

# Title 458 WAC

## REVENUE, DEPARTMENT OF

<b>Chapters</b>			
<b>458-07</b>	<b>Valuation and revaluation of real property.</b>	458-08-060	067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.
<b>458-10</b>	<b>Accreditation of real property appraisers.</b>		Appearance and practice before agency—Former employee as expert witness. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-060, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.
<b>458-12</b>	<b>Property tax division—Rules for assessors.</b>		Pleadings. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-070, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.
<b>458-14</b>	<b>County boards of equalization.</b>	458-08-070	Discovery in contested cases—Scope. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-080, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.
<b>458-15</b>	<b>Historic property.</b>		Depositions and interrogatories in contested cases—Right to take. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-090, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.
<b>458-16</b>	<b>Property tax—Exemptions.</b>		Depositions and interrogatories in contested cases—Officer before whom taken. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-100, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.
<b>458-16A</b>	<b>Property tax—Exemptions—Homes for the aging, senior citizens and disabled persons.</b>	458-08-080	Depositions and interrogatories in contested cases—Authorization. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-110, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.
<b>458-17</b>	<b>Assessment and taxation of ships and vessels.</b>		Depositions and interrogatories in contested cases—Protection of parties and deponents. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-120, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.
<b>458-18</b>	<b>Property tax—Abatements, credits, deferrals and refunds.</b>	458-08-090	Deposition and interrogatories in contested cases—Oral examination and cross-examination. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-130, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.
<b>458-19</b>	<b>Property tax levies, rates, and limits.</b>		Depositions and interrogatories in contested cases—Recordation. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-140, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.
<b>458-20</b>	<b>Excise tax rules.</b>		Depositions and interrogatories in contested cases—Signing attestation and return. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-150, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.
<b>458-28</b>	<b>Taxation of financial businesses by cities or towns.</b>	458-08-100	Depositions and interrogatories in contested cases—Use and effect. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-160, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.
<b>458-29A</b>	<b>Leasehold excise tax.</b>		Depositions and interrogatories in contested cases—Fees of officers and deponents. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-170, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.
<b>458-30</b>	<b>Open Space Taxation Act rules.</b>		Depositions upon interrogatories—Submission of interrogatories. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-180, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.
<b>458-40</b>	<b>Taxation of forest land and timber.</b>		
<b>458-50</b>	<b>Intercounty utilities and transportation companies—Assessment and taxation.</b>	458-08-110	
<b>458-53</b>	<b>Property tax annual ratio study.</b>		
<b>458-57</b>	<b>State of Washington Estate and Transfer Tax Reform Act rules.</b>		
<b>458-61</b>	<b>Real estate excise tax.</b>	458-08-120	
<b>458-276</b>	<b>Access to public records.</b>		
<b>DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE</b>			
<b>Chapter 458-08</b>			
<b>UNIFORM PROCEDURAL RULES FOR THE CONDUCT OF CONTESTED CASES</b>			
458-08-010	Application and scope of chapter 458-08 WAC. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-010, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.	458-08-130	
458-08-020	Definitions. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-020, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.	458-08-140	
458-08-030	Appearance and practice before agency—Who may appear. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-030, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.	458-08-150	
458-08-040	Appearance and practice before agency—Standards of ethical conduct. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-040, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.	458-08-160	
458-08-050	Appearance and practice before agency—Appearance by former employee of agency or former member of attorney general's staff. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-050, filed 11/18/85.] Repealed by 95-07-	458-08-170	
		458-08-180	

and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-180, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.

458-08-190 Depositions upon interrogatories—Interrogation. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-190, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.

458-08-200 Depositions upon interrogatories—Attestation and return. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-200, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.

458-08-210 Depositions upon interrogatories—Provisions of deposition rule. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-210, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.

458-08-220 Interrogatories to parties. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-220, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.

458-08-230 Requests for admission. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-230, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.

458-08-240 Subpoenas. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-240, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.

458-08-250 Settlement. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-250, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.

458-08-260 Decision procedure. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-260, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.

458-08-270 Review procedures. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-270, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.

Reviser's note: Later promulgation, see WAC 458-20-10001 and 458-20-10002.

Chapter 458-24

UNFAIR CIGARETTE SALES BELOW COST ACT RULES AND REGULATIONS

458-24-010 General. [Order NET 72-2, § 458-24-010, filed 9/29/72.] Repealed by 96-21-141, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-24-020 Unlawful practices. [Statutory Authority: RCW 82.32.300. 82-19-028 (Order NET 82-9), § 458-24-020, filed 9/10/82; Order NET 72-2, § 458-24-020, filed 9/29/72.] Repealed by 96-21-141, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-24-030 Licenses, bond. [Statutory Authority: RCW 82.32.300. 82-19-028 (Order NET 82-9), § 458-24-030, filed 9/10/82; Order NET 72-2, § 458-24-030, filed 9/29/72.] Repealed by 96-21-141, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-24-040 Legal action, remedies. [Order NET 72-2, § 458-24-040, filed 9/29/72.] Repealed by 96-21-141, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-24-050 Administrative remedies. [Statutory Authority: RCW 82.32.300. 82-19-028 (Order NET 82-9), § 458-24-050, filed 9/10/82; Order NET 72-2, § 458-24-050, filed 9/29/72.] Repealed by 96-21-141, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-24-060 Form and contents of complaint. [Statutory Authority: RCW 82.32.300. 82-19-028 (Order NET 82-9), § 458-24-060, filed 9/10/82; Order NET 72-2, § 458-24-060, filed 9/29/72.] Repealed by 96-21-141, filed 10/23/96,

effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-24-070 Penalties. [Statutory Authority: RCW 82.32.300. 82-19-028 (Order NET 82-9), § 458-24-070, filed 9/10/82.] Repealed by 96-21-141, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-24-080 Cigarette wholesalers and retailers—Determination of cost. [Statutory Authority: RCW 19.91.180(1). 85-01-061 (Order NET 84-5), § 458-24-080, filed 12/17/84. Statutory Authority: RCW 82.32.300. 82-24-028 (Order NET 82-11), § 458-24-080, filed 11/23/82.] Repealed by 96-21-141, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-24-090 Basic cost of cigarettes—How calculated. [Statutory Authority: RCW 19.91.180(1). 85-01-061 (Order NET 84-5), § 458-24-090, filed 12/17/84.] Repealed by 96-21-141, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

Chapter 458-52

PROPERTY TAX ANNUAL RATIO STUDY

458-52-010 Declaration of purpose. [Statutory Authority: RCW 84.48.075. 78-02-052 (Order PT 78-1), § 458-52-010, filed 1/19/78.] Repealed by 79-11-029 (Order PT 79-3), filed 10/11/79. Statutory Authority: RCW 84.48.075. Later promulgation, see WAC 458-53-010.

458-52-020 Definitions. [Statutory Authority: RCW 84.48.075. 78-02-052 (Order PT 78-1), § 458-52-020, filed 1/19/78.] Repealed by 79-11-029 (Order PT 79-3), filed 10/11/79. Statutory Authority: RCW 84.48.075. Later promulgation, see WAC 458-53-020.

458-52-030 Stratification of assessment rolls—Real property. [Statutory Authority: RCW 84.48.075. 78-02-052 (Order PT 78-1), § 458-52-030, filed 1/19/78.] Repealed by 79-11-029 (Order PT 79-3), filed 10/11/79. Statutory Authority: RCW 84.48.075. Later promulgation, see WAC 458-53-030.

458-52-040 Land Use Code—Abstract report. [Statutory Authority: RCW 84.48.075. 78-02-052 (Order PT 78-1), § 458-52-040, filed 1/19/78.] Repealed by 79-11-029 (Order PT 79-3), filed 10/11/79. Statutory Authority: RCW 84.48.075. Later promulgation, see WAC 458-53-050.

458-52-050 Stratification—Personal property. [Statutory Authority: RCW 84.48.075. 78-02-052 (Order PT 78-1), § 458-52-050, filed 1/19/78.] Repealed by 79-11-029 (Order PT 79-3), filed 10/11/79. Statutory Authority: RCW 84.48.075. Later promulgation, see WAC 458-53-060.

458-52-060 Sales studies. [Statutory Authority: RCW 84.48.075. 78-02-052 (Order PT 78-1), § 458-52-060, filed 1/19/78.] Repealed by 79-11-029 (Order PT 79-3), filed 10/11/79. Statutory Authority: RCW 84.48.075. Later promulgation, see WAC 458-53-070.

458-52-070 Real property appraisal studies. [Statutory Authority: RCW 84.48.075. 78-02-052 (Order PT 78-1), § 458-52-070, filed 1/19/78.] Repealed by 79-11-029 (Order PT 79-3), filed 10/11/79. Statutory Authority: RCW 84.48.075. Later promulgation, see WAC 458-53-130.

458-52-080 Personal property audit studies. [Statutory Authority: RCW 84.48.075. 78-02-052 (Order PT 78-1), § 458-52-080, filed 1/19/78.] Repealed by 79-11-029 (Order PT 79-3), filed 10/11/79. Statutory Authority: RCW 84.48.075. Later promulgation, see WAC 458-53-140.

458-52-090 Indicated real property ratio—Computation. [Statutory Authority: RCW 84.48.075. 78-02-052 (Order PT 78-1), § 458-52-090, filed 1/19/78.] Repealed by 79-11-029 (Order PT 79-3), filed 10/11/79. Statutory Authority: RCW 84.48.075. Later promulgation, see WAC 458-53-150.

458-52-100 Indicated personal property ratio—Computation. [Statutory Authority: RCW 84.48.075. 78-02-052 (Order PT 78-1), § 458-52-100, filed 1/19/78.] Repealed by 79-11-029 (Order PT 79-3), filed 10/11/79. Statutory Authority: RCW 84.48.075. Later promulgation, see WAC 458-53-160.

458-52-110 Final indicated ratio—Computation. [Statutory Authority: RCW 84.48.075. 78-02-052 (Order PT 78-1), § 458-52-110, filed 1/19/78.] Repealed by 79-11-029 (Order PT 79-3), filed 10/11/79. Statutory Authority: RCW 84.48.075. Later promulgation, see WAC 458-53-170.

458-52-120 Use of indicated ratios. [Statutory Authority: RCW 84.48.075. 78-02-052 (Order PT 78-1), § 458-52-120, filed 1/19/78.] Repealed by 79-11-029 (Order PT 79-3),

	filed 10/11/79. Statutory Authority: RCW 84.48.075. Later promulgation, see WAC 458-53-180.	458-56-170	Gifts taxable as inheritance. [Order IT-75-1, § 458-56-170, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.
458-52-130	County assessor's review. [Statutory Authority: RCW 84.48.075. 78-02-052 (Order PT 78-1), § 458-52-130, filed 1/19/78.] Repealed by 79-11-029 (Order PT 79-3), filed 10/11/79. Statutory Authority: RCW 84.48.075. Later promulgation, see WAC 458-53-190.	458-56-180	Gift tax returns. [Order IT-75-1, § 458-56-180, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.
458-52-140	Certification of county indicated ratios. [Statutory Authority: RCW 84.48.075. 78-02-052 (Order PT 78-1), § 458-52-140, filed 1/19/78.] Repealed by 79-11-029 (Order PT 79-3), filed 10/11/79. Statutory Authority: RCW 84.48.075. Later promulgation, see WAC 458-53-200.	458-56-190	Liens. [Order IT-75-1, § 458-56-190, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.
458-52-150	Assessor's appeal. [Statutory Authority: RCW 84.48.075. 78-02-052 (Order PT 78-1), § 458-52-150, filed 1/19/78.] Repealed by 79-11-029 (Order PT 79-3), filed 10/11/79. Statutory Authority: RCW 84.48.075. Later promulgation, see WAC 458-53-210.	458-56-200	Valuation of securities and accounts. [Order IT-75-1, § 458-56-200, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.
<b>Chapter 458-56</b>			
<b>RULES RELATING TO GIFT TAXES</b>			
458-56-010	Scope of rules. [Order IT-75-1, § 458-56-010, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.	458-56-220	Receipts. [Order IT-75-1, § 458-56-220, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.
458-56-020	Imposition of tax. [Order IT-75-1, § 458-56-020, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.	458-56-230	Appeals and appellate procedure. [Order IT-75-1, § 458-56-230, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.
458-56-030	Requirement of return. [Order IT-75-1, § 458-56-030, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.	<b>Chapter 458-60</b>	
458-56-040	Joint accounts and trusts. [Order IT-75-1, § 458-56-040, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.	<b>REAL ESTATE EXCISE TAX</b>	
458-56-050	Annual exclusion. [Order IT-75-1, § 458-56-050, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.	458-60-002	Real estate excise tax—Definitions. [Statutory Authority: RCW 82.45.120 and 28A.45.120. 80-15-033 (Order PT 80-2), § 458-60-002, filed 10/9/80.] Repealed by 82-15-070 (Order PT 82-5), filed 7/21/82. Statutory Authority: RCW 82.45.120 and 82.45.150. Later promulgation, see chapter 458-61 WAC.
458-56-060	Time and place for filing return. [Order IT-75-1, § 458-56-060, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.	458-60-010	Leases with options to purchase—General policy. [Order PT 68-7, § 458-60-010, filed 5/1/68.] Repealed by 82-15-070 (Order PT 82-5), filed 7/21/82. Statutory Authority: RCW 82.45.120 and 82.45.150. Later promulgation, see chapter 458-61 WAC.
458-56-070	Gifts made during prior calendar years. [Order IT-75-1, § 458-56-070, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.	458-60-020	Leases with options to purchase—Tax payable only when option exercised. [Order PT 68-7, § 458-60-020, filed 5/1/68.] Repealed by 82-15-070 (Order PT 82-5), filed 7/21/82. Statutory Authority: RCW 82.45.120 and 82.45.150. Later promulgation, see chapter 458-61 WAC.
458-56-080	Gross gifts made during calendar year. [Order IT-75-1, § 458-56-080, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.	458-60-030	Leases with options to purchase—Special procedures for lease-option agreements. [Order PT 68-7, § 458-60-030, filed 5/1/68.] Repealed by 82-15-070 (Order PT 82-5), filed 7/21/82. Statutory Authority: RCW 82.45.120 and 82.45.150. Later promulgation, see chapter 458-61 WAC.
458-56-090	Description of property. [Order IT-75-1, § 458-56-090, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.	458-60-040	Leases with options to purchase—Determination of purchase price. [Order PT 68-7, § 458-60-040, filed 5/1/68.] Repealed by 82-15-070 (Order PT 82-5), filed 7/21/82. Statutory Authority: RCW 82.45.120 and 82.45.150. Later promulgation, see chapter 458-61 WAC.
458-56-100	Valuation of property. [Order IT-75-1, § 458-56-100, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.	458-60-045	Payment of the excise tax on real estate sales—Recording instrument of conveyance. [Statutory Authority: RCW 82.45.120 and 28A.45.120. 80-15-033 (Order PT 80-2), § 458-60-045, filed 10/9/80.] Repealed by 82-15-070 (Order PT 82-5), filed 7/21/82. Statutory Authority: RCW 82.45.120 and 82.45.150. Later promulgation, see chapter 458-61 WAC.
458-56-110	Exempt gifts. [Order IT-75-1, § 458-56-110, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.	458-60-046	Real estate excise tax affidavit—Contents—Oath requirement—Signatures—Affidavit. [Statutory Authority: RCW 82.45.120 and 28A.45.120. 80-15-033 (Order PT 80-2), § 458-60-046, filed 10/9/80.] Repealed by 82-15-070 (Order PT 82-5), filed 7/21/82. Statutory Authority: RCW 82.45.120 and 82.45.150. Later promulgation, see chapter 458-61 WAC.
458-56-120	Specific exemptions. [Order IT-75-1, § 458-56-120, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.	458-60-048	Real estate excise tax affidavit—When required—When not required. [Statutory Authority: RCW 82.45.120 and 28A.45.120. 80-15-033 (Order PT 80-2), § 458-60-048, filed 10/9/80.] Repealed by 82-15-070 (Order PT 82-5), filed 7/21/82. Statutory Authority: RCW 82.45.120 and 82.45.150. Later promulgation, see chapter 458-61 WAC.
458-56-130	Community property and separate property. [Order IT-75-1, § 458-56-130, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.		
458-56-140	(Reserved.) Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.		
458-56-150	Penalties. [Order IT-75-1, § 458-56-150, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.		
458-56-160	Payment of tax. [Order IT-75-1, § 458-56-160, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.		

## Chapter 458-65

## ABANDONED PROPERTY

- 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.

## 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, reconciling 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) **Introduction.** This rule provides information about the revaluation of real property in a county where all real property is not revalued each year. It explains when an assessor is authorized to revalue real property using appraisal judgment outside of the approved revaluation cycle. It also explains what happens when the area of the county being physically inspected and revalued in a particular year is not completed in that year. Finally, this rule explains the requirement that revaluation notices be mailed by the assessor to the taxpayer when there is any change in the assessed value of real property.

(2) **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.

(3) **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), 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;

(2005 Ed.)

(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.

(4) **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.

(5) **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. For additional information about revaluation notices, refer to WAC 458-12-360.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 03-22-025, § 458-07-020, filed 10/27/03, effective 11/27/03. 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;

[Title 458 WAC—p. 5]

(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 consideration. 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) **Introduction.** This rule explains when the assessor must begin the listing and valuation of property in the county. It also provides information relating to the listing and valuation of subdivisions of real property. Finally, this rule explains when a person will be allowed to pay property taxes on their partial interest in a parcel of real property.

(2) **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.

(3) **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 will 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, must 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, must 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 must 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, must 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, must be placed on the roll for the succeeding assessment year.

(4) **Petition for payment of taxes on partial interest.** Any person desiring to pay taxes on only their interest in a

(2005 Ed.)

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 must determine the value of the applicant's interest and certify that value to the county treasurer who will accept payment of taxes for the applicant's interest in the property. No segregation of the property can be made unless all current year and delinquent taxes and assessments on the entire parcel have been paid in full, except for the following situations, in which all current year and 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 84.08.010 and 84.08.070. 03-22-025, § 458-07-035, filed 10/27/03, effective 11/27/03. Statutory Authority: RCW 84.08.070. 00-01-043, § 458-07-035, filed 12/7/99, effective 1/7/00.]

**Chapter 458-10 WAC  
ACCREDITATION OF REAL PROPERTY  
APPRAISERS**

**WAC**

458-10-010	Accreditation of real property appraisers—Implementation—Definitions.
458-10-020	Application for accreditation.
458-10-030	Accreditation examination—Prerequisites—Waiver or exemption—Reexamination.
458-10-040	Accreditation certificate.
458-10-050	Continuing education requirements—Appraisal practice and ethics.
458-10-060	Standards of practice.
458-10-070	Denial, suspension, or revocation of accreditation.

**WAC 458-10-010 Accreditation of real property appraisers—Implementation—Definitions.** (1) **Implementation of accreditation requirements.** The rules in this chapter implement the provisions of chapter 36.21 RCW dealing with the accreditation of persons responsible for valuing real property for purposes of taxation. To the extent practical, these rules coordinate accreditation requirements with the requirements for certified and licensed real estate appraisers under chapter 18.140 RCW. The purpose of these rules is to promote uniformity and consistency throughout the state in the education and experience qualifications and maintain minimum standards of competence and conduct of persons responsible for valuing real property for purposes of taxation.

(2) **Accreditation required for persons valuing real property for purposes of taxation.** Any person responsible for valuing real property for purposes of taxation must be an accredited appraiser. This requirement includes persons acting as assistants or deputies to a county assessor who determine real property values or review appraisals prepared by others. This requirement does not apply to persons working in the county assessor's office who do not exercise appraisal judgment with respect to real property.

(3) **Definitions.** Unless the context clearly requires otherwise, the following definitions apply throughout chapter 458-10 WAC:

(a) "Accreditation" means the act or process by which persons are authorized by the department to assess real prop-

erty for purposes of taxation and includes the status of being accredited.

(b) "Accredited appraiser" means a person who has successfully completed and fulfilled all requirements imposed by the department for accreditation and who has a currently valid accreditation certificate.

(c) "Appraisal" means the act or process of estimating the value of real property; an estimate of value of real property; or of or pertaining to appraising real property and related functions.

(d) "Assessment" means the act or process of estimating the value of real property for purposes of taxation only; an estimate of value of real property for purposes of taxation only; or of or pertaining to assessing real property and related functions.

(e) "Classroom hour" means a minimum of fifty minutes out of each sixty-minute hour spent attending an approved course.

(f) "Department" means the department of revenue.

(g) "IAAO" means the International Association of Assessing Officers.

(h) "Real property" means an identified parcel or tract of land, including any improvements, and includes one or more defined interests, benefits, or rights inherent in the ownership of real estate.

(i) "Transactions involving real property" means any of the following:

(i) The sale, lease, purchase, investment in, or exchange of real property, including interests in property or the financing thereof;

(ii) The refinancing of real property or interests in real property; or

(iii) The use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

[Statutory Authority: RCW 36.21.015, 84.08.010 and 84.08.070. 97-08-068, § 458-10-010, filed 4/1/97, effective 5/2/97.]

**WAC 458-10-020 Application for accreditation. (1) Prerequisite to application—Experience.** Prior to applying for accreditation, applicants must have had at least one year of experience related to the items listed in this subsection. The requisite experience may include hours worked during the preceding two years but must include a minimum of one thousand hours worked in a minimum time period of twelve months. The work experience must be directly connected with the following:

(a) Transactions involving real property;

(b) Appraisal of real property;

(c) Assessment of real property; or

(d) A combination of (a), (b), and (c) of this subsection.

(2) **Prerequisite to application—Knowledge.** Prior to applying for accreditation, applicants must be knowledgeable in:

(a) Repair and remodeling of buildings and improvement of land;

(b) The significance of locality and area to the value of real property; and

(c) The standards for appraising real property established by the department. (See WAC 458-10-060.)

[Title 458 WAC—p. 8]

(3) **Application procedure.** Any person desiring to be an accredited appraiser must complete an "Application for Accreditation" form and submit it to the property tax division of the department. The department shall review the application and verify that the applicant meets the qualifications prescribed by chapter 36.21 RCW and chapter 458-10 WAC, including either passing the accreditation examination or qualifying for a waiver of or exemption from the examination. Upon completion of review and verification, the department shall, as appropriate, issue an accreditation certificate, reject the application and give the reason or reasons for the rejection, or notify the applicant of any further requirements prior to issuing an accreditation certificate. Forms shall be prepared by and are available from the property tax division of the department.

[Statutory Authority: RCW 36.21.015, 84.08.010 and 84.08.070. 97-08-068, § 458-10-020, filed 4/1/97, effective 5/2/97.]

**WAC 458-10-030 Accreditation examination—Prerequisites—Waiver or exemption—Reexamination. (1) Prerequisites to taking examination.** Any person desiring to take the accreditation examination must complete a "Request for Administration of Appraiser Examination" form and submit it to the property tax division of the department. As a prerequisite to taking the examination for accreditation an applicant shall submit evidence to the department that he or she has successfully completed at least thirty classroom hours of courses approved by the department in the basic principles of real property appraising. These courses must have been completed within two years of the date the evidence is submitted to the department. Course content required prior to taking the accreditation examination must include coverage of basic principles of real property appraisal or related topics such as, but not limited to:

(a) Influences on real property value;

(b) Legal considerations in appraisal;

(c) Types of value;

(d) Economic principles;

(e) Real estate markets and analysis;

(f) Valuation process;

(g) Property description;

(h) Highest and best use analysis;

(i) Appraisal math and statistics;

(j) Sales comparison approach;

(k) Site value;

(l) Cost approach;

(m) Income approach, including:

(i) Gross rent multiplier analysis;

(ii) Estimation of income and expenses;

(iii) Operating expense ratios; and

(iv) Direct capitalization;

(n) Valuation of partial interests; and

(o) Washington state property tax law.

(2) **Examination required unless waived—Passing score.** No person shall assess real property for purposes of taxation without passing the accreditation examination or without receiving an examination waiver under subsection (4) of this section or without meeting the requirements set out in subsection (6) of this section. A minimum score of seventy is required to pass the accreditation examination.

(2005 Ed.)

(3) **Accreditation examination—Fee.** The accreditation examination shall be prepared and administered by the department on subjects related to the valuation of real property. In preparing the examination, the department may request assistance from an advisory committee made up of assessors, assessor's appraisal staff, other qualified appraisers, or persons from the department of personnel. In administering the test, the department may contract with others to supervise the examination of applicants. An appropriate fee to cover the costs of such supervision must be paid by the applicant at the time of application.

(4) **Waiver of examination requirement.** The department shall waive the accreditation examination requirement for those persons who provide adequate evidence of any one of the following:

(a) The person has either attended a presentation of IAAO Course 1, or its equivalent, and successfully passed the course examination or successfully passed the course examination without having attended the presentation of the course;

(b) The person is currently certified or licensed as a real estate appraiser under chapter 18.140 RCW, the Certified Real Estate Appraiser Act; or

(c) The person has sufficient education and experience that is the equivalent of passing the accreditation examination. For purposes of this section, sufficient education means successfully completing a minimum of seventy-five classroom hours of courses approved by the department in the basic principles of real property appraising, and sufficient experience means a minimum of two years (twenty-four months), and not less than two thousand hours, of experience appraising real property.

(5) **Procedure for requesting a waiver.** An applicant may request a waiver of the accreditation examination requirement by completing an "Application for Accreditation" form and submitting it to the property tax division of the department. The department shall determine if the applicant has shown the necessary qualifications that are the equivalent of passing the examination. The department may require additional documentation or verification from the applicant's employer(s) or others in making this determination.

(6) **Exemption from examination requirement.** Accreditation examination requirements shall not apply to persons who have either:

(a) Been certified as a real property appraiser by the department of personnel prior to July 1, 1992; or

(b) Attended and satisfactorily completed the assessor's school operated jointly by the department and the Washington state assessors association prior to August 9, 1971.

(7) **Reexamination.** An applicant who has failed the accreditation examination, or failed to appear for a scheduled examination, may apply for reexamination or examination by submitting a new "Request for Administration of Appraiser Examination" form not less than sixty days from the date the examination was administered. No additional fee is required for one reexamination or one rescheduled examination.

[Statutory Authority: RCW 36.21.015, 84.08.010 and 84.08.070. 97-08-068, § 458-10-030, filed 4/1/97, effective 5/2/97.]

**WAC 458-10-040 Accreditation certificate. (1) Requirements for issuance of accreditation certificate.** The department shall issue an accreditation certificate to any

(2005 Ed.)

applicant who meets the requirements of WAC 458-10-020 and who satisfies one of the following:

(a) Successfully passes the accreditation examination;

(b) Has received a waiver of the examination from the department under WAC 458-10-030(4); or

(c) Is exempt from the examination requirement under WAC 458-10-030(6).

(2) **Certificate duration.** An accreditation certificate is valid for two years from the date issued.

[Statutory Authority: RCW 36.21.015, 84.08.010 and 84.08.070. 97-08-068, § 458-10-040, filed 4/1/97, effective 5/2/97.]

**WAC 458-10-050 Continuing education requirements—Appraisal practice and ethics. (1) Introduction.**

This rule provides information about the process for renewing an accreditation certificate, including detailed information about the continuing education requirements required of renewal applicants.

(2) **Renewal of accreditation certificate.** An accredited appraiser desiring to renew his or her accreditation certificate must complete a renewal application and submit it to the property tax division of the department at least two weeks prior to the expiration date of the certificate. In order to receive a renewal of the certificate, the applicant must provide proof that he or she has attended a minimum of fifteen classroom hours of approved instruction within the two years preceding the expiration date of the certificate.

(3) **Extensions of time for renewal.** An applicant may request an extension of time to submit the renewal application and complete the continuing education requirements if the request is submitted prior to the expiration date of the certificate. The time extension shall only be approved upon a showing of good cause by the applicant and only for a maximum time period of three months from the original expiration date of the certificate. Good cause may include, but is not limited to, a showing of long-term illness or extended absence from work for valid reasons. Excessive workload, insufficient funds, lack of budget allocation, or other similar reasons are not satisfactory to show good cause.

(4) **Preapproval of courses.** All courses, seminars, or workshops must be preapproved by the department in order to be applied toward the continuing education requirement. The department will use the following criteria to approve courses, seminars, or workshops:

(a) Any course, seminar, or workshop directly related to real property appraising and offered by qualified personnel will be approved for the full number of classroom hours involved; and

(b) Any seminar or workshop directly related to a topic or topics of general interest to an assessor's office and offered by qualified personnel will be approved for a maximum of three classroom hours. No more than three hours out of the fifteen classroom hours required may be on a topic or topics of general interest to an assessor's office.

(5) **Course examination not required.** No examination is required for courses, seminars, or workshops taken to satisfy the requirement for continuing education classroom hours.

(6) **Participation in education other than as a student.** The continuing education requirement may be satisfied by participating other than as a student in educational process

[Title 458 WAC—p. 9]

and programs approved by the department including teaching, program development, and authorship of textbooks or other written instructional materials. Approval of the number of classroom hours will be based upon the subject matter and time spent in preparation or development of the training or materials. In order to meet the continuing education requirement in this manner, the following criteria must be met:

(a) Textbook, course, or presentation materials must originate with and be developed by the textbook or course author or the presenter;

(b) The textbook or course author or presenter must provide the department with a description of the work involved in preparing the textbook, course, or presentation, together with the amount of time spent in preparation and amount of time, if any, proposed to be spent in actual training or presenting; and

(c) The course author or presenter must provide the department with a copy of the course or presentation outline showing the amount of time allotted to each topic covered in the course or presentation.

(7) **Topics covered.** Courses, seminars, or workshops taken to satisfy the continuing education requirement for accredited appraisers must cover topics related to real property appraisal, such as:

- (a) Ad valorem taxation;
- (b) Arbitrations;
- (c) Business courses related to practice of real estate;
- (d) Construction estimating;
- (e) Ethics and standards of professional practice;
- (f) Land use planning, zoning, and taxation;
- (g) Property development;
- (h) Real estate law;
- (i) Real property exchange;
- (j) Real property computer applications;
- (k) Mass appraisal;
- (l) Geographic information systems (GIS);
- (m) Levy process;
- (n) Boards of equalization; and
- (o) Other subjects as are approved by the department.

(8) **Same or similar content.**

(a) No applicant will receive approval from the department for courses taken within any four-year time period that have the same or very similar content and are deemed comparable by the department, even if the course providers are different.

(b) Applicants who request approval from the department for continuing education hours for preparation and development of textbook, course, or presentation materials that have previously been approved by the department must provide sufficient information and explanation to indicate how the materials differ from the original approved materials and how much preparation and time was involved in the revision of the original materials.

(9) **Carry-over of classroom hours.** A maximum of five continuing education classroom hours may be carried over and applied to the following two-year period of accreditation.

(10) **Education requirement for standards of appraisal practice and ethics.** Each accredited appraiser is required to successfully complete fifteen classroom hours of a course or courses approved by the department in standards

of appraisal practice and ethics. If the course or courses have not been successfully completed at the time an applicant is accredited, the course or courses attended to satisfy this requirement may also be used to satisfy the general continuing education requirement and are not in addition to the fifteen hours of continuing education required to be satisfied every two years. The requirement for successful completion of fifteen classroom hours in standards of appraisal practice and ethics must be satisfied in any one of the following three ways:

(a) An accredited appraiser had successfully completed the fifteen classroom hours of a course or courses at the time he or she was initially accredited, and can provide proof to the department of such successful completion;

(b) An accredited appraiser who has not yet successfully completed the fifteen hours of such course or courses must do so within three years of the effective date of this rule; or

(c) An applicant for accreditation must either:

(i) Have successfully completed fifteen hours of such course or courses within three years prior to the date of application; or

(ii) Successfully complete fifteen hours of such course or courses within three years of the date of accreditation.

(11) **Failure to comply with continuing education requirements.** Any accredited appraiser whose accreditation certificate has expired, and who has not received an extension of time under subsection (3) of this section, is prohibited from appraising real property for purposes of taxation. After the certificate has expired, an applicant must show the following in order to renew the certificate:

(a) For a certificate that expired less than two years prior to the date the renewal application is submitted, an applicant must show that he or she has satisfied the fifteen classroom hours of continuing education requirement within the previous two years. Any application submitted within two years of the certificate expiration that fails to satisfy the continuing education requirement will be denied.

(b) For a certificate that expired more than two years prior to the date the renewal application is submitted, the application will be treated as a new application for accreditation and in addition, the applicant will be required to show that he or she has satisfied thirty classroom hours of continuing education within the previous four years.

[Statutory Authority: RCW 36.21.015, 84.08.010 and 84.08.070. 05-02-038, § 458-10-050, filed 12/30/04, effective 1/30/05; 97-08-068, § 458-10-050, filed 4/1/97, effective 5/2/97.]

**WAC 458-10-060 Standards of practice.** The standards of practice adopted by the department and governing real property appraisal activities by accredited appraisers are the generally accepted appraisal standards as evidenced by the current appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. A complete text of these appraisal standards is available for viewing during normal working hours at the property tax division of the department.

[Statutory Authority: RCW 36.21.015, 84.08.010 and 84.08.070. 97-08-068, § 458-10-060, filed 4/1/97, effective 5/2/97.]

**WAC 458-10-070 Denial, suspension, or revocation of accreditation.** (1) **Reasons for denial, suspension, or revocation.** The department may deny, suspend, or revoke the accreditation of any person for any of the following reasons:

(a) Failure to meet the minimum qualifications established for accreditation by the department;

(b) Failure to pass the accreditation examination or to meet examination waiver or exemption requirements;

(c) Knowingly providing false information on application forms; or

(d) Failure to comply with continuing education requirements, including requirements regarding appraisal standards and ethics.

(2) **Notification of denial, suspension, or revocation—Appeal.** Notification of denial, suspension, or revocation by the department shall be in writing to the applicant at the applicant's last known address and, if the applicant is currently employed in an assessor's office, to the assessor. Any appeal by an applicant or accredited appraiser of the denial, suspension, or revocation of accreditation must be made in writing to the assistant director of the property tax division of the department.

[Statutory Authority: RCW 36.21.015, 84.08.010 and 84.08.070. 97-08-068, § 458-10-070, filed 4/1/97, effective 5/2/97.]

### Chapter 458-12 WAC

#### PROPERTY TAX DIVISION—RULES FOR ASSESSORS

##### WAC

458-12-005	Definition—Property—Personal.
458-12-010	Definition—Property—Real.
458-12-012	Definition—Irrigation systems—Real—Personal.
458-12-025	Compensation for assistance by department of revenue at request of assessor.
458-12-030	County appraisers' salary and classification plan.
458-12-035	Standard forms.
458-12-045	Listing of real property—Contracts for sale of public lands.
458-12-050	Omitted property and omitted value.
458-12-055	Taxable situs—Real property.
458-12-060	Listing of personal property.
458-12-110	Listing of personal property by the assessor—Penalties for failing to list personal property and for making a false or fraudulent listing.
458-12-115	Personalty—Taxable situs—In general.
458-12-120	Situs of personalty—Beer kegs.
458-12-140	Taxing district boundaries—Designation of tax code area.
458-12-155	Listing of property—Public lands—Federal lands—Exclusive or concurrent jurisdiction.
458-12-160	Listing of property—Public land—Conveyances.
458-12-165	Listing of property—Public lands—Purchase by state, county or city.
458-12-170	Listing of property—Public lands—Possessory rights.
458-12-175	Listing of property—Public lands—Leasehold interests and improvements.
458-12-180	Listing of property—Public lands—Public body as lessee—Improvements.
458-12-251	Computer software—Definitions—Valuation.
458-12-295	Exemption—Agricultural products—Grains, flour, fruit, vegetables and fish—Cancellation.
458-12-296	Exemption—Ores and metals.
458-12-310	Valuation of property—Personal property.
458-12-342	New construction—Assessment.
458-12-343	New construction—Reports.
458-12-360	Notice of change in value of real property.

(2005 Ed.)

#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

458-12-015	Definition—Interstate commerce. [Order PT 68-6, § 458-12-015, filed 4/29/68.] Repealed by 01-11-029, filed 5/8/01, effective 6/8/01. Statutory Authority: RCW 84.36.865, 84.08.010 and 84.08.070.
458-12-020	Definition—Foreign commerce—Imports and exports. [Order PT 68-6, § 458-12-020, filed 4/29/68.] Repealed by 01-11-029, filed 5/8/01, effective 6/8/01. Statutory Authority: RCW 84.36.865, 84.08.010 and 84.08.070.
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.
458-12-065	Listing personal property—Form and notice. [Order PT 68-6, § 458-12-065, filed 4/29/68.] Repealed by 04-01-119, filed 12/17/03, effective 1/17/04. Statutory Authority: RCW 84.08.010 and 84.08.070.
458-12-070	Listing of personalty—When due—Late filing. [Order PT 68-6, § 458-12-070, filed 4/29/68.] Repealed by 04-01-119, filed 12/17/03, effective 1/17/04. Statutory Authority: RCW 84.08.010 and 84.08.070.
458-12-075	Personalty—Filing by corporations, partnerships, firms or agents. [Order PT 68-6, § 458-12-075, filed 4/29/68.] Repealed by 04-01-119, filed 12/17/03, effective 1/17/04. Statutory Authority: RCW 84.08.010 and 84.08.070.
458-12-080	Listing of personalty—Manufacturers. [Order PT 69-1, § 458-12-080, filed 4/14/69; Order 68-6, § 458-12-080, filed 4/29/68.] Repealed by 04-01-119, filed 12/17/03, effective 1/17/04. Statutory Authority: RCW 84.08.010 and 84.08.070.
458-12-085	Listing of personalty—Merchants—Personalty—Consignments. [Order PT 68-6, § 458-12-085, filed 4/29/68.] Repealed by 01-11-029, filed 5/8/01, effective 6/8/01. Statutory Authority: RCW 84.36.865, 84.08.010 and 84.08.070.
458-12-090	Listing of personalty—\$300 exemption and its effect on listing. [Order PT 68-6, § 458-12-090, filed 4/29/68.] Repealed by 02-19-004, filed 9/4/02, effective 10/5/02. Statutory Authority: RCW 84.36.865 and 84.08.070. Later promulgation, see WAC 458-16-115.
458-12-095	Listing of personalty—Partial listing. [Order PT 68-6, § 458-12-095, filed 4/29/68.] Repealed by 05-02-034, filed 12/30/04, effective 1/30/05. Statutory Authority: RCW 84.08.010, 84.08.070, 84.40.040, 84.40.080, 84.40.085, 84.40.130, and 84.40.200.
458-12-100	Listing of personalty—Omitted property—Omitted value. [Statutory Authority: RCW 84.08.010 and 84.08.070. 82-22-059 (Order PT 82-7), § 458-12-100, filed 11/2/82; Order PT 68-6, § 458-12-100, filed 4/29/68.] Repealed by 05-02-034, filed 12/30/04, effective 1/30/05. Statutory Authority: RCW 84.08.010, 84.08.070, 84.40.040, 84.40.080, 84.40.085, 84.40.130, and 84.40.200.
458-12-105	Listing of personalty—Willful failure to list or fraudulent listing—Penalty. [Order PT 68-6, § 458-12-105, filed 4/29/68.] Repealed by 05-02-034, filed 12/30/04, effective 1/30/05. Statutory Authority: RCW 84.08.010, 84.08.070, 84.40.040, 84.40.080, 84.40.085, 84.40.130, and 84.40.200.
458-12-125	Situs of personalty—Merchants and manufacturers. [Order PT 68-6, § 458-12-125, filed 4/29/68.] Repealed by 00-22-036, filed 10/25/00, effective 11/25/00. Statutory Authority: RCW 84.08.010.
458-12-130	Situs of personalty—Migratory stock. [Order PT 68-6, § 458-12-130, filed 4/29/68.] Repealed by 97-21-004, filed 10/1/97, effective 11/1/97. Statutory Authority: RCW 84.08.070.
458-12-135	Listing of property—Taxing district designation. [Order PT 68-6, § 458-12-135, filed 4/29/68.] Repealed by 02-14-011, filed 6/20/02, effective 7/21/02. Statutory Authority: RCW 84.08.010. Later promulgation, see WAC 458-12-140.
458-12-145	Listing of property—Exemptions—Generally—Rules of construction. [Order PT 73-7, § 458-12-145, filed 1/16/74; Order PT 68-6, § 458-12-145, filed 4/29/68.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-100.
458-12-146	Listing of property—Applications—Who must file, annual filing requirement, application forms, what covered, filing fee, financial statement, extensions of time, evidence of timely filing. [Order PT 73-7, § 458-12-146,

[Title 458 WAC—p. 11]

- filed 1/16/74.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-110.
- 458-12-147 Listing of property—Determination—Notification—Appeals. [Order PT 73-7, § 458-12-147, filed 1/16/74.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-120.
- 458-12-148 Listing of property—Properties sold or acquired by organizations deemed to be exempt. [Order PT 73-7, § 458-12-148, filed 1/16/74.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-130.
- 458-12-150 Listing of property—Proof of exemption. [Order PT 73-7, § 458-12-150, filed 1/16/74; Order PT 68-6, § 458-12-150, filed 4/29/68.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-140.
- 458-12-151 Listing of property—Cessation of use—Taxes collectible. [Order PT 73-7, § 458-12-151, filed 1/16/74; Order 73-2, § 458-12-151, filed 5/9/73.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-150.
- 458-12-152 Listing of property—Inaccurate information—What constitutes. [Order PT 73-7, § 458-12-152, filed 1/16/74.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-160.
- 458-12-153 Listing of property—Rental or lease of property deemed to be exempt. [Order PT 73-7, § 458-12-153, filed 1/16/74.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-170.
- 458-12-185 Listing of property—Public lands—Airports, bridges, consulates owned by foreign municipalities. [Order PT 68-6, § 458-12-185, filed 4/29/68.] Repealed by 97-21-004, filed 10/1/97, effective 11/1/97. Statutory Authority: RCW 84.08.070.
- 458-12-190 Listing of property—Cemeteries. [Order PT 73-7, § 458-12-190, filed 1/16/74; Order PT 68-6, § 458-12-190, filed 4/29/68.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-180.
- 458-12-195 Listing of property—Churches, parsonages and convents. [Order PT 73-7, § 458-12-195, filed 1/16/74; Order PT 68-6, § 458-12-195, filed 4/29/68.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-190.
- 458-12-200 Listing of property—Grounds upon which a church or parsonage shall be built. [Order PT 73-7, § 458-12-200, filed 1/16/74; Order PT 68-6, § 458-12-200, filed 4/29/68.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-200.
- 458-12-205 Listing of property—Nonprofit, nonsectarian organizations. [Order PT 73-7, § 458-12-205, filed 1/16/74; Order PT 68-6, § 458-12-205, filed 4/29/68.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-210.
- 458-12-206 Listing of property—Church camps. [Order PT 73-7, § 458-12-206, filed 1/16/74.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-220.
- 458-12-210 Listing of property—Character building organizations. [Order PT 73-7, § 458-12-210, filed 1/16/74; Order PT 68-6, § 458-12-210, filed 4/29/68.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-230.
- 458-12-215 Listing of property—Veterans organizations. [Order PT 73-7, § 458-12-215, filed 1/16/74; Order PT 68-6, § 458-12-215, filed 4/29/68.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-240.
- 458-12-220 Listing of property—Relief organizations. [Order PT 73-7, § 458-12-220, filed 1/16/74; Order PT 68-6, § 458-12-220, filed 4/29/68.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-250.
- 458-12-225 Listing of property—Day care centers, libraries, orphanages, homes for the aged, homes for the sick or infirm, hospitals. [Order PT 73-7, § 458-12-225, filed 1/16/74; Order PT 68-6, § 458-12-225, filed 4/29/68.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-260.
- 458-12-230 Listing of property—Schools and colleges. [Order PT 73-7, § 458-12-230, filed 1/16/74; Order PT 68-6, § 458-12-230, filed 4/29/68.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-270.
- 458-12-235 Listing of property—Art, scientific and historical collections—Fire companies—Humane societies. [Order PT 73-7, § 458-12-235, filed 1/16/74; Order PT 68-6, § 458-12-235, filed 4/29/68.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-280.
- 458-12-236 Listing of property—Nature conservancy lands. [Order PT 73-7, § 458-12-236, filed 1/16/74.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-290.
- 458-12-238 Listing of property—Sheltered workshops for handicapped. [Order PT 73-7, § 458-12-238, filed 1/16/74.] Repealed by Order PT 76-2, filed 4/7/76.
- 458-12-240 Listing of property—Nonprofit organizations—Taxable interests in real property owned or used by nonprofit organizations. [Order PT 68-6, § 458-12-240, filed 4/29/68.] Repealed by 93-08-049, filed 4/2/93, effective 5/3/93. Statutory Authority: RCW 84.41.090 and 84.08.010.
- 458-12-245 Listing of property—Intangibles. [Order PT 68-6, § 458-12-245, filed 4/29/68.] Repealed by 98-14-027, filed 6/22/98, effective 7/23/98. Statutory Authority: RCW 84.36.865, 84.08.010 and 84.08.070.
- 458-12-250 Listing of property—Ships and vessels—Definition. [Order PT 68-6, § 458-12-250, filed 4/29/68.] Repealed by 85-22-083 (Order PT 85-4), filed 11/6/85, effective 1/1/86. Statutory Authority: RCW 84.08.070.
- 458-12-255 Listing of property—Ships and vessels—Taxable situs in Washington. [Order PT 68-6, § 458-12-255, filed 4/29/68.] Repealed by 85-22-083 (Order PT 85-4), filed 11/6/85, effective 1/1/86. Statutory Authority: RCW 84.08.070.
- 458-12-260 Listing of property—Ships and vessels—Vessels under construction. [Order PT 68-6, § 458-12-260, filed 4/29/68.] Repealed by 85-22-083 (Order PT 85-4), filed 11/6/85, effective 1/1/86. Statutory Authority: RCW 84.08.070.
- 458-12-265 Listing of property—Ships and vessels—Partial exemption. [Order PT 68-6, § 458-12-265, filed 4/29/68.] Repealed by 85-22-083 (Order PT 85-4), filed 11/6/85, effective 1/1/86. Statutory Authority: RCW 84.08.070.
- 458-12-270 Listing of property—Household goods and personal effects. [Order PT 68-6, § 458-12-270, filed 4/29/68.] Repealed by 02-19-004, filed 9/4/02, effective 10/5/02. Statutory Authority: RCW 84.36.865 and 84.08.070. Later promulgation, see WAC 458-16-115.
- 458-12-275 Listing of property—\$300—Head of family—In general. [Order PT 68-6, § 458-12-275, filed 4/29/68.] Repealed by 02-19-004, filed 9/4/02, effective 10/5/02. Statutory Authority: RCW 84.36.865 and 84.08.070. Later promulgation, see WAC 458-16-115.
- 458-12-280 Listing of property—\$300—Head of family—Definition. [Order PT 68-6, § 458-12-280, filed 4/29/68.] Repealed by 02-19-004, filed 9/4/02, effective 10/5/02. Statutory Authority: RCW 84.36.865 and 84.08.070. Later promulgation, see WAC 458-16-115.
- 458-12-285 Relationship between average inventory provisions of RCW 84.40.020, the "transient trader" provision of RCW 84.56.180 and the "freepoint exemption" (RCW 84.36.171-84.36.174). [Order 68-8, § 458-12-285, filed 10/31/68; Order PT 68-6, § 458-12-285, filed 4/29/68.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.
- 458-12-290 Identification and reporting requirements for "freepoint exemption" (RCW 84.36.171-84.36.174). [Order PT 68-6, § 458-12-290, filed 4/29/68.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 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.
- 458-12-315 Timber and forest products—Valuation. [Order PT 68-6, § 458-12-315, filed 4/29/68.] Repealed by 00-09-003, filed 4/5/00, effective 5/6/00. Statutory Authority: RCW 84.04.080, 84.33.074 and 84.33.040.
- 458-12-320 Timber—Ownership—Valuation—Roads—Easements over public lands. [Statutory Authority: RCW 84.04.080, 84.33.074 and 84.33.040. 00-09-003, § 458-12-320, filed 4/5/00, effective 5/6/00; Order PT 68-6, § 458-12-320, filed 4/29/68.] Repealed by 05-02-010, filed 12/27/04, effective 1/27/05. Statutory Authority: RCW 84.04.080, 84.33.040 and 84.33.078.

- 458-12-325 Valuation of property—Leasehold interests. [Order PT 68-6, § 458-12-325, filed 4/29/68.] Repealed by Order PT 75-1, filed 2/13/75.
- 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.
- 458-12-340 Assessment and evaluation—Property assessed as of January 1st. [Order PT 68-6, § 458-12-340, filed 4/29/68.] Repealed by 97-21-004, filed 10/1/97, effective 11/1/97. Statutory Authority: RCW 84.08.070.
- 458-12-341 100% assessment ratio. [Order PT 74-6, § 458-12-341, filed 9/11/74; Order PT 69-2, § 458-12-395 (codified as WAC 458-12-341), filed 8/28/69.] Repealed by 97-21-004, filed 10/1/97, effective 11/1/97. Statutory Authority: RCW 84.08.070.
- 458-12-345 Assessment and evaluation—Reforestation lands. [Order PT 68-6, § 458-12-345, filed 4/29/68.] Repealed by 97-21-004, filed 10/1/97, effective 11/1/97. 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.
- 458-12-355 Assessment and evaluation—Assessment of classes of property to be uniform within the taxing district. [Order PT 68-6, § 458-12-355, filed 4/29/68.] Repealed by 97-21-004, filed 10/1/97, effective 11/1/97. Statutory Authority: RCW 84.08.070.
- 458-12-365 Levy. [Order PT 68-6, § 458-12-365, filed 4/29/68.] Repealed by 97-21-004, filed 10/1/97, effective 11/1/97. Statutory Authority: RCW 84.08.070.
- 458-12-370 Levy—Duty of assessor. [Order PT 68-6, § 458-12-370, filed 4/29/68.] Repealed by 97-21-004, filed 10/1/97, effective 11/1/97. Statutory Authority: RCW 84.08.070.
- 458-12-375 Levy—Prorating 40 mill law. [Order PT 68-6, § 458-12-375, filed 4/29/68.] Repealed by 97-21-004, filed 10/1/97, effective 11/1/97. Statutory Authority: RCW 84.08.070.
- 458-12-380 Levy—Tax Freeze Act of 1967. [Order PT 68-6, § 458-12-380, filed 4/29/68.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.
- 458-12-385 State levy. [Order PT 74-6, § 458-12-385, filed 9/11/74; Order PT 68-6, § 458-12-385, filed 4/29/68.] Repealed by 97-21-004, filed 10/1/97, effective 11/1/97. Statutory Authority: RCW 84.08.070.
- 458-12-390 State levy—Fertilizers and insecticides held by farmers—Inventory. [Order PT 69-1, § 458-12-390, filed 4/14/69.] Repealed by 00-22-036, filed 10/25/00, effective 11/25/00. Statutory Authority: RCW 84.08.010.
- 458-12-400 Leasehold estates—Definitions. [Order PT 75-1, § 458-12-400, filed 2/13/75.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.
- 458-12-401 Leasehold estates—Report to county assessor by public body. [Order PT 75-1, § 458-12-401, filed 2/13/75.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.
- 458-12-402 Leasehold estates—Report to county treasurer by county assessor. [Order PT 75-1, § 458-12-402, filed 2/13/75.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.
- 458-12-403 Leasehold estates—Notice of in lieu tax due—Payment to department. [Order PT 75-1, § 458-12-403, filed 2/13/75.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.
- 458-12-404 Leasehold estates—Determination of economic rent. [Order PT 75-1, § 458-12-404, filed 2/13/75.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.
- 458-12-405 Leasehold estates—Amount of in lieu tax. [Order PT 75-1, § 458-12-405, filed 2/13/75.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.
- 458-12-406 Leasehold estates—Disbursement of the in lieu excise tax. [Order PT 75-1, § 458-12-406, filed 2/13/75.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.
- 458-12-408 Leasehold estates—Operating properties. [Order PT 75-1, § 458-12-408, filed 2/13/75.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.
- 458-12-410 Leasehold estates—Exemptions. [Order PT 75-1, § 458-12-410, filed 2/13/75.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.
- 458-12-412 Leasehold estates—Taxation of improvements. [Order PT 75-1, § 458-12-412, filed 2/13/75.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.
- 458-12-414 Leasehold estates—Continuity. [Order PT 75-1, § 458-12-414, filed 2/13/75.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.
- 458-12-416 Leasehold estates—Term. [Order PT 75-1, § 458-12-416, filed 2/13/75.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.
- 458-12-418 Leasehold estates—Valuation. [Order PT 75-1, § 458-12-418, filed 2/13/75.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.
- 458-12-420 Leasehold estates—Commercial concessions or restrictions. [Order PT 75-1, § 458-12-420, filed 2/13/75.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.
- 458-12-422 Leasehold estates—Appeal procedures. [Order PT 75-1, § 458-12-422, filed 2/13/75.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.

**WAC 458-12-005 Definition—Property—Personal.**

The terms "personal property" and "real property" are defined in RCW 84.04.080 and 84.04.090, respectively. These definitions should routinely be consulted in any case where it is at all doubtful whether a given piece of property is real or personal.

Personal property, as defined in RCW 84.04.080, falls into two categories; namely, *tangible* personal property, that is to say, things which have a physical existence, and *intangi-*

ble personal property which consists of rights and privileges having a legal but not a physical existence. The category of tangible personal property includes but is not limited to the following:

(1) Goods and chattels. RCW 84.04.080. This category includes most tangible movables, such as

- (a) Inventories, AGO 57-58, No. 206 (1958);
- (b) Farm machinery, AGO 1909-1910, p. 51;
- (c) Livestock and poultry, RCW 84.44.060;
- (d) Logs and lumber, RCW 84.44.030;
- (e) Motor vehicles, RCW 84.44.050;
- (f) Books, *Booth & Henford Abstract Company v. Phelps*, 8 Wash. 549 (1894);
- (g) Coin collections and coin inventories of coin dealers, AGO 63-64, No. 116 (1964);
- (h) Tools.

(2) All standing timber held or owned separately from the ownership of the land on which it stands, RCW 84.04.080; *Leuthold v. Davis*, 56 Wn.2d 710 (1960).

(3) All fish traps, pound net, reef net, set net and drag seine fishing locations, RCW 84.04.080.

(4) All privately-owned improvements, including buildings and the like, upon publicly owned lands which have not become part of the realty, RCW 84.04.080; *Pier 67, Inc. v. King County*, 71 W.D.2d 89 (1967); AGO 1935-1936, p. 167; AGO 3-25-52; TCR 6-17-1947.

(5) All gas and water mains and pipes laid in roads, streets or alleys, RCW 84.04.080.

(6) Water craft of all descriptions, RCW 84.04.080, *Black v. State*, 67 Wn.2d 97 (1965), provided they have acquired an actual situs in the taxing county pursuant to RCW 84.44.050.

(7) Foxes, mink, marten, fish, oysters and all other animals held or raised in captivity for business or commercial purposes, including livestock. RCW 16.72.050; AGO 4-16-1900; AGO 1927-1928, p. 88; TCR 1-6-36.

(8) The roads and bridges of plank roads, gravel roads, turnpike or bridge companies. RCW 84.44.040.

(9) Trade fixtures. This concept, which is peculiar to the landlord-tenant relationship, refers to the machinery or equipment of any commercial or industrial business which operates on leased land or in rented quarters. Such machinery or equipment is a trade fixture; i.e., the tenant's personal property, no matter how firmly it may be attached to the landlord's realty, unless it could not be removed without virtually destroying the building housing it, or otherwise seriously damaging the landlord's realty. Brown on *Personal Property* (2d Edition 1955), Sec. 144.

(10) All engines and machinery of every description used or designed to be used in any process of refining or manufacturing, unless such engines and machinery shall have been included as part of any parcel of real property as defined in WAC 458-12-010(3).

(11) All buildings and other permanent improvements constructed or placed upon the easements of public service corporations other than railroads.

(12) All surface leases, whether of public or privately-owned land, except leases for the life of the lessee. RCW 84.04.080; AGO 49-51, No. 476 (1951); TCR 8-8-41: *In Re Barclay's Estate*, 1 Wn.2d 82 (1939). This category includes practically all leases to corporations because the legal life of

a corporation is almost always longer than the term of any lease to it. *Pier 67, Inc., v. King County*, 71 W.D.2d 89 (1967).

*Intangible* personal property includes but is not necessarily limited to the following:

(1) Contract rights to cut timber on either public or privately-owned land under which title to the timber has not yet passed. AGO 53-55, No. 29 (1953); PTB 222 (1-13-53). A contract right to cut timber is a mere license, and all contractual licenses to use someone else's realty are personal property. See WAC 458-12-005 (5-Intangibles).

(2) All mining claims, whether patented or unpatented, which are located on public land. TCR 10-3-35; TCR 4-4-1950; AGO 55-57, No. 327 (1956); *American Smelting and Refining Company v. Whatcom County*, 13 Wn.2d 295 (1942).

(3) All mining or prospecting *leases*, whether on public or privately-owned land, except leases for the life of the lessee. RCW 84.04.080; TCR 4-22-36; *Walla Walla Oil, Gas & Pipe Line Company v. Vallentine*, 103 Wash. 359 (1918).

(4) All contractual licenses to use public or someone else's land for specified purposes, or to take something from public or someone else's land, which have a specified minimum term. Examples: Timber contracts, AGO 53-55, No. 29, (1953); oil and gas prospecting permits, *Walla Walla Oil, Gas & Pipe Line Company v. Vallentine*, 103 Wash. 359 (1918); grazing permits; permits to take gravel or other minerals, TCR 4-22-1936. However, a license or permit which is revocable at the will of the landowner is not property at all because it gives the licensee no legally-protected right or interest whatsoever.

(5) All possessory rights in realty which are divorced from the title to the realty. TCR 10-3-35; AGO 1937-1938, p. 353. Such possessory rights are analogous to leases; hence they are personal property unless they are coextensive with the life of their holder. This category includes the possessory interest which an installment contract for the sale of public or privately-owned land creates in the vendee. See RCW 84.40.230.

(6) Public utility franchises owned by public service corporations. A public utility franchise is the right to use publicly owned real estate for power lines, gas or water lines, sewers or some other public utility facility. *Commercial Electric Light and Power Company v. Judson*, 21 Wash. 49 (1899); *Chehalis Broom Company v. Chehalis County*, 24 Wash. 135 (1901). Such public utility franchises are very similar to public utility easements, which are personal property under Paragraph 8 thereof. However, a Washington corporation's primary franchise to exist and do business in corporate form is not taxable property. *Bank of Fairfield v. Spokane County*, 173 Wash. 145 (1933).

(7) Public utility easements owned by public service corporations other than railroads. RCW 84.20.010.

[Order PT 68-6, § 458-12-005, filed 4/29/68.]

**WAC 458-12-010 Definition—Property—Real.** The term "real property" is defined in RCW 84.04.090; this definition should be consulted as a matter of course in all cases where the meaning of "real property" is in doubt. As there

defined, "real property" includes but is not limited to the following:

- (1) All land, whether platted or unplatted.
- (2) All buildings, structures or permanent improvements built upon or attached to privately-owned land.
- (3) Any fixture permanently affixed to and intended to be annexed to land or permanently affixed to and intended to be a component of a building, structure, or improvement on land, including machinery and equipment which become fixtures. Intent is to be gathered from all the surrounding circumstances at the time of annexation or installation of the item, including consideration of the nature of the item affixed, the manner of annexation and the purpose for which the annexation is made and is not to be gathered exclusively from the statements of the annex or, installer, or owner as to his or her actual state of mind.

(a) Such items shall be considered as permanently affixed when they are owned by the owner of the real property and:

- (i) They are securely attached to the real property; or
- (ii) Although not so attached, the item appears to be permanently situated in one location on real property and is adapted to use in the place it is located. For example a heavy piece of machinery or equipment set upon a foundation without being bolted thereto could be considered as affixed.

(b) Such items shall not be considered as affixed when they are owned separately from the real property unless an agreement specifically provides that such items are to be considered as part of the real property and are to be left with the real property when the occupant vacates the premises.

(c) Whenever the property taxable status of engines, machinery, equipment or fixtures is questioned by the assessor, the taxpayer may be required to list such items in the manner provided by chapter 84.40 RCW and WAC 458-12-080. The assessor shall make the determination of whether such property is real, and shall amend the taxpayer's statement as provided by WAC 458-12-080(2).

(d) The explanations relating to fixtures under subsection (3) of this section are for purposes of clarification and may not answer the question as to whether an item is a fixture in all cases. In the event these explanations do not clearly indicate whether the item is a fixture, the numerous decisions of the Washington appellate courts regarding fixtures should be consulted.

(4) Privately-owned easements and easement-like privileges, irrespective of whether the servient estate is public or privately-owned land. However, easements of public service corporations other than railroads are personal property by reason of RCW 84.20.010.

(5) Leases of real property and leasehold interests therein having a term coextensive with the life of the tenant.

(6) Title to minerals in place which belongs to someone other than the surface owner. Such a title to minerals in place is a "mineral right" but must be distinguished from mineral leases and permits, which do not give title to minerals in place and which are intangible *personal* property. Mineral rights, as defined herein, are realty regardless of whether they were created by grant or reservation.

(7) Standing timber growing on land which belongs to the same person as the timber.

(8) Water rights, whether riparian, appropriative, or in the nature of an easement.

(9) Buildings and similar permanent improvements erected or made by a tenant on land which he does not own, and title to which is not reserved in the tenant by the lease or some other landlord-tenant agreement. Such buildings and improvements become the landlord's real property.

(10) All life estates in real property, whether created by grant or a reservation. A person has such a life estate when he has a right to the possession, occupation and use of a piece of realty, and to the crops, rents and profits produced by it, during his or her natural life.

(11) All possessory rights in realty which are coextensive with the natural life of their holder. Such possessory rights are analogous to leases, and since leases for life are realty, possessory rights for life are also realty.

[Statutory Authority: RCW 84.41.090 and 84.08.010. 93-08-049, § 458-12-010, filed 4/2/93, effective 5/3/93; Order PT 69-1, § 458-12-010, filed 4/14/69; Order PT 68-6, § 458-12-010, filed 4/29/68.]

**WAC 458-12-012 Definition—Irrigation systems—Real—Personal.** (1) The following parts of irrigation systems shall be assessed as real property except as provided in subsections (3) and (4) of this section:

- (a) Penstocks and buried mainlines;
- (b) Sub-mains (underground);
- (c) River pumping stations;
- (d) Water distribution points;
- (e) Concrete head ditches;
- (f) Irrigation wells;
- (g) Electrical distribution stations;
- (h) Electrical booster stations;
- (i) Electrical distribution lines (underground); and
- (j) Buried solid set systems with risers or drip tubes.

(2) The following shall be assessed as personal property except as provided in subsection (4) of this section:

- (a) Hand lines;
- (b) Wheel lines;
- (c) Center pivots;
- (d) Motors;
- (e) Pumps;
- (f) Screens;
- (g) Electrical panels;
- (h) Mainlines (above ground); and
- (i) Laterals.

(3) All irrigations systems shall be assessed as personal property when they are located on publicly owned lands or the system is owned separately from the land, can be removed, and the parties to the lease agree there is no change in title.

(4) If individual components meet the criteria of two or more of subsections (1), (2) or (3) of this section, the component shall be assessed according to the subsection that defines the majority of the component.

[Statutory Authority: RCW 84.08.010(2) and 84.04.095. 88-04-020 (Order PT 88-2), § 458-12-012, filed 1/25/88.]

**WAC 458-12-025 Compensation for assistance by department of revenue at request of assessor.** Whenever the department of revenue receives from any county assessor a request for special assistance in the valuation of property, it

shall have the option of either entering into a statutory contract for special assistance, or providing such services on an informal basis. All requests for special assistance must be made in writing by the county assessor or the board of county commissioners. The written request shall state the extent of the work to be accomplished and shall be forwarded to the director of the department of revenue.

The department of revenue shall consider the request and shall advise the assessor in writing within 30 days of receipt of the request that such request is either approved or rejected in whole or in part. The department of revenue is not obligated to provide services until accepting the request.

(1) **Contracts for special assistance** - If the department of revenue chooses to enter into the statutory contract it shall proceed to negotiate a written contract with the assessor and the board of county commissioners within 30 days after receipt of the request for assistance initiated by the county. The contract shall contain, but is not limited to the following provisions:

(a) It shall be in writing;

(b) It shall be signed by the director of the department of revenue, the board of county commissioners, and the county assessor of the county in which the work is to be done;

(c) A description of the work to be done, beginning and completion dates of the work, total estimated cost of the work, a statement of the county's share of the estimated cost (no less than 50% of the total cost), and the method and term (not exceeding 3 years from date of expenditure) of payment.

(2) **Services on an informal basis** - If the department of revenue provides services on an informal basis, payment for such services shall be made by the board of county commissioners on completion of the work. Prior to providing services on an informal basis the department and the county shall stipulate in writing the extent of the services to be performed and the amount, if any, to be reimbursed by the county in payment for such services.

(3) **"Inter-Local Cooperation Act"** - Special projects performed on a cooperative basis for the mutual advantage of the department of revenue and one or more of the counties may be conducted under the provisions of chapter 239, Laws of 1967. Such projects may include, but are not limited to, development of appraisal methods and procedures, research, development of data processing systems, form design, and other projects where close cooperation of the state and county governments is desirable.

[Order PT 68-6, § 458-12-025, filed 4/29/68.]

**WAC 458-12-030 County appraisers' salary and classification plan.** (1) If an assessor wishes to put into effect the appraisers' salary and classification plan established in accordance with section 7, chapter 146, Laws of 1967 ex. sess., he shall inform the department of revenue and the board of county commissioners of this intent in writing. Upon receipt of this notification from the assessor of his intent to implement the plan, the department of revenue and the county board of commissioners may thereupon designate their respective representatives. The designation of the department's representative shall be made in writing by the director, or by the assistant director, property tax, and shall be sent to the assessor and the chairman of the board of county

commissioners. The designation by the board shall also be in writing, signed by a member of the board, and shall be sent to the director and the assessor.

(2) Such designations shall be made within fifteen calendar days from receipt of the notification from the assessor, or within fifteen calendar days from the date of this regulation, whichever is later. If either the department or the board fail to designate a representative, the committee may still be formed and may still act. However, if both the department and the board fail to designate a representative, the committee shall not be considered as having been formed or empowered to act, the assessor alone being unable to act as the committee.

(3) The committee shall determine the total required number of certified appraiser positions. The committee shall also determine salaries to be paid by determining the number of positions to be established within each class of appraisers for each of the next four budget years. The committee may not, however, change the salary level established in the plan for each class. In determining the number of appraisers' positions within each class, the committee may, if it so desires, provide for different numbers for each year. The committee's determination should be based upon its judgment as to the number of positions within each class necessary to carry out the requirements relating to revaluation of property in chapter 84.41 RCW for each of the next four budget years. In the event of increases unanticipated by the committee in the workload of the assessor's office during this four-year period, because of unanticipated increases in taxable property, the county commissioners, acting under their statutory powers and independently of section 7, chapter 146, Laws of 1967 ex. sess., may increase the number of positions in each class from the minimum numbers established by the committee.

(4) The determination of the committee, made pursuant to paragraph 3 shall be in writing, shall be certified as true and correct by all members of the committee, and shall be immediately transmitted to the board of county commissioners. Such determination must be by unanimous vote.

(5) In the event that the committee fails to reach a determination, classifications, qualifications, and salaries of appraisers shall be established independently of the provisions of section 7, chapter 146, Laws of 1967 ex. sess., and these rules. And in such event, nothing in these rules or in section 7 shall be construed to derogate from:

(a) The authority of the assessor with respect to setting qualifications for his personnel, or;

(b) The authority of the board of county commissioners with respect to determining the budget of the assessor's office.

[Order PT 68-6, § 458-12-030, filed 4/29/68.]

**WAC 458-12-035 Standard forms.** All forms required to carry out the provisions of the statutes which are now used, or to be used in the future in connection with the assessment and collection of taxes, shall meet the standards as prescribed by the department of revenue. The forms now in use in the county assessors' and treasurers' offices shall be submitted to the department of revenue for review and approval upon request by the department.

It will be the policy of the department of revenue to permit use of all forms presently in use if, in the department's

judgment, they adequately meet the standards and fulfill the statutory requirements. Once the department has approved the forms used in an office, the forms may be used until, in the opinion of the department, the forms need revision because of obsolescence caused by time or statutory change.

All forms shall be submitted in duplicate so that one copy of the approved form may be retained for the department of revenue.

After a complete review of all county and state forms, the state department of revenue will compile and adopt an official standard forms list for each county. (Rule derived from RCW 84.08.020; 84.48.010; 84.56.050; TCR 10-30-1940.)

[Order PT 68-6, § 458-12-035, filed 4/29/68.]

**WAC 458-12-045 Listing of real property—Contracts for sale of public lands.** Whenever any real property belonging to the United States of America, the state of Washington or any county or municipality is sold under an arrangement whereby title is reserved in the grantor and use and possession goes to the grantee, such property shall be listed as real property in the name of the grantee rather than the governmental instrumentality.

Any improvements existing on the property at the time the contract for sale is entered into or which are subsequently added after said contract shall likewise be listed as real property in the name of the grantee. (Rule derived from AGO 6-24-1947; PTB No. 167, 8-21-1947.)

[Order PT 68-6, § 458-12-045, filed 4/29/68.]

**WAC 458-12-050 Omitted property and omitted value.** (1) **Introduction.** Under RCW 84.40.080, an assessor is required to add to the assessment roll any real or personal property omitted from the assessment roll for any preceding year, at the value for the preceding year. The assessor is also required to add to the assessment roll any omitted value of personal property. This rule explains the meaning of the terms "omitted property" and "omitted value." It also provides information about omitted property and omitted value assessments, including when the taxes on these assessments are due and the appeal rights of persons receiving an omitted property or omitted value assessment.

(2) **What is omitted property?** Omitted property includes all real and personal property that was not entered on the assessment roll. Omitted property does not include:

(a) Real or personal property that was listed on the assessment roll but improperly exempted from taxation in prior years; and

(b) Real or personal property that was accurately listed but improperly valued by the assessor.

(3) **What is omitted value?** Omitted value includes all personal property that was assessed at less than its true and fair value due to inaccurate reporting by the taxpayer or person making the listing. Omitted value does not include:

(a) Personal property that was listed on the assessment roll but improperly exempted from taxation in prior years; and

(b) Personal property that was accurately listed but improperly valued by the assessor.

(2005 Ed.)

(4) **What is the duty of the assessor upon discovery of omitted property or value?** Whenever the assessor discovers or is made aware of omitted property or omitted value, the assessor is required to make an omitted property or omitted value assessment at the property's true and fair value for each year omitted, subject to the requirements of (a) and (b) of this subsection. The assessor is required to notify the property owner or taxpayer of the omitted property or value assessment for each year omitted and the value shall be stated separately from the value of any other year. The assessor must value real property for the years omitted in accordance with the revaluation cycle of the county. For an omitted value assessment, the assessor must provide the taxpayer with a copy of the amended personal property statement along with a letter of particulars informing the taxpayer of the assessor's findings. The assessor must also notify the property owner or taxpayer of the right to appeal an omitted value assessment to the board of equalization and the right to request the board be reconvened to act on the omitted property or omitted value assessment.

(a) **Improvements omitted from the assessment roll.** Where improvements have not been valued and assessed as a part of the real estate upon which the improvements are located, as evidenced by the assessment rolls, they may be separately valued and assessed as omitted property. No such omitted assessment can be made where a bona fide purchaser, encumbrancer, or contract buyer has acquired any interest in the property prior to the time the improvements are assessed. Thus, if a purchaser, encumbrancer, or contract buyer has acquired an interest in improvements that have been omitted from the assessment roll by giving valuable consideration, in good faith, and without actual or constructive knowledge of the omission of the assessment, the assessor is prohibited from making an omitted property assessment. However, if the assessment roll is still open in the year the omission is discovered, the improvements must be added to the assessment roll for that assessment year. If the assessment roll is closed for that year, the improvements must be placed on the assessment roll in the following year.

(b) **Limitation period for omitted property or omitted value assessments.** No omitted property or omitted value assessment can be made for any period more than three years preceding the year in which the omission is discovered. RCW 84.40.085.

(5) **When are taxes on omitted property or omitted value assessments due?** When an omitted property or omitted value assessment is made, the taxes levied as a result of the assessment may be paid within one year of the due date of the taxes for the year in which the assessment is made without penalty or interest. An assessment is "made," for purposes of omitted property or omitted value assessments, when the assessor notifies the taxpayer in writing of the property and/or value that was previously omitted from the assessment roll. Taxes resulting from an omitted property or omitted value assessment are due on April 30th and cannot be timely paid in two installments, unlike taxes for the current tax year.

(a) **Penalties and interest.** If the taxes due on an omitted property or omitted value assessment are not paid by the due date, the penalties and interest provided in RCW 84.56.020 begin to accrue from the date the taxes become delinquent.

(b) **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 actual situation must be determined after a review of all of the facts and circumstances.

(i) In April 2003, an assessor discovers an improvement that has never been valued, that is, the assessment roll shows no improvement on the property. Construction of the improvement was completed in June 2001. (This fact means the assessor should have added the improvement to the assessment roll by the end of August 2001 under the "new construction" statute, RCW 36.21.080.) No bona fide purchaser, encumbrancer, or contract buyer has acquired any interest in the improvement. The assessor values the improvement for 2001, 2002, and the current assessment year of 2003, and mails a valuation notice to the taxpayer. The taxes for the 2003 assessment year are due on April 30, 2004. If the amount due is fifty dollars or more, one-half of the tax due may be paid by April 30, 2004, and the balance may be paid by October 31, 2004. The taxes for the omitted property assessment covering the 2001 and 2002 assessment years are due in full by April 30, 2005, which is one year after the due date for the taxes for the assessment year in which the omitted property assessment is made. If the taxes for the omitted assessment are not paid in full by April 30, 2005, the penalties and interest provided in RCW 84.56.020 begin to accrue as of May 1, 2005, on the unpaid amount.

(ii) In November 2002, after the assessment rolls are closed, an assessor discovers an improvement that has never been valued, that is, the assessment roll shows no improvement on the property. Construction of the improvement was completed in March 1998. No bona fide purchaser, encumbrancer, or contract buyer has acquired any interest in the improvement. The assessor adds the improvement to the assessment roll at true and fair value for 1999, 2000, 2001, and 2002, and mails a valuation notice to the taxpayer. Because the roll is closed for assessment year 2002, no taxes are due on the improvement in 2003. The taxes resulting from this omitted property assessment are due in full by April 30, 2004, which is one year after the due date for the taxes for the assessment year in which the omitted property assessment is made. (Although the roll is closed in 2002, the assessment is still "made" in 2002.) If the taxes for the omitted property assessment are not paid in full by April 30, 2004, the penalties and interest provided in RCW 84.56.020 begin to accrue as of May 1, 2004, on the unpaid amount. The taxes for the 2003 assessment year are due on April 30, 2004. If the amount due is fifty dollars or more, one-half of the tax due may be paid by April 30, 2004, and the balance may be paid by October 31, 2004.

(iii) In May 2004, an assessor audits a taxpayer's personal property records and discovers omitted value not reported by the taxpayer. The personal property was acquired by the taxpayer in 1997, and disposed of by the taxpayer in November 2003. The assessor values the property at true and fair value for assessment years 2001, 2002, and 2003, and notifies the taxpayer of the omitted value by forwarding a copy of the amended personal property statements along with a letter of particulars informing the taxpayer of the assessor's findings and of the taxpayer's right to appeal those findings to the board of equalization, and/or to request that the board of

equalization be reconvened to act on the omitted value assessment. The taxes resulting from the omitted value assessment are due in full by April 30, 2006, which is one year after the due date for the taxes for the assessment year in which the omitted value assessment is made. If the taxes for the omitted value assessment are not paid in full by April 30, 2006, the penalties and interest provided in RCW 84.56.020 begin to accrue as of May 1, 2006, on the unpaid amount.

(6) **What are the appeal rights of taxpayers receiving an omitted property or omitted value assessment?** Upon request of either the taxpayer or the assessor, the county board of equalization may be reconvened to act on an omitted property or omitted value assessment. RCW 84.40.085. For additional information on reconvened boards of equalization, refer to WAC 458-14-127.

[Statutory Authority: RCW 84.08.010, 84.08.070, 84.40.040, 84.40.080, 84.40.085, 84.40.130, and 84.40.200. 05-02-034, § 458-12-050, filed 12/30/04, effective 1/30/05; Order PT 68-6, § 458-12-050, filed 4/29/68.]

**WAC 458-12-055 Taxable situs—Real property.** The situs of real property is at the place where the property is located. The situs of a possessory interest in real property is at the place where the real property is situated.

Where a parcel of real property is located in more than one taxing district the portion lying within a particular district is assessable only in that district.

[Order PT 68-6, § 458-12-055, filed 4/29/68.]

**WAC 458-12-060 Listing of personal property. (1) Introduction.** This rule provides information about the listing of personal property subject to ad valorem taxation. This rule also provides specific information about the listing of personal property by manufacturers. For information about the listing of ships and vessels subject to property taxation, refer to WAC 458-17-101.

(2) **Who is required to list personal property with the county assessor?** Every person is required to list all taxable (i.e., nonexempt) personal property in the person's ownership, possession, or control. RCW 84.40.185 and 84.40.190. Every person required to list personal property must deliver to the county assessor a form listing all of the person's taxable personal property that was located in the county as of 12:00 p.m. on January 1st of the assessment year. The listing may be delivered to the assessor either in person, by mail, or by electronic transmittal (e.g., Internet-based application, e-mail, or facsimile) if available. The listing does not need to be signed or verified under penalty of perjury. (Chapter 302, Laws of 2003.)

For purposes of this rule, the term "person" includes natural persons and artificial persons such as partnerships, corporations, limited liability companies, associations, trusts, and estates.

(a) **How should property be identified on the listing form?** Each item of taxable personal property may, but need not, be separately identified on the listing form. At a minimum, however, each category of taxable personal property must be separately identified on the listing form. For example, office equipment must be separately identified as personal computers and peripherals, facsimile machines, copiers, telephone equipment, office furniture, supplies, and the like. RCW 84.08.020 and 84.40.040.

(b) **What other information must be included in the personal property listing?** In addition to a listing of all categories of taxable personal property, a listing form must also include:

(i) The year of acquisition for each category of personal property; and

(ii) The total original cost of each category of personal property. The value of any trade-in is not to be deducted from the acquisition cost. For purposes of listing taxable personal property, the total original cost includes all costs associated with making the property operational but excludes sales tax. For example, installation, freight, and engineering charges are costs that may be incurred while placing property into operation. RCW 84.08.020 and 84.40.040.

(c) **When are personal property listings due?** RCW 84.40.040 provides that personal property listings are due on or before April 30th. A penalty may be added to the amount of tax assessed if listing is not made by the due date. RCW 84.40.130. Refer to WAC 458-12-110 for detailed information about the penalties imposed under RCW 84.40.130.

(d) **How do the exemptions for household goods, furnishings, and personal effects and for the head of a family affect listing?** RCW 84.36.110 provides exemptions for the head of a family and for household goods, furnishings, and personal effects. Information about these exemptions and their effect on listing is provided in WAC 458-16-115.

(e) **What if the assessor believes that an incomplete or inaccurate listing has been made?** When the assessor believes that an incomplete or inaccurate listing has been made, the assessor has the following options:

(i) If the assessor believes that a person listing personal property for himself or herself, or on behalf of a principal (e.g., any other person, company, or corporation), has not made a full, fair, and complete listing of such property, the assessor may examine the person under oath in regard to the amount of the property the person is required to list. If the person refuses to answer under oath, the assessor may list the property of that person, or of that person's principal, according to the assessor's best judgment and information. RCW 84.40.110. Any oath authorized to be administered under Title 84 RCW may be administered by any assessor or deputy assessor, or by any other officer having authority to administer oaths. Any person willfully making a false list, schedule, or statement under oath is subject to the penalties of perjury. RCW 84.40.120.

(ii) For the purpose of verifying any list, statement, or schedule required to be furnished to the assessor by any taxpayer, any assessor or the assessor's trained and qualified deputy may visit, investigate, and examine any personal property at any reasonable time. For the purposes of this verification, the records, accounts, and inventories, which will aid in determining the amount and valuation of the property, will also be subject to visitation, investigation, and examination. The visitation, investigation, and examination may be performed at any office of the taxpayer in this state. The taxpayer is required to furnish or make available all the information pertaining to property in this state to the assessor even though the records may be maintained at any office outside this state. RCW 84.40.340.

(f) **What if the owner of personal property moves to another county or into this state after January 1st?** The owner of taxable personal property who moves from one county to another between January 1st and July 1st will be assessed in the county whose assessor first calls upon the owner to make a listing. The owner of personal property who moves into this state from another state between January 1st and July 1st must make a listing of taxable personal property that the person owned on January 1st of the assessment year with the assessor in the county in which the person resides.

If the owner of personal property moves to another county or into this state after January 1st and can satisfy the assessor that the owner's property has been assessed and will be held liable for the tax on the current year in another state or county, the owner cannot be assessed again for the current year. RCW 84.44.080.

(3) **Assessor's duty to maintain list of persons liable to assessment.** Assessors must maintain an alphabetical list of the names and last known addresses of all property owners in the county who are subject to assessment of personal property. On or before January 1st of each year, the assessor is required to mail or electronically transmit (e.g., e-mail) a notice to such persons that a listing is required along with a listing form. The notice and listing form must be in accordance with forms prescribed by the department of revenue. If practicable, the notice and listing form mailed or electronically transmitted to each taxpayer must include a copy of the previous year's listing. RCW 84.40.040. A copy of the taxpayer's previous year's listing must also be provided to the taxpayer upon the taxpayer's request.

(a) **What if I do not receive a listing form from the assessor?** Property owners who are subject to assessment of personal property and any other person required to list personal property are responsible for making a listing regardless of whether or not the person receives a listing form from the assessor.

(b) **What are the assessor's duties upon receipt of a personal property listing?** Upon receipt of a personal property listing, the assessor will determine the true and fair value of the property listed and enter one hundred percent of the true and fair value of the property on the assessment roll opposite the name of the party assessed (i.e., the owner of the property). The assessor may, after giving written notice of the action to the person assessed, add to the assessment list any taxable property that should have been included in the list but was omitted by the taxpayer. RCW 84.40.040.

RCW 84.40.200 requires that a copy of the completed personal property listing containing the assessor's determination of the true and fair value of the property assessed must be provided to the person assessed, or to the person listing the property. The information may be provided in person, by mail, or by electronic transmittal if available.

(4) **Listing of personal property by manufacturers.** This subsection provides specific information about the listing of taxable personal property by manufacturers. A manufacturer must make and deliver to the assessor a personal property listing. The listing is made in the county where the personal property is situated. RCW 84.44.010. The listing must include the manufacturer's stock, engines, machinery, and other nonexempt personal property, together with the year of acquisition and total original cost for each category.

Detailed information about the cost of personal property is contained in subsection (2)(b)(ii) of this rule. Manufacturer's stock that constitutes "business inventories," as that term is defined in RCW 84.36.477, is exempt from ad valorem taxation and need not be included in the personal property listing.

Fixtures considered by the assessor as part of any parcel of real property should not be included in a manufacturer's personal property listing. For detailed information about fixtures or trade fixtures, refer to WAC 458-12-005 and 458-12-010.

(a) **Who is a "manufacturer"?** A "manufacturer" is any person who purchases, receives, or holds personal property of any description for the purpose of adding to the value thereof by any process of manufacturing, refining, rectifying, or by the combination of different materials with the view of making gain or profit by so doing. RCW 84.40.210.

(b) **What is "manufacturer's stock"?** "Manufacturer's stock" includes all articles purchased, received, or otherwise held for the purpose of being used in whole or in part in any process or processes of manufacturing, combining, rectifying, or refining.

(c) **What if property identified on the personal property listing has also been listed and assessed as part of any parcel of real property?** On receipt of the manufacturer's personal property listing, the assessor will delete from the assessment the value of any engines and machinery that the assessor knows to have been assessed as part of any parcel of real property (i.e., as a fixture). A copy of the corrected assessment will be provided to the manufacturer.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 04-01-119, § 458-12-060, filed 12/17/03, effective 1/17/04; Order PT 68-6, § 458-12-060, filed 4/29/68.]

**WAC 458-12-110 Listing of personal property by the assessor—Penalties for failing to list personal property and for making a false or fraudulent listing.** (1) **Introduction.** This rule explains the process of listing and assessing taxable personal property by the assessor when the taxpayer fails to make a listing as required by chapter 84.40 RCW. This rule also provides information about the penalties imposed by RCW 84.40.130 for persons who fail or refuse to make a timely listing of their taxable personal property or who willfully provide the assessor a false or fraudulent listing of their taxable personal property. For additional information about the listing of personal property, refer to the rules found in WAC 458-12-060 through 458-12-080.

(2) **Failure to provide a listing of taxable personal property to the assessor.** If a person who is required under chapter 84.40 RCW to make a listing of taxable personal property with the county assessor fails to do so by April 30, it is the duty of the assessor under RCW 84.40.200 to ascertain the amount and value of the taxable personal property that should have been listed. When such a listing is made by the assessor, he or she must deliver or mail a copy of the listing, showing the valuation of the property so listed, to the person for whom the listing is made. The provisions of RCW 84.40.200 do not apply to the listing of ships and vessels required under RCW 84.40.065.

(3) **Penalty for failing or refusing to make a listing of taxable personal property.** A person who fails or refuses to provide the assessor with a listing of their taxable personal

property by April 30 is subject to a mandatory penalty. The amount of the penalty is described below in (a) of this subsection.

(a) **Amount of penalty.** The amount of the penalty is five percent of the amount of tax assessed against the taxpayer on the property not listed, not to exceed fifty dollars per calendar day if the delinquency is for less than one month. If the delinquency is for more than one month, the taxpayer must pay an additional five percent of the amount of tax for each additional month or fraction of a month that the listing is delinquent, up to a maximum penalty each year of twenty-five percent of the amount of tax. The penalty provided in this subsection (3) will be collected in the same manner as the tax to which it is added.

(b) **How does the penalty apply when a listing is made by the assessor?** When the assessor makes a listing of taxable personal property under the provisions of RCW 84.40.200 and subsection (2) of this rule, the penalty provided in this subsection (3) continues to accrue until the taxpayer provides a listing to the assessor as required by chapter 84.40 RCW.

(c) **Can the penalty be waived?** If a person can establish to the satisfaction of the assessor that the failure to provide a listing of taxable personal property was due to reasonable cause and not due to willful neglect, no penalty will be imposed.

Whether reasonable cause exists depends upon the facts of each case. Reasonable cause may be shown by one or more of the following events or circumstances. These examples do not encompass all of the possible events or circumstances that could constitute reasonable cause for failing to make a listing of taxable personal property with the assessor by the due date.

(i) The taxpayer was unable to make a listing by the due date because of a death or serious illness of the taxpayer or of a member of the taxpayer's immediate family occurring at or shortly before the due date. For purposes of this subsection, the term "immediate family" includes, but is not limited to, a grandparent, parent, brother, sister, spouse, child, or grandchild.

(ii) The taxpayer was unable to make a listing by the due date because the taxpayer reasonably relied upon incorrect, ambiguous, or misleading written advice as to the proper listing requirements by either the assessor or assessor's staff, or the property tax advisor designated under RCW 84.48.140, or his or her staff.

(iii) The taxpayer was unable to make a listing by the due date because of a natural disaster such as a flood or earthquake occurring at or shortly before the due date.

(iv) The taxpayer was unable to make a listing by the due date because of a delay or loss related to the delivery of the listing form by the postal service. The taxpayer must be able to provide documentation from the postal service of such a delay or loss.

(v) The failure of the assessor to provide a notice and listing form as required by RCW 84.40.040 to a taxpayer does not excuse a taxpayer from making a timely listing of taxable personal property with the assessor. The assessor's failure to provide a notice and listing form may, however, be considered in determining whether the taxpayer's failure to provide a timely listing was due to reasonable cause.

(d) **How are the penalties distributed?** When collected, the penalties provided for in this subsection (3) are credited to the county current expense fund. RCW 84.40.130 and 84.56.020(8).

(e) **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 actual situation must be determined after a review of all of the facts and circumstances.

(i) Due to an oversight, Company A makes its listing of taxable personal property on October 6th of the assessment year, over five months after the deadline provided in RCW 84.40.040. The amount of tax imposed against Company A on its personal property in the following year is \$600.00. Company A is subject to a penalty of \$150.00, 25% of the amount of its tax liability.

(ii) Due to an oversight, Company B makes its listing of taxable personal property on May 2nd of the assessment year, two days after the deadline provided in RCW 84.40.040. The amount of tax imposed against Company B on its personal property in the following year is \$2,250.00. The amount of the penalty assessed against Company B is \$100.00. 5% of \$2,250.00 is \$112.50. However, the penalty is limited to \$50.00 per calendar day when the delinquency does not exceed one month.

(iii) Due to an oversight, Company C fails to make a listing of its taxable personal property by April 30th, the deadline provided in RCW 84.40.040. On August 24th of the assessment year, the assessor lists and values the taxable personal property of Company C and mails a copy of the listing to Company C. At this time, Company C would be subject to a penalty of 20% of the tax imposed against it on its personal property in the following year. After receiving the assessor's listing, Company C makes its own listing with the assessor on September 7th of the assessment year. The amount of penalty imposed is 25% of the tax imposed against Company C on its personal property in the following year. The listing by the assessor has no effect on the amount of the penalty Company C is subject to.

(iv) Due to an oversight, Company D fails to make a listing of its taxable personal property for assessment years 2001, 2002, and 2003. In May of 2003, the assessor learns of Company D's failure to list its taxable personal property for the 2001, 2002, and 2003 assessment years. After being notified by the assessor of its failure to make a listing, Company D makes a listing for assessment years 2001, 2002, and 2003 with the assessor on May 20, 2003. The assessor adds the taxable personal property for 2003 to the assessment roll. The assessor also adds the taxable personal property for 2001 and 2002 to the assessment roll as omitted property under the provisions of RCW 84.40.080. The penalties assessed against Company D include a penalty of 25%, for each year, of the amount of tax imposed on Company D resulting from the omitted property assessment for assessment years 2001 and 2002. In addition, Company D is subject to a penalty for the delinquent 2003 listing in the amount of 5% of the amount of tax imposed on Company D resulting from the listing for the 2003 assessment year or \$1,000, whichever is less. The amount of \$1,000 represents \$50 per calendar day of delinquency. For additional information about omitted property, refer to WAC 458-12-050.

(2005 Ed.)

(4) **Penalty for willfully providing a false or fraudulent listing of taxable personal property.** If a person willfully provides the assessor with a false or fraudulent listing of taxable personal property, or, with the intent to defraud, fails or refuses to provide a listing of taxable personal property as required by chapter 84.40 RCW, the person is subject to a penalty of one hundred percent of the tax properly due. A false or fraudulent listing may arise because it does not include all of the taxable personal property in the ownership, possession, or control of the person making the listing, or because it contains false information relating to the proper value of the personal property listed. A person is not liable for the penalty provided in this subsection (4) if the failure to list or the false listing was the result of negligence, inadvertence, accident, or simple oversight rather than willfulness or an intent to defraud. Likewise, a person making a false listing will not be subject to the penalty provided in this subsection (4) if it is shown that the misrepresentations made by the person are entirely attributable to reasonable cause. The penalty imposed under this subsection (4) is in lieu of the penalty imposed under subsection (3) of this rule.

(a) **How is the penalty imposed?** The assessor does not impose the penalty provided in this subsection (4). Rather, the penalty provided for in this subsection along with any tax properly due are to be recovered in a lawsuit brought in the name of the state of Washington on the complaint of the county assessor or the county legislative authority. The provisions of this subsection (4) are in addition to any other provisions of law relating to the recovery of property taxes.

(b) **How is the penalty distributed?** When collected, the penalty imposed under this subsection (4) and the tax to which it was added must be paid into the county treasury to the credit of the current expense fund.

[Statutory Authority: RCW 84.08.010, 84.08.070, 84.40.040, 84.40.080, 84.40.085, 84.40.130, and 84.40.200. 05-02-034, § 458-12-110, filed 12/30/04, effective 1/30/05; Order PT 68-6, § 458-12-110, filed 4/29/68.]

**WAC 458-12-115 Personalty—Taxable situs—In general.** Personal property except where required by statute to be listed elsewhere shall be listed and assessed in the county where situated as of 12 noon on January 1st of each year. (RCW 84.44.010)

For the purposes of determining the situs of goods in transit the following guidelines shall be observed:

(1) **Goods in interstate transit** - Goods in transit to this state from another are assessable only if on the assessment date they have come to rest within this state. The fact that such goods may be still in their original package as of the assessment date is immaterial. (*American Steel & Wire Company v. Speed*, 192 U.S. 500 (1903); AGO 5-2-1942; TCR 2-25-1936) Goods which are in-transit either from or through the state with the ultimate destination point elsewhere shall not be subject to local property taxation. However, if during the course of such transit any nonexempt goods (see RCW 84.36.140 through 84.36.191) shall be stored in any county of this state for other than natural causes or lack of facilities for immediate transportation then such goods shall become subject to local taxation. (*Kelley v. Rhoads*, 188 U.S. 1 (1902))

(2) **Exports and imports** - Goods from foreign countries are imports in the strict sense and generally become taxable within the following situations:

(a) Such goods are sold by the importer;

(b) The physical container except intermodal containers (i.e., vanpacs or similar equipment) constructed and utilized solely to transport a quantity of goods in separate original packages in a single container and intended to be reuseable in which they arrived is broken; (*Brown v. Maryland*, 25 U.S. 266 (1827); *Waring v. The Mayor of Mobile*, 75 U.S. 110 (1868))

(c) The merchandise is commingled with the mass of properties in the state; (*May v. New Orleans*, 178 U.S. 496 (1890))

(d) The goods have been committed to the purpose or use for which they were imported. (*Youngstown Sheet & Tube Company v. Bowers*, 358 U.S. 534 (1958))

Goods which are to be exported are assessable until they enter into the stream of exportation. (*Eardley Fisheries Co. v. Seattle*, 50 Wn.2d 566)

(3) **Intrastate transit** - Goods in transit from one point in this state to another on the assessment date are assessable at their destination. (*State Trust Company v. Chehalis County*, 79 U.S. 282 (1897); AGO 1929-30, p. 179; TCR 2-25-1937; AGO 1933-34, p. 97)

"In-transit" shall mean that the goods are either in the hands of the carrier without being subject to further control by the owner or that the goods are physically moving as of the assessment date. (TCR 2-16-1938; 2-7-1939) If during the course of the transit the goods shall happen to be delayed for other than natural causes or lack of immediate transportation facilities then such goods shall be subject to assessment at the location of their actual situs. This shall be so notwithstanding the fact that such situs may not be the destination point nor the domicile of the owner. However, if the goods are only temporarily delayed for the excusable reasons, then they are assessable at the destination point. (AGO 1929-30, p. 192; TCR 6-13-1940)

Goods arriving at destination point before the assessment date shall be assessed and taxed at that point regardless of whether or not possession or the right of possession has passed to the person, firms or corporations accepting such goods. (AGO 1929-30, p. 179; AGO 1913-14, p. 61.)

[Order PT 68-6, § 458-12-115, filed 4/29/68.]

**WAC 458-12-120 Situs of personalty—Beer kegs.**

Beer kegs owned by Washington breweries are taxable at the situs of the brewery. Those kegs owned by out-of-state breweries are taxable at the situs of their own actual location. (PTB 9-26-1939.)

[Order PT 68-6, § 458-12-120, filed 4/29/68.]

**WAC 458-12-140 Taxing district boundaries—Designation of tax code area. (1) Introduction.** This rule explains when the boundaries of a taxing district must be established for the purpose of levying property taxes. No property tax levy can be made for a given year on behalf of any taxing district whose boundaries are not established as of the dates provided in this rule. This rule also explains that county assessors are required to transmit taxing district boundary information to the property tax division of the department of revenue (department) when there is a change in taxing district boundaries or when a new taxing district is

established. Lastly, this rule provides guidance to assessors in designating tax code areas to be used in the listing of real and personal property.

For purposes of this rule, the definition of "taxing district" is the same as in WAC 458-19-005.

(2) **Establishment of taxing district boundaries.** Except as follows, the boundaries of counties, cities, and all other taxing districts, for purposes of property taxation and the levy of property taxes, must be the established official boundaries of the taxing districts existing on March 1st of the year in which the property tax levy is made.

(a) **Boundaries of certain newly incorporated taxing districts.** The official boundaries of certain newly incorporated taxing districts will be established at a different date in the year in which the incorporation occurred as follows:

(i) **Newly incorporated cities.** Boundaries for a newly incorporated city must be the established official boundaries existing on March 31st of the year in which the initial property tax levy is made. The boundaries of a road district, library district, or fire protection district or districts, that include any portion of the area that was incorporated within the boundaries of a newly incorporated city, must be altered as of March 31st to exclude this area if the budget for the newly incorporated city is filed as provided in RCW 84.52.020 and the levy request of the newly incorporated city is made in accordance with RCW 84.52.070. Whenever a proposed city incorporation is on the March special election ballot, the county auditor must submit the legal description of the proposed city to the department on or before March 1st.

(ii) **Newly incorporated port districts.** Boundaries for a newly incorporated port district must be the established official boundaries existing on October 1st of the year in which the initial property tax levy is made if the boundaries of the newly incorporated port district are coterminous with the boundaries of another taxing district, as they existed on March 1st of that year.

(iii) **Newly incorporated water-sewer districts.** Boundaries for a newly incorporated water-sewer district must be the established official boundaries existing on June 15th of the year in which the proposition under RCW 57.04.-050 is approved authorizing a water-sewer district excess levy.

(iv) **Other newly incorporated taxing districts.** Boundaries of any other newly incorporated taxing district must be the established official boundaries existing on June 1st of the year in which the initial property tax levy is made if the taxing district has boundaries coterminous with the boundaries of another taxing district, as they existed on March 1st of that year.

(b) **Mosquito control districts.** Boundaries of a mosquito control district must be the established official boundary existing on September 1st of the year in which the property tax levy is made.

(c) **Addition or removal of property from a taxing district after March 1st.** Except as otherwise provided in this rule, the boundaries of a taxing district will be established on June 1st if territory with boundaries coterminous with the boundaries of another taxing district as they existed on March 1st of that year has been added to, or removed from, the taxing district after March 1st of that year. The boundaries of a road district, library district, or fire protection

district or districts, that include any portion of the area that was annexed to a city or town within its boundaries, must be altered as of June 1st to exclude this area.

(3) **Withdrawal of certain areas of a library district, metropolitan park district, fire protection district, or public hospital district.** Notwithstanding the provisions of RCW 84.09.030 and subsection (2) of this rule, the boundaries of a library district, metropolitan park district, fire protection district, or public hospital district, that withdraws an area from its boundaries under RCW 27.12.355, 35.61.360, 52.04.056, or 70.44.235, which area has boundaries that are coterminous with the boundaries of a tax code area, will be established as of October 1st in the year in which the area is withdrawn.

(4) **School district boundary changes.** Each school district affected by a transfer of territory from one school district to another school district under chapter 28A.315 RCW must retain its preexisting boundaries for the purpose of the collection of excess tax levies authorized under RCW 84.52.053 before the effective date of the transfer. The preexisting boundaries must be retained for such tax collection years and for such excess tax levies as the regional committee on school district organization (committee) may approve. The committee may order that the transferred territory will either be subject to or relieved of such excess levies. For the purpose of all other excess tax levies previously authorized under chapter 84.52 RCW and all excess tax levies authorized under RCW 84.52.053 subsequent to the effective date of a transfer of territory, the boundaries of the affected school districts must be modified to recognize the transfer of territory subject to RCW 84.09.030 and subsection (2) of this rule.

(5) **Copy of instrument setting forth taxing district boundary changes must be provided to the department.** Any instrument setting forth the official boundaries of a newly established taxing district, or setting forth any change in taxing district boundaries, that is required by law to be filed in the office of the county auditor or other county official must be filed in triplicate. The county official with whom the instrument is filed must forward two copies to the county assessor. The assessor must provide one copy of the instrument, together with a copy of a plat showing the new boundaries, to the property tax division of the department of revenue within thirty days of the establishment of the boundaries of such taxing district.

(6) **Designation of tax code areas.** Assessors must designate the name or number of each tax code area in which each description of real or personal property is located and assessed. The tax code area designation must be entered opposite each assessment in a column provided for that purpose in the detail and assessment list.

For purposes of this rule, the definition of "tax code area" is the same as in WAC 458-19-005.

(a) **Personal property.** Assessors must designate the tax code area on all listings of personal property in accordance with the applicable rules controlling "taxable situs" as of the assessment date.

(b) **Property located in more than one tax code area.** When real and personal property of any person is located and assessable in more than one tax code area, a separate listing must be made on the detail and assessment list and identified

(2005 Ed.)

by the name or number of the tax code area in which each portion of the property or properties is located.

[Statutory Authority: RCW 84.08.010, 02-14-011, § 458-12-140, filed 6/20/02, effective 7/21/02; Order PT 68-6, § 458-12-140, filed 4/29/68.]

**WAC 458-12-155 Listing of property—Public lands—Federal lands—Exclusive or concurrent jurisdiction.** Before assessing personal property located on federally-owned lands, the assessor shall determine whether the federal government claims exclusive or concurrent jurisdiction over the land. If exclusive jurisdiction is claimed, such land shall be treated as not even existing in the state of Washington for taxation purposes. (*Concessions Company v. Morris*, 109 Wash. 46 (1919); *Ryan v. State*, 188 Wash. 115 (1936); AGO 1933-1934, p. 298; PTB No. 211 (1951)) Personal property, including leasehold interests, located upon such lands shall not be subject to taxation.

If the federal government holds the land concurrently with the state, personal property, including leasehold interests located on or in such land, is subject to taxation. (AGO 1933-34, p. 298; AGO 1945-46, p. 717; PTB No. 211 (1951).)

[Order PT 68-6, § 458-12-155, files 4/29/68.]

**WAC 458-12-160 Listing of property—Public land—Conveyances.** All property coming into the exclusive ownership of any public-exempt body shall be exempt from further taxation and shall be removed from the assessment and taxation rolls.

All property coming into the exclusive possession of any governmental unit as trust property for bond holders shall be exempt from taxation only if a specific exemption can be found for it. (*Spokane v. Spokane County*, 169 Wash. 355 (1932))

All real property now in the ownership of any public-exempt body which is being sold to some nonexempt vendee under an arrangement where possession is given to the vendee and title remains in the vendor shall be governed by RCW 84.40.230; WAC 458-12-045.

In all other situations where either real or personal property is sold by any public-exempt body to a nonexempt vendee, such *property* (only the actual property itself is exempt, not the vendee's possessory interest in it) shall become subject to taxation on the January 1 following the time title passes.

[Order PT 68-6, § 458-12-160, filed 4/29/68.]

**WAC 458-12-165 Listing of property—Public lands—Purchase by state, county or city.** Real property acquired either by purchase or condemnation by the state, county, city or any exempt political subdivision shall remain liable for any tax liens existing on the realty at the time the conveyance is completed. (RCW 84.60.050) If the taxes are not delinquent at the time of the purchase or condemnation, the date of completion of the sale shall be noted. If the transfer was before February 15 of the taxable year, there shall be no tax payable. If the transfer is between February 15 and April 30, one-half of the tax shall be payable. If the transfer is after April 30, the full amount of tax shall be payable. (RCW 84.60.060) Whenever only part of a parcel of property is pur-

[Title 458 WAC—p. 23]

chased or condemned, the assessor is authorized to segregate the taxes according to the provision of RCW 84.60.070.

[Order PT 68-6, § 458-12-165, filed 4/29/68.]

**WAC 458-12-170 Listing of property—Public lands—Possessory rights.** All possessory rights in exempt public lands are taxable to the holder (*American Smelting & Refining Co. v. Whatcom Co.*, 13 Wn.2d 295 (1942) dealing with mining claims located on Federal lands) thereof unless the holder of the possessory interest is exempt from taxation elsewhere, or if interest is in lands where the federal government claims exclusive jurisdiction. (WAC 458-12-155)

All possessory rights which are held by an exempt public body shall likewise be exempt from taxation.

[Order PT 68-6, § 458-12-170, filed 4/29/68.]

**WAC 458-12-175 Listing of property—Public lands—Leasehold interests and improvements.** Leasehold interests in public lands other than those specified in WAC 458-12-155, are taxable as personal property to the holder thereof. (RCW 84.04.080; WAC 458-12-325) The fact that the land itself may be exempt from taxation is immaterial.

Improvements on public lands are generally considered personal property taxable to the owner thereof. (RCW 84.04.080) Whenever the improvement is a permanent fixture which cannot be removed without destroying it, such improvement shall be presumed to have become a part of the realty and would not be taxable, since owned by the exempt public body. (*Pier 67, Inc. v. King County*, 71 Wn.Dec.2d 89 (1967)) This presumption shall not be conclusive and can be overcome by clear evidence which indicates that the parties did not intend that the improvements become part of the realty.

[Order PT 68-6, § 458-12-175, filed 4/29/68.]

**WAC 458-12-180 Listing of property—Public lands—Public body as lessee—Improvements.** Leasehold interests held by public-exempt bodies are exempt from taxation. The property on which they are located is assessable to the owner and its taxability is in no way affected by the leasehold interest. (AGO 1-30-1937; AGO 8-30-1934)

Improvements made by the public-exempt body in or upon the realty of a private taxpayer shall become part of the realty for taxation purposes unless it clearly appears otherwise. (TCR 5-12-1948)

Whenever it should appear that title to the improvements remain in the public-exempt body, the assessor shall ascertain whether or not the owner of the realty has any taxable interest in the improvements. If he does, he shall be taxed on this interest and not the improvements. If he doesn't, he shall not be taxed on the improvements or anything related thereto.

[Order PT 68-6, § 458-12-180, filed 4/29/68.]

**WAC 458-12-251 Computer software—Definitions—Valuation.** (1) This rule implements the provisions of chapter 29, Laws of 1991, ex. sess, regarding the property taxation of computer software.

(2) **Computer software.** Computer software is a set of directions or instructions that exist in the form of machine-readable or human-readable code, is recorded on physical or

electronic medium and directs the operation of a computer system or other machinery and/or equipment. Computer software includes the associated documentation which describes the code and/or its use, operation, and maintenance and typically is delivered with the code to the user. Computer software does not include data bases, but does include the computer programs and code which are used to generate data bases. Computer software can be canned, custom, or a mixture of both.

(a) A data base is text, data, or other information that may be accessed or managed with the aid of computer software but that does not itself have the capacity to direct the operation of a computer system or other machinery and equipment; and, therefore does not constitute computer software.

(3) **Custom software.** Custom software is computer software that is specially designed for a single person's or a small group of persons' specific needs. Custom software includes modifications to canned software and can be developed in-house by the user, by outside developers, or by both.

(4) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof.

(5) A "small group of persons" shall consist of less than four persons. A group of four or more persons shall be presumed not to be a small group of persons for the purposes of this section unless each of the persons are affiliated through common control and ownership.

(a) "Persons affiliated through common control and ownership" means

(i) Corporations qualifying as controlled group of corporations in 26 USC § 1563; or

(ii) Partnerships or other persons in which at least 80% of the ownership in the persons claimed to be affiliated is the same.

(6) **Canned software.** Canned software, also referred to as prewritten, "shrink-wrapped" or standards software, is computer software that is designed for and distributed "as is" for multiple persons who can use it without modifying its code and which is not otherwise considered custom software.

(a) Computer software that is a combination of prewritten or standard components and components specially modified to meet the needs of a user is a mixture of canned and custom software. The standard or prewritten components are canned software and the modifications are custom software.

(b) Canned software that is "bundled" with or sold with computer hardware retains its identity as canned software and shall be valued as such. "Bundled" software is canned software that is sold with hardware and does not have a separately stated price, and can include operating systems such as DOS, UNIX, OS-2, or System 6.0 as well as other programs.

(c) An upgrade is canned software provided by the software developer, author, distributor, inventor, licensor or sub-licensor to improve, enhance or correct the workings of previously purchased canned software.

(7) **Embedded software.** Embedded software is computer software that resides permanently on some internal memory device in a computer system or other machinery and equipment, that is not removable in the ordinary course of operation, and that is of a type necessary for the routine operation of the computer system or other machinery and equipment.

(a) Embedded software can be either canned or custom software which:

(i) Is an integral part of the computer system or machinery or other equipment in which it resides;

(ii) Is designed specifically to be included in or with the computer system or machinery or other equipment; and

(iii) In its absence, the computer system or machinery or other equipment is inoperable.

(b) "Not removable in the ordinary course of operation" means that the software is not readily accessible and is not intended to be removed without

(i) Terminating the computer system, machinery, or equipment's operation; or

(ii) Removal of a computer chip, circuit board, or other mechanical device, or similar item.

(c) "Necessary for the routine operation" means that the software is required for the machinery, equipment, or computer to be able to perform its intended function. In the case of machinery or other equipment, such embedded software does not have to be a physical part of the actual machinery or other equipment, but may be part of a separate control or management panel or cabinet.

(8) **Retained rights.** Retained rights are any and all rights, including intellectual property rights such as those rights arising from copyright, patent, and/or trade secret laws, that are owned or held under contract or license by a computer software developer, author, inventor, publisher or distributor, licensor or sublicensor.

(9) **Golden or master copy.** A golden or master copy of computer software is a copy of computer software from which a computer software developer, author, inventor, publisher or distributor makes copies for sale or license.

(10) **Acquisition cost.**

(a) The acquisition cost of computer software shall include the total consideration paid for the software, including money, credits, rights, or other property expressed in terms of money, actually paid or accrued. The term also includes freight and installation charges but does not include charges for modifying software, retail sales tax or training. No deduction from the acquisition cost of computer software shall be allowed for any retained rights held by the developer, author, inventor, publisher, or distributor.

(b) In cases where the acquisition cost of computer software cannot be specifically identified, it will be valued at the usual retail selling price of the same or substantially similar computer software.

(c) In cases where canned software is specially modified for the user, the canned component of the computer software retains its identity as canned software; and the modifications are considered custom software and not taxable.

(11) **Valuation of canned software.**

(a) In the first year in which it will be subject to assessment, canned software shall be listed and valued at one hundred percent of acquisition cost as defined in section (10)(a),

(2005 Ed.)

above, regardless of whether the software has been expensed or capitalized on the accounting records of the business.

(b) In the second year in which it will be subject to assessment, canned software shall be listed at one hundred percent of acquisition cost and valued at fifty percent of its acquisition cost.

(c) After the second year in which canned software has been subject to assessment, it shall be valued at zero.

(d) Upgrades to canned software shall be listed and valued at the acquisition cost of the upgrade package under subsections (11)(a) and (b), above, and not at the value of what the complete software package would cost as a new item.

(12) **Valuation of customized canned software.** In the case where a person purchases canned software and subsequently has that canned software customized or modified in-house, by outside developers, or both, only the canned portion of such computer software shall be taxable and it shall be valued as described in subsection (11).

(13) **Valuation of embedded software.** Because embedded software is part of the computer system, machinery, or other equipment, it has no separate acquisition cost and shall not be separately valued apart from the computer system, machinery, or other equipment in which it is housed.

(14) **Taxable person.** Canned software is taxable to the person having the right to use the software, including a licensee.

(15) **Exemptions.**

(a) All custom software, except embedded software, shall be exempt from property taxation;

(b) Retained rights of the computer software developer, author, inventor, publisher, distributor, licensor or sublicensor are exempt from property taxation;

(c) Modifications to canned software shall be exempt from property taxation as custom software; however, the underlying canned software shall retain its identity as canned software and shall be valued as prescribed in subsection (11) of this rule;

(d) Master or golden copies of computer software are exempt from property taxation;

(e) The taxpayer is responsible for maintaining and providing records sufficient to support any claim of exemption for either canned or custom software.

[Statutory Authority: RCW 84.08.010 and 1991 c 29. 92-01-132, § 458-12-251, filed 12/19/91, effective 1/19/92.]

**WAC 458-12-295 Exemption—Agricultural products—Grains, flour, fruit, vegetables and fish—Cancellation.** All agricultural and horticultural products, other than forest products, livestock and fowls, shall be exempt from assessment when the ownership of the property remains in the original producer on the 1st day of January following harvesting. (RCW 84.44.060) Such agricultural products shall be exempt even though stored in a different location from the owner's farm so long as the ownership remains in the original producer. (TCR 4-1-1938)

Grains and flour, fruit and fruit products, vegetables and vegetable products, and fish and fish products, while being transported to or held in storage in a public or private warehouse shall be exempt from taxation if actually shipped to points outside the state on or before April 30th of the first year for which they would otherwise be taxable. In order to

claim the exemption, proof of shipment must be furnished to the county assessor before June 1st of the year for which exemption is claimed. (RCW 84.36.140; RCW 84.36.150)

The county assessor shall list and assess all products covered by RCW 84.36.140 as of January 1st of each year without regard to any average inventory. The assessment shall be cancelled in whole or in proportionate part when the assessor receives documentary proof that the property was actually shipped to points outside the state on or before April 30th of the year. (RCW 84.36.150)

Assessment of grain shall also be subject to cancellation if documentary proof is furnished that the grain was milled into flour and the flour was actually shipped to points outside the state on or before April 30th. (RCW 84.36.150)

The agricultural products exempted by RCW 84.36.140 may also be exempt under the "Freeport exemption" provided by RCW 84.36.171-84.36.174. (AGO 65-66 No. 25, 6-16-65)

This exemption shall be liberally construed to effectuate the purpose of encouraging the storage of grains and flour, fruits, vegetables, fish, and their products within the state of Washington, and a broad definition shall be applied in determining whether a given commodity constitutes grain or flour, fruits, vegetables, fish, or their products, whether such commodities are edible and whether, while in the hands of the first processor, such commodities are suitable and designed for human consumption or whose ingredients are solely intended for such purpose. (RCW 84.36.162.)

[Order PT 68-6, § 458-12-295, filed 4/29/68.]

**WAC 458-12-296 Exemption—Ores and metals.** RCW 84.36.181 provides: "All ore or metal shipped from without this state to any smelter or refining works within this state, while in process of reduction or refinement and for thirty days after completion of such reduction and refinement, shall be considered and held to be property in transit and nontaxable."

The following ores qualify for the exemption provided in this statute:

(1) **Crude ore** - Which is the original, as mined ore, containing many impurities. Examples are: Copper (chalcopyrite); lead (galena); iron (iron oxide); and aluminum (bauxite).

(2) **Concentrated ore** - Which is the product of the beneficiation of crude ore. Beneficiation is the physical, chemical or combination of both processes which is used to remove impurities from a crude ore. The product of beneficiation is a "usable beneficiated ore." Examples of usable or beneficiated ore are: Concentrated iron ore (ferric oxide); concentrated copper ore (copper sulfide); and concentrated bauxite ore (alumina or aluminum oxide).

[Order PT 69-1, § 458-12-296, filed 4/14/69.]

**WAC 458-12-310 Valuation of property—Personal property.** As in the valuation of all other classes of tangible property for ad valorem tax purposes, market value is the assessment goal. To attain that goal, the trade level concept for inventory and leased equipment shall be considered.

Trade level may be defined as value at the point in the production stream where an item of manufactured personalty

is found, or the production-distribution level in which a product is found.

In appraising tangible personal property, the assessor shall give recognition to the trade level at which the property is situated and to the principle that tangible property normally increases in value as it progresses through production and distribution channels. Such property normally attains its maximum value as it reaches the consumer level.

**Raw material** in the hands of the processor or manufacturer should be valued at their cost to the owner or to a competitor.

**Work in process** in the hands of the processor or manufacturer shall be valued at the stage of production where found (costs to date) or cost to a competitor.

**Finished goods** held for sale shall be valued at the amount for which they would transfer to a like business (cost to produce); those held for lease or rental shall be valued at the trade level of the principal user, usually cost to retailer or consumer.

Where personal property is in the hands of a person engaged in two or more of the functions of producer, manufacturer, processor, wholesaler, or retailer, the assessor shall determine the level of trade at which the property is situated on the assessment date by reference to its form, location, quantity, and probable purchasers or lessees.

**Livestock** all county assessors shall use the livestock schedule published annually for their district by the department of revenue as a guide in the valuation of livestock. The assessor must not use the average inventory basis of valuation in the assessment of livestock. (AGO 1-17-51)

**Petroleum products** all county assessors shall use the petroleum products schedule, approved annually by the department of revenue and adjusted to market zones within the state as a guide in the valuation of petroleum products.

**Average inventory** where the stock of goods, wares, merchandise or material, whether in a raw or finished state or in process of manufacture, owned by a taxpayer on January 1st of any year does not fairly represent the average stock carried by such taxpayer, such stock shall be listed and assessed upon the basis of the monthly average of stock owned or held by such taxpayer during the preceding calendar year or during such portion thereof as the taxpayer was engaged in business. (RCW 84.40.020) Although the taxpayer may request that the average inventory method be used and the assessor must comply with that request, whatever method is used—average inventory or inventory on January 1st—That method must be followed from year-to-year in reporting unless a showing is made that a major change in the business has occurred necessitating use of the other method.

[Order PT 68-6, § 458-12-310, filed 4/29/68.]

**WAC 458-12-342 New construction—Assessment.**

(1) New construction covered under the provisions of RCW 36.21.070 and 36.21.080 shall be assessed at its true and fair value as of July 31st each year regardless of its percentage of completion. New construction as used in this section refers only to real property, as defined in RCW 84.04.090 and further defined in WAC 458-12-010, for which a building permit was issued or should have been issued pursuant to chapter

19.27, 19.27A, or 19.28 RCW or other laws providing for building permits.

(2) The assessor is authorized to place new construction on the assessment rolls up to August 31st each year and shall notify the owner of the value of any new construction that has been assessed. The notice shall advise the owner that he has thirty days to appeal the valuation to the county board of equalization as provided in WAC 458-14-056.

[Statutory Authority: RCW 84.41.090 and 84.08.010. 93-08-049, § 458-12-342, filed 4/2/93, effective 5/3/93; 83-22-004 (Order PT 83-6), § 458-12-342, filed 10/20/83.]

**WAC 458-12-343 New construction—Reports.** The county assessor is authorized to require property owners to submit pertinent data respecting the cost and characteristics of any improvements on their property (RCW 84.41.041). When requiring owners to report costs associated with new construction, the assessor shall use forms prescribed or approved by the department of revenue, which forms shall require the total investment in the improvements as of the new construction assessment date, the percentage of completion of the major components of the improvements, and the estimated total cost of the project.

The reporting forms may be sent to the owners of any property upon which a building permit has been issued prior to the new construction assessment date.

The owner shall return the reporting form to the assessor, properly filled out, within thirty days of receipt.

[Statutory Authority: RCW 84.41.090 and 84.08.010. 83-22-004 (Order PT 83-6), § 458-12-343, filed 10/20/83.]

**WAC 458-12-360 Notice of change in value of real property.** (1) **Introduction.** This rule explains the requirement of county assessors to notify taxpayers of any change in the true and fair value of real property as provided by RCW 84.40.045. The notice of a change in the true and fair value of real property is commonly referred to as a value notice or revaluation notice.

(2) **When must a revaluation notice be provided?** All revaluation notices must be mailed within thirty days of the completed appraisal, except that no revaluation notices can be mailed during the period from January 15th to February 15th of each year. If the true and fair value of the real property appraised has not changed, no revaluation notice need be sent to the taxpayer following the completed appraisal. Also, no notice need be sent with respect to changes in valuation of forest land made under chapter 84.33 RCW.

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) On January 5th the assessor completes an appraisal of a home and the land upon which it sits. The total value of the land and home increased as a result of the appraisal. The assessor must mail a revaluation notice to the taxpayer by February 16th; however, the assessor is not allowed to mail the revaluation notice between January 15th and February 15th.

(b) The assessor appraises a home and the land upon which it sits. The value of the home decreases, and the value of the land increases; however, the total value of the home

(2005 Ed.)

and land remain unchanged. The assessor is not required to mail a revaluation notice to the taxpayer. Under RCW 84.40.045, revaluation notices are only required when there is a change in the true and fair value of the real property that is the subject of the appraisal. In this example, although there is a change in the true and fair value of the home and land, there is no overall change in the true and fair value of the real property that was the subject of the appraisal.

(3) **What if an assessor fails to provide a timely revaluation notice?** The failure to provide a timely revaluation notice as required by RCW 84.40.045 does not invalidate the assessment. RCW 84.40.045 does not affect RCW 84.40.020 which provides, in relevant part, that all real property in this state subject to taxation must be listed and assessed every year, at its value on January 1st of the assessment year.

A taxpayer who fails to timely appeal an assessor's determination of value to the county board of equalization (board) because of the assessor's failure to timely provide a revaluation notice may still petition the board for a review of the assessor's determination of value. A board may reconvene on its own authority in certain circumstances as provided in WAC 458-14-127, including upon request of a taxpayer who has not received a timely revaluation notice. Under WAC 458-14-127, the taxpayer must submit to the board a sworn affidavit stating that a revaluation notice for the current assessment year was not received by the taxpayer at least fifteen calendar days prior to the deadline for filing the petition for review of the assessor's determination of value, and the taxpayer can show proof that the value was actually changed. The request to reconvene and the sworn affidavit must be filed with the board by April 30th of the tax year immediately following the board's regularly convened session. (For additional information about appealing an assessor's determination of value to the county board, refer to chapter 458-14 WAC.)

(4) **Who is entitled to receive a revaluation notice?** The assessor is required by law to mail revaluation notices to the taxpayer. RCW 84.40.045. For purposes of this rule, "taxpayer" means the person charged, or whose property is charged, with property tax and whose name appears on the most recent tax roll or has been otherwise provided to the assessor.

If any taxpayer, as shown by the tax rolls, holds only a security interest under a mortgage, contract of sale, or deed of trust in the real property that is the subject of the revaluation notice, the taxpayer is required to supply, within thirty days of receiving a written request from the assessor, the name and address of the person making payments under the mortgage, contract of sale, or deed of trust. The assessor must mail a copy of the revaluation notice to the person making payments under the mortgage, contract of sale, or deed of trust at the address provided by the taxpayer. The assessor is required to make the request provided for in this subsection during the month of January. A taxpayer who willfully fails to comply with such a request from the assessor within the thirty-day time limitation is subject to a maximum civil penalty of five thousand dollars. The civil penalty is recoverable in an action by the county prosecutor and, when recovered, must be deposited in the county current expense fund.

[Title 458 WAC—p. 27]

(5) **What information must a revaluation notice contain?** A revaluation notice must contain the following information:

- (a) The name and address of the taxpayer;
- (b) A description of the real property that is the subject of the revaluation notice;
- (c) The previous and new true and fair values, stating separately land and improvement values;
- (d) A statement that the assessed value is one hundred percent of the true and fair value;
- (e) If the property is classified on the basis of its current use, the previous and new current use value of the property, stating separately land and improvement values;
- (f) A statement informing taxpayers that if they would like to learn more about how their property was valued for tax purposes and how their property taxes will be determined, they may obtain an information pamphlet describing the property tax system from the assessor's office free of charge;
- (g) A statement that land used for farm and agricultural purposes, to preserve open space, or for the commercial growth and harvesting of forest crops may be eligible for assessment based on the land's current use rather than its highest and best use. This statement must also provide information on the method of making application and availability of further information on current use classification;
- (h) A statement informing taxpayers that if they own and live in a residence in the county, including a mobile home, are now or will be sixty-one years of age by December 31st of the current year, or are retired because of physical disability, and if their combined disposable income is under the limits provided in RCW 84.36.381, they may be eligible to receive a property tax exemption. Although not statutorily required, it is suggested that a revaluation notice contain a statement informing taxpayers that if they are a senior citizen or a disabled person, they may be able to defer payment of their property taxes. This statement should include information about how further information about property tax deferrals for senior citizens and disabled persons may be obtained; and
- (i) A brief statement of the procedure for appeal to the county board of equalization and the time, date, and place of the meetings of the board. The following language is suggested: "You may appeal either the true and fair value and/or current use assessed value to the county board of equalization. An appeal petition may be obtained from the board of equalization. Petitions for a hearing must be filed with the board of equalization on or before July 1st of the assessment year, or within (number of days) of the date of the revaluation notice, whichever is later. Petitions received after those dates will be denied on the grounds of not having been timely filed. The board of equalization will convene on July 15th in the (name of office) at (name of city or town), Washington, and will continue in session for a period not to exceed four weeks. The board of equalization is to review and equalize the assessments of the current year for taxes payable the following year."

[Statutory Authority: RCW 84.08.010 and 84.08.070. 03-18-037, § 458-12-360, filed 8/26/03, effective 9/26/03; Order PT 68-6, § 458-12-360, filed 4/29/68.]

## Chapter 458-14 WAC COUNTY BOARDS OF EQUALIZATION

### WAC

458-14-001	Boards of equalization—Introduction.
458-14-005	Definitions.
458-14-015	Jurisdiction of county boards of equalization.
458-14-025	Assessment roll corrections not requiring board action.
458-14-026	Assessment roll corrections agreed to by taxpayer.
458-14-035	Qualifications of members—Term—Organization of board—Quorum—Adjournment—Alternate and interim members.
458-14-046	Regularly convened session—Board duties—Presumption—Equalization to revaluation year.
<b>RULES OF PRACTICE AND PROCEDURE</b>	
458-14-056	Petitions—Time limits—Waiver of filing deadline for good cause.
458-14-066	Requests for valuation information—Duty to exchange information—Time limits.
458-14-076	Hearings on petitions.
458-14-087	Evidence of value—Admissibility—Weight.
458-14-095	Record of hearings.
458-14-105	Hearings—Open sessions—Exceptions.
458-14-116	Orders of the board—Notice of value adjustment—Effective date.
458-14-127	Reconvened boards—Authority.
458-14-136	Hearing examiners.
458-14-146	Conflicts of interest.
458-14-156	Training seminars.
458-14-160	Continuances—Ex parte contact.
458-14-170	Appeals to the state board of tax appeals.
458-14-171	Direct appeals to board of tax appeals.

### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

458-14-010	Reconvening county boards of equalization—By whom. [Order PT 70-1, § 458-14-010, filed 4/8/70; Tax Commission Rule 1, filed 7/6/66.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
458-14-020	Reconvening county boards of equalization—Contents of request. [Statutory Authority: RCW 84.08.010 and 84.08.070. 88-07-005 (Order PT 88-5), § 458-14-020, filed 3/3/88; Order PT 70-1, § 458-14-020, filed 4/8/70; Tax Commission Rule 2, filed 7/6/66.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
458-14-030	Content of order—Limitation on what county board may consider. [Order PT 70-1, § 458-14-030, filed 4/8/70; Tax Commission Rule 3, filed 7/6/66.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
458-14-040	Limitations on reconvening. [Statutory Authority: RCW 84.08.010 and 84.08.070. 88-07-005 (Order PT 88-5), § 458-14-040, filed 3/3/88; 85-17-016 (Order PT 85-3), § 458-14-040, filed 8/12/85; Order PT 70-1, § 458-14-040, filed 4/8/70; Tax Commission Rule 4, filed 7/6/66.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
458-14-045	Reconvening upon timely filed petition—Limitations. [Statutory Authority: RCW 84.08.010 and 84.08.070. 88-07-005 (Order PT 88-5), § 458-14-045, filed 3/3/88; 85-17-016 (Order PT 85-3), § 458-14-045, filed 8/12/85; 82-19-012 (Order PT 82-6), § 458-14-045, filed 9/7/82.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
458-14-050	Membership. [Statutory Authority: RCW 84.08.010 and 84.08.070. 82-19-012 (Order PT 82-6), § 458-14-050, filed 9/7/82; Order PT 74-5, § 458-14-050, filed 4/29/74; Order PT 70-3, § 458-14-050, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
458-14-051	Composition of board. [Order PT 74-5, § 458-14-051, filed 4/29/74; Order 72-7, § 458-14-051, filed 6/23/72.] Repealed by 82-19-012 (Order PT 82-6), filed 9/7/82. Statutory Authority: RCW 84.08.010 and 84.08.070.

- 458-14-052 Change of venue. [Statutory Authority: RCW 84.08.010 and 84.08.070. 82-19-012 (Order PT 82-6), § 458-14-052, filed 9/7/82.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
- 458-14-055 Clerk. [Order PT 70-3, § 458-14-055, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010 and 84.08.200.
- 458-14-060 Legal advisor. [Order PT 70-3, § 458-14-060, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
- 458-14-062 Property tax advisor. [Order PT 74-5, § 458-14-062, filed 4/29/74.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
- 458-14-065 Appraisers. [Order PT 70-3, § 458-14-065, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
- 458-14-070 Public notice of July meetings. [Statutory Authority: RCW 84.08.010 and 84.08.070. 82-19-012 (Order PT 82-6), § 458-14-070, filed 9/7/82; Order PT 70-3, § 458-14-070, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
- 458-14-075 Meetings. [Statutory Authority: RCW 84.08.010 and 84.08.070. 82-19-012 (Order PT 82-6), § 458-14-075, filed 9/7/82; Order PT 74-5, § 458-14-075, filed 4/29/74; Order PT 70-3, § 458-14-075, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
- 458-14-080 Organization of the board. [Statutory Authority: RCW 84.08.010 and 84.08.070. 82-19-012 (Order PT 82-6), § 458-14-080, filed 9/7/82; Order PT 70-3, § 458-14-080, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
- 458-14-085 Record of proceedings—In general. [Order PT 74-5, § 458-14-085, filed 4/29/74; Order PT 72-11, § 458-14-085, filed 9/29/72; Order PT 70-3, § 458-14-085, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
- 458-14-086 Additional record requirements. [Statutory Authority: RCW 84.08.010 and 84.08.070. 82-19-012 (Order PT 82-6), § 458-14-086, filed 9/7/82; Order PT 74-5, § 458-14-086, filed 4/29/74; Order PT 72-11, § 458-14-086, filed 9/29/72.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
- 458-14-090 Assessment roll and records. [Statutory Authority: RCW 84.08.010 and 84.08.070. 82-19-012 (Order PT 82-6), § 458-14-090, filed 9/7/82; Order PT 70-3, § 458-14-090, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
- 458-14-091 Certification of the valuation of the assessment roll by assessor. [Statutory Authority: RCW 84.08.010 and 84.08.070. 82-19-012 (Order PT 82-6), § 458-14-091, filed 9/7/82; Order 73-4, § 458-14-091, filed 8/13/73.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
- 458-14-092 Change of assessment rolls. [Statutory Authority: RCW 84.08.010 and 84.08.070. 85-17-016 (Order PT 85-3), § 458-14-092, filed 8/12/85; 82-19-012 (Order PT 82-6), § 458-14-092, filed 9/7/82.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
- 458-14-094 Availability of valuation information. [Order PT 74-5, § 458-14-094, filed 4/29/74.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
- 458-14-098 Review of valuation. [Order PT 74-5, § 458-14-098, filed 4/29/74.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
- 458-14-100 Duties of the board. [Statutory Authority: RCW 84.08.010 and 84.08.070. 82-19-012 (Order PT 82-6), § 458-14-100, filed 9/7/82; Order PT 70-3, § 458-14-100, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
- 458-14-110 Notice of raise in valuation by the board. [Statutory Authority: RCW 84.08.010 and 84.08.070. 82-19-012 (Order PT 82-6), § 458-14-110, filed 9/7/82; Order PT 70-3, § 458-14-110, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
- 458-14-115 Exempt properties. [Order PT 74-5, § 458-14-115, filed 4/29/74; Order PT 70-3, § 458-14-115, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
- 458-14-120 Petitions. [Statutory Authority: RCW 84.08.010 and 84.08.070. 82-19-012 (Order PT 82-6), § 458-14-120, filed 9/7/82; Order PT 74-5, § 458-14-120, filed 4/29/74; Order PT 70-3, § 458-14-120, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
- 458-14-121 Action on appeals. [Order 72-7, § 458-14-121, filed 6/23/72.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
- 458-14-122 Appeal of board members, assistants, or county governmental authorities. [Statutory Authority: RCW 84.08.010 and 84.08.070. 82-19-012 (Order PT 82-6), § 458-14-122, filed 9/7/82; Order PT 74-5, § 458-14-122, filed 4/29/74; Order 72-7, § 458-14-122, filed 6/23/72.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
- 458-14-125 Hearing on petition. [Statutory Authority: RCW 84.08.010 and 84.08.070. 82-19-012 (Order PT 82-6), § 458-14-125, filed 9/7/82; 81-21-007 (Order PT 81-11), § 458-14-125, filed 10/8/81; Order 71-3, § 458-14-125, filed 4/29/71; Order PT 70-3, § 458-14-125, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
- 458-14-126 Hearing examiners. [Statutory Authority: RCW 84.08.010. 81-04-053 (Order PT 81-2), § 458-14-126, filed 2/4/81.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
- 458-14-130 Orders of the board. [Order PT 70-3, § 458-14-130, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
- 458-14-135 Appeals. [Statutory Authority: RCW 84.08.010 and 84.08.070. 82-19-012 (Order PT 82-6), § 458-14-135, filed 9/7/82; Order PT 70-3, § 458-14-135, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
- 458-14-140 Records to state board. [Order PT 74-5, § 458-14-140, filed 4/29/74; Order PT 70-3, § 458-14-140, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
- 458-14-145 June meeting. [Order PT 70-3, § 458-14-145, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
- 458-14-150 November meeting. [Order PT 70-3, § 458-14-150, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
- 458-14-152 Manifest errors. [Statutory Authority: RCW 84.08.010 and 84.08.070. 85-17-016 (Order PT 85-3), § 458-14-152, filed 8/12/85; Order PT 74-5, § 458-14-152, filed 4/29/74.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.
- 458-14-155 Definitions. [Order PT 74-5, § 458-14-155, filed 4/29/74; Order PT 70-3, § 458-14-155, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

**WAC 458-14-001 Boards of equalization—Introduction.** The following rules pertain to county boards of equalization and implement the provisions of chapter 84.48 RCW and other statutes dealing with county boards of equalization. The purpose of these rules is to promote uniformity throughout the state in the practices and procedures of these boards.

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.200. 90-23-097, § 458-14-001, filed 11/21/90, effective 12/22/90.]

**WAC 458-14-005 Definitions.** The following definitions shall apply to chapter 458-14 WAC:

(1) "Alternate member" means a board member appointed by the county legislative authority to serve in the temporary absence of a regular board member.

(2) "Arm's length transaction" means a transaction between parties under no duress, not motivated by special purposes, and unaffected by personal or economic relationships between themselves, both seeking to maximize their positions from the transaction.

(3) "Assessed value" means the value of real or personal property determined by an assessor.

(4) "Assessment roll" means the record which contains the assessed values of property in the county.

(5) "Assessment year" means the calendar year when the property is listed and valued by the assessor and precedes the calendar year when the tax is due and payable.

(6) "Assessor" means a county assessor or any person authorized to act on behalf of the assessor.

(7) "Board" means a county board of equalization.

(8) "County financial authority" means the county treasurer or any other person responsible for billing and collecting property taxes.

(9) "County legislative authority" means the board of county commissioners or the county legislative body as established under a home rule charter.

(10) "Department" means the department of revenue.

(11) "Documentary evidence" means comparable sales data, cost data, income data, or any other item of evidence, including maps or photographs, which supports value.

(12) "Equalize" means ensuring that comparable properties are comparably valued and refers to the process by which the county board of equalization reviews the valuation of real and personal property on the assessment roll as returned by the assessor, so that each tract or lot of real property and each article or class of personal property is entered on the assessment roll at one hundred percent of its true and fair value.

(13) "Interim member" means a board member appointed by the county legislative authority to fill a vacancy caused by the resignation or permanent incapacity of a regular board member. Such interim member shall serve for the balance of the regular board member's term.

(14) "Manifest error" means an error in listing or assessment, which does not involve a revaluation of property, including the following:

- (a) An error in the legal description;
- (b) A clerical or posting error;
- (c) Double assessments;
- (d) Misapplication of statistical data;
- (e) Incorrect characteristic data;
- (f) Incorrect placement of improvements;
- (g) Erroneous measurements;

(h) The assessment of property exempted by law from taxation;

(i) The failure to deduct the exemption allowed by law to the head of a family; or

(j) Any other error which can be corrected by reference to the records and valuation methods applied to similarly situated properties, without exercising appraisal judgment.

(15) "Market value" means 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. True and fair value is the same as market value or fair market value.

(16) "May" as used in this chapter is expressly intended to be permissive.

(17) "Member" means a regular member of a board.

(18) "Reconvene" refers to the board's limited power to meet to equalize assessments in the current assessment year after the board's regularly convened session is adjourned, or to meet to hear matters concerning prior years.

(19) "Regularly convened session" means the statutorily mandated twenty-eight day period commencing annually on July 15, or the first business day following July 15 if it should fall on a Saturday, Sunday, or holiday.

(20) "Revaluation" means a change in value of property based upon an exercise of appraisal judgment.

(21) "Shall" as used in this chapter is expressly intended to be mandatory.

(22) "Taxpayer" means the person or entity whose name and address appears on the assessment rolls, or their duly authorized agent, personal representative, or guardian. "Taxpayer" also includes the person or entity whose name and address should appear on the assessment rolls as the owner of the property, but because of mistake, delay, or inadvertence does not so appear; for example, in an instance when the rolls have not yet been updated after a transfer of property. A property owner may contract with a lessee for the purpose of making the lessee responsible for the payment of the property tax and such lessee may be deemed to be a taxpayer solely for the purpose of pursuing property tax appeals in his or her own name. If such contract is made, the lessee shall be responsible for providing the county assessor with a proper and current mailing address.

(23) "Tax year" means the calendar year when property taxes are due and payable.

[Statutory Authority: RCW 84.48.200, 84.08.010 and 84.08.070. 95-17-099, § 458-14-005, filed 8/23/95, effective 9/23/95; 90-23-097, § 458-14-005, filed 11/21/90, effective 12/22/90.]

**WAC 458-14-015 Jurisdiction of county boards of equalization.** (1) Boards have jurisdiction to hear all appeals as may be authorized by statute, including the following types of appeals:

(a) Appeals of exemption denials arising under RCW 35.21.755 (public corporations).

(b) Appeals for a change in appraised value when the department establishes taxable rent under RCW 82.29A.020 (2)(b) (leasehold excise tax) based on an appraisal done by the county assessor at the request of the department.

(c) Appeals of decisions or disputes pursuant to RCW 84.26.130 (historic property).

(d) Forest land determinations pursuant to RCW 84.33.116, 84.33.118, 84.33.120, 84.33.130, and 84.33.140, including an appeal of an assessor's refusal to classify land as forest land under RCW 84.33.120.

(e) Current use determinations pursuant to RCW 84.34.108 and 84.34.035.

(f) Appeals pursuant to RCW 84.36.385 (senior citizen exemption denials).

(g) Appeals pursuant to RCW 84.36.812 (cessation of exempt use).

(h) Determinations pursuant to RCW 84.38.040 (property tax deferrals).

(i) Determinations pursuant to RCW 84.40.085 (omitted property or value).

(j) Valuation appeals of taxpayers pursuant to RCW 84.48.010.

(k) Appeal from a decision of the assessor relative to a claim for either real or personal property tax exemption, pursuant to RCW 84.48.010.

(l) Destroyed property appeals pursuant to RCW 84.70.010.

(2) Boards have jurisdiction to equalize property values on their own initiative pursuant to RCW 84.48.010, in accordance with WAC 458-14-046.

[Statutory Authority: RCW 84.48.200, 84.08.010 and 84.08.070. 95-17-099, § 458-14-015, filed 8/23/95, effective 9/23/95; 93-08-050, § 458-14-015, filed 4/2/93, effective 5/3/93; 90-23-097, § 458-14-015, filed 11/21/90, effective 12/22/90.]

**WAC 458-14-025 Assessment roll corrections not requiring board action.** (1) Introduction. The board need not be involved in all determinations made by an assessor relative to property tax matters, but may become involved in instances when a taxpayer appeals from an assessor's determination.

(2) Statutorily required corrections to the assessment rolls shall be made by the assessor as necessary and shall not require any board action. Such corrections include:

(a) Change of tax status due to a sale to or by a public corporation;

(b) The removal, addition, or change of status of a senior citizens/disabled exemption;

(c) The removal, addition, or change of status of a current use assessment;

(d) The removal, addition, or change of status of forest land classification or designation;

(e) The reduction of property value with respect to destroyed property;

(f) The removal, addition, or change of status of a special valuation assessment (chapter 84.26 RCW);

(g) The exemption with respect to physical improvements to a single family dwelling (RCW 84.36.400);

(h) The change of status of property determined to be exempt by the department;

(i) The change of status of property owned by a public corporation, commission or authority, based on use (RCW 35.21.755); and

(j) The cancellation or correction of assessment rolls which assessments are manifestly erroneous (RCW 84.48.-065).

(2005 Ed.)

(3) Notice of any of the above changes, except for subsection (2)(h) of this section, shall be personally served upon the taxpayer, or mailed to the taxpayer by the assessor, and shall notify the taxpayer of the right to appeal the change to the board and shall notify the taxpayer of the time period in which to file his or her petition.

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.200. 93-08-050, § 458-14-025, filed 4/2/93, effective 5/3/93; 90-23-097, § 458-14-025, filed 11/21/90, effective 12/22/90.]

**WAC 458-14-026 Assessment roll corrections agreed to by taxpayer.** (1) The assessor shall make a correction to the assessment roll for the current assessment year when the correction involves an error in the determination of the valuation of property and the following conditions are met:

(a) The assessment roll has previously been certified in accordance with RCW 84.40.320;

(b) The taxpayer has timely filed a completed petition with the board for the current assessment year;

(c) The board has not yet held a hearing on the merits of the taxpayer's petition; and

(d) The assessor and taxpayer have signed an agreement as to the true and fair value of the taxpayer's property in which agreement the parties set forth the valuation information which was used to establish such true and fair value. The true and fair value shall be the value as of January 1 of the year in which the property was last revalued by the assessor according to a revaluation cycle approved by the department. For example, if the county is on a multiyear revaluation cycle, and the taxpayer's property was last revalued in 1990, any agreement between the taxpayer and the assessor based on an appeal by the taxpayer in 1992, must use the true and fair value of the taxpayer's property in 1990 as the basis of the agreement. The value thus agreed to will, in this example, only apply to the 1992 assessment year (the assessment year for which the taxpayer timely filed his or her appeal) and thereafter until the taxpayer's property is again revalued in accordance with an approved revaluation cycle.

(2) The assessor shall immediately notify the board of any corrections to the assessment roll made in accordance with subsection (1) of this section and the taxpayer's petition shall be deemed withdrawn as of the date of notification to the board.

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.200. 93-08-050, § 458-14-026, filed 4/2/93, effective 5/3/93.]

**WAC 458-14-035 Qualifications of members—Term—Organization of board—Quorum—Adjournment—Alternate and interim members.** (1) Board members shall be residents of the county where the board is located and shall attend the department's training seminar held pursuant to WAC 458-14-156 within one year of appointment or reappointment unless this requirement is waived in writing by the assistant director of the department's property tax division, or his or her designee, for just cause.

(2) The board shall consist of at least three members and no more than seven members, including alternate members. Board members shall be appointed or reappointed by the county legislative authority prior to June 1st, and their appointment shall be for a term of three years or until their successors are appointed. Board members who are appointed

by the county legislative authority may be removed by a majority vote of the county legislative authority.

(3) The members of the board shall elect a chairman and vice-chairman once each year, at the beginning of the regularly convened session.

(4) The members of the board shall take an oath once each year prior to the regularly convened session to fairly and impartially perform their duties as members of the board.

(5) All orders of the board shall be decided by majority vote.

(6) A majority of the board shall constitute a quorum.

(7) The board may adjourn from time to time during the regularly convened session but shall not be adjourned sine die, until the last day of the twenty-eight day period, and shall be considered adjourned after the expiration of the twenty-eight day period, for purposes of the regularly convened session. The board shall adjourn after each reconvened session when the purposes for which the reconvened session was requested or required shall have been accomplished.

(8) The county legislative authority may appoint alternate board members or interim board members, as it deems necessary. Alternate and interim board members shall meet the same qualifications and subscribe to the same oath as regular members, and shall attend the next regularly scheduled board training seminar held by the department following their appointment, unless this requirement is waived in writing by the assistant director of the department's property tax division, or his or her designee, for just cause.

(9) No member of a county legislative authority may sit as a board member unless the entire board is comprised of members of the county legislative authority.

(10) Persons who have been employed in the assessor's office shall not sit on that county's board for a period of two years after leaving their employment.

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.200. 90-23-097, § 458-14-035, filed 11/21/90, effective 12/22/90.]

**WAC 458-14-046 Regularly convened session—Board duties—Presumption—Equalization to revaluation year.** (1) RCW 84.48.010 requires the board to meet annually beginning July 15th for the purpose of equalizing property values in the county and to hear taxpayer appeals. The board shall remain in session not less than three days, nor more than twenty-eight days, provided that the board, with the approval of the county legislative authority may convene at any time when taxpayer petitions filed exceed twenty-five or ten percent of the number of petitions filed in the preceding year, whichever is greater. It is only during this twenty-eight day session that the board has the authority to equalize property values on its own initiative.

(2) At its regularly convened session, the board shall adjust the current assessment year's value of property, both real and personal, to its true and fair value, but only if the board finds that the assessed value is not correct based upon:

(a) Information available to the board and/or the board's own examination and comparison of the assessment roll; or

(b) A request by the assessor, together with necessary valuation information, for correction of an error which correction requires some appraisal judgment.

(3) The board shall also hold hearings in accordance with WAC 458-14-076 on properly and timely filed taxpayer petitions.

(4) The assessor's valuation shall be presumed correct, except with respect to subsection (2)(b) of this section, unless the board has clear, cogent, and convincing evidence that the valuation is grossly inequitable and palpably excessive or that the valuation was made on a fundamentally wrong basis.

(5) In counties which are not on an annual revaluation cycle, the board shall equalize real property values to true and fair value as of January 1 of the year in which the property was last revalued by the county assessor according to an approved revaluation cycle.

(6) The board shall also consider any taxpayer appeals from an assessor's decision with respect to tax exemption of real or personal property, and determine:

(a) If the taxpayer is entitled to an exemption; and

(b) If so, the amount thereof.

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.200. 90-23-097, § 458-14-046, filed 11/21/90, effective 12/22/90.]

## RULES OF PRACTICE AND PROCEDURE

**WAC 458-14-056 Petitions—Time limits—Waiver of filing deadline for good cause.** (1) The sole method for appealing an assessor's determination to the board, as to valuation of property, or as to any other types of assessor determinations shall be by means of a properly completed and timely filed taxpayer petition.

(2) A taxpayer's petition for review of the assessed valuation placed upon property by the assessor or for review of any of the types of appeals listed in WAC 458-14-015 shall be filed in duplicate with the board on or before July 1st of the assessment year or within thirty days after the date an assessment or value change notice or other determination notice is mailed to the taxpayer, whichever date is later (RCW 84.40.038).

(3) No late filing of a petition shall be allowed except as specifically provided in this subsection. The board may waive the filing deadline if the petition is filed within a reasonable time after the filing deadline and the petitioner shows good cause, as defined in this subsection, for the late filing. A petition that is filed after the deadline without a showing of good cause shall be dismissed unless, after the taxpayer is notified by the board that the petition will be dismissed because of the late filing, the taxpayer promptly shows good cause for the late filing. The board shall decide a taxpayer's claim of good cause without holding a public hearing on the claim and shall promptly notify the taxpayer of the decision, in writing. The board's decision regarding a waiver of the filing deadline is final and not appealable to the state board of tax appeals. Good cause may be shown by documentation of one or more of the following events or circumstances:

(a) The taxpayer was unable to file the petition by the filing deadline because of a death or serious illness of the taxpayer or of a member of the taxpayer's immediate family occurring at or shortly before the time for filing. For purposes of this subsection, the term "immediate family" includes, but is not limited to, a grandparent, parent, brother, sister, spouse, child, or grandchild.

(b) The taxpayer was unable to file the petition by the filing deadline because of the occurrence of all of the following:

(i) The taxpayer was absent from his or her home or from the address where the assessment notice or value change notice is normally received by the taxpayer. If the notice is normally mailed by the assessor to a mortgagee or other agent of the taxpayer, the taxpayer must show that the mortgagee or other agent was required, pursuant to written instructions from the taxpayer, to promptly transmit the notice and failed to do so; and

(ii) The taxpayer was absent (as described in (b)(i) of this subsection) for more than fifteen of the thirty days prior to the filing deadline; and

(iii) The filing deadline is after July 1 of the assessment year, that is, the notice from which the taxpayer appeals was mailed within the assessment year and after June 1st.

(c) The taxpayer was unable to file the petition by the filing deadline because the taxpayer reasonably relied upon incorrect, ambiguous, or misleading written advice as to the proper filing requirements by either a board member or board staff, the assessor or assessor's staff, or the property tax advisor designated under RCW 84.48.140, or his or her staff.

(d) The taxpayer was unable to file the petition by the filing deadline because of a natural disaster such as a flood or earthquake occurring at or shortly before the time for filing.

(e) The taxpayer was unable to file the petition by the filing deadline because of a delay or loss related to the delivery of the petition by the postal service. The taxpayer must be able to provide documentation from the postal service of such a delay or loss.

(4) If a petition is filed by mail it shall be postmarked no later than the filing deadline. If the filing deadline falls upon a Saturday, Sunday or holiday, the petition shall be filed on or postmarked no later than the next business day.

(5) A petition is properly completed when all relevant questions on the form provided or approved by the department have been answered and the answers contain sufficient information or statements to apprise the board and the assessor of the reasons for the appeal. A petition which merely states that the assessor's valuation is too high or that property taxes are excessive, or similar such statements, is not properly completed and shall not be considered by the board. If, at the time of filing the petition, the taxpayer does not have all the documentary evidence available which he or she intends to present at the hearing, the petition will be deemed to be properly completed for purposes of preserving the taxpayer's right of appeal, if it is otherwise fully and properly filled out. However, any comparable sales or other valuation evidence not submitted at the time the petition is filed must be provided by the taxpayer to the assessor and the board at least seven business days, excluding legal holidays, prior to the board hearing. A copy of such completed petition shall be provided to the assessor by the clerk of the board. Any petition not fully and properly completed shall not be considered by the board (RCW 84.40.038). See: WAC 458-14-066 Requests for valuation information—Duty to exchange information—Time limits, for an explanation of the availability, use and exchange of valuation information prior to the hearing before the board.

(6) Whenever the taxpayer has an appeal pending with the board, the state board of tax appeals or with a court of

law, and the assessor notifies the taxpayer of a change in property valuation, the taxpayer is required to file a timely petition with the board in order to preserve the right to appeal the change in valuation. For example, if a taxpayer has appealed a decision of the board to the board of tax appeals regarding an assessed value for the year 1989, and that appeal is pending when the assessor issues a value change notice for the 1990 assessment year, the taxpayer must still file a timely petition appealing the valuation for the 1990 assessment year in order to preserve his or her right to appeal from that 1990 assessed value.

(7) Petition forms shall be available from the clerk of the board and from the assessor's office.

[Statutory Authority: RCW 84.48.200, 84.08.010 and 84.08.070. 95-17-099, § 458-14-056, filed 8/23/95, effective 9/23/95; 90-23-097, § 458-14-056, filed 11/21/90, effective 12/22/90.]

**WAC 458-14-066 Requests for valuation information—Duty to exchange information—Time limits.** (1) Introduction. Timely access to valuation information should be provided to both parties prior to the hearing on a petition so that time-consuming and costly discovery procedures are unnecessary.

(2) Requests by a taxpayer for valuation information from the assessor may be made on the petition form filed with the board, or may be made at any reasonable time prior to the hearing. Upon request by the taxpayer, the assessor shall make available to the taxpayer the comparable sales used in establishing the taxpayer's property valuation. If valuation criteria other than comparable sales were used, the assessor shall provide the taxpayer with such information. All such valuation information, including comparable sales, shall be provided to the taxpayer and the board within sixty days of the request but at least fourteen business days, excluding legal holidays, prior to the taxpayer's appearance before the board of equalization.

(3) The valuation information provided by the assessor to the taxpayer shall not be subsequently changed by the assessor unless the assessor has found new evidence supporting the assessor's valuation, in which situation the assessor shall provide the additional evidence to the taxpayer and the board at least fourteen business days prior to the hearing at the board.

(4) A taxpayer who lists comparable sales on the petition, or who provides the board and the assessor with comparable sales or valuation evidence after filing the petition shall not thereafter change or add other comparable sales or valuation evidence without providing the assessor and the board with the additional information at least seven business days, excluding legal holidays, prior to the board hearing.

(5) If either the assessor or taxpayer does not comply with the requirements of this section, the board in its discretion may take any of the following actions:

(a) If there is no objection by either party, consider the new evidence provided by either party and proceed with the hearing;

(b) If there is an objection by either party to the failure of the other party to comply with the requirements of this section, the board may:

(i) Refuse to consider evidence that was not timely submitted;

(ii) Postpone the hearing for a definite time period designated by the board, to provide the parties an opportunity to review all evidence; or

(iii) Proceed with the hearing but allow the parties to submit new evidence to the board and the other party, after the hearing is concluded, within definite time periods designated by the board, and provide each party with an adequate opportunity to rebut or comment on the new evidence prior to the board's decision.

[Statutory Authority: RCW 84.48.200, 84.08.010 and 84.08.070. 95-17-099, § 458-14-066, filed 8/23/95, effective 9/23/95; 90-23-097, § 458-14-066, filed 11/21/90, effective 12/22/90.]

**WAC 458-14-076 Hearings on petitions.** (1) The board or one of its hearing examiners shall hold individual hearings on each properly filed petition which has not been withdrawn or otherwise disposed of.

(2) The assessor and taxpayer shall be provided notice of the hearing date by the clerk of the board at least fifteen business days before the hearing, unless the clerk and the parties agree upon a shorter time period.

(3) If property is sold or transferred after a petition has been timely filed, the new purchaser or transferee may pursue the appeal in place of the seller or transferor.

(4) All persons testifying before the board shall swear or affirm on the record that they will testify truthfully under penalty of perjury.

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.200. 90-23-097, § 458-14-076, filed 11/21/90, effective 12/22/90.]

**WAC 458-14-087 Evidence of value—Admissibility—Weight.** (1) In making its decision with respect to the value of property, the board shall use the criteria set forth in RCW 84.40.030.

(2) Parties may submit and boards may consider any sales of the subject property or similar properties which occurred prior to the hearing date so long as the requirements of RCW 84.40.030, 84.48.150, and WAC 458-14-066 are complied with. Only sales made within five years of the date of the petition shall be considered.

(3) Any sale of property prior to or after January 1st of the year of revaluation shall be adjusted to its value as of January 1st of the year of revaluation, reflecting market activity and using generally accepted appraisal methods. For example, for revaluation year 1990, a sale of the subject property or similar property in September 1986 must be adjusted, based upon market activity for that local area, to show what that sale would have been worth as of January 1, 1990. Similarly, for the revaluation year 1990, a sale of the subject property or similar property in May 1990 must be adjusted, based upon market activity for that local area, to show what that sale would have been worth as of January 1, 1990.

(4) More weight shall be given to similar sales occurring closest to the assessment date which require the fewest adjustments for characteristics.

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.200. 90-23-097, § 458-14-087, filed 11/21/90, effective 12/22/90.]

**WAC 458-14-095 Record of hearings.** (1) All hearings of a board or its hearing examiners shall be recorded with an audio recording device.

(2) Testimony concerning information which is exempt from public disclosure pursuant to RCW 84.40.340 or 42.17.310 shall be recorded on a separate blank audio tape, and shall, along with any other confidential evidence, be placed in an envelope bearing the notation "confidential evidence" and the case number, and sealed from public inspection. The clerk shall keep a separate file for all such confidential evidence. Provided that, notwithstanding the above described procedures, any procedure which substantially complies with the confidentiality requirements of the above mentioned statutes shall be sufficient.

(3) The public record shall include:

(a) The date or dates the board was in session;

(b) The names of board members or hearing examiners in attendance; and

(c) All evidence presented to the board.

(4) The requirements of this section shall not apply to post hearing deliberations of a board.

(5) Boards are not required to provide transcripts of proceedings to any person or entity other than as may be required by chapter 42.17 RCW, however board clerks shall complete a form provided by the department for each hearing.

(6) The records of the board shall be kept and maintained as required by RCW 40.14.060.

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.200. 90-23-097, § 458-14-095, filed 11/21/90, effective 12/22/90.]

**WAC 458-14-105 Hearings—Open sessions—Exceptions.** (1) All board hearings shall be open to the public unless a party requests that part or all of a hearing be conducted in closed session in accordance with subsection (2) of this section.

(2) If one of the parties intends to introduce evidence obtained under RCW 84.40.340 or confidential income data exempted from public inspection pursuant to RCW 42.17.310 and requests that the hearing be closed to the public, the board shall conduct the hearing in closed session, to the extent necessary to protect and preserve confidentiality.

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.200. 90-23-097, § 458-14-105, filed 11/21/90, effective 12/22/90.]

**WAC 458-14-116 Orders of the board—Notice of value adjustment—Effective date.** (1) All orders issued by a board shall be on the form provided or approved by the department and shall state the facts and evidence upon which the decision is based and the reason(s) for the decision.

(2) All orders of the board shall be signed by the chairman of the board, provided, however, that the chairman may, by written designation, authorize other members or the board clerk to sign orders on behalf of the chairman.

(3) After a hearing, if a board adjusts or sustains the valuation of a parcel of real property or an item of personal property, the board shall serve or mail notice of the decision to the appellant and the assessor.

(a) If the valuation is reduced, the new valuation shall take effect immediately, subject to the parties' right to appeal the decision.

(b) If the valuation is increased, the increased valuation shall become effective thirty days after the date of service or mailing of the notice of the adjustment unless the taxpayer or assessor files a petition to the board of tax appeals in accor-

dance with WAC 458-14-170, before the effective date. If such a petition is filed, the increase does not take effect until the board of tax appeals disposes of the matter.

(4) If the valuation is increased without a petition having been filed, the increased valuation shall become effective thirty days after the date of service or mailing of the notice of the adjustment to the taxpayer unless the taxpayer files a petition with the board on or before the effective date.

(5) In counties with a multiyear revaluation cycle, orders issued by the board shall have effect up to the end of the revaluation cycle used by the assessor and approved by the department. The board order may contain a specific statement notifying the parties of this effect. If there has been an intervening change in assessed value of the taxpayer's property between the time the petition was filed and the date the board's order is issued, the board's order shall have effect only up to the effective date of the change in assessed value. The same effect will also apply when a valuation adjustment is ordered upon appeal of a board order.

(6) In counties with a multiyear revaluation cycle, once the board has issued a decision with respect to a taxpayer's real property, and when there has been no intervening change in assessed value, any subsequent appeal to the board:

(a) By the same taxpayer relating to the same property shall be treated as a motion for reconsideration. The board shall hold a hearing on the appeal/motion only if the taxpayer can show that there is newly discovered evidence that materially affects the basis for the board's decision and the taxpayer can show that the evidence could not with reasonable diligence have been discovered and produced at the original hearing;

(b) By a taxpayer who acquired the property from the taxpayer to whom the board decision was issued, and for a subsequent assessment year, shall be treated as an original appeal.

[Statutory Authority: RCW 84.48.200, 84.08.010 and 84.08.070, 95-17-099, § 458-14-116, filed 8/23/95, effective 9/23/95; 90-23-097, § 458-14-116, filed 11/21/90, effective 12/22/90.]

#### **WAC 458-14-127 Reconvened boards—Authority.**

(1) Boards of equalization may reconvene on their own authority to hear requests concerning the current assessment year when the request is filed with the board by April 30 of the tax year immediately following the board's regularly convened session and at least one of the following conditions is met:

(a) A taxpayer requests the board reconvene and submits to the board a sworn affidavit stating that notice of change of value for the assessment year was not received by the taxpayer at least fifteen calendar days prior to the deadline for filing the petition, and can show proof that the value was actually changed.

(b) An assessor submits an affidavit to the board stating that the assessor was unaware of facts which were discoverable at the time of appraisal and that such lack of facts caused the valuation of property to be materially affected. In the affidavit, the assessor shall state the facts which affected the value and also state both the incorrect value and the true and fair market value of the property and shall mail a copy of the affidavit to the taxpayer. If the board decides to reconvene to consider the valuation, it shall notify both the taxpayer and assessor of its decision in writing.

(2005 Ed.)

(c) In an arm's length transaction, a bona fide purchaser or contract buyer of record has acquired an interest in real property subsequent to the first day of July and on or before December 31 of the assessment year and the sale price was less than ninety percent of the assessed value.

(2) Upon request of either the taxpayer or the assessor, boards may reconvene on their own authority to hear appeals with respect to property or value that was omitted from the assessment rolls. No request shall be accepted for any period more than three years preceding the year in which the omission is discovered.

(3) Requests for reconvening boards concerning prior year's assessments or for an extension of the annual regularly convened session to enable the board to complete its annual equalization duties shall be submitted to the clerk of the board who shall submit such request to the department for determination.

(4) The department may require any board to reconvene at any time for the purpose of performing or completing any duty or taking any action the board might lawfully have performed or taken at any of its previous meetings, or for any other purpose allowed by law.

(5) The department shall reconvene a board upon request of a taxpayer when the taxpayer makes a prima facie showing of actual or constructive fraud on the part of taxing officials. The department shall reconvene a board upon request of an assessor when the assessor makes a prima facie showing of actual or constructive fraud on the part of a taxpayer.

(6) All reconvening requests shall:

(a) Specify the assessment year(s) that is the subject of the request; and

(b) State the specific grounds upon which the request is based; and

(c) If the taxpayer is the party requesting the reconvening, state that he or she is the owner or duly authorized agent, personal representative or guardian, of the property or is a lessee responsible for the payment of the property taxes.

(7) No board shall reconvene later than three years after the adjournment of its regularly convened session.

[Statutory Authority: RCW 84.48.200, 84.08.010 and 84.08.070, 95-17-099, § 458-14-127, filed 8/23/95, effective 9/23/95; 93-08-050, § 458-14-127, filed 4/2/93, effective 5/3/93; 90-23-097, § 458-14-127, filed 11/21/90, effective 12/22/90.]

**WAC 458-14-136 Hearing examiners.** (1) Any board may employ one or more hearing examiners to assist the board in conducting hearings.

(2) All hearing examiners shall take the same oath required of regular board members and shall meet the same qualifications for membership as regular board members.

(3) A board member may act as a hearing examiner.

(4) A hearing examiner may hold hearings separate from the board and take testimony from both parties and their witnesses.

(5) Hearing examiners shall present to the full board or a quorum thereof, all evidence submitted by the parties at the hearing before the hearing examiner. The board shall make the final determination on all petitions filed. The board may make its final determination based upon the record submitted by the examiner or may request further testimony or docu-

[Title 458 WAC—p. 35]

mentation from either the taxpayer or the assessor before making its final determination.

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.200. 90-23-097, § 458-14-136, filed 11/21/90, effective 12/22/90.]

**WAC 458-14-146 Conflicts of interest.** (1) Board members shall disqualify themselves from hearing an appeal involving property owned in whole or in part by members or employees of the board or county legislative authority or any person related to a member or employee of the board or county legislative authority by blood or marriage. Board members do not need to disqualify themselves from hearing an appeal filed by other county officials, such as the county auditor, sheriff, treasurer, prosecutor, assessor, judges, or other county officials or their employees.

(2) Board members who are or who have been real estate agents, appraisers, or assessors shall disqualify themselves from hearing an appeal regarding property with which they have been involved, until the property has been revalued subsequent to their involvement in accordance with the assessor's revaluation cycle, as follows:

- (a) Property that they have appraised; or
- (b) Property with which they have been connected with the purchase or sale; or
- (c) Property with which they have in any way exercised discretion.

(3) If a board cannot achieve a quorum due to the provisions of subsections (1) and (2) of this section, the board shall sustain the assessor's determination. The taxpayer shall be advised by the board of the right to appeal the board's action to the state board of tax appeals.

[Statutory Authority: RCW 84.48.200, 84.08.010 and 84.08.070. 95-17-099, § 458-14-146, filed 8/23/95, effective 9/23/95; 90-23-097, § 458-14-146, filed 11/21/90, effective 12/22/90.]

**WAC 458-14-156 Training seminars.** Board members, alternate board members, interim board members, hearing examiners, and clerks shall attend board of equalization training seminars as directed by the department unless this requirement is waived in writing by the assistant director of the department's property tax division, or his or her designee, for just cause.

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.200. 90-23-097, § 458-14-156, filed 11/21/90, effective 12/22/90.]

**WAC 458-14-160 Continuances—Ex parte contact.** (1) Extensions of time, other than the time for filing petitions, continuances, and adjournments may be ordered by the board on its own motion or may be granted by it, in its discretion, on motion of any party showing good and sufficient cause therefor. For a waiver of the time limit in which to file the petition, see WAC 458-14-056(3).

(2) No one shall make or attempt to make any ex parte contact with board members except upon notice and opportunity for all parties to be present or to the extent required for the disposition of ex parte matters as authorized by law, nor shall a board member make or attempt to make any ex parte contact with any person regarding any issue in the proceeding who has a direct or indirect interest in the outcome of the proceeding, without notice and opportunity for all parties to par-

ticipate, unless necessary to procedural aspects of maintaining an orderly process.

[Statutory Authority: RCW 84.48.200, 84.08.010 and 84.08.070. 95-17-099, § 458-14-160, filed 8/23/95, effective 9/23/95; 90-23-097, § 458-14-160, filed 11/21/90, effective 12/22/90.]

**WAC 458-14-170 Appeals to the state board of tax appeals.** (1) Pursuant to RCW 84.08.130, any taxpayer, taxing unit, or assessor feeling aggrieved by the action of a board may appeal to the board of tax appeals by filing with the board of tax appeals a notice of appeal within thirty days after the board has served or mailed its decision. The appeal is deemed timely filed with the board of tax appeals if post-marked on or before the thirtieth day after the board of equalization has served or mailed its decision.

(2) The notice of appeal shall specify the actions of the board that the appellant is appealing, and shall be in such form as is required by the board of tax appeals (see WAC 456-10-310 and 456-09-310). The petitioner shall serve a copy of the notice of appeal on all named parties within the same thirty-day time period.

(3) The board appealed from shall file with the board of tax appeals a true and correct copy of its decision in such action and all evidence taken in connection therewith.

[Statutory Authority: RCW 84.48.200, 84.08.010 and 84.08.070. 95-17-099, § 458-14-170, filed 8/23/95, effective 9/23/95; 93-08-050, § 458-14-170, filed 4/2/93, effective 5/3/93; 90-23-097, § 458-14-170, filed 11/21/90, effective 12/22/90.]

**WAC 458-14-171 Direct appeals to board of tax appeals.** (1) In an appeal involving complex issues or requiring expertise beyond the board's proficiency, a taxpayer, prior to the hearing before the board, may file a request with the board for a direct appeal to the state board of tax appeals without first having been heard by the board. The taxpayer and assessor (or the assessor's authorized designee) must jointly sign this request. Without holding a public hearing on the request, the board, by simple majority vote, shall approve or deny the request within fifteen calendar days of its receipt.

(2) If the board denies the request, the board shall notify all parties to the appeal, in writing, of the denial, and process the taxpayer's appeal as though no request had been made. The board need not provide reasons for its denial. If the board fails to act timely on the request, the taxpayer may petition the board to schedule a hearing on the taxpayer's appeal. Within thirty days of receipt of the taxpayer's petition, the board will schedule a future date for the taxpayer's appeal to be heard.

(3) If the board approves the request, the board shall notify all parties to the appeal, in writing, of the approval, and shall forward the taxpayer's appeal to the state board of tax appeals together with the request for direct appeal and the signed approval of the board.

(4) If the state board of tax appeals rejects the request, it must do so within thirty calendar days of receipt of the request and shall at the same time notify all parties and the board of the reason or reasons for the rejection. In such cases, the board shall process the taxpayer's appeal as though no request had been made.

[Statutory Authority: RCW 84.48.200, 84.08.010 and 84.08.070. 95-17-099, § 458-14-171, filed 8/23/95, effective 9/23/95; 93-08-050, § 458-14-171, filed 4/2/93, effective 5/3/93.]

**Chapter 458-15 WAC  
HISTORIC PROPERTY**

**WAC**

458-15-005	Purpose.
458-15-010	Authority.
458-15-015	Definitions.
458-15-020	Application.
458-15-030	Multiple applications.
458-15-040	Costs and fees.
458-15-050	Qualifications.
458-15-060	Processing of the agreement.
458-15-070	Disqualification or removal.
458-15-080	Disqualification or removal—Effective date.
458-15-090	Additional tax.
458-15-100	Appeals.
458-15-110	Exemption of portion of historic property.
458-15-120	Revaluation and new construction.

**WAC 458-15-005 Purpose.** The purpose of these rules is to implement the provisions of chapter 84.26 RCW relating to the administration of the act. These rules are to be used in conjunction with chapter 254-20 WAC as adopted by the advisory council on historic preservation.

[Statutory Authority: RCW 84.08.010(2) and 84.08.070. 87-05-022 (Order PT 87-2), § 458-15-005, filed 2/13/87.]

**WAC 458-15-010 Authority.** These rules are promulgated by the department under RCW 84.08.010(2).

[Statutory Authority: RCW 84.08.010(2) and 84.08.070. 87-05-022 (Order PT 87-2), § 458-15-010, filed 2/13/87.]

**WAC 458-15-015 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Act" means chapter 84.26 RCW.
- (2) "Additional tax" means those additional taxes, interest, and penalties specified in RCW 84.26.090.
- (3) "Agreement" means an instrument executed by an applicant and the local review board.
- (4) "Applicant" means the owner(s) of record of property who submit(s) an application for special valuation.
- (5) "Assessed value" means the true and fair value of the property for which each special valuation is sought.
- (6) "Board" or "local review board" means any appointed committee designated by local ordinance to make determinations concerning the eligibility of historic properties for special valuation and to approve or deny applications therefor.
- (7) "Cost" means the actual cost of rehabilitation, which cost shall be at least twenty-five percent of the assessed valuation of the historic property, exclusive of the assessed value attributable to the land, prior to rehabilitation.
- (8) "County recording authority" means the county auditor or the county recording authority which records real property transactions.
- (9) "Department" means the department of revenue.
- (10) "Disqualification" means the loss of eligibility of a property to receive special valuation.
- (11) "Eligible historic property" means a property determined by the board to be:

(2005 Ed.)

(a) Within a class approved by the local legislative authority; and

(b) Eligible for special valuation.

(12) "Historic property" means real property together with improvements thereon, except property listed in a register primarily for objects buried below ground, which is:

(a) Listed in a local register of historic places created by comprehensive ordinance, certified by the secretary of the interior as provided in P.L. 96-515; or

(b) Listed in the national register of historic places.

(13) "Special valuation" means the determination of the assessed value of the historic property subtracting, for up to ten years, such cost as is approved by the local review board: Provided, That the special valuation shall not be less than zero.

(14) "Local legislative authority" means the municipal government within incorporated cities and the county government in unincorporated areas.

(15) "Rehabilitation" is the process of returning a property to a state of utility through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its architectural and cultural values. (See WAC 458-15-050.)

[Statutory Authority: RCW 84.08.010(2) and 84.08.070. 87-05-022 (Order PT 87-2), § 458-15-015, filed 2/13/87.]

**WAC 458-15-020 Application.** (1) The application for special valuation under the act shall be submitted to the assessor of the county where the property is located upon forms prescribed by the department of revenue and supplied by the county assessor.

(2) Applications shall be filed by October 1 of the calendar year preceding the first assessment year for which the special valuation is sought.

(3) Upon receipt of the application the assessor shall verify:

(a) The assessed valuation of the building carried on the assessment roll twenty-four months prior to filing the application;

(b) The owner of the property; and

(c) Legal description and parcel or tax account number.

(4) Within ten days after the filing of the application with the county assessor the application for special valuation shall be forwarded to the board for approval or denial.

[Statutory Authority: RCW 84.08.010(2) and 84.08.070. 87-05-022 (Order PT 87-2), § 458-15-020, filed 2/13/87.]

**WAC 458-15-030 Multiple applications.** If rehabilitation of a historic property is completed in more than one phase the cost of each phase shall be determined at the time of application.

[Statutory Authority: RCW 84.08.010(2) and 84.08.070. 87-05-022 (Order PT 87-2), § 458-15-030, filed 2/13/87.]

**WAC 458-15-040 Costs and fees.** The assessor may charge such fees as are necessary for the processing and recording of the certification and agreement for special valuation of historic property. These fees shall be payable to the county recording authority.

[Statutory Authority: RCW 84.08.010(2) and 84.08.070. 87-05-022 (Order PT 87-2), § 458-15-040, filed 2/13/87.]

**WAC 458-15-050 Qualifications.** Four criteria must be met for special valuation under this act. The property must:

- (1) Be an historic property;
- (2) Fall within a class of historic property determined eligible for special valuation by the local legislative authority under an ordinance or administrative rule;
- (3) Be rehabilitated at a cost which meets the definition set forth in RCW 84.26.020(2) within twenty-four months prior to the application for special valuation; and
- (4) Be protected by an agreement between the owner and the board as described in RCW 84.26.050(2).

[Statutory Authority: RCW 84.08.010(2) and 84.08.070. 87-05-022 (Order PT 87-2), § 458-15-050, filed 2/13/87.]

**WAC 458-15-060 Processing of the agreement.** Upon receipt from the board of documentation that the property is an eligible historic property and the agreement between the applicant and the board, the assessor shall:

- (1) Record the original agreement, the certification and the application with the county recording authority.
- (2) Enter upon the assessment rolls for the subsequent year the special valuation as defined in WAC 458-15-015(13).
- (3) The assessor shall calculate and enter on the assessment rolls a special value each succeeding year. The property shall receive the special valuation until:
  - (a) Ten assessment years have elapsed; or
  - (b) The special valuation is lost through disqualification or removal.
- (4) Retain copies of all documents.

[Statutory Authority: RCW 84.08.010(2) and 84.08.070. 87-05-022 (Order PT 87-2), § 458-15-060, filed 2/13/87.]

**WAC 458-15-070 Disqualification or removal.** When property has been granted special valuation as historic property, the special valuation shall continue until the property is disqualified or removed by the assessor upon:

- (1) Expiration of the ten-year special valuation period;
  - (2) Notice by the owner to remove the special valuation;
  - (3) Sale or transfer to an ownership making it exempt from taxation;
  - (4) Sale or transfer of the property through the exercise of the power of eminent domain;
  - (5) Sale or transfer to a new owner; and
- (a) The property no longer qualifies as historic property; or
- (b) The new owner does not sign the notice of compliance contained on the real estate excise tax affidavit;
- (6) Determination by the board that the property no longer qualifies as historic property; or
  - (7) Determination by the board and notice to the assessor that the owner has failed to comply with the conditions established under RCW 84.26.050, chapter 254-20 WAC or the agreement.

[Statutory Authority: RCW 84.08.010(2) and 84.08.070. 87-05-022 (Order PT 87-2), § 458-15-070, filed 2/13/87.]

[Title 458 WAC—p. 38]

**WAC 458-15-080 Disqualification or removal—Effective date.** The disqualification from special valuation shall be effective on the date the event that led to the disqualification occurs.

- (1) If the owner gives notice to discontinue the special valuation, the owner shall specify in the notice the effective date of removal.
- (2) In case of sale or transfer, the date of disqualification shall be the date of the instrument of conveyance.
- (3) If removal is based on a board decision, the board shall determine the effective date of disqualification to be the date of any disqualifying change in the property or the owner's noncompliance with conditions established under RCW 84.26.050. If the board does not specify the date of such an occurrence, then the date of the board order shall be the effective date of disqualification.

(4) After the board has sent notice to the owner that it has determined that property is disqualified or after property has been sold and no notice of compliance has been signed, the owner shall not be deemed able to act in the good faith belief that the property is qualified. Until such time, if the owner was acting in the good faith belief that the property remained qualified, the effective date of the disqualification shall be suspended during the pendency of that good faith belief. When an owner raises a good faith belief at a board proceeding, the board may enter a finding as to when the owner's good faith belief ceased.

[Statutory Authority: RCW 84.08.010(2) and 84.08.070. 87-05-022 (Order PT 87-2), § 458-15-080, filed 2/13/87.]

**WAC 458-15-090 Additional tax.** An additional tax shall be imposed upon the disqualification or removal from the special valuation provided for by chapter 84.26 RCW as follows:

- (1) No additional tax shall be levied prior to the assessor notifying the owner by mail, return receipt requested, that the property is no longer qualified for special valuation.
- (2) Except as provided for in subsection (3) of this section, an additional tax shall be due which is the sum of the following:
  - (a) The cost shall be multiplied by the levy rate for each year the property received the special valuation.
  - (b) For the year of disqualification or removal, the cost multiplied by the levy rate shall be multiplied by a fraction, the denominator of which is the number of days in the current year and the numerator of which shall be the number of days in the current year the property received the special valuation.
  - (c) Interest at the statutory rate on delinquent property taxes shall be added for each year of special valuation from April 30th of that year to the effective date of disqualification or removal.
  - (d) A penalty in the amount of twelve percent of the sum of (a), (b) and (c) of this subsection.
- (3) No additional tax shall be due if the disqualification or removal resulted solely from:
  - (a) Expiration of the ten-year special valuation period;
  - (b) Sale or transfer of the property to an ownership making it exempt from taxation;
  - (c) Alteration or destruction through no fault of the owner; or

(d) A taking through the exercise of the power of eminent domain.

(4) The additional tax shall become a lien on the property which shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the property may become charged or liable.

(5) The additional tax shall be due and payable in full within thirty days after the tax statement is rendered by the county treasurer and shall be delinquent and subject to:

- (a) The delinquent property tax rate after that date; and
- (b) Foreclosure as provided for in chapter 84.64 RCW.

Such additional tax when collected shall be distributed by the county treasurer in the same manner in which current taxes applicable to the subject property are distributed.

[Statutory Authority: RCW 84.08.010(2) and 84.08.070. 87-05-022 (Order PT 87-2), § 458-15-090, filed 2/13/87.]

**WAC 458-15-100 Appeals.** (1) The owner may appeal a determination of eligibility of special valuation by a local review board to superior court under RCW 34.04.130 or to the legislative authority if local ordinances so provide.

(2) Disqualification or removal of the property from special valuation may be appealed to the county board of equalization within thirty days of being notified of the disqualification or removal, or July 15th of the current year, whichever is later.

[Statutory Authority: RCW 84.08.010(2) and 84.08.070. 87-05-022 (Order PT 87-2), § 458-15-100, filed 2/13/87.]

**WAC 458-15-110 Exemption of portion of historic property.** When a portion of a historic property is exempt under chapter 84.36 RCW and rehabilitation was completed on the entire building, only the cost of rehabilitation attributable to that portion of the property that is not exempt shall be used for the special valuation. If the cost of rehabilitation for the nonexempt portion is not readily discernible, the allocation of the cost may be made on a square foot basis.

[Statutory Authority: RCW 84.08.010(2) and 84.08.070. 87-05-022 (Order PT 87-2), § 458-15-110, filed 2/13/87.]

**WAC 458-15-120 Revaluation and new construction.**

(1) The assessor shall continue to revalue the historic property on the regular revaluation cycle, deducting the cost from the assessed value to determine the special valuation.

(2) While rehabilitation is being accomplished, the assessor shall assess the property as required by the new construction assessment dates contained in RCW 36.21.080.

[Statutory Authority: RCW 84.08.010(2) and 84.08.070. 87-05-022 (Order PT 87-2), § 458-15-120, filed 2/13/87.]

**Chapter 458-16 WAC**

**PROPERTY TAX—EXEMPTIONS**

**WAC**

- 458-16-080 Improvements to single family dwellings—Definitions—Exemption—Limitation—Appeal rights.
- 458-16-100 Property tax exemptions, generally, rules of construction.
- 458-16-110 Applications—Who must file, initial applications, annual declarations, appeals, filing fees, penalties, and refunds.

- 458-16-115 Personal property exemptions for household goods, furnishings, and personal effects, and for the head of a family.
- 458-16-120 Appeals.
- 458-16-130 Change in taxable status of real property.
- 458-16-150 Cessation of use—Taxes collectible for prior years.
- 458-16-165 Conditions under which nonprofit organizations, associations, or corporations may obtain a property tax exemption.
- 458-16-180 Cemeteries.
- 458-16-190 Churches, parsonages and convents.
- 458-16-200 Land upon which a church or parsonage shall be built.
- 458-16-210 Nonprofit organizations or associations organized and conducted for nonsectarian purposes.
- 458-16-215 Nonprofit organizations that solicit, collect, and distribute gifts, donations, or grants.
- 458-16-220 Church camps.
- 458-16-230 Character building organizations.
- 458-16-240 Veterans organizations.
- 458-16-245 Student loan agencies.
- 458-16-260 Nonprofit day care centers, libraries, orphanages, homes for sick or infirm, hospitals, outpatient dialysis facilities.
- 458-16-270 Schools and colleges.
- 458-16-280 Art, scientific, and historical collections.
- 458-16-282 Musical, dance, artistic, dramatic and literary associations.
- 458-16-284 Fire companies.
- 458-16-286 Humane societies.
- 458-16-290 Nature conservancy lands.
- 458-16-300 Public meeting hall—Public meeting place—Community meeting hall.
- 458-16-310 Community celebration facilities.
- 458-16-320 Emergency or transitional housing.
- 458-16-330 Sheltered workshops for the handicapped.
- 458-16-560 Housing for very low-income households.

**DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER**

- 458-16-010 Senior citizen and disabled persons exemption—Definitions. [Statutory Authority: RCW 84.36.389 and 84.36.865. 83-19-029 (Order PT 83-5), § 458-16-010, filed 9/14/83. Statutory Authority: RCW 84.36.389. 81-05-018 (Order PT 81-6), § 458-16-010, filed 2/11/81; Order PT 76-1, § 458-16-010, filed 4/7/76; Order PT 74-6, § 458-16-010, filed 9/11/74.] Repealed by 03-09-002, filed 4/2/03, effective 5/3/03. Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. Later promulgation, see chapter 458-16A WAC.
- 458-16-011 Senior citizen and disabled persons exemption—Gross income. [Statutory Authority: RCW 84.36.389. 81-05-018 (Order PT 81-6), § 458-16-011, filed 2/11/81.] Repealed by 03-09-002, filed 4/2/03, effective 5/3/03. Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. Later promulgation, see chapter 458-16A WAC.
- 458-16-012 Senior citizens and disabled persons exemption—Adjusted gross income. [Statutory Authority: RCW 84.36.389. 81-05-018 (Order PT 81-6), § 458-16-012, filed 2/11/81.] Repealed by 03-09-002, filed 4/2/03, effective 5/3/03. Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. Later promulgation, see chapter 458-16A WAC.
- 458-16-013 Senior citizens and disabled persons exemption—Disposable income. [Statutory Authority: RCW 84.36.389 and 84.36.865. 92-15-058, § 458-16-013, filed 7/13/92, effective 8/13/92; 83-19-029 (Order PT 83-5), § 458-16-013, filed 9/14/83. Statutory Authority: RCW 84.36.389. 81-05-018 (Order PT 81-6), § 458-16-013, filed 2/11/81.] Repealed by 03-09-002, filed 4/2/03, effective 5/3/03. Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. Later promulgation, see chapter 458-16A WAC.
- 458-16-020 Senior citizen and disabled persons exemption—Qualifications for exemption. [Statutory Authority: RCW 84.36.389 and 84.36.865. 92-15-058, § 458-16-020, filed 7/13/92, effective 8/13/92; 83-19-029 (Order PT 83-5), § 458-16-020, filed 9/14/83. Statutory Authority: RCW 84.36.389. 81-05-018 (Order PT 81-6), § 458-16-020, filed 2/11/81; Order PT 74-6, § 458-16-020, filed 9/11/74.] Repealed by 03-09-002, filed 4/2/03, effective 5/3/03. Statutory Authority: RCW 84.36.383,

- 84.36.389, and 84.36.865. Later promulgation, see chapter 458-16A WAC.
- 458-16-022 Senior citizen and disabled persons exemption—Qualifications for cooperative housing. [Order PT 76-1, § 458-16-022, filed 4/7/76.] Repealed by 03-09-002, filed 4/2/03, effective 5/3/03. Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. Later promulgation, see chapter 458-16A WAC.
- 458-16-030 Senior citizen and disabled persons exemption—Claims. [Statutory Authority: RCW 84.36.389 and 84.36.865. 88-13-041 (Order PT 88-8), § 458-16-030, filed 6/9/88; 83-19-029 (Order PT 83-5), § 458-16-030, filed 9/14/83; Order PT 74-6, § 458-16-030, filed 9/11/74.] Repealed by 03-09-002, filed 4/2/03, effective 5/3/03. Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. Later promulgation, see chapter 458-16A WAC.
- 458-16-040 Senior citizen and disabled persons exemption—Denial—Appeal—Penalty—Perjury. [Order PT 74-6, § 458-16-040, filed 9/11/74.] Repealed by 03-09-002, filed 4/2/03, effective 5/3/03. Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. Later promulgation, see chapter 458-16A WAC.
- 458-16-050 Senior citizen and disabled persons exemption—Amount of exemption. [Statutory Authority: RCW 84.36.389. 88-02-008 (Order PT 87-8), § 458-16-050, filed 12/28/87. Statutory Authority: RCW 84.36.389 and 84.36.865. 83-19-029 (Order PT 83-5), § 458-16-050, filed 9/14/83. Statutory Authority: RCW 84.36.389. 81-05-018 (Order PT 81-6), § 458-16-050, filed 2/11/81; Order PT 74-6, § 458-16-050, filed 9/11/74.] Repealed by 98-14-028, filed 6/22/98, effective 7/23/98. Statutory Authority: RCW 84.36.865, 84.08.010 and 84.08.070.
- 458-16-060 Senior citizen and disabled persons exemption—Transfer of exemption. [Statutory Authority: RCW 84.36.389. 81-05-018 (Order PT 81-6), § 458-16-060, filed 2/11/81; Order PT 74-6, § 458-16-060, filed 9/11/74.] Repealed by 03-09-002, filed 4/2/03, effective 5/3/03. Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. Later promulgation, see chapter 458-16A WAC.
- 458-16-070 Senior citizen and disabled persons exemption—Cancellation. [Statutory Authority: RCW 84.36.389. 81-05-018 (Order PT 81-6), § 458-16-070, filed 2/11/81; Order PT 74-6, § 458-16-070, filed 9/11/74.] Repealed by 03-09-002, filed 4/2/03, effective 5/3/03. Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. Later promulgation, see chapter 458-16A WAC.
- 458-16-079 Senior citizen and disabled persons exemption—Refunds—Late filings. [Statutory Authority: RCW 84.36.389. 81-05-018 (Order PT 81-6), § 458-16-079, filed 2/11/81.] Repealed by 03-09-002, filed 4/2/03, effective 5/3/03. Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. Later promulgation, see chapter 458-16A WAC.
- 458-16-081 Improvements to single family dwellings—Exemption—Filing—Amount—Limits. [Statutory Authority: RCW 84.36.400. 81-04-052 (Order PT 81-1), § 458-16-081, filed 2/4/81; Order PT 75-3, § 458-16-081, filed 5/23/75.] Repealed by 00-09-004, filed 4/5/00, effective 5/6/00. Statutory Authority: RCW 84.36.400 and RCW 84.36.365.
- 458-16-111 Filing fees, penalties and refunds. [Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-111, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.389 and 84.36.865. 88-13-041 (Order PT 88-8), § 458-16-111, filed 6/9/88. Statutory Authority: RCW 84.36.865. 85-05-025 (Order PT 85-1), § 458-16-111, filed 2/15/85; 81-05-017 (Order PT 81-7), § 458-16-111, filed 2/11/81; Order PT 77-2, § 458-16-111, filed 5/23/77.] Repealed by 98-18-006, filed 8/20/98, effective 9/20/98. Statutory Authority: RCW 84.36.865, 84.36.037, 84.36.805, 84.36.815, 84.36.825 and 84.36.840.
- 458-16-140 Property tax exemptions, generally, rules of construction—Proof of exemption. [Order PT 76-2, § 458-16-140, filed 4/7/76. Formerly WAC 458-12-150.] Repealed by Order PT 77-2, filed 5/23/77.
- 458-16-160 Property tax exemptions, generally, rules of construction—Inaccurate information—What constitutes. [Order PT 76-2, § 458-16-160, filed 4/7/76. Formerly WAC 458-12-152.] Repealed by Order PT 77-2, filed 5/23/77.
- 458-16-170 Property tax exemptions, generally, rules of construction—Rental or lease of property deemed to be exempt. [Order PT 76-2, § 458-16-170, filed 4/7/76. Formerly WAC 458-12-153.] Repealed by Order PT 77-2, filed 5/23/77.
- 458-16-250 Property tax exemptions, generally, rules of construction—Relief organizations. [Order PT 76-2, § 458-16-250, filed 4/7/76. Formerly WAC 458-12-220.] Repealed by Order PT 77-2, filed 5/23/77.
- 458-16-265 Nonprofit homes for the aging. [Statutory Authority: RCW 82.08.010, 84.36.865 and 84.36.041. 90-06-048, § 458-16-265, filed 3/2/90, effective 4/2/90.] Repealed by 95-06-042, filed 2/24/95, effective 3/27/95. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.36.041.
- 458-16-301 Applications without penalties. [Statutory Authority: RCW 84.36.865. 81-21-010 (Order PT 81-14), § 458-16-301, filed 10/8/81.] Repealed by 82-22-060 (Order PT 82-8), filed 11/2/82. Statutory Authority: RCW 84.36.865.

**WAC 458-16-080 Improvements to single family dwellings—Definitions—Exemption—Limitation—Appeal rights. (1) Introduction.** This section explains the property tax exemption available to taxpayers when they make physical improvements to their single family dwelling under the provisions of RCW 84.36.400. It explains the process by which this exemption is obtained and how the amount of the exemption is calculated.

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

(a) "Department" means the department of revenue.

(b) "Single family dwelling" or "dwelling" means a structure maintained and used as a residential dwelling that is designed exclusively for occupancy by one family.

(i) It is an independent and free-standing structure containing one dwelling unit and having a permanent foundation.

(ii) For the purposes of this exemption, a manufactured home, mobile home, or park model trailer will be considered a "single family dwelling" if it has substantially lost its identity as a mobile unit by virtue of its being permanently fixed in location upon land owned or leased by the owner of the manufactured home, mobile home, or park model trailer and placed on a foundation (posts or blocks) with fixed pipe connections with sewer, water, or other utilities.

(c) "Physical improvement" means any addition, improvement, remodel, renovation, or structural enhancement that materially adds to the value of an existing single family dwelling. It is an actual, material, and permanent change that increases the value of the dwelling.

(i) The term includes the addition of a garage, carport, patio, or other improvement to the dwelling that materially adds to its value.

(ii) The term does not include a swimming pool, outbuilding, fence, landscaping, barn, shed, shop, or other item that enhances the land upon which the dwelling stands, but is not common to or normally recognized as a structural component of a single family dwelling.

(iii) The term does not include repairs to or deferred maintenance of a dwelling.

(d) "Physical inspection" means, at a minimum, an exterior observation of the dwelling to determine what physical improvements have been made and whether they increase its true and fair value.

(e) "Real property" has the same meaning as contained in RCW 84.04.090 and chapter 458-12 WAC; these definitions

should be consulted as a matter of course in interpreting and administering this exemption.

(f) "Repairs" means work that preserves the dwelling or returns it to its original condition or use.

(g) "Taxpayer" means any person charged, or whose property is charged, with property tax for the dwelling.

(3) **Exemption - taxpayer's obligations.** Physical improvements to a single family dwelling upon real property are exempt from property tax for three assessment years after the improvements are completed. The amount of the exemption is the difference between the true and fair value of the dwelling before and after the physical improvement. However, the amount of the exemption cannot exceed thirty percent of the true and fair value of the dwelling prior to the improvements.

(a) The following conditions must be met to receive this exemption:

(i) The dwelling must be a "single family dwelling" as defined in subsection (2) of this section;

(ii) The taxpayer must file a claim for the exemption with the assessor of the county in which the real property is located before the improvements are completed. All claims shall be made on forms prescribed by the department and signed by the taxpayer or the taxpayer's authorized agent. Claim forms may be obtained from the assessor's office or the department; and

(iii) The taxpayer may not claim this exemption more than once in a five-year period on the same dwelling. The five-year period begins the first assessment year the exemption appears on the county's assessment roll.

(b) When the improvements are completed, the taxpayer must submit a written notice of completion to the assessor.

(c) The following examples show how eligibility requirements for this exemption will be applied. These examples should be used only as a general guide and cannot be relied upon for any other purpose.

(i) Example 1. The addition of a garage or carport to a single family dwelling may qualify for exemption because it may increase the value of and is compatible with the existing residential dwelling. Conversely, the construction of a swimming pool, shed, barn, or shop, which are not commonly attached to a dwelling, does not qualify for the exemption; even though the construction of such a structure may increase the value of the parcel as a whole.

(ii) Example 2. The replacement of a composition roof with a tile roof on a dwelling may qualify for exemption because a tile roof may increase the value of the dwelling. If the composition roof is repaired or replaced with the same type of composition roofing materials, the repair or replaced roof will not qualify for the exemption.

(4) **Assessor's duties.** Upon receipt of a taxpayer's claim for exemption, the assessor shall determine the true and fair value of the unimproved dwelling. This value may be determined by means of a physical inspection and appraisal or a statistical update of the value shown on the county's current assessment roll. After receiving a notice of completion from the taxpayer, the assessor shall revalue the improved dwelling by means of a physical inspection to determine the amount of the exemption.

(5) **Amount of exemption.** The amount of the exemption is the difference between the dwelling's true and fair

value before and after improvements, but this amount cannot exceed thirty percent of the true and fair value of the original unimproved dwelling. In other words, the amount of the exemption is determined by subtracting the true and fair value of the unimproved dwelling from the true and fair value of the dwelling including improvements. The cost of the physical improvements is not the basis for the exemption granted under RCW 84.36.400 and, as a result, the exemption granted is not normally equivalent to the costs incurred by the taxpayer.

(a) The amount of the exemption shall be deducted from the assessed value of the improved dwelling for the three assessment years immediately following completion of the improvement.

(b) The dwelling must at all times be a "single family dwelling" as defined in subsection (2) of this section. If the assessor determines the dwelling does not meet this definition, the exemption will be denied or canceled.

(c) When an exemption has been granted and placed on the assessment roll, the exemption will continue for the three-year exemption period even if the single family dwelling is sold. The exemption pertains to the dwelling and is not personal to the individual property owner.

(d) Example. The following example should be used only as a general guide and cannot be relied upon for any other purpose. In 1998, Taxpayer A completed the addition of a family room and the renovation of the kitchen. These improvements cost the taxpayer \$60,000. (As the following example will show, the cost of improvements is not the basis of the amount of the exemption.)

True & fair value of dwelling prior to improvements . . . . .	\$150,000
True & fair value of improved dwelling . . . . .	\$200,000
Difference (value of physical improvements) . . . . .	\$50,000
Amount of exemption . . . . .	\$45,000

The difference between the value of the improved dwelling and the value of the unimproved dwelling (\$50,000) or 30% of the unimproved dwelling (\$150,000 x 30% = \$45,000), whichever is less.

The assessed value of the improved dwelling will be reduced by \$45,000 for the next three assessment years (1999, 2000, and 2001).

(6) **Limitation.** This exemption may not be claimed on the same dwelling more than once in a five-year period. This five-year period begins the first year the exemption appears on the county's assessment roll. (In the example above, the taxpayer may not file another claim for an exemption on this dwelling under RCW 84.36.400 until 2003.)

(7) **Relationship to revaluation cycle.** Chapter 84.41 RCW requires each county to establish and maintain a systematic program to revalue all taxable real property within the county at least once every four years.

(a) When an exemption has been granted under RCW 84.36.400, the dwelling may be revalued during the three assessment years the exemption is in effect in accordance with the county's scheduled revaluation plan. The revaluation program will proceed as usual, but the amount of the exemption will remain unchanged.

(b) Example. The following example, which is a continuation of the example set out in subsection (5)(d) of this section, should be used as a general guide and cannot be relied upon for any other purpose.

The scheduled revaluation plan for the county in which the single family dwelling is located calls for

all property to be revalued every four years. The unimproved dwelling was revalued in 1997. The dwelling is improved and a claim for exemption is submitted and approved in June 1998. The first year the exemption will be reflected on the assessment roll is 1999.

	1997 Revaluation & Assessment Year	1998 Assessment Year Improvements are completed	1999 Assessment Year	2000 Assessment Year	2001 Revaluation & Assessment Year	2002 Assessment Year
True & fair value of dwelling	\$150,000	\$150,000 + 50,000*	\$200,000	\$200,000	\$225,000	\$225,000
Amount of exemption	none	none	- 45,000**	- 45,000	- 45,000	none
True & fair value of dwelling minus exemption	n/a	n/a	\$155,000	\$155,000	\$180,000	\$225,000
Assessed value of dwelling	\$150,000	\$200,000	\$155,000	\$155,000	\$180,000	\$225,000
*New construction value on 7/31	n/a	\$50,000*	n/a	n/a	n/a	n/a

\*RCW 36.21.080 authorizes the assessor to place the increased value of any property that is increased in value due to construction or alteration for which a building permit was issued, or should have been issued, on the assessment rolls for the purposes of tax levy up to August 31st of each year. The assessed value of the property shall be considered as of July 31st of that year.

\*\*Even though the value of the dwelling increased by \$50,000, the amount of the exemption cannot exceed 30% of the true and fair value of the unimproved single family dwelling (i.e., \$150,000 x 30% = \$45,000).

(8) **Exemption in relationship to destroyed property.** If the value of a dwelling has been reduced under the provisions of chapter 84.70 RCW because it was destroyed, the dwelling is ineligible to receive the exemption authorized by RCW 84.36.400.

(9) **Right to appeal.** A taxpayer who applies for an exemption under RCW 84.36.400 may file an appeal with the county board of equalization under the following circumstances:

- (a) The application for exemption is denied;
- (b) The exemption is removed prior to the expiration of the three-year exemption period; or
- (c) The taxpayer disputes the amount of the exemption granted.

[Statutory Authority: RCW 84.36.400 and 84.36.365. 00-09-004, § 458-16-080, filed 4/5/00, effective 5/6/00; Order PT 75-3, § 458-16-080, filed 5/23/75.]

**WAC 458-16-100 Property tax exemptions, generally, rules of construction.** (1) **Introduction.** This section explains how statutes exempting property from taxation should be read and interpreted.

(2) **General rules of construction.** All property located in Washington is subject to assessment and taxation, except property expressly exempted from taxation by law. The following principles shall govern the construction of statutes that exempt property from taxation:

- (a) There is no need to construe a statute when its language is plain.
- (b) The burden of proving entitlement to a property tax exemption rests upon the taxpayer claiming exemption.
- (c) Statutes exempting property from taxation shall be strictly construed, though fairly and in keeping with the ordinary meaning of the language employed.
- (d) If there is any doubt regarding the exact meaning of a statute exempting property from taxation, the statute shall be construed in favor of the power to tax and against the person claiming the exemption because taxation is the rule and exemption is the exception.
- (e) If the legislature has created an exemption, the exemption must not be enlarged by construction since it is reasonable to presume that the legislature has granted in express terms all that it intended to grant. An exemption must be limited to the very terms of the statute enacted; if not so limited, the exemption would be enlarged beyond what the legislature intended to exempt.

(f) Property shall be exempt from taxation only when the legislature has created an exemption by clear and explicit language.

(3) **General requirements.** Applicants seeking an initial or continuing property tax exemption shall make the subject property available to the department of revenue at reasonable times for physical inspection, investigation, or examination. Applicants shall also provide to the department of revenue, upon request, all records, documents, or facts necessary for the department to determine the exempt or taxable status of the property. Failure to fully cooperate with the department may result in a determination that the property is taxable for the current year.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-100, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.389 and 84.36.865. 83-19-029 (Order PT 83-5), § 458-16-100, filed 9/14/83. Order PT 76-2, § 458-16-100, filed 4/7/76. Formerly WAC 458-12-145.]

**WAC 458-16-110 Applications—Who must file, initial applications, annual declarations, appeals, filing fees, penalties, and refunds.** (1) **Introduction.** This rule explains the procedures property owners must follow to apply for and renew all real and personal property exemptions or leasehold excise tax exemptions under chapter 84.36 RCW for which the taxpayer must apply in order to receive. It also specifies the fee that must be submitted with each initial application or renewal declaration for exemption, as well as the late filing penalty that is due whenever an application or renewal declaration is received after the filing deadline.

(2) **Application required.** All foreign national governments, cemeteries, nongovernmental nonprofit corporations, organizations, or associations, soil and water conservation districts, and a public hospital district established under chapter 70.44 RCW seeking a property tax exemption or a leasehold excise tax exemption under chapter 84.36 RCW must submit an application for exemption and supporting documentation to the state department of revenue (department). Unless otherwise exempted by law, no real or personal property or leasehold interest is exempt from taxation until an application is submitted and an exemption is granted.

(3) **Where to obtain application and annual renewal declaration forms.** Applications for exemption may be obtained from any county assessor's office, the department's property tax division, or on the internet at <http://dor.wa.gov/index.asp> under Property Tax, "Forms." Annual renewal declaration forms are mailed by the department to all entities receiving a property tax or leasehold excise tax exemption. If such a form is not received in the mail, an annual renewal declaration may be obtained from the department's property tax division or an application form may be obtained and adapted for use as an annual renewal declaration.

(4) **Initial application, filing deadlines, and other requirements.** In general, initial applications for exemption must be filed with the department on or before March 31st to exempt the property from taxes due in the following year. However, an initial application may be filed after March 31st if the property is acquired or converted to an exempt use after that date, if the property may qualify for an exemption under chapter 84.36 RCW. In this situation, the application must be submitted within sixty days of acquisition or conversion of the property to an exempt use. If an initial application is not received within this sixty day period, the late filing penalty described in subsection (12) of this rule is imposed.

(a) The following requirements apply to all initial applications:

(i) A filing fee of thirty-five dollars must be submitted with each application for exemption. The department will not process any application unless this fee is paid;

(ii) The application must be made on a form prescribed by the department and signed by the applicant or the applicant's authorized agent;

(iii) One application can be submitted for all real property that is contiguous and part of a homogeneous unit. If exemption is sought for multiple parcels of real property,

(2005 Ed.)

which are not contiguous nor part of a homogeneous unit, a separate application for each parcel must be submitted. However, multiple applications are not required for church property with a noncontiguous parsonage or convent.

(A) "Contiguous property" means real property adjoining other real property, all of which is under the control of a single applicant even though the properties may be separated by public roads, railroads, rights of way, or waterways.

(B) "Homogeneous unit" means the property is controlled by a single applicant and the operation and use of the property is integrated with and directly related to the exempt activity of the applicant.

(5) **Documentation a nonprofit organization must submit with its application for exemption.** Unless the following information was previously submitted to the department and it is still current, in addition to the application for exemption, a nonprofit organization, corporation, or association must also submit:

(a) Copies of the articles of incorporation or association, constitution, or other establishing documents, as well as all current amendments to these documents, showing nonprofit status;

(b) A copy of the bylaws of the nonprofit entity, if requested by the department;

(c) A copy of any current letter issued by the Internal Revenue Service that exempts the applicant from federal income taxes. This letter is not usually, but may be, required if the nonprofit entity applying for an exemption is part of a larger organization, association, or corporation, like a church or the Boy Scouts of America, that was issued a group 501 (c)(3) exemption ruling by or is otherwise exempt from filing with the Internal Revenue Service; and

(d) The information required in subsection (6) of this rule.

(6) **Other documentation a nonprofit entity, foreign national government, hospital owned and operated by a public hospital district, or soil and water conservation district must submit with its initial application for exemption.** In addition to the initial application for exemption, a nonprofit entity, foreign national government, and public hospital district established under chapter 70.44 RCW, or soil and water conservation district must submit the following information regarding the real or personal property for which exemption is sought, unless it was previously submitted to the department and it is still current:

(a) An accurate description of the real and personal property;

(b) An accurate map identifying by dimension the use or proposed use of all real property that shows buildings, building sites, parking areas, landscaping, vacant areas, and if requested by the department, floor plans of the buildings. The map will be used to determine whether the property is entitled to a total or partial exemption based upon the use of the total area;

(c) A legal description of all real property, listing the county tax parcel number, and if the property is owned by the applicant, a copy of the current deed; and

(d) If the property is rented or loaned to or from another property owner, a copy of the rental agreement or other document explaining the terms of the lease or loan. This documentation must describe:

- (i) What property is rented or loaned;
- (ii) The amount of the rent or other consideration paid or received;
- (iii) The name of the party from whom and the name of the party to whom the property is rented or loaned;
- (iv) How the property is being used; and
- (v) The monthly amount of maintenance and operation costs related to rented or loaned property if a nonprofit entity is claiming an exemption for property leased to another party.

**(7) Department's review of the application and notice of its determination.** Upon receipt of an application for exemption, the department will review the application and all supporting documentation. Additional information may be requested about the ownership and use of the property, if the department needs this information to determine if the exemption should be granted. An application for exemption is not considered complete until all required and requested information is received by the department.

(a) Physical inspection. The department will physically inspect the property as part of the application review process.

(b) Deadline. If a complete application is received by March 31st for that assessment year, the department will issue a determination about the application by August 1st. If a complete application is not received by March 31st, the determination will be made within thirty days of the date the complete application is received by the department or by August 1st, whichever is later.

(c) Notice to applicant. The department will mail a written determination about the exemption application to the applicant. An application may be approved or denied, in whole or in part. If the application is denied for any portion of the property covered by the application, the department must clearly explain its reason for denial in its written determination.

(d) Notice to assessor. Once the department makes its determination about the application for exemption, it will notify the assessor of the county in which the property is located about the determination made. In turn, the assessor takes appropriate action so that the department's determination is reflected on the county's assessment roll(s) for the years covered by the determination.

**(8) Effective date of the exemption.** If an application is approved, the property is exempt from property taxes due the year immediately following the year the application for exemption is submitted.

(a) For example, if an application for exemption is submitted to the department in 2000 and the application is approved in assessment year 2000, the property will be exempt from taxes due in 2001.

(b) Retroactive applications for exemption for previous years are accepted, up to a maximum of three years from the date taxes were paid on the property, if the applicant provides the department with acceptable proof that the property qualified for exemption during the pertinent assessment years and pays the initial application filing fee, renewal declaration fees, and late filing penalties.

**(9) Annual renewal declaration.** To retain a property tax exemption, each nonprofit entity (except nonprofit cemeteries), foreign national government, public hospital district, and soil and water conservation district receiving an exemption must annually submit a renewal declaration certifying

that the use and exempt status of the real and personal property has not changed. The renewal declaration is a form prepared by the department.

(a) On or before January 1st each year, the department mails a renewal declaration to the entity receiving an exemption for the property at the entity's last known address. Within sixty days of changing its mailing address, the exempt entity must notify the department about the change.

(b) The renewal declaration, signed by the exempt entity or the exempt entity's authorized agent, and renewal fee of eight dollars and seventy-five cents must be submitted to the department no later than March 31st each year. The department will not process a renewal declaration unless this fee is paid.

(i) The renewal declaration must include information about any change of use of the exempt property and a certification as to the truth and accuracy of the information listed.

(ii) The renewal declaration is due on or before March 31st even if the department fails to mail the declaration to the exempt entity. If an exempt entity does not receive a renewal declaration, an application form may be submitted to the department to renew the exemption.

(c) If the renewal declaration and renewal fee are not received by March 31st, the department will mail a second notice to the exempt entity at the entity's last known mailing address. If the exempt entity fails to respond to the second notice, the department will remove the exemption from the property and notify the assessor of the county in which the property is located that the exemption has been cancelled.

(d) Real property, which was previously exempt from taxation, is assessed and taxed as provided in RCW 84.40.-350 through 84.40.390 when it loses its exempt status.

(i) Property that no longer retains its exempt status is subject to a pro rata portion of the taxes allocable to the remaining portion of the year after the date the property lost its exempt status.

(ii) The assessor lists and assesses the property with reference to its true and fair value on the date the property lost its exempt status.

(iii) RCW 84.40.380 sets forth the dates upon which taxes are payable when property loses its exempt status. Taxes due and payable under RCW 84.40.350 through 84.40.390 constitute a lien on the property that attaches on the date the property loses its exempt status.

**(10) Failure to submit an annual renewal declaration and reapplication for exemption.** If property loses its exempt status because the annual renewal declaration and renewal fee were not submitted and subsequently the owner wishes to reapply for the property tax exemption:

(a) If the owner reapplies within the same assessment year during which the exemption is cancelled, the owner must submit the annual renewal declaration and pay the renewal fee and any required late filing penalties; or

(b) If the owner reapplies after the assessment year during which the exemption is cancelled, the owner must submit an initial application and pay the initial application fee, any unpaid renewal fees for the intervening years, and required late filing penalties.

**(11) Initial application and renewal declaration procedures regarding cemeteries.** There are several types of cemeteries. The initial application for exemption and

renewal declaration procedures are specific as to the type of cemetery at issue.

(a) The assessor shall consider the following types of cemeteries exempt from property tax, no initial application or renewal declaration is required for:

(i) Cemeteries owned, controlled, operated, and maintained by a cemetery district authorized by RCW 68.52.090; or

(ii) Indian cemeteries, which are considered to be held by the tribe or held in trust for the tribe by the United States.

(b) An initial application is submitted to the department, but no renewal declaration is required, for:

(i) Family cemeteries;

(ii) Historical cemeteries;

(iii) Community cemeteries; and

(iv) Cemeteries belonging to nonprofit organizations, associations, or corporations.

(c) An initial application for exemption and a renewal declaration must be submitted by all for-profit cemeteries seeking a property tax exemption.

(12) **Late filing penalty.** When an initial application or renewal declaration is submitted after the due date, a late filing penalty of ten dollars is due for every month, or portion thereof. This penalty is calculated from the date the application or renewal declaration was due until the postmark date shown on the application or declaration or the date the application or declaration is given to the department.

(13) **Refund of filing fee or penalty.** No filing fees or late filing penalty are refunded after a determination on the application is issued by the department. However, filing fees and the late filing penalty will be refunded under the following circumstances:

(a) When a duplicate application or renewal declaration for the same property is submitted during the same calendar year;

(b) When an application or renewal declaration is received by the department and the department has no authority to grant the exemption requested; or

(c) When a written request to withdraw the application is received before the department issues a determination. The withdrawal request must be signed by the owner or the owner's authorized agent.

(14) **Appeals.** Any applicant that receives a negative determination from the department on either an initial application or a renewal declaration may appeal this determination to the state board of tax appeals (BTA). Similarly, any assessor who disagrees with the department's determination may appeal the determination to the BTA. See WAC 458-16-120 for specific information about the appeal process.

[Statutory Authority: RCW 84.36.865, 84.36.040, 84.36.042, 84.36.045, 84.36.046, 84.36.050, 84.36.385, 84.36.560, 84.36.570, 84.36.800, 84.36.805, 84.36.810, 84.36.815, 84.36.820, 84.36.825, 84.36.830, 84.36.833, 84.36.840, 84.36.850, and 84.40.350 through 84.40.390. 02-02-009, § 458-16-110, filed 12/20/01, effective 1/20/02. Statutory Authority: RCW 84.36.865, 84.36.037, 84.36.805, 84.36.815, 84.36.825 and 84.36.840. 98-18-006, § 458-16-110, filed 8/20/98, effective 9/20/98. Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-110, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. 85-05-025 (Order PT 85-1), § 458-16-110, filed 2/15/85; 81-05-017 (Order PT 81-7), § 458-16-110, filed 2/11/81; Order PT 77-2, § 458-16-110, filed 5/23/77; Order PT 76-2, § 458-16-110, filed 4/7/76. Formerly WAC 458-12-146.]

(2005 Ed.)

**WAC 458-16-115 Personal property exemptions for household goods, furnishings, and personal effects, and for the head of a family.** (1) **Introduction.** This rule explains the personal property tax exemption for household goods, furnishings, and personal effects. It also explains the exemption available to the head of a family for otherwise taxable personal property up to a value of three thousand dollars. These exemptions are provided by RCW 84.36.110.

(2) **Exemption for household goods, furnishings, and personal effects.** All household goods and furnishings actually being used to equip and outfit the owner's residence or place of abode and all personal effects held by any person for his or her exclusive use and benefit are exempt from property taxation. Any household goods and furnishings or personal effects held for sale or commercial use do not qualify for this exemption. RCW 84.36.110(1).

(a) **What are household goods and furnishings?** "Household goods and furnishings" are all items of tangible personal property normally located in or about a residence and used or held to enhance the value or enjoyment of the residence, including its premises. The phrase includes, but is not limited to, movable items of necessity, convenience, or decoration, such as furniture, appliances, food, pictures, and tools and equipment used to maintain the residence. Personal property qualifying for this exemption retains its exempt status while temporarily in storage or while being used temporarily at locations other than the owner's residence.

"Household goods and furnishings" do not include items of personal property constructed primarily for use independent of and separate from a residence such as boats, motor vehicles, campers, and travel trailers. However, certain motor vehicles, campers, and travel trailers may be entitled to an exemption from property taxation under RCW 84.36.595. Also, some boats may be wholly or partially exempt from property taxation under RCW 84.36.080 and 84.36.090.

(b) **What are personal effects?** "Personal effects" are items of tangible property of a personal or intimate nature that usually and ordinarily accompany a person such as wearing apparel, jewelry, and articles of a similar nature. RCW 84.36.120.

(c) **When are household goods, furnishings, and personal effects not exempt?** Personal property held for sale or used for any business or commercial purpose does not qualify for the household goods exemption. Thus, property used to equip and outfit a motel, hotel, apartment, sorority, fraternity, boarding house, rented home, duplex, or any other premises not used by the owner for his or her own personal residence or place of abode does not qualify for this exemption. Likewise, a hairdresser who uses any portion of his or her home as a beauty salon cannot claim a household goods exemption for personal property held for sale or otherwise used in the business. Business inventories, however, are exempt from property taxation under RCW 84.36.477.

Following is a nonexclusive list of items that are exempt as household goods or furnishings if they are used in a residence or place of abode but are fully taxable if they are used for business or commercial purposes.

(i) Desks are exempt as household goods if they are used in a residence but are taxable if they are used in a business office, including an office located in the owner's residence.

[Title 458 WAC—p. 45]

(ii) Silverware and china are exempt if they are used in a residence but are taxable if they are used in a restaurant.

(iii) Art or other collections are exempt if they are located in a residence but are taxable if they are located in a public display or used for commercial purposes.

(iv) Power equipment such as lawnmowers used exclusively to enhance the value or enjoyment of a residence, including its premises, are exempt, but they are taxable when used to maintain a golf course or for any other business or commercial purpose.

**(3) Exemption for the head of a family.** Each head of a family is entitled to an exemption from his or her taxable personal property in an amount up to three thousand dollars of actual value. RCW 84.36.110(2). For purposes of this exemption, "actual value" has the same meaning as "true and fair value" as defined in WAC 458-07-030. The taxpayer must qualify for the head of a family exemption on January 1st of the assessment year (the assessment date) or the exemption is lost for taxes payable the following year. As noted above, household goods, furnishings, and personal effects not used for business or commercial purposes are exempt from property taxation; therefore, the exemption for the head of a family does not apply to such property.

**(a) Who qualifies as the head of a family?** The exemption for the head of a family applies only to individuals (i.e., natural persons); it does not apply to artificial entities such as corporations, limited liability companies, or partnerships. The "head of a family" includes the following residents of the state of Washington:

(i) Any person receiving an old age pension under the laws of this state;

(ii) Any citizen of the United States, over the age of sixty-five years, who has resided in the state of Washington continuously for ten years;

(iii) The husband or wife, when the claimant is a married person, or a surviving spouse not remarried; and

(iv) Any person who resides with, and has under his or her care and maintenance, any of the following:

(A) His or her minor child or grandchild, or the minor child or grandchild of his or her deceased spouse;

(B) His or her minor brother or sister or the minor child of a deceased brother or sister;

(C) His or her father, mother, grandmother, or grandfather, or the father, mother, grandmother, or grandfather of a deceased spouse; or

(D) Any of the other relatives mentioned in this subsection who have attained the age of majority and are unable to take care of or support themselves.

**(b) What property is not exempt?** The personal property exemption for the head of a family does not apply to the following:

(i) Private motor vehicles. A "private motor vehicle" is any motor vehicle used for the convenience or pleasure of the owner, which carries a licensing classification other than motor vehicle for hire, auto stage, auto stage trailer, motor truck, motor truck trailer, or dealer's license. RCW 84.36.-120;

(ii) Mobile homes. A "mobile home" is a trailer designed for human habitation, which is capable of being moved upon the public streets and highways and is either more than thirty-

five feet in length or more than eight feet in width. RCW 84.36.120;

(iii) Floating homes. A "floating home" is a building on a float, used in whole or in part for human habitation as a single-family dwelling and is on the property tax rolls of the county in which it is located. A floating home is not designed for self propulsion by mechanical means or by means of wind. RCW 82.45.032; or

(iv) Houses, cabins, boathouses, boat docks, or other similar improvements that are located on publicly owned land.

**(c) 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 of the facts and circumstances.

(i) A husband and wife operate a catering business as a limited liability company (LLC). The wife also operates a consulting business as a sole proprietor out of the family home. Husband and wife are not entitled to the head of family exemption for property held by the LLC. However, the wife is entitled to the head of family exemption for the taxable personal property used in her consulting business.

(ii) Jane Doe is a citizen of the United States, over the age of sixty-five, and has resided in the state of Washington continuously for over ten years. Jane owns a farm. She has transferred title to the farm property, both real and personal, into a trust. An attorney is the trustee, and Jane is the sole beneficiary. Since Jane Doe has beneficial ownership of the trust property and she qualifies as the head of a family, Jane may claim the head of a family exemption for the taxable personal property held in the trust.

**(4) How do the exemptions included in this rule affect listing?** If the county assessor is satisfied that all of the personal property of any person is exempt from taxation, no listing is required by the owner or taxpayer. If the value of taxable personal property exceeds three thousand dollars, then the taxpayer must make a complete listing, and the assessor will deduct three thousand dollars from the total amount of the assessment and assess the remainder. RCW 84.36.110(2).

[Statutory Authority: RCW 84.36.865 and 84.08.070. 02-19-004, § 458-16-115, filed 9/4/02, effective 10/5/02. Statutory Authority: RCW 84.36.110, 84.08.010(2) and 84.36.865. 89-12-013 (Order 89-7), § 458-16-115, filed 5/26/89.]

**WAC 458-16-120 Appeals. (1) Introduction.** This rule outlines the appeal process an aggrieved party uses when the department issues a determination regarding a property tax exemption with which that party disagrees.

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

(a) "Appellant" means a person, natural or otherwise, who appeals any order or decision made by the department to the board of tax appeals.

(b) "Board" or "BTA" means the state board of tax appeals described in chapter 82.03 RCW and chapters 456-09 and 456-10 WAC.

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

(d) "Formal hearing" means a proceeding before the BTA conducted in accordance with RCW 82.03.160, the

Administrative Procedure Act (chapter 34.05 RCW), and chapter 456-09 WAC.

(e) "Informal hearing" means a proceeding before the BTA conducted in accordance with RCW 82.03.150 and chapter 456-10 WAC.

(3) **General provisions - formal or informal hearing.** Any nonprofit organization, association, or corporation, foreign national government, cemetery, soil and water conservation district, public hospital district, or county assessor may appeal a determination made by the department to the BTA. The duties, responsibilities, and jurisdiction of the BTA are outlined in chapter 82.03 RCW. RCW 82.03.140 allows the party appealing (appellant) to the BTA to request either a formal or informal hearing in its notice of appeal. If the appellant fails to specify the type of hearing requested in the notice, the BTA will conduct an informal hearing. The department also has the right to request a formal hearing after being notified that its determination has been appealed to the BTA.

(a) Formal hearings are usually requested by parties who wish to have a complete record of the appeal that may be used in a subsequent court appeal, if desired. Formal hearings are conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW.

(b) Informal hearings are requested by the majority of parties appearing before the BTA. Decisions entered in an informal appeal cannot be appealed to court.

(4) **Where to obtain an appeal notice.** A notice of appeal can be obtained from the BTA or downloaded from the internet site (<http://bta.state.wa.us/>), the department's property tax division, county auditor's offices, or the office of the clerk of the county council in King County.

(5) **Deadline to appeal.** A notice of appeal must be submitted to the BTA no later than thirty days after the postmark date on the department's notice of determination or the date on which the notice was given to the applicant, whichever is later. Appeals not timely filed will be dismissed. Likewise, appeals not properly filed may be dismissed if the appellant fails to substantially comply with WAC 456-09-320 or 456-10-320.

(6) **Grounds for appeal.** A party aggrieved by any of the following determinations made by the department may appeal it to the BTA:

(a) A determination denying an exemption on an initial application or renewal declaration;

(b) A determination exempting only a portion of the property from property tax;

(c) A property tax exemption is cancelled or removed, in whole or in part;

(d) The property tax exemption is cancelled or removed and back taxes are assessed in accordance with RCW 84.36.810 or 84.36.262; or

(e) An exemption application or renewal declaration is approved and the assessor of the county in which the property is located believes the exemption should not have been granted (see RCW 84.36.850).

[Statutory Authority: RCW 84.36.865, 84.36.040, 84.36.042, 84.36.045, 84.36.046, 84.36.050, 84.36.385, 84.36.560, 84.36.570, 84.36.800, 84.36.805, 84.36.810, 84.36.815, 84.36.820, 84.36.825, 84.36.830, 84.36.833, 84.36.840, 84.36.850, and 84.40.350 through 84.40.390. 02-02-009, § 458-16-120, filed 12/20/01, effective 1/20/02. Statutory Authority: RCW 84.36.865. 81-05-017 (Order PT 81-7), § 458-16-120, filed 2/11/81;

(2005 Ed.)

Order PT 77-2, § 458-16-120, filed 5/23/77; Order PT 76-2, § 458-16-120, filed 4/7/76. Formerly WAC 458-12-147.]

**WAC 458-16-130 Change in taxable status of real property.** (1) **Introduction.** This rule explains what occurs when taxable property becomes exempt and when exempt property becomes taxable. It also describes how property will be treated when exempt use is pending.

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

(a) "Back taxes" means the property taxes that would have been paid but for the existence of the property tax exemption during the three years immediately preceding the cancellation or removal of the exemption or during the life of the exemption, whichever is less, plus interest at the same rate and computed in the same way as delinquent property taxes, see RCW 84.36.810. However, "back taxes" are calculated differently when an exemption is cancelled or removed from property owned by a not-for-profit foundation established for the exclusive support of an institution of higher education under RCW 84.36.050(2) or a nature conservancy under RCW 84.36.260. See RCW 84.36.810 (1)(b) and WAC 458-16-150 regarding not-for-profit foundations and RCW 84.36.262 and WAC 458-16-290 regarding nature conservancies for a more detailed explanation of the back taxes imposed on these entities.

(b) "Cessation of use" means that an owner or user of exempt real property has ceased to use the property for an exempt purpose. The term also refers to property that has lost its exempt status because it was sold, transferred, loaned, or rented to an owner or user that is not entitled to a property tax exemption under chapter 84.36 RCW.

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

(d) "Real property" means real property, as defined in RCW 84.04.090, owned or used by a nongovernmental nonprofit organization, association, or corporation, a foreign national government, cemetery, soil and water conservation district, and public hospital district established under chapter 70.44 RCW.

(e) "Rollback" means the back taxes and interest imposed in accordance with RCW 84.36.810 because the exempt property lost its exempt status and is now taxable for property tax purposes. However, when an exemption granted to a nature conservancy under RCW 84.36.260 is cancelled or removed different rollback procedures are applied. See RCW 84.36.262 and WAC 458-16-290.

(3) **Acquiring tax exempt status.** Within sixty days of acquiring real property that may qualify for exemption or converting real property to a use that may qualify for exemption, any nongovernmental nonprofit organization, association, or corporation, foreign national government, cemetery, or public hospital district established under chapter 70.44 RCW that wants to obtain a property tax exemption for this property must file an application with the department. The applicant may file an application for either a new or continued exemption from property tax under chapter 84.36 RCW. All applications must comply with the requirements set forth in WAC 458-16-110.

(a) If an application for a new exemption is approved, the property will be exempt for taxes payable during the following calendar year. For example, a nonprofit hospital acquires

[Title 458 WAC—p. 47]

a new building on February 10, 2001, converts it to an exempt use by April 1, 2001, and applies for a property tax exemption on April 14, 2001. If the application is approved, the property tax exemption will be effective for taxes payable in 2002.

(b) When exempt property is acquired by an entity that is eligible for a property tax exemption under chapter 84.36 RCW, the exempt status of the property will continue as long as the purchaser makes an application to continue the property tax exemption within sixty days of the date of acquisition and the application is subsequently approved by the department. For example, if a nonprofit home for the aging acquires exempt property from a nursing home, the exempt status of the property will not change as long as the home for the aging makes application to the department within sixty days of acquiring the nursing home and the application for exemption is later approved by the department.

**(4) Exempt to taxable status - pro rata share of taxes for current tax year.** Real property may lose its exempt status for a number of reasons; when this occurs the property tax exemption will be cancelled or removed. Once the exemption is cancelled or removed, the property becomes subject to the following year's taxes. The property will be assessed and taxed at its true and fair value as of the date of the cessation of use or the change of ownership occurred, as provided in RCW 84.40.350 through 84.40.390. Additionally, the treasurer of the county in which the property is located shall collect a pro rata portion of the taxes allocable to the remaining portion of the current tax year after the date the exemption is cancelled or removed. If only a portion of the property no longer qualifies for a tax exemption, the exempt status for only that portion of the property shall be cancelled and subjected to assessment and taxation during the current tax year.

(a) Real property changes from exempt to taxable status whenever the property is:

(i) Transferred as a result of a sale, exchange, gift, or contract from tax exempt to taxable ownership;

(ii) Transferred as a result of a sale, exchange, gift, or contract from tax exempt ownership to another nonprofit organization, association, or corporation that fails to apply for or has been denied a property tax exemption;

(iii) Converted to a taxable use; or

(iv) Loses its exempt status for some other reason.

(b) The rollback provisions of RCW 84.36.810 apply when the status of real property changes from exempt to taxable. See WAC 458-16-150 for specific information. However, the rollback provisions of RCW 84.36.262 apply when the property was exempt under RCW 84.36.260 for the conservation of ecological systems, natural resources, or open space. When property changes from exempt to taxable status, the taxes owing will be prorated as of:

(i) The date the instrument of sale, exchange, gift, or contract is executed; or

(ii) The date on which the property is converted to a taxable use.

(c) Example 1. For five years, nonprofit "A" operated a day care center and received a property tax exemption for this property. Nonprofit "A" transfers this property to nonprofit "B," a nonprofit hospital, that continues to receive a property tax exemption for this property. Two years after acquiring the property nonprofit "B" ceases to use the exempt property for

an exempt purpose. One hundred days after the exempt activity ceased, nonprofit "B" sells the exempt property to XYZ Printing Company, a profit seeking business. The property became taxable and the provisions of RCW 84.34.810 will be applied as of the date "B" ceased to use the property for an exempt purpose.

(d) Example 2. A nonprofit shelter for low-income persons owned and occupied a building for which it received a property tax exemption. The shelter ceased to use the property on January 1, 2001, and had no intent to reoccupy the property. But it hoped to rent the property to another nonprofit organization for a tax exempt purpose and actively advertised and looked for such a tenant. On June 1, 2001, the nonprofit shelter, which had been unable to find a suitable tax exempt tenant for the property, signed a lease agreement with a for-profit business enterprise, which intended to use and occupy the property effective June 1, 2001. The rollback provisions of RCW 84.36.810 must be applied as of January 1, 2001.

**(5) Change of ownership or use - exempt use pending.** If the ownership of exempt property changes or the use of exempt property ceases but the owner of the property begins to use it for an exempt purpose within one hundred twenty days of the date the ownership changed or the previous exempt use ceased, the property will continue to be exempt from property tax. However, if an agreement establishing an alternate exempt use is not signed or an alternate exempt use is not found within one hundred twenty days, the property becomes taxable and is noted as such on the assessment roll as of the date the ownership changed or the exempt use ceased. Additionally, if appropriate, the rollback provisions of RCW 84.36.810 will be applied or RCW 84.36.262 if the exempt property was exempt as a nature conservancy. A pro rata share of taxes allocable for the remaining portion of the year in which the cessation of use or change in ownership occurred will be collected.

[Statutory Authority: RCW 84.36.865, 84.36.040, 84.36.042, 84.36.045, 84.36.046, 84.36.050, 84.36.385, 84.36.560, 84.36.570, 84.36.800, 84.36.805, 84.36.810, 84.36.815, 84.36.820, 84.36.825, 84.36.830, 84.36.833, 84.36.840, 84.36.850, and 84.40.350 through 84.40.390. 02-02-009, § 458-16-130, filed 12/20/01, effective 1/20/02. Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-130, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.389 and 84.36.865. 88-13-041 (Order PT 88-8), § 458-16-130, filed 6/9/88. Statutory Authority: RCW 84.36.865. 85-05-025 (Order PT 85-1), § 458-16-130, filed 2/15/85. Statutory Authority: RCW 84.36.389 and 84.36.865. 83-19-029 (Order PT 83-5), § 458-16-130, filed 9/14/83. Statutory Authority: RCW 84.36.865. 81-21-009 (Order PT 81-13), § 458-16-130, filed 10/8/81; 81-05-017 (Order PT 81-7), § 458-16-130, filed 2/11/81; Order PT 77-2, § 458-16-130, filed 5/23/77; Order PT 76-2, § 458-16-130, filed 4/7/76. Formerly WAC 458-12-148.]

**WAC 458-16-150 Cessation of use—Taxes collectible for prior years. (1) Introduction.** This rule explains what occurs when property loses its tax exempt status and is placed back on the tax rolls. It also describes the back taxes and interest that are collected when an exempt use ceases, unless the property has been exempt for more than ten consecutive years or is otherwise exempt from the provisions of RCW 84.36.810. This rule does not apply to property that received an exemption as a nature conservancy under RCW 84.36.-260; see RCW 84.36.262 and WAC 458-16-290 for more

information about the collection of back taxes in this situation.

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

(a) "Back taxes" means the property taxes that would have been paid but for the existence of the property tax exemption during the three years immediately preceding the cancellation or removal of the exemption or during the life of the exemption, whichever is less, plus interest at the same rate and computed in the same way as delinquent property taxes. However, if the property was exempt under RCW 84.36.050(2), "back taxes" means the taxes that would have been collected but for the existence of the property tax exemption during the seven years immediately preceding the cancellation or removal of the exemption or during the life of the exemption, whichever is less.

(b) "Cessation of use" means that an owner or user of exempt real property has ceased to use the property for an exempt purpose. The term also refers to property that has lost its exempt status because it was transferred, loaned, or rented to an owner that is not entitled to an exemption.

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

(d) "Relocation of the activity" means that a portion or all of an exempt use has been relocated from the original site to a new location. The term shall not include undeveloped property of camp facilities.

(e) "Rollback" means the back taxes and interest imposed in accordance with RCW 84.36.810 because the exempt property has lost its exempt status and is now taxable. However, when an exemption granted to a nature conservancy under RCW 84.36.260 is cancelled or removed different rollback procedures are applied, see RCW 84.36.262 and WAC 458-16-290.

(3) **Applicability of this rule.** Upon cessation of a use for which an exemption was granted under one of the statutes listed below and if directed to do so by the department, the county treasurer shall collect all taxes which would have been paid but for the existence of the property tax exemption. If the property was exempt for more than ten consecutive years, no back taxes or interest are due. Back taxes and interest will be collected only when ownership of property is transferred or when fifty-one percent or more of the total exempt property loses its exempt status.

(a) **Generally applied rollback - three years of back taxes plus interest.** When the status of real property changes from exempt to taxable, all taxes that would have been collected but for the existence of the exemption during the three preceding years, or the life of the exemption, whichever is less, plus interest at the same rate and computed in the same way as that upon delinquent property taxes are due. The rollback provisions of RCW 84.36.810 apply if the property was previously exempt from property tax under any of the following statutes:

TYPE OF EXEMPT ORGANIZATION	AUTHORIZING STATUTE
A nonprofit character building, benevolent, protective, or rehabilitative social service organization, association or corporation	RCW 84.36.030

TYPE OF EXEMPT ORGANIZATION	AUTHORIZING STATUTE
A church camp owned by a nonprofit church, denomination, group of churches, or an organization or association, the membership of which is comprised solely of churches and/or their qualified representatives	RCW 84.36.030
A nonprofit organization or association engaged in character building of boys and girls under eighteen years of age or to serve boys and girls up to twenty-one years if the charter of the nonprofit organization or association requires it	RCW 84.36.030
An organization or society of veterans of any war of the United States	RCW 84.36.030
Corporations formed under an act of Congress to furnish volunteer aid to members of the armed forces of the United States	RCW 84.36.030
Corporations formed under an act of Congress to carry on a system of national and international relief to mitigate and to prevent suffering caused by pestilence, famine, fire, floods, and other national calamities	RCW 84.36.030
Nonprofit organizations exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code that are guarantee agencies under the federal guaranteed student loan program or guarantee agencies that issue debt to provide or acquire student loans	RCW 84.36.030
Nonprofit organizations, associations or corporations in connection with the operation of a public assembly hall, public meeting place, community meeting hall, or community celebration facility	RCW 84.36.037
Nonprofit day care centers	RCW 84.36.040
Free public libraries	RCW 84.36.040
Nonprofit orphanages	RCW 84.36.040
Nonprofit homes for the sick or infirm or nonprofit hospitals for the sick	RCW 84.36.040
Nonprofit outpatient dialysis facilities	RCW 84.36.040
Public hospital district established under chapter 70.44 RCW for hospital purposes	RCW 84.36.040
Nonprofit homes for the aging	RCW 84.36.041
A nonprofit organization, corporation, or association providing housing for low income eligible persons with developmental disabilities	RCW 84.36.042
Nonprofit organizations providing emergency or transitional housing to low-income homeless persons or victims of domestic violence	RCW 84.36.043
A nonprofit organization, corporation, or association in connection with a nonprofit cancer clinic or center	RCW 84.36.046
Nonprofit schools or colleges	RCW 84.36.050

TYPE OF EXEMPT ORGANIZATION	AUTHORIZING STATUTE
Associations maintaining and exhibiting art, scientific or historical collections for the benefit of the general public and not for profit	RCW 84.36.060
Associations 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	RCW 84.36.060
Fire companies for preventing and fighting fires	RCW 84.36.060
Humane societies	RCW 84.36.060
Nonprofit organizations created for the solicitation or collection of gifts, donations, or grants for character building, benevolent, protective, or rehabilitative social services or for the distribution of funds to at least five other nonprofit organizations or associations that provide such social services	RCW 84.36.550
A nonprofit organization, corporation, or association providing rental housing for very low-income households	RCW 84.36.560
A nonprofit organization, corporation, or association providing a demonstration farm with research and extension facilities, a public agricultural museum, and an educational tour site, which is used by a state university for agricultural research and education programs	RCW 84.36.570

(b) **Exception to general rollback provision - property exempt under RCW 84.36.050(2) - seven years of back taxes plus interest.** If property owned by a not-for-profit foundation but leased to and used by an institution of higher education, as defined in RCW 28B.10.016, loses its exempt status and it has not been exempt for at least ten consecutive years under RCW 84.36.050(2), the county treasurer, if directed by the department to do so, will collect all taxes that would have been paid on the property but for the existence of the exemption during the seven preceding years, or the life of the exemption, whichever is less, plus interest at the same rate and computed in the same way as that upon delinquent property taxes are due.

(c) **No rollback imposed.** Back taxes and interest are not imposed if the cessation of use results solely from any of the following:

(i) Transfer to a nonprofit organization, association, or corporation for a use that also qualifies for and is granted exemption under the provisions of chapter 84.36 RCW;

(ii) A taking through an exercise of the power of eminent domain;

(iii) A sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of this power;

(iv) An official action by an agency of the state of Washington or by the county or city within which the exempt property is located that disallows the present exempt use of the property;

(v) A natural disaster (such as a flood, windstorm, earthquake, or other such calamity) that changes the use of the property;

(vi) Relocation of the activity and use of another location or site except for undeveloped properties of camp facilities exempt under RCW 84.36.030. This exemption does not apply to property leased to a state institution of higher education and exempt under RCW 84.36.050(2);

(vii) Cancellation of a lease on property previously exempt as:

(A) A nonprofit day care center;

(B) A library;

(C) An orphanage;

(D) A home for the sick or infirm;

(E) A hospital;

(F) An outpatient dialysis facility;

(G) A nonprofit home for the aging;

(H) A nonpermanent shelter for low-income homeless persons or victims of domestic violence;

(I) An organization that either produces or performs, or both, musical, dance, artistic, dramatic, or literary works;

(J) Housing for low-income eligible persons with developmental disabilities;

(K) A nonprofit cancer clinic or center; or

(L) Rental housing for very low-income households.

(viii) A change in the exempt portion of a home for the aging that is partially exempt from property tax, as long as some portion of the home remains exempt.

(4) **Duty to notify.**

(a) An owner of exempt property who knows of or who has information regarding a change in the use of exempt property shall notify the department of this change. If any portion of the exempt property is loaned or rented, the owner is required to report this change to the department because the loan or rental may affect the taxable status of the property (see RCW 84.36.813).

(b) Any other person who knows or has information regarding a change in use of exempt property is to notify the county assessor of any such change. The assessor, in turn, is required to report this information to the department.

(c) The department may physically inspect exempt property after being notified about a change in the use or ownership of exempt property. It may also conduct physical inspections at any time that it deems necessary to ascertain the exempt use of the property; this may include routine inspections.

(d) The department will determine whether the property may retain its exempt status or whether it will become taxable after a change in use is reported.

(5) **Notice to owner.** The department must notify the current owner and, in the case of a transfer, the previous legal owner of the exempt property that the cessation of use of the property for an exempt purpose has changed the property's taxable status. The notice must address the applicability of the rollback provisions set forth in subsection (3) of this rule. Within thirty days of receiving this notice, the owner(s) may submit comments or information to the department as to why the exemption should not be removed or rollback provisions should not be applied. The department will then issue a final determination.

(6) **County treasurer.** The treasurer will compute and collect the back taxes and interest due when the department notifies the treasurer that the property tax exemption is to be cancelled or removed. The interest will be computed at the same rate and in the same manner as that upon delinquent property taxes. The back taxes collected are to be disbursed to the taxing districts impacted by the previous property tax exemption. The interest collected is to be placed in the county current expense fund.

[Statutory Authority: RCW 84.36.865, 84.36.040, 84.36.042, 84.36.045, 84.36.046, 84.36.050, 84.36.385, 84.36.560, 84.36.570, 84.36.800, 84.36.805, 84.36.810, 84.36.815, 84.36.820, 84.36.825, 84.36.830, 84.36.833, 84.36.840, 84.36.850, and 84.40.350 through 84.40.390. 02-02-009, § 458-16-150, filed 12/20/01, effective 1/20/02. Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-150, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. 86-12-034 (Order PT 86-2), § 458-16-150, filed 5/30/86; 85-05-025 (Order PT 85-1), § 458-16-150, filed 2/15/85. Statutory Authority: RCW 84.36.389 and 84.36.865. 83-19-029 (Order PT 83-5), § 458-16-150, filed 9/14/83. Statutory Authority: RCW 84.36.865. 82-22-060 (Order PT 82-8), § 458-16-150, filed 11/2/82; 81-05-017 (Order PT 81-7), § 458-16-150, filed 2/11/81; Order PT 77-2, § 458-16-150, filed 5/23/77; Order PT 76-2, § 458-16-150, filed 4/7/76. Formerly WAC 458-12-151.]

**WAC 458-16-165 Conditions under which nonprofit organizations, associations, or corporations may obtain a property tax exemption. (1) Introduction.** In order to receive the property tax exemption authorized in chapter 84.36 RCW, most nonprofit organizations, associations, and corporations must also satisfy the conditions set forth in RCW 84.36.805 and 84.36.840. This rule describes these conditions.

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

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

(b) "Maintenance and operation expenses" means items of expense allowed under generally accepted accounting principles to maintain and operate the loaned or rented portion of the exempt property.

(c) "Revenue" means income received from the loan or rental of exempt property when the income exceeds the amount of maintenance and operation expenses attributable to the portion of the property loaned or rented.

(d) "Personal service contract" means a contract between a nonprofit organization, association, or corporation and an independent contractor under which the independent contractor provides a service on the organization's, association's, or corporation's tax exempt property. (See example contained in subsection (4)(c) of this rule.)

(3) **Applicability of this rule.** This rule does not apply to exemptions granted to:

(a) Public burying grounds or cemeteries under RCW 84.36.020;

(b) Churches, parsonages, convents, and church grounds under RCW 84.36.020;

(c) Administrative offices of nonprofit recognized religious organizations under RCW 84.36.032;

(d) Water distribution property owned by a nonprofit corporation or cooperative association under RCW 84.36.-250; or

(e) Property used for the conservation of ecological systems, natural resources, or open space by a nonprofit corporation or association under RCW 84.36.260.

(4) **Exclusive use.** Exempt property must be exclusively used for the actual operation of the activity for which the nonprofit organization, association, or corporation or public hospital district established under chapter 70.44 RCW received the property tax exemption unless the authorizing statute states otherwise. The property exempted from taxation shall not exceed an area reasonably necessary to facilitate the exempt purpose.

(a) **Loan or rental of exempt property.** As a general rule, the loan or rental of exempt property does not make it taxable if the rents or donations received for the use of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented and the property would be exempt from tax if owned by the organization to which it is loaned or rented. Property owned by organizations and societies of war veterans, public assembly halls, public meeting places, community meeting halls, and community celebration facilities are not subject to these limitations.

(i) **Exception - loaned or rented for less than fifteen days.** The status of exempt property will not be affected if:

(A) The property is loaned or rented for a period of fifteen consecutive days or less;

(B) The property is loaned or rented to another nonprofit organization, association, or corporation or public hospital district established under chapter 70.44 RCW that would qualify for exemption if it owned the loaned or rented property; and

(C) All income received from the rental is devoted exclusively to the exempt purpose of the nonprofit organization, association, or corporation or public hospital district established under chapter 70.44 RCW receiving the tax exemption.

(ii) **Loaned or rented to produce income.** If the lessor or lessee of exempt property intends to produce income from exempt property, the property will lose its exempt status. Property loaned or rented to produce income must be segregated from property used for exempt purposes. However, property exempt under RCW 84.36.030(4) (an organization or society of veterans of any war of the United States for veterans) and RCW 84.36.037 (public assembly halls, public meeting places, community meeting halls, and community celebration facilities) may be loaned or rented:

(A) For pecuniary gain or to promote business activities for a maximum of seven days each assessment year; or

(B) In a county with less than ten thousand people, the property may be used to promote the following business activities: Dance lessons; art classes; or music lessons (see WAC 458-16-300 and 458-16-310).

(iii) **Example.** If a portion of a building owned by a nonprofit hospital is rented to a sandwich shop, this portion of the hospital must be segregated from the remainder of the building that is being used for exempt hospital purposes. The portion of the building rented to the sandwich shop is subject to property tax.

(b) **Fund-raising activities.** The use of exempt property for fund-raising activities sponsored by an exempt organization, association, or corporation or public hospital district established under chapter 70.44 RCW does not jeopardize the exemption if the fund-raising activities are consistent with the purposes for which the exemption was granted. The term

"fund-raising" means any revenue-raising activity limited to less than five days in length that disburses fifty-one percent or more of the profits realized from the activity to the exempt nonprofit entity holding the fund-raising event.

(i) Example 1. A nonprofit social service agency holds an art auction in the auditorium of its tax exempt facility to raise funds. The activity must be less than five days in length and fifty-one percent of the profits must be disbursed to the social service agency because the fund-raising activity is being held on exempt property.

(ii) Example 2. A nonprofit school has a magazine subscription drive to raise funds and the subscriptions are being sold door-to-door by students. There are no limitations on this fund-raising activity because the subscription drive is not being held on exempt property.

(c) Personal service contract - exempt programs. Programs provided under a personal service contract will not jeopardize the exemption if the following conditions are met:

(i) The program is compatible and consistent with the purposes of the exempt organization, association, or corporation;

(ii) The exempt organization, association, or corporation maintains separate financial records as to all receipts and expenses related to the program; and

(iii) A summary of all receipts and expenses of the program are provided to the department upon request.

(iv) Example. A nonprofit school may decide to contract with a provider to offer aerobic classes to promote general health and fitness. All brochures and bulletins advertising these classes must show that the school is sponsoring the classes. Under the terms of the contract between the nonprofit school and the aerobic instructor, an independent contractor, the instructor must provide the classes for a predetermined fee. All fees collected from the participants of the classes must be received by the school; the school, in turn, will absorb all costs related to the classes.

(d) Personal service contract - nonexempt programs. Programs provided under a personal service contract (i) that require the contractor to reimburse the nonprofit organization for program expenses or (ii) in which the instructor is paid a fee based on the number of people who attend the program will be viewed as a rental agreement and will subject the property to property tax.

(4) **Irrevocable dedication required.** The property must be irrevocably dedicated to the purpose for which the exemption was granted. Upon the liquidation, dissolution, or abandonment by an exempt nonprofit entity, the property must not directly or indirectly benefit any shareholder or other individual except a nonprofit organization, association, or corporation that would be entitled to receive a property tax exemption if it applied for it.

Irrevocable dedication is not required if the property is leased or rented to an entity qualified for a property exemption under chapter 84.36 RCW. This exception only applies if the lease or rental agreement requires the lessee nonprofit organization, association, or corporation or public hospital district established under chapter 70.44 RCW to receive the benefit of the exemption.

(5) **No discrimination allowed.** The exempt property and the services offered thereon must be available to all persons regardless of race, color, national origin, or ancestry.

(6) **Compliance with licensing or certification requirements.** A nonprofit entity or public hospital district established under chapter 70.44 RCW seeking or receiving a property tax exemption must comply with all applicable licensing and certification requirements imposed by law or regulation.

(7) **Property sold subject to an option to repurchase.** Property sold to a nonprofit entity or public hospital district established under chapter 70.44 RCW with an option to be repurchased by the seller cannot qualify for an exemption. This prohibition does not apply to property sold to a nonprofit entity, as defined in RCW 84.36.560(7), by:

(a) A nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal Internal Revenue Code;

(b) A governmental entity established under RCW 35.21.660, 35.21.670, or 35.21.730;

(c) A housing authority created under RCW 35.82.030;

(d) A housing authority meeting the definition of RCW 35.82.210 (2)(a); or

(e) A housing authority established under RCW 35.82.300.

(8) **Duty to produce financial records.** In order to determine whether a nonprofit entity is entitled to receive a property tax exemption under the provisions of chapter 84.36 RCW and before the exemption is renewed each year, the entity claiming exemption must submit a signed statement, made under oath, with the department. This sworn statement must include a declaration that the income, receipts, and donations of the entity seeking the exemption have been used to pay the actual expenses incurred to maintain and operate the exempt facility or for its capital expenditures and to no other purpose. It shall also include a statement listing the receipts and disbursements of the organization, association, or corporation. This statement shall be made on a form prescribed and furnished by the department.

(a) The provisions of this subsection do not apply to an entity either applying for or receiving an exemption under RCW 84.36.020 or 84.36.030.

(b) This signed statement must be submitted on or before April 1 each year by any entity currently receiving a tax exemption. If this statement is not received on or before April 1, the department shall remove the tax exemption from the property. However, the department shall allow a reasonable extension of time for filing if the exempt entity has submitted a written request for an extension on or before the required filing date and for good cause.

(9) **Caretaker's residence.** If a nonprofit entity or public hospital district established under chapter 70.44 RCW exempt from property tax under chapter 84.36 RCW employs a caretaker to provide either security or maintenance services and the caretaker's residence is located on exempt property, the residence may qualify for exemption if the following conditions are met:

(a) The caretaker's duties include regular surveillance, patrolling the exempt property, and routine maintenance services;

(b) The nonprofit entity or the public hospital district established under chapter 70.44 RCW demonstrates the need for a caretaker at the facility;

(c) The size of the residence is reasonable and appropriate in light of the caretaker's duties and the size of the exempt property; and

(d) The caretaker receives the use of the residence as part of his or her compensation and does not pay rent. Reimbursement of utility expenses created by the caretaker's presence are not rent.

[Statutory Authority: RCW 84.36.865, 84.36.040, 84.36.042, 84.36.045, 84.36.046, 84.36.050, 84.36.385, 84.36.560, 84.36.570, 84.36.800, 84.36.805, 84.36.810, 84.36.815, 84.36.820, 84.36.825, 84.36.830, 84.36.833, 84.36.840, 84.36.850, and 84.40.350 through 84.40.390. 02-02-009, § 458-16-165, filed 12/20/01, effective 1/20/02. Statutory Authority: RCW 84.36.865, 84.36.037, 84.36.805, 84.36.815, 84.36.825 and 84.36.840. 98-18-006, § 458-16-165, filed 8/20/98, effective 9/20/98. Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-165, filed 3/3/94, effective 4/3/94.]

**WAC 458-16-180 Cemeteries. (1) Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.020 to public burying grounds or cemeteries.

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

(a) "Burial" means the placement of uncremated human remains in the ground.

(b) "Dedicated" means a written declaration of dedication of the property to which the exemption is to be applied has been filed with the county auditor in the county where the property is located, dedicating the property exclusively as a public burying ground or cemetery.

(c) "Entombment" means the placement of uncremated human remains in a crypt in a mausoleum.

(d) "Interment" means the disposition of human remains by cremation and inurnment, entombment, or burial in a place used, or intended to be used, and dedicated, for a public burying ground or cemetery.

(e) "Inurnment" means placing cremated remains in an urn or other container.

(f) "Necessary administration and maintenance" means those administrative and maintenance functions necessary to administer and maintain the cemetery and the necessity of which would be nonexistent but for the presence of the cemetery.

(g) "Public burying grounds or cemeteries" means places used, and dedicated, for the interment of human remains, and also includes:

(i) An "abandoned cemetery," "historical cemetery," and "historic grave" as defined in chapter 68.60 RCW;

(ii) Indian graves as protected under chapter 27.44 RCW; and

(iii) Nonprofit cemeteries owned or operated by any recognized religious denomination or any of its churches that qualifies for a property tax exemption under the provisions relating to churches under the provisions of RCW 84.36.020.

(3) **Exemption.** The following property shall be exempt from taxation when used without discrimination as to race, color, national origin, or ancestry:

(a) All lands used, or to the extent used, exclusively for public burying grounds or cemeteries.

(b) All buildings required for and used, or to the extent used, exclusively for necessary administration and maintenance of public burying grounds or cemeteries including, but

(2005 Ed.)

not limited to, the groundskeeping or maintenance building and the administration building. This exemption does not generally include a residential building; however, a caretaker's residence may be exempt if the following conditions are met:

(i) The caretaker's duties include regular surveillance and patrolling of the property;

(ii) The size of the residence is reasonable and appropriate in light of the caretaker's duties and the size of the exempt property;

(iii) The caretaker, or the caretaker's substitute, is required on the premises at all hours the cemetery is closed or at least during the time when vandalism or other damage is most likely to occur; and

(iv) The caretaker receives the use of the residence as part of his or her compensation and does not pay rent. Reimbursement of utilities expenses created the caretaker's presence will not be considered as rent.

(4) **Applications and annual certifications.** Nonprofit cemetery corporations or associations are only required to file an initial application for exemption as described in WAC 458-16-110. For profit cemetery corporations or associations shall file renewal applications and annual certifications as required by WAC 458-16-110.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-180, filed 3/3/94, effective 4/3/94; Order PT 77-2, § 458-16-180, filed 5/23/77; Order PT 76-2, § 458-16-180, filed 4/7/76. Formerly WAC 458-12-190.]

**WAC 458-16-190 Churches, parsonages and convents. (1) Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.020 to churches, parsonages, and convents.

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

(a) "Church purposes" means the use of real and personal property owned by a nonprofit religious organization for religious worship or related administrative, educational, eleemosynary, and social activities. This definition is to be broadly construed. The term "use" includes real property owned by a nonprofit religious organization upon which a church shall be built.

(b) "Clergy person" means a person ordained or regularly licensed for religious service and includes both male and female individuals.

(c) "Commercial" refers to an activity or enterprise that has profit making as one of its primary purposes.

(d) "Convent" means a house or set of buildings occupied by a community of clergy or nuns devoted to religious life under a superior.

(e) "Eleemosynary" means charitable, including types of activities in which some social objective is served or general welfare is advanced.

(f) "Owned" means owned in fee or by contract purchase.

(g) "Parsonage" means a residence, owned by a church, that is occupied by a clergy person designated for a particular congregation and who holds regular services for that congregation.

(h) "Regular services" means religious services that are conducted on a routine and systematic basis at prearranged

times, days, and places. This term includes religious services that are conducted by a visiting or circuit clergy person who may only hold services once a month in a particular location if that person is scheduled to conduct services on a routine and prearranged basis on the exempt property.

(i) "Unoccupied land" means land that is undeveloped, unused, and upon which no structures or improvements have been built.

(A) This land includes, but is not limited to, greenbelt, wetland, and other undeveloped areas contiguous to an exempt church, parsonage, or convent.

(B) This land does not include parking lots, landscaped grounds, or playing fields.

(3) **Property exempt and extent of exemption.** All churches and the ground upon which a church is or shall be built, together with a parsonage, convent, structures and ground necessary for street access, parking, light, ventilation, and buildings and improvements required to maintain and safeguard the property owned by a nonprofit religious organization and wholly used for church purposes shall be exempt from property taxation to the following extent:

(a) The exempt area shall not exceed five acres of land, including ground that is occupied and unoccupied. Occupied ground is ground covered by the church, parsonage, convent, structures and ground necessary for street access, parking, light, ventilation, and buildings and improvements required for the maintenance and security of such property.

(b) The unoccupied land included within this five-acre limitation may not exceed one-third of an acre (fourteen thousand four hundred square feet), unless additional unoccupied land is required to conform with state or local codes, zoning, or licensing requirements.

(4) **Noncontiguous property.** A parsonage or convent may qualify for exemption even if located on land that is not contiguous to the church property; however, the five acre limitation still applies, as does the limitation described in subsection (3)(b) of this section with respect to unoccupied land.

(5) **Exemption of caretaker's residence.** A caretaker's residence located on church property may qualify for exemption if the following conditions are met:

(a) The caretaker's duties include regular surveillance and patrolling of the property;

(b) The size of the residence is reasonable and appropriate in light of the caretaker's duties and the size of the exempt property;

(c) The caretaker is required to provide either security or maintenance service described as follows:

(i) Security of the premises is provided by the caretaker, not merely by his or her presence, but by regular surveillance and patrolling of the grounds, locking gates if necessary, and generally acting in a manner to ensure the security of the property; or

(ii) Maintenance service is provided on a daily basis to open and close the premises, activate or shut down environmental systems, and provide other maintenance and custodial services necessary for the effective operation and utilization of the facilities; and

(d) The caretaker receives the use of the residence as part of his or her compensation and does not pay rent. Reimburse-

ment of utilities expenses created by the caretaker's presence will not be considered as rent.

(6) **Property not used for church purposes.** When property is not used for church purposes, the exemption is lost. If a portion of the exempt property is used for commercial rather than church purposes, that portion must be segregated and taxed whether or not the proceeds received by the church from the commercial use are applied to church purposes.

(7) **Loan or rental of exempt property.** The tax exempt status of any property exempt under this section will not be affected if it is loaned or rented under the following conditions:

(a) The loan or rental must be to a nonprofit organization, association, corporation, or school;

(b) The loan or rental must be for an eleemosynary activity; and

(c) The rental income must be reasonable and devoted solely to the operation and maintenance of the property.

(8) **Fund-raising activities.** The use of exempt property for fund-raising activities sponsored by an exempt organization, association, or corporation does not subject the property to taxation if the fund-raising activities are consistent with the purposes for which the exemption was granted. The term "fund-raising" means any revenue-raising activity limited to less than five days in length, that disburses fifty-one percent or more of the profits realized from the activity to the exempt nonprofit organization, association, or corporation that is holding the fund-raising, and that takes place on exempt property.

(a) Example 1. A nonprofit social service agency holds an art auction in the church basement to raise funds. Since the fund-raising activity is being held on exempt property, the activity must be less than five days in length and fifty-one percent of the profits must be disbursed to the social agency.

(b) Example 2. The women's auxiliary of the church has a candy sale to raise funds for the church's program to provide meals to the homeless during which the candy is sold door-to-door by members of the auxiliary. Since the candy sale is not being held on the exempt property, the sale is not limited to five days in duration nor do fifty-one percent of the profits from this fund-raising activity have to be remitted to the church.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-190, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. 82-22-060 (Order PT 82-8), § 458-16-190, filed 11/2/82; 81-21-009 (Order PT 81-13), § 458-16-190, filed 10/8/81; Order PT 77-2, § 458-16-190, filed 5/23/77; Order PT 76-2, § 458-16-190, filed 4/7/76. Formerly WAC 458-12-195.]

**WAC 458-16-200 Land upon which a church or parsonage shall be built. (1) Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.020 to land upon which a church is to be built or upon which a parsonage or convent is being built in conjunction with and on land contiguous to a church.

(2) **Exemption.** Any property upon which a church is to be built may be exempt from ad valorem taxation if the church has a specific plan and clear intent to use the land for this and no other purpose.

(a) This property may include land upon which a parsonage or convent is to be built on land contiguous to a church.

(b) A parsonage or convent to be built on noncontiguous real property shall not be entitled to exemption until the parsonage or convent is built and occupied by a clergy person.

(3) **Burden of proof.** A nonprofit religious organization claiming this exemption must submit proof that a reasonably specific and active program is being carried out to construct a church within a reasonable period of time. Such proof shall include sufficient information from which the department will be able to determine what portion of the property will qualify for exemption when construction is completed.

(4) **Proof of required intent.** Proof that may be submitted to evidence the required intent to build may include, but is not limited to:

(a) Affirmative action by the board of directors, trustees, or governing body of the nonprofit religious organization toward an active program of construction.

(b) Itemized reasons for the proposed construction, such as:

(i) Need for expansion due to growth;

(ii) Replacement of wornout buildings; or

(iii) Initial facilities for a newly organized congregation or nonprofit religious organization;

(c) Clearly established plans for financing the construction;

(d) Proposed architectural plans that would show what portion of the property will be under actual exempt use;

(e) Building permits; or

(f) Any other proof the department may deem relevant to show an active program aimed at construction.

(5) **Time limit regarding future construction.** The length of time under which a property may be held for future construction under this section shall be dependent upon the intent evidenced under the circumstances of each individual situation. If there is no evidence of progress towards construction within a calendar year, the exemption will be removed.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW 94-07-008, § 458-16-200, filed 3/3/94, effective 4/3/94; Order PT 77-2, § 458-16-200, filed 5/23/77; Order PT 76-2, § 458-16-200, filed 4/7/76. Formerly WAC 458-12-200.]

**WAC 458-16-210 Nonprofit organizations or associations organized and conducted for nonsectarian purposes.**

(1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.030(1) to nonprofit organizations or associations organized and conducted for nonsectarian purposes.

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

(a) "Benevolent" refers to social services or programs that are directed at persons of all ages, that arise from or are prompted by motives of charity or a sense of benevolence, that are marked by a kindly disposition to promote the happiness and prosperity of others, by generosity in and pleasure at doing good works, or that are organized for the purpose of doing good. For example, a benevolent organization may provide a food bank, a soup kitchen, or counseling services at cost.

(b) "Character building" means social services or programs that are designed for the general public good, that assist people with general living skills, that develop interview and job seeking skills, or that assist people in working towards independent living and self sufficiency. These services include, but are not limited to, programs designed to develop an individual's moral or ethical strength, leadership, integrity, self-discipline, fortitude, self-esteem, and reputation.

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

(d) "Community outreach group" means a nonprofit group organized to extend social services to a particular segment of the community; for example, a rescue mission organized to feed the homeless or a program that targets juveniles "at risk" of criminal or abusive behavior.

(e) "Nonsectarian purpose" means a purpose that is not associated with or limited to a particular religious group.

(f) "Protective" refers to activities that are meant to cover, to guard, or to shield other persons from injury or destruction or to save others from financial loss. For example, a protective organization may provide housing for battered persons or for the developmentally disabled or may assist persons with behavioral problems by providing encouragement, support, and training.

(g) "Rehabilitative or rehabilitation" refers to activities designed to restore individuals to a former capacity, to a condition of health, or to useful or constructive activity. For example, a rehabilitative organization may assist persons to overcome alcohol or substance abuse, or to overcome the affects of a physical injury, stroke, or heart attack.

(h) "Social service" means programs designed to help people resolve problems, become more self-sufficient, prevent dependency, strengthen family relationships, and/or enhance the functioning of individuals in society. These services include, but are not limited to, programs in the general categories of:

(i) Socialization and development; and

(ii) Therapy, help, rehabilitation, and social protection.

(3) **Exemption.** The real and personal property owned by a nonprofit organization or association is exempt from taxation if the organization, association, or corporation is organized and conducted for nonprofit and nonsectarian purposes. To be exempt, the property must be used for and integrally related to character-building, benevolent, protective, or rehabilitative social services directed at persons of all ages.

(a) To qualify for this exemption, there must be an element of gift and giving in the nonprofit organization's, association's, or corporation's activities, in relation to the people it serves. This element of gift and giving requires giving something of value with no expectation of compensation or remuneration. The words "gift" and "giving," within the context of this section, mean a voluntary act. In order to meet this requirement of gift and giving, the nonprofit organization, association, or corporation must annually meet one of the following conditions:

(i) Provide goods and/or services free of charge or at a rate that is at least twenty percent below the total actual cost of such goods and/or services to a minimum of fifteen percent of the total number of people assisted by that nonprofit organization, association, or corporation; or

(ii) Contribute at least ten percent of its total annual income towards the support of character-building, benevolent, protective or rehabilitative social services or programs. "Total annual income" refers to the total income reported to the Internal Revenue Service for that year and includes, but is not limited to, funds received through direct and indirect public support, government grants, membership fees, and other contributions. The term does not include funds that are specifically donated or contributed for capital improvements.

(A) In order to meet this ten percent requirement, a nonprofit organization, association, or corporation may include, but is not limited to, the value of time volunteers donate to carry out program services and functions, the loan of its facilities to community outreach groups, and gifts of scholarships and other fee subsidies.

(B) If a nonprofit organization utilizes volunteer time to reach the ten percent requirement, it 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.

(C) If a nonprofit organization allows community outreach groups to use its facilities free of charge, it must maintain records identifying the community outreach groups that used the exempt property and the number of hours each group used the exempt property. The value of this use will be calculated by multiplying the number of hours, or any portion of an hour, the facility is used by these groups times the usual and customary charge the nonprofit organization, association, or corporation charges to rent its facility to any other group.

(b) A nonprofit organization, association, or corporation may not impose conditions or restrictions on the use of the exempt property by persons who do not personally pay the total actual cost of a social service, except conditions or restrictions that are reasonably necessary to safeguard the exempt property and to comply with the purposes of this exemption.

(c) Property used by a fraternal organization or association for fraternal purposes does not qualify for an exemption under this section.

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

(e) The sale of donated merchandise shall not be considered a commercial use of the property if the proceeds are dedicated to the exempt purpose associated with the nonprofit, nonsectarian organization or association. For example, thrift store operations that are restricted to the sale of "donated merchandise" will not jeopardize this exemption if the claimant can verify the proceeds are directed to an exempt purpose.

(4) **Additional requirements.** Any organization or association 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 84.36.030.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW 94-07-008, § 458-16-210, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. 88-02-010 (Order PT 87-10), § 458-16-210, filed 12/28/87; 86-12-034 (Order PT 86-2), § 458-16-210, filed 5/30/86; 85-05-025 (Order PT 85-1), § 458-16-210, filed 2/15/85. Statutory Authority: RCW 84.36.389 and 84.36.865. 83-19-029 (Order PT 83-5), § 458-16-210, filed 9/14/83.]

Statutory Authority: RCW 84.36.865. 81-05-017 (Order PT 81-7), § 458-16-210, filed 2/11/81; Order PT 77-2, § 458-16-210, filed 5/23/77; Order PT 76-2, § 458-16-210, filed 4/7/76. Formerly WAC 458-12-205.]

### **WAC 458-16-215 Nonprofit organizations that solicit, collect, and distribute gifts, donations, or grants.**

(1) **Introduction.** This section explains the property tax exemption available under RCW 84.36.550 to nonprofit organizations that solicit or collect gifts, donations, or grants to be distributed to other nonprofit organizations for character-building, benevolent, protective, or rehabilitative social services.

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

(a) "Benevolent" refers to social services or programs that are directed at persons of all ages, that arise from or are prompted by motives of charity or a sense of benevolence, that are marked by a kindly disposition to promote the happiness and prosperity of others, by generosity in and pleasure at doing good works, or that are organized for the purpose of doing good. For example, a benevolent organization may provide a food bank, a soup kitchen, or counseling services at cost.

(b) "Gifts, donations, or grants" means only amounts that are given or received as outright gifts. Any amount, however designated, that is given or received in return for any goods, services, or other benefits will not be considered a "gift, donation, or grant" for the purposes of this rule. A "gift, donation, or grant" is an amount given or received without conditions, from detached and disinterested generosity, out of affection, respect, charity or like impulses and not because of any moral or legal duty or from the expectation of anticipated benefits. For example, the purchase of a "raffle ticket" or "bingo card" does not qualify as a "gift, donation, or grant" because the sponsor of the raffle or bingo game is selling a chance to win a prize and the participant is paying a portion of the purchase price of that prize and is receiving the chance to receive the prize or prizes in exchange for his or her payment.

(c) "Nonsectarian purpose" means a purpose that is not associated with or limited to a particular religious group.

(d) "Organization" includes associations and corporations.

(e) "Protective" refers to activities that are meant to cover, to guard, or to shield other persons from injury or destruction or to save others from financial loss. For example, a protective organization may provide housing for battered persons or for the developmentally disabled or may assist persons with behavioral problems by providing encouragement, support, and training.

(f) "Rehabilitative or rehabilitation" refers to activities designed to restore individuals to a former capacity, to a condition of health, or to useful or constructive activity. For example, a rehabilitative organization may assist persons to overcome alcohol or substance abuse, or to overcome the effects of a physical injury, stroke, or heart attack.

(g) "Social service" means programs designed to help people resolve problems, become more self-sufficient, prevent dependency, strengthen family relationships, and/or enhance the functioning of individuals in society. These ser-

vices include, but are not limited to, programs in the general categories of:

- (i) Socialization and development; and
- (ii) Therapy, help, rehabilitation, and social protection.

(3) **Exemption.** The real and personal property owned by a nonprofit organization is exempt from taxation if the property is owned by a nonprofit organization and is used to solicit or collect gifts, donations, or grants for distribution to other nonprofit organizations, associations, or corporations organized and conducted for nonsectarian purposes that provide character-building, benevolent, protective, or rehabilitative social services directed at persons of all ages. To qualify for this exemption, the nonprofit organization must meet all of the following conditions:

- (a) Organized and conducted for nonsectarian purposes;
- (b) Affiliated with a state or national organization that authorizes, approves, or sanctions volunteer charitable fund-raising organizations;
- (c) Qualified for exemption under section 501 (c)(3) of the federal Internal Revenue Code;
- (d) Governed by a volunteer board of directors;
- (e) Use the gifts, donations, and grants solicited or collected for character-building, benevolent, protective, or rehabilitative social services directed at persons of all ages or distribute the gifts, donations, or grants in accordance with (f) of this subsection;
- (f) Annually distribute gifts, donations, or grants to at least five other nonprofit organizations, associations, or corporations organized and conducted for nonsectarian purposes that provide character-building, benevolent, protective, or rehabilitative social services directed at persons of all ages.

(4) **Examples.**

(a) The United Way solicits and collects gifts, donations, and grants from numerous sources such as government employees, private businesses, and corporate sponsors. The gifts, donations, and grants received by the United Way are, in turn, distributed to other nonprofit organizations, associations, and corporations that provide character-building, benevolent, protective, or rehabilitative social services directed at persons of all ages. The United Way does not necessarily provide these social services itself but it does own property that is used to solicit and collect gifts, donations, and grants. The United Way would be entitled to receive this exemption if, in addition to owning and using the property to solicit and collect gifts, donations, and grants, it meets all of the conditions listed in subsection (3) of this section.

(b) A nonprofit organization owns real and personal property that is used for bingo games, pull-tabs, and food services to raise funds for the organization's charitable activities that are not conducted at this location. Even if the nonprofit organization in this case is organized for nonsectarian purposes, affiliated with a national organization that authorizes, approves, and sanctions volunteer charitable fund-raising organizations, classified as a section 501 (c)(3) organization with the Internal Revenue Service, and governed by a volunteer board of directors, the bingo facility would not be entitled to an exemption because this property is not used to solicit or collect gifts, donations, or grants because the purchase of a bingo card is not a "gift, donation, or grant" within the meaning of this rule.

(5) **Additional requirements.** Any organization or association 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 84.36.550.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 94-15-041, § 458-16-215, filed 7/14/94, effective 8/14/94.]

**WAC 458-16-220 Church camps. (1) Introduction.**

This section explains the property tax exemption available under the provisions of RCW 84.36.030(2) to property used as a church camp and owned by a nonprofit church, denomination, group of churches, or an organization or association of churches.

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

(a) "Church purposes" means the use of real and personal property as a church camp and owned by a nonprofit religious organization for religious worship or related administrative, educational, eleemosynary, and social activities.

(b) "Property" means real or personal property owned by a nonprofit church, denomination, group of churches, or an organization or association of churches.

(3) **Exemption.** Property owned by a nonprofit church, denomination, group of churches, or an organization or association comprised solely of churches or their qualified representatives that is used exclusively on a regular and scheduled basis for organized and supervised recreational or educational activities and church purposes related to such camp facilities is exempt from ad valorem taxation up to a maximum of two hundred acres as selected by the church, including buildings and other improvements thereon.

(4) **Additional requirements.** Any organization or association 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 84.36.030.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-220, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. 86-12-034 (Order PT 86-2), § 458-16-220, filed 5/30/86; 85-05-025 (Order PT 85-1), § 458-16-220, filed 2/15/85; Order PT 77-2, § 458-16-220, filed 5/23/77; Order PT 76-2, § 458-16-220, filed 4/7/76. Formerly WAC 458-12-206.]

**WAC 458-16-230 Character building organizations.**

(1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.030 (3) to property owned by a nonprofit organization or association engaged in character building of children under eighteen years of age.

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

(a) "Character building" refers to activities for children under eighteen years of age that are for the general public good. The activities may build, improve, or enhance a child's moral constitution by developing moral or ethical strength, leadership, integrity, self-discipline, fortitude self-esteem, and reputation. For example, "character building" activities may involve organized and supervised recreational activities

including, but not limited to, exploring, hiking, beachcombing, swimming, fishing, studying, and discussion groups.

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

(c) "Property" means real and personal property owned and used by a nonprofit organization or association engaged in character building of children under eighteen years of age and includes all buildings, structures, and improvements required to maintain and to safeguard the property.

(3) **Exemption.** Property that is owned by nonprofit organizations or associations engaged in character building of children under eighteen years of age is exempt from taxation if it is exclusively used, or to the extent it is exclusively used, to promote character building.

(a) To be entitled to receive this exemption, the organization or association must be nonprofit and its purpose must be for the general public good. All property of a character building organization or association must be devoted to the general public benefit.

(b) Only property that is exclusively used for character building is exempt under this section. If the property is used for any other purpose, whether commercial or otherwise, it must be segregated and taxed.

(c) A nonprofit character building organization or association may also qualify for this exemption if, prior to 1971, its articles of incorporation or charter mandated the organization or association to provide services to children up to the age of twenty-one years.

(4) **Additional requirements.** Any organization or association 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 84.36.030.

(5) **Related statute.** See RCW 82.04.4271; if a "non-profit youth organization" is exempt from property taxation under RCW 84.36.030, it may deduct membership fees and certain service fees in calculating the amount of business and occupation tax due.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-230, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. 86-12-034 (Order PT 86-2), § 458-16-230, filed 5/30/86; 85-05-025 (Order PT 85-1), § 458-16-230, filed 2/15/85; Order PT 77-2, § 458-16-230, filed 5/23/77; Order PT 76-2, § 458-16-230, filed 4/7/76. Formerly WAC 458-12-210.]

**WAC 458-16-240 Veterans organizations.** (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.030(4) for real and personal property owned by organizations and societies of veterans of any war of the United States.

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

(a) "Inadvertent use or inadvertently used" means any unintentional or accidental use of exempt property by an individual, organization, association, or a corporation to promote business activities through either carelessness, lack of attention, lack of knowledge, mistake, surprise, or neglect.

(b) "Maintenance and operation expenses" means items of expense allowed under generally accepted accounting principles.

(c) "Property" means real and personal property owned by organizations or societies of war veterans.

(3) **Exemption.** Property owned by organizations or societies of war veterans, which are recognized by the department of defense and nationally chartered, is exempt from taxation.

(a) The general purposes and objectives of these organizations or societies shall be:

(i) To preserve memories and associations incident to war service; and

(ii) To devote their members' efforts to mutual helpfulness and to patriotic and community service to state and nation.

(b) In order to qualify for this exemption, the property must be used in a manner reasonably necessary to carry out the purposes and objectives of the organization or society of war veterans. For example, a building owned by a chapter of the veterans of foreign wars that is used to hold meetings to plan a Veterans Day celebration may qualify for exemption.

(c) The tax exempt status of the property will not be affected if it is loaned or rented and the amount of rent or donations collected for the use, loan, or rental of the exempt property:

(i) Is reasonable; and

(ii) Does not exceed the maintenance and operation expenses that are created by the corresponding use, loan, or rental.

(4) **Use of property for pecuniary gain or to promote business activities.** If property owned by an organization or society of veterans that is exempt under subsection (3) of this section is used for pecuniary gain or to promote business activities, the property tax exemption will be lost for the assessment year in which the exempt property was so used. The exemption will not be lost if:

(a) The exempt property is used for pecuniary gain not more than three days a year; or

(b) The exempt property is inadvertently used by an individual, organization, association, or a corporation to promote business activities as long as the inadvertent use is not a pattern of use. A "pattern of use" is presumed when an inadvertent use of the property to promote business activities is repeated within the same assessment year or within two or more successive assessment years.

(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 84.36.030.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-240, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. 86-12-034 (Order PT 86-2), § 458-16-240, filed 5/30/86; 85-05-025 (Order PT 85-1), § 458-16-240, filed 2/15/85; Order PT 77-2, § 458-16-240, filed 5/23/77; Order PT 76-2, § 458-16-240, filed 4/7/76. Formerly WAC 458-12-215.]

**WAC 458-16-245 Student loan agencies.** (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.030(6) to a nonprofit organization, association, or corporation that is exempt from federal income taxation and either guarantees

student loans or issues debt to provide or acquire student loans.

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

(a) "Student loan agency" means a nonprofit organization or association that is exempt from federal income tax under section 501 (c)(3) of the Federal Internal Revenue Code of 1954 (as amended) and:

(i) Is a guarantee agency under the federal guaranteed student loan program; or

(ii) Issues debt to provide or acquire student loans.

(b) "Property" means real or personal property owned by a nonprofit organization, association, or corporation that qualifies as a "student loan agency."

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

(3) **Exemption.**

(a) Property owned and used by a nonprofit organization, association, or corporation that is a guarantee agency under the federal guaranteed student loan program or that issues debt to provide or acquire student loans is exempt from taxation.

(b) If any portion of the organization's, association's, or corporation's property is used for a commercial rather than an exempt purpose that portion 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 84.36.030.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW 94-07-008, § 458-16-245, filed 3/3/94, effective 4/3/94.]

**WAC 458-16-260 Nonprofit day care centers, libraries, orphanages, homes for sick or infirm, hospitals, outpatient dialysis facilities.** (1) **Introduction.** This rule explains the property tax exemption available under the provisions of RCW 84.36.040 to property used by nonprofit day care centers, libraries, orphanages, homes for the sick or infirm, hospitals, outpatient dialysis facilities, and to property leased to and used by a hospital that is owned and operated by a public hospital district for hospital purposes.

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

(a) "Convalescent and chronic care" means any or all procedures commonly employed in caring for the sick including, but not limited to, administering medicines, preparing special diets, providing bedside nursing care, applying dressings and bandages, and carrying out any treatment prescribed by a duly licensed practitioner of the healing arts.

(b) "Day care center" means a facility that regularly provides care for a group of children for periods of less than twenty-four consecutive hours.

(c) "Home for the sick or infirm" means any home, place, or institution that operates or maintains facilities to provide convalescent or chronic care, or both, for three or more persons not related by blood or marriage to the operator, who by reason of illness or infirmity, are unable to properly care for themselves.

(i) The services must be provided to persons over a continuous period of twenty-four hours or more.

(ii) A boarding home, guest home, hotel, or similar institution that is held forth to the public as providing and supplying only room, board, or laundry services to persons who do not need medical or nursing treatment or supervision is not considered a "home for the sick or infirm" for purposes of this rule.

(d) "Hospital" means a nonprofit organization, association, or corporation or public hospital established in accordance with chapter 70.44 RCW engaged in providing medical, surgical, nursing or related health care services for the prevention, diagnosis or treatment of human disease, pain, injury, disability, deformity, mental illness, or retardation, as well as the equipment and facilities used by a nonprofit organization, association, or corporation or hospital established in accordance with chapter 70.44 RCW to deliver such services to inpatients. These services must be provided over a continuous period of twenty-four hours or more.

(i) "Hospital" also means any portion of a hospital building, or other buildings used in connection therewith, and the equipment therein operated as a part of a hospital unit or used as a residence for persons engaged or employed in the operation of a hospital including, but not limited to, a nurse's home or a residence for hospital employees.

(ii) "Hospital" does not mean:

(A) Hotels or similar places that furnish only food and lodging or simple domiciliary care;

(B) Clinics or physician's offices where patients are not regularly kept as bed patients for twenty-four hours or more;

(C) Nursing homes as defined in chapter 18.51 RCW; and

(D) Maternity homes as defined in chapter 18.46 RCW.

(e) "Hospital unit" means all buildings or properties that are part of an integrated, interrelated, homogeneous unit exclusively used for exempt hospital purposes. The term includes residential units exclusively used to temporarily house families of inpatients in an integrated program of hospital therapy.

(f) "Property" means real or personal property used by a nonprofit organization, association, or corporation or leased to and used by a hospital that is owned and operated by a public hospital district established under chapter 70.44 RCW.

(3) **Exemption for exclusively used property.** All real and personal property exclusively used by a nonprofit organization, association, or corporation for the following institutions is exempt from taxation:

(a) Day care centers;

(b) Preschools;

(c) Free public libraries;

(d) Orphanages and orphan asylums;

(e) Homes for the sick or infirm;

(f) Hospitals for the sick; and

(g) Outpatient dialysis facilities.

(4) **Exemption for loaned or rented property.** Property loaned or rented to an institution listed in subsections (3)(a) through (g) of this rule is also exempt from taxation if:

(a) The property is exclusively used by the nonprofit organization, association, or corporation;

(b) The benefit of the exemption inures to the user; and

(c) The property was specifically identified as loaned or rented when the application for exemption was made.

(5) **Property leased to and used by a hospital that is owned and operated by a public hospital district.** All real and personal property leased to and used by a hospital owned and operated by a public hospital district established under chapter 70.44 RCW for hospital purposes is exempt from taxation. The benefit of the exemption must inure to the entity using the exempt property.

(6) **Exclusive use required.** Any portion of property exempt under subsections (3) through (5) of this rule that is not exclusively used in a manner furthering the exempt purposes of the nonprofit organization, association, or corporation or the hospital purposes of public hospital district must be segregated and taxed. For example, hospital property used by a physician to conduct his private practice must be segregated and taxed.

(7) **Actual use and irrevocable dedication required.** To be exempt from taxation under this rule, all property owned by a nonprofit organization, association, or corporation or owned and operated by a public hospital district established under chapter 70.44 RCW must be:

(a) In use; and

(b) Irrevocably dedicated to the exempt purpose of the nonprofit organization, association, or corporation.

(8) **Additional requirements.** Any organization or association that applies for a property tax exemption under this rule 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 under RCW 84.36.040.

[Statutory Authority: RCW 84.36.865, 84.36.040 and 84.36.050. 01-24-037, § 458-16-260, filed 11/28/01, effective 12/29/01. Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-260, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. 88-02-010 (Order PT 87-10), § 458-16-260, filed 12/28/87; 85-05-025 (Order PT 85-1), § 458-16-260, filed 2/15/85. Statutory Authority: RCW 84.36.389 and 84.36.865. 83-19-029 (Order PT 83-5), § 458-16-260, filed 9/14/83. Statutory Authority: RCW 84.36.865. 81-05-017 (Order PT 81-7), § 458-16-260, filed 2/11/81; Order PT 77-2, § 458-16-260, filed 5/23/77; Order PT 76-2, § 458-16-260, filed 4/7/76. Formerly WAC 458-12-225.]

**WAC 458-16-270 Schools and colleges. (1) Introduction.** This rule explains the two property tax exemptions available under the provisions of RCW 84.36.050 to property owned by or used for a nonprofit school or college and to property owned by a not-for-profit foundation established for the exclusive support of an institution of higher education, as defined in RCW 28B.10.016, that is leased to and used by the institution.

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

(a) "Campus or college purposes" means property that is only needed because of the presence of the nonprofit school or college and is principally designed to further the educational purposes and functions of a nonprofit school or college or an institution of higher education, as defined in RCW 28B.10.016.

(b) "Cultural or art education program" includes and is limited to:

(i) An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;

(ii) A musical or dramatic performance or series of performances; or

(iii) An educational seminar or program, or series of such programs, offered by a nonprofit school or college to the general public on an artistic, cultural, or historical subject.

(c) "Educational purposes" means systematic instruction, either formal or informal, in any and all branches of learning directed to an indefinite class of persons and from which a substantial public benefit is derived. The term includes all purposes that seek to promote or advance education.

(d) "Schools and colleges" means:

(i) Nonprofit educational institutions that are approved by the superintendent of public instruction or whose students and credentials are accepted without examination by schools and colleges established under either Title 28A or 28B RCW and offer students an educational program of a general academic nature;

(ii) An institution of higher education, as defined in RCW 28B.10.016; or

(iii) Nonprofit institutions that meet the following criteria:

(A) They have a definable curriculum and measurable outcomes for a specific group of students;

(B) They have a qualified or certified faculty;

(C) They have facilities and equipment that are designed for the primary purpose of the educational program;

(D) They have an attendance policy and requirement;

(E) They have a schedule or course of study that supports the instructional curriculum; and

(F) They are accredited, recognized, or approved by an external agency that certifies educational institutions and the transferability of courses.

(e) "Revenue" means income received from the loan or rental of exempt property when the income exceeds the amount of the maintenance and operation expenses attributable to the portion of the property loaned or rented.

(3) **Exemption - nonprofit schools or colleges.** Property owned or used by any nonprofit school or college within this state is exempt to the extent that it is used exclusively for educational purposes or cultural or art educational programs.

(a) Real property exempt under this rule cannot exceed four hundred acres and must be used exclusively for school, college, or campus purposes. The property includes, but is not limited to:

(i) Buildings and grounds principally designed for the educational, athletic, or social programs of the nonprofit school or college and the need for which would be nonexistent except for the existence of the school or college;

(ii) Buildings that house part-time or full-time students;

(iii) Buildings that house religious faculty; and

(iv) Buildings that house the chief administrator.

(b) The use of exempt property by professional organizations for conferences, seminars, or other activities that enhance the reputation of the nonprofit school or college will not nullify the exemption. Similarly, the use of exempt property owned by a nonprofit school or college for any education purpose will not nullify the exemption.

(c) All property that is not part of the main campus of a school or college and for which the institution wishes to obtain an exemption under this rule, the department may require said institution to provide, in detail, the following information:

- (i) The names of courses taught at the off-campus site;
- (ii) A calendar of dates and times that shows how the subject property was used; and
- (iii) The number of students that participated in the educational activities conducted at the off-campus site.

(d) To be eligible to receive this exemption, the nonprofit school or college must be open to all persons regardless of race, color, national origin, or ancestry. However, there is no limitation on the type of courses the institution may offer.

(4) **Property leased to a nonprofit school or college.** If property is leased to a nonprofit school or college, in order to be exempt, the property must be:

- (a) Irrevocably dedicated to the purpose for which exemption has been granted; and
- (b) The benefit of the exemption must inure to the user.
- (c) For example, if a private citizen leases real or personal property to a nonprofit school or college to be used for educational purposes or cultural or art educational programs, the leased property may qualify for exemption if it meets the requirements of subsection (3)(a), (b), and (c) of this rule.

(5) **Production of financial records - nonprofit schools or colleges.** In addition to the financial records that must be produced to comply with the requirements of WAC 458-16-165, a nonprofit school or college claiming exemption under this rule must annually submit a detailed summary containing the following information regarding the previous calendar year:

- (a) A list of all property that it claimed was exempt;
- (b) The purpose for which the property was used;
- (c) The income derived from the property;
- (d) The manner in which the income received was applied;
- (e) The number of students who attended the school or college;
- (f) The total income of the school or college and the sources from which it was derived; and
- (g) The purposes to which the total income of the school or college was applied including, but not limited to, all income received and expenditures made.

(6) **Exemption - property owned by a not-for-profit foundation that is leased to and used by an institution of higher education.** RCW 84.36.050 also provides a property tax exemption to real or personal property owned by a not-for-profit foundation that is established for the exclusive support of an institution of higher education, as defined in RCW 28B.10.016, if it is leased to and used by the institution exclusively for campus or college purposes and is principally designed to further the educational functions of the institution.

(a) An institution of higher education is defined in RCW 28B.10.016 as synonymous with "postsecondary institutions" and means the University of Washington, Washington State University, Western Washington University at Bellingham, Central Washington University at Ellensburg, Eastern Washington University at Cheney, The Evergreen State College, the community colleges, and the technical colleges.

(b) The exemption can only be obtained for property actively utilized by currently enrolled students.

(c) The benefit of the exemption must inure to the educational institution using the exempt property.

(7) **Additional requirements.** Any organization, association, corporation, or foundation that applies for a property tax exemption under this rule 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 under RCW 84.36-050.

[Statutory Authority: RCW 84.36.865, 84.36.040 and 84.36.050. 01-24-037, § 458-16-270, filed 11/28/01, effective 12/29/01. Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-270, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. 85-05-025 (Order PT 85-1), § 458-16-270, filed 2/15/85. Statutory Authority: RCW 84.36.389 and 84.36.865. 83-19-029 (Order PT 83-5), § 458-16-270, filed 9/14/83. Statutory Authority: RCW 84.36.865. 82-22-060 (Order PT 82-8), § 458-16-270, filed 11/2/82; 81-05-017 (Order PT 81-7), § 458-16-270, filed 2/11/81; Order PT 77-2, § 458-16-270, filed 5/23/77; Order PT 76-2, § 458-16-270, filed 4/7/76. Formerly WAC 458-12-230.]

**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 458-16-284 Fire companies. (1) Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.060 to fire companies.

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

(a) "Fire company" means any nonprofit organization, association, or corporation whose purpose is to extinguish or prevent fires in any city or town within the state of Washington.

(b) "Property" means real or personal property that is owned by a city, town, or nonprofit fire company.

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

(3) **Exemption.** The following property shall be exempt from property taxes if it is owned by a city, town, or nonprofit fire company located within a city or town:

(a) All fire engines and other equipment used to extinguish or fight fires;

(b) Buildings or other structures that are exclusively used, or to the extent that they are exclusively used, to store or to safeguard fire fighting equipment; and

(c) Buildings or other structures that are exclusively used, or to the extent they are exclusively used, for meetings of the fire company. If any portion of the fire company's property is used for a commercial rather than an exempt purpose that portion 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 84.36.060.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW, 94-07-008, § 458-16-284, filed 3/3/94, effective 4/3/94.]

(2005 Ed.)

**WAC 458-16-286 Humane societies. (1) Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.060 to humane societies.

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

(a) "Humane society" means a nonprofit organization, association, or corporation, the primary purpose of which is to prevent cruelty to animals, place unwanted animals in homes, provide other services relating to "lost and found" pets, and provide animal care education to the public, as well as sponsoring a neutering program to control the animal population.

(b) "Actual use" means that the property is currently being used by a humane society to provide services or care related to homeless animals or "lost and found" pets, or to prevent cruelty to animals within the state.

(c) "Property" means real or personal property that is owned and is actually used by a humane society.

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

(3) **Exemption.** Property that is owned and in actual use by a humane society shall be exempt from taxation. Any portion of this property that is not in actual use by the humane society or that is used for a commercial rather than an exempt purpose 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 84.36.060.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW, 94-07-008, § 458-16-286, filed 3/3/94, effective 4/3/94.]

**WAC 458-16-290 Nature conservancy lands. (1) Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.260 to a nonprofit corporation or association, primary purpose of which is to conduct or facilitate scientific research or to conserve natural resources or open space for the general public.

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

(a) "Cessation of use" means a nonprofit association or corporation that has an interest in, or a nonprofit association or corporation that exclusively used exempt real property, has ceased to physically use the property for a use exempt under the provisions of subsection (3) of this section. The term also refers to the situation where the property is no longer being used for an exempt use even though the owner intends to find or is pursuing an alternative exempt use for the property. "Cessation of use" also refers to property that has lost its exempt status because it was transferred, loaned, or rented to an entity that is not qualified to be exempt from ad valorem taxes.

(b) "Conservation futures" means rights in perpetuity to the future development of any open space land, farm and agricultural land, and timber land, so designated under the provisions of chapter 84.34 RCW and taxed at the current use assessment rate as provided by that chapter that are purchased or acquired (except by eminent domain) by a county, city,

town, municipal corporation, nonprofit historic preservation corporation, or nonprofit conservancy corporation or association.

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

(d) "Nonprofit conservancy corporation or association" means an organization that qualifies as being tax exempt under 29 U.S.C. Sec. 501 (c)(3) of the United States Internal Revenue Code as it existed on June 25, 1976, and that has as one of its principal purposes: The conducting or facilitating of scientific research; the conserving of natural resources, including but not limited to biological resources, for the general public; or the conserving of open spaces, including but not limited to wildlife or plant habitat to be utilized as public access areas, for the use and enjoyment of the general public.

(e) "Nonprofit historical preservation corporation" means an organization that qualifies as being tax exempt under 29 U.S.C. Sec. 501 (c)(3) of the United States Internal Revenue Code of 1954, as amended, and has as one of its principal purposes the conducting or facilitating of historic preservation activities within a state including, but not limited to, the conservation or preservation of historic sites, districts, buildings, and artifacts.

(f) "Person or company" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political unit or division of the state of Washington, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, and the United States and any instrumentality thereof.

(g) "Real property interests" means any interest in real property including, but not limited to, fee simple or a lesser ownership interest, developmental rights, easements, covenants, and conservation futures.

(h) "Rollback" refers to the provisions of RCW 84.36.-262 that make previously exempt property subject to back taxes and interest because of the cessation of an exempt use or a change in ownership.

(3) **Exemption.** All real property interests exclusively used to conserve ecological systems, natural resources, or open space, including park lands, by a nonprofit association or corporation whose primary purpose is to conduct or facilitate scientific research or to conserve natural resources or open space for the general public shall be exempt from ad valorem taxation if either of the following conditions is met:

(a) The property, to the extent feasible considering the nature of the interest involved, is:

(i) Used and effectively dedicated primarily to providing scientific research or educational opportunities to the general public or to preserving native plants, animals, biotic communities, works of ancient man, or geological or geographical formations of distinct scientific and educational interests;

(ii) Open to the general public for educational and scientific research purposes subject to reasonable restrictions designed to protect the property; and

(iii) Not for the pecuniary benefit of any person or company; or

(b) The property is subject to an option, which has been accepted in writing by any political unit or department of the federal, state, county, or city government, for purchase by the United States, a state, a county, or a city at a price not exceeding the lesser of the following amounts:

(i) The sum of the original purchase price paid by the nonprofit association or corporation plus interest from the date of acquisition at the rate of six percent per annum compounded annually to the date the option is exercised; or

(ii) The appraised value of the property interest, as determined by the department of revenue, at the time the option is accepted in writing.

(4) **Property used for recreational activities.** Property used merely for recreational activities does not qualify for an exemption under this section.

(5) **Application for exemption under this section.** A nonprofit association or corporation that wants to obtain the property tax exemption described in subsection (3) of this section must submit an application for exemption.

(a) No real property shall be exempt from taxation unless an application has been filed and exemption has been granted therefor.

(b) Prior to approval, the department of revenue must receive a copy of the application and, if the property is subject to an option for purchase, a copy of the option agreement and the written acceptance thereof.

(6) **Cessation of exempt use.** Upon cessation of the use that gave rise to the exemption set forth in subsection (3) of this section, the county treasurer shall collect all taxes that would have been paid if the property had not been exempt during the preceding ten years, or for the life of the exemption, whichever is less, plus interest computed at the same rate and in the same manner as that upon delinquent property taxes.

(a) Type of property affected. The provisions of this section apply to the cessation of use relating to exempt property:

(i) Used to provide scientific research or educational opportunities to the general public (RCW 84.36.260(1));

(ii) Used to preserve native plants, animals, biotic communities, works of ancient man, or geological or geographic formations of distinct scientific and educational interests (RCW 84.36.260(1)); or

(iii) Subject to an option for purchase by the United States, a state, a county, or a city (RCW 84.36.260(2)).

(b) Duty to notify.

(i) An owner of exempt property who knows of or who has information regarding a change in the use of exempt property shall notify the department of revenue of this change. An owner of exempt property must also report the loan or rental of all or a portion of the exempt property since loaning or renting this property may change the taxable status of exempt property.

(ii) Any other person who knows or has information regarding a change in use of exempt property shall notify the county assessor of any such change. The assessor, in turn, shall report this information to the department of revenue.

(iii) After being notified about a change in use of exempt property, the department may physically inspect the property to determine if the reported change has taken place.

(iv) After a change in use, the final determination of the taxable status of the subject property will be made by the department of revenue.

(c) Notice to owner. When it determines that a change in use has occurred, the department of revenue shall notify the current owner of exempt property and, in the case of a transfer, the previous legal owner of exempt property that the change in use may change the taxable status of the property and that the property may be subject to the rollback provisions set forth in subsection (6) of this section. The owner(s) of this property shall have thirty days from the date of the notice to submit any comments or information relevant to this change in use to the department. The department shall then issue a final determination about the taxable status of this property.

(d) County treasurer. Upon notification from the department of revenue that the exempt use of the property has ceased, the county treasurer shall compute the taxes payable, including interest computed at the same rate and in the same manner as that upon delinquent property taxes. The interest collected shall be placed in the county current expense fund.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-290, filed 3/3/94, effective 4/3/94; Order PT 77-2, § 458-16-290, filed 5/23/77; Order PT 76-2, § 458-16-290, filed 4/7/76. Formerly WAC 458-12-236.]

**WAC 458-16-300 Public meeting hall—Public meeting place—Community meeting hall. (1) Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.037 for real and personal property owned by a nonprofit organization, association, or corporation and used exclusively as a public meeting hall, public meeting place, or community meeting hall.

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

(a) "Inadvertent use or inadvertently used" means any unintentional or accidental use of exempt property by an individual, organization, association, or a corporation for pecuniary gain or to promote business activities through either carelessness, lack of attention, lack of knowledge, mistake, surprise, or neglect.

(b) "Public gathering" means any social function that the general public could, if invited, attend. For example, a public gathering includes, but is not limited to, a wedding, reception, funeral, reunion, or meeting of any organization, association, or corporation that is open to nonmembers. The term does not mean a meeting to which only members of a specific organization, association, or corporation are allowed to attend.

(c) "Maintenance and operation expenses" means items of expense allowed under generally accepted accounting principles to maintain and operate the loaned or rented portion of the exempt facility.

(d) "Owner" means a nonprofit organization, association, or corporation.

(e) "Property" means real or personal property owned by a nonprofit organization, association, or corporation.

(3) **Exemption.** Real and personal property owned by a nonprofit organization, association, or corporation and used exclusively as a public assembly hall, public meeting place,

or community meeting hall shall be exempt from taxation under the following conditions:

(a) Exclusive use. The property is used exclusively for public gatherings and is available to any individual, organization, association, or corporation that may desire to use the property. Membership in a particular organization, association, or corporation shall not be required to use the property.

(b) Exemption for real property - area. The area of real property exempt under this section shall not exceed one acre. This area shall include the building(s), the land under the building(s), and any additional area needed for parking.

(c) Statement of availability and fees required. The owner of the property shall prepare and make available upon request a schedule of fees, a policy on the availability of the facility, and any restrictions on the use of the facility. The owner may impose any conditions or restrictions reasonably necessary to safeguard the property and to comply with the purposes of this exemption.

(d) Annual summary required. The owner shall provide the department of revenue with a detailed summary containing the following information regarding the manner in which the exempt property was used during the preceding year:

(i) The name of any person, organization, association, or corporation that used the property;

(ii) The date(s) on which the property was used;

(iii) The purpose for which the property was used;

(iv) The income derived from the rental of the property; and

(v) The expenses incurred relating to the use of the property.

(e) Entities that schedule regular meetings. Any property owned by a nonprofit organization, association, or corporation that schedules regular meetings of its members or shareholders will also qualify for this exemption if:

(i) The owner meets the conditions set forth in (a) through (d) of this subsection;

(ii) The owner does not use the property more than twenty-five percent of the useable time; and

(iii) The facility is used an equal number or greater number of times for public gatherings than the number of times it is used by the owner for gatherings not open to the general public.

(f) Loan or rental of property. The tax exempt status of the property will not be affected if it is loaned or rented and the amount of rent or donations collected for the use, loan, or rental of the exempt property:

(i) Is reasonable; and

(ii) Does not exceed the maintenance and operation expenses that are created by the corresponding use, loan, or rental.

(g) Property not included within this exemption. Property that is used more than fifty percent of the time by a nonprofit organization, association, or corporation that allows only members to attend its activities does not qualify for this exemption.

(4) **Use of property for pecuniary gain or to promote business activities.** If a public meeting hall, public meeting place, or community meeting hall exempt under subsection (3) of this section is used for pecuniary gain or to promote business activities, the property tax exemption will be lost for the assessment year following the year in which the exempt

property is so used. However, the exemption will not be lost if:

(a) The exempt property is used for pecuniary gain or to promote business activities seven days or less in an assessment year; or

(b) In a county with less than ten thousand people, the exempt property is used to promote the following business activities: Dance lessons; art classes; or music lessons; or

(c) The exempt property is inadvertently used by an individual, organization, association, or a corporation for pecuniary gain or to promote business activities if the inadvertent use is not a pattern of use. A "pattern of use" is presumed when an inadvertent use of the property for pecuniary gain or to promote business activities is repeated within the same assessment year or within two or more successive assessment years.

(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 84.36.037.

[Statutory Authority: RCW 84.36.865, RCW 84.36.037, 84.36.805, 84.36.815, 84.36.825 and 84.36.840. 98-18-006, § 458-16-300, filed 8/20/98, effective 9/20/98. Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-300, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. 81-21-010 (Order PT 81-14), § 458-16-300, filed 10/8/81.]

#### **WAC 458-16-310 Community celebration facilities.**

(1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.037 for real and personal property owned by a nonprofit organization, association, or corporation and used primarily for annual community celebration events.

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

(a) "Inadvertent use or inadvertently used" means any unintentional or accidental use of exempt property by an individual, organization, association, or corporation for pecuniary gain or to promote business activities through either carelessness, lack of attention, lack of knowledge, mistake, surprise, or neglect.

(b) "Public gathering" means any social function that the general public could, if invited, attend. For example, a public gathering includes, but is not limited to, a wedding, reception, funeral, reunion, or meeting of any organization, association, or corporation that is open to nonmembers. The term does not mean a meeting to which only members of a specific organization, association, or corporation are allowed to attend.

(c) "Maintenance and operation expenses" means items of expense allowed under generally accepted accounting principles to maintain and operate the loaned or rented portion of the exempt facility.

(d) "Property" means real or personal property owned by a nonprofit organization, association, or corporation.

(3) **Exemption.** Real and personal property owned by a nonprofit organization, association, or corporation and used primarily for annual community celebration events shall be exempt from taxation under the following conditions:

(a) Exemption for real property - area. The area of real property to be exempt shall not exceed twenty-nine acres.

(b) Primary use. The property has been primarily used for annual community celebration events for at least ten years.

(c) Essentially unimproved property. The property is essentially unimproved except for restroom facilities and covered shelters. A "covered shelter," for example, may consist of a covered area that is unenclosed but allows some protection from the elements or it may provide a sheltered eating area with or without a picnic table or outside grill, or both.

(d) Purpose. The purpose of the property is to provide a facility for an annual community celebration.

(e) Statement of availability and fees required. The owner of the property shall prepare and make available upon request a schedule of fees, a policy on the availability of the facility, and any restrictions on the use of the facility. The owner may impose conditions and restrictions that are reasonably necessary to safeguard the property and to promote the purposes of this exemption.

(f) Annual summary required. The owner shall annually provide the department of revenue with a detailed summary containing the following information regarding the manner in which the exempt property was used during the preceding year:

(i) The name of any person, organization, association, or corporation that used the property;

(ii) The date(s) on which the property was used;

(iii) The purpose for which the property was used;

(iv) The income derived from the rental of the property; and

(v) The expenses incurred relating to the use of the property.

(g) Loan or rental of property. The tax exempt status of the property will not be affected if it is loaned or rented and the amount of rent or donations collected for the use, loan, or rental of the exempt property:

(i) Is reasonable; and

(ii) Does not exceed the maintenance and operation expenses that are created by the corresponding use, loan, or rental.

(4) **Use of property for pecuniary gain or to promote business activities.** If a community celebration facility exempt under subsection (3) of this section is used for pecuniary gain or to promote business activities, the property tax exemption will be lost for the assessment year following the year in which the exempt property is so used. However, the exemption will not be lost if:

(a) The exempt property is used for pecuniary gain or to promote business activities seven days or less in an assessment year; or

(b) In a county with less than ten thousand people, the exempt property is used to promote the following business activities: Dance lessons; art classes; or music lessons; or

(c) The exempt property is inadvertently used by an individual, organization, association, or a corporation for pecuniary gain or to promote business activities if the inadvertent use is not a pattern of use. A "pattern of use" is presumed when an inadvertent use of the property for pecuniary gain or to promote business activities is repeated within the same

assessment year or within two or more successive assessment years.

(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 84.36.037.

[Statutory Authority: RCW 84.36.865, 84.36.037, 84.36.805, 84.36.815, 84.36.825 and 84.36.840. 98-18-006, § 458-16-310, filed 8/20/98, effective 9/20/98. Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-310, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. 81-21-010 (Order PT 81-14), § 458-16-310, 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.]

**WAC 458-16-330 Sheltered workshops for the handicapped.** (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.350 to real and personal property owned by a nonprofit organization, association, or corporation and used in operating a sheltered workshop for handicapped persons.

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

(a) "Handicapped person" means an individual who is physically, mentally, or developmentally disabled. For purposes of this section, a substance, either drug or alcohol, abuser is considered physically disabled.

(b) "Sheltered workshop" means a facility, or any portion thereof, operated by a nonprofit organization, association, or corporation where business activities are carried on and whose primary purpose is:

(i) To provide gainful employment or rehabilitative services to the handicapped as an interim step in the rehabilitation process to individuals who cannot be readily absorbed into the competitive labor market or during such time as employment opportunities for them in the competitive labor market do not exist; or

(ii) To provide evaluation and work adjustment services to handicapped individuals.

(c) "Property" means real or personal property owned and used by a nonprofit organization, association, or corporation in operating a sheltered workshop for handicapped persons.

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

(3) **Exemption.** The real or personal property owned and used by a nonprofit organization, association, or corporation in connection with the operation of a sheltered workshop for handicapped persons and used primarily to manufacture and handle, sell, or distribute goods constructed, processed, or repaired in a sheltered workshop is exempt from ad valorem taxation.

(a) Inventory owned by a sheltered workshop is also exempt from taxation if the inventory is for sale or lease by the sheltered workshop or the inventory is to be furnished under a contract of service. For example, "inventory" includes, but is not limited to, raw materials, work in process, and finished products.

(b) The primary use of any property exempt under this section must be to provide training, gainful employment, or rehabilitation services to persons who meet the definition of "handicapped person" contained in subsection (2) of this section.

(c) Example. A sheltered workshop that teaches trade skills and work habits to the blind so that trainees might enter the competitive labor market may qualify for this exemption. This workshop may also qualify if it provides training in recreational activities and living skills, such as housekeeping and cooking.

(d) 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) **Cross reference to excise tax exemption.** A nonprofit organization, association, or corporation that receives a property exemption under RCW 84.36.350 may also be exempt from certain excise taxes. See RCW 82.04.385 for more specific information.

(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 that explains the additional conditions and requirements necessary to obtain a property tax exemption pursuant to RCW 84.36.350.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW, 94-07-008, § 458-16-330, filed 3/3/94, effective 4/3/94.]

**WAC 458-16-560 Housing for very low-income households. (1) Introduction.** This rule explains the exemption that may be claimed by nonprofit entities providing rental housing or lots for mobile homes within a mobile home park for occupancy by a very low-income household in accordance with RCW 84.36.560.

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

(a) "CTED" means the state department of community, trade, and economic development or its successor agency;

(b) "Department" means the state department of revenue;

(c) "Group home" means a single-family dwelling financed, in whole or in part, by the state department of community, trade, and economic development or by an affordable housing levy under RCW 84.52.105. A "group home" has multiple units occupied on a twenty-four-hour basis by persons who are not related by birth or marriage and who are not dependent upon each other financially. Residents of a "group home" typically receive financial assistance from the federal or state government, such as Social Security benefits or supplementary security insurance;

(d) "Mobile home lot" or "mobile home park" means the same as these terms are defined in RCW 59.20.030;

(e) "Occupied dwelling unit" means a living unit that is occupied by an individual or household as of December 31st of the first assessment year the rental housing or mobile home

park becomes operational or is occupied by an individual or household on January 1st of each subsequent assessment year in which the claim for exemption is submitted;

(f) "Rental housing" means a residential housing facility or group home that is occupied, but not owned, by very low-income households;

(g) "Very low-income household" means a single person, family, or unrelated persons living together whose income is at or below fifty percent of the median income adjusted for family size as most recently determined by the federal department of housing and urban development for the county in which the rental housing or mobile home park is located. The median income level is that which is in effect as of January 1st of the year the application for exemption is submitted; and

(h) "Nonprofit entity" means a:

(i) Nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal Internal Revenue Code, as amended;

(ii) Limited partnership in which a general partner is a nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal Internal Revenue Code, as amended, a public corporation established under RCW 35.21.660, 35.21.670, or 35.21.730, a housing authority created under RCW 35.82.030 or 35.82.300, or a housing authority meeting the definition in RCW 35.82.210 (2)(a); or

(iii) Limited liability company in which a managing member is a nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal Internal Revenue Code, as amended, a public corporation established under RCW 35.21.660, 35.21.670, or 35.21.730, a housing authority established under RCW 35.82.030 or 35.82.300, or a housing authority meeting the definition in RCW 35.82.210 (2)(a).

(3) **Total exemption - Requirements for rental housing or lot(s) for a mobile home.** Real and personal property is exempt from all property taxes if:

(a) The property is owned or used by a nonprofit entity in providing rental housing for very low-income households or used to provide a lot of land upon which a mobile home for a very low-income household will be placed in a mobile home park;

(b) The benefit of the exemption is received by the nonprofit entity. That is, if the property is leased to or used by, but not owned by, a nonprofit entity, the reduction in property taxes due to the exemption is passed on to the nonprofit user either through a reduction in rent, reimbursement of rent, or property tax paid;

(c) At least seventy-five percent of the occupied dwelling units in the rental housing or lots in the mobile home park are occupied by very low-income households; and

(d) The rental housing or lots in the mobile home park are insured, financed, or assisted, in whole or in part, through:

(i) A federal or state housing program administered by CTED; or

(ii) An affordable housing levy authorized under RCW 84.52.105.

(4) **Partial exemption - Determination of the amount of exemption.** If less than seventy-five percent of the occupied dwelling units within the rental housing or lots in the

mobile home park are occupied by very low-income households, the rental housing or mobile home park is eligible for a partial exemption on the real property and a total exemption on the housing's or park's personal property. The property must be owned or used by a nonprofit entity in providing rental housing for very low-income households or used to provide a lot upon which a mobile home for a very low-income household will be placed in a mobile home park.

(a) A partial exemption will be allowed for each dwelling unit in the rental housing or for each lot in the mobile home park occupied by a very low-income household; and

(b) The amount of the real property exemption will be calculated by multiplying the assessed value of the property reasonably necessary to provide the rental housing or to operate the mobile home park by a fraction. The formula for determining the fraction is as follows:

(i) The numerator of the fraction is the number of dwelling units or lots occupied by very low-income households as of December 31st of the first assessment year in which the rental housing facility or mobile home park becomes operational or on January 1st of each subsequent assessment year in which the claim for exemption is submitted; and

(ii) The denominator of the fraction is the total number of dwelling units or lots occupied as of December 31st of the first assessment year in which the rental housing facility or mobile home park becomes operational or on January 1st of each subsequent assessment year in which the claim for exemption is submitted.

**(5) Exempt facility with *only* three or less units or mobile home park with *only* three or less lots with vacancy on January 1st - Size of exemption.** If the rental housing or mobile home park is comprised of *only* three or less dwelling units or lots and there are any unoccupied dwelling units or lots on January 1st after receipt of a property tax exemption, the department will determine the size of the exemption based on the number of occupied dwelling units or lots on May 1st of the assessment year in which a claim for exemption is submitted. For example, if one-half of an exempt duplex is vacant on January 1st, which is the duplex's third year of operation, the department will determine the size of the exemption based on the number of occupied units on May 1st of that assessment year.

**(6) Facilities with ten or less units or mobile home parks with ten or less lots - Allowance for income growth.** Because the occupants of rental housing and mobile home parks granted an exemption under RCW 84.36.560 are generally attempting to improve their financial situation, the income of the household is likely to fluctuate during the time they occupy the housing unit or lot in the mobile home park.

(a) In an attempt to assist these households in improving their circumstances, the exemption will continue for specific rental units or mobile home lots when the household's income rises above fifty percent of median income under the following conditions:

(i) The currently exempt rental housing unit in a facility with ten units or fewer or mobile home lot in a mobile home park with ten lots or fewer was occupied by a very low-income household at the time the exemption was granted;

(ii) The household's income rises above fifty percent of the median income but remains at or below eighty percent of median income adjusted for family size as most recently

determined by the federal Department of Housing and Urban Development for the county in which the rental housing or mobile home park is located; and

(iii) The rental housing or mobile home park continues to meet the certification requirements of a very low-income housing program administered by CTED or the affordable housing levy under RCW 84.52.105; and

(b) If a dwelling unit or mobile home lot receiving an exemption under this exception becomes vacant and is subsequently rented, the income of the household moving into the unit or onto the mobile home lot must be at or below fifty percent of the median income adjusted for family size as most recently determined by the federal Department of Housing and Urban Development for the county in which the rental housing or mobile home park is located to remain exempt from property tax.

(c) Example. If a unit is occupied by a household whose income rises up to sixty percent of median income, the unit will retain its exempt status as long as the household continues to occupy the unit and the household's income remains below eighty percent of median income. If the residents of this unit move out on June 1st and the unit is subsequently rented to a household whose income is at or below fifty percent of median income, the unit will retain its exempt status. Conversely, if the unit is rented to a household whose income is above fifty percent of median income, the unit becomes ineligible for exemption as of January 1st of the following year.

**(7) Group homes - Income of residents.** The income of the individual residents of a group home, as defined in subsection (2) of this rule, will not be combined so as to constitute the income of a single household. Each resident will be considered an independent household occupying a separate dwelling unit. In other words, the income of the residents of a group home will not be aggregated when the department determines the size of the exemption the group home is entitled to receive. For example, if there are six residents in a group home, the department will process the application for exemption as if there were six separate dwelling units and determine the size of the exemption on that basis. If three of the residents have income at or below fifty percent of median income, the home will receive a fifty percent reduction in the property taxes due on the home.

**(8) Eligibility of property unoccupied at the time of initial application or at any time after the exemption is granted.** Property that is unoccupied at the time of application or on January 1 of any subsequent year is still eligible for exemption if certain conditions are met. If the property is currently taxable, it may receive exempt status as of the assessment year in which the claim for exemption is submitted. If the property is currently exempt but the exempt use will cease or will be reduced because of renovations or repairs, the exempt status of the property may be continued for taxes payable the next year. The following conditions must be satisfied to receive an exemption under either of these circumstances:

(a) The rental housing or mobile home park will be used for the exempt purpose stated in RCW 84.36.560 within two assessment years;

(b) The nonprofit entity applying for or receiving the exemption has obtained a commitment for financing, in whole or in part, to acquire, construct, remodel, renovate, or

otherwise convert the property to provide housing for very low-income households from:

- (i) A federal or state housing program administered by CTED; or
- (ii) An affordable housing levy authorized under RCW 84.52.105;
- (c) The nonprofit entity has manifested its intent in writing to construct, remodel, renovate, or otherwise convert the rental housing or mobile home park to housing for very low-income households; and
- (d) If less than the entire facility or mobile home park will be used to provide rental housing or mobile home lots for very low-income households, only that portion that will be so used is entitled to an exemption under this subsection.

(9) **Exclusive use required.** To be exempt under RCW 84.36.560, the property must be exclusively used to provide rental housing or mobile home lots for very low-income households, except as provided in RCW 84.36.805.

(10) **Payments in-lieu of property tax will be accepted.** Any nonprofit entity that qualifies for a property tax exemption under RCW 84.36.560 may agree to make payments to the city, county, or other political subdivision for the improvements, services, and facilities furnished by the city, county, or political subdivision for the benefit of the exempt rental housing facility or mobile home lots. However, these payments may not exceed the amount of property tax last levied as the annual tax by the city, county, or political subdivision upon the property prior to the time the exemption was effective.

[Statutory Authority: RCW 84.36.865 and 84.36.560. 02-15-020, § 458-16-560, filed 7/8/02, effective 8/8/02.]

**Chapter 458-16A WAC**

**PROPERTY TAX—EXEMPTIONS—HOMES FOR THE AGING, SENIOR CITIZENS AND DISABLED PERSONS**

**WAC**

458-16A-010	Nonprofit homes for the aging.
458-16A-020	Nonprofit homes for the aging—Initial application and annual renewal.
458-16A-100	Senior citizen and disabled person exemption—Definitions.
458-16A-110	Senior citizen and disabled person exemption—Gross income.
458-16A-115	Senior citizen and disabled person exemption—Adjusted gross income.
458-16A-120	Senior citizen and disabled person exemption—Determining combined disposable income.
458-16A-130	Senior citizen and disabled person exemption—Qualifications for exemption.
458-16A-135	Senior citizen and disabled person exemption—Application procedures.
458-16A-140	Senior citizen and disabled person exemption—Exemption described—Exemption granted—Exemption denied—Freezing property values.
458-16A-150	Senior citizen and disabled person exemption—Requirements for keeping the exemption.

**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 the person's 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 the person's 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 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 their principal place of residence as of December 31st of the assessment year the home first became operational or in each subsequent year, occupied the dwelling unit as their principal place of residence as of January 1st of the assessment year. If an 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, the dwelling will still be considered occupied by the eligible resident;

(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) "First assessment year the home becomes operational" or "the assessment year the home first became operational" means the first year the home becomes occupied by and provides services to eligible residents. Depending upon the facts, this year will be the year during which construction of the home is completed or the year during which a nonprofit organization purchases or acquires an existing home and begins to operate it as a nonprofit home for the aging.

(l) "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.

(m) "HUD" means the federal Department of Housing and Urban Development.

(n) "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.

(o) "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.

(p) "Occupied dwelling unit" means a living unit that is occupied either on January 1st of the year for which the application for exemption is made or on December 31st of the assessment year the home first becomes operational and for which application for exemption is made.

(q) "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.

(r) "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.

(s) "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 can 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.

(t) "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.

(u) "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.

(v) "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.

(w) "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 to 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. In this situation, 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	<b>10%</b> of total units set-aside for residents at or below 80% of local median income <b>and 10%</b> of total units set-aside for residents at or below 50% of local median income
Acquisition or Refinancing of dwelling units <b>currently satisfying</b> 10% and 10% set-aside requirements	Complete & Separate units	<b>10%</b> of total units set-aside for residents at or below 80% of local median income <b>and 10%</b> of total units set-aside for residents at or below 50% of local median income
Acquisition or Refinancing of dwelling units <b>not currently satisfying</b> 10% and 10% set-aside requirements	Complete & Separate units	<b>20%</b> of total units set-aside for residents at or below 50% of local median income <b>or 40%</b> of total units set-aside for residents at or below 60% of local median income
Acquisition, New Construction, Refinancing, or Rehabilitation	Shared units	<b>10%</b> of total units set-aside for residents at or below 80% of local median income <b>and 10%</b> 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	<b>10%</b> of total units set-aside for residents at or below 80% of local median income <b>and 15%</b> of total units set-aside for residents at or below 100% of local median income
Acquisition or Refinancing of dwelling units <b>currently satisfying</b> 10% and 15% set-aside requirements	<b>10%</b> of total units set-aside for residents at or below 80% of local median income <b>and 15%</b> of total units set-aside for residents at or below 100% of local median income
Acquisition or Refinancing of dwelling units <b>not currently satisfying</b> 10% and 15% set-aside requirements	<b>20%</b> of total units set-aside for residents at or below 50% of local median income <b>or 40%</b> 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	<b>10%</b> of total units set-aside for residents at or below 80% of local median income <b>and 10%</b> of total units set-aside for residents at or below 100% of local median income

PURPOSE OF BOND FINANCING	SET-ASIDE REQUIREMENTS
Acquisition or Refinancing of dwelling units <b>currently satisfying</b> 10% and 10% set-aside requirements	<b>10%</b> of total units set-aside for residents at or below 80% of local median income <b>and</b> <b>10%</b> of total units set-aside for residents at or below 100% of local median income
Acquisition or Refinancing of dwelling units <b>not currently satisfying</b> 10% and 10% set-aside requirements	<b>20%</b> of total units set-aside for residents at or below 50% of local median income <b>or</b> <b>40%</b> 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 the resident 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 assistance with daily dressing, bathing, and personal hygiene, weekly housekeeping chores, and daily meal preparation, the person 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 the person resides.

(ii) If the resident of a CCRC only requires someone to clean the 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 nursing 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 and denominator of the fraction will vary depending on the first assessment year the home became operational and occupied by eligible residents.

(i) Numerator. If the home becomes operational after the January 1st assessment date, the numerator is the number of dwelling units occupied by eligible residents and by residents requiring assistance with activities of daily living on December 31st. The December 31st date will be used only in the first year of operation. In any other assessment year, the numerator 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.

(ii) Denominator. If the home becomes operational after the January 1st assessment date, the denominator is the number of dwelling units occupied on December 31st. The December 31st date will be used only in the first assessment year the home becomes operational. In any other assessment year, the denominator is the total number of occupied dwelling units as of January 1st of the assessment year.

(iii) 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. If the home becomes operational after the January 1st assessment date, these forms must be submitted to the assessor as soon as they are available but no later than December 31st of that assessment year.

(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, the resident 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 procedures 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. 00-09-086, § 458-16A-010, filed 4/18/00, effective 5/19/00; 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.]

**WAC 458-16A-020 Nonprofit homes for the aging—  
Initial application and annual renewal. (1) Introduction.**

This section explains the initial application process that must be followed when a home for the aging wishes to obtain a property tax exemption under RCW 84.36.041. This section also describes the annual renewal requirements that a home must follow to retain its tax exempt status, as well as the role of the assessor's office and the department of revenue in administering this exemption. 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.

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

(a) "Assessor" means the county assessor or any agency or person who is duly authorized to act on behalf of the assessor.

(b) "Combined disposable income" means the disposable income of the person submitting the income verification form, plus the disposable income of the person's 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 the person's 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 by reason 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.

(c) "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.

(d) "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.

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

(f) "Department" means the department of revenue.

(g) "Eligible resident" means a person who:

(i) Occupied the dwelling unit as their principal place of residence as of December 31st of the assessment year the home first became operational or in each subsequent year, occupied the dwelling unit as their principal place of residence as of January 1st of the assessment year. If an 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, the dwelling will still be considered occupied by the eligible resident;

(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 federal Department of Housing and Urban Development (HUD) for the county in which the person resides.

(h) "First assessment year the home becomes operational" or "the assessment year the home first became operational" means the first year the home becomes occupied by and provides services to eligible residents. Depending upon the facts, this year will be the year during which construction of the home is completed or the year during which a nonprofit organization purchases or acquires an existing home and begins to operate it as a nonprofit home for the aging.

(i) "Homes for the aging" or "home(s)" 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.

(j) "HUD" means the federal Department of Housing and Urban Development.

(k) "Occupied dwelling unit" means a living unit that is occupied either on January 1st of the year in which the claim for exemption is filed or on December 31st of the first assessment year the home becomes operational and in which the claim for exemption is filed.

(l) "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.

(3) **Application for exemption.** The tax exemption authorized by RCW 84.36.041 is claimed by and benefits a nonprofit home for the aging, not the residents of the home. Therefore, the claim for this exemption is submitted by a home to the department.

(a) If a claim for exemption is filed on behalf of a home under RCW 84.36.041 and the exemption is granted, no resident of that home may receive a personal exemption under RCW 84.36.381.

(b) A listing of the varying levels of care and supervision provided or coordinated by the home must accompany all initial applications submitted for exemption. Examples of the varying levels of care and supervision include, but are not limited to, the following:

(i) Conducting routine room checks;

(ii) Arranging for or providing transportation;

(iii) Arranging for or providing meals;

(iv) On-site medical personnel;

(v) Monitoring of medication; or

(vi) Housekeeping services.

(c) Homes having real property that is used for purposes other than as a home (for example, property used for a barber shop) must provide the department with a floor plan identify-

ing the square footage devoted to each exempt and nonexempt use.

(d) At the time an application for exemption is submitted, the home must submit proof that it is recognized by the Internal Revenue Service as a 501(c) organization.

(e) Homes that apply for a total exemption because of tax exempt bond financing must submit a copy of the regulatory agreement between the home and the entity that issues the bonds. When only a portion of the home is financed by a program using tax exempt bonds, the home must submit a site plan of the home indicating the areas so financed.

(4) **Segregation.** A nonprofit organization that provides shelter and services to elderly and disabled individuals may use the facility for more than one purpose that is exempt from property tax under chapter 84.36 RCW. Property that is used for more than one exempt purpose and that qualifies for exemption under a statute other than RCW 84.36.041 will be segregated and exempted pursuant to the applicable statute.

(a) If a home includes a nursing home, the department will segregate the home and the part of the facility that is used as a nursing home. The department will separately determine the eligibility of the home under RCW 84.36.041 and the nursing home under RCW 84.36.040 for the property tax exemption available under each statute.

Exception: If the home does not receive Medicaid funds (including CCRCs that are permitted to receive Medicaid funds during an initial transition period only) and is seeking a total exemption because of tax exempt bond financing, the home and nursing home will be considered as a whole when the set-aside requirements are applied.

(b) Dwelling units that are occupied by residents who do not meet the age or disability requirements of RCW 84.36.-041 will be segregated and taxed.

(c) 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 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 nursing 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.

(5) **Homes subsidized by HUD.** Homes subsidized by a HUD program must initially and each March 31st thereafter provide the department with a letter of certification from HUD of continued HUD subsidy and a list of the name, age, and/or disability of all residents. If the property is subsidized by more than one HUD contract and one of the contracts expires or is otherwise no longer in effect, the eligibility of the portion of the facility still subsidized by HUD will be conditioned on receipt of a letter of certification from HUD

and a listing of all persons residing on the property. The eligibility of the remainder of the property will be determined by the number of dwelling units occupied by eligible residents on January 1st following the expiration or cancellation of the HUD subsidy.

(6) **Homes that are not subsidized by HUD.** If a home is not subsidized by HUD or does not meet the requirements to receive a total exemption because of tax exempt bond financing, it may receive a total or partial exemption from property tax. The extent of the exemption will be determined by the number of dwelling units occupied by eligible residents. If more than fifty percent of the dwelling units are occupied by eligible residents, the home may receive a total exemption. Alternatively, if less than fifty percent of the dwelling units are occupied by eligible residents, the home may receive partial exemption for its real property on a unit by unit basis and a total exemption for its personal property. An income verification form will be used to determine if a resident of a home meets the criteria of "eligible resident." During the initial application process, the residents of a home applying for exemption will be asked to submit an income verification form with the assessor of the county in which the home is located and the assessor and/or the department may request any relevant information deemed necessary to make a determination.

(a) The type of income verification form required and its due date depends upon the date the home first became operational and began to provide services to eligible residents:

(i) If the home was operating and providing services to eligible residents on the January 1st assessment date, the residents are to submit Form REV 64-0043 between January 1st and July 1st of the year preceding the year in which the tax is due; or

(ii) If the home started operating and providing services to eligible residents after the January 1st assessment date, the residents are to submit Form REV 64-0042 on or before December 31st of the year preceding the year in which the tax is due. In this situation, no income verification forms will be required during the following year if the same eligible residents occupy the same dwelling units on December 31st and January 1st of the subsequent year.

(b) If two or more residents occupy one unit, only one cotenant is required to file verification of combined disposable income, as defined in subsection (2) of this section, with the assessor.

(c) Form REV 64-0043 will not be accepted by the assessor if it is submitted or postmarked after July 1st unless the assessor and/or the department has agreed to waive this deadline. Form REV 64-0042 will not be accepted if it is submitted or postmarked after December 31st unless the assessor and/or department agrees to waive this deadline.

(d) After the application for exemption is approved, residents will not be required to file a new income verification form unless a change in their circumstances occurs or the assessor requests it. However, at any time after the initial application is approved, assessors and/or the department may:

- (i) Request residents to complete Form REV 64-0043;
- (ii) Conduct audits; and
- (iii) Request other relevant information to ensure continued eligibility.

(e) By March 31st each year, a home not subsidized by HUD that wishes to retain its exempt property tax status must file with the department a list of the total number of dwelling units in its complex, the number of occupied dwelling units in its complex as of January 1st, the number of previously qualified dwelling units in its complex that are no longer occupied by the same eligible residents, and a list of the name, age, and/or disability of all residents and the date upon which they moved into or occupied the home. If a home's eligibility was based upon the number of units occupied on December 31st, the home must only provide the department with an amended list of additions or deletions as of the subsequent January 1st assessment date.

(7) **Homes financed by tax exempt bonds.** Homes that receive a total property tax exemption because of tax exempt bond financing must initially and each March 31st thereafter provide the department with a letter of certification from the agency or organization monitoring compliance with the bond requirements. The letter of certification must verify that the home is in full compliance with all requirements and set-asides of the underlying regulatory agreement.

(a) If the set-aside requirements contained in the regulatory agreement differ from the set-aside requirements established by the department and set forth in WAC 458-16A-010, the department may require the residents of the home to submit income verification forms (Form REV 64-0042 or 64-0043) to the assessor of the county in which the home is located.

(b) A home for the aging that is receiving a property tax exemption must annually submit a list of the name, age, and/or disability of all residents in the home to the department.

(8) **Assessor's responsibilities.** Assessors will determine the age or disability and income eligibility of all residents who file Form REV 64-0042 or 64-0043, the income verification forms. By July 15th each year or by January 15th of the assessment year following the first assessment year a home becomes operational, the assessor will forward a copy of Form REV 64-0042 or 64-0043 to the department for each resident who meets the eligibility requirements.

(9) **Appeals.** An applicant who is determined not to be an "eligible resident" by the assessor and a home that is denied a property tax exemption by the department each have the right to appeal. Appeals must be filed within thirty days of the date the notice of ineligibility or denial was mailed by the assessor or the department.

(a) If the assessor determines that an applicant does not meet the definition of an "eligible resident," the resident may appeal this decision to the board of equalization of the county in which the home is located.

(b) If the department denies, in whole or in part, an application for exemption, the home may appeal this denial to the state board of tax appeals.

(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-010 and 458-16-165. WAC 458-16A-010 contains information regarding the basic eligibility requirements to receive a total or partial exemption under RCW 84.36.041. 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. 00-09-086, § 458-16A-020, filed 4/18/00, effective 5/19/00. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.36.041. 95-06-042, § 458-16A-020, filed 2/24/95, effective 3/27/95.]

**WAC 458-16A-100 Senior citizen and disabled person exemption—Definitions.** (1) **Introduction.** This rule contains definitions of the terms used for the senior citizen and disabled person exemption from property taxes. The definitions apply to the senior citizen and disabled person exemption contained in sections RCW 84.36.381 through 84.36.389 unless the context clearly requires otherwise.

(2) **Annuity.** "Annuity" means a series of payments under a contract. Annuity contracts pay a fixed sum of money at regular intervals for more than one full year. An annuity may be paid as the proceeds of a life insurance contract (other than as a lump sum payment), unemployment compensation, disability payments, or even welfare receipts. It does not include payments for the care of dependent children.

(3) **Assessment year.** "Assessment year" means the year when the assessor lists and values the principal residence for property taxes. The assessment year is the calendar year prior to the year the taxes become due and payable. It is always the year before the claimant receives a reduction in his or her property taxes because of the senior citizen and disabled person exemption.

(4) **Capital gain.** "Capital gain" means the amount the seller receives for property (other than inventory) over that seller's adjusted basis in the property. The seller's initial basis in the property is the property's cost plus taxes, freight charges, and installation fees. In determining the capital gain, the seller's costs of transferring the property to a new owner are also added onto the adjusted basis of the property. If the property is acquired in some other manner than by purchase, the seller's initial basis in the property is determined by the way the seller received the property (e.g., property exchange, payment for services, gift, or inheritance). The seller adjusts (increases and decreases) the initial basis of the property for events occurring between the time the property is acquired and when it is sold (e.g., increased by the cost of improvements made later to the property).

(5) **Claimant.** "Claimant" means a person claiming the senior citizen and disabled person exemption by filing an application with the county assessor in the county where the property is located.

(6) **Combined disposable income.** "Combined disposable income" means the annual disposable income of the claimant, the claimant's spouse, and any cotenant reduced by amounts paid by the claimant or the claimant's spouse for their:

- (a) Legally prescribed drugs;
- (b) Home health care; and
- (c) Nursing home expenses.

Disposable income is not reduced by these amounts if payments are reimbursed by insurance or a government program (e.g., Medicare or Medicaid). When the application is made, the combined disposable income is calculated for the assessment year.

(7) **Cotenant.** "Cotenant" means a person who resides with the claimant and who has an ownership interest in the residence.

(8) **Department.** "Department" means the state department of revenue.

(9) **Depreciation.** "Depreciation" means the annual deduction allowed to recover the cost of business or investment property having a useful life of more than one year. In limited circumstances, this cost, or a part of this cost, may be taken as a section 179 expense on the federal income tax return in the year business property is purchased.

(10) **Disposable income.** "Disposable income" means the adjusted gross income as defined in the Federal Internal Revenue Code of 2001, and as amended after that date, plus all the other items described below to the extent they are not included in or have been deducted from adjusted gross income. (RCW 84.36.383)

(a) Capital gains, other than gain excluded from the sale of a principal residence that is reinvested prior to the sale or within the same calendar year in a different principal residence;

(b) Losses. Amounts deducted for loss;

(c) Depreciation. Amounts deducted for depreciation;

(d) Pension and annuity receipts;

(e) Military pay and benefits other than attendant-care and medical-aid payments. Attendant-care and medical-aid payments are any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the military;

(f) Veterans benefits other than attendant-care and medical-aid payments. Attendant-care and medical-aid payments are any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the Department of Veterans Affairs (VA);

(g) Federal Social Security Act and railroad retirement benefits;

(h) Dividend receipts;

(i) Interest received on state and municipal bonds.

(11) **Excess levies.** "Excess levies" means voter-approved levies by taxing districts, other than port or public utility districts, of additional taxes in excess of the statutory aggregate dollar rate limit, the statutory dollar rate limit, or the constitutional one percent levy limit. It does not include regular levies allowed to exceed a statutory limit with voter approval or voted regular levies.

(12) **Excluded military pay or benefits.** "Excluded military pay or benefits" means military pay or benefits excluded from a person's federal gross income, other than those amounts excluded from that person's federal gross income for attendant-care and medical-aid payments. Members of the armed forces receive many different types of pay and allowances. Some payments or allowances are included in their gross income for the federal income tax while others are excluded from their gross income. Excluded military pay or benefits include:

(a) Compensation for active service while in a combat zone or a qualified hazardous duty area;

(b) Death allowances for burial services, gratuity payment to a survivor, or travel of dependents to the burial site;

(c) Moving allowances;

(d) Travel allowances;

(e) Uniform allowances;

(f) Group term life insurance payments made by the military on behalf of the claimant, the claimant's spouse, or the cotenant; and

(g) Survivor and retirement protection plan premiums paid by the military on behalf of the claimant, the claimant's spouse, or the cotenant.

(13) **Family dwelling unit.** "Family dwelling unit" means the dwelling unit occupied by a single person, any number of related persons, or a group not exceeding a total of eight related and unrelated nontransient persons living as a single noncommercial housekeeping unit. The term does not include a boarding or rooming house.

(14) **Home health care.** "Home health care" means the treatment or care of either the claimant or the claimant's spouse received in the home. It must be similar to the type of care provided in the normal course of treatment or care in a nursing home, although the person providing the home health care services need not be specially licensed. The treatment and care must meet at least one of the following criteria. It must be for:

(a) Medical treatment or care received in the home;

(b) Physical therapy received in the home;

(c) Food, oxygen, lawful substances taken internally or applied externally, necessary medical supplies, or special needs furniture or equipment (such as wheel chairs, hospital beds, or therapy equipment), brought into the home as part of a necessary or appropriate in-home service that is being rendered (such as a meals on wheels type program); or

(d) Attendant care to assist the claimant, or the claimant's spouse, with household tasks, and such personal care tasks as meal preparation, eating, dressing, personal hygiene, specialized body care, transfer, positioning, ambulation, bathing, toileting, self-medication a person provides for himself or herself, or such other tasks as may be necessary to maintain a person in his or her own home, but shall not include improvements or repair of the home itself.

(15) **Lease for life.** "Lease for life" means a lease that terminates upon the demise of the lessee.

(16) **Legally prescribed drugs.** "Legally prescribed drugs" means drugs supplied by prescription of a medical practitioner authorized to issue prescriptions by the laws of this state or another jurisdiction.

(17) **Life estate.** "Life estate" means an estate whose duration is limited to the life of the party holding it or of some other person.

(a) Reservation of a life estate upon a principal residence placed in trust or transferred to another is a life estate.

(b) Beneficial interest in a trust is considered a life estate for the settlor of a revocable or irrevocable trust who grants to himself or herself the beneficial interest directly in his or her principal residence, or the part of the trust containing his or her personal residence, for at least the period of his or her life.

(c) Beneficial interest in an irrevocable trust is considered a life estate, or a lease for life, for the beneficiary who is granted the beneficial interest representing his or her principal residence held in an irrevocable trust, if the beneficial interest is granted under the trust instrument for a period that is not less than the beneficiary's life.

(18) **Owned.** "Owned" includes "contract purchase" as well as "in fee," a "life estate," and any "lease for life." A res-

idence owned by a marital community or owned by cotenants is deemed to be owned by each spouse or cotenant.

(19) **Ownership by a marital community.** "Ownership by a marital community" means property owned in common by both spouses. Property held in separate ownership by one spouse is not owned by the marital community. The person claiming the exemption must own the property for which the exemption is claimed. Example: A person qualifying for the exemption by virtue of age or disability cannot claim exemption on a residence owned by the person's spouse as a separate estate outside the marital community unless the claimant has a life estate therein.

(20) **Pension.** "Pension" means an agreement to provide for payments, not wages, to a person (or to that person's family) who has fulfilled certain conditions of service or reached a certain age. A pension may allow payment of all or a part of the entire pension benefit, in lieu of regular periodic payments.

(21) **Physical disability.** "Physical disability" means the condition of being disabled, resulting in the inability to pursue an occupation because of physical or mental impairment.

(22) **Principal residence.** "Principal residence" means the claimant owns and occupies the residence as his or her principal or main residence. It does not include a residence used merely as a vacation home. For purposes of this exemption:

(a) Principal or main residence means the claimant occupies the residence for more than six months each year.

(b) Confinement of the claimant to a hospital or nursing home does not disqualify the claim for exemption if:

(i) The residence is temporarily unoccupied;

(ii) The residence is occupied by the claimant's spouse or a person financially dependent on the claimant for support;

(iii) The residence is occupied by a caretaker who is not paid for watching the house;

(iv) The residence is rented for the purpose of paying nursing home or hospital costs.

(23) **Regular gainful employment.** "Regular gainful employment" means consistent or habitual labor or service which results in an increase in wealth or earnings.

(24) **Replacement residence.** "Replacement residence" means a residence that qualifies for the senior citizen and disabled person exemption and replaces the prior residence of the senior citizen or disabled person receiving the exemption.

(25) **Residence.** "Residence" means a single-family dwelling unit whether such unit be separate or part of a multiunit dwelling and includes up to one acre of the parcel of land on which the dwelling stands. The term also includes:

(a) A share ownership in a cooperative housing association, corporation, or partnership if the person claiming exemption can establish that his or her share represents the specific unit or portion of such structure in which he or she resides.

(b) A single-family dwelling situated upon leased lands and upon lands the fee of which is vested in the United States, any instrumentality thereof including an Indian tribe, the state of Washington, or its political subdivisions.

(c) A mobile home which has substantially lost its identity as a mobile unit by being fixed in location upon land owned or rented by the owner of said mobile home and placed on a foundation, posts, or blocks with fixed pipe con-

nections for sewer, water or other utilities even though it may be listed and assessed by the county assessor as personal property. It includes up to one acre of the parcel of land on which a mobile home is located if both the land and mobile home are owned by the same qualified claimant.

(26) **Veterans benefits.** "Veterans benefits" means benefits paid or provided under any law, regulation, or administrative practice administered by the VA. Federal law excludes from gross income any veterans' benefits payments, paid under any law, regulation, or administrative practice administered by the VA.

[Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. 03-09-002, § 458-16A-100, filed 4/2/03, effective 5/3/03.]

**WAC 458-16A-110 Senior citizen and disabled person exemption—Gross income.** (1) **Introduction.** This rule explains the definition of gross income used for federal income tax. In order to meet the income requirements for the senior citizen and disabled person exemption program, the claimant must provide supporting documents verifying combined disposable income. The gross income for federal income tax purposes of the claimant, the claimant's spouse, and any cotenants represents a part of the claimant's combined disposable income.

(a) **Income tax return.** In most cases, the claimant presents copies of federal income tax returns to demonstrate both gross income and adjusted gross income amount(s) for the claimant, the claimant's spouse, and any cotenants. The assessor then determines the disposable income for each person based upon that person's income tax return and the other information supplied by the claimant.

(b) **No income tax return.** When the claimant does not present federal income tax returns, the assessor must determine what constitutes gross income for the nonfiler and obtain copies of income documents to determine that person's gross income. This rule provides the assessor with some guidance in determining the gross income for a nonfiler.

(c) **Verifying the gross income amount.** In some cases, the assessor may choose to verify income amount(s). The rule provides the assessor some guidance in verifying all or part of the gross income for the claimant, the claimant's spouse, or any of the cotenants.

(2) **Gross income determined.** Internal Revenue Code section 61 defines "gross income," generally, as all income from whatever source derived. WAC 458-16A-135 lists the documentation used to determine the income of the claimant.

(3) **Exclusions from the federal definition of gross income.** A claimant may provide documentation or information about amounts received during the year that are excluded from gross income. These amounts should not be taken into account when determining gross income. The federal definition of gross income, generally, does not include:

(a) Gifts, inheritance amounts, or life insurance proceeds;

(b) Up to two hundred fifty thousand dollars (five hundred thousand dollars for a married couple) gain from the sale of a principal residence that meets the requirements of Internal Revenue Code section 121, see also WAC 458-16A-100 (definition of disposable income);

(c) Amounts received for illness or injury when received from workmen's compensation, a legal settlement, a legal

judgment, a Medicare+Choice MSA, a federal employer under the federal Employees Compensation Act, accident insurance, or health insurance. If the amount received is from an employer directly for illness or injury or from employer-provided accident or health insurance, the amount is excluded only if it is paid to reimburse medical expenses, for the loss of limb, or for permanent disfigurement to the employee, the employee's spouse, or the employee's dependents;

(d) Contributions or payments made by an employer to accident and health plans, the employer's qualified transportation plan, a cafeteria plan, a dependent care assistance program, educational assistance programs, or for certain fringe benefits for employees described by Internal Revenue Code section 132. If the claimant earns wages as an employee, he or she should receive a W-2 form from the employer reporting those wages. This W-2 form should have already excluded the described contributions or payments provided for the employee's benefit in the above list. If a question arises about whether or not an employer adjusted the employee's gross income for these exclusions, the claimant should contact their employer and have the employer provide the county with a correct or corrected copy of the W-2 form to verify the correct wages paid to the employee;

(e) Income from discharge of indebtedness under certain limited circumstances, such as insolvency. These circumstances are outlined in Internal Revenue Code section 108;

(f) Improvements by a lessee left upon the lessor's property at the termination of a lease;

(g) Recovery of an amount deducted in a prior tax year that did not reduce federal income taxes paid in that prior year. For example, a person that itemized deductions may get a refund of property taxes or a stolen uninsured item will be returned. This refund or recovery is included in income unless the deduction did not result in a reduction of tax. It may not result in a reduction of tax because the person had to pay alternative minimum tax or taking away that deduction drops that person below the standard deduction amount. When the deduction did not reduce taxes, the recovery amount that did not reduce taxes is excluded. The assessor may request the claimant excluding such a recovery to present prior returns and worksheets such as the worksheets provided in Publication 525, *Taxable and Nontaxable Income*, to demonstrate how the exclusion was calculated;

(h) Qualified scholarships and fellowship grants provided for certain educational expenses (e.g., tuition and books). Internal Revenue Code section 117 provides a complete description of qualified scholarship and fellowship grant amounts excluded from gross income;

(i) Meals or lodging furnished to an employee for the convenience of the employer;

(j) Excluded military pay and benefits. These exclusions are defined in WAC 458-16A-100. A discussion of how to determine and calculate these benefits is found in WAC 458-16A-120;

(k) Amounts received under insurance contracts for certain living expenses: As a general rule, when an individual's principal residence is damaged or destroyed by fire, storm, or other casualty, or who is denied access to his principal residence by governmental authorities because of the occurrence or the threat of such a casualty, gross income does not include amounts received by such individual under an insurance con-

tract which are paid to compensate or reimburse such individual for living expenses incurred for himself and members of his household resulting from the loss of use or occupancy of such residence;

(l) Certain cost-sharing payments made for conservation purposes on land owned by the claimant: Payments received from federal or state funds primarily to conserve soil, protect or restore the environment, improve forests, or provide a habitat for wildlife are excluded from gross income. In addition, the claimant may exclude energy conservation subsidies provided by public utilities from gross income. If the claimant indicates that he or she has received payments from the government or had improvements made to his or her residence or land by the government for conservation purposes, the assessor may ask for verification of the amount excluded (if any) from gross income and the information received by the claimant supporting this exclusion. See Internal Revenue Code sections 126 and 136;

(m) Child support payments;

(n) Qualified foster care payments made from the government or a qualified nonprofit to a foster parent or guardian. See Internal Revenue Code section 131;

(o) Income from United States savings bonds used to pay higher education tuition and fees. See Internal Revenue Code section 135;

(p) Distributions from a qualified state tuition program or a Coverdell Education Savings Account used to pay for higher education expenses. Distributions from a Coverdell Education Savings Account used to pay for elementary or secondary education expenses. See Internal Revenue Code sections 529 and 530.

[Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. 03-09-002, § 458-16A-110, filed 4/2/03, effective 5/3/03.]

**WAC 458-16A-115 Senior citizen and disabled person exemption—Adjusted gross income.** (1) **Introduction.** This rule explains how an assessor determines the adjusted gross income for the claimant, the claimant's spouse, and any cotenants. In order to meet the income requirements for the senior citizen and disabled person exemption program, the claimant must provide supporting documents verifying combined disposable income. The adjusted gross income for federal income tax purposes of the claimant, the claimant's spouse, and any cotenants represents a part of the claimant's combined disposable income.

(a) **Income tax return.** In most cases, the claimant presents copies of federal income tax returns to demonstrate adjusted gross income amount(s) for the claimant, the claimant's spouse, and any cotenants. The assessor then determines the disposable income for each person based upon that person's income tax return and other information supplied by the claimant.

(b) **No income tax return.** When the claimant does not present federal income tax return(s), the assessor must determine what constitutes the gross income and the adjusted gross income of the nonfiler and obtain copies of income documents to determine that person's income amounts. This rule provides the assessor with some guidance in determining the adjusted gross income for a nonfiler.

(c) **Verifying the adjusted gross income amount.** In some cases, the assessor may choose to verify income

amount(s). The rule provides the assessor some guidance in verifying all or part of the adjusted gross income for the claimant, the claimant's spouse, or any of the cotenants.

(2) **Adjusted gross income.** Internal Revenue Code section 62 defines "adjusted gross income" as gross income minus the following deductions:

(a) **Trade and business deductions.** Business owners may deduct from gross income trade or business expenses. If the claimant submits a copy of a Form 1040 federal income tax return, these deductions will be taken on the Schedule C, the Schedule C-EZ, or, for a farm, the Schedule F. If the business owned is a partnership, limited partnership, S Corporation, or Limited Liability Company (LLC), the deduction is taken on the return submitted by the partnership, limited partnership, S Corporation, or LLC (Tax Return Forms 1065 and 1120S) and passed through to the individual on a Schedule K-1. A claimant or cotenant that does not file a federal income tax return, but claims to have trade or business deductions should provide documentation of income and expenses from the business to allow the assessor to determine the amount of trade or business expenses to be deducted.

(b) **Unreimbursed expenses paid or incurred by an elementary or secondary school teacher for educational materials and equipment, an employee who is a qualified performing artist, or a state or local government official paid on a fee basis.** From 2002 until 2010, an elementary or secondary school teacher may deduct from gross income up to two hundred fifty dollars of unreimbursed amounts that the teacher pays for educational materials and equipment used in the teacher's classroom. A teacher may take this deduction on a Form 1040 or a 1040A. A qualified performing artist, defined by Internal Revenue Code section 62(b), or a state or local government official paid on a fee basis may deduct from gross income any unreimbursed trade or business expenses incurred for that employer as an employee. If the claimant submits a copy of a Form 1040 federal income tax return, the deduction will be taken on the dotted line before the final line for determining adjusted gross income with a designation of "QPA" or "FBO." A claimant or cotenant that does not file a tax return, but claims to have unreimbursed expenses for this deduction, should provide documentation to demonstrate his or her status as an elementary or secondary school teacher, a qualified performing artist, or a government employee paid on a fee basis and documentation of the unreimbursed educational materials and equipment or trade or business amounts spent as an employee for his or her employer.

(c) **Losses from sale or exchange of property.** A property owner may deduct from gross income losses from the sale or exchange of property for federal income tax purposes. If the claimant submits a copy of a Form 1040 federal income tax return, the deduction is generally determined on a Schedule D. For purposes of this program, losses cannot be deducted from income. Any losses taken must be added onto adjusted gross income. An assessor may refuse documentation of losses from a claimant or cotenant that does not file a tax return as these losses do not result in any change to the claimant's final combined disposable income.

(d) **Deductions attributable to rents and royalties.** A property owner may deduct from gross income expenses attributable to property held for the production of rents and royalties. If the claimant submits a copy of a Form 1040 fed-

eral income tax return, the deductions are determined on a Schedule E. A claimant or cotenant that does not file a tax return, but claims to have expenses from rental property or licensed property, should provide documentation of these expenses.

(e) **Certain deductions of life tenants and income beneficiaries of property.** A life tenant or income beneficiary of a trust or estate may deduct from gross income for federal income tax purposes depreciation or depletion expenses related to the business or rental property in which he or she has a life estate or when the property is owned by a trust or estate, if he or she has a beneficial interest in the property. If the claimant submits a copy of a Form 1040 federal income tax return, these deductions are shown on Schedule E. A claimant or cotenant with a beneficial interest in business property owned by a trust or estate would show the depreciation or depletion deduction on the Schedule K-1 from that trust or estate. An assessor may refuse documentation of depreciation or depletion on property from a claimant or cotenant that does not file a tax return as these expenses do not result in any change to the claimant's final combined disposable income.

(f) **Pension, profit-sharing, annuity, and annuity plans of self-employed individuals.** A self-employed person may deduct from gross income contributions to a SEP, SIMPLE, or other qualified plan. These deductions are claimed on the Form 1040 federal income tax return. A self-employed claimant or cotenant that does not file a tax return, but claims this deduction, should provide documentation of the contributions made to a qualified plan by his or her business.

(g) **Self-employed health insurance deduction.** As part of his or her trade and business expenses, a self-employed person may deduct from gross income part (and after 2002, all) of the business's payments for his or her health insurance. This deduction is claimed on the Form 1040 federal income tax return. A self-employed claimant or cotenant that does not file a tax return, but claims this deduction, should provide documentation of the payments made for his or her health insurance by his or her business. The assessor may request the claimant to submit a copy of the deduction worksheet provided in the instructions for Form 1040 to calculate this deduction whether or not the self-employed person filed a tax return.

(h) **One-half of self-employment tax.** As part of his or her trade or business expenses, a self-employed person may deduct from gross income one-half of the self-employment tax paid to the federal government determined on a Schedule SE. This deduction is claimed on the Form 1040 federal income tax return. A self-employed person that has not filed a return, may not claim this deduction as the self-employment tax is reported and paid with that return.

(i) **Retirement savings.** A person may deduct from gross income qualifying contributions (up to three thousand five hundred dollars) made to an individual retirement account (IRA). This deduction may be claimed on either the Form 1040 or Form 1040A federal income tax return. A claimant or cotenant that does not file a tax return, but claims to have made qualifying contributions to an IRA, should provide documentation of these contributions. The assessor may request the claimant to submit a copy of the IRA deduction

worksheet provided in the instructions for Form 1040 and Form 1040A to calculate this deduction whether or not the person filed a tax return.

(j) **Penalties on early withdrawal of savings.** A person may deduct from gross income for purposes of federal income tax penalties paid because of an early withdrawal of savings. This deduction is claimed on the Form 1040 federal income tax return. The IRS classifies these penalties as losses. For purposes of this program, losses may not be deducted from income. Any deduction taken on this line must be added to adjusted gross income. An assessor may refuse documentation about these penalties from a claimant or cotenant that does not file a tax return as these losses do not result in any change to the claimant's final combined disposable income.

(k) **Alimony.** A person may deduct from gross income alimony paid in cash to a previous spouse. This deduction is claimed on the Form 1040 federal income tax return. A person that does not file a tax return, but made alimony payments, should provide copies of documentation showing alimony payments were made in cash to a prior spouse. The documents should include a copy of the divorce or separation instrument providing for the alimony payments and the amount of the alimony payments made during the year.

(l) **Reforestation costs.** A landowner may deduct from gross income for purposes of federal income tax the amortized reforestation costs for qualified timber property over a period of eighty-four months. If the property is held as business property, the deduction will appear with the trade and business expenses. If the property is not held as business property and the claimant submits a copy of a Form 1040 federal income tax return, this deduction is claimed on the dotted line before the final line for determining adjusted gross income on the Form 1040 federal income tax return and identified as "RFST." An assessor may refuse documentation of the amortization of reforestation costs from a claimant or cotenant that does not file a tax return as these amortized costs are depreciation expenses. These expenses would be added onto adjusted gross income for purposes of this program and do not result in any change to the claimant's final combined disposable income.

(m) **Required repayment of supplemental unemployment compensation.** A person may deduct from gross income required repayments of supplemental unemployment compensation benefits. If the claimant submits a Form 1040 federal income tax return, the deduction may show on the return in one of two ways. If the repayment is made in the same year the benefits are received, the taxpayer reduces the total unemployment compensation reported on the return by the amount of repayment. If the repayment is made in a later year, the taxpayer deducts the repayment on the dotted line before the final line for determining adjusted gross income on the return and identifies it as "Sub-Pay TRA." A person that does not file a tax return, but claims to have repaid supplemental unemployment compensation, should provide documentation of these repayments.

(n) **Jury duty pay given to employer.** An employee may deduct from gross income jury duty pay given to his or her employer. An employee deducts the jury pay given to the employer on the dotted line before the final line for determining adjusted gross income on the Form 1040 federal income

tax return and identifies it as "Jury Pay." A person that does not file a tax return, but claims to have given jury pay received during the year to their employer, should provide documentation of the amount of jury pay given over to the employer.

(o) **Clean-fuel vehicles and certain refueling property.** A person may deduct from gross income a portion of the cost for a qualified clean-fuel vehicle and certain refueling property until the end of calendar year 2004. This deduction may show on the Form 1040 federal income tax return in one of two ways. If the property is held as business property, the deduction will appear with the trade and business expenses. If a clean-fuel vehicle is not held as business property, or is claimed by an employee who used it in whole or part for business, this deduction is claimed on the dotted line before the final line for determining adjusted gross income on the return and identified as "Clean Fuel." A purchaser that does not file a tax return, but purchased clean-fuel property, should provide documentation about the qualifying clean-fuel vehicle or the refueling property, the amount paid for the clean-fuel property, and a calculation of the deduction amount allowed.

(p) **Unreimbursed moving expenses.** If the claimant or cotenant had to move a significant distance for a job or business, he or she may deduct from gross income the unreimbursed moving costs. This deduction is claimed on the Form 1040 federal income tax return. If the claimant or cotenant does not file a tax return, the claimant should provide documentation of the distance moved, the reason for the move, and the moving expenses. The assessor may ask the claimant to submit a copy of Form 3903, Moving Expenses, and the distance test worksheet on that form to prove the amount of his or her adjusted gross income whether or not the claimant or cotenant filed a federal income tax return.

(q) **Archer MSAs (medical savings accounts).** A person may deduct from gross income a qualifying contribution to an Archer MSA. An MSA is an account set up exclusively for paying the qualified medical expenses of the account holder or the account holder's spouse or dependent(s) in conjunction with a high deductible health plan (HDHP). To be eligible for an MSA, the person must work as an employee for a small employer or be self-employed. The person must also have an HDHP, and have no other health insurance coverage except permitted coverage. The calculation of the deduction is performed on a Form 8853. This deduction is claimed on the Form 1040 federal income tax return. If the person does not file a tax return, but claims to have made a qualifying contribution to an Archer MSA, the claimant should provide copies of documentation as to that person's qualifications for the deduction and how the deduction was calculated. If this deduction is claimed, the assessor may ask the claimant to submit a copy of Form 8853, Archer MSAs and Long Term Care Insurance Contracts, whether or not the claimant or cotenant filed a federal income tax return.

(r) **Interest on student loans.** A person may deduct from gross income some or all student loan interest paid on his or her student loan(s) during the first sixty months of the loan repayment period. The deduction may not be claimed by a taxpayer claimed as a dependent, a taxpayer filing as married filing separately, or when the taxpayer has an adjusted gross income amount over fifty-five thousand dollars (sev-

enty-five thousand dollars if married filing jointly). This deduction is claimed on either the Form 1040 or Form 1040A federal income tax return. A person that does not file a tax return, but claims to have paid student loan interest, should provide copies of documentation of that person's qualification for the deduction and how the deduction was calculated. For 2002 and after, a person may deduct some or all of this student loan interest (not over two thousand five hundred dollars) repaid for any repayment period (the sixty-month limit is gone), provided the taxpayer does not have adjusted gross income above sixty-five thousand dollars (one hundred thirty thousand dollars if married filing jointly). The two thousand five hundred dollar limit on the interest gets reduced for taxpayers with adjusted gross income over fifty thousand dollars (one hundred thousand dollars if married filing jointly). See Internal Revenue Code section 221.

(s) **Higher education expenses.** From 2002 to 2005, an individual with adjusted gross income below a set amount (generally sixty-five thousand dollars) may take a deduction for qualified tuition and related expenses paid by that person for that person, that person's spouse, or a dependent of that person. Depending on the individual's gross income, the deduction cannot exceed three thousand dollars (four thousand dollars in 2004 and 2005). The deduction is claimed on either the Form 1040 or Form 1040A federal income tax return. A person that does not file a tax return, but claims to have paid higher education expenses, should provide copies of documentation of that person's qualification for the deduction and how the deduction was calculated. This deduction may only be taken if the income was not excluded from gross income. See WAC 458-16A-110 (savings bonds, qualified state tuition programs, and Coverdell Education Savings Accounts).

[Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. 03-09-002, § 458-16A-115, filed 4/2/03, effective 5/3/03.]

**WAC 458-16A-120 Senior citizen and disabled person exemption—Determining combined disposable income.** (1) **Introduction.** This rule describes how an assessor determines a claimant's combined disposable income.

(2) **Begin by calculating disposable income.** The assessor must determine the disposable income of the claimant, the claimant's spouse, and all cotenants. The assessor begins by obtaining a copy of the claimant's, the claimant's spouse's, and any cotenant's federal income tax return. If the claimant, the claimant's spouse, or a cotenant does not provide a federal income tax return, the assessor must calculate disposable income from copies of other income documents (e.g., W-2, 1099-R, 1099-INT, etc.). The assessor may want to review the definitions of gross income, WAC 458-16A-110, and adjusted gross income, WAC 458-16A-115, to help calculate the combined disposable income for a claimant. These rules provide some guidance on how to determine adjusted gross income without copies of a federal income tax return. On the federal income tax return, the adjusted gross income is found on the front pages of Form 1040, Form 1040A, and Form 1040EZ. Even when a return is provided, an assessor may request copies of supporting documents to verify the amount of the claimant's combined disposable income.

(a) **Absent spouse.** When a spouse has been absent for over a year and the claimant has no knowledge of his/her spouse's whereabouts or whether the spouse has any income or not, and the claimant has not received anything of value from the spouse or anyone acting upon the spouse's behalf, the spouse's disposable income is deemed to be zero for purposes of this exemption. The claimant must submit with the application a dated statement signed by the applicant under the penalty of perjury. This statement must state that more than one year prior to filing this application:

- (i) The claimant's spouse has been absent;
- (ii) The claimant has not and does not know the whereabouts of the claimant's spouse;
- (iii) The claimant has not had any communication with the claimant's spouse;
- (iv) The claimant has not received anything of value from the claimant's spouse or anyone acting upon the claimant's spouse's behalf.

The statement must also agree to provide this income information if the claimant is able to obtain it anytime in the next four years.

(b) **Form 1040EZ.** Generally, the adjusted gross income on Form 1040EZ represents the disposable income for the person or couple filing the return. However, that person's or couple's adjusted gross income as shown on the Form 1040EZ must be increased by the following amounts that are excluded from their adjusted gross income.

(i) **Gain from a sold residence.** Under certain circumstances, gain from a sold residence is added onto the seller's adjusted gross income. Since there is no federal form used for reporting the exclusion of capital gains from the sale of a principal residence, the exemption application asks if a home has been sold, whether the sale proceeds were reinvested in new principal residence, and the amount of capital gain from the sale.

(A) If the proceeds were reinvested in a new principal residence, the excluded capital gain reinvested in the new residence is ignored. The adjusted gross income on Form 1040EZ is not adjusted for any part of the excluded capital gain reinvested in the new residence.

(B) If the proceeds were not reinvested in a new principal residence or only a part of the proceeds were reinvested in a new principal residence, the amount of excluded capital gain that is not reinvested in a new principal residence is added onto the seller's adjusted gross income to determine the seller's disposable income. The assessor may accept the excluded capital gain amount claimed upon the application or request a copy of documents demonstrating the seller's basis in the property and the capital gain earned upon the sale.

(ii) **Interest received on state and municipal bonds.** Interest received on state or local government bonds is generally not subject to federal income tax. This tax exempt interest is marked "TEI" and reported on the Form 1040EZ. The tax-exempt interest is added onto the bond owner's federal adjusted gross income to determine the bond owner's disposable income.

(A) The assessor may ask a claimant whether the claimant, the claimant's spouse, or any cotenant's own state or local government bonds. If the return does not show the tax exempt amount from the bond, the assessor may ask to see a copy of the Form 1099-INT (Interest Income).

(B) If the claimant does not have this form, the bond issuer should be able to tell the owner whether the interest is taxable. The issuer should also give the owner a periodic (or year-end) statement showing the tax treatment of the bond. If the income recipient invested in the bond through a trust, a fund, or other organization, that organization should give the recipient this information.

(iii) **Excluded military pay and benefits.** Military pay and benefits excluded from federal adjusted gross income, other than attendant-care and medical-aid payments, are added onto the adjusted gross income of the military personnel receiving the excluded military pay or benefits to determine that person's disposable income. Excluded military pay and benefits are discussed in more detail below in paragraph (c)(vii).

(iv) **Veterans benefits.** Veterans benefits, other than attendant-care and medical-aid payments, are added onto the veteran's adjusted gross income to determine the veteran's disposable income. Veterans benefits are discussed in more detail below in paragraph (c)(viii).

(c) **Form 1040A.** If a claimant provides a copy of a Form 1040A, the assessor calculates the disposable income for the person or couple filing the return by adding onto the adjusted gross income reported the items described below to the extent these items were excluded or deducted from gross income:

(i) **Gain from a sold residence.** The excluded capital gain from selling a principal residence to the extent that excluded gain was not reinvested in a new principal residence is added onto the seller's adjusted gross income to determine the seller's disposable income. The amount is reported on the exemption application. Refer to paragraph (a)(i) above for a more complete discussion of excluded capital gain upon a sold residence.

(ii) **Interest received on state and municipal bonds.** Interest received on state or local government bonds is generally not subject to federal income tax. The tax-exempt interest reported on Form 1040A is added back onto the bond owner's adjusted gross income to determine the bond owner's disposable income. Refer to paragraph (a)(ii) above for a more complete discussion of tax-exempt interest on state and municipal bonds.

(iii) **Pension and annuity receipts.** Any nontaxable pension and annuity amounts are added onto the recipient's adjusted gross income amount to determine the recipient's disposable income. The nontaxable pension and annuity amounts are the difference in the total pension and annuity amounts reported from the taxable amounts reported. If the total amount of the pension and annuity amounts are not reported on the return, the assessor may use a copy of the claimant's, the claimant's spouse's, or the cotenant's Form 1099-R (Distributions from Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc.) to determine the total amount of pension and annuity amounts received. Pension and annuity amounts do not include distributions made from a traditional individual retirement account; and

(iv) **Federal Social Security Act and railroad retirement benefits.** Any nontaxable Social Security benefit or equivalent railroad retirement amount reported on Form 1040A is added onto the adjusted gross income of the person

receiving these benefits to determine that person's disposable income. The nontaxable Social Security benefit or equivalent railroad retirement amount is the difference in the total Social Security benefits or equivalent railroad retirement amounts reported from the taxable amount reported. If the total amount of the Social Security benefit or equivalent railroad retirement amount is not reported on the return, the assessor may use a copy of the claimant's, the claimant's spouse's, or the cotenant's Form SSA-1099 to determine the Social Security benefits or Form RRB-1099 to determine the railroad retirement benefits received.

(v) **Excluded military pay and benefits.** Military pay and benefits excluded from federal adjusted gross income, other than attendant-care and medical-aid payments, are added onto adjusted gross income of the military personnel receiving the excluded military pay or benefits to determine that person's disposable income. Excluded military pay and benefits are discussed below in paragraph (c)(vii).

(vi) **Veterans benefits.** Veterans benefits, other than attendant-care and medical-aid payments, are added back onto the veteran's adjusted gross income to determine the veteran's disposable income. Veterans benefits are discussed below in paragraph (c)(viii).

(d) **Form 1040.** If a claimant provides a copy of a Form 1040, the assessor calculates the disposable income for the person or couple filing the return by adding onto the reported adjusted gross income all the items described below to the extent these items were excluded or deducted from gross income:

(i) **Gain from a sold residence.** The excluded capital gain from selling a principal residence to the extent that excluded gain was not reinvested in a new principal residence is added onto the seller's adjusted gross income to determine the seller's disposable income. The excluded capital gain amount is reported on the exemption application.

(ii) **Capital gains.** If the return shows capital gains or losses, the assessor examines a copy of the following schedule or forms, if any, that were filed with the return. The assessor should examine the capital gains reported on Schedule D (Capital Gains and Losses) and on Forms 4684 (Casualty and Thefts), 4797 (Sales of Business Property), and 8829 (Business Use of Home).

The assessor adds onto the adjusted gross income any amount of capital gains reduced by losses or deductions on the schedules or forms listed above to determine the total capital gains. The amount of capital gains that were excluded or deducted from adjusted gross income must be added onto that adjusted gross income to determine disposable income.

(iii) **Losses.** Amounts deducted for loss are added onto the adjusted gross income to determine the disposable income. Most losses are reported on the return in parentheses to reflect that these loss amounts are to be deducted. The net losses are reported on Form 1040 as business losses, as capital losses, as other losses, as rental or partnership-type losses, and as farm losses. Add these amounts in parentheses onto the adjusted gross income. In addition, the assessor adds to adjusted gross income the amount reported as a penalty on early withdrawal of savings because the amount represents a loss under section 62 of the Internal Revenue Code.

(A) The taxpayer only reports the net amount of losses on the front page of the Form 1040 federal income tax return.

A loss may be used on other schedules or forms to reduce income before being transferred to the front page of the return to calculate adjusted gross income. The assessor adds onto the adjusted gross income the amount of losses used to reduce income on these other schedules and forms. If the assessor has already added capital gains reduced by losses, the assessor does not add this amount onto adjusted gross income as it has already been accounted for. The amount of losses that were used to reduce adjusted gross income must be added onto that adjusted gross income to determine disposable income. For example, the claimant reports on the front page of the 1040 a capital loss of (five thousand dollars). The assessor examines the Schedule D. On the Schedule D, the claimant reports two thousand dollars in long-term capital gains from the sale of Company X stock and seven thousand dollars in long-term capital losses from the sale of an interest in the Y limited partnership. The assessor has already reduced the claimant's adjusted gross income by five thousand dollars from the capital loss reported on the front page of the return. The assessor would add onto adjusted gross income only the additional two thousand dollars in losses from this Schedule D that was used to offset the capital gain the claimant earned from the sale of Company X stock.

(B) The assessor should examine losses reported on Schedules C (Profit or Loss from Business), D (Capital Gains and Losses), E (Supplemental Income and Loss), F (Profit or Loss from Farming), and K-1 (Shareholder's Share of Income, Credits, Deductions, etc.), and on Forms 4684 (Casualty and Thefts), 4797 (Sales of Business Property), 8582 (Passive Activity Loss Limitations), and 8829 (Business Use of Home) to determine the total amount of losses claimed.

(iv) **Depreciation.** Amounts deducted for the depreciation, depletion, or amortization of an asset's costs are added onto the adjusted gross income to determine the disposable income. This includes section 179 expenses, as an expense in lieu of depreciation. Amounts deducted for depreciation, depletion, amortization, and 179 expenses may be found on Schedules C, C-EZ, E, F, K and K-1, and on Form 4835 (Farm Rental Income and Expenses). If the schedule or form results in a loss transferred to the front of the Form 1040 federal income tax return, the depreciation deduction to the extent it is represented in that loss amount should not be added onto the adjusted gross income (as this would result in it being added back twice);

(v) **Pension and annuity receipts.** Any nontaxable pension and annuity amounts are added onto the recipient's adjusted gross income amount to determine the recipient's disposable income. The nontaxable pension and annuity amounts are the difference in the total pension and annuity amounts reported from the taxable amount reported. If the total amount of the pension and annuity amounts are not reported on the return, the assessor may use a copy of the claimant's, the claimant's spouse's, or the cotenant's Form 1099-R (Distributions from Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc.) to determine the total amount of pension and annuity amounts received. Pension and annuity amounts do not include distributions made from a traditional individual retirement account.

(vi) **Federal Social Security Act and railroad retirement benefits.** Any nontaxable Social Security benefit or equivalent railroad retirement amount reported on the Form 1040 federal income tax return is added onto the adjusted gross income of the person receiving these benefits to determine that person's disposable income. The nontaxable Social Security benefit or equivalent railroad retirement amount is the difference in the total Social Security benefits or equivalent railroad retirement amounts reported from the taxable amount reported. If the total amount of the Social Security benefit or equivalent railroad retirement amount is not reported on the return, the assessor may use a copy of the claimant's, the claimant's spouse's, or the cotenant's Form SSA-1099 to determine the Social Security benefits or Form RRB-1099 to determine the railroad retirement benefits received.

(vii) **Excluded military pay and benefits.** Military pay and benefits excluded from federal adjusted gross income, other than pay or benefits for attendant care or medical aid, are added onto the adjusted gross income of the military personnel receiving the military pay or benefits to determine that person's disposable income. Excluded military pay and benefits are not reported on the Form 1040. Excluded military pay and benefits such as pay earned in a combat zone, basic allowance for subsistence (BAS), basic allowance for housing (BAH), and certain in-kind allowances, are reported in box 12 of the Form W-2. The claimant should disclose when excluded military pay and benefits were received and provide copies of the Form W-2 or other documents that verify the amounts received.

(viii) **Veterans benefits.** Veterans benefits, other than attendant-care and medical-aid payments, are added onto the veteran's adjusted gross income to determine the veteran's disposable income. Federal law excludes from gross income any veterans benefits payments, paid under any law, regulation, or administrative practice administered by the Department of Veterans Affairs (VA). Except for payments by the VA made for attendant care or medical aid, allowances or payments made from the VA must be added onto the veteran's adjusted gross income. VA benefits are not reported on the Form 1040. The claimant should disclose when excluded veterans benefits were received and provide copies of documents that verify the amount received. Attendant-care and medical-aid payments are any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the VA. Disability compensation or pensions paid by the VA are not attendant-care or medical-aid payments;

(ix) **Dividend receipts.** Exempt-interest dividends received from a regulated investment company (mutual fund) are reported on the tax-exempt interest line of the Form 1040 and added onto the recipient's adjusted gross income to determine that recipient's disposable income.

(A) The assessor may ask a claimant whether the claimant, the claimant's spouse, or any cotenants have received exempt-interest dividends.

(B) Generally, the mutual fund owner will receive a notice from the mutual fund telling him or her the amount of the exempt-interest dividends received. These exempt-interest dividends are not shown on Form 1099-DIV or Form 1099-INT. Although exempt-interest dividends are not tax-

able, the owner must report them on the Form 1040 tax return if he or she has to file; and

(x) **Interest received on state and municipal bonds.** Interest received on state or local government bonds is generally not subject to federal income tax. This tax-exempt interest is reported on the Form 1040 and added onto the bond owner's adjusted gross income to determine the bond owner's disposable income.

(3) **Calculate the combined disposable income.** When the assessor has calculated the disposable income for the claimant, the claimant's spouse, and any cotenants, the assessor combines the disposable income of these people together. The assessor reduces this combined income by the amount paid by the claimant or the claimant's spouse during that calendar year for their legally prescribed drugs, home health care, and nursing home care to calculate the claimant's combined disposable income.

[Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. 03-09-002, § 458-16A-120, filed 4/2/03, effective 5/3/03.]

**WAC 458-16A-130 Senior citizen and disabled person exemption—Qualifications for exemption.** (1) **Introduction.** This rule describes the qualifications a claimant must meet for the senior citizen or disabled person property tax exemption. In order to qualify for the exemption, the claimant:

- (a) Must meet age or disability requirements;
- (b) Must have a combined disposable income of thirty thousand dollars or less; and
- (c) Must own the property and occupy it as his or her principal residence.

(2) **Age, retirement, and disability requirements.** In order to qualify for the exemption:

(a) The senior citizen claiming the exemption must be age sixty-one or older on December 31st of the year in which the claim is filed. No proof is required concerning a senior citizen's employment status to claim the exemption.

(b) The disabled person claiming the exemption must be at the time of filing retired from regular gainful employment because of his or her physical disability (i.e., unable to work because of a physical or mental impairment). A disabled person is considered retired, although he or she was not working at a job, if he or she is unable to enter into regular gainful employment because of his or her physical disability and does not have a guardian or other person legally required to financially support and care for him or her; or

(c) The surviving spouse of a claimant, who applies to continue their spouse's exemption, must be age fifty-seven or older in the calendar year the claimant dies.

(3) **Income requirements.** In order to qualify for the exemption, the claimant's combined disposable income, as defined in RCW 84.36.383 and WAC 458-16A-120, must be below the statutory limit amount provided in RCW 84.36.381.

(4) **Principal residence requirements.** In order to qualify for the exemption, the claimant must own the property and occupy it as his or her principal residence. The claimant must occupy the principal residence at the time of filing for each year the exemption is claimed. See WAC 458-16A-100 (definitions of principal residence and residence), and WAC 458-16A-135 (supporting documents required to demonstrate

the property is owned and occupied as a claimant's principal residence).

[Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. 03-09-002, § 458-16A-130, filed 4/2/03, effective 5/3/03.]

**WAC 458-16A-135 Senior citizen and disabled person exemption—Application procedures.** (1) **Introduction.** This rule explains when and how a senior citizen or disabled person may apply for a property tax exemption on that person's principal residence. RCW 84.36.381 through 84.36.389.

(2) **When to apply for the exemption.** A claimant may first apply for the exemption in the calendar year that he or she meets the age or disability requirements for exemption of taxes due in the following year. If the claimant does not apply when he or she meets the age or disability requirements, then he or she may apply for the exemption in any subsequent year. The exemption may be claimed on his or her principal residence for previous years by applying with separate applications for each year. However, refunds based upon an exemption made in previous years may be refunded only for up to three years after the taxes were paid as provided in chapter 84.69 RCW.

(3) **Application required.** A claimant must submit to the county assessor's office an application for exemption with supporting documents. If the claimant applies for more than one year when the application is first made, an application must be made for each year the claimant seeks the exemption.

(4) **Where to obtain the application form.** A claimant may obtain the application form and the list of required supporting documents from the county assessor's office where his or her principal residence is located.

(5) **How to apply for the exemption.** Applications and supporting documents are filed in person or by mail at the county assessor's office where the principal residence is located.

(a) **The application form.** The county assessor designs the application form or adapts a master form obtained from the department. The county must obtain approval of the final form from the department before it may be distributed and used. The claimant must use an application form from the county where the principal residence is located and provide true and accurate information in the application.

(b) **Signatures.** The signature must certify that under penalty of perjury under the laws of Washington the application is true and correct. The application must be signed, dated, and state the place (city, county, or address) where it was signed. The application must be signed by:

- (i) The claimant;
- (ii) The claimant's designated agent;
- (iii) The legal guardian for the claimant (if applicable);

or

(iv) If the property is subject to a deed of trust, mortgage, or purchase contract requiring an accumulation of reserves to pay property taxes, the lien holder; and

(v) If the claimant resides in a cooperative housing unit or portion of a cooperative structure representing the claimant's ownership share in that cooperative, the authorized agent of the cooperative must also sign the application.

(c) **Perjury statement.** The perjury statement certifying under the penalty of perjury that the application is true and

correct must be placed upon the application immediately above a line for the signature. Any person signing a false claim with the intent to defraud or evade the payment of any tax commits perjury. If a person receives an exemption based on erroneous information, the assessor assesses any unpaid taxes with interest for up to three years. If a person receives an exemption based on erroneous information, and the person either provided that information with the intent to defraud or intentionally failed to correct that information, the assessor assesses any unpaid taxes with interest, for up to three years, with the one hundred percent penalty provided in RCW 84.40.130. RCW 84.36.385(5).

(d) **Cooperative agreement to reduce rent.** A cooperative must also agree, in a statement attached to the application, to reduce amounts owed by the claimant to the cooperative by the amount of the tax exemption. The agreement must also state that when the exemption exceeds the amount owed to the cooperative, the cooperative must pay to the claimant any amount of the tax exemption remaining after this offsetting reduction. RCW 84.36.387(5).

(e) **Supporting documents.** Unless the assessor determines that all or some of the supporting documents are not necessary, a claimant must present the documents listed below with his or her application. Except for affidavits, the assessor's office should not accept original documents from the claimant. If the assessor's office is presented with original documents (other than affidavits), they must make copies or note the information provided in the documents on a separate sheet and return these original documents to the claimant. The claimant submits the following documents with the application:

(i) If the county records do not reflect the claimant as the property owner, copies of any legal instruments demonstrating the claimant's interest held in the property;

(ii) Documents demonstrating that the property is the claimant's principal residence (i.e., copy of a driver's license and voter's registration card);

(iii) Copies of legal identification showing the claimant's age (i.e., copy of a driver's license or birth certificate);

(iv) If the claim is based upon a physical disability, either:

(A) An affidavit from a licensed physician (medical or osteopath doctor), a licensed or certified psychologist for disabling mental impairments, or a licensed podiatrist for disabling impairments of the foot, that states the claimant is unable to enter into regular gainful employment because of his or her physical disability and the expected term of the disability; or

(B) Copies of a written acknowledgment or decision by the Social Security Administration or Veterans Administration that the claimant is permanently physically disabled;

(v) Copies of documents showing income earned or reported by the claimant, the claimant's spouse and any cotenants, even when the income is estimated (income information should be provided to the degree possible and then confirmed with supporting documents in the follow-up period), such proof shall include to the extent it is relevant:

(A) If the claimant, the claimant's spouse, or any cotenants receive Social Security payments, a federal statement showing Social Security paid (generally, Form SSA-1099);

(B) If the claimant, the claimant's spouse, or any cotenants receive railroad retirement benefits, a federal statement showing railroad retirement benefits paid (generally, Forms RRC-1099 and RRC 1099-R);

(C) If the claimant, the claimant's spouse, or any cotenants file federal income tax returns, those returns with supporting forms, schedules, and, if specifically requested, worksheets for the deductions taken from gross income (generally, Form 1040 with its supporting forms and schedules);

(D) If the claimant or the claimant's spouse has been in a nursing home or receiving in-home care, copies of invoices (or an equivalent billing statement or payment statement) for nonreimbursed nursing home and in-home care;

(E) If the claimant indicates that the claimant's and the claimant's spouse's nonreimbursed prescription drugs for the period under review exceeds five hundred dollars, copies of checks or other payment statements (i.e., pharmacy printout of payments for purchases) showing amounts paid for nonreimbursed prescription drug expenses;

(F) If no federal returns were filed or received, the claimant must still provide copies of documents to demonstrate his or her income and the income of his or her spouse and any cotenants (i.e., federal income statements such as Form W-2 (wages), Form 1099-INT (interest), Form 1099-DIV (dividends), Form 1099-R (pension amounts), Form 1099-G (unemployment), or Form 1099-Misc. (contract income)). Even claimants who claim they have no federal income (or an inordinately small amount of federal income) must have income to maintain themselves and their residences. In these situations, the claimant must produce copies of documents demonstrating the source of the funds they are living on (i.e., checking account registers and bank statements) and the bills for maintaining the claimant and the residence (i.e., public assistance check stubs, utility invoices, cable TV invoices, check registers, bank statements, etc.); and

(vi) Any other copies of documents the assessor requires in his or her discretion for the claimant to produce in order to demonstrate the claimant qualifies for the exemption.

(f) Public disclosure of the application. The application form may not be disclosed. A copy of the application may be disclosed only if all income information on the form is obliterated so that it cannot be read. Except as required by law, no public disclosure may be made of the checklist of supporting documents or any supporting documents retained that concern the claimant's, the claimant's spouse's, or any cotenant's income.

[Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. 03-09-002, § 458-16A-135, filed 4/2/03, effective 5/3/03.]

**WAC 458-16A-140 Senior citizen and disabled person exemption—Exemption described—Exemption granted—Exemption denied—Freezing property values.**

(1) **Introduction.** This rule explains how county assessors process a claimant's application form for the senior citizen or disabled person property tax exemption. The rule describes the exemption and what happens when the exemption is granted or denied by the assessor.

(2) **The exemption described.** This property tax exemption reduces or eliminates property taxes on a senior citizen's or disabled person's principal residence. Except for benefit charges made by a fire protection district, this exemp-

tion does not reduce or exempt an owner's payments for special assessments against the property. Local governments impose special assessments on real property because the real property is specially benefitted by improvements made in that area (e.g., local improvement district assessments for roads or curbs, surface water management fees, diking/drainage fees, weed control fees, etc.). All the property owners in that area share in paying for these improvements. The only exception related to this program is for benefit charges made by a fire protection district. Fire protection district benefit charges are reduced twenty-five, fifty, or seventy-five percent depending upon the combined disposable income of the claimant. RCW 52.18.090.

(a) **Excess levies.** A qualifying claimant receives an exemption from excess levies on his or her principal residence.

(b) **Regular levies.** Depending upon the claimant's combined disposable income, the exemption may also apply to all or a portion of the regular levies on the claimant's principal residence. Both the level of the claimant's combined disposable income and the assessed value of the home determine the amount of the regular levy exempted from property taxes. The exemption applies to all the regular and excess levies when the assessed value of the claimant's principal residence falls below the amount of exempt assessed value identified in RCW 84.36.381 (5)(b) and the claimant's combined disposable income is also below the levels set in that section.

(c) **Property taxes due.** Generally the owner pays the property taxes on the principal residence and obtains directly the benefit of this exemption. If the claimant is not the property's owner, or is not otherwise obligated to pay the property taxes on the principal residence, but "owned" the principal residence for purposes of this exemption, the property owner that owes the tax must reduce any amounts owed to them by the claimant up to the amount of the tax exemption. If the amounts owed by the claimant to this property owner are less than the tax exemption, the owner must pay to the claimant in cash any amount of the tax exemption remaining after this offsetting reduction. RCW 84.36.387(6).

(3) **Processing exemption applications.** County assessors process applications for the senior citizen or disabled person exemption. The assessors grant or deny the exemption based upon these completed applications.

(a) **Application review.** The county assessor reviews a completed application and its supporting documents.

The assessor:

(i) Notes on a checklist for the claimant's file the supporting documents received;

(ii) Reviews the supporting documents;

(iii) Records relevant information from the supporting documents into the claimant's file. In particular, the assessor records into the file the claimant's age and a summary of the income information received; and

(iv) After reviewing the supporting documents, must either destroy or return the supporting documents used to verify the claimant's age and income.

(b) **Incomplete applications.** A county assessor may return an incomplete application or a duplicate application. An incomplete application may be missing:

(i) Signatures;

(ii) Information upon the form; or

(iii) Supporting documents.

Upon returning an incomplete application, the assessor should provide the claimant with a dated denial form listing the signatures, information, or documents needed to complete the application. The denial of an incomplete application may be appealed in the same manner as a denial of the exemption.

(c) The assessor may accept any late filings for the exemption even after the taxes have been levied, paid, or become delinquent. An application filed for the exemption in previous years constitutes a claim for a refund under WAC 458-18-210.

(4) **Exemption timing if approved.** Property taxes are reduced or eliminated on the claimant's principal residence for the year following the year the claimant became eligible for the program. When a late application is filed, the exemption may only result in:

(a) A property tax refund for taxes paid within three years of the payment date; and

(b) Relief from unpaid property taxes for previous years.

(5) **Exemption procedure when claim granted.** When the exemption is granted, the county assessor:

(a) Freezes the assessed value of the principal residence upon the assessment roll;

(b) Determines the level of exemption the claimant qualifies for;

(c) Notifies the claimant that the exemption has been granted;

(d) Notifies the claimant of his or her duty to file timely renewal applications;

(e) Notifies the claimant of his or her duty to file change of status forms when necessary;

(f) Notifies the claimant of the need to reapply for the exemption if the claimant moves to a replacement residence;

(g) Notifies the claimant that has supplied estimated income information whether or not follow-up income information is needed;

(h) Places the claimant on a notification list for renewal of the exemption;

(i) Places the claimant on a notification list if supporting documents are needed to confirm estimated income information prior to May 31st of the following year;

(j) Exempts the residence from all or part of its property taxes; and

(k) Provides the department with a recomputation of the assessed values for the immediately preceding year as a part of the annual recomputation process.

(6) **Exemption procedure when claim denied.** The assessor denies the exemption when the claimant does not qualify. The assessor provides a dated denial form listing his or her reasons for this denial. A claimant may appeal the exemption's denial to the county board of equalization as provided for in WAC 458-14-056.

(7) **Freezing the property value.** The assessor freezes the assessed value of the principal residence either on the latter of January 1, 1995, or January 1st of the year when a claimant first qualifies for the exemption. The assessor then tracks both the market value of the principal residence and its frozen value. The assessor provides both the principal residence's market value and its frozen value in the valuation notices sent to the owner.

(a) **Frozen values in counties using a cyclical revaluation plan.** In counties using a cyclical revaluation plan, the assessor:

(i) Revalues the principal residence, for property revalued in that assessment year, before the assessed value is frozen; or

(ii) Freezes the principal residence's value at the most recent assessed value for property that is not revalued in that assessment year.

The assessor continues to revalue the principal residence during the regular revaluation cycles to track the market value for the property.

(b) **Adding on improvement costs.** The assessor adds onto the frozen assessed value the cost of any improvements made to the principal residence.

(c) **One-year gaps in qualification.** If a claimant receiving the exemption fails to qualify for only one year because of high income, the previous frozen property value must be reinstated on January 1st of the following year when the claimant again qualifies for the program.

(d) **Moving to a new residence.** If an eligible claimant moves, the county assessor freezes the assessed value of the new principal residence on January 1st of the assessment year in which the claimant transfers the exemption to the replacement residence.

[Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. 03-09-002, § 458-16A-140, filed 4/2/03, effective 5/3/03.]

**WAC 458-16A-150 Senior citizen and disabled person exemption—Requirements for keeping the exemption.** (1) **Introduction.** This rule explains how and when a senior citizen or disabled person must file additional reports with the county assessor to keep the senior citizen or disabled person property tax exemption. The rule also explains what happens when the claimant or the property no longer qualifies for the full exemption.

(2) **Continuing the exemption.** The claimant must keep the assessor up to date on the claimant's continued qualification for the senior citizen or disabled person property tax exemption. The claimant keeps the assessor up to date in three ways. First, the claimant submits a change in status form when any change affects his or her exemption. In some circumstances, the change in status form may be submitted by an executor, a surviving spouse, or a purchaser to notify the county of a change in status affecting the exemption. Second, the claimant submits a renewal application for the exemption either upon the assessor's request following an amendment of the income requirement, or every four years. Third, the claimant applies to transfer the exemption when moving to a new principal residence.

(3) **Change in status.** When a claimant's circumstances change in a way that affects his or her qualification for the senior citizen or disabled person property tax exemption, the claimant must submit a completed change in status form to notify the county of this change.

(a) **When to submit form.** The claimant must submit a change in status form to the county assessor for any change affecting that person's qualification for the exemption within thirty days of such change in status. If the claimant is unable or fails to submit a change in status form, any subsequent property owner, including a claimant's estate or surviving

spouse, should submit a change in status form to avoid interest and in some cases the penalty for willfully claiming the exemption based upon erroneous information.

(b) **Changes in status described.** Changes in status include:

(i) Changes that affect the property (i.e., new construction, boundary line changes, rentals, ownership changes, etc.);

(ii) Changes to the property owner's annual income that increase or decrease property taxes due under the program; or

(iii) Changes that affect the property owner's eligibility for the exemption (i.e., death, moving to a replacement residence, moving to another residence the claimant does not own, moving into a hospice, a nursing home, or any other long-term care facility, marriage, improvement of a physical disability for a disabled person's claim, or a disabled person entering into gainful employment).

(c) **Change in status form.** The county assessor designs the change in status form or adapts a master form obtained from the department. The county must obtain approval of the final form from the department before it may be distributed. The claimant, the claimant's agent, or a subsequent owner of the residence must use a change in status form from the county where the principal residence is located. The person filing the form must provide true and accurate information on the change in status form.

(d) **Obtaining the form.** The claimant or subsequent property owner may obtain the form from the county assessor where his or her principal residence is located.

(e) **Failure to submit the form after a change in status occurs.** If the claimant fails to submit the change in status form, the application information relied upon becomes erroneous for the period following the change in status. Upon discovery of the erroneous information, the assessor determines the status of the exemption, and notifies the county treasurer to collect any unpaid property taxes and interest from the claimant, the claimant's estate, or if the property has been transferred, from the subsequent property owner. The treasurer may collect any unpaid property taxes, interest, and penalties for a period not to exceed three years as provided for under RCW 84.40.380. In addition, if a person willfully fails to submit the form or provides erroneous information, that person is liable for an additional penalty equal to one hundred percent of the unpaid taxes. RCW 84.36.385. If the change in status results in a refund of property taxes, the treasurer may refund property taxes and interest for up to the most recent three years after the taxes were paid as provided in chapter 84.69 RCW.

(f) **Loss of the exemption.** If the change in status disqualifies the applicant for the exemption, property taxes must be recalculated based upon the current full assessed value of the property and paid from the date the change in status occurred. RCW 84.40.360. For example, the exemption is lost when the claimant dies (unless the spouse is also qualified). The property taxes are recalculated to the full assessed amount of the principal residence on a pro rata basis beginning the day following the date of the claimant's death for the remainder of the year.

(g) **Loss of exemption on part of the property.** If the change in status removes a portion of the property from the exemption, property taxes in their full amount on that portion

of the property that is no longer exempt must be recalculated based upon the current full assessed value of that portion of the property and paid from the date the change in status occurred. For example, a property owner subdivides his or her one-acre lot into two parcels. The parcel that does not have the principal residence built upon it no longer qualifies for the exemption. The property taxes are recalculated to the full assessed amount of that parcel on a pro rata basis for the remainder of the year beginning the day following the date the subdivision was given final approval.

(h) **Exemption reduced.** If the change in status reduces the exemption amount, the increased property taxes are due in the year following the change in income. For example, a claimant's income rises so that only excess levies on her principal residence are exempt. The claimant's income is based upon the assessment year. The following year when the taxes are collected, the property taxes due are calculated with only an exemption for excess levies.

(4) **Renewal application.** The county assessor must notify claimants when to file a renewal application with updated supporting documentation.

(a) **Notice to renew.** Written notice must be sent by the assessor in the year the renewal application is requested. Notice must be sent no later than December 10th, three weeks before the December 31st filing requirement.

(b) **When to renew.** The assessor must request a renewal application at least once every four years. The assessor may request a renewal application for any year the income requirements are amended in the statute after the exemption is granted. Once notified, the claimant must file the renewal application by December 31st of that year.

(c) **Processing renewal applications.** Renewal applications are processed in the same manner as the initial application.

(d) **The renewal application form.** The county assessor may design the renewal application form or adapt either its own application form or the application master form obtained from the department. The county must obtain approval of the final renewal application form from the department before it may be distributed. The property owner must use a renewal form from the county where the principal residence is located. The claimant must provide true and accurate information on the renewal application form.

(e) **Obtaining the form.** The assessor provides this form to senior citizens or disabled persons claiming the exemption when requesting renewal.

(f) **Failure to submit the renewal application.** If the property owner fails to submit the renewal application form, the exemption is discontinued until the claimant reapplies for the program. The assessor may postpone collection activities and continue to work with an eligible claimant to complete an application for a missed period.

(5) **Transfer of the exemption.** When a claimant moves to a replacement residence, the claimant must file a change in status form with the county where his or her former principal residence was located. No claimant may receive an exemption on more than the equivalent of one residence in any year.

(a) **Exemption on the former residence.** The exemption on the former residence applies to the closing date on the sale of the former residence, provided the claimant lived in the residence for most of the portion of that year prior to the

date of closing. Property taxes in their full amount must be recalculated based upon the current full assessed value of the property and paid from the day following the date the sale closed. The taxes are paid for the remaining portion of the year. RCW 84.40.360.

(b) **Exemption upon the replacement residence.** Upon moving, the claimant must reapply for the exemption in the county where the replacement residence is located if the claimant wants to continue in the exemption program. The same application, supporting documents, and application process is used for the exemption on the replacement residence as when a claimant first applies. See WAC 458-16A-135. The exemption on the replacement residence applies on a pro rata basis in the year he or she moves, but only from the latter of the date the claimant moves into the new principal residence or the day following the date the sale closes on his or her previous residence.

[Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. 03-16-029, § 458-16A-150, filed 7/29/03, effective 8/29/03; 03-09-002, § 458-16A-150, filed 4/2/03, effective 5/3/03.]

### Chapter 458-17 WAC

#### ASSESSMENT AND TAXATION OF SHIPS AND VESSELS

##### WAC

458-17-101 Assessment and taxation of ships and vessels.

##### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

458-17-100 Ships and vessels—Apportionment of value. [Statutory Authority: RCW 84.08.070, 85-22-083 (Order PT 85-4), § 458-17-100, filed 11/6/85, effective 1/1/86.] Repealed by 86-21-003 (Order PT 86-5), filed 10/2/86. Statutory Authority: RCW 82.01.060(2).

458-17-105 Ships and vessels—Definitions. [Statutory Authority: RCW 82.01.060(2), 86-21-003 (Order PT 86-5), § 458-17-105, filed 10/2/86.] Repealed by 03-16-028, filed 7/29/03, effective 8/29/03. Statutory Authority: RCW 84.08.005, 84.08.070, and 82.01.060(2).

458-17-110 Ships and vessels—Subject to property taxation. [Statutory Authority: RCW 82.01.060(2), 86-21-003 (Order PT 86-5), § 458-17-110, filed 10/2/86.] Repealed by 03-16-028, filed 7/29/03, effective 8/29/03. Statutory Authority: RCW 84.08.005, 84.08.070, and 82.01.060(2).

458-17-115 Ships and vessels—Listing. [Statutory Authority: RCW 82.01.060(2), 86-21-003 (Order PT 86-5), § 458-17-115, filed 10/2/86.] Repealed by 03-16-028, filed 7/29/03, effective 8/29/03. Statutory Authority: RCW 84.08.005, 84.08.070, and 82.01.060(2).

458-17-120 Ships and vessels—Apportionment of value. [Statutory Authority: RCW 82.01.060(2), 86-21-003 (Order PT 86-5), § 458-17-120, filed 10/2/86.] Repealed by 03-16-028, filed 7/29/03, effective 8/29/03. Statutory Authority: RCW 84.08.005, 84.08.070, and 82.01.060(2).

**WAC 458-17-101 Assessment and taxation of ships and vessels.** (1) **Introduction.** This rule explains the application of the personal property tax to ships and vessels. Ships and vessels that are not subject to the excise tax imposed by chapter 82.49 RCW are either subject to the state property tax levy or are completely exempt from both the property tax and the excise tax. This rule covers only those ships and vessels subject to the property tax. See chapter 308-93 WAC for information regarding ships and vessels subject to the excise tax, which is administered by the department of licensing.

(2005 Ed.)

(2) **Which ships and vessels are subject to property taxation?** Under RCW 84.36.080, a ship or vessel is subject to the state portion of the property tax if the ship or vessel is:

- (a) Used exclusively for commercial fishing purposes; or
- (b) Primarily engaged in commerce and has or is required to have a valid marine document as a vessel of the United States.

Accordingly, such a ship or vessel is subject to assessment by the department of revenue for that portion of the property tax levied by the state for state purposes.

(3) **Which ships and vessels are exempt from property taxation?** The following are exempt from all property taxation, including the state levy:

- (a) A ship or vessel listed in the state or federal register of historical places (see RCW 84.36.080);
- (b) A ship or vessel with an assessed value of less than five hundred dollars (see RCW 84.36.015); and
- (c) A ship or vessel that is not within the scope of subsection (2) of this rule (see RCW 84.36.090).

(4) **What are a ship or vessel owner's obligations?** Under RCW 84.40.065, every individual, corporation, partnership, trust, and estate must list with the department of revenue any ship or vessel subject to that person's ownership, possession or control and subject to property taxation under RCW 84.36.080. This listing is subject to the same requirements, penalties, and liens provided in chapters 84.40 and 84.60 RCW for all other personal property.

The listed owner of a ship or vessel as of January 1st of the assessment year is responsible for payment of the property tax for that vessel in the following year. A ship or vessel is subject to property taxation even if it is temporarily not within the limits of the state on January 1st of the year in which the vessel is to be assessed. If ownership of a taxable ship or vessel is transferred after January 1st, the listed owner as of January 1st remains liable for payment of the full amount of tax payable in the following year. The full year's property tax may be abated only if the ship or vessel is damaged or destroyed and qualifies for a reduction in value under RCW 84.70.010.

For example, Seller A sells a taxable charter boat to Buyer B on August 14, 2002. Because Seller A was the listed owner as of January 1, 2002, Seller A is responsible for the entire year's property tax for the 2002 assessment year. That tax is due by April 30, 2003. Buyer B will be the listed owner for 2003 and responsible for the property tax for assessment year 2003, which is due by April 30, 2004.

(5) **What happens if my ship or vessel is out of the state or being repaired during part of the year?** A qualifying ship or vessel, referred to as an "apportionable vessel," may have its assessed value reduced to reflect certain circumstances. A reduction in assessed value also reduces the amount of tax due.

(a) **What is an "apportionable vessel"?** Under RCW 84.40.036, an "apportionable vessel" is a ship or vessel that is:

- (i) Engaged in interstate commerce, meaning the transporting of persons or property from one state or territory of the United States to another;
- (ii) Engaged in foreign commerce, meaning the transporting of persons or property between a state or territory of the United States and a foreign country; or

(iii) Engaged exclusively in fishing, tendering, harvesting and/or processing seafood products on the high seas or waters under the jurisdiction of other states.

(b) **How is value apportioned?** An apportionable vessel has its value apportioned as provided in this subsection.

(i) The value is apportioned based on the number of days or fractions of days that the vessel was within the limits of the state during the calendar year preceding the calendar year in which the vessel is assessed. No value is apportioned to this state unless the vessel is within the limits of the state for more than one hundred twenty days. Days during which a ship or vessel leaves the limits of the state only while navigating the high seas in order to travel between points in this state are considered as days within this state. A ship or vessel that does not qualify as an apportionable vessel under subsection (5)(a) of this rule may not have its value apportioned, regardless of the number of days the ship or vessel is within or outside the limits of the state.

(A) A "fraction of a day" means more than sixteen hours in a calendar day.

(B) The "limits of the state" means the boundaries of the state of Washington abutting Canada, Oregon, and Idaho and three miles to the west of Washington's coast line.

(ii) Time during which an apportionable vessel is in the state exclusively for one or more of the following purposes is not considered as time within the limits of the state, if the length of time is reasonable to:

(A) Undergo maintenance, repair or alteration;

(B) Take on or discharge cargo, passengers or supplies; or

(C) Serve as a tug for a vessel under (A) or (B) of this subsection (5)(b)(ii).

A "reasonable length of time" includes a reasonable length of travel time to enter and leave the limits of the state exclusively for one of the purposes listed in (A) through (C) above. A ship or vessel engaging in any activity or use not described in (A) through (C) above, or merely being moored, is not considered to be within the state exclusively for the purposes described in this subsection.

(c) **Examples.** The following examples illustrate the application of the apportionment rules. 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) Barge A loads cargo in Washington Port Z in eastern Washington. Loaded, Barge A embarks down the Columbia River to Vancouver, Washington and discharges its cargo. This activity does not qualify Barge A as an apportionable vessel because Barge A did not engage in interstate or foreign commerce. The barge would qualify as an apportionable vessel for the following assessment year if it had discharged its cargo at Portland, Oregon.

(ii) Charter Boat operates out of XYZ Charters, based in Anacortes, Washington. The charter begins in Anacortes and sails into Canadian waters for one month before returning to Anacortes to complete the charter. This activity does not qualify Charter Boat as an apportionable vessel because Charter Boat did not engage in foreign or interstate commerce; no persons or property were transported from one country or state to another.

(iii) Charter Boat operates out of XYZ Charters, based in Anacortes, Washington. Charter Boat is delivered to persons who board the vessel in Vancouver, British Columbia. Charter Boat cruises in Canadian waters for one month before returning to Anacortes where the passengers disembark, completing the charter. This transaction involves foreign commerce because persons were transported between another country and the United States. As a result, the vessel qualifies as an apportionable vessel and its value will be apportioned based upon the number of days the vessel is within the limits of the state during that calendar year.

(iv) Charter Boat carries passengers from Seattle to Juneau, Alaska. Charter Boat then charts out of Alaska during the summer months. Charter Boat returns to Seattle in September for mooring and off-season repairs. The vessel qualifies as an apportionable vessel and its value will be apportioned to reflect the days the vessel is within the limits of the state during that calendar year. However, the days in Washington while the vessel is being repaired are not counted as days within the state, if reasonable in amount of time. On the other hand, the vessel's travel time within Washington waters while traveling to and from the state is counted as time within the state because the trip to this state was not exclusively for the purpose of repairs.

(v) Fishing Boat goes to Alaska each year to fish and returns to Seattle each fall for repair and maintenance. The vessel qualifies as an apportionable vessel and its value will be apportioned to reflect the days the vessel is within the limits of the state during that calendar year. The days in Washington for repair and maintenance are not counted, if the amount of time is reasonable. Travel time to and from Washington is also not counted as time within the state because the trip was exclusively for the purpose of obtaining repair and maintenance services. As a result, none of the vessel's value will be apportioned to Washington in this instance.

(vi) Charter Boat Owner A purchases a vessel on November 1, 2001. The boat had previously been used as a pleasure craft. The boat is first used in interstate commerce as a charter boat in January 2002 and spends half of the year outside of state waters in calendar year 2002. The boat is first listed in Owner A's name for tax purposes as of January 1, 2002. The vessel's entire value is assessed in 2002 because the vessel did not qualify as an apportionable vessel during calendar year 2001 (the calendar year preceding the assessment year). Owner A will first pay property taxes in the 2003 tax year based upon the vessel's value in the 2002 assessment year. The full amount of tax is due by April 30, 2003. The value for the 2003 assessment year will be apportioned based upon the boat's use in calendar year 2002 (50% of time within state waters). The amount of tax due for tax year 2004 will be based upon the 2003 assessed value and is due by April 30, 2004.

[Statutory Authority: RCW 84.08.005, 84.08.070, and 82.01.060(2). 03-16-028, § 458-17-101, filed 7/29/03, effective 8/29/03.]

## Chapter 458-18 WAC

PROPERTY TAX—ABATEMENTS, CREDITS,  
DEFERRALS AND REFUNDS

## WAC

458-18-010	Deferral of special assessments and/or property taxes— Definitions.
458-18-020	Deferral of special assessments and/or property taxes— Qualifications for deferral.
458-18-030	Deferral of special assessments and/or property taxes— Declarations to defer—Filing—Forms.
458-18-040	Deferral of special assessments and/or property taxes— Lien of state—Mortgage—Purchase contract— Deed of trust.
458-18-050	Deferral of special assessments and/or property taxes— Declarations to renew deferral—Filing—Forms.
458-18-060	Deferral of special assessments and/or property taxes— Limitations of deferral—Interest.
458-18-070	Deferral of special assessments and/or property taxes— Duties of the county assessor.
458-18-080	Deferral of special assessments and/or property taxes— Duties of the department of revenue—State treasurer.
458-18-090	Deferral of special assessments and/or property taxes— Appeals.
458-18-100	Deferral of special assessments and/or property taxes— When payable—Collection—Partial payment.
458-18-210	Refunds—Procedure—Interest.
458-18-215	Refunds—Payment under protest requirements.
458-18-220	Refunds—Rate of interest.
458-18-500	Deposit of moneys, assessments or taxes—Purpose.
458-18-510	Definitions.
458-18-520	Agreement.
458-18-530	Prohibition of deposit.
458-18-540	General provisions.
458-18-550	Expenditure of funds.

**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 458-18-020 Deferral of special assessments and/or property taxes—Qualifications for deferral.** A person may defer payment of special assessments and/or real property taxes on up to eighty percent of the amount of his equity value in said property if the following conditions are met:

(1) The claimant must have owned, at the time of filing, the residence on which the special assessment and/or real property taxes have been imposed. For purposes of this subsection a residence owned by a marital community or owned by cotenants shall be deemed to be owned by each spouse and cotenant. A claimant who has only a share ownership in cooperative housing, a life estate, a lease for life or a revocable trust does not satisfy the ownership requirement.

(2) If the amount deferred is to exceed one hundred percent of the claimant's equity value in the land or lot only, the claimant must have and keep in force fire and casualty insurance in sufficient amount to protect the interest of the state of Washington and shall designate the state as a loss payee upon said policy. In no case shall the deferred amount exceed the amount of the insured value of the improvement plus the land value.

(3) In the case of special assessment deferral, the claimant must have opted for payment of such special assessments on the installment method if such method was available.

(4) The claimant must meet all requirements for an exemption for the residence under RCW 84.36.381, other than the income requirements, and to the extent eligible, must have first applied for the exemptions under RCW 84.36.381 through 84.36.389 prior to filing a declaration to defer.

(5) The claimant must have a combined disposable income, as defined in RCW 84.36.383 and WAC 458-16-010 and 458-16-013, of thirty thousand dollars or less.

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

**WAC 458-18-030 Deferral of special assessments and/or property taxes—Declarations to defer—Filing—Forms.**

(1) Declarations to defer special assessments and/or real property taxes for any year shall be filed no later than thirty days before the tax or assessment is due, or thirty days after receiving notice under RCW 84.64.030 or 84.64.050 whichever is later. For good cause shown the department may waive this requirement. All declarations to defer shall be made and signed by the claimant. If the claimant is unable to make his or her own declaration, it may be made and signed by a duly authorized agent or by a guardian or other person charged with care of the person or property of such claimant.

(2) The declaration to defer shall be made solely upon forms prescribed by the department of revenue and supplied by the county assessor. Such forms shall contain the following:

(a) Name and address of the claimant.

(b) If the property described upon the assessment rolls by the assessor contains more than one acre, the claimant must supply a complete and accurate legal description that encompasses the residence and that does not contain more than one acre.

(c) An affirmation that the claimant meets the conditions of WAC 458-18-020 including, but not limited to the name, address, policy number, and amount of fire and casualty insurance carried on the residence.

(c) A list of all members of the claimants household.

(d) The claimant's equity in his residence including all liens, obligations and encumbrances against the property.

(e) Information concerning any special assessments to be deferred.

(f) The names of other parties with an interest in the residence to which the deferral applies.

(g) Signatures of other parties in interest designating the claimant.

(h) Signature of any mortgagee, contract purchase holder and/or beneficiary under a deed of trust.

(i) An affirmation that the claimant is aware of the lien of the deferred special assessments and/or real property taxes and when the lien becomes payable.

(j) A numbering system approved by the department.

(k) Any other pertinent information the department deems relevant.

[Statutory Authority: RCW 84.38.180. 84-21-010 (Order PT 84-4), § 458-18-030, filed 10/5/84; 81-05-020 (Order PT 81-8), § 458-18-030, filed 2/11/81; Order PT 76-1, § 458-18-030, filed 4/7/76.]

**WAC 458-18-040 Deferral of special assessments and/or property taxes—Lien of state—Mortgage—Purchase contract—Deed of trust.**

(1) Whenever any special assessments and/or real property taxes are deferred under the provisions of this chapter, the amount deferred, including interest, shall become a lien in favor of the state upon this property and shall have priority as provided in chapters 35.50 and 84.60 RCW except as provided in subsection (3) herein.

(2) If any residence is under mortgage, deed of trust or purchase contract whereby the explicit wording or terms of the mortgage, deed of trust or purchase contract requires the accumulation of reserves out of which the holder of the mortgage, deed of trust, or purchase contract is required to pay real property taxes, said holder or his authorized agent shall cosign the declaration to defer either before a notary public or the county assessor or his deputy in the county in which the real property is located.

(3) The interest of any party required to cosign a declaration to defer under subsection (2) of this section shall have priority to the lien established in subsection (1) of this section.

[Order PT 76-1, § 458-18-040, filed 4/7/76.]

**WAC 458-18-050 Deferral of special assessments and/or property taxes—Declarations to renew deferral—Filing—Forms.**

(1) Declarations to defer assessments and/or real property taxes for all years following the first year shall be made by filing a "declaration to renew deferral" with the county assessor no later than thirty days before the tax or assessment is due. For good cause shown the department may waive this requirement. If the claimant is unable to make his or her renewal declaration, it may be made and signed by a duly authorized agent or by a guardian or other person charged with care of the person or property of such claimant.

(2) Such "declaration to renew deferral" will be made solely upon forms prescribed by the department and supplied

by the county assessor. The "declaration to renew deferral" form shall include, but not be limited to, those requirements contained in WAC 458-18-030 (2)(a), (2)(b), (2)(d), (2)(e), (2)(i), (2)(j), and (2)(k).

[Statutory Authority: RCW 84.38.180, 84-21-010 (Order PT 84-4), § 458-18-050, filed 10/5/84; 81-05-020 (Order PT 81-8), § 458-18-050, filed 2/11/81; Order PT 76-1, § 458-18-050, filed 4/7/76.]

**WAC 458-18-060 Deferral of special assessments and/or property taxes—Limitations of deferral—Interest.** No deferral shall be granted if the liens created by the deferrals of special assessments and/or real property taxes equal or exceed eighty percent of the claimant's equity value in said property. Equity value will be determined as of January 1 in the year the taxes are to be deferred.

The liens shall include:

(1) The total amount of special assessments and/or real property taxes deferred, plus

(2) Interest on the amount deferred at the rate of eight percent per year, from the time it could have been paid before delinquency until said lien is paid. When a declaration is filed after the taxes are delinquent, interest at the rate of eight percent per year on the amount deferred will begin accruing on the date the declaration is filed and will continue until the obligation is paid.

[Statutory Authority: RCW 84.38.180, 88-13-042 (Order PT 88-9), § 458-18-060, filed 6/9/88; 84-21-010 (Order PT 84-4), § 458-18-060, filed 10/5/84; 81-21-008 (Order 81-12), § 458-18-060, filed 10/8/81; Order PT 76-1, § 458-18-060, filed 4/7/76.]

**WAC 458-18-070 Deferral of special assessments and/or property taxes—Duties of the county assessor.** The county assessor shall:

(1) Determine each year if each claimant filing a "declaration to defer" and/or a "declaration to renew deferral" shall be granted a deferral. If the assessor determines the claimant is not eligible, he shall notify the claimant as soon as possible;

(2) In January of each year mail renewal declarations to each claimant who had received a deferral the previous year;

(3) Immediately transmit one copy of each approved declaration to the department;

(4) Transmit one copy of each approved declaration to the local improvement district which imposed the assessment that is to be deferred. Such district shall verify the figures concerning said assessment supplied by the claimant and notify the assessor of the correct figures if those supplied are inaccurate;

(5) Compute the dollar tax rates under the provisions of chapter 84.52 RCW as if the deferrals did not exist;

(6) As soon as possible notify the department of the amount of special assessments and/or real property taxes deferred for each claimant for that year. Such notice shall contain any corrections brought about by subsection (4) of this section;

(7) As soon as possible notify the county treasurer and the respective treasurers of the local improvement districts of which claimants and properties have qualified for deferral and the amount that will be paid by the state treasurer on behalf of the claimant;

(2005 Ed.)

(8) Notify the county treasurer and the department immediately upon occurrence of any condition set forth in WAC 458-12-100(1).

[Statutory Authority: RCW 84.38.180, 84-21-010 (Order PT 84-4), § 458-18-070, filed 10/5/84; Order PT 76-1, § 458-18-070, filed 4/7/76.]

**WAC 458-18-080 Deferral of special assessments and/or property taxes—Duties of the department of revenue—State treasurer.** The department shall:

(1) Notify the county assessor as soon as possible of any declaration to defer, where any factor appears to disqualify the claimant;

(2) Certify to the state treasurer the amount due the respective treasurers for any special assessments and/or real property taxes deferred for that year;

(3) File a notice of the deferral with the county recorder or auditor;

(4) Notify the department of licensing to show the state's lien on the certificate of ownership of a mobile home.

The department may audit any "declaration to defer" and/or "declaration to renew deferral" it deems necessary.

The state treasurer shall pay, before delinquency, to the county treasurers and the treasurers of the respective local improvement districts the amounts certified by the department of revenue. The amount paid shall be distributed to the districts which levied the taxes.

[Statutory Authority: RCW 84.38.180, 84-21-010 (Order PT 84-4), § 458-18-080, filed 10/5/84; 81-05-020 (Order PT 81-8), § 458-18-080, filed 2/11/81; Order PT 76-1, § 458-18-080, filed 4/7/76.]

**WAC 458-18-090 Deferral of special assessments and/or property taxes—Appeals.** Any claimant whose "declaration to defer" or "declaration to renew deferral" is denied by the county assessor may appeal to the county board of equalization under the provisions of chapter 458-14 WAC. The decision of the county board of equalization shall be final for that year and no further appeal shall be allowed.

In any case where the claimant is notified of a denial subsequent to July 15 due to WAC 458-18-080(2), the department may reconvene the board of equalization if requested to do so by the assessor or claimant.

[Order PT 76-1, § 458-18-090, filed 4/7/76.]

**WAC 458-18-100 Deferral of special assessments and/or property taxes—When payable—Collection—Partial payment.** (1) Any special assessments and/or real property taxes deferred shall become payable together with interest:

(a) Upon the conveyance of property which has a deferred special assessment and/or real property tax lien upon it.

(b) Upon the death of the claimant except when the surviving spouse is qualified and elects to incur the lien and continue the deferment by (i) filing an original "declaration to defer" within ninety days of the claimant's death and (ii) continuing to meet the qualifications of WAC 458-18-010 through 458-18-100.

When a surviving spouse elects to continue the deferment, the spouse then becomes the claimant and is fully sub-

ject to the conditions of WAC 458-18-010 through 458-18-100.

(c) Upon condemnation of property with a deferred special assessment and/or real property tax lien upon it by a public or private body exercising the power of eminent domain: Provided, That if the assessed value of the property not condemned exceeds the amount of the liens, including interest, the claimant may elect to have the liens set over to the property retained: Provided further, That the amount of the lien allowed to be set over shall not exceed 80% of the claimant's equity in the retained property.

(d) At such time as the claimant ceases to reside permanently in the residence upon which the deferral has been granted. If the cessation occurs between filing the declaration and the date the taxes are payable, the deferral shall not be allowed.

(e) Upon the failure of the claimant to have or keep in force fire and casualty insurance in sufficient amount to protect the interest of the state of Washington or failure to keep the state listed as a loss payee upon said policy. Subsection (1)(b) shall take precedence over subsection (1)(d).

(2) Once a deferral has been granted, the various conditions contained within WAC 458-18-010 through 458-18-100 may prohibit the claimant from qualifying for further deferrals, but any obligations resulting from deferrals previously granted will become due and payable only upon occurrence of the conditions set forth in subsection (1) of this section.

(3) Upon occurrence of any condition requiring the payment of any deferred special assessments and/or real property taxes, the county treasurer shall proceed to collect the same in the manner provided for in chapter 84.56 RCW. For purposes of collection of the deferred taxes and interest, provisions of chapters 84.56, 84.60, and 84.64 RCW shall be applicable. When these moneys are collected, they shall be credited to a special account in the county treasury and shall then be remitted to the state treasurer within thirty days from collection with remittance advice to the department of revenue. The state treasurer shall deposit the moneys in the state general fund.

(4) Any person may at any time pay a part or all of the deferred assessments and/or taxes including the interest, but such payment shall not affect the deferred tax status of the property. Any payment made shall be credited to the oldest deferred amount and shall be prorated between interest and the deferred assessments and/or taxes.

[Statutory Authority: RCW 84.38.180, 84-21-010 (Order PT 84-4), § 458-18-100, filed 10/5/84; 81-05-020 (Order PT 81-8), § 458-18-100, filed 2/11/81; Order PT 76-1, § 458-18-100, filed 4/7/76.]

#### **WAC 458-18-210 Refunds—Procedure—Interest.**

(1) Refunds provided for by chapter 84.69 RCW are made by one of the following two methods:

(a) The county legislative authority acts upon its own motion and orders a refund; or

(b) The taxpayer files a claim for refund with the county. This claim shall:

(i) Be verified by the person who paid the tax, his guardian, executor or administrator; and

(ii) Be filed within three years after the payment sought to be refunded was made; and

(iii) State the statutory ground upon which the refund is claimed.

(2) All claims for refunds must be certified as correct by the county assessor and treasurer and not be refunded until so ordered by the county legislative authority.

(3) For all refunds, the rate of interest is set out in WAC 458-18-220. The rate of interest is based upon the date the taxes were paid.

(4) Except as provided in subsections (5) and (6) of this section, the interest shall accrue from the time the taxes were paid until the refund is made.

(5) Refunds on a state, county or district-wide basis shall not commence to accrue interest until six months following the date of the final order of the court.

(6) Refunds may be made without interest within sixty days after the date of payment if:

(a) Paid more than once; or

(b) The amount paid exceeds the amount due on the property as shown on the tax roll.

[Statutory Authority: RCW 84.08.010, 84.08.070, 84.69.030, 84.69.100 and 84.69.150, 98-01-176, § 458-18-210, filed 12/23/97, effective 1/1/98. Statutory Authority: RCW 84.69.100 as amended by 1987 c 319 and 84.08.010(2), 87-19-141 (Order PT 87-7), § 458-18-210, filed 9/23/87.]

#### **WAC 458-18-215 Refunds—Payment under protest requirements.**

(1) **Introduction.** This rule explains and implements the procedures to be followed to comply with RCW 84.68.020. This statute imposes the requirement that property taxes be paid under protest in order to preserve the taxpayer's right to bring an action in court for a refund. The intent of the rule is to clarify the rights and responsibilities of taxpayers with respect to paying taxes under protest. This rule does not explain nor apply to the provisions of chapter 84.69 RCW, which describe alternative procedures for obtaining property tax refunds in factual circumstances that do not require the tax to be paid under protest.

(2) **What constitutes a valid protest.** In order to preserve a right to bring an action in court for refund of any property tax paid, a taxpayer must at the time of payment of the tax, submit to the county treasurer a written protest setting forth all of the grounds upon which the tax, or any portion of the tax, is claimed to be unlawful or excessive. When the taxpayer pays the tax in two installments, the right to bring an action in court for refund of any property tax paid is preserved if a written protest, as provided in this section, accompanies each installment payment or if a written protest, as provided in this section, accompanies the first installment payment and indicates that the protest is a continuing protest with respect to the taxes payable for the entire year. No protest accompanying a tax payment shall be deemed to include protest of taxes due in succeeding years. A statement on a check or money order that the tax is being paid under protest is not sufficient to preserve the right to seek a refund in court. Any tax paid without a written protest, as provided in this section, is considered to be voluntarily paid and nonrefundable.

(3) **Sufficiency of protest.** The written protest is intended to provide the taxing authorities with notice that the taxpayer is disputing the right to collect the tax and also to provide notice to the taxing authorities of the grounds upon which the taxpayer bases the protest. Any written protest

which clearly states that the taxpayer disputes liability for the tax or a part thereof, and states all the reasons for the dispute constitutes a sufficient notice and a sufficient written protest for the purposes of this section. When the taxpayer submits a written protest as provided in this section, the taxpayer is thereafter prohibited from raising other or additional grounds as the basis for the dispute.

(4) **Notice to taxpayers of protest requirement.** A prominent notice of the written protest requirement shall be included as part of, or enclosed with, property tax statements. One sample notice is as follows: To preserve your right to seek a court ordered refund, you must submit a separate written statement to the county treasurer at the time you pay the tax stating: You are paying the tax or a portion of the tax under protest; and all of the reasons why you believe the tax paid is unlawful or excessive. An alternative sample notice is as follows: To preserve your right to seek a court ordered refund, you must comply with requirements of the law (RCW 84.68.020 and WAC 458-18-215). Copies are available from the county treasurer.

(5) **Effective date.** This rule is effective for 1994 tax statements and taxes due in 1994, and thereafter. This rule is not intended to impose additional administrative costs upon counties to the extent 1994 tax statements may have already been printed, as of the effective date of this rule, without containing the notice required in subsection (4) of this section.

[Statutory Authority: RCW 84.08.070. 93-24-087, § 458-18-215, filed 11/30/93, effective 12/31/93.]

**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%
2001	2000	5.98%

Year tax paid	Auction Year	Rate
2002	2001	3.50%
2003	2002	1.73%
2004	2003	0.95%
2005	2004	1.73%

[Statutory Authority: RCW 84.69.100. 04-24-101, § 458-18-220, filed 12/1/04, effective 1/1/05; 03-24-014, § 458-18-220, filed 11/20/03, effective 12/21/03; 02-23-081, § 458-18-220, filed 11/19/02, effective 12/20/02; 02-03-039, § 458-18-220, filed 1/8/02, effective 2/8/02; 00-24-106, § 458-18-220, filed 12/6/00, effective 12/31/00; 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.]

**WAC 458-18-500 Deposit of moneys, assessments or taxes—Purpose.** RCW 35.21.650 and 36.32.120 provide that any taxpayer may deposit with the treasurer or other legal depository any moneys, assessments or taxes that may become due or be levied in the future.

WAC 458-18-500 through 458-18-550 are to establish guidelines to be used in all cases wherein a taxpayer desires to deposit any moneys, assessments or taxes levied or to be levied under Title 84 RCW.

These rules are adopted by the department of revenue pursuant to its general supervisory powers and control over the administration of the assessment and tax laws of the state (RCW 84.08.010(1)) and rule-making authority (RCW 84.08.070).

[Statutory Authority: RCW 84.08.010 and 84.08.070. 81-22-037 (Order PT 81-16), § 458-18-500, filed 10/30/81.]

**WAC 458-18-510 Definitions.** For the purposes of WAC 458-18-500 through 458-18-550,

(1) "County legislative authority" shall mean the county commissioners, or in the case of a home rule charter county, the governmental authority empowered to so act.

(2) "City treasurer" shall mean the duly appointed or elected treasurer of any city or town.

(3) "Taxpayer" shall mean any individual, corporation, association, partnership, trust, or estate whose property has been or will be assessed for property tax purposes according to Title 84 RCW.

(4) "Agreement" shall mean a written document wherein the taxpayer and county legislative authority, city treasurer, or governing officers of any district have agreed to certain conditions concerning the deposit. The agreement shall be made in accordance with WAC 458-18-520.

(5) "District" shall mean any county, city, town, port district, school district, road district, water district, fire district, or other municipal corporation, now or hereafter existing, having the power or authorized by law to levy or have levied

for it, burdens on property for the purposes of obtaining revenue for public purposes, but shall not include the state.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 81-22-037 (Order PT 81-16), § 458-18-510, filed 10/30/81.]

**WAC 458-18-520 Agreement.** The agreement shall be binding on all parties thereto: Provided, That the agreement may be amended from time to time if such is agreed to by all parties in writing. The agreement shall contain:

- (1) The name and address of the taxpayer;
- (2) The name of the district or districts which (is) (are) a party to the agreement;
- (3) The total amount and the date of the deposit or deposits;
- (4) The funds and the amount of the deposit which is to be applied to each fund;
- (5) A schedule for repayment or credit against the future assessment or taxes which shall show:
  - (a) The year or date that each credit will be allowed, and
  - (b) The amount of the credit. The credit may be in specific amounts or by percentage, whichever the parties deem most beneficial.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 81-22-037 (Order PT 81-16), § 458-18-520, filed 10/30/81.]

**WAC 458-18-530 Prohibition of deposit.** No taxpayer shall, nor shall any city treasurer or county legislative authority allow, deposit of any moneys, assessments, or taxes as a credit against any future assessments or taxes except as provided for in the agreement made in accordance with WAC 458-18-500 through 458-18-550.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 81-22-037 (Order PT 81-16), § 458-18-530, filed 10/30/81.]

**WAC 458-18-540 General provisions.** The following shall apply to all deposits and agreements:

- (1) There shall be no limit on the number of years in advance of the due date that assessments and taxes may be deposited for;
- (2) The district shall establish an accounting system which will enable any party, at any time, to accurately determine the amount of deposits and future credit, to any and all funds, which system shall be subject to approval by the state auditor;
- (3) No interest shall be charged between the parties to the agreement on any deposits which have been made or agreed to be made except as provided for in subsection 6 of this section;
- (4) Any deposit which is to be applied to any funds of districts other than county funds, shall be agreed to by the governing officers of said district which shall be a party to the agreement;
- (5) Any moneys deposited shall not have any effect whatsoever on the levy of any taxes on any property in accordance with the provisions of chapters 84.52 and 84.55 RCW;
- (6) The agreement may provide for penalties when the taxpayer has agreed to make deposits which subsequently are not made or not timely made; and
- (7) Any taxes paid in the year they are due shall not be considered deposits.

[Title 458 WAC—p. 98]

[Statutory Authority: RCW 84.08.010 and 84.08.070. 81-22-037 (Order PT 81-16), § 458-18-540, filed 10/30/81.]

**WAC 458-18-550 Expenditure of funds.** The funds to which the deposits are applied may be expended in any manner or for any purpose for which the funds could be applied as if they were received in the manner and at the time that assessments and taxes are normally paid.

Any district which has received or anticipates to receive deposits to be applied to their funds may, in the budget process, show those deposits as revenue or anticipated revenue, and budget for the expenditure of those moneys in the year they are to be expended.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 81-22-037 (Order PT 81-16), § 458-18-550, filed 10/30/81.]

## Chapter 458-19 WAC

### PROPERTY TAX LEVIES, RATES, AND LIMITS

#### WAC

458-19-005	Definitions.
458-19-010	Levy limit and levy rate calculations.
458-19-020	Levy limit—Method of calculation.
458-19-025	Restoration of regular levy.
458-19-030	Levy limit—Consolidation of districts.
458-19-035	Levy limit—Annexation.
458-19-040	Levy limit—Newly formed taxing district.
458-19-045	Levy limit—Removal of limit (lid lift).
458-19-050	Port district levies.
458-19-055	Levy limit—Proration of earmarked funds.
458-19-060	Emergency medical service levy.
458-19-065	Levy limit—Protection of future levy capacity.
458-19-070	Procedure to adjust consolidated levy rate for taxing districts when the statutory aggregate dollar rate limit is exceeded.
458-19-075	Constitutional one percent limit calculation.
458-19-080	City annexed by fire protection and/or library districts.
458-19-085	Refunds—Procedures—Applicable limits.
458-19-550	State levy—Apportionment between counties.

#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

458-19-015	Assessor to determine one hundred six percent levy limit—Exceptions. [Statutory Authority: RCW 84.55.060 and 84.08.070. 94-07-066, § 458-19-015, filed 3/14/94, effective 4/14/94.] Repealed by 02-24-015, filed 11/25/02, effective 12/26/02. Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230(1).
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**WAC 458-19-005 Definitions. (1) Introduction.** This rule contains definitions of the terms used throughout chapters 84.52 and 84.55 RCW and chapter 458-19 WAC in the administration of the system used to levy property taxes on taxable property within the state of Washington.

(2) Unless the context clearly requires otherwise, the following definitions apply:

(a) "Annexation" means one taxing district is adding territory or another dissimilar taxing district from outside the annexing taxing district's boundary and includes a merger of a portion of a fire protection district under chapter 52.06 RCW with another fire protection district.

(b) "Assessed value" means the value of taxable property placed on the assessment rolls. The term is often abbreviated with the initials "A.V."

(c) "Certified property tax levy" means the levy certified by a taxing district to the county assessor, either through the county legislative authority or directly to the assessor.

(d) "Certified property tax levy rate" means the tax rate calculated by the county assessor in accordance with law to produce the lawful amount of the certified property tax levy.

(e) "Consolidated levy rate" means:

(i) For purposes of the statutory aggregate dollar rate levy limit, the sum of all regular levy rates set for collection exclusive of rates set for port and public utility districts, emergency medical services under RCW 84.52.069, conservation futures under RCW 84.34.230, levies to finance affordable housing under RCW 84.52.105, and the portion of metropolitan park district levies protected under RCW 84.52.120; and

(ii) For purposes of the constitutional one percent limit, the sum of all regular levy rates set for collection exclusive of rates set for port and public utility districts.

(f) "Consolidation" means the act of combining two or more similar taxing districts into one taxing district; for example, the combination of two fire protection districts into one fire protection district.

(g) "Constitutional one percent limit" means the levy limit established by Article VII, section 2 of the state Constitution, which prohibits the aggregate of all tax levies on real and personal property from exceeding one percent (\$10 per \$1,000) of the true and fair value of property. This limit does not apply to excess levies, levies by port districts, and levies by public utility districts. This limit is also set forth in RCW 84.52.050.

(h) "Department" means the department of revenue of the state of Washington.

(i) "Excess property tax levy" or "excess levy" means a voter-approved property tax levy by or for a taxing district, other than a port or public utility district, that is subject to neither the statutory aggregate dollar rate limit set forth in RCW 84.52.043 nor the constitutional one percent limit set forth in Article VII, section 2 of the state Constitution and in RCW 84.52.050. It does not include regular levies allowed to exceed a statutory limit with voter approval.

(j) "Improvement" means any valuable change in or addition to real property, including the subdivision or segregation of parcels of real property or the merger of parcels of real property.

(k) "Inflation" means the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the Bureau of Economic Analysis of the Federal Department of Commerce in September of the year before the taxes are payable; see RCW 84.55.005.

(l) "Joint taxing district" means a taxing district that exists in two or more counties; the term does not include the state nor does it include an intercounty rural library district.

(m) "Junior taxing district" means a taxing district other than the state, a county, a county road district, a city, a town, a port district, or a public utility district.

(n) "Levy limit" means the statutorily established limit that prohibits a taxing district, other than the state, from levying regular property taxes for a particular year that exceed the limit factor multiplied by the highest amount of regular property taxes that could have been lawfully levied in the taxing

district in any year since 1985, plus an additional dollar amount calculated by multiplying the increase during the current year of the assessed value in the taxing district due to new construction, improvements to property, and the increase in the value of state assessed property by the levy rate of that district for the preceding year, or the last year the taxing district levied taxes.

(i) For purposes of the levy limit, the phrase "highest amount of regular property taxes that could have been lawfully levied" means the maximum amount that could have been levied by a taxing district under the limitation set forth in chapter 84.55 RCW unless the highest amount that could have been levied was actually restricted by the taxing district's statutory dollar rate limit. If the taxing district's levy was restricted by the statutory dollar rate limit, the highest amount that could have been lawfully levied is the amount produced by multiplying the assessed value of the taxing district by the statutory dollar rate.

(ii) The levy limit for the state is the limit factor multiplied by the highest amount of regular property taxes lawfully levied in the three most recent years, plus an additional dollar amount attributable to new construction, improvements to property, and any increase in the assessed value of state assessed property.

(o) "Levy rate" means the dollar amount per thousand dollars of assessed value applied to taxable property within a taxing district and is calculated by dividing the total amount of a statutorily authorized levy of a taxing district by the total assessed value of that district and is expressed in dollars and cents per thousand dollars of assessed value.

(p) "Limit factor" means:

(i) For taxing districts with a population of less than ten thousand in the calendar year immediately prior to the assessment, one hundred one percent;

(ii) For taxing districts having made a finding of substantial need in accordance with RCW 84.55.0101, the lesser of the substantial need factor or one hundred one percent; or

(iii) For all other taxing districts, including the state, the lesser of one hundred one percent or one hundred percent plus inflation.

(q) "New construction" means the construction or alteration of any property for which a building permit was issued, or should have been issued, under chapter 19.27, 19.27A, or 19.28 RCW or other laws providing for building permits, which results in an increase in the value of the property.

(r) "Regular property tax levy" or "regular levy" means a property tax levy by or for a taxing district that is subject to the statutory aggregate dollar rate limit set forth in RCW 84.52.043, the constitutional one percent limit set forth in RCW 84.52.050, or is a levy imposed by or for a port district or a public utility district.

(s) "Regular property taxes" means those taxes resulting from regular property tax levies.

(t) "Senior taxing district" means the state (for support of common schools), a county, a county road district, a city, or a town.

(u) "Statutory aggregate dollar rate limit" or "statutory aggregate limit" means the maximum aggregate regular property tax levy rate within a county established by law for senior and junior taxing districts, other than the state. See WAC 458-19-070 for the current limit.

(v) "Substantial need limit factor" means a limit factor approved by a taxing district's legislative authority that exceeds one hundred percent plus inflation. This limit cannot exceed one hundred one percent.

(w) "Statutory dollar rate limit" means the maximum regular property tax levy rate established by law for a particular class of taxing district.

(x) "Super majority" means a majority of at least three-fifths of the registered voters of a taxing district approving a proposition authorizing a levy, at which election the number of persons voting "yes" on the proposition constitutes three-fifths of a number equal to forty percent of the total votes cast in the taxing district in the last preceding general election; or by a majority of at least three-fifths of the registered voters of the taxing district voting on the proposition when the number of registered voters voting on the proposition exceeds forty percent of the total votes cast in the taxing district in the last preceding general election.

(y) "Tax code area" means a geographical area made up of a unique mix of one or more taxing districts, which is established for the purpose of properly calculating, collecting, and distributing taxes. Only one tax code area will have the same combination of taxing districts, with limited exceptions.

(z) "Taxing district" means the state and any county, city, town, port district, school district, road district, metropolitan park district, water-sewer district, or other municipal corporation, now or hereafter existing, having the power or authorized by law to impose burdens upon property within the district on an ad valorem basis, for the purpose of obtaining revenue for public purposes, as distinguished from municipal corporations authorized to impose burdens, or for which burdens may be imposed for public purposes, upon property in proportion to the benefits accruing thereto.

[Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230(1). 02-24-015, § 458-19-005, filed 11/25/02, effective 12/26/02. Statutory Authority: RCW 84.55.060 and 84.08.070. 94-07-066, § 458-19-005, filed 3/14/94, effective 4/14/94.]

**WAC 458-19-010 Levy limit and levy rate calculations.** (1) **Introduction.** This rule explains two of the basic steps in the levy setting process. First, who determines the levy limit for all taxing districts and second, who calculates the levy rate for the various taxing districts.

(2) **Who determines the levy limit?** The assessor generally determines the levy limit for all taxing districts levying regular property taxes. However, the levy limit for joint taxing districts, intercounty rural library districts, and the state is determined as follows:

(a) Joint taxing districts. The levy limit for joint taxing districts is determined by the assessor of the county in which the greatest amount of assessed value of the joint taxing district is located;

(b) Intercounty rural library districts. The levy limit for intercounty rural library districts is determined by the board of trustees of the intercounty rural library district in consultation with the assessors of the counties served by the district; and

(c) State levy. The levy limit for the state is determined by the department.

(3) **Who sets levy rates?** The assessor generally calculates the property tax levy rate necessary to collect the amount of taxes levied by or for each taxing district, within the limitations provided by law. However, the levy rate for joint taxing districts and intercounty rural library districts is calculated as follows:

(a) Joint taxing districts. The assessor of the county in which the greatest amount of assessed value of the joint taxing district is located calculates the levy rate; and

(b) Intercounty rural library districts. The board of trustees of an intercounty rural library district calculates the levy rate for the intercounty rural library district in consultation with the assessors of the counties served by the district and certifies that rate to the respective county legislative authorities.

[Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230(1). 02-24-015, § 458-19-010, filed 11/25/02, effective 12/26/02. Statutory Authority: RCW 84.55.060 and 84.08.070. 94-07-066, § 458-19-010, filed 3/14/94, effective 4/14/94.]

**WAC 458-19-020 Levy limit—Method of calculation.**

(1) **Introduction.** This rule explains the general method used to calculate the levy limit for the state and all other taxing districts in accordance with RCW 84.55.010 and 84.55.092. Except for the state levy, the same method is generally used to calculate the amount of regular property taxes that can be levied by a taxing district in any year. This rule also describes what occurs when a taxing district makes a finding of substantial need in accordance with RCW 84.55.0101 to use a limit factor in excess of one hundred percent plus inflation. This rule does not attempt to include all special circumstances that may affect the applicable limit under chapter 84.55 RCW.

(2) **Increase in tax revenues - Ordinance or resolution required.** No taxing district, other than the state, may authorize an increase in property tax revenue, other than one resulting from an increase in assessed value of the district attributable to new construction, improvements to property, or any increase in state assessed property except by holding a public hearing and adopting an ordinance or resolution. The ordinance or resolution may cover a period of up to two years, but the ordinance or resolution must specifically state for each year the dollar increase and percentage change in the levy from the previous year. The dollar increase and percentage change should reflect everything included in the levy limit and should not reflect anything excluded under chapter 84.55 RCW (such as, but not limited to, a levy for property tax refunds paid under the provisions of chapter 84.68 or 84.69 RCW).

(a) A majority of the legislative authority of a taxing district must approve an ordinance or resolution authorizing an increase in the taxing district's levy as calculated in subsection (3) of this rule.

(b) Upon making a finding of substantial need to increase its levy by an amount greater than the rate of inflation, the legislative authority of a taxing district may adopt a second ordinance or resolution establishing a limit factor greater than one hundred percent plus inflation. But the substantial need limit factor can never exceed one hundred one percent.

(i) In districts with legislative authorities of four members or less, two-thirds of the members must approve an ordinance or resolution supporting a substantial need to increase the limit factor.

(ii) In districts with more than four members, a majority plus one must approve an ordinance or resolution supporting a substantial need to increase the limit factor.

**(3) Calculation of levy limit for all taxing districts other than the state.** The amount of regular property taxes that can be levied by a taxing district other than the state in any year is limited to an amount that will not exceed the amount resulting from the following calculation, except as otherwise provided by statute:

(a) The highest amount that could have been lawfully levied by the taxing district in any year since 1985 for 1986 collection, multiplied by the limit factor; plus

(b) A dollar component calculated by multiplying the increase in assessed value of the district from the previous year attributable to new construction, improvements to property, and any increase in the assessed value of state assessed property, by the actual regular property tax levy rate of that district for the preceding year, or the last year the taxing district levied taxes.

**(4) Calculation of levy limit for the state levy.** The levy limit for the state is calculated in the same manner as for other taxing districts except that the limit factor is multiplied by the highest amount that was lawfully levied by the state in the three most recent years in which such taxes were levied.

[Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230(1). 02-24-015, § 458-19-020, filed 11/25/02, effective 12/26/02. Statutory Authority: RCW 84.55.060 and 84.08.070. 94-07-066, § 458-19-020, filed 3/14/94, effective 4/14/94.]

**WAC 458-19-025 Restoration of regular levy. (1) Introduction.** This rule explains how a taxing district restores a regular property tax levy if it has not levied since 1985 and it elects to restore a regular property tax levy in accordance with RCW 84.55.015.

**(2) Calculation of restored regular levy.** If a taxing district has not levied since 1985 and it elects to restore a regular property tax levy, the first regular property tax payable as a result of the restored levy cannot exceed the lesser of:

(a) The combination of the following:

(i) The amount last levied plus,

(ii) A dollar component calculated by multiplying the increase in assessed value of property in the district attributable to new construction and improvements to property since the last levy through the current year by the levy rate that is proposed to be restored. The levy rate that is proposed to be restored is determined by dividing the total dollar amount that was last levied by the district by the current year's assessed value after deducting the accumulated assessed value attributable to new construction and improvements to property since the last levy; or

(b) The maximum amount which could be lawfully levied by that district in the year the restored levy is proposed, subject to the statutory dollar rate limit contained in the taxing district's authorizing statute, without considering the calculation used in subsection (2)(a) of this rule.

**(3) Example.** Taxing district "A" has not levied a regular levy since 1985 when it levied \$10,000 based upon 1985 assessed values and all lawful limitations at that time. The total increase since the 1985 assessment year in assessed value of property in the district as a result of new construction and improvements to property beginning in 1986 through the current assessment year is \$3,000,000. The assessed value of taxing district "A" for the current year is \$15,000,000. The calculation for (a) of this subsection is as follows:

Current year A.V. -	\$15,000,000
Minus increases in new construction and improvements to property since 1985 -	<u>- 3,000,000</u> \$12,000,000
Amount levied in 1985 -	\$10,000
Current year A.V. less increases in new construction and improvements to property -	+ <u>\$12,000,000</u>
Levy rate proposed to be restored -	.000833
Increases in new construction and improvements to property -	x <u>\$3,000,000</u>
Calculated dollar amount -	\$2,500
Allowable 1985 levy -	+ <u>10,000</u>
Allowable levy for current year (under (a)) -	\$12,500

The amount calculated under (a) of this subsection must be compared to the amount determined under (b) of this subsection and the lesser of the two amounts is the maximum amount that can be levied.

**(4) Assessor to maintain taxing district records.** Records of value increases attributable to new construction and improvements to property, and increases in the value of state assessed property are to be maintained each year by the county assessor for each taxing district whether or not the district imposes a regular property tax levy.

[Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230(1). 02-24-015, § 458-19-025, filed 11/25/02, effective 12/26/02. Statutory Authority: RCW 84.55.060 and 84.08.070. 94-07-066, § 458-19-025, filed 3/14/94, effective 4/14/94.]

**WAC 458-19-030 Levy limit—Consolidation of districts. (1) Introduction.** This rule describes the method used to calculate the first levy for a taxing district created by the consolidation of similar taxing districts in accordance with RCW 84.55.020.

**(2) Calculation of the first levy of a consolidated taxing district.** The first regular property tax levy made by a taxing district, created by the consolidation of two or more similar taxing districts, cannot exceed:

(a) The sum of the product of the limit factor multiplied by the highest amount of regular property taxes lawfully levied by each of the component districts during the three most recent years in which taxes were levied; plus

(b) The sum of each of the amounts calculated by multiplying the increase in assessed value of property attributable to new construction and improvements to property in each of the component districts since the preceding year by the regular property tax rate of each component district in the preceding year.

**(3) Example.** Taxing district "A" and taxing district "B" consolidate, becoming one taxing district. The highest amount of regular property taxes lawfully levied by district "A" during the three most recent years is \$100,000. The highest amount of regular property taxes lawfully levied by district "B" during the three most recent years is \$150,000. The

increase in assessed value due to new construction and improvements to property in district "A" since the year prior to consolidation was \$600,000. The increase in assessed value due to new construction and improvements to property in district "B" since the year prior to consolidation was \$900,000. The regular property tax rate for district "A" in the year prior to consolidation was \$.50 per \$1,000 of assessed value. The regular property tax rate for district "B" in the year prior to consolidation was \$.45 per \$1,000 of assessed value. Assume the limit factor for this example is 101% because it is the lesser of one hundred one percent and one hundred percent plus the rate of inflation. The maximum amount of regular property taxes that can be levied in the year of consolidation, for taxes payable the following year, by the new consolidated taxing district is calculated as follows:

	Highest regular levy	
District "A" -	\$100,000	
District "B" -	<u>150,000</u>	
Total -	\$250,000	x 1.01 = \$252,500
Increases in assessed value multiplied by levy rate:		
District "A" -	\$600,000 x \$.50 ÷ \$1,000 = \$300	
District "B" -	\$900,000 x \$.45 ÷ \$1,000 = <u>\$405</u>	
		\$705

Maximum regular property taxes that can be levied in the year of consolidation, payable in the year following consolidation:

$$\$252,500 + \$705 = \$253,205$$

[Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230(1), 02-24-015, § 458-19-030, filed 11/25/02, effective 12/26/02. Statutory Authority: RCW 84.55.060 and 84.08.070, 94-07-066, § 458-19-030, filed 3/14/94, effective 4/14/94.]

**WAC 458-19-035 Levy limit—Annexation.** (1) **Introduction.** One taxing district may annex territory or another dissimilar taxing district from outside the annexing taxing district's boundary. This rule sets forth the method used to calculate the first regular property tax levy made after a taxing district has annexed territory or a dissimilar taxing district in accordance with RCW 84.55.030 and 84.55.110. This rule also explains what occurs when the department of natural resources (DNR) discontinues forest fire patrol assessments on parcels of forest land.

(2) **Increase in territory due to annexation.** The first regular property tax levy of a taxing district after it annexes territory or a dissimilar taxing district cannot exceed the amount calculated as follows:

(a) Multiply the highest amount of regular property taxes that could have been lawfully levied since 1985 for 1986 collection, of the annexing district as though no annexation had occurred, by the limit factor as defined in RCW 84.55.005 and WAC 458-19-005;

(b) Multiply the increase in assessed value in the annexing district since the preceding year attributable to new construction, improvements to property, and increase in assessed value of state assessed property by the regular property tax levy rate of the annexing district for the preceding year; and

(c) Multiply the current year assessed value of the annexed territory or district by the levy rate that would have

been used for the current year by the annexing district had there been no annexation.

(d) Add together the result of each of the calculations set forth in subsection (2)(a), (b), and (c) of this rule to determine the maximum amount of the first regular levy of a taxing district after annexation.

(3) **Example.** Following is an example of the calculations prescribed in subsection (2) of this rule. Taxing district "A" annexes a portion of taxing district "B" that takes effect before March 1st in 2002. The highest amount of regular property taxes that could have been levied by district "A" since 1985 for 1986 collection is \$100,000. The increase in assessed value from 2001 to 2002 in district "A" due to new construction, improvements to property, and increase in the value of state assessed property is \$700,000. The levy rate for district "A" for 2001 was \$.50 per \$1,000 of assessed value. The 2002 levy rate for district "A", had there been no annexation, would have been \$.48 per \$1,000 of assessed value. The 2002 assessed value of the portion of taxing district "B" that was annexed by taxing district "A" is \$5,000,000, which includes the value of new construction and improvements to property. Assume the levy limit for this example is 101% because it is the lesser of one hundred one percent and one hundred percent plus the rate of inflation. The first regular levy by taxing district "A" after annexation cannot exceed the amount calculated as follows:

District "A" highest levy since 1985 -	\$100,000
	x <u>1.01</u>
	\$101,000
A.V. of new construction* in district "A" -	\$700,000
District "A" levy rate for 2001 -	x <u>.50</u>
	\$350,000
Divide by \$1,000 -	÷ <u>1,000</u>
Levy amount for new construction -	\$350
2002 A.V. of annexed portion of district "B" -	\$5,000,000
District "A" levy rate that would have been used in 2002, absent annexation -	x <u>.48</u>
	\$2,400,000
Divide by \$1,000 -	÷ <u>1,000</u>
Levy amount for annexed part of district "B" -	\$2,400
	\$101,000
	350
	+ <u>2,400</u>
Maximum levy amount for district "A" after annexation -	\$103,750

\* For purposes of this example, "new construction" includes improvements to property and increases in the value of state assessed property.

(4) **Loss of territory due to annexation.** When a taxing district loses a portion of its territory as a result of annexation to another district, the levy limit for the taxing district that loses part of its territory is calculated by multiplying the highest amount that could have been lawfully levied by that taxing district since 1985 for 1986 collection by the limit factor as defined in RCW 84.55.005 and WAC 458-19-005. However, only the increase in assessed value from the preceding year, attributable to new construction, improvements to prop-

erty, and increase in assessed value of state assessed property that is actually situated in the remaining territory of the taxing district is added to the amount thus determined, to calculate the levy limit. In no case, absent voter approval of an excess levy, can the levy rate exceed the statutory dollar rate limit for that class of taxing district.

(5) **Forest fire patrol protection assessments discontinued by DNR - Effect.** If an owner of forest land within a forest protection zone neglects or fails to provide adequate fire protection as required by RCW 76.04.600, DNR will provide this protection and impose an annual assessment on each parcel of forest land in accordance with RCW 76.04.610. When DNR discontinues the forest fire patrol assessment by dissolving the forest protection assessment areas and an existing fire district assumes protection services and property tax levying authority for this unimproved land within its existing boundaries, the assessed value of the fire district will increase and effectively be an annexation for property tax purposes. In order to be included in the assessed value of the fire district, all details of the dissolution and annexation must be completed and the county assessor's office must receive formal notice from the fire district and DNR prior to March 1st of the assessment year. This notice must specify the forest fire patrol assessment areas being dissolved, the fire district(s) assuming the levying and fire protection responsibilities, and the forest land impacted by the change.

[Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230(1), 02-24-015, § 458-19-035, filed 11/25/02, effective 12/26/02. Statutory Authority: RCW 84.55.060 and 84.08.070, 94-07-066, § 458-19-035, filed 3/14/94, effective 4/14/94.]

**WAC 458-19-040 Levy limit—Newly formed taxing district.** (1) **Introduction.** This rule explains how the levy limit is determined for any taxing district that is created by means other than by consolidation or annexation.

(2) RCW 84.55.035 specifically states that the first regular levy made by a newly formed taxing district created other than by consolidation or annexation is not subject to the levy limit set forth in chapter 84.55 RCW. The newly formed taxing district may levy up to the lesser of the statutory dollar rate limit for that class of district, or the amount approved by the voters when the district was formed, subject to the statutory aggregate dollar rate limit and the constitutional one percent limit. The second regular levy by the district and all subsequent regular levies are subject to the levy limit or, if applicable, the limit described in WAC 458-19-025 regarding the restoration of a regular property tax levy.

[Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230(1), 02-24-015, § 458-19-040, filed 11/25/02, effective 12/26/02. Statutory Authority: RCW 84.55.060 and 84.08.070, 94-07-066, § 458-19-040, filed 3/14/94, effective 4/14/94.]

**WAC 458-19-045 Levy limit—Removal of limit (lid lift).** (1) **Introduction.** The levy limit may be exceeded when authorized by a majority of the voters voting on a proposition to "lift the lid" of the levy limit in accordance with RCW 84.55.050. This "lid lift" is intended to allow the levy limit to be exceeded for the levy made immediately following the vote on the proposition. The purpose of the lid lift is to allow additional property taxes to be collected at a time when

the levy limit in chapter 84.55 RCW is the effective legal constraint to the collection of additional property taxes. This rule explains the procedures for implementing a lid lift ballot measure when a taxing district wants to ask its voters for the authority to exceed the levy limit.

(2) **Election for approval of lid lift proposition—when held.** The election to approve a lid lift proposition must be held within the taxing district and may be held at the time of a general election, or at a special election called by the governing body of the taxing district for that purpose. The election must be held not more than twelve months prior to the date the proposed levy is to be made. For purposes of this rule, a levy is "made" when the taxing district's budget is certified. The ballot title and measure proposing the lid lift is prepared by the county prosecutor or city attorney, as applicable, in accordance with RCW 29.27.066. RCW 29.27.066 requires a ballot title to include a concise description of the measure, not to exceed seventy-five words. A simple majority vote is required for approval of a lid lift.

(3) **Ballot title and contents of ballot measure.** The text of a ballot title and measure for a lid lift contains the following:

(a) The dollar rate of the proposed levy so that it reflects the total dollar rate for the taxing district, which may be less than the maximum statutory dollar rate allowed for the particular class of taxing district; and

(b) Any of the following limitations that are applicable:

(i) The number of years the increased levy is to be made by the taxing district; however, if one of the purposes of the increased levy is to make redemption payments on bonds of the taxing district, the duration of the increased levy cannot exceed nine years; and/or

(ii) The purpose or purposes of the increased levy.

(4) **Permanent lid lift.** A permanent lid lift occurs when the ballot title and the ballot measure contain none of the limitations stated in subsection (3)(b) of this rule. Approval of a permanent lid lift permanently increases the base used to calculate the levy limit.

(a) The first regular levy of a taxing district made after voter approval of a permanent lid lift proposition is calculated on the basis of the dollar rate stated in the ballot title, but that dollar rate is subject to the constitutional one percent limit and the statutory aggregate dollar rate limit and any applicable prorationing.

(b) The levy limit on regular levies of a taxing district made subsequent to the first regular levy made after voter approval of a permanent lid lift proposition is calculated by multiplying the highest amount that could have been lawfully levied since 1985, including the dollar amount of the regular levy calculated in accordance with (a) of this subsection by the limit factor.

(5) **Temporary lid lift.** A temporary lid lift occurs when the ballot title and the ballot measure contain a time limit for the increased levy or contains a limited purpose or purposes for the increased levy, or both.

(a) The first regular levy of a taxing district made after voter approval of a temporary lid lift proposition is calculated on the basis of the dollar rate stated in the ballot title, but that dollar rate is subject to the constitutional one percent limit and the statutory aggregate dollar rate limit and any applicable prorationing.

(b) The levy limit on regular levies of a taxing district made subsequent to the first regular levy made after voter approval of a temporary lid lift proposition is calculated by multiplying the highest amount that could have been lawfully levied since 1985, including the dollar amount of the regular levy calculated in accordance with (a) of this subsection by the limit factor.

(c) After expiration of the time limit authorized or satisfaction of the limited purpose for which the lid lift was authorized, whichever comes first, the levy limit as defined in RCW 84.55.005 on the taxing district's subsequent regular levies is calculated as if the lid lift proposition had not been approved.

[Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230(1). 02-24-015, § 458-19-045, filed 11/25/02, effective 12/26/02. Statutory Authority: RCW 84.55.060 and 84.08.070. 94-07-066, § 458-19-045, filed 3/14/94, effective 4/14/94.]

**WAC 458-19-050 Port district levies. (1) Introduction.** This rule describes the various port district levies and the limitations to which they are subject. Port district levies are not limited by the constitutional one percent limit nor by the statutory aggregate dollar rate limit. As set forth in RCW 84.04.140, all port district levies are regular levies regardless of whether they are voted levies.

(2) **Levy for general port purposes.** Port districts may annually levy taxes for general port purposes, including the establishment of a capital improvement fund for future capital improvements. This levy cannot exceed forty-five cents per thousand dollars of assessed value of the port district. This levy may be made without an authorizing vote of the voters of the district.

(3) **Levy for bond repayment.** Port districts may levy taxes for the purpose of paying the principal and interest on any general bonded indebtedness of the port district. Even though this levy is not subject to any dollar rate limitation, the limitations on the amount of indebtedness that a port district may incur by contract or borrowing and the levy limit do apply.

(4) **Levy for dredging, canal construction, or land leveling or filling purposes.** Port districts may annually levy taxes for dredging, canal construction, or land leveling or filling purposes, and the proceeds of any such levy must be used exclusively for these purposes. This levy cannot exceed forty-five cents per thousand dollars of assessed value of the port district. This levy must first be authorized by a majority of the voters of the district voting on whether to make such a levy, submitted at an election held under RCW 29.13.020.

(5) **Levy for industrial development district purposes.** Port districts that have adopted a comprehensive scheme of harbor improvements and industrial development may annually levy taxes to be used exclusively for purposes of industrial development districts as described in chapter 53.25 RCW. Any excess revenue collected but not required to complete projects under chapter 53.25 RCW must be used solely to retire the general obligation bonded indebtedness of the district. This levy cannot exceed forty-five cents per thousand dollars of assessed value of the port district. This levy need not be authorized by a vote of the people of the district, except as provided in (b) of this subsection.

(a) **Levy for limited time period.** This levy is limited to a period of six years, and a second six years if the procedures in (b) of this subsection are followed. A third six-year period is authorized for a port district located in a county bordering the Pacific Ocean that has adopted a comprehensive scheme of harbor improvements and industrial developments when approved by a simple majority of the voters in the port district.

(b) **Notice to be given if levy to last more than six years.** If this levy is intended to extend beyond the first six years these levies were imposed, the port commission must publish notice of this intention, in one or more newspapers of general circulation in the district, after January 1 and not later than June 1 of the year in which the seventh annual levy is to be made. If, within ninety days of the date of publication of this notice, a petition by the required number of registered voters in the port district in accordance with RCW 53.36.100 is filed with the county auditor and certified in the manner prescribed in RCW 29.79.200, the proposition to make these levies in the seventh through twelfth year period must be submitted to the voters of the port district at a special election called for this purpose no later than the date on which a primary election would be held under RCW 29.13.070. Levies may be made during the seventh through twelfth years only if approved by a majority of the voters of the port district voting on the proposition.

**(6) Calculation of the levy limit for port districts.**

(a) The levies described in subsections (2), (3), and (4) of this rule are subject to the levy limit. For purposes of calculating the levy limit, the dollar amount of those levies are combined and the levy limit is calculated as provided in WAC 458-19-020.

(b) The levy for industrial development district purposes described in subsection (5) will be treated as though it were a separate regular property tax levy made by or for a separate taxing district. The first such levy by a port district is not subject to the levy limit.

[Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230(1). 02-24-015, § 458-19-050, filed 11/25/02, effective 12/26/02. Statutory Authority: RCW 84.55.060 and 84.08.070. 94-07-066, § 458-19-050, filed 3/14/94, effective 4/14/94.]

**WAC 458-19-055 Levy limit—Proration of earmarked funds. (1) Introduction.** Certain taxing districts are authorized to make "earmarked" levies for specific purposes. An "earmarked levy" is not a taxing district in and of itself; the levy is included within, or is in addition to, the general regular levy made by a taxing district. Because these levies are generally placed within a taxing district treasury as a separately identified fund, they are often referred to as "earmarked funds." A taxing district is either directed by statute to levy or is authorized by statute to levy, but is not required to levy, for these earmarked funds; that is, some of the underlying statutes are mandatory while others are permissive in nature. This rule only discusses those taxing districts with the statutory authority to reduce their earmarked levies from their budgeted levy amount when they are up against their general levy limit; that is, the levy limit contained in chapter 84.55 RCW. Only those taxing districts having specific authoriza-

tion to reduce the earmarked levy as a result of the levy limit under this chapter are addressed in this rule.

(2) **Earmarked funds to be reduced only when regular levy affected.** Cities having a regularly organized full-time, paid, fire department may levy an additional amount for a firemen's pension fund under RCW 41.16.060. Counties are required to annually levy amounts for the developmental disabilities or mental health services fund under RCW 71.20.-110 and for veteran's assistance fund under RCW 73.08.080. These earmarked levies may be reduced if the taxing district's general regular levy is restricted by the levy limit contained in chapter 84.55 RCW. If a reduction is necessary, the earmarked levy may be reduced from its budgeted levy amount in the same proportion as the district's general levy is reduced from its budgeted amount.

In other words, if the taxing district is unable to levy its total budgeted amount because it is restricted by the levy limit under chapter 84.55 RCW, the amount levied for the earmarked fund may be reduced proportionately to the reduction in the taxing district's general regular levy. For example, if the overall budget of the county or city/town is limited by the levy limit, and that levy includes specific amounts earmarked for special purposes, the county or city/town may take the total amount it receives from property taxes and allocate "x" amount to the earmarked fund and the remainder to its general purposes.

[Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230(1), 02-24-015, § 458-19-055, filed 11/25/02, effective 12/26/02. Statutory Authority: RCW 84.55.060 and 84.08.070, 94-07-066, § 458-19-055, filed 3/14/94, effective 4/14/94.]

#### **WAC 458-19-060 Emergency medical service levy.**

(1) **Introduction.** This rule explains the criteria contained in RCW 84.52.069 relative to a taxing district imposing a limited or permanent regular levy for emergency medical care or emergency medical services. It describes the permitted duration of this levy, the ballot title and measure that must be presented to and approved by the voters, the maximum rate for this levy, and the applicable limits.

(2) **Purpose - voter approval required - who may levy.** An emergency medical service (EMS) levy is a regular voter approved levy. Any taxes collected as a result of this levy can only be used to provide emergency medical care or emergency medical services, including related personnel costs, training for such personnel and related equipment, supplies, vehicles, and structures needed to provide this care or service. An EMS levy must be approved by a super majority of registered voters at a general or special election. Only a county, emergency medical service district, city, town, public hospital district, urban emergency medical service district, or fire protection district is authorized to impose an EMS levy.

(3) **Duration - maximum rate.** An EMS levy is imposed each year for six consecutive years, each year for ten consecutive years, or permanently. If approved, a taxing district can impose a regular property tax levy in an amount that cannot exceed fifty cents per thousand dollars of assessed value of the property of the taxing district.

(4) **Contents of ballot title and measure.** Any ballot title and measure seeking authorization of an EMS levy must conform to the requirements of RCW 29.30.111. A taxing

district cannot submit to the voters at the same election multiple propositions to impose a levy under RCW 84.52.069. If the approved ballot title and measure did not authorize the maximum allowable levy rate (fifty cents) for the EMS levy, any future proposition to increase the rate up to the maximum allowable must be specifically authorized by voters at a general or special election. That is, a taxing district may impose a levy rate up to, but no greater than, the rate contained in the approved ballot measure without obtaining additional voter approval. The ballot title and measure authorizing a taxing district to impose:

(a) An EMS levy for a limited duration must state the name of the taxing district, the maximum rate per thousand dollars of assessed value to be imposed, and the maximum number of years the levy is to be allowed; or

(b) A permanent EMS levy must state the name of the taxing district and the maximum rate per thousand dollars of assessed value to be permanently imposed. A ballot title for this type of levy must include wording to indicate that it is a permanent EMS levy. A taxing district that seeks to impose a permanent levy must also provide for a referendum procedure to apply to the ordinance or resolution imposing the tax. The detailed specifics of this procedure are set forth in RCW 84.52.069(4).

(5) **County-wide EMS levy.** A county-wide EMS levy cannot be placed on the ballot without first obtaining the approval of the legislative authority of any city within the county having a population exceeding fifty thousand. No other taxing district within the county may hold an election on a proposed EMS levy at the same time as the election on a proposed county-wide EMS levy. To the extent feasible, emergency medical care and services must be provided throughout the county whenever the county levies an EMS levy. In addition, if a county levies an EMS levy, the following conditions apply:

(a) Any other taxing district within the county, authorized to levy an EMS levy may do so, but only if the taxing district's EMS levy rate does not exceed the difference between the county's EMS levy rate and fifty cents per thousand dollars of assessed value of the property of the taxing district; and

(b) When a taxing district within the county levies an EMS levy and the voters of the county subsequently approve a county-wide EMS levy, the taxing district must then reduce its EMS levy rate so that the combined EMS levy rate of the county and the taxing district does not exceed fifty cents per thousand dollars of assessed value in the taxing district; and

(c) An EMS levy of limited duration of a taxing district within the county, authorized by the voters subsequent to a county-wide EMS levy of limited duration, will expire concurrently with the county EMS levy.

(6) **EMS levy of taxing district other than county.** Once a taxing district that has the authority to levy an EMS levy has done so within the county, only the county may concurrently levy an EMS levy within the boundaries of that taxing district; all other taxing districts are prohibited from levying an EMS levy within that taxing district's boundaries while it collects an EMS levy.

(7) **Constitutional one percent limit is applicable.** An EMS levy is subject to the constitutional one percent limit for regular property taxes. If a reduction of the rate of an EMS

levy is required because this limit is exceeded, it is to be reduced in the manner set forth in RCW 84.52.010(1) and WAC 458-19-075.

(8) **Statutory aggregate dollar rate limit is not applicable.** An EMS levy is not subject to the statutory aggregate dollar rate limit of five dollars and ninety cents per thousand dollars of assessed value (see RCW 84.52.043).

(9) **Applicability of limit factor to EMS levy.** The first year an EMS levy is made following voter approval, the levy limit set forth in RCW 84.55.010 does not apply. However, after the first year any EMS levy made is subject to this limit. In other words, beginning the second year this levy is made it cannot exceed the limit factor multiplied by the highest amount of regular property taxes that could have lawfully been levied since the voters last approved such a levy plus an additional dollar amount calculated by multiplying the increase in assessed value in that district resulting from new construction, improvements to property, and any increase in the assessed value of state-assessed property by the regular property tax rate for the district in the preceding year. The EMS levy is calculated separately from any other levies made by the taxing district for purposes of calculating the levy limit.

[Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230(1), 02-24-015, § 458-19-060, filed 11/25/02, effective 12/26/02. Statutory Authority: RCW 84.55.060 and 84.08.070, 94-07-066, § 458-19-060, filed 3/14/94, effective 4/14/94.]

**WAC 458-19-065 Levy limit—Protection of future levy capacity.** (1) **Introduction.** This rule explains what occurs when a taxing district levies taxes in an amount less than the maximum allowed under the levy limit for any year and how future levies of the district will be calculated.

(2) **Use of maximum lawful levy amount.** In any year when a taxing district other than the state levies taxes in an amount less than the maximum amount allowed by the levy limit, whether voluntarily or as a result of the operation of the statutory aggregate dollar rate limit or constitutional one percent limit reducing or eliminating the taxing district's levy rate, the levy limit for succeeding years after 1985 will be calculated as though the maximum lawful levy amount allowed by the levy limit or the taxing district's statutory dollar rate limit had been levied.

(3) **Examples.**

These examples do not include any amounts for new construction, improvements to property, or increases in the value of state assessed property.

(a) In 2001, the highest amount of regular property taxes that could have been lawfully levied by taxing district "A" as restricted by the levy limit was \$100,000. But in 2001 taxing district "A" is otherwise limited by the statutory aggregate dollar rate limit to a maximum levy of \$95,000. The levy limit for the 2002 levy will be calculated on the basis of what could have been the highest levy amount since 1985, that is \$100,000 multiplied by the limit factor. The amount actually levied in 2001 is not controlling.

(b) Using the same basic facts from the previous example, if the levy amount of district "A" had been limited by the statutory dollar rate limit in 2001 to \$95,000, and \$95,000 was the highest amount of regular property taxes that could

have been lawfully levied since 1985, then the levy limit for 2002 will be calculated on the basis of \$95,000, that is \$95,000 multiplied by the limit factor.

[Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230(1), 02-24-015, § 458-19-065, filed 11/25/02, effective 12/26/02. Statutory Authority: RCW 84.55.060 and 84.08.070, 94-07-066, § 458-19-065, filed 3/14/94, effective 4/14/94.]

**WAC 458-19-070 Procedure to adjust consolidated levy rate for taxing districts when the statutory aggregate dollar rate limit is exceeded.** (1) **Introduction.** The aggregate of all regular levy rates of junior taxing districts and senior taxing districts, other than the state and other specifically identified districts, cannot exceed five dollars and ninety cents per thousand dollars of assessed value in accordance with RCW 84.52.043. When the county assessor finds that this limit has been exceeded, the assessor recomputes the levy rates and establishes a new consolidated levy rate in the manner set forth in RCW 84.52.010. This rule describes the prorationing process used to establish a consolidated levy rate when the assessor finds the statutory aggregate levy rate exceeds five dollars and ninety cents. If prorationing is required, the five dollar and ninety cents limit is reviewed before the constitutional one percent limit.

(2) **Levies not subject to statutory aggregate dollar rate limit.** The following levies are not subject to the statutory aggregate dollar rate limit of five dollars and ninety cents per thousand dollars of assessed value:

- (a) Levies by the state;
- (b) Levies by or for port or public utility districts;
- (c) Excess property tax levies authorized in Article VII, section 2 of the state Constitution;
- (d) Levies for acquiring conservation futures under RCW 84.34.230;
- (e) Levies for emergency medical care or emergency medical services imposed under RCW 84.52.069;
- (f) Levies to finance affordable housing for very low income households under RCW 84.52.105; and
- (g) The portion of metropolitan park district levies protected under RCW 84.52.120.

(3) **Prorationing under consolidated levy rate limitation.** RCW 84.52.010 sets forth the prorationing order in which the regular levies of taxing districts will be reduced or eliminated by the assessor to comply with the statutory aggregate dollar rate limit of five dollars and ninety cents per thousand dollars of assessed value. The order contained in the statute lists which taxing districts are the first to either reduce or eliminate their levy rate. Taxing districts that are at the same level within the prorationing order are grouped together in tiers. Reductions or eliminations in levy rates are made on a pro rata basis within each tier of taxing district levies until the consolidated levy rate no longer exceeds the statutory aggregate dollar rate limit of five dollars and ninety cents.

As opposed to the order contained in RCW 84.52.010, which lists the taxing districts that are the first to have their tax rates reduced or eliminated, this rule is written in reverse order; that is, it lists the taxing districts that must be first either fully or partially funded. If the statutory aggregate dollar rate is exceeded, then the levy rates for taxing districts within a particular tier must be reduced or eliminated on a pro

rata basis. The proration factor, which is multiplied by each levy rate within the tier, is obtained by dividing the dollar rate remaining available to the taxing districts in that tier as a group by the sum of the levy rates originally certified by or for all of the taxing districts within the tier.

(a) Step one: Total the aggregate levy rates requested by all affected taxing districts in the tax code area. If this total is less than five dollars and ninety cents per thousand dollars of assessed value, no prorationing is necessary. If this total is more than five dollars and ninety cents, the assessor must proceed through the following steps until the aggregate dollar rate is brought within that limit.

(b) Step two: Subtract from \$5.90 the levy rates of the county and the county road district if the tax code area includes an unincorporated portion of the county, or the levy rates of the county and the city or town if the tax code area includes an incorporated area, as applicable.

(c) Step three: Subtract from the remaining levy capacity the levy rates, if any, by fire protection districts under RCW 52.16.130, library districts, the first fifty cents per thousand dollars of assessed valuation for public hospital districts, and the first fifty cents per thousand dollars of assessed valuation for metropolitan park districts created before January 1, 2002.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step four.

(d) Step four: Subtract from the remaining levy capacity the levy rates, if any, by fire protection districts under RCW 52.16.140 and 52.16.160.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step five.

(e) Step five: Subtract from the remaining levy capacity the levy rate, if any, of the fifty cents per thousand dollars of

assessed valuation for metropolitan park districts created on or after January 1, 2002.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step six.

(f) Step six: Subtract from the remaining levy capacity the twenty-five cent levy for metropolitan park districts if it is not protected under RCW 84.52.120, the twenty-five cent levy for public hospital districts under RCW 70.44.060, and the levy rates, if any, for all other junior taxing districts if those levies are not listed in steps three through five or seven or eight of subsection (3) of this rule.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step seven.

(g) Step seven: Subtract from the remaining levy capacity the levy rate, if any, by a flood control zone district under RCW 86.15.160.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step eight.

(h) Step eight: Subtract from the remaining levy capacity the levy rates, if any, of a park and recreation district under RCW 36.69.145, a park and recreation service area under RCW 36.68.525, a cultural arts, stadium and convention district under RCW 67.38.130, and a city transportation authority under chapter 248, Laws of 2002 on a pro rata basis until the remaining levy capacity equals zero.

**(4) Example.**

DISTRICT	ORIGINAL LEVY RATE	PRORATION FACTOR	FINAL LEVY RATE	REMAINING LEVY CAPACITY
County Road	1.8000	NONE	1.8000	1.850
	2.2500	NONE	2.2500	
Library	.5000	NONE	.5000	.350
Fire	.5000	NONE	.5000	
Hospital	.5000	NONE	.5000	

Fire	.2000	NONE	.2000	.150
Cemetery	.1125	.4138	.0466	
Hospital	.2500	.4138	.1034	
Totals	6.1125		5.90	

1. Beginning with the limit of \$5.90, subtract the original certified levy rates for the county and county road taxing districts leaving \$1.85 available for the remaining districts.

2. Subtract the total of the levy rates for each district within the next tier: The library's \$.50, the fire district's \$.50 and the hospital's \$.50 = \$1.50, which leaves \$.35 available for the remaining districts.

3. Subtract the fire district's additional \$.20 levy rate, which leaves \$.15 available for the remaining districts.

4. The remaining \$.15 must be shared by the cemetery and the hospital districts within the next tier of levies. The cemetery district originally sought to levy \$.1125 and the hospital district sought to levy \$.25. The proration factor is arrived at by dividing the amount available (\$.15) by the original levy rates (\$.3625) requested within that tier resulting in a proration factor of .4138. And finally, the original levy rates in this tier of \$.1125 and \$.25 for the cemetery and hospital respectively are multiplied by the proration factor.

[Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230(1), 02-24-015, § 458-19-070, filed 11/25/02, effective 12/26/02. Statutory Authority: RCW 84.55.060 and 84.08.070. 94-07-066, § 458-19-070, filed 3/14/94, effective 4/14/94.]

**WAC 458-19-075 Constitutional one percent limit calculation.** (1) **Introduction.** The total amount of all regular property tax levies that can be applied against taxable property is limited to one percent of the true and fair value of the property in money. The one percent limit is stated in Article VII, section 2 of the state Constitution and the enabling statute, RCW 84.52.050. The constitutional one percent limit is based upon the amount of taxes actually levied on the true and fair value of the property, not the dollar rate used in computing property taxes. This rule explains how to determine if the constitutional one percent limit is being exceeded and the sequence in which levy rates will be reduced or eliminated in accordance with RCW 84.52.010 if the constitutional one percent limit is exceeded. The constitutional one percent calculation is made after the assessor ensures that the statutory aggregate dollar rate limit is not exceeded.

(2) **Preliminary calculations.** To determine if the constitutional one percent limit is being exceeded, the following calculations are made:

(a) First, add all the regular levy rates in the tax code area, including the state school levy at the local rate, any conservation futures levy imposed under RCW 84.34.230, any emergency medical service levy imposed under RCW 84.52.069, any metropolitan park district levy protected under RCW 84.52.120, and any affordable housing levy imposed under RCW 84.52.105 to arrive at a combined levy rate for that tax code area. The levy rate for any port or public utility district is not included in this computation as they are not subject to the constitutional one percent limit.

(b) Second, multiply the combined levy rate obtained in subsection (2)(a) of this rule by the higher of the real or personal property ratio of the county for the assessment year in which the levy is made to determine the effective levy rate. If

the effective regular levy rate exceeds ten dollars per thousand dollars of assessed value, the individual levy rates must be reduced or eliminated until the effective levy rate is equal to ten dollars per thousand dollars of assessed value.

(3) **Prorationing - constitutional one percent limit.** RCW 84.52.010 sets forth the prorationing order in which levy rates are to be reduced or eliminated when the constitutional one percent limit is exceeded. The order contained in this statute begins with the taxing districts that are the first to have their levy rates either reduced or eliminated. Taxing districts that are at the same level within the prorationing order are grouped together in tiers. Levy rates are reduced or eliminated on a pro rata basis within each tier of taxing district levies until the combined levy rate no longer exceeds one percent of the true and fair value of property.

If the constitutional one percent limit is exceeded, the following levies are to be reduced or eliminated in the following order until the effective rate no longer exceeds ten dollars per thousand dollars of assessed value:

(a) The twenty-five cent levy for metropolitan park district protected under RCW 84.52.120.

(b) The levy rates for conservation futures under RCW 84.34.230, for affordable housing under RCW 84.52.105, and any portion of a levy for emergency medical services under RCW 84.52.069 in excess of thirty cents per thousand dollars of assessed value are reduced on a pro rata basis or eliminated.

(c) The levy for the first thirty cents per thousand dollars for emergency medical services under RCW 84.52.069.

(d) The levy rates for a park and recreation district under RCW 36.69.145, a park and recreation service area under RCW 36.68.525, a cultural arts, stadium and convention district under RCW 67.38.130, and a city transportation authority under section 11, chapter 248, Laws of 2002, are reduced on a pro rata basis or eliminated.

(e) The levy rate for a flood control zone district under RCW 86.15.160.

(f) The levy rates for all other junior taxing districts, except fire protection districts, library districts, and the first fifty cents per thousand dollars of assessed valuation for metropolitan park districts, and the first fifty cents per thousand dollars of assessed valuation for public hospital districts are reduced on a pro rata basis or eliminated.

(g) The levy rate of fifty cents per thousand dollars of assessed valuation for metropolitan park districts created on or after January 1, 2002.

(h) The levy rates for fire protection districts under RCW 52.16.140 and 52.16.160 are reduced on a pro rata basis or eliminated.

(i) The levy rates for fire protection districts under RCW 52.16.130, library districts under RCW 27.12.050 and 27.12.-150, the first fifty cents per thousand dollars of assessed valuation for public hospital districts under RCW 70.44.060(6), and the first fifty cents per thousand dollars of assessed valuation for metropolitan park districts under RCW 35.61.210

created before January 1, 2002, are reduced on a pro rata basis or eliminated.

(j) The levy rates for the county, county road, and a city or town are reduced on a pro rata basis or eliminated.

(k) The levy rate for the state for the support of common schools.

[Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230(1). 02-24-015, § 458-19-075, filed 11/25/02, effective 12/26/02. Statutory Authority: RCW 84.55.060 and 84.08.070. 94-07-066, § 458-19-075, filed 3/14/94, effective 4/14/94.]

**WAC 458-19-080 City annexed by fire protection and/or library districts.** (1) **Introduction.** When a city or town is annexed to a fire protection and/or a library district, the city or town is entitled under RCW 52.04.081 and 27.12.390 to levy up to three dollars and sixty cents per thousand dollars of assessed value less the regular levy made by the fire protection and/or library district. However, the limitations upon regular property taxes imposed by chapter 84.55 RCW are still applicable. This rule explains how the first levy following annexation is calculated, how the levy limit is calculated, and the order of any prorationing that may be required.

(2) The assessor will calculate the first levy following annexation as follows:

(a) Calculate the levy and rate for the fire protection and/or library district, including the assessed value of the annexed city or town; and

(b) Subtract the fire protection and/or library district levy rate from the statutory rate (\$3.60 per \$1,000 A.V.) of the city or town. The resulting rate is the maximum levy rate for the city or town even if the fire and/or library district rate is later reduced as a result of prorationing under RCW 84.52.010 to prevent the consolidated levy rate from exceeding the statutory aggregate dollar rate limit or the constitutional one percent limit.

(3) **Levy limit calculation.** The levy limit for the city or town is calculated independently of the calculation performed in subsection (2) of this rule.

(4) **Subtraction of fire protection or library district levy rate.** The fire protection and/or library district levy rate is subtracted from the city or town statutory levy rate before any prorated reduction under RCW 84.52.010.

[Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230(1). 02-24-015, § 458-19-080, filed 11/25/02, effective 12/26/02. Statutory Authority: RCW 84.55.060 and 84.08.070. 94-07-066, § 458-19-080, filed 3/14/94, effective 4/14/94.]

**WAC 458-19-085 Refunds—Procedures—Applicable limits.** (1) **Introduction.** Chapters 84.68 and 84.69 RCW both set out procedures and conditions under which property taxes are refunded. This rule explains the differences between the types of refunds authorized under each chapter, the procedures related to the refunds, and the effect the refunds have on levy limits and the levy setting process in general.

(2) **Court ordered refunds under chapter 84.68 RCW - County tax refund fund levy.** Any person who believes that the taxes levied against their property are unlawful or excessive may pay the taxes under protest, setting forth all

(2005 Ed.)

the grounds upon which the tax is claimed to be unlawful or excessive, and bring an action in superior court or in any federal court of competent jurisdiction against the state, county, or municipality. RCW 84.68.020. If the court determines that the taxes were indeed unlawful or excessive, it will enter a judgment in favor of the taxpayer who paid the tax under protest and determine the amount to be refunded to the taxpayer. When such a judgment is entered, the law provides a specific procedure for refunding the money to the taxpayer in RCW 84.68.030 and for taxing districts to generate the moneys to be refunded in RCW 84.68.040. Any and all taxing districts that were levying taxes against the property at the time for which a refund is directed by court order under RCW 84.68.020 must levy, or have levied for them, an amount for the county tax refund fund. The county tax refund fund is a regular levy that is subject to all the applicable levy limitations provided in law for regular levies. However, the law specifically exempts a refund fund levy from the levy limit set forth in RCW 84.55.010.

(a) Method used to make refunds. When a court judgment is entered in favor of a taxpayer, RCW 84.68.030 states that the refund is to be paid via warrants drawn against the "county tax refund fund." If, at the time the judgment is entered, there are no moneys in that fund, then the warrants bear interest and are "callable under such conditions as are provided by law for county warrants."

(b) Process used to generate funds for the county tax refund fund. RCW 84.68.040 provides that as part of the annual levying of taxes for county purposes, the county is required to make and enter a tax levy or levies for the county tax refund fund. The purpose of the refund fund levy is to produce moneys to be deposited into a fund from which a taxpayer, who paid taxes that were later adjudged to be unlawful or excessive, can be repaid, without unduly affecting the operating funds of the taxing districts. This levy has precedence over all other tax levies for county and/or taxing district purposes.

(c) Who makes and enters the tax levies for the refund fund levy? Officers of local taxing districts, the county legislative authority, the county assessor, and any other person or entity that would normally be involved in the levy making process are required to make and enter the refund fund levy. However, if a taxing district is required to levy for the county tax refund fund and fails to do so, or if a taxing district is required to levy for the county tax refund fund and does not have a regular nonvoted levy, then the county legislative authority levies the tax for or on behalf of the district, the assessor sets the rate, and the treasurer collects the tax.

(d) What limitations apply to the county tax refund fund levy? There are four basic levy limitations that need to be taken into consideration: The levy limit set forth in RCW 84.55.010; the constitutional (Article VII, section 2) and statutory (RCW 84.52.010) one percent limit; the statutory dollar rate limit for the various taxing districts; and the aggregate dollar rate limit contained in RCW 84.52.043.

(i) The levy limit set forth in RCW 84.55.010 does not apply to the county tax refund fund levy, regardless of which taxing district is involved (see RCW 84.55.070). Therefore, a taxing district(s) can levy the amount to be refunded even if that amount will cause the total levy of the taxing district to exceed the levy limit. For example, a court orders County A

[Title 458 WAC—p. 109]

to refund \$10,000 to a Taxpayer. The proper county officials in County A must determine what portion of the \$10,000 is attributable to Taxing District No. 1. For purposes of this example, Taxing District No. 1 owes the Taxpayer \$1,000. Taxing District No. 1's levy last year was \$30,000. Without considering new construction, improvements to property, and increase in value of state assessed property the levy for this year under the levy limit would be \$30,300. However, Taxing District No. 1's levy for this year, including the refund fund levy, can be \$31,300.

(ii) The constitutional one percent limit, the statutory dollar rate limit, and the aggregate dollar rate limit apply to any refund fund levy. Consequently, any refund fund levy must be contained within the maximum dollar rate authorized by law for any taxing district. For example, if under the levy limit, the county current expense levy rate is \$1.80/\$1,000 and the refund fund levy rate is \$.10/\$1,000 A.V., then only \$1.70 may go to the current expense fund. Similarly, if the current expense levy rate, as limited by the levy limit, is \$1.50/\$1,000 A.V., then the \$.10/\$1,000 is added to the \$1.50 making a levy rate that is \$1.60/\$1,000 A.V. Any combination is possible as long as the total of the two does not exceed the statutory dollar rate maximum of \$1.80/\$1,000 A.V. for levies made for county purposes. All moneys levied for the county tax refund fund levy are allocated first, without consideration of any delinquency, and then whatever balance is remaining goes to the district's operating fund.

(e) Refund fund's relationship to excess levies. Because the refund fund levy is the direct result of a court ordered judgment in a specific amount, it does not matter whether the judgment amount is derived from taxes paid on regular, excess, or bond levies, or any combination of these levies. The refund fund levy is separate and independent of the levies from which it arose. The levy includes an additional amount deemed necessary to meet the obligations of the county tax refund fund, taking into consideration the probable portions of the taxes that will not be collected or collectible during the year in which they are due and payable, as well as any unobligated cash in hand in this fund.

(f) Applicability to school district levies and state school levy. All taxing districts for which, and within which, taxes were collected unlawfully are required to levy for the refund fund. A refund fund for the school district would not be limited by a dollar rate limit. However, the school district refund fund levy would be subject to the constitutional one percent limit because the refund fund is a regular levy subject to all applicable limits. The state school levy will include a refund fund levy, which will be calculated by the department at the time it levies the state school levy. The state, as a taxing district itself, follows the same procedures that apply to any other taxing district, to the extent that those procedures are applicable.

(g) Separate account in county treasury. The county treasurer must keep a separate account for each district for which a refund fund is created and can only disburse money from that account to the taxpayer(s) entitled to receive a court ordered refund.

**(3) Administrative refunds under chapter 84.69 RCW.** Property taxes may be refunded on the order of the county treasurer before or after delinquency if the property taxes were paid under one of the circumstances listed in

RCW 84.69.020. These circumstances include errors, changes in valuation or status by a county board of equalization or the state board of tax appeals, and delays in applying for a senior citizen exemption or deferral.

(a) Levy limit set forth in RCW 84.55.010 does not apply. RCW 84.55.070 states that the limitations contained in chapter 84.55 RCW do not apply to property tax refunds paid or to be paid under the provisions of chapter 84.69 RCW. Therefore, an amount necessary to fund any refund paid in accordance with RCW 84.69.020 may be added to the levy for a taxing district without regard to the levy limit. A refund fund levy is not subject to the levy limit. However, the statutory dollar rate limit still applies to each taxing district, as well as the five dollar and ninety cent limit set forth in RCW 84.52.043 and the constitutional one percent limit set forth in Article VII, section 2 of the state Constitution and RCW 84.52.050.

(b) Refunds include interest. Refunds authorized under RCW 84.69.020 must include interest that is payable from the time the taxes were paid. The rate of interest is calculated in accordance with RCW 84.69.100, established annually by the department, and published in WAC 458-18-220.

(c) Examples. Both examples assume that the base for computing the allowable levy is \$10,000 and refer to the county current expense levy rate that may not exceed one dollar and eighty cents per thousand dollars of assessed value in accordance with RCW 84.52.043.

(i) Statutory rate requested does not exceed the dollar rate allowable:

The allowable levy for the county current expense fund	\$10,000
Refunds paid or to be paid	<u>2,000</u>
Total amount of levy	\$12,000
Assessed value	\$7,000,000
Levy rate	\$1.714/\$1,000
The levy rate is within the statutory rate limit of \$1.80/\$1,000	

(ii) Statutory rate requested exceeds the dollar rate allowable:

Allowable levy	\$10,000
Refunds paid or to be paid	<u>2,000</u>
Total amount of levy	\$12,000
Assessed value	\$6,500,000
Levy rate	\$1.846/\$1,000
The dollar rate cannot exceed \$1.80/\$1,000; therefore, the maximum that can be levied is \$6,500,000 x \$1.80/\$1,000	
	\$11,700
Amount to be refunded	\$2,000
Amount to be credited to current expense	\$9,700

(d) The base for computing the following year's levy limit does not include the refund levy amount. In the preceding examples, the base for the following year's levy limit calculation is \$10,000. However, when calculating the additional levy amount based on the value of new construction, improvements to property and any increase in the value of state assessed property, the actual regular levy rate (including the refund levy) is used.

[Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230(1). 02-24-015, § 458-19-085, filed 11/25/02, effective 12/26/02.]

**WAC 458-19-550 State levy—Apportionment between counties.** (1) **Introduction.** The department is charged with levying the state taxes authorized by law. As part of this task, the department apportions the amount of tax levied for state purposes among the counties in proportion to the value of taxable property in each county for the year to ensure that each county pays its due and just share of the state tax. This rule explains how the state property tax levy rate is determined, how the department adjusts the previous year's apportionment because of changes and errors in taxable values reported to the department after October 1 of the preceding year, and how the limit factor set forth in RCW 84.55.010 is applied to the state levy.

(2) **Calculation of state levy rate.** The levy rate for the state property tax levy is the lesser of:

(a) \$3.60 per thousand dollars of the full true and fair value of the taxable property in the state; or

(b) The rate that, when applied to the valuation figures specified in subsection (3) of this rule, will produce a total amount equal to the levy limit set forth in RCW 84.55.010. This levy limit equals the limit factor multiplied by the highest state property tax levy of the most recent three annual state levies, plus an amount calculated by multiplying increases in value due to new construction, improvements to real property, and the increase in value of state-assessed property by the state levy rate applicable in the year prior to the current year for which the tax levy is being computed.

(3) **Apportionment between the counties - Adjustment for changes or errors.** When determining the amount of the state levy using the calculations set forth in subsection (2)(b) above, the dollar amount apportioned to each county is based upon the valuation figures reported to the department by each county by October 1 of the levy year. If use of the counties' certified assessed values for state levy purposes causes an erroneous apportionment among the counties because of later changes or later-identified errors in valuation within a county, the department will adjust the following year's levy apportionment to reflect these changes and the corrections for these errors.

(a) For purposes of this rule, a change in taxable value includes any final adjustment made by a reviewing body (county board of equalization, state board of tax appeals, or court of competent jurisdiction) and may also include additions of omitted property, other additions to or deletions from the assessment or tax rolls, any assessment return submitted by a county to the department subsequent to December 1st, or a change in the indicated ratio of a county.

(b) Errors requiring adjustments under this rule include errors corrected by a final reviewing body or any other error that may have come to the department's attention and would otherwise be a subject for correction in the exercise of its supervisory powers.

(4) **Changes or errors in current levy - Adjust apportionment for the following year's levy.** If there are any changes or errors relating to the values used in apportioning the current levy, the apportionment for the following year's levy will be adjusted. For purposes of this apportionment, the department will recalculate the previous year's levy and the apportionment thereof to correct any changes or errors in taxable values reported to the department after October 1 of the preceding year. The department will adjust the apportioned

amount of the current year's state levy for each county by the difference between the dollar amounts of state levy due from each county as shown by the original and revised levy computations for the previous year.

(5) **County required to correct any error upon discovery.** Nothing in this rule relieves a county from its obligation to correct any error immediately upon discovery when the correction may be timely made to avoid distortion in the true apportionment of the state levy between counties.

[Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230(1). 02-24-015, § 458-19-550, filed 11/25/02, effective 12/26/02. Statutory Authority: RCW 84.48.080, 84.55.060 and 84.08.010. 82-06-006 (Order PT 82-2), § 458-19-550, filed 2/19/82. Statutory Authority: RCW 84.48.080 and 84.55.060. 81-04-055 (Order PT 81-4), § 458-19-550, filed 2/4/81.]

## Chapter 458-20 WAC EXCISE TAX RULES

### WAC

458-20-100	Appeals, small claims and settlements.
458-20-10001	Adjudicative proceedings—Brief adjudicative proceedings—Wholesale and retail cigarette license revocation or suspension—Certificate of registration (tax registration endorsement) revocation.
458-20-10002	Adjudicative proceedings—Formal adjudicative proceedings—Log export enforcement actions pursuant to chapter 240-15 WAC—Orders to county officials issued to pursuant to RCW 84.08.120 and 84.41.120—Converted brief adjudicative proceedings.
458-20-101	Tax registration and tax reporting.
458-20-102	Resale certificates.
458-20-103	Time and place of sale.
458-20-104	Small business tax relief based on income of business.
458-20-105	Employees distinguished from persons engaging in business.
458-20-106	Casual or isolated sales—Business reorganizations.
458-20-107	Selling price—Advertised prices including sales tax.
458-20-108	Returned goods, allowances, cash discounts.
458-20-109	Finance charges, carrying charges, interest, penalties.
458-20-110	Delivery charges.
458-20-111	Advances and reimbursements.
458-20-112	Value of products.
458-20-113	Ingredients or components, chemicals used in processing new articles for sale.
458-20-115	Sales of packing materials and containers.
458-20-116	Sales and/or use of labels, name plates, tags, premiums, and advertising material.
458-20-117	Sales and/or use of dunnage.
458-20-118	Sale or rental of real estate, license to use real estate.
458-20-119	Sales of meals.
458-20-120	Sales of ice.
458-20-121	Sales of heat or steam—Including production by cogeneration.
458-20-124	Restaurants, cocktail bars, taverns and similar businesses.
458-20-12401	Special stadium sales and use tax.
458-20-126	Sales of motor vehicle fuel, special fuels, and nonpollutant fuel.
458-20-127	Magazines and periodicals.
458-20-128	Real estate brokers and salesmen.
458-20-129	Gasoline service stations.
458-20-131	Games of chance.
458-20-132	Automobile dealers/demonstrator and executive vehicles.
458-20-133	Frozen food lockers.
458-20-134	Commercial or industrial use.
458-20-135	Extracting natural products.
458-20-13501	Timber harvest operations.
458-20-136	Manufacturing, processing for hire, fabricating.
458-20-13601	Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment.
458-20-138	Personal services rendered to others.
458-20-139	Trade shops—Printing plate makers, typesetters, and trade binderies.
458-20-140	Photofinishers and photographers.

458-20-141	Duplicating industry and mailing bureaus.	458-20-191	Federal reservations.
458-20-142	Photographic equipment and supplies.	458-20-192	Indians—Indian country.
458-20-143	Publishers of newspapers, magazines, periodicals.	458-20-193	Inbound and outbound interstate sales of tangible personal property.
458-20-144	Printing industry.		Multiple activities tax credits.
458-20-145	Local sales and use tax.	458-20-19301	Imports and exports—Sales of goods from or to persons in foreign countries.
458-20-146	National and state banks, mutual savings banks, savings and loan associations and other financial institutions.	458-20-193C	Transportation, communication, public utility activities, or other services in interstate or foreign commerce.
458-20-14601	Financial institutions—Income apportionment.	458-20-194	Doing business inside and outside the state.
458-20-148	Barber and beauty shops.	458-20-195	Taxes, deductibility.
458-20-150	Optometrists, ophthalmologists, and opticians.	458-20-196	Credit losses, bad debts, recoveries.
458-20-151	Dentists and other health care providers, dental laboratories, and dental technicians.	458-20-197	When tax liability arises.
458-20-153	Funeral directors.	458-20-198	Conditional and installment sales, method of reporting.
458-20-154	Cemeteries, crematories, columbaria.	458-20-199	Accounting methods.
458-20-155	Information and computer services.	458-20-200	Leased departments.
458-20-156	Abstract, title insurance and escrow businesses.	458-20-201	Interdepartmental charges.
458-20-158	Florists and nurserymen.	458-20-202	Pool purchases.
458-20-159	Consignees, bailees, factors, agents and auctioneers.	458-20-203	Corporations, Massachusetts trusts.
458-20-160	Agricultural commission agents.	458-20-204	Outdoor advertising and advertising display services.
458-20-162	Stockbrokers and security houses.	458-20-205	Sales of utility services by building companies.
458-20-163	Insurance companies, including surety companies, fraternal benefit societies, fraternal fire insurance associations, beneficiary corporations or societies and Washington state health insurance pool.	458-20-207	Legal, arbitration, and mediation services.
458-20-164	Insurance agents, brokers and solicitors.	458-20-208	Exemptions for wholesale sales of new motor vehicles between new car dealers and for accommodation sales.
458-20-165	Laundry, dry cleaning, linen and uniform supply, and self-service and coin-operated laundry services.	458-20-209	Farming for hire and horticultural services performed for farmers.
458-20-166	Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc.	458-20-210	Sales of tangible personal property for farming—Sales of agricultural products by farmers.
458-20-167	Educational institutions, school districts, student organizations, and private schools.	458-20-211	Leases or rentals of tangible personal property, bailments.
458-20-168	Hospitals, medical care facilities, and adult family homes.	458-20-212	Insurance adjusters.
458-20-169	Nonprofit organizations.	458-20-214	Cooperative marketing associations and independent dealers acting as agents of others with respect to the sale of fruit and produce.
458-20-170	Constructing and repairing of new or existing buildings or other structures upon real property.	458-20-216	Successors, quitting business.
458-20-17001	Government contracting—Construction, installations, or improvements to government real property.	458-20-217	Lien for taxes.
458-20-171	Building, repairing or improving streets, roads, etc., which are owned by a municipal corporation or political subdivision of the state or by the United States and which are used primarily for foot or vehicular traffic.	458-20-218	Advertising agencies.
458-20-172	Clearing land, moving earth, cleaning, fumigating, razing or moving existing buildings, and janitorial services.	458-20-221	Collection of use tax by retailers and selling agents.
458-20-173	Installing, cleaning, repairing or otherwise altering or improving personal property of consumers.	458-20-222	Veterinarians.
458-20-174	Sales of motor vehicles, trailers, and parts to motor carriers operating in interstate or foreign commerce.	458-20-223	Persons performing contracts on the basis of time and material, or cost-plus-fixed-fee.
458-20-17401	Use tax liability for motor vehicles, trailers, and parts used by motor carriers operating in interstate or foreign commerce.	458-20-224	Service and other business activities.
458-20-175	Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce.	458-20-226	Landscape and horticultural services.
458-20-176	Commercial deep sea fishing—Commercial passenger fishing—Diesel fuel.	458-20-227	Subscriber television services.
458-20-177	Sales of motor vehicles, campers, and trailers to nonresidents.	458-20-228	Returns, remittances, penalties, extensions, interest, stay of collection.
458-20-178	Use tax.	458-20-22801	Tax reporting frequency—Forms.
458-20-17802	Collection of use tax by county auditors and department of licensing—Measure of tax.	458-20-22802	Electronic funds transfer.
458-20-179	Public utility tax.	458-20-229	Refunds.
458-20-17901	Public utility tax—Energy conservation and cogeneration deductions.	458-20-230	Statutory limitations on assessments.
458-20-17902	Brokered natural gas—Use tax.	458-20-233	Tax liability of medical and hospital service bureaus and associations and similar health care organizations.
458-20-180	Motor transportation, urban transportation.	458-20-235	Effect of rate changes on prior contracts and sales agreements.
458-20-181	Vessels, including log patrols, tugs and barges, operating upon waters in the state of Washington.	458-20-236	Baseball clubs and other sport organizations.
458-20-182	Warehouse businesses.	458-20-238	Sales of watercraft to nonresidents.
458-20-183	Amusement, recreation, and physical fitness services.	458-20-239	Sales to nonresidents of farm machinery or implements, and related services.
458-20-185	Tax on tobacco products.	458-20-240	Manufacturer's new employee tax credits.
458-20-186	Tax on cigarettes.	458-20-24001	Sales and use tax deferral—Manufacturing and research/development activities in distressed areas—Applications filed after July 31, 1999.
458-20-187	Coin operated vending machines, amusement devices and service machines.	458-20-24001A	Sales and use tax deferral—Manufacturing and research/development activities in distressed areas—Applications filed prior to August 1, 1999.
458-20-18801	Prescription drugs, prosthetic and orthotic devices, ostomic items, and medically prescribed oxygen.	458-20-24002	Sales and use tax deferral—New manufacturing and research/development facilities.
458-20-189	Sales to and by the state of Washington, counties, cities, towns, school districts, and fire districts.	458-20-24003	Tax incentives for high technology businesses.
458-20-190	Sales to and by the United States, its departments, institutions and instrumentalities—Sales to foreign governments.	458-20-241	Radio and television broadcasting.
		458-20-242A	Pollution control exemption and/or credits for single purpose facilities added to existing production plants to meet pollution control requirements and which are separately identifiable equipment principally for pollution control.
		458-20-242B	Pollution control exemption and/or credits for dual purpose facilities which are constructed to meet pollution control requirements and which achieve pollution control in the process of production of the plant's products.
		458-20-243	Litter tax.
		458-20-244	Food and food ingredients.
		458-20-245	Telephone business, telephone service.
		458-20-246	Sales to or through a direct seller's representative.

458-20-247	Trade-ins, selling price, sellers' tax measures.		
458-20-248	Sales of precious metal bullion and monetized bullion.		
458-20-249	Artistic or cultural organizations.	458-20-157	Producers of poultry and hatching eggs. [Statutory Authority: RCW 82.32.300. 86-21-085 (Order NET 86-18), § 458-20-157, filed 10/17/86. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order NET 78-4), § 458-20-157, filed 6/27/78; Order NET 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.
458-20-250	Refuse-solid waste collection business—Core deposits and credits, battery core charges, and tires.		
458-20-251	Sewerage collection and other related activities.		
458-20-252	Hazardous substance tax and petroleum product tax.		
458-20-254	Recordkeeping.		
458-20-255	Carbonated beverage syrup tax.		
458-20-256	Trade shows, conventions and seminars.	458-20-161	Persons buying or producing wheat, oats, dry peas, corn, barley, dry beans, lentils and triticale and making sales thereof. [Statutory Authority: RCW 82.32.300. 83-07-033 (Order NET 83-16), § 458-20-161, filed 3/15/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order NET 78-4), § 458-20-161, filed 6/27/78; Order NET 70-3, § 458-20-161 (Rule 161), filed 5/29/70, effective 7/1/70.] Repealed by 00-22-035, filed 10/25/00, effective 11/25/00. Statutory Authority: RCW 82.32.300.
458-20-257	Warranties and maintenance agreements.		
458-20-258	Travel agents and tour operators.		
458-20-260	Oil spill response and administration tax.		
458-20-261	Exemptions and credits for ride sharing, public transportation, and nonmotorized commuting.		
458-20-262	Retail sales and use tax exemptions for agricultural employee housing.		
458-20-263	Fuel cell, wind, landfill gas, and solar energy electric generating facilities sales and use tax exemption.		
458-20-264	National Uniform Tobacco Settlement.		
458-20-99999	Appendix—The Buck Act.	458-20-184	Tax on conveyances repealed. [Statutory Authority: RCW 82.32.300. 87-19-007 (Order NET 87-5), § 458-20-184, filed 9/8/87; 83-07-033 (Order NET 83-16), § 458-20-184, filed 3/15/83; Order NET 70-3, § 458-20-184 (Rule 184), filed 5/29/70, effective 7/1/70.] Repealed by 97-21-022, filed 10/7/97, effective 11/7/97. Statutory Authority: RCW 82.32.300.
<b>DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER</b>			
458-20-114	Nonbusiness income—Bona fide initiation fees, dues, contributions, tuition fees and endowment funds. [Statutory Authority: RCW 82.32.300. 86-02-039 (Order NET 85-8), § 458-20-114, filed 12/31/85; 84-08-012 (Order 84-1), § 458-20-114, filed 3/27/84; Order NET 70-3, § 458-20-114 (Rule 114), filed 5/29/70, effective 7/1/70.] Repealed by 95-22-099, filed 11/1/95, effective 12/2/95. Statutory Authority: RCW 82.32.300.	458-20-18601	Wholesale and retail cigarette vendor licenses. [Statutory Authority: RCW 82.32.300. 95-07-068, § 458-20-18601, filed 3/14/95, effective 4/14/95; 92-06-081, § 458-20-18601, filed 3/4/92, effective 4/4/92.] Repealed by 05-02-035, filed 12/30/04, effective 1/30/05. Statutory Authority: RCW 82.24.235, 82.32.300, and 82.01.060(1).
458-20-122	Sales of feed, seed, fertilizer, spray materials, and other tangible personal property for farm use. [Statutory Authority: RCW 82.32.300. 94-07-049, § 458-20-122, filed 3/10/94, effective 4/10/94; 86-21-085 (Order ET 86-18), § 458-20-122, filed 10/17/86; 86-09-058 (Order ET 86-7), § 458-20-122, filed 4/17/86; Order ET 70-3, § 458-20-122 (Rule 122), filed 5/29/70, effective 7/1/70.] Repealed by 03-18-024, filed 8/25/03, effective 9/25/03. Statutory Authority: RCW 82.01.060(2), 82.32.300, and 34.05.230. Later promulgation, see WAC 458-20-210.	458-20-188	Slot machines, pinball machines and other mechanical devices wherein an element of skill or of chance involves a pay-out to the player. [Order NET 70-3, § 458-20-188 (Rule 188), filed 5/29/70, effective 7/1/70.] Repealed by Order NET 73-1, filed 11/27/73. See chapter 218, Laws of 1973 1st ex. sess. for taxability of persons operating the machines or devices previously covered by this rule. See WAC 458-20-187.
458-20-123	Public and lending libraries. [Statutory Authority: RCW 82.32.300. 83-07-034 (Order NET 83-17), § 458-20-123, filed 3/15/83; Order NET 70-3, § 458-20-123 (Rule 123), filed 5/29/70, effective 7/1/70.] Repealed by 92-23-021, filed 11/10/92, effective 12/11/92. Statutory Authority: RCW 82.32.300. Later promulgation, see WAC 458-20-167 and 458-20-189.	458-20-193A	Sales of goods originating in Washington to persons in other states. [Statutory Authority: RCW 82.32.300. 83-07-033 (Order NET 83-16), § 458-20-193A, filed 3/15/83; Order NET 70-3, § 458-20-193A (Rule 193 Part A), filed 5/29/70, effective 7/1/70.] Repealed by 91-24-020, filed 11/22/91, effective 1/1/92. Statutory Authority: RCW 82.32.300. Later promulgation, see WAC 458-20-193.
458-20-125	Miscellaneous sales for farm use. [Statutory Authority: RCW 82.32.300. 83-07-034 (Order NET 83-17), § 458-20-125, filed 3/15/83; Order NET 70-3, § 458-20-125 (Rule 125), filed 5/29/70, effective 7/1/70.] Repealed by 94-07-051, filed 3/10/94, effective 4/10/94. Statutory Authority: RCW 82.32.300.	458-20-193B	Sales of goods originating in other states to persons in Washington. [Statutory Authority: RCW 82.32.300. 89-06-015 (Order 89-3), § 458-20-193B, filed 2/23/89; 83-07-033 (Order NET 83-16), § 458-20-193B, filed 3/15/83; Order NET 74-1, § 458-20-193B, filed 5/7/74; Order NET 70-3, § 458-20-193B (Rule 193 Part B), filed 5/29/70, effective 7/1/70.] Repealed by 91-24-020, filed 11/22/91, effective 1/1/92. Statutory Authority: RCW 82.32.300. Later promulgation, see WAC 458-20-193.
458-20-130	Sales of real property, standing timber, minerals, natural resources. [Statutory Authority: RCW 82.32.300. 87-19-007 (Order NET 87-5), § 458-20-130, filed 9/8/87; 83-07-034 (Order NET 83-17), § 458-20-130, filed 3/15/83; Order NET 70-3, § 458-20-130 (Rule 130), filed 5/29/70, effective 7/1/70.] Repealed by 00-22-034, filed 10/25/00, effective 11/25/00. 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 NET 83-1), § 458-20-206, filed 3/30/83; Order NET 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.
458-20-137	Articles manufactured and installed. [Statutory Authority: RCW 82.32.300. 83-07-034 (Order NET 83-17), § 458-20-137, filed 3/15/83; Order NET 70-3, § 458-20-137 (Rule 137), filed 5/29/70, effective 7/1/70.] Repealed by 98-01-111, filed 12/18/97, effective 1/18/98. Statutory Authority: RCW 82.32.300.	458-20-213	Oil company bulk station agents. [Order NET 70-3, § 458-20-213 (Rule 213), filed 5/29/70, effective 7/1/70.] Repealed by 00-22-034, filed 10/25/00, effective 11/25/00. Statutory Authority: RCW 82.32.300.
458-20-147	Public stenographers. [Order NET 73-1, § 458-20-147, filed 11/2/73; Order NET 70-3, § 458-20-147 (Rule 147), filed 5/29/70, effective 7/1/70.] Repealed by 92-23-021, filed 11/10/92, effective 12/11/92. Statutory Authority: RCW 82.32.300. Later promulgation, see WAC 458-20-138 and 458-20-224.	458-20-215	Auditing out-of-state business. [Statutory Authority: RCW 82.32.300. 83-08-026 (Order NET 83-1), § 458-20-215, filed 3/30/83; Order NET 70-3, § 458-20-215 (Rule 215), filed 5/29/70, effective 7/1/70.] Repealed by 92-23-021, filed 11/10/92, effective 12/11/92. Statutory Authority: RCW 82.32.300. Later promulgation, see WAC 458-20-254.
458-20-149	Jewelry repair shops. [Order NET 70-3, § 458-20-149 (Rule 149), filed 5/29/70, effective 7/1/70.] Repealed by 93-03-005, filed 1/8/93, effective 2/8/93. Statutory Authority: RCW 82.32.300.	458-20-219	Patronage dividends of cooperative associations, not deductible. [Statutory Authority: RCW 82.32.300. 83-08-026 (Order NET 83-1), § 458-20-219, filed 3/30/83; Order NET 70-3, § 458-20-219 (Rule 219), filed 5/29/70, effective 7/1/70.] Repealed by 92-23-021, filed
458-20-152	Shoe repairmen and shoe shiners. [Order NET 70-3, § 458-20-152 (Rule 152), filed 5/29/70, effective 7/1/70.] Repealed by 92-23-021, filed 11/10/92, effective		

- 11/10/92, effective 12/11/92. Statutory Authority: RCW 82.32.300.
- 458-20-220 Painting, paper hanging, and sign painting. [Order NET 70-3, § 458-20-220 (Rule 220), filed 5/29/70, effective 7/1/70.] Repealed by 92-23-021, filed 11/10/92, effective 12/11/92. Statutory Authority: RCW 82.32.300. Later promulgation, see WAC 458-20-170, 458-20-17001, 458-20-171 and 458-20-173.
- 458-20-225 Pattern makers. [Order NET 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.
- 458-20-231 Tax on internal distribution. [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.] Repealed by 03-09-062, filed 4/14/03, effective 5/15/03. Statutory Authority: RCW 82.32.300 and 82.01.060(2).
- 458-20-232 Sales of intoxicating liquor. [Statutory Authority: RCW 82.32.300. 83-08-026 (Order NET 83-1), § 458-20-232, filed 3/30/83; Order NET 73-1, § 458-20-232, filed 11/2/73; Order NET 71-1, § 458-20-232, filed 7/22/71; Order NET 70-3, § 458-20-232 (Rule 232), filed 5/29/70, effective 7/1/70.] Repealed by 96-21-142, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 82.32.300 and 34.05.354.
- 458-20-234 Business tax on flour millers, manufacturers of soybean or sunflower oil. [Statutory Authority: RCW 82.32.300. 83-08-026 (Order NET 83-1), § 458-20-234, filed 3/30/83; Order NET 70-3, § 458-20-234 (Rule 234), filed 5/29/70, effective 7/1/70.] Repealed by 00-22-035, filed 10/25/00, effective 11/25/00. Statutory Authority: RCW 82.32.300.
- 458-20-237 Retail sales tax collection schedules. [Statutory Authority: RCW 82.32.300. 91-05-038, § 458-20-237, filed 2/13/91, effective 3/16/91; 83-09-028 (Order NET 83-2), § 458-20-237, filed 4/15/83; 82-16-061 (Order NET 82-7), § 458-20-237, filed 7/30/82. Statutory Authority: RCW 82.32.300 and 82.08.060. 82-06-020 (Order 82-1), § 458-20-237, filed 2/24/82. Statutory Authority: RCW 82.08.060 and 82.14.070. 81-01-099 (Order 80-5), § 458-20-237, filed 12/23/80. Statutory Authority: RCW 82.08.060, 82.14.070 and 82.32.300. 79-06-036 (Order NET 79-1), § 458-20-237, filed 5/17/79, effective 7/1/79; Order NET 76-2, § 458-20-237, filed 5/19/76; Order NET 72-3, § 458-20-237, filed 11/30/72; Order NET 70-3, § 458-20-237 (Rule 237), filed 5/29/70, effective 7/1/70.] Repealed by 00-22-034, filed 10/25/00, effective 11/25/00. Statutory Authority: RCW 82.32.300.
- 458-20-242 Pollution control exemption and/or credits. (Rule 242) [Recodified as WAC 458-20-242A and 458-20-242B.]
- 458-20-253 Mobile homes and mobile home park fee. [Statutory Authority: RCW 82.32.300. 89-21-002, § 458-20-253, filed 10/5/89, effective 11/5/89; 89-01-033 (Order 88-8), § 458-20-253, filed 12/13/88.] Repealed by 98-01-111, filed 12/18/97, effective 1/18/98. Statutory Authority: RCW 82.32.300.
- 458-20-259 Small timber harvesters—Business and occupation tax exemption. [Statutory Authority: RCW 82.32.300. 98-16-107, § 458-20-259, filed 8/5/98, effective 9/5/98; 90-17-007, § 458-20-259, filed 8/3/90, effective 9/3/90.] Repealed by 01-15-072, filed 7/17/01, effective 8/17/01. Statutory Authority: RCW 82.32.300.

**WAC 458-20-100 Appeals, small claims and settlements.** (1) **Introduction.** This section explains the procedure for a taxpayer to seek an administrative review of an action by the department of revenue. A taxpayer is encouraged to request a conference with a supervisor of the department where disagreement exists over a proposed action of the department. The request for the conference should be made to the division of the department that is proposing to issue an assessment or is taking some other action in dispute. Such conferences provide an opportunity to resolve any issue without a review as provided in this section. Any taxpayer who has been issued a notice of departmental action or having

paid any tax administered by chapter 82.32 RCW may petition the department of revenue for the review of the action or for a determination of the taxpayer's liability for the tax paid. Departmental actions subject to review include but are not limited to:

- (a) A notice of assessment of additional taxes, of use tax due, or of tax balances due;
- (b) A notice of penalties or interest due;
- (c) A notice of delinquent taxes, including a notice of tax collection activities; and
- (d) An order revoking a certificate of registration.

(2) **Time for filing of petitions - extensions.** A review of a departmental action is started by the filing of a petition for review. A petition for review must be filed with the department within thirty days after the date the departmental action has occurred.

(a) A petition for review requesting a refund of taxes paid must be filed within four years after the close of the tax year in which the taxes were paid. Therefore, the department may not grant an extension of time to file a petition for review requesting a refund of taxes paid.

(b) An extension of time to file a petition may be granted if requested within the thirty-day filing period.

(c) A petition or request for extension is timely if it bears a United States Postal Service cancelled postmark on or before the thirty-day due date or is received by the department within the thirty-day filing period.

(3) **Contents of petitions.** A petition should be addressed: State of Washington, Department of Revenue, Interpretations and Appeals, Mailstop AX-02, Olympia, Washington 98504-0090. A petition must be in writing and contain the following information:

- (a) Indicate which item or items are in question;
- (b) Set forth the reasons why the correction, refund, or relief should be granted;
- (c) State the amount of the tax, and/or interest, and/or penalty which the taxpayer believes to be in error or which the taxpayer seeks to be refunded;
- (d) Indicate whether the petitioner elects to have the petition heard under the small claims procedure;
- (e) Indicate whether the petitioner requests the petition to be heard as an executive level petition stating the specific reasons for the request;

(f) In the case of an appeal of an order revoking a certificate of registration, specifically identify the mistake of fact, error of law, or the date the warrant was paid; and

(g) Be signed by the taxpayer and/or authorized representative.

(h) The department has provided as an addendum to this section a form which when completed will provide the necessary information. A taxpayer wishing a review is encouraged to provide the information requested so that the appeal can be processed, heard, and decided as quickly as possible.

(4) **Hearing on the petition - issuance of determination.** A petition for review may be granted or denied. If a review is denied, the taxpayer shall be promptly notified by mail. The reason for the denial, e.g., the nontimely filing of the petition, shall be included in the notification.

(a) When a petition for review is granted, the department may grant a hearing or issue a determination without conducting a hearing. If a hearing is granted, the taxpayer is noti-

fied by mail of its time and place. Most hearings are conducted by telephone conference. If a taxpayer prefers and requests an in-person hearing at the department's Olympia office, the request will be granted. Hearings at offices of the department of revenue throughout the state may be granted upon special request of the taxpayer and at the discretion of the department.

(b) Hearings will be conducted by an administrative law judge of the department of revenue, an employee specially trained in interpretation of the Revenue Act and the precedents established by prior department rulings and by the courts. Other departmental employees may be in attendance at an in-person hearing and the department shall notify the taxpayer when other departmental employees are attending. The taxpayer may appear personally or may be represented by an attorney, accountant, or any other person.

(c) All hearings before an administrative law judge will be conducted informally in a nonadversary, uncontested manner.

(d) Following the hearing, the administrative law judge will make such determination as may appear to be just and lawful and in accordance with the rules, principles, and precedents established by the department. The department shall notify the taxpayer in writing of the decision.

(e) The determination of the administrative law judge is the official position of the department of revenue and is binding upon the taxpayer unless a petition for reconsideration is timely filed. See: Subsection (8) of this section for taxpayer appeals outside the department.

(5) **Request for reconsideration.** If a taxpayer believes that an error has been made in the determination of the administrative law judge, the taxpayer may, within thirty days of the issuance of the determination, request in writing a reconsideration of the decision. A petition for reconsideration may be made on the petition form provided as an addendum to this section. The request for reconsideration shall indicate specific mistakes in law or fact and provide legal authority that would necessitate the reconsideration of the decision. A taxpayer may request an executive level reconsideration when the determination decided an issue of first impression or an issue which has industry-wide impact or significance.

The department shall decide whether or not the decision is to be reconsidered and may grant or deny the petition. If the request for reconsideration is denied, the department shall mail to the taxpayer written notice of the denial and the reason for the denial, e.g., the petition is not timely filed, the authorities specified do not support a mistake of law, or the facts specified were considered in the determination. The denial is then the final action of the department. If the request is granted, a hearing on reconsideration may be conducted or a determination may be issued without a hearing. If a hearing is granted, it shall be conducted informally in a nonadversary, uncontested manner, and shall be held at the department offices in Olympia. A determination upon reconsideration shall be sent to the taxpayer in writing and shall represent the final action of the department of revenue.

(6) **Request for hearing at the executive level.** If a taxpayer appeal involves an issue of first impression (one for which no precedent has been established) or an issue which has industry-wide significance or impact, a taxpayer may request the petition be heard at the executive level by the

director or the director's designee. The request must specify the reasons why this action is appropriate. The department may grant or deny the request. An executive level hearing shall be conducted informally in a nonadversary, uncontested manner. A determination from an executive level appeal is the final action of the department and a request for reconsideration will not be granted.

(7) **Small claims hearing.** Under certain conditions, a taxpayer may elect, by so indicating on the petition, to have the appeal heard under the expedited small claims hearing procedure.

(a) An appeal qualifies for a small claims hearing only if:

(i) The tax at issue in the appeal is five thousand dollars or less; or

(ii) Penalties and/or interest is the only issue and the amount of penalties and/or interest is ten thousand dollars or less.

(b) The department may decline to hear an appeal under the small claims procedure if the department finds it to be unsuitable for small claims resolution. Appeals with multiple or complex issues, issues of first impression, issues of industry-wide application, and constitutional issues are generally not suitable for small claims resolution.

(c) After the small claims hearing with the administrative law judge has been conducted, the taxpayer may no longer revoke the election for small claims resolution.

(d) The taxpayer will be notified of the time and place of the hearing. The hearing will be conducted informally in a nonadversary, uncontested manner by an administrative law judge and the taxpayer may personally, or through a representative, present oral and/or written testimony at that time. Upon conclusion of the hearing, the administrative law judge may render an oral decision at that time, but in no case will the decision be rendered more than five working days after the hearing. In all small claims hearings, either an abbreviated written decision (determination) containing the department's conclusions will be issued, or a closing agreement will be signed.

(e) The decision rendered in a small claims hearing is the final action of the department and a taxpayer request for reconsideration of the decision will not be granted.

(f) A decision rendered in a small claims hearing has no precedential value.

(8) **Appeals to board of tax appeals - Thurston County Superior Court.** A taxpayer may appeal a determination of the department of revenue to the board of tax appeals or may seek a refund of taxes paid in Thurston County Superior Court. See: Chapter 82.03 RCW, and RCW 82.32.180. A taxpayer filing an appeal with the board of tax appeals must pay the tax by the due date, unless arrangements are made with the department of revenue for a stay of collection pursuant to RCW 82.32.200. See: WAC 458-20-228.

(9) **Rulings of prior determination of tax liability.** Any taxpayer may make a written request to the department for a written opinion of future tax liability. Such a request shall contain all pertinent facts concerning the question presented and may contain a statement of the taxpayer's views concerning the correct application of the law. The department shall advise the taxpayer in writing of its opinion. The opinion shall be binding upon both the taxpayer and the department under the facts presented until the department changes

the opinion by a determination or subsequent opinion issued to the taxpayer, or the legal basis of the opinion has been changed by legislative, court, or WAC rule action. When changes occur, a taxpayer may contact the department to determine if a change in the legal basis of the opinion has occurred. Any future change in the opinion shall have prospective application only.

(10) **Settlement.** At any time during the appeal process, the taxpayer or the department may propose to compromise the matter by settlement.

(a) Settlement may be appropriate when:

(i) The issue is nonrecurring. An issue is nonrecurring when the law has changed so future periods are treated differently than the periods under appeal; or the taxpayer's position or business activity has changed so that in future periods the issue under consideration is changed or does not exist; or the taxpayer agrees to a prospective change; or

(ii) A conflict exists between precedents i.e., statutes, rules, excise tax bulletins, and correspondences to the taxpayer; or

(iii) A strict application of the law would have unduly harsh consequences which may be only relieved by an equitable doctrine; or

(iv) There is uncertainty of the outcome of the appeal if it were presented to a court. Factors to be considered include the relative degrees of certainty and the costs for both the taxpayer and the state. This category includes cases which involve factual issues that might require extensive expert testimony to resolve; or

(b) Settlement is not appropriate when:

(i) The same issue in the taxpayer's appeal is being litigated by the department; or

(ii) The taxpayer challenges a long-standing departmental policy or a WAC rule which the department will not change unless the policy or rule is declared invalid by a court of record; or

(iii) The taxpayer presents issues that have no basis upon which relief for the taxpayer can be granted or given. Settlement will not be considered if the taxpayer's offer of settlement is simply to eliminate the inconvenience or cost of further negotiation or litigation, and is not based upon the merits of the case; or

(iv) The taxpayer's only argument is that a statute is unconstitutional; or

(v) The taxpayer's only argument is financial hardship. Financial hardship issues are properly discussed with the department's compliance division.

(c) Each settlement is concluded by a closing agreement being signed by both the department and the taxpayer as provided by RCW 82.32.350 and is binding on both parties as provided in RCW 82.32.360. A closing agreement has no precedential value.

PETITION
STATE OF WASHINGTON
DEPARTMENT OF REVENUE
INTERPRETATION AND APPEALS
MAILSTOP AX-02
OLYMPIA, WA 98504-0090

Taxpayer Name
Address and
Telephone No.

Name, address and
Telephone No.
of Representative:

Registration No.:
Amount At Issue:
Audit No.: Document No.:

Do you request this petition to be heard under the small claims procedure? The small claims procedures are limited to appeals of tax issues which do not exceed \$5,000 or issues involving penalties and interest which do not exceed \$10,000. You may not revoke your request to be heard under the small claims procedure after the conference with the administrative law judge has been held. Under the small claims procedures, the decision of the department is final and the department will not accept a petition for reconsideration.

.... Yes .... No

Do you request this petition to be heard as an executive level petition? A petition for executive level consideration may be granted if the issue is one of first impression or the issue has industry-wide impact or significance. The specific reasons for an executive level appeal must be specified in the petition. A decision of a petition heard at the executive level is the final decision of the department and a petition for reconsideration will not be accepted.

.... Yes .... No

Is this a petition for reconsideration?

.... Yes .... No

Is this a petition for executive level reconsideration? (Specific reasons must be specified.)

.... Yes .... No

Items Protested (attach additional information if necessary):

Time Period at Issue:

Relief Requested (attach additional information if necessary):

Reason for relief (cite applicable rules, statutes, etc., and attach additional information if necessary):

(Signature of Taxpayer or Authorized Representative - Date)

[Statutory Authority: RCW 82.32.300, 90-24-049, § 458-20-100, filed 11/30/90, effective 1/1/91; 83-07-032 (Order ET 83-15), § 458-20-100, filed 3/15/83; Order ET 75-1, § 458-20-100, filed 5/2/75; Order ET 70-3, § 458-20-100 (Rule 100), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-10001 Adjudicative proceedings—Brief adjudicative proceedings—Wholesale and retail cigarette license revocation or suspension—Certificate of registration (tax registration endorsement) revocation.**

(1) **Introduction.** The department conducts adjudicative proceedings pursuant to chapter 34.05 RCW, the Administrative Procedure Act (APA). These adjudicative proceedings include, but are not limited to, wholesale and retail cigarette license revocation or suspension of RCW 82.24.550, certificate of registration (tax registration endorsement) revocation of RCW 82.32.215. The department adopts in this section the brief adjudicative procedures as provided in the APA for wholesale and retail cigarette license revocation or suspension of RCW 82.24.550, and certificate of registration (tax registration endorsement) revocation of RCW 82.32.215. This section explains the procedure and process pertaining to the adopted brief adjudicative proceedings. This section does not apply to log export enforcement actions pursuant to chapter 240-15 WAC, orders to county officials issued pursuant to RCW 84.08.120 and 84.41.120, brief adjudicative proceedings converted to formal adjudicative proceeding under subsection (5) of this section, and other formal adjudicative proceedings which are explained in WAC 458-20-10002. This section also does not apply to the nonadjudicative proceedings as provided in RCW 82.32.160, 82.32.170 and WAC 458-20-100.

(2) **Adoption of brief adjudicative proceedings.** As provided in RCW 34.05.482 (1)(c), this section adopts RCW 34.05.482 through 34.05.494 and the brief adjudicative procedure for APA adjudicative proceedings which the department of revenue conducts for wholesale and retail cigarette license revocation or suspension of RCW 82.24.550, and certificate of registration (tax registration endorsement) revocation of RCW 82.32.215.

(3) **Brief adjudicative proceedings - procedure.** The following procedure shall apply to the department's brief adjudicative proceeding.

(a) **Notice of hearing.** The department shall set the time and place of the hearing. The date of the hearing may not be less than seven days after written notice is served upon the person(s) to whom the proceedings apply. With the concurrence of the presiding officer and all persons involved in the proceedings, the hearing may be conducted by telephone and the recorded conversation shall be made a part of the record of the hearing. The notice shall include:

(i) The names and addresses of each person to whom the proceedings apply and, if known, the names and addresses of their representative(s);

(ii) The mailing address and the telephone number of the person or office designated to represent the department in the proceeding;

(iii) The official file or other reference number and the name of the proceeding;

(iv) The name, official title, mailing address and telephone number of the presiding officer, if known;

(v) A statement of the time, place and nature of the proceeding;

(vi) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(vii) A reference to the particular sections of the statutes and/or rules involved;

(viii) A short and plain statement of the matters asserted by the department; and

(ix) A statement that if a person to whom the proceedings apply fails to attend or participate in a hearing, the hearing may/will proceed and that adverse action may be taken against such person.

(x) When the department is notified or otherwise made aware that a limited-English-speaking person is a person to whom the proceedings apply, all notices, including the notice of hearing, continuance and dismissal, shall either be in the primary language of such person or shall include a notice in the primary language of the person which describes the significance of the notice and how the person may receive assistance in understanding and responding to the notice. In addition, the notice shall state that if a limited-English-speaking or hearing impaired party or witness needs an interpreter, a qualified interpreter will be appointed at no cost to the person to whom the proceedings apply or witness. The notice shall include a form to be returned to the department for a person to whom the proceedings apply to indicate whether such person, or a witness, needs an interpreter and to identify the primary language or hearing impaired status of the person.

**(b) Presiding officer.**

(i) When the proceeding is a certificate of registration (tax registration endorsement) revocation pursuant to RCW 82.32.215, the presiding officer shall be the assistant director of the department's compliance division or designee, or such other person as the director of the department of revenue may designate.

(ii) When the proceeding is a wholesale and retail cigarette license revocation or suspension pursuant to RCW 82.24.550, the presiding officer shall be the assistant director of the department's special program's division or designee, or such other person as the director of the department of revenue may designate.

(iii) The presiding officer conducts the hearing and before taking action, the presiding officer shall give each person to whom the proceedings apply an opportunity to be informed of the department's view of the matter, and to explain the person's view of the matter.

(iv) The presiding officer shall have the authority granted by chapter 34.05 RCW including but not limited to:

(A) Determine the order of the hearing including the presentation of evidence; administer oaths and affirmations; issue subpoenas;

(B) Rule on procedural matters, objections and motions; rule on offers of proof and receive relevant evidence;

(C) Ask questions of the person to whom the proceedings apply or the person representing the department, or of the witnesses called by either, in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

(D) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by both the person to whom the proceedings apply and the department;

(E) Take any appropriate action to maintain order during the hearing; permit or require oral argument, briefs, or discovery and determine the time limits for their submission;

(F) Take any other action necessary and authorized by applicable statute or rule;

(G) Waive any requirement of this section not specifically required by law unless either the person to whom the proceedings apply or the department shows that it would be prejudiced by such a waiver;

(H) Convert the proceedings, at any time in the proceeding, from a brief adjudicative proceeding to a formal proceeding pursuant to RCW 34.05.413 through 34.05.479 and WAC 458-20-10002.

**(c) Appearance and practice at a brief adjudicative proceeding.**

(i) The right to practice before the department in a brief adjudicative proceeding is limited to:

(A) Persons who are natural persons representing themselves;

(B) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;

(C) Attorneys at law entitled to practice before the highest court of record of any other state, if attorneys licensed in Washington are permitted to appear before the courts of such other state in a representative capacity, and if not otherwise prohibited by state law;

(D) Public officials in their official capacity;

(E) Certified public accountants entitled to practice in the state of Washington;

(F) A duly authorized director, officer, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership or corporation;

(G) Partners, joint venturers or trustees representing their respective partnerships, joint ventures, or trusts; and

(H) Other persons designated by a person to whom the proceedings apply with the approval of the presiding officer.

(ii) In the event a proceeding is converted from a brief adjudicative proceeding to a formal proceeding, representation is limited to the provisions of law and RCW 34.05.428.

**(d) Rules of evidence - discovery - record of the proceeding - filing and service of papers.**

(i) All testimony of a person to whom the proceedings apply, the department and witnesses shall be made under oath or affirmation. Every interpreter shall, before beginning to interpret, take an oath that a true interpretation will be made to the person being examined of all the proceedings in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the presiding officer in the English language, to the best of the interpreter's skill and judgment.

(ii) Evidence, including hearsay, is admissible if in the judgment of the presiding officer, it is the kind of evidence on which reasonably prudent persons are accustomed to rely in conduct of their affairs. The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious and shall be guided in evidentiary rulings, where not inconsistent with this section, by RCW 34.05.452, WAC 10-08-140, and by the Washington Rules of Evidence.

(iii) Discovery (depositions, interrogatories, etc.) may be conducted only by order of the presiding officer and if ordered, RCW 34.05.446 applies to the proceeding.

(iv) All hearings shall be recorded by manual, electronic, or other type of recording device. The agency record shall consist of the documents regarding the matter that were considered or prepared by the presiding officer, or by the reviewing officer in any review, and the recording of the hearing. These records shall be maintained by the department as its official record.

(v) All notices and other pleadings or papers filed with the presiding officer or reviewing officer shall be served on each person to whom the proceeding apply, the department or their representatives/agents of record. Service shall be made personally; by first-class, registered or certified mail; by telegraph; or electronic telefacsimile (fax) and same-day mailing of copies; or by commercial parcel delivery company. Service by mail shall be regarded as completed upon deposit in the United States mail properly stamped and addressed. Service by telegraph shall be regarded as completed when deposited with a telegraph company with the charges prepaid. Service by electronic telefacsimile (fax) shall be regarded as completed upon the production by the telefacsimile device of confirmation of transmission. Service by commercial parcel delivery shall be regarded as being completed upon delivery to the parcel delivery company charges prepaid. Service to a person to whom the proceedings apply and/or representative/agent, and, the department and/or presiding officer shall be to the address shown on the notice of subsection (2)(a) of this section. Service to the reviewing officer shall be to interpretation and appeals division at the address shown in subsection (4) of this section. Where proof of service is required, the proofs of service include:

(A) An acknowledgment of service;

(B) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon all or one or more of the parties of record in the proceeding by delivering a copy in person to (names).

(C) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon all or one or more of parties of record by a method of service as provided in this subsection (d)(v) of this section.

(e) **Impaired persons - interpreters.** When an impaired person is a person to whom the proceedings apply, or a witness, the presiding officer shall, in absence of a written waiver signed by the impaired person, appoint a qualified interpreter to assist the impaired person throughout the proceeding.

(i) An "impaired person" is any person involved in an adjudicative proceeding who is a hearing impaired person or a limited-English-speaking person.

(ii) A "hearing impaired person" is a person who, because of a hearing impairment or speech defects, cannot readily understand or communicate in spoken language; and includes persons who are deaf, deaf and blind, or hard of hearing.

(iii) A "limited-English-speaking person" is a person who because of a non-English-speaking cultural background cannot readily speak or understand the English language.

(iv) A "qualified interpreter" is one who is readily able to interpret spoken and translate written English to and for

impaired persons into spoken English and who meets the requirements of (e)(ix) of this subsection: Provided, That for hearing impaired persons a qualified interpreter must be certified by the registry of interpreters for the deaf with a specialist certificate-legal, master's comprehensive skills certificate, or comprehensive skills certificate.

(v) An "intermediary interpreter" is one who is readily able to interpret spoken and translate written English and who meets the requirements of (e)(ix) of this subsection, and who is able to assist in providing an accurate interpretation between spoken and sign language or between variants of sign language by acting as an intermediary between a hearing impaired person and a qualified interpreter for the hearing impaired.

(vi) When an impaired person is a person to whom the proceedings apply, or a witness in such adjudicative proceeding, the presiding officer shall, in the absence of a written waiver signed by the impaired person, appoint a qualified interpreter to assist the impaired person throughout the proceedings. The right to a qualified interpreter may not be waived except when:

(A) The impaired person requests a waiver through the use of a qualified interpreter;

(B) The representative, if any, of the impaired person consents; and

(C) The presiding officer determines that the waiver has been made knowingly, voluntarily, and intelligently.

(vii) Waiver of a qualified interpreter shall not preclude the impaired person from claiming his or her right to a qualified interpreter at a later time during the proceeding.

(viii) Relatives of any participant in a proceeding and employees of the department shall not be appointed as interpreters in the proceeding without the consent of the presiding officer and the person(s) to whom the proceedings apply, in the case of an employee of the department, or the department in the case of a relative of the person(s) to whom the proceedings apply or of a witness for such person(s).

(ix) The presiding officer shall make a preliminary determination that an interpreter is able in the particular proceeding to interpret accurately all communication to and from the impaired person. This determination shall be based upon the testimony or stated needs of the impaired person, the interpreter's education, certifications, and experience, the interpreter's understanding of the basic vocabulary and procedure involved in the proceeding, and the interpreter's impartiality. A person to whom the proceedings apply or their representative(s), or the department may question the interpreter as to his or her qualifications or impartiality.

(x) If at any time during the proceeding, in the opinion of the impaired person, the presiding officer or a qualified observer, the interpreter does not provide accurate and effective communication with the impaired person, the presiding officer shall appoint another qualified interpreter.

(xi) If the communication mode or language or a hearing impaired person is not readily interpretable, the interpreter or hearing impaired person shall notify the presiding officer who shall appoint and pay an intermediary interpreter to assist the qualified interpreter.

(xii) Mode of interpretation.

(A) Interpreters for limited-English-speaking persons shall use simultaneous mode of interpretation where the pre-

siding officer and interpreter agree that simultaneous interpretation will advance fairness and efficiency; otherwise, the consecutive mode of foreign language interpretation shall be used.

(B) Interpreters for hearing impaired persons shall use the simultaneous mode of interpretation unless an intermediary interpreter is needed. If an intermediary interpreter is needed, interpreters shall use the mode that the qualified interpreter considers to provide the most accurate and effective communication with the hearing impaired person.

(C) When an impaired person is the person to whom the proceedings apply, the interpreter shall translate all statements made by other hearing participants. The presiding officer shall ensure that sufficient extra time is provided to permit translation and the presiding officer shall ensure that the interpreter translates the entire proceeding to the person to whom the proceedings apply to the extent that the person has the same opportunity to understand all statements made during the proceedings as a nonimpaired party listening to uninterpreted statements would have.

(xiii) A qualified interpreter shall not, without the written consent of the parties to the communication, be examined as to any communication the interpreter interprets under circumstances where the communication is privileged by law. A qualified interpreter shall not, without the written consent of the parties to the communication, be examined as to any information the interpreter obtains while interpreting pertaining to any proceeding then pending.

(xiv) The presiding officer shall explain to the impaired party that a written decision or order will be issued in English, and that the party may contact the interpreter for a translation of the decision at no cost to the party. The presiding officer shall orally inform the party during the hearing of the right and of the time limits to request review.

(xv) At the hearing, the interpreter for a limited-English-speaking party shall provide to the presiding officer the interpreter's telephone number written in the primary language of the impaired party. A copy of such telephone number shall be attached to the decision or order mailed to the impaired party. A copy of the decision or order shall also be mailed to the interpreter for use in translation.

(xvi) In any proceeding involving a hearing impaired person, the presiding officer may order that the testimony of the hearing impaired person and the interpretation of the proceeding by the qualified interpreter be visually recorded for use as the official transcript of the proceeding. Where simultaneous translation is used for interpreting statements of limited-English-speaking persons, the foreign language statements shall be recorded simultaneously with the English language statements by means of a separate tape recorder.

(xvii) A qualified interpreter appointed under this section is entitled to a reasonable fee for services, including waiting time and reimbursement for actual necessary travel expenses. The department shall pay such interpreter fee and expenses. The fee for services for interpreters for hearing impaired persons shall be in accordance with standards established by the department of social and health services, office of deaf services.

(xviii) This subsection (e) shall apply to a review of the decision under subsection (4) of this section.

**(f) Informal settlements.**

(i) The department encourages informal settlement of issues which have resulted in a proceeding being commenced. At any time in the proceeding the person(s) to whom the proceeding applies and the department are encouraged to reach agreement. Settlement of a proceeding shall be concluded by:

(A) Stipulation of the person(s) to whom the proceedings apply and the department signed by each or their representative(s), and/or recited into the record of the proceedings. In the event the stipulation provides for a payment agreement, the order of the presiding officer may be a continuance of these proceedings and dismissal when all payments have been made, but in no case, may the order provide for the reconvening of the proceedings if the payment agreement is breached unless seven days notice of the reconvening is provided. Except as provided in this section, the presiding officer shall enter an order in conformity with the terms of the stipulation; or

(B) Withdrawal by the department in which case the presiding officer shall enter an order dismissing the proceedings.

(ii) In the case of revocation of certificate of registration (tax registration endorsement) under RCW 82.32.215, the presiding officer, or the reviewing officer, shall not hear or rule upon (other than the entry of an order as provided in (f)(i)(A) and (B) of this subsection) arguments, or motions, etc., for the settlement of the matter. Settlement of the controversy is totally between the person(s) to whom the proceedings apply and the department through its representative at the proceeding. Nothing in this section shall prevent a presiding officer or a reviewing officer from granting a continuance of a hearing, or such other motion as the presiding officer or reviewing officer deems appropriate for the purpose of settlement of the matter between the parties.

**(g) Entry of orders.**

(i) At the time any unfavorable action is taken, the presiding officer shall serve upon each person to whom the proceeding apply and the department a brief statement of the reasons for the decision. Within ten days of a decision, the presiding officer shall serve upon each person to whom the proceedings apply and the department a brief written statement of the reasons for the decision and the availability of the departmental review procedure as provided in this section.

(ii) The brief written statement provided the parties, which may include an order where a person to whom the proceedings apply fails to attend or participate in the hearing or other stage of the proceeding, is an initial order and if no review is requested as provided in subsection (4) of this section, the initial order shall become a final order.

**(4) Review of initial orders from brief adjudicative proceeding.** If a person to whom the proceedings apply wishes a review of the initial order, the brief written statement of the decision as provided in subsection (3)(g)(i) of this section, the person may request a review by the department by the filing of a petition for review, or the making of an oral request for review, with the department's interpretation and appeals division, within twenty-one days after the service of the initial order on the person to whom the proceedings apply. A request for review should state the reasons the review is sought. The address and telephone number of the interpretation and appeals division is:

Interpretation and Appeals Division  
Department of Revenue  
P.O. Box 47460  
Olympia, Washington 98504-7460  
Telephone Number - (360) 753-2310  
Fax - (360) 664-2729

(a) The interpretation and appeals division shall appoint a reviewing officer who shall make such determination as may appear to be just and lawful. The reviewing officer shall give each person to whom the proceedings apply and the department an opportunity to explain each person's view of the matter and shall make any inquiries necessary to ascertain whether the proceeding should be converted to a formal adjudicative proceeding. The review by the interpretation and appeals division shall be governed by the brief adjudicative procedures of chapter 34.05 RCW and this section; or subsection (5) of this section in the event a brief adjudicative hearing is converted to a formal adjudicative proceeding, and not by the processes and procedures of WAC 458-20-100.

(b) The agency record need not constitute the exclusive basis for the reviewing officer's decision. The reviewing officer shall have the authority of a presiding officer as provided in this section.

(c) The order of the reviewing officer shall be in writing and shall include a brief statement of the reasons for the decision and must be entered within twenty days of the initial order or the petition for review, whichever is later. The order shall include a description of any further administrative review available, or if none, a notice that judicial review may be available.

(d) Unless otherwise provided in the order of the reviewing officer, the order of the reviewing officer represents the final position of the department. A reconsideration of the order of a reviewing officer may be sought only if the right to a reconsideration is contained in the final order.

**(5) Conversion of a brief adjudicative proceeding to a formal proceeding.** The presiding officer, or reviewing officer, may at any time, on motion of a person to whom the proceedings apply, or the department, or his/her own motion, convert the brief adjudicative proceeding to a formal proceeding.

(a) The presiding/reviewing officer shall convert the proceeding when it is found that the use of the brief adjudicative proceeding violates any provision of law, when the protection of the public interest requires the agency to give notice to and an opportunity to participate to persons other than the parties, and when the issues and interests involved warrant the use of the procedures of RCW 34.05.413 through 34.05.479.

(b) When a proceeding is converted from a brief adjudication to a formal proceeding, the director of the department of revenue, upon notice to the person(s) to whom the proceedings apply and the department, may become the presiding officer, or may designate a replacement presiding officer to conduct the formal proceedings.

(c) In the conduct of the formal proceedings, WAC 458-20-10002 shall apply to the proceedings. The converted proceeding is itself the independent administrative review by the department of revenue as provided in RCW 82.32A.020(6).

**(6) Court appeal.** Court appeal from the final order of the department is available under Part V, chapter 34.05

RCW. However, court appeal may be available only if a review of the initial decision has been requested under subsection (4) of this section and all other administrative remedies have been exhausted. See RCW 34.05.534.

**(7) Posting of a final order of revoking a certificate of registration (tax registration endorsement) - revocation not a substitute for other collection methods or processes available to the department.** When an order revoking a certificate of registration (tax registration endorsement) is a final order of the department, the department shall post a copy of the order in a conspicuous place at the main entrance to the taxpayer's place of business and it shall remain posted until such time as the warrant amount has been paid.

(a) It is unlawful to engage in business after the revocation of a certificate of registration (tax registration endorsement). A person engaging in the business after a revocation may be subject to criminal sanctions as provided in RCW 82.32.290. RCW 82.32.290(2) provides that a person violating the prohibition against such engaging in business is guilty of a Class C felony in accordance with chapter 9A.20 RCW.

(b) Any certificate of registration (tax registration endorsement) revoked shall not be reinstated, nor a new certificate of registration issued until:

(i) The amount due on the warrant has been paid, or provisions for payment satisfactory to the department of revenue have been entered; and

(ii) The taxpayer has deposited with the department of revenue as security for taxes, increases and penalties due or which may become due under such terms and conditions as the department of revenue may require, but the amount of the security may not be greater than one-half the estimated average annual liability of the taxpayer.

(c) The revocation of a certificate of registration (tax registration endorsement), including any time during the revocation process, shall not be a substitute for, or in any way curtail, other collection methods or processes available to the department.

**(8) Computation of time.** In computing any period of time prescribed by this regulation or by the presiding officer, the day of the act or event after which the designated period is to run is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the next day which is not a Saturday, Sunday or legal holiday. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

[Statutory Authority: RCW 82.32.300 and 34.05.410. 95-07-070, § 458-20-10001, filed 3/14/95, effective 4/14/95.]

**WAC 458-20-10002 Adjudicative proceedings—Formal adjudicative proceedings—Log export enforcement actions pursuant to chapter 240-15 WAC—Orders to county officials issued pursuant to RCW 84.08.120 and 84.41.120—Converted brief adjudicative proceedings. (1) Introduction.** The department conducts adjudicative proceedings pursuant to chapter 34.05 RCW, the Administrative Procedure Act (APA). This section explains the procedure and process for formal adjudicative proceedings conducted by the department. These formal proceedings include, but are not limited to, log export enforcement actions pursuant to chapter 240-15 WAC, orders to county officials issued pursu-

(2005 Ed.)

ant to RCW 84.08.120 and 84.41.120, and converted brief adjudicative proceedings. This section does not apply to wholesale and retail cigarette license revocation/suspension of RCW 82.24.550, certificate of registration (tax registration endorsement) revocation of RCW 82.32.215, or other proceedings which are brief adjudicative proceedings and are explained in WAC 458-20-10001. This section also does not apply to the nonadjudicative proceedings as provided in RCW 82.32.160, 82.32.170 and WAC 458-20-100.

**(2) Formal adjudicative proceedings - procedure and process.** RCW 34.05.413 through 34.05.479 and chapter 10-08 WAC shall apply to formal adjudicative proceedings conducted by the department of revenue.

(a) **Presiding officer - final order - review.** The presiding officer of a formal adjudicative proceeding shall be the director, department of revenue, or such person as the director shall designate. The presiding officer, whether the director of the department of revenue, or such person as the director shall have designated, shall make the final decision and shall enter a final order as provided in RCW 34.05.461 (1)(b). No further administrative review is available from a decision of the presiding officer.

(b) **Petitions for reconsideration.** RCW 34.05.470 provides that petitions for reconsideration shall be filed within ten days of the final order. A petition for reconsideration shall be filed with the presiding officer at the address of the presiding officer provided in the notice of the proceedings, or at such other address as may be provided in the final order, and shall be in the form of other pleadings in the matter. As with all other pleadings, a copy of the petition shall be served upon all other parties to the proceeding.

[Statutory Authority: RCW 82.32.300 and 34.05.410. 95-07-069, § 458-20-10002, filed 3/14/95, effective 4/14/95.]

#### **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

[Title 458 WAC—p. 121]

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 several 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 458-20-102 Resale certificates.** (1) **Introduction.** This rule explains the conditions under which a buyer may furnish a resale certificate to a seller, and explains the information and language required on the resale certificate. This rule also provides tax reporting information to persons who purchase articles or services for dual purposes (i.e., for both resale and consumption). In 2003, the legislature enacted legislation conforming state law to portions of the national Streamlined Sales and Use Tax Agreement (chapter 168, Laws of 2003), which eliminates the good faith requirement when the seller takes from the buyer a resale certificate and also eliminates signature requirements for certificates provided in a format other than paper. These changes apply to resale certificates taken on and after July 1, 2004.

(2) **What is a resale certificate?** The resale certificate is a document or combination of documents that substantiates the wholesale nature of a sale. The resale certificate cannot be used for purchases that are not purchases at wholesale, or where a more specific certificate, affidavit, or other documentary evidence is required by statute or other section of chapter 458-20 WAC. While the resale certificate may come in different forms, all resale certificates must satisfy the language and information requirements of RCW 82.04.470.

(a) **What is the scope of a resale certificate?** Depending on the statements made on the resale certificate, the resale certificate may authorize the buyer to purchase at wholesale all products or services being purchased from a particular seller, or may authorize only selected products or services to be purchased at wholesale. The provisions of the resale certificate may be limited to a single sales transaction, or may apply to all sales transactions for a period not to exceed four years from the effective date. Whatever its form and/or purpose, the resale certificate must be completed in its entirety and signed by a person who is authorized to make such a representation on behalf of the buyer.

(b) **Who may issue and sign certificates?** The buyer may authorize any person in its employ to issue and sign resale certificates on the buyer's behalf. The buyer is, however, responsible for the information contained on the resale certificate. A resale certificate is not required to be completed by every person ordering or making the actual purchase of articles or services on behalf of the buyer. For example, a construction company that authorizes only its bookkeeper to

issue resale certificates on its behalf may authorize both the bookkeeper and a job foreman to purchase items under the provisions of the resale certificate. The construction company is not required to provide, nor is the seller required to obtain, a resale certificate signed by each person making purchases on behalf of the construction company.

The buyer is responsible for educating all persons authorized to issue and/or use the resale certificate on the proper use of the buyer's resale certificate privileges.

(3) **Resale certificate renewal.** Resale certificates must be renewed at least every four years. In addition, the buyer must renew its resale certificate whenever a change in the ownership of the buyer's business requires a new tax registration. (See WAC 458-20-101 Tax registration and tax reporting.) The buyer may not make purchases under the authority of a resale certificate bearing a tax registration number that has been cancelled or revoked by the department of revenue (department).

(4) **Sales at wholesale.** All sales are treated as retail sales unless the seller takes from the buyer a properly executed resale certificate. Resale certificates may only be used for sales at wholesale and may not be used as proof of entitlement to retail sales tax exemptions otherwise provided by law.

(a) **When may a buyer issue a resale certificate?** The buyer may issue a resale certificate only when the property or services purchased are:

(i) For resale in the regular course of the buyer's business without intervening use by the buyer;

(ii) To be used as an ingredient or component part of a new article of tangible personal property to be produced for sale;

(iii) A chemical to be used in processing an article to be produced for sale (see WAC 458-20-113 on chemicals used in processing);

(iv) To be used in processing ferrosilicon that is subsequently used in producing magnesium for sale;

(v) Provided to consumers as a part of competitive telephone service, as defined in RCW 82.04.065;

(vi) Feed, seed, seedlings, fertilizer, spray materials, or agents for enhanced pollination including insects such as bees for use in the federal conservation reserve program or its successor administered by the United States Department of Agriculture; or

(vii) Feed, seed, seedlings, fertilizer, spray materials, or agents for enhanced pollination including insects such as bees for use by a farmer for producing for sale any agricultural product. (See WAC 458-20-210 on sales to and by farmers.)

(b) **Required information.** All resale certificates, whether paper or nonpaper format, must contain the following information:

(i) The name and address of the buyer;

(ii) The uniform business identifier or tax registration number of the buyer, if the buyer is required to be registered with the department;

(iii) The type of business;

(iv) The categories of items or services to be purchased at wholesale, unless the buyer is in a business classification that may present a blanket resale certificate as provided by the department by rule;

(v) The date on which the certificate was provided;

(vi) A statement that the items or services purchased either are purchased for resale in the regular course of business or are otherwise purchased at wholesale; and

(vii) A statement that the buyer acknowledges that the buyer is solely responsible for purchasing within the categories specified on the certificate and that misuse of the resale certificate subjects the buyer to a penalty of fifty percent of the tax due, in addition to the tax, interest, and any other penalties imposed by law.

(c) **Additional requirements for paper certificates.** In addition to the requirements stated in subsection (4)(b) of this rule, paper certificates must contain the following:

(i) The name of the individual authorized to sign the certificate, printed in a legible fashion;

(ii) The signature of the authorized individual; and

(iii) The name of the seller. RCW 82.04.470.

(5) **Seller's responsibilities for acceptance of resale certificates.** When a seller receives and accepts from the buyer a resale certificate at the time of the sale, or has a resale certificate on file at the time of the sale, or obtains a resale certificate from the buyer within a reasonable time after the sale, the seller is relieved of liability for retail sales tax with respect to the sale covered by the resale certificate. The seller may accept a legible fax, a duplicate copy of an original resale certificate, or a certificate in a format other than paper. The resale certificate will be considered to be obtained within a reasonable time of the sale if it is received within one hundred twenty days of the sale or sales in question. However, refer to (e) of this subsection in event of an audit situation.

(a) **Timing requirements for single orders with multiple billings.** If a single order or contract will result in multiple billings to the buyer, and the appropriate resale certificate was not obtained or on file at the time the order was placed or the contract entered, the resale certificate must be received by the seller within one hundred twenty days after the first billing to be considered obtained within a reasonable time of the sale. For example, a subcontractor entering into a construction contract for which it has not received a resale certificate must obtain the certificate within one hundred twenty days of the initial construction draw request to consider the resale certificate obtained in a reasonable time after the sale, even though the construction project may not be completed at that time and additional draw requests will follow.

(b) **Requirements for resale certificates obtained after reasonable time has passed.** If the resale certificate is obtained more than one hundred twenty days after the sale or sales in question, the resale certificate must be specific to the sale or sales. The certificate must specifically identify the sales in question on its face, or be accompanied by other documentation signed by the buyer specifically identifying the sales in question and stating that the provisions of the accompanying resale certificate apply. A nonspecific resale certificate that is not obtained within a reasonable period of time is generally not, in and of itself, acceptable proof of the wholesale nature of the sales in question. The resale certificate and/or required documentation must be obtained within the statutory time limitations provided by RCW 82.32.050.

(c) **Examples.** The following examples explain the seller's documentary requirements in typical situations when obtaining a resale certificate more than one hundred twenty

days after the sale. 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.

(i) Beginning in January of year 1, MN Company regularly makes sales to ABC Inc. In June of the same year, MN discovers ABC has not provided a resale certificate. MN requests a resale certificate from ABC and, as the resale certificate will not be received within one hundred twenty days of many of the past sales transactions, requests that the resale certificate specifically identify those past sales subject to the provisions of the certificate. MN receives a legible fax copy of an original resale certificate from ABC on July 1st of that year. Accompanying the resale certificate is a memo providing a list of the invoice numbers for all past sales transactions through May 15th of that year. This memo also states that the provisions of the resale certificate apply to all past and future sales, including those listed. MN Company has satisfied the requirement that it obtain a resale certificate specific to the sales in question. As the provisions of this resale certificate apply to both past and future sales transactions, the certificate must be renewed no later than December 31st four years from the date the resale certificate became effective.

(ii) XYZ Company makes three sales to MP Inc. in October of year 1 and does not charge retail sales tax. In the review of its resale certificate file in April of the following year, XYZ discovers it has not received a resale certificate from MP Inc. and immediately requests a certificate. As the resale certificate will not be received within one hundred twenty days of the sales in question, XYZ requests that MP provide a resale certificate identifying the sales in question. MP provides XYZ with a resale certificate that does not identify the sales in question, but simply states "applies to all past purchases." XYZ Company has not satisfied its responsibility to obtain an appropriate resale certificate. As XYZ failed to secure a resale certificate within a reasonable period of time, XYZ must obtain a certificate specifically identifying the sales in question or prove through other facts and circumstances that these sales are wholesale sales. (Refer to (d) of this subsection for information on how a seller can prove through other facts and circumstances that a sale is a wholesale sale.) It remains the seller's burden to prove the wholesale nature of the sales made to a buyer if the seller has not obtained a valid resale certificate within one hundred twenty days of the sale.

(d) **Seller's liability.** If the seller has not obtained an appropriate resale certificate or other acceptable documentary evidence (see subsection (8) of this rule), the seller is personally liable for the tax due unless it can sustain the burden of proving through facts and circumstances that the property was sold for one of the purposes set forth in subsection (4)(a) of this rule. The department will consider all evidence presented by the seller, including the circumstances of the sales transaction itself, when determining whether the seller has met its burden of proof. This evidence must be presented within the statutory time limitations provided by RCW 82.32.060. It is the seller's responsibility to provide the information necessary to evaluate the facts and circumstances of all sales transactions for which resale certificates are not obtained. Facts and circumstances that should be considered include, but are not necessarily limited to, the following:

(i) The nature of the buyer's business. The items being purchased at wholesale must be consistent with the buyer's business. For example, a buyer having a business name of "Ace Used Cars" would generally not be expected to be in the business of selling furniture;

(ii) The nature of the items sold. The items sold must be of a type that would normally be purchased at wholesale by the buyer;

(iii) The quantity and frequency of items sold. The number of items sold and the frequency of sales must indicate that the buyer is purchasing such items at wholesale; and

(iv) Additional documentation. Other available documents, such as purchase orders and shipping instructions, should be considered in determining whether they support a finding that the sales are sales at wholesale.

(e) **Additional time to secure documentation after audit.** If in event of an audit the department discovers that the seller has not secured the necessary resale certificates and/or documentation, the seller will generally be allowed thirty days in which to obtain and present appropriate resale certificates and/or documentation, or prove by facts and circumstances the sales in question are wholesale sales. The time allotted to the seller shall commence from the date the auditor initially provides the seller with the results of the auditor's wholesale sales review. The processing of the audit report will not be delayed as a result of the seller's failure within the allotted time to secure and present appropriate documentation, or its inability to prove by facts and circumstances that the sales in question were wholesale sales. The audit report will also not be delayed because the time allotted to the seller expires prior to one hundred twenty days from the date of the sale or sales in question.

(f) **Seller's personal liability.** If the seller is unable to provide proper documentation, or unable to prove by facts and circumstances that the sales in question are wholesale sales, the seller becomes personally liable for the taxes in question. If the seller is required to make payment to the department, and later is able to present the department with proper documentation or prove by facts and circumstances that the sales in question are wholesale sales, the seller may in writing request a refund of the taxes paid along with the applicable interest. Both the request and the documentation or proof that the sales in question are wholesale sales must be submitted to the department within the statutory time limitations provided by RCW 82.32.060. (See WAC 458-20-229.)

(6) **Penalty for improper use.** Any buyer who uses a resale certificate to purchase items or services without payment of sales tax and who is not entitled to use the certificate for the purchase will be assessed a penalty of fifty percent of the tax due on the improperly purchased item or service. This penalty is in addition to all other taxes, penalties, and interest due, and can be imposed even if there was no intent to evade the payment of retail sales tax. The penalty will be assessed by the department and applies only to the buyer. However, see subsection (12) of this rule for situations in which the department may waive the penalty.

Persons who purchase articles or services for dual purposes (i.e., some for their own consumption and some for resale) should refer to subsection (11) of this rule to determine whether they may give a resale certificate to the seller.

(7) **Resale certificate - suggested form.** While there may be different forms of the resale certificate, all resale certificates must satisfy the language and information requirements provided by RCW 82.04.470. The resale certificate may be in the suggested form shown below, which is available on the department's home page at <http://dor.wa.gov>, or may be in any other form that contains substantially the following information and language, except that certificates provided in a format other than paper are not required to include the printed name of the person authorized to sign the certificate, the signature of the authorized individual, or the name of the seller:

The undersigned buyer hereby certifies that the tangible personal property or services specified below will be purchased for: (a) Resale in the regular course of business without intervening use by the buyer, (b) use as an ingredient or component part of a new article of tangible personal property to be produced for sale, (c) use as a chemical to be used in processing a new article of tangible personal property to be produced for sale, or (d) use as feed, seed, fertilizer, or spray materials in its capacity as a farmer as defined in chapter 82.04 RCW. This certificate shall be considered a part of each order that I may give to you on or after the effective date of this certificate, unless otherwise specified, and is valid until revoked by me in writing. This certificate is given with full knowledge that the buyer is solely responsible for purchasing within the categories specified on the certificate, and that misuse of the resale privilege claimed on the certificate is subject to the legally prescribed penalty of fifty percent of the tax due, in addition to the tax, interest, and any other penalties imposed by law.

Name of Seller. . . . . Effective Date. . . . .  
Name of Buyer . . . . .  
Address. . . . .  
UBI/ Tax Registration #. . . . .  
Type of Business . . . . .  
Items or item categories purchased at wholesale. . . . .  
. . . . .  
Authorized agent for buyer (printed). . . . .  
Authorized Signature. . . . .  
Title. . . . .

(a) **Buyer's responsibility to specify products or services purchased at wholesale.** RCW 82.04.470 requires the buyer making purchases at wholesale to specify the kinds of products or services subject to the provisions of the resale certificate. A buyer who will purchase some of the items at wholesale, and consume and pay tax on some other items being purchased from the same seller, must use terms specific enough to clearly indicate to the seller what kinds of products or services the buyer is authorized to purchase at wholesale.

(i) The buyer may list the particular products or services to be purchased at wholesale, or provide general category descriptions of these products or services. The terms used to describe these categories must be descriptive enough to restrict the application of the resale certificate provisions to those products or services that the buyer is authorized to purchase.

chase at wholesale. The following are examples of terms used to describe categories of products purchased at wholesale, and businesses that may be eligible to use such terms on their resale certificates:

(A) "Hardware" for use by a general merchandise or building material supply store, "computer hardware" for use by a computer retailer;

(B) "Paint" or "painting supplies" for use by a general merchandise or paint retailer, "automotive paint" for use by an automotive repair shop; and

(C) "Building materials" or "subcontract work" for use by prime contractors performing residential home construction, "wiring" or "lighting fixtures" for use by an electrical contractor.

(ii) The buyer must remit retail sales tax on any taxable product or service not listed on the resale certificate provided to the seller. If the buyer gave a resale certificate to the seller and later used an item listed on the certificate, or if the seller failed to collect the sales tax on items not listed on the certificate, the buyer must remit the deferred sales or use tax due directly to the department.

(iii) RCW 82.08.050 provides that each seller shall collect from the buyer the full amount of retail sales tax due on each retail sale. If the department finds that the seller has engaged in a consistent pattern of failing to properly charge sales tax on items not purchased at wholesale (i.e., not listed on the resale certificate), it may hold the seller liable for the uncollected sales tax.

(iv) Persons having specific questions regarding the use of terms to describe products or services purchased at wholesale may submit their questions to the department for ruling. The department may be contacted on the internet at <http://dor.wa.gov/> or by writing:

Department of Revenue  
Taxpayer Services  
P.O. Box 47478  
Olympia, WA 98504-7478

(b) **Blanket resale certificates.** A buyer who will purchase at wholesale all of the products or services being purchased from a particular seller will not be required to specifically describe the items or item categories on the resale certificate. If the certificate form provides for a description of the products or services being purchased at wholesale (as does the suggested form provided in this rule), the buyer may specify "all products and/or services" (or make a similar designation). A resale certificate completed in this manner is often described as a blanket resale certificate.

The resale certificate used by the buyer must, in all cases, be completed in its entirety. A resale certificate in which the section for the description of the items being purchased at wholesale is left blank by the buyer will not be considered a properly executed resale certificate.

(c) **Resale certificates for single transactions.** If the resale certificate is used for a single transaction, the language and information required of a resale certificate may be written or stamped upon a purchase order or invoice. The language contained in a "single use" resale certificate should be modified to delete any reference to subsequent orders or purchases.

(d) **Examples.** The following examples explain the proper use of types of resale certificates in typical situations. 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) ABC is an automobile repair shop purchasing automobile parts for resale and tools for its own use from DE Supply. ABC must provide DE Supply with a resale certificate limiting the certificate's application to automobile part purchases. However, should ABC withdraw parts from inventory to install in its own tow truck, deferred retail sales tax or use tax must be remitted directly to the department. The buyer has the responsibility to report deferred retail sales tax or use tax upon any item put to its own use, including items for which it gave a resale certificate and later used for its own use.

(ii) X Company is a retailer selling lumber, hardware, tools, automotive parts, and household appliances. X Company regularly purchases lumber, hardware, and tools from Z Distributing. While these products are generally purchased for resale, X Company occasionally withdraws some of these products from inventory for its own use. X Company may provide Z Distributing with a resale certificate specifying "all products purchased" are purchased at wholesale. However, whenever X Company removes any product from inventory to put to its own use, deferred retail sales tax or use tax must be remitted to the department.

(iii) TM Company is a manufacturer of electric motors. When making purchases from its suppliers, TM issues a paper purchase order. This purchase order contains the information required of a resale certificate and a signature of the person ordering the items on behalf of TM. This purchase order includes a box that, if marked, indicates to the supplier that all or certain designated items purchased are being purchased at wholesale.

When the box indicating the purchases are being made at wholesale is marked, the purchase order can be accepted as a resale certificate. As TM Company's purchase orders are being accepted as resale certificates, they must be retained by the seller for at least five years. (See WAC 458-20-254 Recordkeeping.)

(8) **Other documentary evidence.** Other documentary evidence may be used by the seller and buyer in lieu of the resale certificate form described in this rule. However, this documentary evidence must collectively contain the information and language generally required of a resale certificate. The conditions and restrictions applicable to the use of resale certificates apply equally to other documentary evidence used in lieu of the resale certificate form in this rule. The following are examples of documentary evidence that will be accepted to show that sales were at wholesale:

(a) **Combination of documentary evidence.** A combination of documentation kept on file, such as a membership card or application, and a sales invoice or "certificate" taken at the point of sale with the purchases listed, provided:

(i) The documentation kept on file contains all information required on a resale certificate, including, for paper certificates, the names and signatures of all persons authorized to make purchases at wholesale; and

(ii) The sales invoice or "certificate" taken at the point of sale must contain the following:

(A) Language certifying the purchase is made at wholesale, with acknowledgement of the penalties for the misuse of resale certificate privileges, as generally required of a resale certificate; and

(B) The name and registration number of the buyer/business, and, if a paper certificate, an authorized signature.

(b) **Contracts of sale.** A contract of sale that within the body of the contract provides the language and information generally required of a resale certificate. The contract of sale must specify the products or services subject to the resale certificate privileges.

(c) **Other preapproved documentary evidence.** Any other documentary evidence that has been approved in advance and in writing by the department.

(9) **Sales to nonresident buyers.** If the buyer is a nonresident who is not engaged in business in this state, but buys articles here for the purpose of resale in the regular course of business outside this state, the seller must take from the buyer a resale certificate as described in this rule. The seller may accept a resale certificate from an unregistered nonresident buyer with the registration number information omitted, provided the balance of the resale certificate is completed in its entirety. The resale certificate should contain a statement that the items are being purchased for resale outside Washington.

(10) **Sales to farmers.** Farmers selling agricultural products only at wholesale are not required to register with the department. (See WAC 458-20-101 Tax registration and tax reporting.) When making wholesale sales to farmers (including farmers operating in other states), the seller must take from the farmer a resale certificate as described in this rule. Farmers not required to be registered with the department may provide, and the seller may accept, resale certificates with the registration number information omitted, provided the balance of the certificates are completed in full. Persons making sales to farmers should also refer to WAC 458-20-210 (Sales of tangible personal property for farming—Sales of agricultural products by farmers).

(11) **Purchases for dual purposes.** A buyer normally engaged in both consuming and reselling certain types of tangible personal property, and not able to determine at the time of purchase whether the particular property purchased will be consumed or resold, must purchase according to the general nature of his or her business. RCW 82.08.130. If the buyer principally consumes the articles in question, the buyer should not give a resale certificate for any part of the purchase. If the buyer principally resells the articles, the buyer may issue a resale certificate for the entire purchase. For the purposes of this subsection, the term "principally" means greater than fifty percent.

(a) **Deferred sales tax liability.** If the buyer gives a resale certificate for all purchases and thereafter consumes some of the articles purchased, the buyer must set up in his or her books of account the value of the article used and remit to the department the applicable deferred sales tax. The deferred sales tax liability should be reported under the use tax classification on the buyer's excise tax return.

(i) Buyers making purchases for dual purposes under the provisions of a resale certificate must remit deferred sales tax on all products or services they consume. If the buyer fails to make a good faith effort to remit this tax liability, the penalty for the misuse of resale certificate privileges may be

assessed. This penalty will apply to the unremitted portion of the deferred sales tax liability.

A buyer will generally be considered to be making a good faith effort to report its deferred sales tax liability if the buyer discovers a minimum of eighty percent of the tax liability within one hundred twenty days of purchase, and remits the full amount of the discovered tax liability upon the next excise tax return. However, if the buyer does not satisfy this eighty percent threshold and can show by other facts and circumstances that it made a good faith effort to report the tax liability, the penalty will not be assessed. Likewise, if the department can show by other facts and circumstances that the buyer did not make a good faith effort in remitting its tax liability the penalty will be assessed, even if the eighty percent threshold is satisfied.

(ii) The following example illustrates the use of a resale certificate for dual-use purchases. This example 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. BC Contracting operates both as a prime contractor and speculative builder of residential homes. BC Contracting purchases building materials from Seller D that are principally incorporated into projects upon which BC acts as a prime contractor. BC provides Seller D with a resale certificate and purchases all building materials at wholesale. BC must remit deferred sales tax upon all building materials incorporated into the speculative projects to be considered to be properly using its resale certificate privileges. The failure to make a good faith effort to identify and remit this tax liability may result in the assessment of the fifty percent penalty for the misuse of resale certificate privileges.

(b) **Tax paid at source deduction.** If the buyer has not given a resale certificate, but has paid retail sales tax on all articles of tangible personal property and subsequently resells a portion of the articles, the buyer must collect the retail sales tax from its retail customers as provided by law. When reporting these sales on the excise tax return, the buyer may then claim a deduction in the amount the buyer paid for the property resold.

(i) This deduction may be claimed under the retail sales tax classification only. It must be identified as a "taxable amount for tax paid at source" deduction on the deduction detail worksheet, which must be filed with the excise tax return. Failure to properly identify the deduction may result in the disallowance of the deduction. When completing the local sales tax portion of the tax return, the deduction must be computed at the local sales tax rate paid to the seller, and credited to the seller's tax location code.

(ii) The following example illustrates the tax paid at source deduction. This example 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. Seller A is located in Spokane, Washington and purchases equipment parts for dual purposes from a supplier located in Seattle, Washington. Seller A does not issue a resale certificate for the purchase, and remits retail sales tax to the supplier at the Seattle tax rate. A portion of these parts are sold to Customer B, with retail sales tax collected at the Spokane tax rate. Seller A must report the amount of the sale to Customer B on its excise tax return, compute the local sales tax liability at the Spokane rate, and code this liability to the location code

for Spokane (3210). Seller A would claim the tax paid at source deduction for the cost of the parts resold to Customer B, compute the local sales tax credit at the Seattle rate, and code this deduction amount to the location code for Seattle (1726).

(iii) Claim for deduction will be allowed only if the taxpayer keeps and preserves records in support of the deduction that show the names of the persons from whom such articles were purchased, the date of the purchase, the type of articles, the amount of the purchase and the amount of tax that was paid.

(iv) Should the buyer resell the articles at wholesale, or under other situations where retail sales tax is not to be collected, the claim for the tax paid at source deduction on a particular excise tax return may result in a credit. In such cases, the department will issue a credit notice that may be used against future tax liabilities. However, a taxpayer may request in writing a refund from the department.

**(12) Waiver of penalty for resale certificate misuse.** The department may waive the penalty imposed for resale certificate misuse upon finding that the use of the certificate to purchase items or services by a person not entitled to use the certificate for that purpose was due to circumstances beyond the control of the buyer. However, the use of a resale certificate to purchase items or services for personal use outside of the business does not qualify for the waiver or cancellation of the penalty. The penalty will not be waived merely because the buyer was not aware of either the proper use of the resale certificate or the penalty. In all cases the burden of proving the facts is upon the buyer.

(a) **Considerations for waiver.** Situations under which a waiver of the penalty will be considered by the department include, but are not necessarily limited to, the following:

(i) The resale certificate was properly used to purchase products or services for dual purposes; or the buyer was eligible to issue the resale certificate; and the buyer made a good faith effort to discover all of its deferred sales tax liability within one hundred twenty days of purchase; and the buyer remitted the discovered tax liability upon the next excise tax return. (Refer to subsection (11)(a)(i) of this rule for an explanation of what constitutes "good faith effort.")

(ii) The certificate was issued and/or purchases were made without the knowledge of the buyer, and had no connection with the buyer's business activities. However, the penalty for the misuse of resale certificate privileges may be applied to the person actually issuing and/or using the resale certificate without knowledge of the buyer.

(b) **One-time waiver of penalty for inadvertent or unintentional resale certificate misuse.** The penalty prescribed for the misuse of the resale certificate may be waived or cancelled on a one time only basis if such misuse was inadvertent or unintentional, and the item was purchased for use within the business. If the department does grant a one time waiver of the penalty, the buyer will be provided written notification at that time.

(c) **Examples.** The following are examples of typical situations where the fifty percent penalty for the misuse of resale privileges will or will not be assessed. 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) ABC Manufacturing purchases electrical wiring and tools from X Supply. The electrical wiring is purchased for dual purposes, i.e., for resale and for consumption, with more than fifty percent of the wiring purchases becoming a component of items that ABC manufactures for sale. ABC Manufacturing issues a resale certificate to X Supply specifying "electrical wiring" as the category of items purchased for resale. ABC regularly reviews its purchases and remits deferred sales tax upon the wiring it uses as a consumer.

ABC is subsequently audited by the department and it is discovered that ABC Manufacturing failed to remit deferred sales tax upon three purchases of wiring for consumption. The unreported tax liability attributable to these three purchases is less than five percent of the total deferred sales tax liability for wiring purchases made from X Supply. It is also determined that the failure to remit deferred sales tax upon these purchases was merely an oversight. The fifty percent penalty for the misuse of resale certificate privileges does not apply, even though ABC failed to remit deferred sales tax on these purchases. The resale certificate was properly issued, and ABC remitted to the department more than eighty percent of the deferred sales tax liability for wiring purchases from X Supply.

(ii) During a routine audit examination of a jewelry store, the department discovers that a dentist has provided a resale certificate for the purchase of a necklace. This resale certificate indicates that in addition to operating a dentistry practice, the dentist also sells jewelry. The resale certificate contains the information required under RCW 82.04.470.

Upon further investigation, the department finds that the dentist is not engaged in selling jewelry. The department will look to the dentist for payment of the applicable retail sales tax. In addition, the dentist will be assessed the fifty percent penalty for the misuse of resale certificate privileges. The penalty will not be waived or cancelled as the dentist misused the resale certificate privileges to purchase a necklace for personal use.

(iii) During a routine audit examination of a computer dealer, it is discovered that a resale certificate was obtained from a bookkeeping service. The resale certificate was completed in its entirety and accepted by the dealer. Upon further investigation it is discovered that the bookkeeping service had no knowledge of the resale certificate, and had made no payment to the computer dealer. The employee who signed the resale certificate had purchased the computer for personal use, and had personally made payment to the computer dealer.

The fifty percent penalty for the misuse of the resale certificate privileges will be waived for the bookkeeping service. The bookkeeping service had no knowledge of the purchase or unauthorized use of the resale certificate. However, the department will look to the employee for payment of the taxes and the fifty percent penalty for the misuse of resale certificate privileges.

(iv) During an audit examination it is discovered that XYZ Corporation, a duplicating company, purchased copying equipment for its own use. XYZ Corporation issued a resale certificate to the seller despite the fact that XYZ does not sell copying equipment. XYZ also failed to remit either the deferred sales or use tax to the department. As a result of a previous investigation by the department, XYZ had been

informed in writing that retail sales and/or use tax applied to all such purchases. The fifty percent penalty for the misuse of resale certificate privileges will be assessed. XYZ was not eligible to provide a resale certificate for the purchase of copying equipment, and had previously been so informed. The penalty will apply to the unremitted deferred sales tax liability.

(v) AZ Construction issued a resale certificate to a building material supplier for the purchase of "pins" and "loads." The "pins" are fasteners that become a component part of the finished structure. The "load" is a powder charge that is used to drive the "pin" into the materials being fastened together. AZ Construction is informed during the course of an audit examination that it is considered the consumer of the "loads" and may not issue a resale certificate for its purchase thereof. AZ Construction indicates that it was unaware that a resale certificate could not be issued for the purchase of "loads," and there is no indication that AZ Construction had previously been so informed.

The failure to be aware of the proper use of the resale certificate is not generally grounds for waiving the fifty percent penalty for the misuse of resale certificate privileges. However, AZ Construction does qualify for the "one time only" waiver of the penalty as the misuse of the resale certificate privilege was unintentional and the "loads" were purchased for use within the business.

[Statutory Authority: RCW 82.32.300, 82.32.291, and 82.01.060(2). 04-17-024, § 458-20-102, filed 8/9/04, effective 9/9/04. Statutory Authority: RCW 82.32.300. 94-13-031, § 458-20-102, filed 6/6/94, effective 7/7/94; 86-09-058 (Order ET 86-7), § 458-20-102, filed 4/17/86; 83-07-034 (Order ET 83-17), § 458-20-102, filed 3/15/83; Order ET 70-3, § 458-20-102 (Rule 102), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-103 Time and place of sale.** Under the Revenue Act of 1935, as amended, the word "sale" means any transfer of the ownership of, title to, or possession of, property for a valuable consideration, and includes the sale or charge made for performing certain services.

For the purpose of determining tax liability of persons selling tangible personal property, a sale takes place in this state when the goods sold are delivered to the buyer in this state, irrespective of whether title to the goods passes to the buyer at a point within or without this state.

With respect to the charge made for performing services which constitute sales as defined in RCW 82.04.040 and 82.04.050, a sale takes place in this state when the services are performed herein. With respect to the charge made for renting or leasing tangible personal property, a sale takes place in this state when the property is used in this state by the lessee.

Where gift certificates are sold which will be redeemed in merchandise, or in services which are defined by the Revenue Act as retail sales, the sale is deemed to occur and the retail sales tax shall be collected at the time the certificate is actually redeemed for the merchandise or services. The measure of the tax is the total selling price of the merchandise or services at the time of the redemption, including the redemption value of the certificate, or any part thereof, which is applied toward the selling price. (See WAC 458-20-235 for effect of rate changes on prior contracts and sales agreements. See also WAC 458-20-131 which deals with merchan-

dising games, and which covers the situation where certificates or trade checks are issued which may be redeemed for services which are not retail sales, such as barber services, admissions, etc.)

Revised March 2, 1982.

[Statutory Authority: RCW 82.32.300. 82-12-021 (Order ET 82-2), § 458-20-103, filed 5/25/82; Order ET 70-3, § 458-20-103 (Rule 103), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-104 Small business tax relief based on income of business.** (1) **Introduction.** This rule explains the business and occupation (B&O) tax credit for small businesses provided by RCW 82.04.4451. This credit is commonly referred to as the small business B&O tax credit or small business credit (SBC). The amount of small business B&O tax credit available on a tax return can increase or decrease, depending on the reporting frequency of the account and the net B&O tax liability for that return. This rule also explains the public utility tax income exemption provided by RCW 82.16.040. The public utility tax exemption is a fixed amount, or threshold, based on the reporting frequency assigned to the account. Readers should refer to WAC 458-20-22801 (Tax reporting frequency—Forms) for an explanation of how the department of revenue (department) assigns a particular reporting frequency to each account. Readers may also want to refer to WAC 458-20-101 for an explanation of Washington's tax registration and tax reporting requirements.

This rule provides examples that identify a number of facts and then state a conclusion regarding the applicability of the income exemption for the public utility tax or small business B&O tax credit. 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.

(2) **The public utility tax income exemption.** Persons subject to public utility tax (PUT) are exempt from payment of this tax for any reporting period in which the gross taxable amount reported under the combined total of all public utility tax classifications does not equal or exceed the maximum exemption for the assigned reporting period. The public utility tax exemption amounts are:

for taxpayers reporting monthly . . . . .	\$2,000 per month
for taxpayers reporting quarterly . . . . .	\$6,000 per quarter
for taxpayers reporting annually . . . . .	\$24,000 per annum

(a) **What if the taxable income equals or exceeds the maximum exemption?** If the taxable income for a reporting period equals or exceeds the maximum exemption, tax must be remitted on the full taxable amount.

(b) **How does the exemption apply if a business does not operate for the entire tax reporting period?** The public utility tax maximum exemptions apply to the entire tax reporting period, even though the business may not have operated during the entire period.

(c) **Do taxable amounts for B&O tax or other taxes affect this exemption?** The public utility tax exemption is

not affected by taxable amounts reported in the B&O tax section or any of the other tax sections of the tax return.

(d) **Example.** Taxpayer registers with the department and is assigned a quarterly tax reporting frequency. Taxpayer begins business activities on February 1st. During the two months of the first quarter that the taxpayer is in business, taxpayer's public utility gross income is seven thousand dollars. After deductions provided by chapter 82.16 RCW (Public utility tax) are computed, the total taxable amount is five thousand dollars. In this case, the taxpayer does not owe any public utility tax because the taxable amount of five thousand dollars is less than the six thousand dollar exemption threshold for quarterly taxpayers. The fact that the taxpayer was in business during only two months out of the three months in the quarter has no effect on the threshold amount. However, if there were no deductions available to the taxpayer, the taxable amount would have been seven thousand dollars. The public utility tax would then have been due on the full taxable amount of seven thousand dollars.

(3) **The small business B&O tax credit.** Persons subject to the B&O tax may be eligible to claim a small business B&O tax credit against the amount of B&O tax otherwise due. The small business B&O tax credit operates completely independent of the public utility tax exemption described above in subsection (2) of this rule. RCW 82.04.4451 authorizes the department to create a tax credit table for use by all taxpayers when determining the amount of their small business B&O tax credit. Taxpayers must use the tax credit table to determine the appropriate amount of their small business B&O tax credit. A tax credit table for each of the monthly, quarterly, and annual reporting frequencies is provided in subsection (7) of this rule. The statute provides that taxpayers who use the tables will not owe any more tax than if they used the statutory credit formula to determine the amount of the credit.

(a) **How is the credit applied if a business does not operate during the entire tax reporting period?** The small business B&O tax credit applies to the entire reporting

period, even though the business may not have been operating during the entire period.

(b) **Can a husband and wife both take the credit?** Spouses operating distinct and separate businesses are each eligible for the small business B&O tax credit. For both to qualify, each must have a separate tax reporting number and file their own business tax returns.

(c) **How do I determine the amount of the credit?** Taxpayers eligible for the small business B&O tax credit must follow the steps outlined in subsection (5) of this rule to determine the amount of credit available. Taxpayers who have other B&O tax credits to apply on a tax return, in addition to the small business B&O tax credit, may use the multiple B&O tax credit worksheet in subsection (4) of this rule before determining the amount of small business B&O tax credit available. Subsection (7) of this rule contains the tax credit tables that correspond with the monthly, quarterly, and annual reporting frequencies.

(d) **Can I carryover the small business B&O tax credit to future tax reporting periods?** Use of the small business B&O tax credit may not result in a B&O tax liability of less than zero, and thus there will be no unused credit.

(e) **Do I have to report and pay retail sales tax even if I do not owe any B&O tax?** Persons making retail sales must collect and pay all applicable retail sales taxes even if B&O tax is not due. There is no comparable retail sales tax exemption.

(4) **Multiple business and occupation tax credit worksheet.** The small business B&O tax credit should be computed after claiming any other B&O tax credits available under Title 82 RCW (Excise taxes). Examples of other B&O tax credits to be taken before computing the small business B&O tax credit include the multiple activities tax credit, high technology credit, commute trip reduction credit, pollution control credit, and cogeneration fee credit. The following multiple B&O tax credit worksheet describes the process taxpayers must follow to apply credits in the appropriate order. Refer to subsection (6) of this rule for an example illustrating the use of the multiple B&O tax credit worksheet.

MULTIPLE B&O TAX CREDIT WORKSHEET

1. Determine the total Business and Occupation (B&O) tax due from the B&O section of your excise tax return. \$ \_\_\_\_\_
2. Add together the credit amounts taken for:
  - Multiple Activities Tax Credit from Schedule C (if applicable). \$ \_\_\_\_\_
  - (Add any other B&O tax credits from Title 82 RCW that will be applied to this return period.) + \$ \_\_\_\_\_
  - Total (Enter 0 if none of these credits are being taken.) \$ \_\_\_\_\_
3. Subtract line 2 from line 1. This is the total B&O tax allowable for the Small Business Credit. \$ \_\_\_\_\_
4. Find the tax credit table which matches the reporting frequency assigned to the account, then find the total B&O tax due amount which includes your figure from item 3, above.
5. Read across to the next column. This is the amount of the Small Business Credit to be used on the excise tax return. \$ \_\_\_\_\_

(5) **Using the tax credit table to determine your small business B&O tax credit.** The following steps explain how to use the small business B&O tax credit table:

(a) **Step one.** Determine the total B&O tax amount due from the excise tax return. This amount will normally be the

total of the tax amounts due calculated for each classification in the B&O tax section of the excise tax return. However, if additional B&O tax credits will be taken on the return, refer to subsection (4) of this rule and the multiple B&O tax credit worksheet before going to step two.

(b) **Step two.** Find the small business B&O tax credit table that matches the assigned reporting frequency (i.e., the monthly table shown in subsection (7)(b) of this rule, the quarterly table in subsection (7)(c) of this rule, or the annual table in subsection (7)(d) of this rule).

(c) **Step three.** Find the "If Your Total Business and Occupation Tax is" column of the tax credit table and come down the column until you find the range of amounts which includes the total B&O tax due figure obtained from the excise tax return or multiple B&O tax credit worksheet.

(d) **Step four.** Read across to the "Your Small Business Credit is" column. The figure shown is the amount of the small business B&O tax credit that can be claimed on the "Small Business B&O Tax Credit" line in the "Credits" section of the excise tax return.

(6) **Example.** ABC reports quarterly. This quarter, ABC reports one hundred ninety dollars under the wholesaling classification and seventy dollars under the manufacturing classification for a total B&O tax liability of two hundred sixty dollars. ABC completes Schedule C, and determines it is entitled to a multiple activities tax credit (MATC) of seventy dollars. Using the multiple B&O tax credit worksheet, ABC enters two hundred sixty dollars on line one, enters seventy dollars on line two, and enters one hundred ninety dollars on line three (line two subtracted from line one). Line three, one hundred ninety dollars is the total B&O tax. ABC will use this amount to determine whether it is eligible for a small business B&O tax credit.

(7) **Tax credit tables.** Corresponding tax credit tables for the monthly, quarterly, and annual reporting frequencies appear below. Taxpayers must use the tax credit table that corresponds to their assigned reporting frequency to determine the correct amount of small business B&O tax credit available.

(a) **Example illustrating the use of the small business B&O tax credit tables.** The facts are the same as in the previous example in subsection (6) of this rule. After completing the multiple B&O tax credit worksheet, ABC has one hundred ninety dollars of B&O tax liability left for potential application of the small business B&O tax credit. ABC refers to the quarterly small business B&O tax credit table, which is located below in subsection (7)(c) of this rule, and finds the "If Your Total Business and Occupation Tax is" column. Following down that column, ABC finds the tax range of one hundred eighty six to one hundred ninety one dollars and comes over to the "Your Small Business Credit is" column, which shows that a credit in the amount of twenty-five dollars is available. Before calculating the total amount due for the tax return, ABC enters its small business B&O tax credit of twenty-five dollars in the "Credits" section.

(b) **Monthly filers.** Persons assigned a monthly reporting frequency must use the following table to determine if they are eligible for a small business B&O tax credit.

If Your Total Business and Occupation Tax is:		Your Small Business Credit is:
At Least	But Less Than	
\$0	\$36	The Amount of Business and Occupation Tax Due
\$36	\$41	\$35

If Your Total Business and Occupation Tax is:		Your Small Business Credit is:
At Least	But Less Than	
\$41	\$46	\$30
\$46	\$51	\$25
\$51	\$56	\$20
\$56	\$61	\$15
\$61	\$66	\$10
\$66	\$71	\$5
\$71	or more	\$0

(c) **Quarterly filers.** Persons assigned a quarterly reporting frequency must use the following table to determine if they are eligible for a small business B&O tax credit.

If Your Total Business and Occupation Tax is:		Your Small Business Credit is:
At least	But Less Than	
\$0	\$106	The Amount of Business and Occupation Tax Due
\$106	\$111	\$105
\$111	\$116	\$100
\$116	\$121	\$95
\$121	\$126	\$90
\$126	\$131	\$85
\$131	\$136	\$80
\$136	\$141	\$75
\$141	\$146	\$70
\$146	\$151	\$65
\$151	\$156	\$60
\$156	\$161	\$55
\$161	\$166	\$50
\$166	\$171	\$45
\$171	\$176	\$40
\$176	\$181	\$35
\$181	\$186	\$30
\$186	\$191	\$25
\$191	\$196	\$20
\$196	\$201	\$15
\$201	\$206	\$10
\$206	\$211	\$5
\$211	or more	\$0

(d) **Annual filers.** Persons assigned an annual reporting frequency must use the following table to determine if they are eligible for a small business B&O tax credit.

If Your Total Business and Occupation Tax is:		Your Small Business Credit is:
At Least	But Less Than	
\$0	\$421	The Amount of Business and Occupation Tax Due
\$421	\$426	\$420
\$426	\$431	\$415
\$431	\$436	\$410
\$436	\$441	\$405
\$441	\$446	\$400
\$446	\$451	\$395
\$451	\$456	\$390
\$456	\$461	\$385

If Your Total Business and Occupation Tax is:		Your Small Business Credit is:
At Least	But Less Than	
\$461	\$466	\$380
\$466	\$471	\$375
\$471	\$476	\$370
\$476	\$481	\$365
\$481	\$486	\$360
\$486	\$491	\$355
\$491	\$496	\$350
\$496	\$501	\$345
\$501	\$506	\$340
\$506	\$511	\$335
\$511	\$516	\$330
\$516	\$521	\$325
\$521	\$526	\$320
\$526	\$531	\$315
\$531	\$536	\$310
\$536	\$541	\$305
\$541	\$546	\$300
\$546	\$551	\$295
\$551	\$556	\$290
\$556	\$561	\$285
\$561	\$566	\$280
\$566	\$571	\$275
\$571	\$576	\$270
\$576	\$581	\$265
\$581	\$586	\$260
\$586	\$591	\$255
\$591	\$596	\$250
\$596	\$601	\$245
\$601	\$606	\$240
\$606	\$611	\$235
\$611	\$616	\$230
\$616	\$621	\$225
\$621	\$626	\$220
\$626	\$631	\$215
\$631	\$636	\$210
\$636	\$641	\$205
\$641	\$646	\$200
\$646	\$651	\$195
\$651	\$656	\$190
\$656	\$661	\$185
\$661	\$666	\$180
\$666	\$671	\$175
\$671	\$676	\$170
\$676	\$681	\$165
\$681	\$686	\$160
\$686	\$691	\$155
\$691	\$696	\$150
\$696	\$701	\$145
\$701	\$706	\$140
\$706	\$711	\$135
\$711	\$716	\$130
\$716	\$721	\$125
\$721	\$726	\$120
\$726	\$731	\$115
\$731	\$736	\$110
\$736	\$741	\$105
\$741	\$746	\$100

If Your Total Business and Occupation Tax is:		Your Small Business Credit is:
At Least	But Less Than	
\$746	\$751	\$95
\$751	\$756	\$90
\$756	\$761	\$85
\$761	\$766	\$80
\$766	\$771	\$75
\$771	\$776	\$70
\$776	\$781	\$65
\$781	\$786	\$60
\$786	\$791	\$55
\$791	\$796	\$50
\$796	\$801	\$45
\$801	\$806	\$40
\$806	\$811	\$35
\$811	\$816	\$30
\$816	\$821	\$25
\$821	\$826	\$20
\$826	\$831	\$15
\$831	\$836	\$10
\$836	\$841	\$5
\$841	or more	\$0

[Statutory Authority: RCW 82.32.300 and 82.01.060(2), 04-14-052, § 458-20-104, filed 6/30/04, effective 7/31/04. Statutory Authority: RCW 82.32.300, 98-16-019, § 458-20-104, filed 7/27/98, effective 8/27/98; 97-08-050, § 458-20-104, filed 3/31/97, effective 5/1/97; 95-07-088, § 458-20-104, filed 3/17/95, effective 4/17/95; 83-07-034 (Order ET 83-17), § 458-20-104, filed 3/15/83; Order ET 70-3, § 458-20-104 (Rule 104), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-105 Employees distinguished from persons engaging in business.** (1) The Revenue Act imposes taxes upon persons engaged in business but not upon persons acting solely in the capacity of employees.

(2) While no one factor definitely determines employee status, the most important consideration is the employer's right to control the employee. The right to control is not limited to controlling the result of the work to be accomplished, but includes controlling the details and means by which the work is accomplished. In cases of doubt about employee status all the pertinent facts should be submitted to the department of revenue for a specific ruling.

(3) **Persons engaging in business.** The term "engaging in business" means the act of transferring, selling or otherwise dealing in real or personal property, or the rendition of services, for consideration except as an employee. The following conditions will serve to indicate that a person is engaging in business.

If a person is:

(a) Holding oneself out to the public as engaging in business with respect to dealings in real or personal property, or in respect to the rendition of services;

(b) Entitled to receive the gross income of the business or any part thereof;

(c) Liable for business losses or the expense of conducting a business, even though such expenses may ultimately be reimbursed by a principal;

(d) Controlling and supervising others, and being personally liable for their payroll, as a part of engaging in business;

(e) Employing others to carry out duties and responsibilities related to the engaging in business and being personally liable for their pay;

(f) Filing a statement of business income and expenses (Schedule C) for federal income tax purposes;

(g) A party to a written contract, the intent of which establishes the person to be an independent contractor;

(h) Paid a gross amount for the work without deductions for employment taxes (such as Federal Insurance Contributions Act, Federal Unemployment Tax Act, and similar state taxes).

(4) **Employees.** The following conditions indicate that a person is an employee.

If the person:

(a) Receives compensation, which is fixed at a certain rate per day, week, month or year, or at a certain percentage of business obtained, payable in all events;

(b) Is employed to perform services in the affairs of another, subject to the other's control or right to control;

(c) Has no liability for the expenses of maintaining an office or other place of business, or any other overhead expenses or for compensation of employees;

(d) Has no liability for losses or indebtedness incurred in the conduct of the business;

(e) Is generally entitled to fringe benefits normally associated with an employer-employee relationship, e.g., paid vacation, sick leave, insurance, and pension benefits;

(f) Is treated as an employee for federal tax purposes;

(g) Is paid a net amount after deductions for employment taxes, such as those identified in subsection (3)(h) of this section.

(5) **Full-time life insurance salespersons.** Chapter 275, Laws of 1991, effective July 1, 1991, provides that individuals performing services as full-time life insurance salespersons, as provided in section 3121 (d)(3)(B) of the Internal Revenue Code, will be considered employees. Treatment as an employee under this subsection (5) applies only to persons engaged in the full-time sale of life insurance. The status of other persons, including others listed in section 3121(d) of the Internal Revenue Code, will be determined according to the provisions of subsections (1) and (2) of this section (see WAC 458-20-164 for the proper tax treatment of insurance agents, brokers, and solicitors).

(6) **Operators of rented or owned equipment.** Persons who furnish equipment on a rental or other basis for a charge and who also furnish the equipment operators, are engaging in business and are not employees of their customers. Likewise, persons who furnish materials and the labor necessary to install or apply the materials, or produce something from the materials, are presumed to be engaging in business and not to be employees of their customers.

(7) **Casual laborers.** Persons regularly performing odd job carpentry, painting or paperhanging, plumbing, bricklaying, electrical work, cleaning, yard work, etc., for the public generally are presumed to be engaging in business. The burden of proof is upon such persons to show otherwise. However, refer to WAC 458-20-101 and 458-20-104 for registration and reporting requirements for such activities.

(8) A corporation, joint venture, or any group of individuals acting as a unit, is not an employee.

(9) **Booth renters.** For purposes of the business and occupation tax a "booth renter," as defined in RCW 18.16-020(19), is considered engaged in business and not an employee. A "booth renter" is any person who:

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

(b) Pays a fee for the use of salon or shop facilities and receives no compensation or other consideration from the owner of the salon or shop for the services performed.

(c) See WAC 458-20-118 for the proper treatment of amounts received for the rental or licensing of real estate and WAC 458-20-200 for the proper treatment of amounts received for leased departments.

[Statutory Authority: RCW 82.32.300, 92-06-082, § 458-20-105, filed 3/4/92, effective 4/4/92; 89-16-080 (Order 89-10), § 458-20-105, filed 8/1/89, effective 9/1/89; Order ET 70-3, § 458-20-105 (Rule 105), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-106 Casual or isolated sales—Business reorganizations.** A casual or isolated sale is defined by RCW 82.04.040 as a sale made by a person who is not engaged in the business of selling the type of property involved. Any sales which are routine and continuous must be considered to be an integral part of the business operation and are not casual or isolated sales.

Furthermore, persons who hold themselves out to the public as making sales at retail or wholesale are deemed to be engaged in the business of selling, and sales made by them of the type of property which they hold themselves out as selling, are not casual or isolated sales even though such sales are not made frequently.

In addition the sale at retail by a manufacturer or wholesaler of an article of merchandise manufactured or wholesaled by him is not a casual or isolated sale, even though he may make but one such retail sale.

#### **Business and Occupation Tax**

The business and occupation tax does not apply to casual or isolated sales.

#### **Retail Sales Tax**

The retail sales tax applies to all casual or isolated retail sales made by a person who is engaged in the business activity; that is, a person required to be registered under WAC 458-20-101. Persons not engaged in any business activity, that is, persons not required to be registered under WAC 458-20-101, are not required to collect the retail sales tax upon casual or isolated sales.

However, persons in business as selling agents who are authorized, engaged or employed to sell or call for bids on tangible personal property belonging to another, and so selling or calling, are deemed to be sellers, and shall collect the retail sales tax upon all retail sales made by them. The tax applies to all such sales even though the sales would have been casual or isolated sales if made directly by the owner of the property sold.

A transfer of capital assets to or by a business is deemed not taxable to the extent the transfer is accomplished through an adjustment of the beneficial interest in the business. The following examples are instances when the tax will not apply.

(1) Transfers of capital assets between a corporation and a wholly-owned subsidiary, or between wholly-owned subsidiaries of the same corporation.

(2) Transfers of capital assets by an individual or by a partnership to a corporation, or by a corporation to another corporation in exchange for capital stock therein.

(3) Transfers of capital assets by a corporation to its stockholders in exchange for surrender of capital stock.

(4) Transfers of capital assets pursuant to a reorganization under 26 USC Section 368 of the Internal Revenue Code, when capital gain or ordinary income is not realized.

(5) Transfers of capital assets to a partnership or joint venture in exchange for an interest in the partnership or joint venture; or by a partnership or joint venture to its members in exchange for a proportional reduction of the transferee's interest in the partnership or joint venture.

(6) Transfer of an interest in a partnership by one partner to another; and transfers of interests in a partnership to third parties, when one or more of the original partners continues as a partner, or owner.

The burden is upon the taxpayer to establish the facts concerning the adjustment of the beneficial interest in the business when exemption is claimed.

#### Use Tax

The use tax applies upon the use of any property purchased at a casual retail sale without payment of the retail sales tax, unless exempt by law. Uses which are exempt from the use tax are set out in RCW 82.12.030.

Where there has been a transfer of the capital assets to or by a business, the use of such property is not deemed taxable to the extent the transfer was accomplished through an adjustment of the beneficial interest in the business, provided, the transferor previously paid sales or use tax on the property transferred. (See the exempt situations listed under the retail sales tax subdivision of this rule.)

[Statutory Authority: RCW 82.32.300, 83-07-034 (Order ET 83-17), § 458-20-106, filed 3/15/83; Order ET 75-1, § 458-20-106, filed 5/2/75; Order ET 74-1, § 458-20-106, filed 5/7/74; Order ET 70-3, § 458-20-106 (Rule 106), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-107 Selling price—Advertised prices including sales tax.** (1) **Selling price.** Under the provisions of RCW 82.08.020 the retail sales tax is to be collected and paid upon retail sales, measured by the "selling price."

(a) The term "'Selling price' means the consideration, whether money, credits, rights, or other property except trade-in property of like kind, expressed in the terms of money paid or delivered by a buyer to a seller without any deduction on account of the cost of tangible personal property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes other than taxes imposed under this chapter if the seller advertises the price as including the tax or that the seller is paying the tax, or any other expenses whatsoever paid or accrued and without any deduction on account of losses; . . ." (See RCW 82.08.010(1).)

(b) Concerning the tax liabilities and benefits in connection with "trade-in" transactions, see WAC 458-20-247.

(c) RCW 82.08.050 specifically requires that the retail sales tax must be stated separately from the selling price on any sales invoice or other instrument of sale, i.e., contracts,

sales slips, and/or customer billing receipts. (For an exception covering restaurant receipts of Class H liquor licensees, see WAC 458-20-119.) This is required even though the seller and buyer may know and agree that the price quoted is to include state and local taxes, including the retail sales tax. The law creates a "conclusive presumption" that, for purposes of collecting the tax and remitting it to the state, the selling price quoted does not include the retail sales tax. This presumption is not overcome or rebutted by any written or oral agreement between seller and buyer. However, selling prices may be advertised as including the tax or that the seller is paying the tax and, in such cases, the advertised price shall not be considered to be the taxable selling price under certain prescribed conditions explained in this section. Even when prices are advertised as including the sales tax, the actual sales invoices, receipts, contracts, or billing documents must list the retail sales tax as a separate charge. Failure to comply with this requirement may result in the retail sales tax due and payable to the state being computed on the gross amount charged even if it is claimed to already include all taxes due.

#### (2) Advertising prices including tax.

(a) The law provides that a seller may advertise prices as including the sales tax or that the seller is paying the sales tax under the following conditions:

(i) The words "tax included" are stated immediately following the advertised price in print size at least half as large as the advertised price print size, unless the advertised price is one in a listed series;

(ii) When advertised prices are listed in series, the words "tax included in all prices" are placed conspicuously at the head of the list in the same print size as the list;

(iii) If the price is advertised as including tax, the price listed on any price tag shall be shown in the same way; and

(iv) All advertised prices and the words "tax included" are stated in the same medium, whether oral or visual, and if oral, in substantially the same inflection and volume.

(b) If these conditions are satisfied, as applicable, then price lists, reader boards, menus, and other price information mediums need not reflect the item price and separately show the actual amount of sales tax being collected on any or all items.

(c) The scope and intent of the foregoing is that buyers have the right to know whether retail sales tax is being included in advertised prices or not and that the tax is not to be used for the competitive advantage or disadvantage of retail sellers.

(3) See: WAC 458-20-257 for warranties (guarantees) and maintenance agreements (service contracts).

[Statutory Authority: RCW 82.32.300, 90-10-080, § 458-20-107, filed 5/2/90, effective 6/2/90; 86-03-016 (Order ET 86-1), § 458-20-107, filed 1/7/86; 83-07-034 (Order ET 83-17), § 458-20-107, filed 3/15/83; Order ET 70-3, § 458-20-107 (Rule 107), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-108 Returned goods, allowances, cash discounts.** (1) When a contract of sale is made subject to cancellation at the option of one of the parties or to revision in the event the goods sold are defective or if the sale is made subject to cash or trade discount, the gross proceeds actually derived from the contract and the selling price are determined by the transaction as finally completed.

(2) **Returned goods.** When sales are made either upon approval or upon a sale or return basis, and the purchaser returns the property purchased and the entire selling price is refunded or credited to the purchaser, the seller may deduct an amount equal to the selling price from gross proceeds of sales in computing tax liability, if the amount of sales tax previously collected from the buyer has been refunded by the seller to the buyer. If the property purchased is not returned within the guaranty period as established by contract or by customs of the trade, or if the full selling price is not refunded or credited to the purchaser, a presumption is raised that the property returned is not returned goods but is an exchange or a repurchase by the vendor.

To illustrate: S sells an article for \$60.00 and credits his sales account therewith. The purchaser returns the article purchased within the guaranty period and the purchase price and the sales tax theretofore paid by the buyer is refunded or credited to him. S may deduct \$60.00 from the gross amount reported on his tax return.

(3) **Defective goods.** When bona fide refunds, credits or allowances are given within the guarantee period by a seller to a purchaser on account of defects in goods sold, the amount of such refunds, credits or allowances may be deducted by the seller in computing tax liability, if the proportionate amount of the sales tax previously collected from the buyer has been refunded by the seller.

To illustrate: S sells an article to B for \$60.00 and credits his sales account therewith. The article is later found to be defective.

(a) S gives B credit of \$50.00 on account of the defect, and also a credit of sales tax collectible on that amount. S may deduct \$50.00 from the gross amount reported in his tax returns. This is true whether or not B retains the defective article.

(b) B returns the article to S who gives B an allowance of \$50.00 on a second article of the same kind which B purchases for an additional payment of \$10.00, plus sales tax thereon. S may deduct \$50.00 from the gross amount reported in his tax returns. The sale of the second article, however, must be reported for tax purposes as a \$60.00 sale and included in the gross amount in his tax return.

(c) B returns the article to S who replaces it with a new article of the same kind free of charge, and without sales tax. S may deduct \$60.00 from the gross amount reported in his tax returns, but the \$60.00 selling price of the substituted article must be reported in the gross amount.

No deduction is allowed from the gross amount reported for tax if S in (b) and (c) of this subsection, does not credit his sales account with the selling price of the new article furnished to replace the defective one, but instead merely credits the sales account with an amount equal to the additional payment received, if any. In such case, the allowance for the defect is already shown in the sales account by the reduced sales price of the new article.

(4) **Motor vehicle warranties.** In the 1987 session, the Washington legislature enacted a "lemon law" creating enforcement provisions for new motor vehicle warranties. A manufacturer which repurchases a new motor vehicle under warranty because of a defective condition is required to refund to the consumer the "collateral charges" which include retail sales tax. The refund shall be made to the consumer by

(2005 Ed.)

the manufacturer or by the dealer for the manufacturer. The department will then credit or refund the amount of the tax so refunded.

**Evidence.** To receive a credit or refund, the manufacturer or dealer must provide evidence that the retail sales tax was collected by the dealer and that it was refunded to the consumer. Acceptable proof will be:

(a) A copy of the dealer invoice showing the sales tax was paid by the consumer; and

(b) A signed statement from the consumer acknowledging receipt of the refunded tax. The statement should include the consumer's name, the date, the amount of the tax refunded, and the name of the dealer or the manufacturer making the refund.

(5) **Discounts.** The selling price of a service or of an article of tangible personal property does not include the amount of bona fide discounts actually taken by the buyer and the amount of such discount may be deducted from gross proceeds of sales providing such amount has been included in the gross amount reported.

(a) Discounts are not deductible under the retail sales tax when such tax is collected upon the selling price before the discount is taken and no portion of the tax is refunded to the buyer.

(b) Discount deductions will be allowed under the extracting or manufacturing classifications only when the value of the products is determined from the gross proceeds of sales.

(c) Patronage dividends which are granted in the form of discounts in the selling price of specific articles (for example, a rebate of one cent per gallon on purchases of gasoline) are deductible. (Some types of patronage dividends are not deductible. See WAC 458-20-219.)

[Statutory Authority: RCW 82.32.300. 88-01-050 (Order 87-9), § 458-20-108, filed 12/15/87; 83-07-034 (Order ET 83-17), § 458-20-108, filed 3/15/83; Order ET 70-3, § 458-20-108 (Rule 108), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-109 Finance charges, carrying charges, interest, penalties.** (1) **Introduction.** This section explains the B&O and public utility taxation of finance charges, carrying charges, interest and/or penalties received by taxpayers in the regular course of business. This section also explains when these amounts are not part of the selling price for retail sales tax purposes.

(2) **Business and occupation tax.** Persons who receive finance charges, carrying charges, service charges, penalties and interest are taxable under the service and other business activities classification on the receipt of amounts from these sources.

(a) Amounts received from these sources include but are not limited to:

(i) Interest received by persons engaged in public utility activities; and

(ii) Interest received by persons regularly engaged in the business of selling real estate.

(b) Persons engaged in financial business activities should refer to WAC 458-20-146.

(c) Amounts categorized as "interest" in a lease payment are generally taxable in the retailing classification as part of

the total lease payment and part of the selling price for retail sales tax purposes. See WAC 458-20-211.

(d) Interest or finance charges received from an installment sale are taxable under the service classification.

(3) **Retail sales tax.** Retail sales tax applies as follows.

(a) Finance charges, carrying charges, service charges, penalties and/or interest from installment sales are not considered a part of the selling price of such property and are not subject to the retail sales tax, when:

(i) The amount of such finance charges, carrying charges, service charges, penalty, or interest is in addition to the usual or established cash selling price; and

(ii) The amount is segregated on the taxpayers' accounts; and

(iii) The amount is billed separately to customers.

(b) Amounts designated as finance charges, carrying charges, service charges or interest in a lease of tangible personal property must be included in the measure of retail sales tax regardless of the fact that such charges may be billed separately to customers. However, a penalty or interest charge for failure of the customer to make a timely lease payment is taxable under the service and other business activities classification and not subject to retail sales tax.

(4) **Examples.** The following examples identify a number of facts and then state a conclusion as to whether the situation results in taxable interest or finance charges. 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) ABC Electric Company, who sells electricity to consumers, receives \$9,000.00 in late charges in the month of November. These fees are taxable under the service and other classification of the business and occupation tax. The public utility tax would not apply to this income.

(b) XYZ Furniture Company sells furniture and allows its customers to pay for the furniture over a twelve-month period. The seller charges interest at twelve percent per annum for allowing the customer to defer immediate payment. The interest charged the customer is a separate activity from the sale of the furniture and is taxable under the service and other business activities classification.

(c) Jane Doe is leasing a car from ABC Leasing, Inc. The lease contract provides that if the customer is more than fifteen days late in making the lease payment, a five percent penalty will be charged. Jane Doe was more than fifteen days late in making her March payment and was required to pay the five percent penalty. The penalty amount received by ABC Leasing is a separate activity from the lease of the vehicle and is taxable under the service and other activity business and occupation tax. Retail sales tax does not apply to this amount.

(d) John Doe sold his personal residence on contract. He receives monthly interest and principal payments. The interest is received in exchange for the seller's deferring receipt of immediate payment. The sale of the residence was not related to any other business activities and John Doe has sold no other real estate. The interest is not taxable under the B&O tax since the transaction was a casual and isolated sale.

(e) Judy Smith is engaged in business as a real estate broker and regularly sells real estate for others. Judy Smith sold her personal residence on contract. She receives monthly

interest and principal payments. She receives no other interest from real estate contracts. The sale of her own residence can be distinguished from the sale of real estate for others. Since this was a single sale of her own residence, it is a casual and isolated sale and the interest is not subject to B&O tax.

(f) James Smith sold on contract seventeen of twenty-three apartment complexes which he owned during a four-year period. He receives payment of principal and interest every month from these sales. The only other income he receives is from the rental of apartment units to nontransients. The income which James Smith receives as interest from the sale of the real estate is subject to the service and other B&O tax. The rental of the apartment units is not taxable for the B&O tax. The courts have held that the selling and financing of sales of capital assets by means of real estate contracts does not constitute an investment within the meaning of RCW 82.04.4281. James Smith is engaged in a taxable business activity. A deduction is provided to sellers who are engaged in banking, loan, security, or other financial businesses if the sale is primarily secured by a first mortgage or trust deed on nontransient residential property. However, James Smith is not engaged in these types of business, nor was the loan secured in this manner. Persons in a financial business should refer to WAC 458-20-146.

(g) David Roe acquired four pieces of real property over a period of several years. This property has been held for residential rental to nontransients. David Roe sold all of the real estate in 1991 and is receiving payments of principal and interest pursuant to sales contracts. The determination of whether the interest received is subject to the business and occupation tax depends on all facts and circumstances and cannot be made based on the limited facts set forth in this example. Additional facts and circumstances would include, but not be limited to, the extent to which David Roe has purchased and sold real property in the past, the number of other sales contracts held by David Roe aside from the ones mentioned here, whether the property may have been acquired by inheritance, and the type of business in which David Roe regularly engages.

[Statutory Authority: RCW 82.32.300, 91-23-038, § 458-20-109, filed 11/13/91, effective 1/1/92; Order ET 70-3, § 458-20-109 (Rule 109), filed 5/29/70, effective 7/1/70.]

#### **WAC 458-20-110 Delivery charges. (1) Introduction.**

This rule explains the manner in which delivery charges are considered for purposes of business and occupation (B&O), retail sales, and use taxes. For information about delivery charges with regard to promotional materials, see WAC 458-20-17803 (Use tax on promotional materials).

(2) **What are delivery charges?** "Delivery charges" means charges by the seller for preparation and delivery to a location designated by the purchaser of tangible personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing. RCW 82.08.010 and chapter 168, Laws of 2003, adopted the national Streamlined Sales and Use Tax Agreement definition of "delivery charges."

(3) **Do the business and occupation (B&O) and retail sales taxes apply to delivery charges?** The measure of the tax is "gross proceeds of sales" for B&O tax (RCW 82.04.-070) and "selling price" for retail sales tax (RCW 82.08.010).

Gross proceeds of sales and selling price include all consideration paid by the buyer, without any deduction for costs of doing business such as material, labor, and transportation costs, including delivery charges. Thus, delivery charges by the seller are a component of these tax measures.

(a) **What if delivery charges are separately itemized on the sales invoice?** Amounts received by a seller from a buyer for delivery charges are included in the measure of tax regardless of whether charges for such costs are billed separately, itemized, or whether the seller is also the carrier. Limiting delivery charges to the actual cost of delivery to the seller does not affect taxability.

(b) **Does retail sales tax apply to all delivery charges by the seller?** Delivery charges by the seller making a retail sale are a component of the selling price. If the sale of the tangible personal property or service is exempt from retail sales tax, such as certain "food and food ingredients," retail sales tax does not apply to the selling price, including delivery charges, associated with that sale. Similarly, if the product is sold at wholesale, retail sales tax does not apply to the delivery charges of that sale.

(c) **Are there any situations in which delivery charges by the seller may be excluded from the measure of tax?** There is no specific exclusion from the measure of tax for delivery charges by the seller. Actual delivery costs, regardless of whether separately charged, may be excluded from the measure of the manufacturing and extracting B&O taxes when the products are delivered outside the state. For further discussion, refer to WAC 458-20-112 (Value of products). WAC 458-20-13501 (Timber harvest operations) provides guidance regarding this issue for persons engaged in activities associated with timber harvesting.

(d) **Delivery charges in cases of payments to third parties.** Delivery charges incurred after the buyer takes delivery of the goods are not part of the selling price when the seller is not liable for payment of the delivery charges. To be excluded from the gross proceeds of sales for B&O tax and selling price for retail sales tax, the seller must document that the buyer alone is responsible to pay the carrier for the delivery charges.

(e) **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. In these examples, if the seller had been required to collect use tax (RCW 82.12.040) instead of retail sales tax (RCW 82.08.050), the use tax collection responsibility remains the same as for retail sales tax. This is because, in this context, the "value of article used" has the same meaning as the "purchase price" or "selling price."

(i) **Example 1.** Jane Doe orders a life vest from Marine Sales and requests that the vest be mailed by the United States Postal Service to her home. Marine Sales places the correct postage on the package using its postage meter and separately itemizes a charge on the sales invoice to Jane at the exact amount of the postage cost. Marine Sales is subject to the retailing B&O tax on the gross proceeds of the sale and must collect retail sales tax on the selling price, both of which measures of tax include the charge for postage.

(ii) **Example 2.** XYZ Corporation orders equipment from ABC Distributors and provides ABC with a properly

completed resale certificate. ABC ships the equipment using overnight air delivery and itemizes the actual amount of its shipping costs on the sales invoice. ABC must remit wholesaling B&O tax on the gross proceeds of sale, which includes the amount billed as shipping charges. Since the equipment is purchased for resale, ABC does not collect or report retail sales tax.

(iii) **Example 3.** The facts in this example are the same as those in (ii) of this subsection except that XYZ provides ABC with a properly completed exemption certificate. Retail sales tax does not apply to the delivery charge because the selling price, of which the delivery charge is a component, is exempt from retail sales tax. However, the delivery charge is included in the gross proceeds of the sale, and thus, is subject to retailing B&O tax.

(iv) **Example 4.** Jones Computer Supply, a distributor, makes retail sales of computer products primarily by mail order. It is the practice of Jones Computer Supply to add a ten-dollar handling charge for each order. No separate charge is made for actual transportation. The handling charge is part of the measure of tax for the retailing B&O and retail sales taxes.

(v) **Example 5.** ABC Construction in Seattle purchased a new saw from XYZ, Inc. The sales contract specifies that ABC will contract with MNO, Inc. for shipping to Seattle and that MNO, Inc. will pick up the saw in Spokane. ABC does contract with MNO for the shipping and is shown as the consignor on the bill of lading. The transportation charge is not included in the measure of tax for purposes of the retailing B&O and retail sales taxes because ABC, the buyer, is liable for payment to MNO, for shipping the new saw.

(4) **Delivery charges and use tax.** Beginning June 1, 2002, "value of article used," which is the measure of the use tax for tangible personal property, includes the amount of any delivery charge paid or given to the seller or on behalf of the seller with respect to the purchase of such article. Beginning July 1, 2004, both the "value of the article used" and the "value of the service used" will be the "purchase price" in instances where the seller is required under RCW 82.12.040 to collect use tax from the purchaser. RCW 82.12.010. "Purchase price" has the same meaning as "selling price" as described in subsection (3) of this rule. Consumers responsible for remitting use tax directly to the department should refer to WAC 458-20-178 (Use tax).

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. Presume that all transactions in the following examples occur July 1, 2004, or later.

(a) **Example 1.** ABC Construction ordered replacement parts for a saw from XYZ, Inc., a business located in Chicago that is not required to collect Washington taxes. XYZ contracted with MNO Freight to ship the parts from Chicago. ABC is subject to use tax on the value of the article used (presumed to be the purchase price of the parts) including the cost of the transportation, regardless of whether the transportation costs are itemized.

(b) **Example 2.** The facts in this example are the same as those in (a) of this subsection except that instead of ordering a replacement part, ABC Construction sends a broken part to

XYZ, Inc. in Chicago for repair. ABC is subject to use tax on the repair service. The cost of transportation is included in the value of the service used, regardless of whether the transportation costs are itemized.

(c) **Example 3.** ABC Construction ordered replacement parts for a saw from XYZ, Inc., a business located in Chicago that is not required to collect Washington taxes. ABC hired MNO Freight to ship the parts from Chicago and was responsible for payment. ABC may exclude the cost of the transportation from the value on which use tax is due. The transportation costs ABC pays MNO are not a component of the value of the article used because the cost is not part of the consideration paid to XYZ for the replacement parts. ABC is subject to use tax on the value of the parts, which is presumed to be their purchase price.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2), 05-02-039, § 458-20-110, filed 12/30/04, effective 1/30/05. Statutory Authority: RCW 82.32.300, 91-23-037, § 458-20-110, filed 11/13/91, effective 12/14/91; Order ET 70-3, § 458-20-110 (Rule 110), filed 5/29/70, effective 7/1/70.]

#### **WAC 458-20-111 Advances and reimbursements.**

The word "advance" as used herein, means money or credits received by a taxpayer from a customer or client with which the taxpayer is to pay costs or fees for the customer or client.

The word "reimbursement" as used herein, means money or credits received from a customer or client to repay the taxpayer for money or credits expended by the taxpayer in payment of costs or fees for the client.

The words "advance" and "reimbursement" apply only when the customer or client alone is liable for the payment of the fees or costs and when the taxpayer making the payment has no personal liability therefor, either primarily or secondarily, other than as agent for the customer or client.

There may be excluded from the measure of tax amounts representing money or credit received by a taxpayer as reimbursement of an advance in accordance with the regular and usual custom of his business or profession.

The foregoing is limited to cases wherein the taxpayer, as an incident to the business, undertakes, on behalf of the customer, guest or client, the payment of money, either upon an obligation owing by the customer, guest or client to a third person, or in procuring a service for the customer, guest or client which the taxpayer does not or cannot render and for which no liability attaches to the taxpayer. It does not apply to cases where the customer, guest or client makes advances to the taxpayer upon services to be rendered by the taxpayer or upon goods to be purchased by the taxpayer in carrying on the business in which the taxpayer engages.

For example, where a taxpayer engaging in the business of selling automobiles at retail collects from a customer, in addition to the purchase price, an amount sufficient to pay the fees for automobile license, tax and registration of title, the amount so collected is not properly a part of the gross sales of the taxpayer but is merely an advance and should be excluded from gross proceeds of sales. Likewise, where an attorney pays filing fees or court costs in any litigation, such fees and costs are paid as agent for the client and should be excluded from the gross income of the attorney.

On the other hand, no charge which represents an advance payment on the purchase price of an article or a cost of doing or obtaining business, even though such charge is

made as a separate item, will be construed as an advance or reimbursement. Money so received constitutes a part of gross sales or gross income of the business, as the case may be. For example, no exclusion is allowed with respect to amounts received by (1) a doctor for furnishing medicine or drugs as a part of his treatment; (2) a dentist for furnishing gold, silver or other property in conjunction with his services; (3) a garage for furnishing parts in connection with repairs; (4) a manufacturer or contractor for materials purchased in his own name or in the name of his customer if the manufacturer or contractor is obligated to the vendor for the payment of the purchase price, regardless of whether the customer may also be so obligated; (5) any person engaging in a service business or in the business of installing or repairing tangible personal property for charges made separately for transportation or traveling expense.

Revised May 1, 1947.

[Order ET 70-3, § 458-20-111 (Rule 111), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-112 Value of products.** The term "value of products" includes the value of by-products, and except as provided herein, shall be determined by "gross proceeds of sales" whether such sales are at wholesale or at retail, to which shall be added all subsidies and bonuses received with respect to the extraction, manufacture, or sale thereof.

"The term 'gross proceeds of sales' means the value proceeding or accruing from the sale of tangible personal property . . . without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses." (RCW 82.04.070.)

**In the case of bona fide sales of products.** The law provides (RCW 82.04.450), that under the extracting and manufacturing classifications of the business and occupation tax the value of products extracted or manufactured shall be determined by the gross proceeds of sales in every instance in which a bona fide sale of such products is made, and whether sold at wholesale or at retail.

**Sales to points outside the state.** In determining the value of products delivered to points outside the state there may be deducted from the gross proceeds of sales so much thereof as the taxpayer can show to be actual transportation costs from the point at which the shipment originates in this state to the point of delivery outside the state.

**All other cases.** The law provides that where products extracted or manufactured are

(1) For commercial or industrial use (by the extractor or manufacturer—see WAC 458-20-134); or

(2) Transported out of the state, or to another person without prior sale; or

(3) Sold under circumstances such that the stated gross proceeds from the sale are not indicative of the true value of the subject matter of the sale; the value shall correspond as nearly as possible to the gross proceeds from other sales at comparable locations in this state of similar products of like quality and character, in similar quantities, under comparable conditions of sale, to comparable purchasers, and shall include subsidies and bonuses.

In the absence of sales of similar products as a guide to value, such value may be determined upon a cost basis. In such cases, there shall be included every item of cost attributable to the particular article or article extracted or manufactured, including direct and indirect overhead costs.

Revised June 1, 1970.

[Order ET 70-3, § 458-20-112 (Rule 112), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-113 Ingredients or components, chemicals used in processing new articles for sale.** (1) The term "retail sale" means "every sale of tangible personal property . . . other than a sale to one who purchases for the purpose of resale . . . or for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale . . . (RCW 82.04-.050.)

(2) **Ingredients or components.** The sale of articles of tangible personal property which physically enter into and form a part of a new article or substance produced for sale does not constitute a retail sale. This does not exempt from the retail sales tax the sale of articles consumed in a manufacturing process which do not enter into and become a physical part of the new article produced for sale, such as fuel used for heating purposes, oil for machinery, sandpaper, etc.

(3) Also, the definition of retail sale does not exclude consumables purchased for use in manufacturing, refining, or processing new articles for sale merely because some constituents of the consumables may also be traceable in the finished product, which are impurities or undesirable or unnecessary constituents of the finished product.

(4) For articles to qualify for sales and use tax exemption as ingredients or components of products produced for sale, such articles or their constituents must be traceable in the finished product and identifiable as having been directly provided by the article claimed for exemption.

(5) **Chemicals used in processing.** Sales of chemicals to a person for use in processing articles produced for sale are not retail sales, and therefore are not subject to the retail sales tax.

(6) "Chemicals used in processing" carries its common restricted meaning in commercial usage. It includes only chemical substances which are used by the purchaser to unite with other chemical substances, present as ingredients or components of the articles or substances being processed, to produce a chemical reaction therewith, as contrasted with merely a physical change therein. A chemical reaction is one in which there takes place a permanent change of certain properties, with the formation of new substances which differ in chemical composition and properties from the substances originally present, and usually differ from them in appearance as well. It is not necessary that all of the new substances which are formed be present in the final completed article or substance which is sold; one or more of such new substances resulting from the chemical reaction may be removed or drawn off in the processing.

(2005 Ed.)

(7) To illustrate: Sales of chemicals to a pulp mill for use in the digesting and bleaching of pulp are not subject to the retail sales tax because such chemicals react chemically with the cellulose in the pulp fiber which, in turn, becomes a major ingredient of the final product, paper. Similarly, sales of carbon to an aluminum reduction plant for the primary purpose of forming a chemical reaction with alumina to remove its oxygen content are not retail sales.

(8) Conversely, sales of water purifiers and wetting agents to a pulp mill are taxable sales. The treated water acts primarily as a conveyor or carrier of the pulp fibers and only an insignificant part of the water becomes an ingredient of the final product. Similarly, sales of caustic soda to potato processors to remove peelings from potatoes are retail sales because the chemical reacts only with the peelings which are removed as waste, and not with the potatoes which are sold as the final product.

(9) Sales of diesel or fuel oil to a steel mill or foundry, for use or consumption primarily in generating heat, are retail sales and subject to the retail sales tax, notwithstanding the fact that some portion of the oil may cause a chemical reaction and to some extent alter the character of the article being manufactured or processed.

(10) Effective April 3, 1986, (chapter 231, Laws of 1986), purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose is to create a chemical reaction directly through contact with an ingredient of ferrosilicon, are not subject to retail sales tax or use tax.

(11) In special cases where doubt exists, a special ruling will be made by the department of revenue upon submission of all the pertinent facts relative to the nature of the chemical substances concerned and the use made thereof by the purchaser.

Revised June 1, 1970.

[Statutory Authority: RCW 82.32.300. 86-20-027 (Order 86-17), § 458-20-113, filed 9/23/86; Order ET 70-3, § 458-20-113 (Rule 113), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-115 Sales of packing materials and containers.** (1) **Introduction.** This section explains the B&O, retail sales, and use taxes which apply to persons who sell packing materials and to those who use packing materials.

(2) **Definitions.** The term "packing materials" means and includes all boxes, crates, bottles, cans, bags, drums, cartons, wrapping papers, cellophane, twines, gummed tapes, wire, bands, excelsior, waste paper, and all other materials in which tangible personal property may be contained or protected within a container, for transportation or delivery to a purchaser.

(3) **Business and occupation tax.**

(a) Sales of packing materials to persons who sell tangible personal property contained therein or protected thereby are sales for resale and subject to tax under the wholesaling classification. Sellers must obtain resale certificates from the purchaser to support that these sales are for resale. Refer to WAC 458-20-102.

(b) Sales of containers to persons who sell tangible personal property therein, but who retain title to such containers which are to be returned, are sales for consumption and sub-

[Title 458 WAC—p. 141]

ject to tax under the retailing classification. This class includes wooden or metal bottle cases, barrels, gas tanks, carboys, drums, bags and other items, when title thereto remains in the seller of the tangible personal property contained therein, and even though a deposit is not made for the containers, and when such articles are customarily returned to the seller. If a charge is made against a customer for the container, with the understanding that such charge will be cancelled or rebated when the container is returned, the amount charged is deemed to be made as security for the return of the container and is not part of the selling price for tax purposes. However, refer to the comments below for sales of containers for beverages and foods.

(c) Title to containers, whether designated as returnable or nonreturnable, for beverages and food sold at retail, including beer, milk, soft drinks, mixers and the like, will be deemed to pass to the customer along with the contents. In such cases, amounts charged for the containers are part of the selling price of the food or beverage and subject to retailing tax when sold to consumers. Sales to persons who will resell the food or beverages are wholesale sales.

(d) Persons who perform custom or commercial packing for others are generally taxable under the service B&O tax classification on the income from the packing activity.

(i) Under RCW 82.04.190, persons taxable under the service B&O tax classification are consumers of any materials used in performing the service. Sales of packing materials to persons engaged in the business of custom or commercial packing are sales for consumption and are subject to the retail sales tax. However, there is a specific statutory exemption from the B&O tax for persons who perform packing of fresh perishable horticultural products for the grower. These persons are also exempt from retail sales tax on the purchase of any materials and supplies used in performing the packing service.

(ii) Persons who perform custom or commercial packing for others and who also manufacture the boxes, containers, or other packaging materials used by them in the packing are subject to the manufacturing tax and use tax on the value of the packing materials which they manufacture. Refer to WAC 458-20-136.

(e) Persons who operate cold storage warehouses or who perform processing for hire for others, which includes packaging the processed items, are not the consumers of the containers or other packaging materials. Sales of boxes, cartons, and packaging materials to these persons are taxable under the wholesaling tax classification. Refer to WAC 458-20-136 and 458-20-133.

(f) Persons who manufacture packing materials for delivery outside Washington or for their own commercial or industrial use are manufacturers and should refer to WAC 458-20-136, 458-20-134, and 458-20-112.

#### (4) Retail sales tax.

(a) All sales taxable under the retailing classification of the business and occupation tax as indicated above are also subject to retail sales tax except those specifically distinguished hereafter in this subsection.

(b) Retail sales tax does not apply to sales of returnable food and beverage containers, and vendors may take a deduction from gross retail sales for the amount of such sales in reporting sales tax due, providing (i) the seller separately

states the charge for the container and (ii) the separately stated charge is the amount the vendor will pay for a repurchase of the container. Return of the containers is a repurchase by the vendor, and sales tax is not due on amounts paid to the customer on such repurchases, since the vendor will resell the containers in the regular course of business. (RCW 82.08.0282.)

(c) No deduction is allowed in computing tax under the retail sales tax classification where the retail sales tax is collected from the customer upon the charge for the container.

(d) Sales of packing materials to cooperative marketing associations, agents, or independent contractors for the purpose of packing fresh perishable horticultural products for the growers thereof, are not subject to retail sales tax. See also WAC 458-20-214.

#### (5) Use tax.

(a) The use tax applies to uses of packing materials and containers to which retail sales tax would apply but, for any reason, was not paid at the time such materials and containers were acquired.

(b) The use tax applies to the use of packing materials, such as boxes, cartons, and strapping materials, by a manufacturer in Washington where the packing materials are used to protect materials while being transported to another site of the manufacturer for further processing.

(c) The use tax applies to the use of pallets by a manufacturer or seller where the pallets will not be sold with the product, but are for use in the manufacturing plant or warehouse.

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

(a) ABC Packing Co. does custom packing of small parts for a Washington manufacturer. The parts are sent by truck to ABC who then places the parts into plastic bags and seals the bags through a heat fusion process. ABC is the consumer of the bags and must pay either retail sales tax or use tax on the use of the bags. This is true even though the bags will remain with the parts until delivered to the ultimate user of the parts.

(b) XY manufactures paper products in Washington. The paper is placed on large rolls. These large rolls are shipped to another of its own plants where the paper goes through a slitter for conversion into reams of paper. These large rolls involve the use of "cores" made of heavy fiber board on which the paper is rolled. "Plugs" are placed in the ends to give additional support. The rolls are also wrapped and banded with steel banding. The cores, plugs, wrapping materials, and banding are all eventually removed during the additional processing. XY is the consumer of the plugs, cores, and other packing materials and must pay retail sales or use tax on these items.

(c) XY uses three types of pallets in its manufacturing operation. One type of pallet is used strictly for storing paper which is in the manufacturing process. A second type of pallet is returnable and the customer is charged a deposit which is refunded at the time the pallet is returned. The third type of pallet is nonreturnable and is sold with the product. XY is required to pay retail sales or use tax on the first two types of pallets. The third type of pallets may be purchased by XY

without the payment of retail sales or use tax since these pallets are sold with the paper products.

(d) Cold Storage Co. does custom fish processing for various customers. The processing involves cutting whole fish into fillets or steaks, vacuum packaging the pieces, and freezing the packages. The packing activity is considered to be part of a processing for hire activity. As a processor for hire, Cold Storage Co. is not the consumer of the packing materials.

[Statutory Authority: RCW 82.32.300, 93-19-017, § 458-20-115, filed 9/2/93, effective 10/3/93; 88-20-014 (Order 88-6), § 458-20-115, filed 9/27/88; Order 74-2, § 458-20-115, filed 6/24/74; Order ET 70-3, § 458-20-115 (Rule 115), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-116 Sales and/or use of labels, name plates, tags, premiums, and advertising material.** (1) **Introduction.** This section explains Washington's B&O and retail sales tax applications to the sale of labels, name plates, tags, and advertising material. It also gives tax reporting information to persons offering premiums at reduced or no cost to customers.

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

(a) "Labels," "name plates," and "tags" are slips, generally made of paper or cloth, which are affixed to articles or containers for identification or description.

(b) A "premium" is an item offered free of charge or at a reduced price to prospective customers as an inducement to buy.

(3) **Sales for resale.** Sales of labels, name plates, tags, premiums, and advertising material to persons for use in the following manner are sales for resale (wholesale sales) and not subject to retail sales tax:

(a) Sales of labels, name plates, and tags to persons who will attach these items to articles or containers sold by them, or enclose these items with articles sold by them. However, the labels, name plates, or tags may not be purchased for resale if they will be put to intervening use by such persons.

(b) Sales of premiums to persons who pass title to the premium along with other articles which are sold by them, when the passing of title to the premiums is not contingent upon the returning of coupons or other evidence of prior purchase.

(c) Sales of premiums to persons who in turn sell the same to customers at a reduced price.

(d) Sales of advertising material to persons who enclose the advertising material with articles sold by them, when such advertising material relates primarily to the articles with which it is enclosed. Persons who enclose advertising material with articles being sold for the purpose of promoting sales of other products are consumers and may not purchase this advertising material for resale. (See RCW 82.12.010(5).)

(4) **Retail sales tax.** Sales of labels, name plates, tags, premiums, and advertising material to consumers are retail sales. The retail sales tax applies to the following:

(a) Sales of labels, name plates, and tags to persons who attach the same to containers enclosing articles sold by them, when such persons retain title to the containers which are to be returned. Such sales are sales for consumption and subject to the retail sales tax. Since the container is not being resold,

any labels, name plates, tags, or similar items attached to the container are also not being resold.

(b) Sales of labels, name plates, and tags to persons who use them for inventory, statistical, or other business purposes. Such sales are sales for consumption and the retail sales tax applies, notwithstanding the labels, name plates, or tags remain attached to the articles or containers delivered to the customer.

(c) Sales of premiums to persons who do not pass title thereto with other articles which are sold by them, but which are given as an inducement to perform a service, or are given upon the returning of coupons or other evidence of prior purchase. Such sales are sales for consumption and are subject to the retail sales tax.

(d) Sales of premiums to persons who offer them as an inducement to potential customers at no charge and with no requirement that the customer purchase any other article or service as a condition to receive the premium. Such sales are sales for consumption and subject to the retail sales tax.

(5) **Business and occupation tax.** The B&O tax applies to the sale of labels, name plates, tags, premiums, and advertising material as follows:

(a) **Wholesaling.** Persons who sell labels, name plates, tags, premiums, and advertising material to persons who will resell these items as described in subsection (3) of this section are subject to the wholesaling B&O tax on the gross proceeds of these sales. Sellers must obtain resale certificates from their customers to support the resale nature of these transactions. (Refer to WAC 458-20-102.)

(b) **Retailing.** Persons who sell labels, name plates, tags, premiums, and advertising material to consumers are subject to the retailing B&O tax on such sales.

(6) **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.

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

(a) ABC Timber purchases log tags which are attached to logs as they are received in ABC's yard. These tags are used by ABC to keep track of the logs for inventory purposes. These tags remain on the logs after sale, and are also used by ABC's customers to verify receipt of the logs. ABC must remit retail sales or use tax upon the purchase of the log tags, notwithstanding they remain attached to the logs after sale to ABC's customers. The use of these tags for inventory purposes by ABC prior to actual sale is intervening use as a consumer.

(b) MT Gas, a gasoline and service station, offers customers a free set of stemware with any gasoline purchase of ten gallons or more. Customer purchasing seven to nine gallons of gasoline may purchase the same set of stemware for a nominal amount. MT Gas may purchase the stemware without paying retail sales tax. The stemware is offered as a premium, and is considered to be resold along with the gasoline. It is immaterial that the sale of gasoline is exempt from the retail sales tax. MT Gas must report the retailing B&O tax and collect and remit retail sales tax on the price charged for

the stemware sold to those customers purchasing seven to nine gallons of gasoline.

(c) KMP Company is a camping club which purchases gift items which are used as premiums. These gift items are offered free of charge to potential customers on condition that the potential customer attend a sales presentation. No purchase of a membership or anything else is required to receive the premium. KMP must remit retail sales or use tax upon the purchase of the premiums. KMP is the consumer of premiums given away free of charge where the recipient has no requirement to purchase any service or article as a condition of receiving the premium.

(d) BC Bank offers a choice of various premiums to customers opening new savings accounts. In some cases, a charge may be made to the customer for the premium, with the amount of the charge based on the amount of deposit the customer makes in the new savings account. BC Bank may give a resale certificate to its suppliers for those premiums which will be resold to its new customers. For those premiums which will be given to customers without charge, BC Bank must pay either the retail sales tax to its suppliers or use tax to the department on the cost of the premiums. (Refer to WAC 458-20-102.) It also must report the retailing B&O tax and collect and remit retail sales tax on any amounts charged to its customers.

[Statutory Authority: RCW 82.32.300, 93-19-018, § 458-20-116, filed 9/2/93, effective 10/3/93; 83-07-034 (Order ET 83-17), § 458-20-116, filed 3/15/83; Order ET 70-3, § 458-20-116 (Rule 116), 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 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 458-20-118 Sale or rental of real estate, license to use real estate.** (1) Amounts derived from the sale and rental of real estate are exempt from taxation under the business and occupation tax. However, there is no exemption of amounts derived from engaging in any business wherein a mere license to use or enjoy real property is granted. Amounts derived from the granting of a license to use real property are taxable under the service B&O tax classification unless otherwise taxed under another classification by specific statute, e.g., sale of lodging taxed under retailing. (See RCW 82.04.050 and 82.04.290.) Further, no exemption is allowed for amounts received as commissions for the sale or rental of real estate (RCW 82.04.390) nor for interest received by persons engaged in the business of selling real estate on time or installment contracts. For purposes of distinguishing the lease or rental of real estate from the granting of a license to use real estate the department of revenue will be guided by the following principles.

(2) **Lease or rental of real estate.** A lease or rental of real property conveys an estate or interest in a certain designated area of real property with an exclusive right in the lessee of continuous possession against the world, including the owner, and grants to the lessee the absolute right of control and occupancy during the term of the lease or rental agreement. An agreement will not be construed as a lease of real estate unless a relationship of "landlord and tenant" is created thereby. It is presumed that the sale of lodging by a hotel, motel, tourist court, etc., for a continuous period of thirty days or more is a rental of real estate. It is further presumed that all rentals of mini-storage facilities, apartments and

leased departments constitute rentals of real estate. The rental of a boat moorage slip or an airplane hangar/tie down site is presumed to be a rental of real estate only if a specific space, slip, or site is assigned and the rental is for a period of thirty days or longer.

(3) **License to use real estate.** A license grants merely a right to use the real property of another but does not confer exclusive control or dominion over the same. Usually, where the grant conveys only a license to use, the owner controls such things as lighting, heating, cleaning, repairing, and opening and closing the premises.

(a) Persons who are involved in more than one kind of business activity are required to segregate their income and report under the appropriate tax classification based on the nature of the specific activity (see RCW 82.04.440).

(b) It will be presumed that a taxable license to use or enjoy real property is granted in the rental of the following:

(i) Hotel rooms (for periods of less than 30 continuous days; see WAC 458-20-166).

(ii) Motels, tourist courts and trailer parks (for periods of less than 30 continuous days; see WAC 458-20-166).

(iii) Cold storage lockers (see WAC 458-20-133).

(iv) Safety deposit boxes and private mail boxes.

(v) Storage space (see WAC 458-20-182).

(vi) Space within park or fair grounds to a concessionaire.

(vii) Hairdressers, barbers, or manicurists who lease space within another business (see WAC 458-20-200 Leased departments).

(viii) Use of boat launch facilities for recreational purposes.

(ix) Space on a building for the attachment of advertising signs, including for periods in excess of 30 continuous days.

(c) RCW 82.04.050 (2)(f) specifically defines all services of a hotel, motel, or similar businesses as being retail sales. Thus, the rentals of meeting rooms, display rooms, or ball rooms are retail sales when rented out by such businesses. Persons who are not in the business of selling lodging are taxable under the service B&O tax classification on income from the rental of meeting rooms.

[Statutory Authority: RCW 82.32.300. 91-02-056, § 458-20-118, filed 12/28/90, effective 1/28/91; 83-07-034 (Order ET 83-17), § 458-20-118, filed 3/15/83; Order ET 70-3, § 458-20-118 (Rule 118), 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

age 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 nontransients 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 company 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) **Fraternalities and sororities.** Fraternalities, 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 Amer-

icans 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 prepared 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 nontransient 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 458-20-120 Sales of ice.** Sales of ice to fishermen for the purpose of packing and preserving their fish during the trip from the fishing banks to their port of discharge are sales for consumption and are taxable under the retail sales tax.

Sales of ice to persons, other than railroad companies, for use in icing refrigerator cars are sales for consumption and are taxable under the retail sales tax.

The use of ice purchased or manufactured by interstate railroad companies for the purpose of icing within this state perishables or refrigerator cars or car cooling systems, is subject to use tax. (See WAC 458-20-175.)

Sales of ice to persons who sell fish, fruit, vegetables and other commodities are sales for resale and not subject to the retail sales tax when such ice is used for packing during shipment and title thereto passes to the purchaser along with the property sold.

Sales of ice to persons operating restaurants, soda fountains and the like are sales for resale and are not subject to the retail sales tax when such ice is used exclusively as crushed ice in drinks sold by such persons.

Sales of ice to persons operating creameries, beer parlors, restaurants, soda fountains and the like are sales for consumption and are taxable under the retail sales tax when such ice is used primarily for the purpose of cooling food products and is not for resale to customers.

Revised May 1, 1949.

[Order ET 70-3, § 458-20-120 (Rule 120), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-121 Sales of heat or steam—Including production by cogeneration.** (1) **Introduction.** This section provides tax reporting information to persons who sell heat and/or steam. Because heat and steam are often the product of a cogeneration facility, this section also provides tax information for persons operating cogeneration facilities. Persons generating electrical power should also refer to WAC 458-20-179 and 458-20-17901.

(2) **Sale of heat or steam - business and occupation (B&O) tax.** Persons engaging in the business of operating a plant for the production, extraction, or storage of heat or steam for distribution, for hire or sale, are taxable under the service and other business activities classification. This includes heat or steam produced by a biomass system, cogeneration, geothermal sources, fossil fuels, or any other method.

(3) **Sale or production of electricity - cogeneration.** The production of steam, heat, or electricity is not a manufacturing activity within the definition of RCW 82.04.120. Persons who operate a plant or system for the generation, production or distribution of electrical energy for hire or sale are subject to the provisions of the public utility tax under the light and power tax classification. Persons who generate elec-

(2005 Ed.)

trical energy should refer to WAC 458-20-179. A deduction may be taken for:

(a) Power generated in Washington and delivered out-of-state. (See RCW 82.16.050(6).)

(b) Amounts derived from the sale of electricity to persons who are in the business of selling electricity and are purchasing the electricity for resale. (See RCW 82.16.050(2).)

(4) **Tax incentive programs - cogeneration.** There were tax incentive programs available for cogeneration projects begun before January 1, 1990. See WAC 458-20-17901 for the requirements which applied. Sales and use tax deferrals may apply under certain conditions for power generation facilities, even though the production of power is not specifically subject to a manufacturing tax. For example, if the cogeneration facilities are part of a manufacturing plant for the production of new articles of tangible personal property and the requirements for tax deferral are met, the business may apply for tax deferral programs. These incentive programs are discussed in WAC 458-20-240, 458-20-24001, and 458-20-24002.

(5) **Fuel.** Persons who produce their own fuel to generate heat, steam, or electricity are subject to the manufacturing B&O tax on the value of the fuel. This includes the value of fuel which is created at the same site as a by-product of another manufacturing process, such as production of hog fuel. The taxable value should be determined based on comparable sales, or on the basis of all costs in the absence of comparable sales. Refer to WAC 458-20-112.

The fuel does not become an ingredient or component of power, steam, or electricity. The purchase of fuel is subject to payment of retail sales tax to the supplier. In the event retail sales tax is not paid to the supplier, deferred sales or use tax must be paid. However, the law provides a specific exemption from the use tax for fuel which is used in the same manufacturing plant which produced the fuel. For example, if a lumber manufacturer produces wood waste which is used in the same plant to produce heat for drying lumber and also electricity which is sold to a public utility district, the wood waste is not subject to use tax even though the manufacturing tax will apply. (See RCW 82.12.0263.)

(6) **Equipment and supplies.** Persons who are in the business of producing heat, steam, or electricity are required to pay retail sales tax to suppliers of all equipment and supplies. If the supplier fails to collect retail sales tax, deferred sales or use tax must be paid.

[Statutory Authority: RCW 82.32.300, 94-13-033, § 458-20-121, filed 6/6/94, effective 7/7/94; 83-07-034 (Order ET 83-17), § 458-20-121, filed 3/15/83; Order ET 70-3, § 458-20-121 (Rule 121), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-124 Restaurants, cocktail bars, taverns and similar businesses.** (1) **Introduction.** This section explains Washington's B&O and retail sales tax applications to sales by restaurants and similar businesses. It discusses the sales of meals, beverages and foods at prices inclusive of the retail sales tax. This section also explains how discounted and promotional meals are taxed. Persons operating restaurants and similar businesses should also refer to WAC 458-20-119 and 458-20-244. Persons who merely manage the operations of a restaurant or similar business should refer to WAC 458-20-119 to determine their tax liability. The term "restaurants,

[Title 458 WAC—p. 149]

cocktail bars, taverns, and similar businesses" means every place where prepared foods and beverages are sold and served to individuals, generally for consumption on the premises where sold.

(2) **Business and occupation tax.** The tax liability of restaurants, cocktail bars, taverns and similar businesses is as follows:

(a) **Retailing.** Sales to consumers of meals and prepared foods by restaurants, cocktail bars, taverns and similar businesses are subject to the retailing tax classification. Meals provided to employees are presumed to be in exchange for services received from the employee and are retail sales and also subject to the retailing tax. (See WAC 458-20-119, Sales of meals.)

(b) **Wholesaling.** 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.** Compensation received from owners of coin-operated machines for allowing the placement of those machines at the restaurant, cocktail bar, tavern, or similar business is subject to the service and other business activities tax. Persons operating games of chance should refer to WAC 458-20-131.

(3) **Retail sales tax.** Sales to consumers of meals and prepared foods by restaurants, cocktail bars, taverns and similar businesses are generally subject to retail sales tax. This includes the meals sold or furnished to the employees of the business. 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;

(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 the meals being sold.

(d) 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, are not subject to retail sales tax when purchased by restaurants and similar businesses making actual sales of meals.

(5) **Combination businesses.** Persons operating a combination of two kinds of food sales businesses, of which one

is the sale of food for immediate consumption (i.e., a bakery selling food products ready for consumption and in bulk quantities), are required to keep their accounting records and sales receipts segregated between taxable and tax exempt sales. Persons operating a combination business should refer to WAC 458-20-244.

(6) **Discounted meals, promotional meals, and meals given away.** Persons who sell meals on a "two for one" or similar basis are not giving away a free meal, but rather are selling two meals at a discounted price. Both the retailing B&O and retail sales taxes should be calculated on the reduced price actually received by the seller.

(a) Persons who provide meals free of charge to persons other than employees are consumers of those meals. However, certain food products are statutorily exempt of retail sales or use tax unless sold by a retail vendor where the food product must be handled by a person required to have a food handler's permit. For tax reporting periods beginning with December 1, 1993, persons operating restaurants or similar businesses, where a food handler's permit is required, will not be required to report use tax on food products given away, even if the food products are part of prepared meals. For example, a restaurant providing meals to the homeless or hot dogs free of charge to a little league team will not incur a retail sales or use tax liability with respect to these items given away. A sale has not occurred, and the food products exemption applies. Should the restaurant provide the little league team with carbonated beverages free of charge, the restaurant will incur a deferred retail sales or use tax liability with respect to those carbonated beverages. Carbonated beverages are not considered food products for the purposes of the food products exemption. (See also WAC 458-20-244 for a list of exempt food products.)

(b) Meals provided to employees are presumed to be in exchange for services received from the employee and are not considered to be given away. These meals are retail sales. (See WAC 458-20-119 on employee meals.)

(7) **Sales of meals, beverages and food at prices including sales tax.** Persons may advertise and/or sell meals, beverages, or any kind of food product at prices including sales tax. Any person electing to advertise and/or make sales in this manner must clearly indicate this pricing method on the menu and other price information.

If sales slips, sales invoices, or dinner checks are given to the customer, the sales tax must be separately stated on all such sales slips, sales invoices, or dinner checks. If not separately stated on the sales slips, sales invoices, or dinner checks, it will be presumed that retail sales tax was not collected. In such cases the measure of tax will be gross receipts. (Refer also to WAC 458-20-107.)

(8) **Class H restaurants.** Restaurants operating under the authority of a class H liquor license generally have both dining and cocktail lounge areas. Customers purchasing beverages or food in lounge areas are generally not given sales invoices, sales slips, or dinner checks, nor are they generally provided with menus.

(a) Many class H restaurants elect to sell beverages or food at prices inclusive of the sales tax in the cocktail lounge area. If this pricing method is used, notification that retail sales tax is included in the price of the beverages or foods must be posted in the lounge area in a manner and location so

that customers can see the notice without entering employee work areas. It will be presumed that no retail sales tax has been collected or is included in the gross receipts when a notice is not posted and the customer does not receive a sales slip or sales invoice separately stating the retail sales tax.

(b) The election to include retail sales tax in the selling price in one area of a location does not preclude the restaurant operator from selling beverages or food at a price exclusive of sales tax in another. For example, an operator of a class H restaurant may elect to include the retail sales tax in the price charged for beverages in the lounge area, while the price charged in the dining area is exclusive of the sales tax.

(c) Class H restaurants are not required to post actual drink prices in the cocktail lounge areas. However, if actual prices are posted, the advertising requirements expressed in WAC 458-20-107 must be met.

(9) **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 B&O and retail sales taxes. (Refer also to WAC 458-20-119.)

(10) **Vending machines and amusement devices.** Persons owning and operating vending machines and amusement devices should refer to WAC 458-20-187 (Coin operated vending machines, amusement devices and service machines).

(11) **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) ABC Coffee Shop has its own bakery and also a counter and tables where it sells pastries and coffee for immediate consumption. ABC also sells donuts and other bakery items for consumption off the premises. No beverages are sold in unsealed containers except for consumption on the premises. ABC accounts separately for its sales of products which are not intended for immediate consumption through a coding maintained by the cash register. ABC is operating a combination business. It is required to collect retail sales tax on items sold for consumption on the premises, but is not required to collect retail sales tax on baked goods intended for consumption off the premises.

(b) XYZ Restaurant operates both a cocktail bar and a dining area. XYZ has elected to sell drinks and appetizers in the bar at prices including the retail sales tax while selling drinks and meals served in the dining area at prices exclusive of the sales tax. There is a sign posted in the bar area advising customers that all prices include retail sales tax. Customers in the dining area are given sales invoices which separately state the retail sales tax. As an example, a typical well drink purchased in the bar for \$2.50 inclusive of the sales tax, is sold for \$2.50 plus sales tax in the dining area. The pricing requirements have been satisfied and the drink and food totals are correctly reflected on the customers' dinner checks. XYZ may factor the retail sales tax out of the cocktail bar gross receipts when determining its retailing and retail sales tax liability.

(c) RBS Restaurant operates both a cocktail bar and a dining area. RBS has elected to sell drinks at prices inclusive of retail sales tax for all areas where drinks are served. It has a sign posted to inform customers in the bar area of this fact and a statement is also on the dinner menu indicating that any charges for drinks includes retail sales tax. Dinner checks are given to customers served in the dining area which state the price of the meal exclusive of sales tax, sales tax on the meal, and the drink price including retail sales tax. Because the business has met the sign posting requirement in the bar area and has indicated on the menu that sales tax is included in the price of the drinks, RBS may factor the sales tax out of the gross receipts received from its drink sales when determining its taxable retail sales.

(d) Z Tavern sells all foods and drinks at a price inclusive of the retail sales tax. However, there is no mention of this pricing structure on its menus or reader boards. The gross receipts from Z Tavern's food and drink sales are subject to the retailing and retail sales taxes. Z Tavern has failed to meet the conditions for selling foods and drinks at prices including tax. Z Tavern may not assume that the gross receipts include any sales tax and may not factor the retail sales tax out of the gross receipts.

[Statutory Authority: RCW 82.32.300, 93-23-018, § 458-20-124, filed 11/8/93, effective 12/9/93; 83-07-034 (Order ET 83-17), § 458-20-124, filed 3/15/83; Order ET 70-3, § 458-20-124 (Rule 124), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-12401 Special stadium sales and use tax.** (1) **Introduction.** RCW 82.14.360 was amended in the third special session in 1995. (See chapter 1, 1995 3rd sp.s.) Effective January 1, 1996, a special stadium sales and use tax applies to sales of food and beverages by restaurants, taverns, and bars in counties with a population of one million or more. Currently, the special stadium tax applies only in King County. The tax applies only to those food and beverage sales that are already subject to the retail sales tax. Grocery stores, mini-markets, and convenience stores were specifically excluded from the definition of a restaurant and are not required to collect the tax. However, a restaurant located within a grocery store, mini-market, or convenience store is subject to this tax if the restaurant is owned or operated by a different legal entity from the store or market. This section explains when the tax will apply.

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

(a) "Restaurant" means any establishment having special space and accommodation where food and beverages are regularly sold to the public for immediate, but not necessarily on-site, consumption, but excluding grocery stores, mini-markets, and convenience stores. Restaurant includes, but is not limited to, lunch counters, diners, coffee shops, espresso shops or bars, concession stands or counters, delicatessens, and cafeterias. It also includes space and accommodations where food and beverages are sold to the public for immediate consumption that are located within hotels, motels, lodges, boarding houses, bed-and-breakfast facilities, hospitals, office buildings, and schools, colleges, or universities, if a separate charge is made for such food or beverages. Mobile sales units that sell food or beverages for immediate consumption within a place, the entrance to which is subject to an

admission charge, are "restaurants" for purposes of this tax. So too are public and private carriers, such as trains and vessels, that sell food or beverages for immediate consumption on trips that both originate and terminate within the county imposing the special stadium tax if a separate charge for the food and/or beverages is made. A restaurant is open to the public for purposes of this section if members of the public can be served as guests. "Restaurant" does not include businesses making sales through vending machines or through mobile sales units such as catering trucks or sidewalk vendors of food or beverage items.

(b) "Tavern" has the same meaning here as in RCW 66.04.010 and means any establishment with special space and accommodation for the sale of beer by the glass and for consumption on the premises.

(c) "Bar" means any establishment selling liquor by the glass or other open container and includes, but is not limited to, establishments that have been issued a class H license by the liquor control board.

(d) "Grocery stores, mini-markets, and convenience stores," have their ordinary and common meaning.

(3) **Tax application.** This special stadium sales and use tax currently applies only to food and beverages sold by restaurants, bars, and taverns in King County. The tax is in addition to any other sales or use tax that applies to these sales. This special tax only applies if the regular sales or use tax imposed by chapters 82.08 or 82.12 RCW applies.

(a) The tax applies to the total charge made by the restaurant, tavern, or bar, for food and beverages. If a mandatory gratuity is included in the charge that, too, is subject to the tax.

(b) Catering provided by a restaurant, tavern or bar is also subject to the tax. However, when catering is done by a business that does not meet the definition of restaurant in subsection (2) of this section, has no facilities for preparing food, and all food is prepared at the customer's location, the charge is not subject to the tax.

(c) In the case of catering subject to the tax, if a separate charge is made for linens, glassware, tables, tents, or other items of tangible personal property that are not required for the catering, those separate charges are not subject to the tax. However, separately stated charges for items that are required as a part of the catering service, such as waitpersons or mandatory gratuities, are subject to the tax.

(4) **Examples.** The following 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. For these examples, assume the transactions occur in King County.

(a) XYZ Bakery operates a coffee shop where customers may purchase baked goods and coffee for consumption on the premises or may purchase bakery products for consumption elsewhere. The sales of bakery goods and beverages for consumption on the premises are subject to the special stadium tax. The special stadium tax does not apply to the bakery goods sold "to go" because under the provisions of RCW 82.08.0293 and WAC 458-20-244(6) these bakery goods are not subject to the state retail sales tax. Since the state retail sales tax does not apply to these sales, neither does the special stadium sales tax.

(b) XYZ operates a "fast food" business. Customers may consume the food and beverages on the premises or may take the food "to go" for consumption elsewhere. All sales of food and beverages by this business are subject to the special stadium tax, including the food and beverages sold "to go."

(c) XYZ operates carts that may be set up on a sidewalk or within parks from which customers may purchase hot dogs and beverages. The cart includes heating facilities for preparation of hot dogs at the cart site. No seating is provided by the business. The site location is not owned or leased by the business. These sales are not subject to the special stadium sales tax because the business does not have a designated space for the preparation of the food it sells. This business does not fit the definition of "restaurant." However, if XYZ operates a mobile food service unit selling food or beverages for immediate consumption at fixed locations within the grounds of a stadium, arena, fairgrounds, or other place, admission to which is subject to an admission charge, then the special stadium tax applies.

(d) XYZ operates a combination gas station and convenience store. The convenience store sells some groceries and also some prepared foods such as hot dogs and hamburgers. Customers may also purchase soft drinks or coffee by the cup. None of these sales are subject to the special stadium sales tax because of the specific language in the statute exempting convenience stores from the tax.

(e) XYZ operates a business that sells prepared pizza. The business prepares and bakes the pizza at its premises. The business has no seating. Customers may order the pizzas by either entering the seller's place of business or by telephone. Customers may either take delivery at the seller's site or the business will deliver the pizza to the customer's residence or other site. These sales are subject to the special stadium sales tax because the business does have a designated site and facilities for the preparation of food for sale for immediate consumption, even though no seating is available. The regular retail sales tax applies to these sales since these sales are not exempt food products under RCW 82.08.0293 (2)(c).

(f) XYZ has the exclusive concession rights to prepare and sell hot dogs within a sports facility. Customers place their orders and take delivery of the prepared food and beverages at the seller's site in the sports facility. XYZ provides no seating that it controls. Customers generally take the food and beverage to their seats and consume the items while watching the sports event. XYZ will also prepare hot dogs and soft drinks at its food bar and use its employees or agents to sell these products to customers in the stands while the sports event is in progress. All of the sales of food and beverages by XYZ are subject to the special tax. XYZ's business operation meets the definition of "restaurant." XYZ has set aside space that it controls for the purpose of preparing food and beverages for immediate consumption for sale to the public.

(g) DEF operates a café within ABC's grocery store, for the sale of food or beverages for immediate consumption. ABC is a separate entity from DEF, and it leases the space for the café to DEF. Sales of food and beverages by ABC are exempt from the special stadium tax, but sales from the café by DEF are subject to that tax.

[Statutory Authority: RCW 82.32.300 and 82.14.080. 96-16-086, § 458-20-12401, filed 8/7/96, effective 9/7/96.]

**WAC 458-20-126 Sales of motor vehicle fuel, special fuels, and nonpollutant fuel. (1) Motor vehicle fuel and special fuels.** "Motor vehicle fuel" as used in this section means gasoline or any other inflammable gas or liquid the chief use of which is as fuel for the propulsion of motor vehicles. (See RCW 82.36.010.) "Special fuels" as used in this section means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles, except that it does not include motor vehicle fuel as defined above. (See RCW 82.38.020.) Diesel fuel is an example of a special fuel.

(a) The retail sales tax does not apply to the following:

(i) Sales of motor vehicle fuel on which the tax of chapter 82.36 RCW is paid.

(ii) Sales of special fuel when sold for use as fuel in propelling motor vehicles upon the public highways in this state and on which the special fuel tax of chapter 82.38 RCW is paid. Payment of the annual fee in lieu of the special fuel tax on natural gas and propane, RCW 82.38.075, constitutes payment of the special fuel tax imposed by chapter 82.38 RCW.

(b) The retail sales tax or use tax applies to sales and uses of motor vehicle fuel or special fuel when the taxes of chapter 82.36 or 82.38 RCW have not been paid or have been refunded.

(c) By reason of special exemptions contained in RCW 82.08.0255 the retail sales tax does not apply to sales of special fuel delivered in this state which is later transported and used outside this state by persons engaged in interstate commerce. This exemption also applies to persons hauling their own goods in interstate commerce.

**Exemption certificate.** Persons selling special fuel to interstate carriers which comes within the foregoing exemption may obtain an exemption certificate from the purchaser in substantially the following form in order to document the entitlement to the exemption.

Certificate of Special Fuel Sales  
to Interstate Carriers

The undersigned hereby certifies that all the special fuel purchased from the listed dealer will be purchased for transportation and use outside of Washington by them as an interstate carrier and is entitled to the exemption of RCW 82.08.0255 or will be used on highways in Washington and the special fuel tax of chapter 82.38 RCW will be paid.

Dealer: .....  
Carrier: .....  
Authorized Carrier Signature: .....  
Title or office: .....  
Date: .....

The above certificate must be renewed at intervals not to exceed four years.

(d) Neither the retail sales tax nor use tax applies to sales or uses of motor vehicle fuel or special fuel purchased by private, nonprofit transportation providers certified under chapter 81.66 RCW, who are entitled to fuel tax refund or exemption under chapter 82.36 or 82.38 RCW.

(e) Persons selling special fuels on which the tax of chapter 82.38 RCW is not collected, except special fuel sold for use outside this state by persons engaged in interstate

commerce, or fuel sold to exempt certified transportation providers, are required to collect the retail sales tax on retail sales thereof.

It is the intent of the law that all vehicle fuels, except special fuel purchased in this state for use outside this state by interstate commerce carriers, or fuels sold to exempt certified transportation providers will be subject to either the vehicle fuel taxes (chapter 82.36 or 82.38 RCW) or else the sales or use taxes of the Revenue Act (chapter 82.08 or 82.12 RCW). The fuel taxes apply to sales of fuel for on-highway consumption. The sales or use tax applies to fuel sold for consumption off the highways (e.g., boat fuel, or fuel for farm machinery, construction equipment, etc.).

(f) When persons purchase motor vehicle fuel or special fuel upon which either the fuel taxes of chapter 82.36 or 82.38 RCW have been paid, but the fuel is consumed off the highways, such persons are entitled to a refund of these taxes under the procedures of chapter 82.36 or 82.38 RCW. However, persons receiving refund of vehicle fuel taxes because of their off-highway consumption of the fuel in this state are subject to payment of the use tax of chapter 82.12 RCW on the value of the fuel. The director of the department of licensing administers the fuel tax refund provisions and will deduct from the amount of any such refunds the amount of use tax due.

(2) **Nonpollutant fuel.** RCW 82.38.075 provides for payment of an annual fee by users of nonpollutant fuel (natural gas and liquified petroleum gas, commonly called propane) in lieu of motor vehicle fuel tax which would otherwise be due. This fee is paid at the time of original and annual renewals of vehicle license registrations. Sales or use tax applies to sales of nonpollutant fuel and any other motor fuel only if the taxes of chapter 82.36 or 82.38 RCW are not paid. The "in lieu of" tax is merely an alternative method of paying tax due under chapter 82.38 RCW. Thus, when it is paid by a user, the user has no liability for sales or use tax on purchases of nonpollutant fuel for use in the motor vehicle.

(a) Fuel dealers should not collect sales or use tax on any nonpollutant fuel sold to Washington licensed vehicle owners for "on-highway" use when the vehicle displays a currently valid decal or other identifying device issued by the department of licensing.

(b) Nonpollutant fuels purchased for "off-highway" use, however, are not subject to the taxes of chapter 82.36 or 82.38 RCW and therefore the sales tax applies to dealer sales of fuel for "off-highway" use. If the nonpollutant fuel is pumped into the vehicle fuel tank, then the special fuel tax applies. However, this tax should have already been paid by Washington state licensed vehicle owners directly under the "in lieu of" provisions of RCW 82.38.075.

(c) The department recognizes that certain licensed special fuel users may find it more practical to accept deliveries of nonpollutant fuels into a bulk storage facility rather than into the fuel tanks of motor vehicles. Persons selling nonpollutant fuels to such bulk purchasers may obtain from the purchaser an exemption certificate in order to document entitlement to the exemption. The certificate will certify the amount of fuel which will be consumed by the buyer in propelling motor vehicles upon the highways of this state. This procedure is limited, however, to persons duly registered with the department. The registration number given on the certificate

ordinarily will be sufficient evidence that the purchaser is properly registered. The certificate shall be in substantially the following form:

**Certificate for Purchase of Nonpollutant Special Fuels**

Seller: .....  
Buyer: .....  
Buyer's DOR reporting No.: .....  
Buyer's Special Fuel User's License No.:

The undersigned hereby certifies that on this date he purchased (gallons/cubic feet) of nonpollutant fuel from the above named seller, and that delivery of the products so purchased was not made into the fuel tanks of a motor vehicle. The undersigned further certifies that of the purchase herein described:

1. (gallons/cubic feet) will be used to propel motor vehicles upon the highways of the state of Washington and that the "in lieu of" special fuel taxes of chapter 82.38 RCW have been paid.
2. (gallons/cubic feet) will be used in some other manner and that the retail sales tax is applicable to the purchaser of this quantity.

Date .....  
Name  
Office or Title

(d) Where it is not possible for a special fuel user licensee to determine at the time of purchase the exact proportion of the products purchased which will be consumed in propelling motor vehicles upon the highways of this state, the amount of such off-highway use special fuel may be estimated. In the event such an estimate is used, the purchaser must make an adjustment on a following excise tax return and pay use tax upon any portion of the fuel used for off-highway purposes upon which the retail sales tax was not paid.

(e) Certificates should be retained by the seller, as a part of his permanent records, and will be acceptable evidence of sales tax exemption upon sales of nonpollutant special fuel delivered in the manner described. When nonpollutant fuel is delivered by the seller into the bulk storage facilities of a special fuel user licensee or is otherwise sold to such buyers under conditions whereby it is not delivered into the fuel tanks of motor vehicles, it will be presumed that the entire amount of the products so sold will be subject to the retail sales tax unless the seller has obtained the certificate.

(f) Owners of out-of-state licensed vehicles who purchase propane and other nonpollutant fuel normally will not have paid the motor vehicle fuel tax or the special fuel tax. Thus, where the taxes of chapters 82.36 and 82.38 RCW have not been paid they owe sales tax on their purchases of this fuel for both on-highway or off-highway use.

(g) Accordingly, the following guidelines will prevail:

(i) All sales of nonpollutant fuel not placed in vehicle fuel tanks by the seller are subject to sales tax which the seller must collect and remit unless a certificate as described above is obtained from the purchaser.

(ii) All sales of motor vehicle fuel, special fuel, or non-pollutant fuel of any kind for "on-highway" use are subject to the fuel taxes of chapter 82.36 or 82.38 RCW.

(iii) The tax due on nonpollutant fuel for "on-highway" use (including propane) under chapter 82.38 RCW will already have been paid by Washington licensed vehicle owners so the seller need not collect additional state tax of any kind.

(iv) Non-Washington licensed vehicle owners who have not paid tax under either chapter 82.36 or 82.38 RCW must pay sales tax on all purchases of nonpollutant fuel (including propane) whether for on-highway or off-highway use.

[Statutory Authority: RCW 82.32.300. 91-15-022, § 458-20-126, filed 7/11/91, effective 8/11/91; 83-17-099 (Order ET 83-6), § 458-20-126, filed 8/23/83; 83-07-034 (Order ET 83-17), § 458-20-126, filed 3/15/83; Order ET 73-1, § 458-20-126, filed 11/2/73; Order ET 70-3, § 458-20-126 (Rule 126), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-127 Magazines and periodicals. (1) Retail sales tax.** Sales of magazines and periodicals to the reading public by persons operating news stands, book stores, cigar stores, drug stores and the like are sales at retail and are subject to the retail sales tax. Sales to newsstands or stores which are sales for resale are not subject to the retail sales tax.

When magazines or periodicals are distributed to the final purchaser by a distributor who effects such distribution through organizers, captains, or others selling from house to house or upon the streets, the news company or distributor is the one responsible for the collection and payment of the retail sales tax.

Such news companies or distributors shall collect from those selling the magazines or periodicals the retail sales tax upon the gross retail selling price of all magazines and periodicals taken by such persons.

Registration certificates are not required for organizers, captains, or other persons selling magazines or other periodicals under such circumstances. Branch certificates will be issued to the news company or magazine distributor for each of the local stations operated by such company.

(2) Where subscriptions or renewals of subscriptions are mailed directly by purchasers to publishers outside the state, the guidelines contained in WAC 458-20-193B and 458-20-221 apply to the obligation of publishers to collect sales or use tax.

This rule does not apply to the sale of newspapers. The law expressly exempts the sale of newspapers from the retail sales tax. (RCW 82.08.0253.) See WAC 458-20-143 for the definition of "newspaper."

(3) **Use tax.** Where no retail sales tax is paid upon the purchase of, or subscription to, a magazine or periodical, the use tax is subsequently payable upon the use of the magazine or periodical in this state by the purchaser or subscriber.

[Statutory Authority: RCW 82.32.300. 89-21-001, § 458-20-127, filed 10/5/89, effective 11/5/89; 83-07-034 (Order ET 83-17), § 458-20-127, filed 3/15/83; Order ET 70-3, § 458-20-127 (Rule 127), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-128 Real estate brokers and salesmen.**

**Definitions**

As used herein:

The terms "real estate broker" and "real estate salesman" mean, respectively, a person licensed as such under the provisions of chapter 18.85 RCW.

### Business and Occupation Tax

A real estate broker is engaged in business as an independent contractor and is taxable under the service and other activities classification upon the gross income of the business.

The measure of the tax on real estate commissions earned by the real estate broker shall be the gross commission earned by the particular real estate brokerage office including that portion of the commission paid to salesmen or associate brokers in the same office on a particular transaction: Provided, however, That where a real estate commission is divided between an originating brokerage office and a cooperating brokerage office on a particular transaction, each brokerage office shall pay the tax only upon their respective shares of said commission; and provided further, that where the brokerage office has paid the tax as provided herein, salesmen or associated brokers within the same brokerage office shall not be required to pay a similar tax upon the same transaction. RCW 82.04.255.

Thus, with the exception of cooperating brokerage offices, no deduction is allowed for commissions, fees or salaries paid by a broker to another broker or salesman, nor for other expenses of doing business.

The term "gross income of the business" includes gross income from commissions, fees and other emoluments however designated which the agent receives or becomes entitled to receive, but does not include amounts held in trust for others. (See also WAC 458-20-111, advances and reimbursements.) No deductions are allowed for dues, charges, and fees paid to multiple listing associations.

Real estate salesmen are presumed to be independent contractors. They are subject to the service and other activities classification of the business and occupation tax on gross income from real estate commissions and fees earned where the brokerage office at which the real estate salesman's license is posted has not paid the tax on the gross commission.

[Statutory Authority: RCW 82.32.300. 83-07-034 (Order ET 83-17), § 458-20-128, filed 3/15/83; Order ET 70-3, § 458-20-128 (Rule 128), filed 5/29/70, effective 7/1/70.]

### WAC 458-20-129 Gasoline service stations.

#### Gasoline Service Stations Business and Occupation Tax

**Retailing.** Persons operating gasoline service stations are taxable under the retailing classification upon the gross proceeds of sales of tangible personal property, from services rendered with respect to the cleaning or repair of such property, gross income from towing and gross income from automobile parking and storage. On computing tax there may be deducted from gross proceeds of sales the amount of state and federal gallonage tax on motor vehicle fuel included therein.

#### Retail Sales Tax

The retail sales tax applies upon the sale of tangible personal property (except vehicle fuel) on which the tax of either chapters 82.36 or 82.38 RCW is paid and upon charges for towing, automobile parking and storage and the sale of services rendered with respect to the cleaning or repairing of tangible personal property.

(2005 Ed.)

Thus the tax applies upon the sale of tires, accessories, etc., upon sales of labor and materials in respect to lubricating, greasing, tire changing, etc., and also upon washing, battery charging and repair work. (See also WAC 458-20-126.)

[Order ET 73-1, § 458-20-129, filed 11/2/73; Order ET 70-3, § 458-20-129 (Rule 129), 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)

[Title 458 WAC—p. 155]

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 458-20-132 Automobile dealers/demonstrator and executive vehicles.** (1) Introduction. This section accounts for the unique practices of the retail automobile dealer's industry and reflects administrative notice of the customs of this trade. The tax reporting formulas explained in this rule represent a compromise of tax liabilities and offsetting deductions. It recognizes that demonstrators and vehicles used by executives or persons associated with a dealer are actually used for limited periods of time without significantly affecting their marketability or retail selling value, and that such used vehicles have a high trade-in value when returned to inventory for sale.

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

(a) The terms "demonstration" and "demonstrator" mean the use of automobiles provided by dealers to their sales staff, without charge, for any personal or business reason other than (or in addition to) the mere display of such vehicles to prospective purchasers.

(b) The term "display" means the showing for sale of vehicles to prospective purchasers, at or near the dealer's premises, including the short term test driving, operating, and examining by prospective purchasers.

(c) The term "executive use vehicle" means any vehicle from sales inventory, used by any person associated with the automobile dealership for personal driving, other than for demonstration or display purposes as defined above, when such person does not have a recent model vehicle registered and licensed in that person's own name on which retail sales tax was paid.

(d) The term "recent model vehicle" refers to a car of the current model year or either of the two preceding model years.

(e) The terms "purchase price" and "total cost" mean the amount charged to the dealer for the purchase of a vehicle and includes any additional charges for accessories installed on the vehicle. If the vehicle was acquired through a trade-in by a customer, these terms then mean the trade-in value given to the customer by the dealer (with consideration of underallowances and overallowances) as well as any costs of refurbishing and repairs in preparing the vehicle for resale or use. These values will generally be the amounts shown as the vehicle cost within the dealer's inventory records.

(f) The phrase "pickup truck" refers only to trucks having a commercial pickup body rated at three-quarter ton capacity or less.

(3) Business and occupation tax. Automobile dealers are taxable under the retailing classification upon the sale or lease of automobiles to their employees or other representatives for personal use, including demonstration. The business and occupation tax does not apply upon the transfer of vehicles to employees or other representatives for their personal use, including demonstration where no sale occurs.

(4) Retail sales tax. The retail sales tax applies upon the sale or lease of automobiles, parts, and accessories by dealers to their employees or other representatives for the personal use by such persons. The retail sales tax does not apply to the display of automobiles where no sale takes place.

(5) Use tax. The use tax does not apply to the display of new or used automobiles by dealers, their employees or other representatives. Neither does use tax apply upon the personal use or demonstration of automobiles which have been sold or leased to dealers' employees or other representatives and upon which the retail sales tax has been paid. Also, use tax does not apply upon demonstrator vehicles if no such vehicles are actually used. However, where an automobile dealer purchases a passenger car or pickup truck without paying a retail sales tax and uses such car or truck for personal use or demonstration purposes, the use tax applies even if such personal car or demonstrator may later be sold by the dealer.

(6) Computation of use tax. For practical purposes, automobile dealers may elect to compute the use tax upon the use of demonstrators by sales staff on either a "one per one hundred vehicles sold" basis or on an "actual number of demonstrators used" basis. Use of the one per one hundred vehicles sold method will satisfy the use tax liability for personal or business use of demonstrators by sales staff employed by a new car dealer. However, the one per one hundred vehicles sold method will not satisfy the use tax liability for the personal or business use of vehicles by persons other than sales staff employed by the dealership.

(a) One per one hundred demonstrator reporting basis. The use of demonstrators is subject to the use tax on the basis of one demonstrator for each one hundred new automobiles and pickup trucks, or fractional part of such number, of all makes or models sold at retail including lease transactions during a calendar year. The use tax on each such demonstrator is measured by twenty-five percent of the average selling price, including dealer preparation, transportation, and factory or dealer installed accessories, of all makes and models of new passenger cars and new pickup trucks sold during the preceding calendar year divided by the number of such units sold: Provided, That the first such vehicle reported during any calendar year shall be subject to use tax measured by the full average retail selling price.

(i) The average retail selling price is computed by dividing the total retail sales of new passenger cars and trucks in the preceding year by the total units sold in the preceding year. Thus, for example, a dealer with \$3,000,000.00 in gross sales for the previous year, who sold 250 units that year derives an average selling price of \$12,000.00. The very first demonstrator use in the current year will be \$12,000.00 multiplied by the prevailing use tax rate. All subsequent demonstrators reported in the current year, based upon the formula of one demonstrator for each one hundred units sold, will be \$3,000.00 multiplied by the prevailing use tax rate.

(ii) The use tax is paid as of the date of the first sale in any calendar year and subsequently upon the sale of the one hundred and first automobile or pickup truck. If a dealer sold 340 units in the current year, use tax would be due on four units (the first at one hundred percent of the average retail selling price of all new vehicles sold in the preceding year and the remaining three at twenty-five percent of the previous year's average selling price of new vehicles).

(b) Actual demonstrator reporting basis. Dealers who decide to report use tax on demonstrators on an actual basis are required to report use tax on each vehicle assigned to demonstrator use. The value is computed in the same manner as under the one per one hundred basis. The first vehicle in the current year which is used for demonstrator use is taxable on the full average selling price of all new vehicles sold in the preceding year. Additional vehicles during the year which are put to use as demonstrators are taxable at twenty-five percent of the average selling price of new vehicles sold in the preceding year.

(c) The above method of computation applies only in respect to use by sales staff of demonstrator vehicles operated under dealer plates issued to the dealership. Vehicles which are required to be licensed other than to the dealership are presumed to be used substantially for purposes other than demonstration and are subject to the use tax measured by the actual value (purchase price) of such vehicles.

(d) Change in reporting method. When an automobile dealer has elected to report the use tax under the "one per one hundred basis," or upon the actual number of demonstrators used, it will not be permitted to change the manner of reporting without the written consent of the department of revenue.

Dealers are required to provide reasonably accurate records reflecting the use of dealer plates.

(7) Executive vehicles - personal use of vehicles by executives and persons associated with a dealer. When a dealer or a person associated with a dealer (firm executive, corporate officer, partner, or manager) does not have a recent model car registered and licensed in its own name and regularly uses either one or various new cars from inventory for personal driving (whether or not such cars are also used for demonstration purposes) the use tax applies to the value of one such car for each two calendar years in addition to the tax which applies to demonstrator use by sales staff. The measure of the use tax is the same as the measure for the computation of use tax on subsequently used demonstrator vehicles, that is, twenty-five percent of the average selling price of all makes and models of new passenger cars and pickup trucks sold at retail during the preceding year.

(a) The dealer may not include within the executive car reporting method the use of a new vehicle which is not of the type or model of new vehicles authorized to be sold by the dealer's franchise agreement. The executive car reporting method applies only to vehicles removed from inventory for use by the executives. Vehicles purchased specifically for use by the executives are taxable on the purchase price of each vehicle.

(b) No use tax in addition to that outlined above will be due if members of the immediate family of the executive also use a vehicle from inventory which is not otherwise licensed or required to be licensed. "Immediate family" includes only the spouse and children of the executive who live in the same household as the executive.

(8) Vehicles used by automobile manufacturers or distributors. Automobile manufacturers or distributors will often assign vehicles to their employee representatives for demonstration purposes, sales solicitation and personal use in the state. It is common practice to replace these vehicles frequently so that several vehicles may be used by a company representative during the course of the year. Under these cir-

cumstances, the department of revenue will allow computation of the use tax based on the average selling price of all new cars sold in the preceding year multiplied by the maximum complement of cars of each model year in use at any time during the year. The tax is due at the start of the model year. No use tax is due on the usual turnover or replacement of cars within the model year.

(9) Vehicles loaned to nonprofit or other organizations. The use tax applies to the value of vehicles that are required to be licensed and are loaned or donated to civic, religious, nonprofit or other organizations. The use tax may be computed for loaned vehicles on a value of two percent per month multiplied by the purchase price of the vehicle. Such tax is in addition to the tax on the use of demonstrators as provided in this rule. Vehicles that are not required to be licensed which are used for the purpose of promoting or participating in an event such as a parade, pageant, convention, or other community activity are not subject to the use tax provided the dealer obtains a temporary letter of authority or a special plate in accordance with RCW 46.16.048.

(10) Service department vehicles. Vehicles removed from inventory and committed to use as service vehicles, parts trucks, or service department loaner cars are subject to use tax. Dealers will often use vehicles for this purpose for only short periods of time. In recognition of this, dealers may elect to report use tax on either the purchase price of the vehicle or on two percent per month of the purchase price for each month or any fraction thereof that the vehicle is being used as a service vehicle or loaner. If use tax is reported based on total purchase price rather than on the two percent method, a trade-in deduction is allowed if the vehicle is returned to inventory and concurrently another vehicle replaces this vehicle for use as a loaner or service vehicle. The trade-in value is the wholesale value and generally will be the value recorded by the dealer in the inventory records exclusive of any refurbishing costs at the time the vehicle is returned to inventory.

(11) Personal use of used vehicles. Used vehicle dealers who provide used cars for personal use to their sales staff or managers without charge are subject to use tax on one vehicle per year for each sales person or manager to whom a used vehicle is provided. The value for use tax reporting is the average selling price of all used vehicles sold in the preceding year multiplied by twenty-five percent. The use tax is due in the month in which the vehicle is first used for personal use. New vehicle dealers will also be taxable in this manner for used cars furnished to sales staff or managers, but only if no new cars are provided during the course of the year to the manager or sales person. If both new and used cars are provided by a new vehicle dealer to a manager or sales person, use tax liability is as provided in subsections (6) and (7) of this section.

Where used car dealers satisfy the criteria for executive car use (no current model vehicle registered in the user's name) they are deemed to be using one executive or personal use vehicle per calendar year. In such cases use tax must be reported under the same formula as for subsequently used new demonstrator cars, that is, measured by twenty-five percent of the average selling price of all used cars sold during the preceding calendar year. Use tax also is due on all vehicles that are capitalized for accounting purposes or removed

from inventory and used for personal use. In such cases, the use tax measure is the purchase price of the vehicle. If the vehicle was acquired through a trade-in by a customer, the value will generally be that recorded by the dealer in the inventory records including any costs incurred in repairing or refurbishing the vehicle. Purchase of a new car by a used car dealer and used personally by the dealer or person associated with the dealer is subject to use tax measured by the purchase price of the vehicle.

(12) 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) Dealer A makes a specific charge each month to its sales person for the use of a vehicle. The sales person uses the vehicle for personal use as well as displaying the vehicle to potential customers. The dealer is required to report the gross charges under the retailing and retail sales tax classifications. No use tax is due on this vehicle.

(b) Dealer A assigns a vehicle from its new vehicle inventory for personal and business use to each of its new vehicle sales staff. No charge is made to the sales staff for the use of the vehicle. Dealer A is subject to use tax and may elect to report the tax on each vehicle assigned to the sales staff or may report on the "one per one hundred" method discussed above. Once a method is elected, the dealer may not change methods without approval from the department.

(c) Dealer A assigns a vehicle from its new vehicle inventory for personal use to its service manager. The service manager will use the vehicle for approximately ninety days when it will be replaced with another new vehicle. The service manager does not have a recent model car registered and licensed in his/her name. The dealer is subject to use tax on the vehicles assigned to the service manager. The tax will apply on only one vehicle every second year and will be measured by twenty-five percent of the average selling price of all new passenger cars and trucks sold in the previous year.

(d) Dealer A has the franchise to sell Chevrolets. Dealer A purchases a new Mercedes Benz for its personal use. The dealer attaches a "dealer plate" to this vehicle. Dealer A is subject to use tax on the purchase price of this vehicle. The dealer may not report use tax on the method authorized for reporting executive cars for this vehicle since the dealer is not an authorized dealer for this make of vehicle and the vehicle was not removed from the dealer's new vehicle inventory.

(e) Vehicle Manufacturer A has five employees who live and work from their homes in Washington. These employees call on dealers in Washington to resolve warranty disputes. Each employee is given a new vehicle at the start of the model year. The vehicle will be replaced every sixty days. Manufacturer A owes use tax on five vehicles at the start of the model year. No additional use tax will be due when these vehicles are replaced during the same model year. However, should a sixth employee be added during the course of the year, an additional vehicle will be subject to use tax.

(f) Dealer A uses a vehicle from inventory as a service truck. This vehicle is used to pick up parts from local suppliers, transportation for making emergency repairs on customer's vehicles, and similar activities. The dealer is liable for use tax on this vehicle. At its option, the dealer may report

use tax on two percent per month of the purchase price of the vehicle or may report use tax on the full value of the vehicle at the time it is put to use.

(g) Dealer A uses a new vehicle from inventory for his/her own personal use. Dealer A's spouse also uses a new vehicle. Dealer A's son who lives in the same household will occasionally use a new vehicle. All of these vehicles are operated with dealer plates attached. Dealer A does not have a recent model car licensed in Washington. Dealer A is subject to use tax on one vehicle as an "executive" car every second year as provided above.

(h) Dealer A loans a vehicle to a civic organization for a thirty-day period. The dealer is unable to obtain a temporary letter of authority for use of the vehicle under RCW 46.16.048. The dealer is liable for use tax, but the dealer may report the use tax based on two percent of the purchase price of the vehicle per month as the measure of the tax. No use tax would be due if the dealer had obtained a letter of authority under RCW 46.16.048 for the use of the vehicle.

(i) Dealer A, who sells new and used vehicles, assigns a used vehicle to the used car sales manager for personal use. However, if the sales manager exceeds the sales goals for the preceding quarter, the manager will be assigned a new vehicle for personal use for the following quarter. The manager will generally exceed the sales goal at least once during the year. Since the manager uses both a new and used car from inventory during the course of a year, use tax will be computed based on twenty-five percent of the average selling price of all new cars and trucks sold in the preceding year. The use tax will be due on one such vehicle every second year.

(j) Dealer A, who sells new and used vehicles, regularly assigns a used vehicle from inventory to its service manager for personal use. This vehicle is replaced approximately every sixty days. Use tax is due on one vehicle every year measured by twenty-five percent of the average selling price of all used vehicles sold in the preceding year.

[Statutory Authority: RCW 82.32.300, 92-05-066, § 458-20-132, filed 2/18/92, effective 3/20/92; 86-09-002 (Order ET 86-5), § 458-20-132, filed 4/3/86; 83-07-034 (Order ET 83-17), § 458-20-132, filed 3/15/83; Order ET 70-3, § 458-20-132 (Rule 132), filed 5/29/70, effective 7/1/70.]

### **WAC 458-20-133 Frozen food lockers.**

#### **Business and Occupation Tax**

Persons engaged in the business of renting frozen food lockers are taxable under the service and other business activities classification upon the gross income from rentals thereof.

When such persons also engage in the activities of curing, smoking, cutting or wrapping meat of and for consumers, or do any other act through which such meat is altered or improved, they become taxable under the retailing classification upon the gross charges made therefor.

#### **Retail Sales Tax**

The retail sales tax applies upon the charges made for curing, smoking, cutting or wrapping meat of and for consumers, or for any act through which such meat is altered or improved, and sellers are required to collect such tax from their customers.

(2005 Ed.)

The retail sales tax does not apply upon the charges made for the rental of frozen food lockers.

Issued May 1, 1949.

[Order ET 70-3, § 458-20-133 (Rule 133), filed 5/29/70, effective 7/1/70.]

### **WAC 458-20-134 Commercial or industrial use. (1)**

"The term 'commercial or industrial use' means the following uses of products, including by-products, by the extractor or manufacturer thereof:

- (a) Any use as a consumer; and
- (b) The manufacturing of articles, substances or commodities." (RCW 82.04.130.)
- (2) Following are examples of commercial or industrial use:
  - (a) The use of lumber by the manufacturer thereof to build a shed for its own use.
  - (b) The use of a motor truck by the manufacturer thereof as a service truck for itself.
  - (c) The use by a boat manufacturer of patterns, jigs and dies which it has manufactured.
  - (d) The use by a contractor building or improving a publicly owned road of crushed rock or pit run gravel which it has extracted.

(3) Business and occupation tax. Persons manufacturing or extracting tangible personal property for commercial or industrial use are subject to tax under the classifications manufacturing or extracting, as the case may be. The tax is measured by the value of the product manufactured or extracted and used. (See WAC 458-20-112 for definition and explanation of value of products.)

(4) Use tax. Persons manufacturing or extracting tangible personal property for commercial or industrial use are subject to use tax on the value of the articles used. (See WAC 458-20-178 for further explanation of the use tax and definition of value of the article used.)

(5) Exemptions. The following uses of articles produced for commercial or industrial use are expressly exempt of use tax.

(a) RCW 82.12.0263 exempts from the use tax the use of fuel by the extractor or manufacturer thereof when used directly in the operation of the particular extractive operation or manufacturing plant which produced or manufactured the same. (Example: The use of hog fuel to produce heat or power in the same plant which produced it.)

(b) Effective April 3, 1986, (chapter 231, Laws of 1986) property produced for use in manufacturing ferrosilicon which is subsequently used to make magnesium for sale is exempt of use tax if the primary purpose is to create a chemical reaction directly through contact with an ingredient of ferrosilicon.

(6) RCW 82.12.010 provides that in the case of articles manufactured for commercial or industrial use by manufacturers selling to the United States Department of Defense, the value of the articles used shall be determined according to the value of the ingredients of such articles, rather than the full value of the manufactured articles as is normally the case.

[Statutory Authority: RCW 82.32.300, 86-20-027 (Order 86-17), § 458-20-134, filed 9/23/86; 83-07-032 (Order ET 83-15), § 458-20-134, filed 3/15/83; Order ET 70-3, § 458-20-134 (Rule 134), filed 5/29/70, effective 7/1/70.]

[Title 458 WAC—p. 159]

**WAC 458-20-135 Extracting natural products.** (1) **Introduction.** This rule explains the application of the business and occupation (B&O), retail sales, and use taxes to persons extracting natural products. Persons extracting natural products often use the same extracted products in a manufacturing process. The rule provides guidance for determining when an extracting activity ends and the manufacturing activity begins. In addition to all other taxes, commercial fishermen may be subject to the enhanced food fish excise tax levied by chapter 82.27 RCW (Tax on enhanced food fish).

Persons engaging in activities associated with timber harvest operations should refer to WAC 458-20-13501 (Timber harvest operations). Persons engaged in a manufacturing activity should also refer to WAC 458-20-136 (Manufacturing, processing for hire, fabricating) and 458-20-13601 (Manufacturers and processors for hire—Sales and use tax exemptions for machinery and equipment).

(2) **Who is an "extractor"?** RCW 82.04.100 defines the term "extractor" to mean every person who, from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or for commercial or industrial use mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral, or other natural resource product. The term includes a person who fells, cuts, or takes timber, Christmas trees other than plantation Christmas trees, or other natural products. It also includes any person who takes fish, shellfish, or other sea or inland water foods or products.

(a) **Persons excluded from the definition of "extractor."** The term "extractor" does not include:

(i) Persons performing under contract the necessary labor or mechanical services for others (these persons are extractors for hire, see subsection (4) below); or

(ii) Persons who are farmers as defined in RCW 82.04.-213. Refer to WAC 458-20-209 and 458-20-210 for tax-reporting information for farmers and persons selling property to or performing horticultural services for farmers.

(b) **When an extractor is also a manufacturer.** An extractor may subsequently take an extracted product and use it as a raw material in a manufacturing process. The following examples explain when an extracting process ends and a manufacturing process begins for various situations. These examples should be used only as a general guide. A determination of when extracting ends and manufacturing begins for other situations can be made only after a review of all of the facts and circumstances.

(i) **Mining and quarrying.** Mining and quarrying operations are extracting activities, and generally include the screening, sorting, and piling of rock, sand, stone, gravel, or ore. For example, an operation that extracts rock, then screens, sorts, and with no further processing places the rock into piles for sale, is an extracting operation.

(A) The crushing and/or blending of rock, sand, stone, gravel, or ore are manufacturing activities. These are manufacturing activities whether or not the materials were previously screened or sorted.

(B) Screening, sorting, piling, or washing of the material, when the activity takes place in conjunction with crushing or blending at the site where the materials are taken or produced, is considered a part of the manufacturing operation if

it takes place after the first screen. If there is no separate first screen, only those activities subsequent to the materials being deposited into the screen are considered a part of the manufacturing operation.

(ii) **Commercial fishing.** Commercial fishing operations, including the taking of any fish in Washington waters (within the statutory limits of the state of Washington) and the taking of shellfish or other sea or inland water foods or products, are extracting activities. These activities often include the removal of meat from the shell and the icing of fish or sea products.

(A) A person growing, raising, or producing a product of aquaculture as defined in RCW 15.85.020 on the person's own land or on land in which the person has a present right of possession is considered a farmer. RCW 82.04.213.

(B) Cleaning (removal of the head, fins, or viscera), filleting, and/or steaking fish are manufacturing activities. The cooking of fish or seafood is also a manufacturing activity. Refer to RCW 82.04.260 and WAC 458-20-136 for information regarding the special B&O tax rate/classification that applies to the manufacturing of seafood products that remain in a raw, raw frozen, or raw salted state.

(C) The removal of meat from the shell or the icing of fish or sea products, when the activity is performed in conjunction with and at the site where manufacturing takes place (e.g., cooking the fish or seafood), is considered a part of the manufacturing operation.

(3) **Tax-reporting responsibilities for income received by extractors.** Extractors are subject to the extracting B&O tax upon the value of the extracted products. (See WAC 458-20-112 regarding "value of products.") Extractors who sell the products at retail or wholesale in this state are subject to either the retailing or wholesaling B&O tax, as the case may be. In such cases, the extractor must report under both the "production" (extracting) and "selling" (wholesaling or retailing) classifications of the B&O tax, and claim a tax credit under the multiple activities tax credit (MATC). See also WAC 458-20-19301 (Multiple activities tax credits) for a more detailed explanation of the MATC reporting requirements.

For example, Corporation quarries rock without further processing. Corporation sells and delivers the rock to Landscaper, who is located in Washington. Landscaper provides Corporation with a resale certificate. Corporation should report under both the extracting and wholesaling B&O tax classifications, and claim a MATC per WAC 458-20-19301. Had Corporation delivered the quarried rock to an out-of-state location, Corporation would have incurred only an extracting B&O tax liability.

(a) **When extractors use their products in a manufacturing process.** Persons who extract products, use these extracted products in a manufacturing process, and then sell the products all within Washington are subject to both "production" taxes (extracting and manufacturing) and the "selling" tax (wholesaling or retailing), and may claim the appropriate credits under the MATC. (See also WAC 458-20-136 on manufacturing.)

For example, Company quarries rock (an extracting activity), crushes and blends the rock (a manufacturing activity), and sells the resulting product at retail. The taxable value of the extracted rock is \$50,000 (the amount subject to the

extracting B&O tax). The taxable value of the crushed and blended rock is \$140,000 (the amount subject to the manufacturing B&O tax). The crushed and blended rock is sold for \$140,000 (the amount subject to the retailing B&O tax). Assume the tax rates for the extracting and manufacturing B&O taxes are .00484, and the tax rate for the retailing B&O tax is .00471. Company should compute its tax liability as follows:

(i) **Reporting B&O tax on the combined excise tax return:**

(A) Extracting B&O tax liability of \$242 ( $\$50,000 \times .00484$ );

(B) Manufacturing B&O tax liability of \$678 ( $\$140,000 \times .00484$ ); and

(C) Retailing B&O tax liability of \$659 ( $\$140,000 \times .00471$ ).

(ii) **Completing the multiple activities tax credit (Part II of Schedule C):**

Activity which results in a tax credit	Taxable Amount	Business and Occupation Tax Reported				Total Credit
		Extracting	Manufacturing	Wholesaling	Retailing	
Washington extracted products manufactured in Washington	50,000	242	242			242
Washington extracted products sold in Washington						
Washington manufactured products sold in Washington	140,000		678		659	659
			Multiple Activities Tax Credit Subtotal of taxes paid to Washington state			901
					Credit ID 800	901

Schedule C helps taxpayers calculate and claim the multiple activities tax credit provided by RCW 82.04.440. In the Schedule C example above, materials that a person extracts and then uses in a manufacturing process in Washington are entered at their value when extracting ceases and manufacturing begins (\$50,000 shown on the "Washington extracted products manufactured in Washington" line of the Schedule C). The taxable amount reported on the "Washington manufactured products sold in Washington" line of the Schedule C is the value of products at the point that manufacturing ceases (\$140,000), not simply the value added by the manufacturing activity. For more information and examples that are helpful in determining the value of products, refer to WAC 458-20-112 (Value of products).

(b) **When extractors sell their products at retail or wholesale.** An extractor making retail sales must collect and remit retail sales tax on all sales to consumers, unless the sale is exempt by law (e.g., see WAC 458-20-244 regarding sales of certain food products). Extractors making wholesale sales must obtain resale certificates from their customers to document the wholesale nature of any transaction. (Refer to WAC 458-20-102 on resale certificates.)

(4) **Tax-reporting responsibilities for income received by extractors for hire.** Persons performing extracting activities for extractors are subject to the extracting for hire B&O tax upon their gross income from those services.

For example, a person removing ore, waste, or overburden at a mining pit for the operator of the mining operation is an extractor for hire. Likewise, a person drilling to locate or provide access to a satisfactory grade of ore at the mining pit for the operator is also an extractor for hire. The gross income derived from these activities is subject to the extracting for hire B&O tax classification.

(5) **Mining or mineral rights.** Royalties or charges in the nature of royalties for granting another the privilege or right to remove minerals, rock, sand, or other natural resource product are subject to the service and other activities B&O

tax. The special B&O tax rate provided by RCW 82.04.2907 does not apply because this statute specifically excludes compensation received for any natural resource. Refer also to RCW 82.45.035 and WAC 458-61-520 (Mineral rights and mining claims) for more information regarding the sale of mineral rights and the real estate excise tax.

Income derived from the sale or rental of real property, whether designated as royalties or another term, is exempt of the B&O tax.

(6) **Tax liability with respect to purchases of equipment or supplies and property extracted and/or manufactured for commercial or industrial use.** The retail sales tax applies to all purchases of equipment, component parts of equipment, and supplies by persons engaging in extracting or extracting for hire activities unless a specific exemption applies. If the seller fails to collect the appropriate retail sales tax, the buyer is required to remit the retail sales tax (commonly referred to as "deferred retail sales tax") or use tax directly to the department.

(a) **Exemption available for certain manufacturing equipment.** RCW 82.08.02565 and 82.12.02565 provide retail sales and use tax exemptions for certain machinery and equipment used by manufacturers and processors for hire. While this exemption does not extend to extractors or extractors for hire, persons engaged in both extracting and manufacturing activities should refer to WAC 458-20-13601 for an explanation of how these exemptions may apply to them.

(b) **Property manufactured for commercial or industrial use.** Persons manufacturing tangible personal property for commercial or industrial use are subject to both the manufacturing B&O and use taxes upon the value of the property manufactured, unless a specific exemption applies. (See also WAC 458-20-134 on commercial or industrial use.)

If the person also extracts materials used in the manufacturing process, the extracting B&O tax is due on the value of the extracted materials and a MATC may be taken. For example, Quarry extracts rock, crushes the rock into desired size,

and then uses the crushed rock in its parking lot. The use of the crushed rock by Quarry in its parking lot is a commercial or industrial use. Quarry is subject to the extracting and manufacturing B&O taxes and may claim a MATC. Quarry is also responsible for remitting use tax on the value of the crushed rock applied to the parking lot.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). 04-01-126, § 458-20-135, filed 12/18/03, effective 1/18/04. Statutory Authority: RCW 82.32.300. 00-11-096, § 458-20-135, filed 5/17/00, effective 6/17/00; 86-09-058 (Order ET 86-7), § 458-20-135, filed 4/17/86; 83-07-034 (Order ET 83-17), § 458-20-135, filed 3/15/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-135, filed 6/27/78; Order ET 70-3, § 458-20-135 (Rule 135), filed 5/29/70, effective 7/1/70.]

### **WAC 458-20-13501 Timber harvest operations. (1)**

**Introduction.** Timber harvest operations generally consist of a variety of different activities. These activities are subject to different tax rates and/or classifications under the Revenue Act, depending on the nature of the activity.

(a) **Scope of rule.** This rule explains the application of the business and occupation (B&O), public utility, retail sales, and use taxes to persons performing activities associated with timber harvest operations. This rule explains how the public utility tax deduction available for the transportation of commodities to an export facility (RCW 82.16.050) applies to the transportation of logs (subsection (13)). It also explains how the B&O tax exemption provided by RCW 82.04.333 for small timber harvesters applies (subsection (14)).

(b) **Additional information sources for activities associated with timber harvest operations.** In addition to the taxes addressed in this rule, the forest excise and real estate excise taxes often apply to certain activities or sales associated with timber harvest operations. Persons engaged in timber harvest operations should refer to the following rules for additional information:

- (i) WAC 458-20-135 (Extracting natural products);
- (ii) WAC 458-20-136 (Manufacturing, processing for hire, fabricating);
- (iii) WAC 458-20-13601 (Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment);
- (iv) Chapter 458-40 WAC (Taxation of forest land and timber); and
- (v) Chapter 458-61 WAC (Real estate excise tax).

(c) **Information regarding short-rotation hardwoods.** Effective July 22, 2001, persons cultivating short-rotation hardwoods are considered farmers. Refer to WAC 458-20-122, 458-20-209, and 458-20-210 for tax-reporting information for farmers and persons selling property to or performing horticultural services for farmers. "Short-rotation hardwoods" are hardwood trees, such as, but not limited to, hybrid cottonwoods, cultivated by agricultural methods in growing cycles shorter than 15 years. Chapter 97, Laws of 2001.

(2) **Timber harvesters.** Timber harvesters may engage in business activities that require them to report under the extracting, manufacturing, and/or wholesaling or retailing B&O tax classifications.

The definition of "extractor" (RCW 82.04.100) as it relates to the harvesting of trees (other than plantation Christmas trees) is generally identical to the definition of "harvester" (RCW 84.33.035). An exception is the specific provi-

sions in the definition of "harvester" relating to trees harvested by federal, state, and local government entities. Both definitions include every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts (severs), or takes timber for sale or for commercial or industrial use. Both definitions exclude persons performing under contract the necessary labor or mechanical services for the extractor/harvester.

(a) **Timber purchasers to file information report.** A purchaser must report to the department of revenue purchases of privately owned timber in an amount exceeding two hundred thousand board feet, if purchased in a voluntary sale made in the ordinary course of business. The report must contain the purchaser's name and address, purchase information (dates, price, descriptions of land, acreage, and required improvements, the volume purchased, and cruise and thinning data) and all relevant information to the value of the timber purchased.

This report must be filed on or before the last day of the month following the purchase of the timber. A two hundred fifty dollar penalty may be imposed against a purchaser for each failure to satisfy the requirements for filing this report. These filing requirements become effective July 1, 2001, and are scheduled to expire July 1, 2004. Chapter 320, Laws of 2001.

(b) **Extracting.** The felling, cutting (severing from land), or taking of trees is an extracting activity. RCW 82.04.100. The extracting B&O tax applies to the value of the products, which is the value of the severed trees prior to any manufacturing activity.

(c) **Manufacturing.** The cutting into length (bucking), delimiting, and measuring (for bucking) of felled, cut (severed), or taken trees is a manufacturing activity. RCW 82.04.120. The manufacturing B&O tax applies to the value of the products, which is generally the gross proceeds of sale, whether the manufactured product is sold at retail or wholesale. Refer also to RCW 82.04.450 and WAC 458-20-112 for more information regarding the value of products.

If the product is delivered to a point outside the state, transportation costs incurred by the seller from the last point at which manufacturing takes place within Washington may be deducted from the gross proceeds of sale when determining the value of the product. For example, in each situation below presume that the timber harvester delivers the product to the customer at a point outside the state:

(i) If there is no further manufacturing subsequent to manufacturing conducted at the harvest site, the measure of tax is the gross proceeds of the sale of the logs less transportation costs incurred by the seller from the harvest site to delivery to the customer;

(ii) If logs are hauled to a facility for processing into lumber, poles, or piles, the measure of tax is the gross proceeds of sale of the lumber, poles, or piles less transportation costs incurred by the seller from the facility to delivery to the customer; and

(iii) If logs are hauled to a facility that only removes the bark, the measure of tax is the gross proceeds of sale of the logs less transportation costs incurred by the seller from the

harvest site to the customer. This is because the mere removal of bark is not a manufacturing activity.

However, if at that facility the debarking is a part of a manufacturing process (e.g., cutting the logs into lumber), the entire process, including the debarking, is a manufacturing activity. In such a case, the measure of tax is the gross proceeds of sale of the products manufactured from the logs less transportation costs incurred by the seller from the facility to the customer.

(d) **Selling.** The sale of the logs is subject to either the wholesaling or retailing B&O tax, as the case may be, unless exempt by law. The measure of tax is the gross proceeds of sale without any deduction for transportation costs.

(i) When determining the gross proceeds of sale, the timber harvester may not deduct amounts paid to others. For example, a timber harvester enters into a contract with another person to perform the necessary labor and mechanical services for the harvesting of timber. The harvester is to receive sixty percent of the log sale proceeds, and the person contracting to perform the services is to receive forty percent. The log buyer purchases the logs for five hundred thousand dollars. The buyer pays three hundred thousand dollars to the harvester and two hundred thousand dollars to the person performing the harvesting services. The harvester's gross proceeds of sale is five hundred thousand dollars.

(ii) Retail sales tax must be collected and remitted on all sales to consumers, again unless exempt by law. Sellers must obtain resale certificates from their customers to document the wholesale nature of any transaction. (Refer to WAC 458-20-102 on resale certificates.)

(e) **Multiple activities tax credit (MATC).** An extractor and/or manufacturer who sells the product he or she extracts and/or manufactures must report under each of the appropriate "production" (extracting and/or manufacturing) and "selling" (wholesaling or retailing) classifications of the B&O tax. RCW 82.04.440. The extractor and/or manufacturer may then claim a multiple activities tax credit (MATC) for the extracting tax (RCW 82.04.230) or manufacturing tax (RCW 82.04.240), provided the credit does not exceed the wholesaling or retailing tax liability. See WAC 458-20-19301 (Multiple activities tax credits) for a more detailed explanation of the MATC reporting requirements.

(3) **Extractors for hire.** Persons performing extracting activities (labor or mechanical services) for timber harvesters are subject to the extracting for hire B&O tax upon the gross income from those services. RCW 82.04.280(3). For example, a person severing trees owned by a timber harvester is performing an extracting activity, and is considered an extractor for hire with respect to those services. (See also WAC 458-20-135 for more information regarding extractors for hire.) The measure of tax is the gross income from the services. This income is not subject to the retail sales tax.

Extracting activities commonly performed by extractors for hire include, but are not limited to:

- (a) Cutting or severing trees;
- (b) Logging road construction or maintenance;
- (c) Activities related to and performed on timber-producing property that are necessary and incidental to timber operations, such as:
  - (i) Slash cleanup and burning;
  - (ii) Scarification;

- (iii) Stream and pond cleaning or rebuilding;
- (iv) Restoration of logging roadways to a natural state;
- (v) Restoration of wildlife habitat; and
- (vi) Fire trail work.

(4) **Processors for hire.** Persons performing labor or mechanical services for timber harvesters during the manufacturing portion of a timber harvest operation are subject to the processing for hire B&O tax. RCW 82.04.280(3). (See also WAC 458-20-136 for more information regarding processors for hire.) For example, a person delimiting and bucking severed trees at the harvest site is a processor for hire if another person owns the severed trees. A person transporting logs by helicopter from where the logs were severed to a landing from which the logs will be transported to a mill is generally a processor for hire. However, if the manufacturing process on those logs has not yet begun the helicopter operator is an extractor for hire. The measure of tax is the gross income from the services.

Persons performing processing for hire activities for consumers must collect retail sales tax on those services unless otherwise exempt by law.

(5) **Hauling activities.** Persons performing services for timber harvesters are often required to haul logs by motor vehicle from the harvest site exclusively or in part over public roads. The income attributable to this hauling activity is subject to the public utility tax. While the appropriate tax rate will generally be the motor transportation tax rate, refer to WAC 458-20-180 for more information regarding the distinction between the motor and urban transportation tax rates and classifications. If the hauling is exclusively performed over private roads, the service and other activities B&O tax applies. For example, Hauler A hauls logs over private roads from the harvest site to transfer site, at which the logs are unloaded. Hauler B hauls these logs over both private and public roads from the transfer site to a mill. The income received by Hauler A is subject to the service and other activities B&O tax. The income received by Hauler B is subject to the appropriate classification of the public utility tax.

(a) **Subcontracting hauls to a third party.** If the person subcontracts all of the hauling to a third party, the amount paid to the third party is subject to the appropriate tax classification for the hauling activity. If the hauling is subject to the public utility tax, a deduction for the amount paid to the third party may be claimed as jointly furnished services. RCW 82.16.050(3). The law provides no similar deduction for hauls subject to the service and other activities B&O tax.

For example, EFH is hired by a timber harvester to perform the necessary labor and services to fell trees, delimit and buck these trees to length, and haul the logs to a mill. EFH is paid two hundred fifty thousand dollars. EFH hires Trucking to haul all of the logs from the woods to the mill, in part over public roads. Trucking is paid one hundred thousand dollars. The amount of income received by EFH attributable to felling the trees is fifty-five thousand dollars, while ninety-five thousand dollars is attributable to delimiting and bucking the trees. EFH will report fifty-five thousand dollars and ninety-five thousand dollars under the extracting for hire and processing for hire B&O tax classifications, respectively. EFH will report one hundred thousand dollars under the appropriate public utility tax classification, and claim a deduction for

the full one hundred thousand dollars as "jointly furnished services."

(b) **Hauls using own equipment.** If the person hauls the product using his or her own equipment, and has established hauling rates that he or she pays to third-parties for comparable hauls, these rates may be used to establish the measure of tax for the hauling activity. Otherwise, the measure of the tax should be all costs attributable to the hauling activity including, but not limited to, the following costs relative to the hauling equipment: Depreciation; repair parts and repair labor; and wages and benefits for employees or compensation to contractors driving or maintaining the equipment. If appropriate records are not maintained to document these costs, the department will accept one-third of the gross income derived from a contract for all labor or mechanical services beginning with the cutting or severance of trees through the hauling services as the measure of the motor transportation tax.

(c) **Deduction for hauls to export facilities.** Refer also to subsection (13) below for information regarding the deduction available for certain log hauls to export facilities.

(6) **Common timber sale arrangements.** Persons who sell and/or take timber may incur either a B&O, timber excise, or real estate excise tax liability, or possibly both a B&O and a timber excise tax liability. There are a number of ways in which harvesting activities are conducted and timber is sold. The timing of the transfer of ownership of or the contractual right to sever standing timber determines which taxes are due and who is liable for remitting tax.

The following examples briefly identify two common types of timber sale arrangements and then state a conclusion as to the taxes that apply. These examples are not an all-inclusive list of the different types of timber sale arrangements, or the variations that may occur. This information should only be used as a general guide. The tax results of other types of arrangements must be determined only after a review of all the facts and circumstances. These examples presume that the trees being harvested are not Christmas trees, and that no participant is a federal, state, or local government entity.

(a) **Sale of standing timber (stumpage sales).** In this type of arrangement, Seller (landowner or other owner of the rights to standing timber) sells standing timber to Buyer. Buyer receives title to the timber from Seller before it is severed from the stump. Buyer may hire Contractor to perform the harvesting activity.

The tax consequences are:

(i) Seller is liable for real estate excise tax. A sale of real property has occurred under RCW 82.45.060. Refer to chapter 458-61 WAC for information on remitting the real estate excise tax.

(ii) Buyer is liable for both timber excise tax and B&O tax. Buyer is a "harvester" under RCW 84.33.035 and an "extractor" under RCW 82.04.100 because Buyer "from the...land of another under a right or license...fells, cuts (severs), or takes timber for sale or for commercial or industrial use." (See subsection (2).)

(iii) Contractor is liable for B&O tax and possibly public utility tax because Contractor "is performing under contract the necessary labor or mechanical services for the extractor/harvester." (See subsections (3), (4), and (5).)

(b) **Sale of harvested timber (logs).** In this type of sales transaction, Seller (landowner or other owner of the rights to

standing timber) hires Contractor to perform the harvesting activity. Contractor obtains all the necessary cutting permits, performs all of the harvesting activities from severing the trees to delivering the logs for scaling, and makes all the arrangements for the sale of the logs. Contractor, in effect, is performing the harvesting and marketing services for Seller. Seller retains title to the logs until after they are scaled, at which time title transfers to Buyer.

The tax consequences are:

(i) Seller is liable for both timber excise tax and B&O tax. Seller is a "harvester" under RCW 84.33.035 and an "extractor" under RCW 82.04.100 because Seller is "the person who from the person's own land or from the land of another under a right or license granted by lease or contract...fells, cuts (severs), or takes timber for sale or for commercial or industrial use." (See subsection (2).)

(ii) Contractor is liable for B&O tax and possibly public utility tax because Contractor "is performing under contract the necessary labor or mechanical services for the extractor/harvester." (See subsections (3), (4), and (5).)

(iii) There is no real estate excise tax liability because there is no sale of real property under chapter 82.45 RCW.

(7) **Equipment and supplies used in timber harvest operations.** The retail sales tax applies to all purchases of equipment, component parts of equipment, and supplies by persons engaging in timber operations unless a specific exemption applies. Purchases of fertilizer and spray materials (e.g., pesticides) for use in the cultivating of timber are also subject to the retail sales tax, unless purchased for resale as tangible personal property. If the seller fails to collect the appropriate retail sales tax, the buyer is required to remit the retail sales tax (commonly referred to as "deferred retail sales tax") or use tax directly to the department.

If a person using property in Washington incurs a use tax liability, and prior to that use paid a retail sales or use tax on the same property to another state or foreign country (or political subdivision of either), that person may claim a credit for those taxes against the Washington use tax liability.

(a) **Exemption available for certain manufacturing equipment.** RCW 82.08.02565 and 82.12.02565 provide a retail sales and use tax exemption for certain machinery and equipment used by manufacturers. Persons engaged in both extracting and manufacturing activities should refer to WAC 458-20-13601 for an explanation of how these exemptions may apply to them.

(b) **Property manufactured for commercial use.** Persons manufacturing tangible personal property for commercial or industrial use are subject to both the manufacturing B&O and use taxes upon the value of the property manufactured, unless a specific exemption applies. (See also WAC 458-20-134 on commercial or industrial use and WAC 458-20-112 on the value of products.) If the person also extracts the product, the extracting B&O tax is also due and a MATC may be taken.

For example, ABC Company severs trees, manufactures the logs into lumber, and then uses the lumber to construct an office building. The use of the lumber by ABC in constructing its office building is a commercial or industrial use. ABC is subject to the extracting and manufacturing B&O taxes and may claim a MATC. ABC is also responsible for remitting

use tax on the value of the lumber incorporated into the office building.

(8) **Seeds and seedlings.** Persons cultivating timber often purchase or collect tree seeds that are raised into tree seedlings. The growing of the seed may be performed by the person cultivating timber, or through the use of a third-party grower. In the case of a third-party grower, the seed is provided to the grower and tree seedlings are received back after a specified growing period.

(a) **Responsibility to remit retail sales or use tax.** The purchase of seeds or seedlings by a person cultivating timber is subject to the retail sales tax. If the seller fails to collect retail sales tax, the buyer must remit retail sales tax (commonly referred to as "deferred sales tax") or use tax, unless otherwise exempt by law. The use of seed collected by a person cultivating timber is subject to use tax. In the case of seed provided to third-party growers in Washington, the seed owner, and not the third-party grower, incurs any use tax liability upon the value of the seed. The value of seedlings brought into and used in Washington is subject to the use tax, unless retail sales or use tax was previously paid on the seedlings or on the seed from which the seedlings were grown.

(b) **Limited sales and use tax exemptions for conifer seeds.** Chapter 129, Laws of 2001, provides retail sales and use tax exemptions for certain sales and/or uses of conifer seeds. A deferral mechanism is also available if the buyer cannot at the time of purchase determine whether the purchase is in whole or in part eligible for the sales tax exemption.

(i) **Retail sales tax exemption.** Retail sales tax does not apply to the sale of conifer seed that is immediately placed into freezer storage operated by the seller if the seed is to be used for growing timber outside Washington. This exemption also applies to the sale of conifer seed to an Indian tribe or member and is to be used for growing timber in Indian country, again only if the seed is immediately placed into freezer storage operated by the seller. For the purposes of this exemption, "Indian country" has the meaning given in RCW 82.24.010.

This exemption applies only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate to substantiate the exempt nature of these sales.

(ii) **Deferring payment of retail sales tax if unable to determine whether purchase qualifies for the retail sales tax exemption.** If a buyer of conifer seed is normally engaged in growing timber both within and outside Washington and is not able to determine at the time of purchase whether the seed acquired, or the seedlings germinated from the seed acquired, will be used for growing timber within or outside Washington, the buyer may defer payment of the sales tax until it is determined that the seed, or seedlings germinated from the seed, will be planted for growing timber in Washington. A buyer that does not pay sales tax on the purchase of conifer seed and subsequently determines that the sale did not qualify for the tax exemption must remit to the department the amount of sales tax that would have been paid at the time of purchase. It is important to note that the sales tax liability may be deferred only if the seller immediately places the conifer seed into freezer storage operated by the seller.

(iii) **Tax paid at source deduction.** A buyer who pays retail sales tax on the purchase of conifer seed and subsequently determines that the sale qualifies for this tax exemption may claim a tax paid at source deduction on the buyer's tax return. The deduction is allowed only if the buyer keeps and preserves records that show from whom the seed was purchased, the date of the purchase, the amount of the purchase, and the tax that was paid.

(iv) **Use tax exemption.** Use tax does not apply to the use of conifer seed to grow seedlings if the seedlings are grown by a person other than the owner of the seed. This exemption applies only if the seedlings will be used for growing timber outside Washington, or if the owner of the conifer seed is an Indian tribe or member and the seedlings will be used for growing timber in Indian country. If the owner of conifer seed is not able to determine at the time the seed is used in a growing process whether the use of the seed qualifies for this exemption, the owner may defer payment of the use tax until it is determined that the seedlings will be planted for growing timber in Washington. For the purposes of this exemption, "Indian country" has the meaning given in RCW 82.24.010.

(9) **Activities and/or income incidental to timber operations.** The following activities or income, and the applicable tax classifications are often associated with timber operations. These tax-reporting requirements apply even if these activities are incidental to the person's primary business activity.

(a) **Taking other natural products from timberland.** The taking of natural products such as boughs, mushrooms, seeds, and cones for sale or commercial or industrial use is subject to the extracting B&O tax. The sale of these products is subject to the wholesaling or retailing B&O tax, as the case may be. Persons both extracting and selling natural products should refer to WAC 458-20-19301 (Multiple activities tax credit) for an explanation of the MATC reporting requirements. The retail sales tax applies to sales to consumers, unless a specific exemption applies.

(b) **Timber cruising, scaling, and access fees.** Charges for timber cruising, scaling services, and to allow others to use private roads are subject to the service and other activities B&O tax. This tax classification also applies to access fees for activities such as hunting, taking firewood, bough cutting, mushroom picking, or grazing. Charges to allow a person to take an identified quantity of tangible personal property are considered sales of that property (see subsection (9)(d) below).

(c) **Planting, thinning, and spraying.** The service and other activities B&O tax applies to the gross proceeds of sale received for planting trees or other vegetation, precommercial thinning, and spraying or applying fertilizers, pesticides, or herbicides.

(d) **Sales of firewood and Christmas trees.** Sales of firewood, Christmas trees, and other tangible personal property are either wholesale (subject to the wholesaling B&O tax) or retail (subject to the retailing B&O and retail sales taxes) sales, depending on the nature of the transaction. (See WAC 458-20-102 for an explanation of the documentation requirements for wholesale sales.) These sales are often made in the nature of charges allowing the buyer to select and

take an identified quantity of the property (e.g., six cords of firewood or two Christmas trees).

(e) **Unloading logs from logging trucks.** The unloading of logs from logging trucks onto rail cars at transfer points is subject to the retailing B&O and retail sales taxes when the activity is a rental of equipment with operator. RCW 82.04.050. (See also WAC 458-20-211 for more information regarding the rental of equipment with an operator.) If this activity is not a rental of equipment with operator, the activity is subject to the service and other activities B&O tax. The unloading of logs from logging trucks is subject to the stevedoring B&O tax if performed at an export facility as a part of or to await future movement in waterborne export. (See also WAC 458-20-193D for additional tax-reporting information regarding services associated with interstate or foreign commerce.)

(f) **Transporting logs by water.** Gross income received for transporting logs by water (e.g., log booming and rafting) or log patrols is subject to the "other public service business" classification of the public utility tax.

This tax classification applies to the gross income from this activity even if the person segregates a charge for boomsticks used while transporting the logs. In many cases logs will be towed to a location specified by the customer for storage. Any charges for boomsticks while the logs are stored are rentals of tangible personal property and subject to the retailing B&O and retail sales tax if to a consumer. (See also WAC 458-20-211 for more information regarding the rental of tangible personal property.)

(g) **Export sorting yard operations.** Export sorting yard operations generally consist of multiple activities. These activities can include, but are not necessarily limited to, services such as weighing, tagging, banding, appraising, and sorting of logs. Other incidental activities, such as the debarking, removal of imperfections such as crooks, knots, splits, and seams, and trimming of log ends to remove defects, are also performed as needed. Income received by persons performing the export sorting yard activities as identified in this subsection is subject to the service and other activities B&O tax.

(10) **Harvesting Christmas trees.** Persons growing, producing, or harvesting Christmas trees are either farmers or extractors under the law, as explained below. Activities generally associated with the harvesting of Christmas trees, such as cutting, trimming, shearing, and bailing (packaging) are not manufacturing activities because they are not the "cutting, delimiting, and measuring of felled, cut, or taken trees" under RCW 82.04.120.

(a) **Plantation Christmas tree operations.** Persons growing or producing plantation Christmas trees on their own lands or upon lands in which they have a present right of possession are farmers. RCW 82.04.213. Plantation Christmas trees are Christmas trees that are exempt from the timber excise tax under RCW 84.33.170. This requires that the Christmas trees be grown on land prepared by intensive cultivation and tilling, such as irrigating, plowing, or turning over the soil, and on which all unwanted plant growth is controlled continuously for the exclusive purpose of raising Christmas trees. RCW 82.04.035, 84.33.170, and 84.33.035.

(i) Wholesale sales of plantation Christmas trees by farmers are exempt from B&O tax. RCW 82.04.330. Retail

sales of plantation Christmas trees by farmers are subject to the retailing B&O and retail sales taxes. See also WAC 458-20-210 (Sales of agricultural products by farmers).

(ii) Farmers growing or producing plantation Christmas trees may purchase seeds, seedlings, fertilizer, and spray materials at wholesale. RCW 82.04.050 and 82.04.060. See also WAC 458-20-122 (Sales of feed, seed, fertilizer, spray materials, and other tangible personal property for farm use).

(iii) Persons performing cultivation or harvesting services for farmers are generally subject to the service and other activities B&O tax upon the gross income from those services. See also WAC 458-20-209 (Farming for hire and horticultural services performed for farmers).

(b) **Other Christmas tree operations.** Persons who either directly or by contracting with others for the necessary labor or mechanical services fell, cut, or take Christmas trees other than plantation Christmas trees are extractors. RCW 82.04.100. The tax-reporting instructions regarding extracting and extracting for hire activities provided elsewhere in this rule apply.

(11) **Timber harvest operations in conjunction with other land clearing or construction activities.** Persons sometimes engage in timber harvest operations in conjunction with the clearing of land for and/or the construction of residential communities, golf courses, parks, or other development. In such cases, these persons are engaging in separate business activities, each of which may be subject to different tax liabilities. Income attributable to the timber harvest operations is subject to the tax classifications as described elsewhere in this rule. Income attributable to the clearing of land for and/or the construction of the residential community, golf course, park, or other development is subject to the wholesaling, retailing, retail sales, or public road construction taxes, as the case may be. Refer to WAC 458-20-170, 458-20-171, and/or 458-20-172 for tax-reporting information regarding these construction activities. Persons cutting and/or trimming trees after the land is developed should refer to WAC 458-20-226 (Landscape and horticultural services).

(12) **Logging road construction and maintenance.** Constructing or maintaining logging roads (whether active or inactive) is considered an extracting activity. Income derived from this activity is subject to the extracting or extracting for hire B&O tax, as the case may be. This income is not subject to the retail sales tax. A person constructing or maintaining a logging road is a consumer of all materials incorporated into the logging road. The purchase and/or use of these materials is subject to either the retail sales or use tax.

(a) **Logging road materials provided without charge.** Landowners/timber harvesters may provide materials (e.g., crushed rock) without charge to persons constructing or maintaining logging roads. In such cases, while both the person providing the materials without charge and the person applying the materials to the road are consumers under the law, tax is due only once on the value of the materials. The person constructing or maintaining the roads is responsible for remitting use tax on the value of the materials, unless that person documents that the landowner and/or timber harvester previously remitted the appropriate retail sales or use tax.

Alternatively, the person may take a written statement from the landowner/timber harvester certifying that the landowner/timber harvester has remitted (for past periods) and/or

will remit (for future periods) all applicable retail sales or use taxes due on materials provided without charge. This statement must identify the period of time, not to exceed four years, for which it is effective. The statement must identify the landowner/timber harvester's tax reporting account number and must be signed by a person who is authorized to make such a representation.

(b) **Extracted and/or manufactured logging road materials.** Persons constructing or maintaining logging roads are subject to the B&O and use taxes on the value of applied materials they extract and/or manufacture from private pits, quarries, or other locations. The measure of tax is the value of the extracted or manufactured products, as the case may be. See WAC 458-20-112 for additional information regarding how to determine the "value of products."

(i) If the person either directly or by contracting with others extracts and crushes, washes, screens, or blends materials to be incorporated into the road, extracting B&O tax is due on the value of the extracted product before any manufacturing. The manufacturing B&O and use taxes are also due upon the value of manufactured product. If the "cost basis" is the appropriate method for determining the value of products under WAC 458-20-112, this value includes the cost of transportation to a processing point, but does not include any transportation from the processing point to the road site. A MATC may be taken under the B&O tax classification as explained in WAC 458-20-19301.

(ii) In the case of fill dirt, sand, gravel, or rock that is extracted from a location away from the logging road site, but not further processed, extracting B&O and use taxes are due upon the value of the extracted product. If the "cost of production basis" is the appropriate method for determining the value of products under WAC 458-20-112, this value does not include transportation costs to the road site.

(iii) The mere severance of fill dirt, sand, gravel, or rock from outcroppings at the side of a logging road for placement in the road is a part of the logging road construction or maintenance activity. The person incorporating these materials

into the road does not incur an extracting and/or use tax liability with respect to these materials.

(13) **Deduction for hauling logs to export yards.** RCW 82.16.050 provides a public utility tax deduction for amounts derived from the transportation of commodities from points of origin within this state to an export elevator, wharf, dock, or shipside ("export facility") on tidewater or navigable tributaries of tidewaters. The commodities must be forwarded from the facility, without intervening transportation, by vessel and in their original form, to an interstate or foreign destination. No deduction is allowed when the point of origin and the point of delivery are located within the corporate limits of the same city or town.

(a) **Conditions for deduction.** This deduction is available only to the person making the last haul, not including hauls within the export facility, before the logs are put on the ship. This deduction is not available if the haul starts in the same city or town where the export facility is located.

The deduction is available only if:

(i) The logs eventually go by vessel to another state or country; and

(ii) The form of the logs does not change between the time the logs are delivered to the export facility and the time the logs are put on the ship. The mere removal of bark from the logs (debarking) and/or the incidental removal of imperfections (see subsection (9)(g), above) while the logs are at the export facility is not itself a manufacturing activity, nor does it result in a change in the "original form" of the logs as contemplated by RCW 82.16.050.

(b) **Documentation requirements for deduction.** The log hauler must prove entitlement to the deduction. Delivery tickets that show delivery to an export facility are not, alone, sufficient proof. A certificate from the export facility operator is acceptable additional proof if it is substantially in the following form. Rather than a certificate covering each haul, a "blanket certificate" may be used for a one-year period of time if no significant changes in operation will occur within this period of time.

#### **Exemption certificate for logs delivered to an export facility**

The undersigned export facility operator hereby certifies:

That \_\_\_\_\_ percentage or more of all logs hauled to the storage facilities at \_\_\_\_\_, the same located on tidewater or navigable tributaries thereto, will be shipped by vessel directly to an out-of-state or foreign destination and the following conditions will be met:

1. The logs will not go through a process to change the form of the logs before shipment to another state or country.
2. There will be no intervening transportation of these logs from the time of receipt at the export facility until loaded on the vessel for the interstate or foreign journey.

Trucking Firm \_\_\_\_\_

Trucking Firm Address \_\_\_\_\_

Trucking Firm UBI# \_\_\_\_\_

Export Facility Operator \_\_\_\_\_

Operator UBI# \_\_\_\_\_

Person Giving Statement \_\_\_\_\_

Title of Person Giving Statement \_\_\_\_\_

Date \_\_\_\_\_

(c) **Examples.** The following examples identify a number of facts and then state a conclusion regarding the deductibility of income derived from hauling logs to export facilities. Unless specifically provided otherwise, presume that the

logs are shipped directly to another country from the export facility. 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.

(i) Logs are hauled from the harvest site to an export facility. While the bark will be removed from fifty percent of the logs, no other processing takes place. Because the mere removal of bark is not considered a change in the form of the logs, the export facility may provide a certificate in the above form indicating that all logs at this facility will ultimately be shipped to another country. The hauler may then claim a deduction for one hundred percent of this haul.

(ii) Logs are hauled from the harvest site to an export sorting area. At this location further sorting takes place and eighty percent of the logs are hauled approximately one mile on public roads to shipside and shipped to another country. The other twenty percent of the logs are sold to local sawmills. The haul to the sorting yard is subject to tax because there is another haul from the sorting yard to shipside. It is immaterial that the hauler may be paid based on an "export" rate.

The haul from the sorting yard to shipside is deductible if it does not start and end within the corporate limits of the same city or town, and the hauler obtains the appropriate exemption certificate. The haul to the local sawmills is not deductible.

(iii) Logs are hauled from the harvest site to an export facility. The hauler is aware that all logs will need to be hauled a distance of approximately one-half mile across the export facility yard to reach the ship when it arrives at the dock. The dock is located next to the export facility. The hauler may take the deduction, provided the appropriate exemption certificate is obtained. Movement of the logs within the export facility is not an intervening haul.

**(14) Small timber harvesters—Business and occupation tax exemption.** RCW 82.04.333 provides a limited exemption from B&O tax for small harvesters whose value of product harvested, gross proceeds of log sales, or gross income of the timber harvesting business is less than one hundred thousand dollars per year.

A "small harvester" is a harvester who takes timber in an amount not exceeding two million board feet in a calendar year. It is important to note that whenever the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein, fells, cuts, or takes timber for sale or for commercial or industrial use, not exceeding these amounts, the small harvester is the first person other than the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein, who acquires title to or a possessory interest in such timber. RCW 84.33.073.

**(a) Registration - tax return.** A person whose only business activity is as small harvester of timber and whose gross income in a calendar year from the harvesting of timber is less than one hundred thousand dollars, is not required to register with the department for B&O tax purposes. This person must nonetheless register with the forest tax division of the department for payment of the timber excise tax. (See also chapters 84.33 RCW and 458-40 WAC for more information regarding the timber excise tax.)

An unregistered small harvester of timber is required to register with the department for B&O tax purposes in the month when the gross proceeds received during a calendar

year from the timber harvested exceed the exempt amount. The harvester must then file and report on a return all proceeds received during the calendar year to the time when the filing of a return is required.

**(b) 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. In each example, the harvester must register with the department's forest tax division for the payment of timber excise tax, and must report under the appropriate tax classifications as described above in this rule.

(i) A small harvester not currently registered with the department for B&O tax purposes harvests timber in June and again in August, receiving fifty thousand dollars in June and two hundred thousand dollars in August from the sale of the logs harvested.

B&O tax is due on the entire two hundred fifty thousand dollars received from the sale of logs. The small harvester must register with the department in August when the receipts from the timber harvesting business exceed the one hundred thousand dollars exemption amount. A tax return is to be filed in the appropriate period as provided in WAC 458-20-22801.

(ii) A person is primarily engaged in another business that is currently registered with the department for B&O tax purposes and has monthly receipts of two hundred fifty thousand dollars. The person is a small harvester under RCW 84.33.073 and receives sixty thousand dollars from the sale of the timber harvested.

B&O tax remains due on two hundred fifty thousand dollars from the other business activities. The sixty thousand dollars received from the sale of logs is exempt and is not reported on the person's combined excise tax return. The exemption applies to the activity of harvesting timber and receipts from the sale of logs are not combined with the receipts from other business activities to make the sale of logs taxable.

(iii) A small harvester not otherwise registered with the department for B&O tax purposes contracts with a logging company to provide the labor and mechanical services of the harvesting. The small harvester is to receive sixty percent and the logging company forty percent of the log sale proceeds. The log purchaser pays two hundred fifty thousand dollars for the logs during the calendar year, paying one hundred fifty thousand dollars to the small harvester and one hundred thousand dollars to the logging company.

For the small harvester, B&O tax is due on the entire two hundred fifty thousand dollars paid for the logs. The small harvester is taxed upon the gross sales price of the logs without deduction for the amount paid to the logging company. RCW 82.04.070. The small harvester must register with the department for B&O tax purposes in the month when, for the calendar year, the proceeds from all timber harvested exceed one hundred thousand dollars. The logging company is taxed on the one hundred thousand dollars it received under the appropriate business tax classification(s). The logging company is not a small harvester as defined in RCW 84.33.073.

[Statutory Authority: RCW 82.32.300, 01-13-042, § 458-20-13501, filed 6/14/01, effective 7/15/01.]

**WAC 458-20-136 Manufacturing, processing for hire, fabricating.** (1) **Introduction.** This rule explains the application of the business and occupation (B&O), retail sales, and use taxes to manufacturers. It identifies the special tax classifications and rates that apply to specific manufacturing activities. The law provides a retail sales and use tax exemption for certain machinery and equipment used by manufacturers. Refer to RCW 82.08.02565, 82.12.02565, and WAC 458-20-13601 (Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment) for more information regarding this exemption. Persons engaging in both extracting and manufacturing activities should also refer to WAC 458-20-135 (Extracting natural products) and 458-20-13501 (Timber harvest operations).

(2) **Manufacturing activities.** RCW 82.04.120 explains that the phrase "to manufacture" embraces all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different, or useful substance or articles of tangible personal property is produced for sale or commercial or industrial use. The phrase includes the production or fabrication of special-made or custom-made articles.

(a) "To manufacture" includes, but is not limited to:

(i) The production or fabrication of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician, effective October 1, 1998 (chapter 168, Laws of 1998);

(ii) The cutting, delimiting, and measuring of felled, cut, or taken trees;

(iii) The crushing and/or blending of rock, sand, stone, gravel, or ore; and

(iv) The cleaning (removal of the head, fins, or viscera) of fish.

(b) "To manufacture" does not include:

(i) The conditioning of seed for use in planting;

(ii) The cubing of hay or alfalfa;

(iii) The growing, harvesting, or producing of agricultural products;

(iv) The cutting, grading, or ice glazing of seafood which has been cooked, frozen, or canned outside this state;

(v) The packing of agricultural products, including sorting, washing, rinsing, grading, waxing, treating with fungicide, packaging, chilling, or placing in controlled atmospheric storage; and

(vi) The repairing and reconditioning of tangible personal property for others.

(3) **Manufacturers and processors for hire.** RCW 82.04.110 defines "manufacturer" to mean every person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or for commercial or industrial use from his or her own materials or ingredients any articles, substances, or commodities. However, a nonresident of the state of Washington who is the owner of materials processed for it in this state by a processor for hire is not deemed to be a manufacturer in this state because of that processing. Additionally, any owner of materials from which a nuclear fuel assembly is fabricated in this state by a processor for hire is also not deemed to be a manufacturer because of such processing.

(a) The term "processor for hire" means a person who performs labor and mechanical services upon property

(2005 Ed.)

belonging to others so that as a result a new, different, or useful article of tangible personal property is produced for sale or commercial or industrial use. Thus, a processor for hire is any person who would be a manufacturer if that person were performing the labor and mechanical services upon his or her own materials.

(b) If a particular activity is excluded from the definition of "to manufacture," a person performing the labor and mechanical services upon materials owned by another is not a processor for hire. For example, the cutting, grading, or ice glazing of seafood that has been cooked, frozen, or canned outside this state is excluded from the definition of "to manufacture." Because of this exclusion, a person who performs these activities on seafood belonging to others is not a "processor for hire."

(c) A person who produces aluminum master alloys, regardless of the portion of the aluminum provided by that person's customer, is considered a "processor for hire." RCW 82.04.110. For the purpose of this specific provision, the term "aluminum master alloy" means an alloy registered with the Aluminum Association as a grain refiner or a hardener alloy using the American National Standards Institute designating system H35.3.

(d) In some instances, a person furnishing the labor and mechanical services undertakes to produce an article, substance, or commodity from materials or ingredients furnished in part by the person and in part by the customer. Depending on the circumstances, this person will either be considered a manufacturer or a processor for hire.

(i) If the person furnishing the labor and mechanical services furnishes materials constituting less than twenty percent of the value of all of the materials or ingredients which become a part of the produced product, that person will be presumed to be processing for hire.

(ii) The person furnishing the labor and mechanical services will be presumed to be a manufacturer if the value of the materials or ingredients furnished by the person is equal to or greater than twenty percent of the total value of all materials or ingredients which become a part of the produced product.

(iii) If the person furnishing the labor and mechanical services supplies, sells, or furnishes to the customer, before processing, twenty percent or more in value of the materials or ingredients from which the product is produced, the person furnishing the labor and mechanical services will be deemed to be the owner of the materials and considered a manufacturer.

(e) There are occasions where a manufacturing facility and ingredients used in the manufacturing process are owned by one person, while another person performs the actual manufacturing activity. The person operating the facility and performing the manufacturing activity is a processor for hire. The owner of the facility and ingredients is the manufacturer.

(4) **Tax-reporting responsibilities for income received by manufacturers and processors for hire.** Persons who manufacture products in this state are subject to the manufacturing B&O tax upon the value of the products, including by-products (see also WAC 458-20-112 regarding "value of products"), unless the activity qualifies for one of the special tax rates discussed in subsection (5), below. See also WAC

458-20-193 (Inbound and outbound interstate sales of tangible personal property).

For example, Corporation A stains door panels that it purchases. Corporation A also affixes hinges, guide wheels, and pivots to unstained door panels. Corporation B shears steel sheets to dimension, and slits steel coils to customer's requirements. The resulting products are sold and delivered to out-of-state customers. Corporation A and Corporation B are subject to the manufacturing B&O tax upon the value of these manufactured products. These manufacturing activities take place in Washington, even though the manufactured product is delivered out-of-state. A credit may be available if a gross receipts tax is paid on the selling activity to another state. (See also WAC 458-20-19301 on multiple activities tax credits.)

(a) Manufacturers who sell their products at retail or wholesale in this state are also subject to either the retailing or wholesaling B&O tax, as the case may be. In such cases, the manufacturer must report under both the "production" (manufacturing) and "selling" (wholesaling or retailing) classifications of the B&O tax, and claim a multiple activities tax credit (MATC). See also WAC 458-20-19301 for a more detailed explanation of the MATC reporting requirements.

For example, Incorporated purchases raw fish that it fillets and/or steaks. The resulting product is then sold at wholesale in its raw form to customers located in Washington. Incorporated is subject to both the manufacturing raw seafood B&O tax upon the value of the manufactured product, and the wholesaling B&O tax upon the gross proceeds of sale. Incorporated is entitled to claim a MATC.

(b) Processors for hire are subject to the processing for hire B&O tax upon the total charge made to those services, including any charge for materials furnished by the processor. The B&O tax applies whether the resulting product is delivered to the customer within or outside this state.

(c) The measure of tax for manufacturers and processors for hire with respect to "cost-plus" or "time and material" contracts includes the amount of profit or fee above cost received, plus the reimbursements or prepayments received on account of materials and supplies, labor costs, taxes paid, payments made to subcontractors, and all other costs and expenses incurred by the manufacturer or processor for hire.

(d) A manufacturing B&O tax exemption is available for the cleaning of fish, if the cleaning activities are limited to the removal of the head, fins, or viscera from fresh fish without further processing other than freezing. RCW 82.04.2403. Processors for hire performing these cleaning activities remain subject to the processing for hire B&O tax.

(e) Amounts received by hop growers or dealers for hops shipped outside the state of Washington for first use, even though the hops have been processed into extract, pellets, or powder in this state are exempt from the B&O tax. RCW 82.04.337. However, a processor for hire with respect to hops is not exempt on amounts charged for processing these products.

(f) Manufacturers and processors for hire making retail sales must collect and remit retail sales tax on all sales to consumers, unless the sale is exempt by law (e.g., see WAC 458-20-244 regarding sales of certain food products). A manufacturer or processor for hire making wholesale sales must obtain resale certificates from the customers to document the

wholesale nature of any transaction. (Refer to WAC 458-20-102 on resale certificates.)

(5) **Manufacturing—Special tax rates/classifications.** RCW 82.04.260 provides several special B&O tax rates/classifications for manufacturers engaging in certain manufacturing activities. In all such cases the principles set forth in subsection (4) of this rule concerning multiple activities and the resulting credit provisions are also applicable.

(a) Special tax classifications/rates are provided for the activities of:

(i) Manufacturing wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, meal, or canola by-products, or sunflower seeds into sunflower oil;

(ii) Splitting or processing dried peas;

(iii) Manufacturing seafood products, which remain in a raw, raw frozen, or raw salted state;

(iv) Manufacturing by canning, preserving, freezing, processing, or dehydrating fresh fruits and vegetables;

(v) Slaughtering, breaking, and/or processing perishable meat products and/or selling the same at wholesale and not at retail; and

(vi) Manufacturing nuclear fuel assemblies.

(6) **Repairing and/or refurbishing distinguished from manufacturing.** The term "to manufacture" does not include the repair or refurbishing of tangible personal property. To be considered "manufacturing," the application of labor or skill to materials must result in a "new, different, or useful article." If the activity merely restores an existing article of tangible personal property to its original utility, the activity is considered a repair or refurbishing of that property. (See WAC 458-20-173 for tax-reporting information on repairs.)

(a) In making a determination whether an activity is manufacturing as opposed to a repair or reconditioning activity, consideration is given to a variety of factors including, but not limited to:

(i) Whether the activity merely restores or prolongs the useful life of the article;

(ii) Whether the activity significantly enhances the article's basic qualities, properties, or functional nature; and

(iii) Whether the activity is so extensive that a new, different, or useful article results.

(b) The following example illustrates the distinction between a manufacturing activity resulting in a new, different, or useful article, and the mere repair or refurbishment of an existing article. This example should only be used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances. In cases of uncertainty, persons should contact the department for a ruling.

(i) Corporation rebuilds engine cores. When received, each core is assigned an individual identification number and disassembled. The cylinder head, connecting rods, crankshaft, valves, springs, nuts, and bolts are all removed and retained for reassembly into the same engine core. Unusable components are discarded. The block is then baked to burn off dirt and impurities, then blasted to remove any residue. The cylinder walls are rebored because of wear and tear. The retained components are cleaned, and if needed straightened and/or reground. Corporation then reassembles the cores, replacing the pistons, gaskets, timing gears, crankshaft bearings, and oil pumps with new parts. The components retained

from the original engine core are incorporated only into that same core.

(ii) Corporation is under these circumstances not engaging in a manufacturing activity. The engine cores are restored to their original condition, albeit with a slightly larger displacement because of wear and tear. The cores have retained their original functional nature as they run with approximately the same efficiency and horsepower. The rebuilding of these cores is not so extensive as to result in a new, different, or useful article. Each engine core has retained its identity because all reusable components of the original core are reassembled in the same core. Corporation has taken an existing article and extended its useful life.

**(7) Combining and/or assembly of products to achieve a special purpose as manufacturing.** The physical assembly of products from various components is manufacturing because it results in a "new, different, or useful" product, even if the cost of the assembly activity is minimal when compared with the cost of the components. For example, the bolting of a motor to a pump, whether bolted directly or by using a coupling, is a manufacturing activity. Once physically joined, the resulting product is capable of performing a pumping function that the separate components cannot.

(a) In some cases the assembly may consist solely of combining parts from various suppliers to create an entirely different product that is sold as a kit for assembly by the purchaser. In these situations, the manufacturing B&O tax applies even if the person combining the parts does not completely assemble the components, but sells them as a package. For example, a person who purchases component parts from various suppliers to create a wheelbarrow, which will be sold in a "kit" or "knock-down" condition with some assembly required by purchaser, is a manufacturer. The purchaser of the wheelbarrow kit is not a manufacturer, however, even though the purchaser must attach the handles and wheel.

(b) The department considers various factors in determining if a person combining various items into a single package is engaged in a manufacturing activity. Any single one of the following factors is not considered conclusive evidence of a manufacturing activity, though the presence of one or more of these factors raises a presumption that a manufacturing activity is being performed:

- (i) The ingredients are purchased from various suppliers;
- (ii) The person combining the ingredients attaches his or her own label to the resulting product;
- (iii) The ingredients are purchased in bulk and broken down to smaller sizes;
- (iv) The combined product is marketed at a substantially different value from the selling price of the individual components; and
- (v) The person combining the items does not sell the individual items except within the package.

(c) The following examples should be used only as a general guide. The specific facts and circumstances of each situation must be carefully examined to determine if the combining of ingredients is a manufacturing activity or merely a packaging or marketing activity. In cases of uncertainty, persons combining items into special purpose packages should contact the department for a ruling.

(i) Combining prepackaged food products and gift items into a wicker basket for sale as a gift basket is not a manufacturing activity when:

- (A) The products combined in the basket retain their original packaging;
- (B) The person does not attach his or her own labels to the components or the combined basket;
- (C) The person maintains an inventory for sale of the individual components and does sell these items in this manner as well as the combined baskets.

(ii) Combining bulk food products and gift items into a wicker basket for sale as a gift basket is a manufacturing activity when:

- (A) The bulk food products purchased by the taxpayer are broken into smaller quantities; and
- (B) The taxpayer attaches its own labels to the combined basket.

(iii) Combining components into a kit for sale is not a manufacturing activity when:

- (A) All components are conceived, designed, and specifically manufactured by and at the person's direction to be used with each other;
- (B) The person's label is attached to or imprinted upon the components by supplier;
- (C) The person packages the components with no further assembly, connection, reconfiguration, change, or processing.

**(8) Tax liability with respect to purchases of equipment or supplies and property manufactured for commercial or industrial use.** The retail sales tax applies to purchases of tangible personal property by manufacturers and processors for hire unless the property becomes an ingredient or component part of a new article produced for sale, or is a chemical used in the processing of an article for sale. If the seller fails to collect the appropriate retail sales tax, the buyer is required to remit the retail sales tax (commonly referred to as "deferred retail sales tax") or use tax directly to the department. Refer to WAC 458-20-113 for additional information about what qualifies as an ingredient or component or a chemical used in processing.

(a) RCW 82.08.02565 and 82.12.02565 provide a retail sales and use tax exemption for certain machinery and equipment used by manufacturers and/or processors for hire. Refer to WAC 458-20-13601 for additional information regarding how these exemptions apply.

(b) Persons manufacturing tangible personal property for commercial or industrial use are subject to both the manufacturing B&O and use taxes upon the value of the property manufactured, unless a specific exemption applies. (See also WAC 458-20-134 on commercial or industrial use.) Persons who also extract the product used as an ingredient in a manufacturing process should refer to WAC 458-20-135 for additional information regarding their tax-reporting responsibilities.

[Statutory Authority: RCW 82.32.300. 00-11-096, § 458-20-136, filed 5/17/00, effective 6/17/00; 88-21-014 (Order 88-7), § 458-20-136, filed 10/7/88; 86-20-027 (Order 86-17), § 458-20-136, filed 9/23/86; 83-07-032 (Order ET 83-15), § 458-20-136, filed 3/15/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-136, filed 6/27/78; Order ET 71-1, § 458-20-136, filed 7/22/71; Order ET 70-3, § 458-20-136 (Rule 136), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-13601 Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment.** (1) **Introduction.** This rule explains the retail sales and use tax exemption provided by RCW 82.08.02565 and 82.12.02565 for sales to or use by manufacturers or processors for hire of machinery and equipment (M&E) used directly in a manufacturing operation or research and development operation. This rule explains the requirements that must be met to substantiate a claim of exemption. For information regarding the distressed area sales and use tax deferral refer to WAC 458-20-24001 and chapter 82.60 RCW. For the high technology business sales and use tax deferral refer to chapter 82.63 RCW.

On and after July 25, 1999, a person engaged in testing for manufacturers or processors for hire is eligible to take the exemption, subject to the requirements explained below.

(2) **Legislative history.** The manufacturing machinery and equipment exemption, codified as RCW 82.08.02565 and 82.12.02565, became effective July 1, 1995. The exemption has since been the subject of a number of changes: See 1995 1st sp.s. c 3, 1996 c 173, 1996 c 247, 1998 c 330, and 1999 c 211. The 1995 legislation covered installation charges for qualifying machinery and equipment as well as replacement parts that increased the productivity, improved efficiency, or extended the useful life of the machinery and equipment.

(a) In 1996, the exemption was extended to include charges for repairing, cleaning, altering, or improving the machinery and equipment. The same act also revised the definition of "machinery and equipment" to include tangible personal property that becomes an ingredient or component of the machinery and equipment, including repair and replacement parts. A second act extended the exemption to research and development engaged in by manufacturers or processors for hire. Both acts took effect June 6, 1996.

(b) In 1998, the duplicate certificate and annual reporting requirements were eliminated, effective June 11, 1998.

(c) In 1999, the 1995 legislation was clarified retroactively by ESHB 1887, chapter 211, Laws of 1999, to include certain logging and mining activities, segmented manufacturing, and off-site testing by manufacturers, and to explain that hand-powered tools were excluded. On July 25, 1999, the exemption was extended on a prospective basis to persons who perform third-party testing for manufacturers or processors for hire.

(3) **Definitions.** For purposes of the manufacturing machinery and equipment tax exemption the following definitions will apply.

(a) "Cogeneration" means the simultaneous generation of electrical energy and low-grade heat from the same fuel. See RCW 82.08.02565.

(b) "Device" means an item that is not attached to the building or site. Examples of devices are: Forklifts, chain-saws, air compressors, clamps, free standing shelving, software, ladders, wheelbarrows, and pulleys.

(c) "Industrial fixture" means an item attached to a building or to land. Fixtures become part of the real estate to which they are attached and upon attachment are classified as real property, not personal property. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and certain concrete slabs.

(d) "Machinery and equipment" means industrial fixtures, devices, and support facilities, and tangible personal property that becomes an ingredient or component thereof, including repair parts and replacement parts. "Machinery and equipment" includes pollution control equipment installed and used in a qualifying operation to prevent air pollution, water pollution, or contamination that might otherwise result from the operation. "M&E" means "machinery and equipment."

(e) "Manufacturer" has the same meaning as provided in chapter 82.04 RCW.

(f) "Manufacturing" has the same meaning as "to manufacture" in chapter 82.04 RCW.

(g) "Manufacturing operation" means the manufacturing of articles, substances, or commodities for sale as tangible personal property. A manufacturing operation begins at the point where the raw materials enter the manufacturing site and ends at the point where the processed material leaves the manufacturing site. The operation includes storage of raw materials at the site, the storage of in-process materials at the site, and the storage of the processed material at the site. The manufacturing operation is defined in terms of a process occurring at a location. To be eligible as a qualifying use of M&E, the use must take place within the manufacturing operation, unless specifically excepted by law. Storage of raw material or other tangible personal property, packaging of tangible personal property, and other activities that potentially qualify under the "used directly" criteria, and that do not constitute manufacturing in and of themselves, are not within the scope of the exemption unless they take place at a manufacturing site. The statute specifically allows testing to occur away from the site.

The term "manufacturing operation" also includes that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. The term does not include the production of electricity by a light and power business as defined in RCW 82.16.010 or the preparation of food products on the premises of a person selling food products at retail.

(i) Neither duration or temporary nature of the manufacturing activity nor mobility of the equipment determine whether a manufacturing operation exists. For example, operations using portable saw mills or rock crushing equipment are considered "manufacturing operations" if the activity in which the person is engaged is manufacturing. Rock crushing equipment that deposits material onto a roadway is not used in a manufacturing operation because this is a part of the constructing activity, not a manufacturing activity. Likewise, a concrete mixer used at a construction site is not used in a manufacturing operation because the activity is constructing, not manufacturing. Other portable equipment used in non-manufacturing activities, such as continuous gutter trucks or trucks designed to deliver and combine aggregate, or specialized carpentry tools, do not qualify for the same reasons.

(ii) Manufacturing tangible personal property for sale can occur in stages, taking place at more than one manufacturing site. For example, if a taxpayer processes pulp from wood at one site, and transfers the resulting pulp to another site that further manufactures the product into paper, two separate manufacturing operations exist. The end product of the

manufacturing activity must result in an article, substance, or commodity for sale.

(h) "Processor for hire" has the same meaning as used in chapter 82.04 RCW and as explained in WAC 458-20-136.

(i) "Qualifying operation" means a manufacturing operation, a research and development operation, or, as of July 25, 1999, a testing operation.

(j) "Research and development operation" means engaging in research and development as defined in RCW 82.63.-010 by a manufacturer or processor for hire. RCW 82.63.010 defines "research and development" to mean: Activities performed to discover technological information, and technical and nonroutine activities concerned with translating technological information into new or improved products, processes, techniques, formulas, inventions, or software. The term includes exploration of a new use for an existing drug, device, or biological product if the new use requires separate licensing by the Federal Food and Drug Administration under chapter 21, C.F.R., as amended. The term does not include adaptation or duplication of existing products where the products are not substantially improved by application of the technology, nor does the term include surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software developed for internal use, and research in areas such as improved style, taste, and seasonal design.

(k) "Sale" has the same meaning as "sale" in chapter 82.08 RCW, which includes by reference RCW 82.04.040. RCW 82.04.040 includes by reference the definition of "retail sale" in RCW 82.04.050. "Sale" includes renting or leasing, conditional sale contracts, leases with option to purchase, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price.

(l) "Site" means the location at which the manufacturing or testing takes place.

(m) "Support facility" means a part of a building, or a structure or improvement, used to contain or steady an industrial fixture or device. A support facility must be specially designed and necessary for the proper functioning of the industrial fixture or device and must perform a function beyond being a building or a structure or an improvement. It must have a function relative to an industrial fixture or a device. To determine if some portion of a building is a support facility, the parts of the building are examined. For example, a highly specialized structure, like a vibration reduction slab under a microchip clean room, is a support facility. Without the slab, the delicate instruments in the clean room would not function properly. The ceiling and walls of the clean room are not support facilities if they only serve to define the space and do not have a function relative to an industrial fixture or a device.

(n) "Tangible personal property" has its ordinary meaning.

(o) "Testing" means activities performed to establish or determine the properties, qualities, and limitations of tangible personal property.

(p) "Testing operation" means the testing of tangible personal property for a manufacturer or processor for hire. A testing operation begins at the point where the tangible personal property enters the testing site and ends at the point

where the tangible personal property leaves the testing site. The term also includes that portion of a cogeneration project that is used to generate power for consumption within the site of which the cogeneration project is an integral part. The term does not include the production of electricity by a light and power business as defined in RCW 82.16.010 or the preparation of food products on the premises of a person selling food products at retail. The testing operation is defined in terms of a process occurring at a location. To be eligible as a qualifying use of M&E, the use must take place within the testing operation, unless specifically excepted by law.

(4) **Sales and use tax exemption.** The M&E exemption provides a retail sales and use tax exemption for machinery and equipment used directly in a manufacturing operation or research and development operation. Sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving qualifying machinery and equipment are also exempt from sales tax. However, because the exemption is limited to items with a useful life of one year or more, some charges for repair, labor, services, and replacement parts may not be eligible for the exemption. In the case of labor and service charges that cover both qualifying and nonqualifying repair and replacement parts, the labor and services charges are presumed to be exempt. If all of the parts are nonqualifying, the labor and service charge is not exempt, unless the parts are incidental to the service being performed, such as cleaning, calibrating, and adjusting qualifying machinery and equipment.

On and after July 25, 1999, the exemption may be taken for qualifying machinery and equipment used directly in a testing operation by a person engaged in testing for a manufacturer or processor for hire.

Sellers remain subject to the retailing B&O tax on all sales of machinery and equipment to consumers if delivery is made within the state of Washington, notwithstanding that the sale may qualify for an exemption from the retail sales tax.

(a) Sales tax. The purchaser must provide the seller with an exemption certificate. The exemption certificate must be completed in its entirety. The seller must retain a copy of the certificate as a part of its records. This certificate may be issued for each purchase or in blanket form certifying all future purchases as being exempt from sales tax. Blanket forms must be renewed every four years.

The form must contain the following information:

- (i) Name, address, and registration number of the buyer;
- (ii) Name of the seller;
- (iii) Name and title of the authorized agent of the buyer/user;
- (iv) Authorized signature;
- (v) Date; and
- (vi) Whether the form is a single use or blanket-use form.

A copy of a M&E certificate form may be obtained from the department of revenue on the internet at <http://www.dor.wa.gov/>, under "Other forms and schedules" or by contacting the department's taxpayer services division at:

Department of Revenue  
Taxpayer Services  
P.O. Box 47478  
Olympia, WA 98504-7478

(b) 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 chapter 82.12 RCW and WAC 458-20-178.) If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the retail sales tax (commonly referred to as "deferred sales tax") or the use tax directly to the department unless the purchase and/or use is exempt from the retail sales and/or use tax. A qualifying person using eligible machinery and equipment in Washington in a qualifying manner is exempt from the use tax. If an item of machinery and equipment that was eligible for use tax or sales tax exemption fails to overcome the majority use threshold or is totally put to use in a nonqualifying manner, use tax is due on the fair market value at the time the item was put to nonqualifying use. See subsection (10) of this rule for an explanation of the majority use threshold.

(5) **Who may take the exemption.** The exemption may be taken by a manufacturer or processor for hire who manufactures articles, substances, or commodities for sale as tangible personal property, and who, for the item in question, meets the used directly test and overcomes the majority use threshold. (See subsection (9) of this rule for a discussion of the "used directly" criteria and see subsection (10) of this rule for an explanation of the majority use threshold.) However, for research and development operations, there is no requirement that the operation produce tangible personal property for sale. A processor for hire who does not sell tangible personal property is eligible for the exemption if the processor for hire manufactures articles, substances, or commodities that will be sold by the manufacturer. For example, a person who is a processor for hire but who is manufacturing with regard to tangible personal property that will be used by the manufacturer, rather than sold by the manufacturer, is not eligible. See WAC 458-20-136 and RCW 82.04.110 for more information. On and after July 25, 1999, persons who engage in testing for manufacturers or processors for hire are eligible for the exemption. To be eligible for the exemption, the taxpayer need not be a manufacturer or processor for hire in the state of Washington, but must meet the Washington definition of manufacturer.

(6) **What is eligible for the exemption.** Machinery and equipment used directly in a qualifying operation by a qualifying person is eligible for the exemption, subject to overcoming the majority use threshold.

There are three classes of eligible machinery and equipment: Industrial fixtures, devices, and support facilities. Also eligible is tangible personal property that becomes an ingredient or component of the machinery and equipment, including repair parts and replacement parts. "Machinery and equipment" also includes pollution control equipment installed and used in a qualifying operation to prevent air pollution, water pollution, or contamination that might otherwise result from the operation.

(7) **What is not eligible for the exemption.** In addition to items that are not eligible because they do not meet the used directly test or fail to overcome the majority use threshold, there are four categories of items that are statutorily

excluded from eligibility. The following property is not eligible for the M&E exemption:

(a) Hand-powered tools. Screw drivers, hammers, clamps, tape measures, and wrenches are examples of hand-powered tools. Electric powered, including cordless tools, are not hand-powered tools, nor are calipers, plugs used in measuring, or calculators.

(b) Property with a useful life of less than one year. All eligible machinery and equipment must satisfy the useful life criteria, including repair parts and replacement parts. For example, items such as blades and bits are generally not eligible for the exemption because, while they may become component parts of eligible machinery and equipment, they generally have a useful life of less than one year. Blades generally having a useful life of one year or more, such as certain sawmill blades, are eligible. See subsection (8) of this rule for thresholds to determine useful life.

(c) Buildings, other than machinery and equipment that is permanently affixed to or becomes a physical part of a building. Buildings provide work space for people or shelter machinery and equipment or tangible personal property. The building itself is not eligible, however some of its components might be eligible for the exemption. The industrial fixtures and support facilities that become affixed to or part of the building might be eligible. The subsequent real property status of industrial fixtures and support facilities does not affect eligibility for the exemption.

(d) Building fixtures that are not integral to the manufacturing operation, testing operation, or research and development operation that are permanently affixed to and become a physical part of a building, such as utility systems for heating, ventilation, air conditioning, communications, plumbing, or electrical. Examples of nonqualifying fixtures are: Fire sprinklers, building electrical systems, or washroom fixtures. Fixtures that are integral to the manufacturing operation might be eligible, depending on whether the item meets the other requirements for eligibility, such as the used directly test.

(8) **The "useful life" threshold.** RCW 82.08.02565 has a per se exception for "property with a useful life of less than one year." Property that meets this description is not eligible for the M&E exemption. The useful life threshold identifies items that do not qualify for the exemption, such as supplies, consumables, and other classes of items that are not expected or intended to last a year or more. For example, tangible personal property that is acquired for a one-time use and is discarded upon use, such as a mold or a form, has a useful life of less than one year and is not eligible. If it is clear from taxpayer records or practice that an item is used for at least one year, the item is eligible, regardless of the answers to the four threshold questions. A taxpayer may work directly with the department to establish recordkeeping methods that are tailored to the specific circumstances of the taxpayer. The following steps should be used in making a determination whether an item meets the "useful life" threshold. The series of questions progress from simple documentation to complex documentation. In order to substantiate qualification under any step, a taxpayer must maintain adequate records or be able to establish by demonstrating through practice or routine that the threshold is overcome. Catastrophic loss, damage, or destruction of an item does not affect eligibility of machinery

and equipment that otherwise qualifies. Assuming the machinery and equipment meets all of the other M&E requirements and does not have a single one-time use or is not discarded during the first year, useful life can be determined by answering the following questions for an individual piece of machinery and equipment:

(a) Is the machinery and equipment capitalized for either federal tax purposes or accounting purposes?

- If the answer is "yes," it qualifies for the exemption.
- If the answer is "no,"

(b) Is the machinery and equipment warranted by the manufacturer to last at least one year?

- If the answer is "yes," it qualifies for the exemption.
- If the answer is "no,"

(c) Is the machinery and equipment normally replaced at intervals of one year or more, as established by industry or business practice? (This is commonly based on the actual experience of the person claiming the exemption.)

- If the answer is "yes," it qualifies for the exemption.
- If the answer is "no,"

(d) Is the machinery and equipment expected at the time of purchase to last at least one year, as established by industry or business practice? (This is commonly based on the actual experience of the person claiming the exemption.)

- If the answer is "yes," it qualifies for the exemption.
- If the answer is "no," it does not qualify for the exemption.

tion.

(9) The "used directly" criteria. Items that are not used directly in a qualifying operation are not eligible for the exemption. The statute provides eight descriptions of the phrase "used directly." The manner in which a person uses an item of machinery and equipment must match one of these descriptions. If M&E is not "used directly" it is not eligible for the exemption. Examples of items that are not used directly in a qualifying operation are cafeteria furniture, safety equipment not part of qualifying M&E, packaging materials, shipping materials, or administrative equipment. Machinery and equipment is "used directly" in a manufacturing operation, testing operation, or research and development operation, if the machinery and equipment meets any one of the following criteria:

(a) Acts upon or interacts with an item of tangible personal property. Examples of this are drill presses, concrete mixers (agitators), ready-mix concrete trucks, hot steel rolling machines, rock crushers, and band saws. Also included is machinery and equipment used to repair, maintain, or install tangible personal property. Computers qualify under this criteria if:

(i) They direct or control machinery or equipment that acts upon or interacts with tangible personal property; or

(ii) If they act upon or interact with an item of tangible personal property.

(b) Conveys, transports, handles, or temporarily stores an item of tangible personal property at the manufacturing site or the testing site. Examples of this are wheelbarrows, handcarts, storage racks, forklifts, tanks, vats, robotic arms, piping, and concrete storage pads. Floor space in buildings does not qualify under this criteria. Not eligible under this criteria are items that are used to ship the product or in which the product is packaged, as well as materials used to brace or support an item during transport.

(2005 Ed.)

(c) Controls, guides, measures, verifies, aligns, regulates, or tests tangible personal property at the site or away from the site. Examples of "away from the site" are road testing of trucks, air testing of planes, or water testing of boats, with the machinery and equipment used off site in the testing eligible under this criteria. Machinery and equipment used to take readings or measurements is eligible under this criteria.

(d) Provides physical support for or access to tangible personal property. Examples of this are catwalks adjacent to production equipment, scaffolding around tanks, braces under vats, and ladders near controls. Machinery and equipment used for access to the building or to provide a work space for people or a space for tangible personal property or machinery and equipment, such as stairways or doors, is not eligible under this criteria.

(e) Produces power for or lubricates machinery and equipment. A generator providing power to a sander is an example of machinery and equipment that produces power for machinery and equipment. An electrical generating plant that provides power for a building is not eligible under this criteria. Lubricating devices, such as hoses, oil guns, pumps, and meters, whether or not attached to machinery and equipment, are eligible under this criteria.

(f) Produces another item of tangible personal property for use in the manufacturing operation, testing operation, or research and development operation. Machinery and equipment that makes dies, jigs, or molds, and printers that produce camera-ready images are examples of this.

(g) Places tangible personal property in the container, package, or wrapping in which the tangible personal property is normally sold or transported.

(h) Is integral to research and development as defined in RCW 82.63.010.

**(10) The majority use threshold.**

(a) Machinery and equipment both used directly in a qualifying operation and used in a nonqualifying manner is eligible for the exemption only if the qualifying use satisfies the majority use requirement. Examples of situations in which an item of machinery and equipment is used for qualifying and nonqualifying purposes include: The use of machinery and equipment in manufacturing and repair activities, such as using a power saw to make cabinets in a shop versus using it to make cabinets at a customer location; the use of machinery and equipment in manufacturing and constructing activities, such as using a forklift to move finished sheet rock at the manufacturing site versus using it to unload sheet rock at a customer location; and the use of machinery and equipment in manufacturing and transportation activities, such as using a mixer truck to make concrete at a manufacturing site versus using it to deliver concrete to a customer. Majority use can be expressed as a percentage, with the minimum required amount of qualifying use being greater than fifty percent compared to overall use. To determine whether the majority use requirement has been satisfied, the person claiming the exemption must retain records documenting the measurement used to substantiate a claim for exemption or, if time, value, or volume is not the basis for measurement, be able to establish by demonstrating through practice or routine that the requirement is satisfied. Majority use is measured by looking at the use of an item during a calendar year using any of the following:

(i) Time. Time is measured using hours, days, or other unit of time, with qualifying use of the M&E the numerator, and total time used the denominator. Suitable records for time measurement include employee time sheets or equipment time use logs.

(ii) Value. Value means the value to the person, measured by revenue if the qualifying and nonqualifying uses both produce revenue. Value is measured using gross revenue, with revenue from qualifying use of the M&E the numerator, and total revenue from use of the M&E the denominator. If there is no revenue associated with the use of the M&E, such as in-house accounting use of a computer system, the value basis may not be used. Suitable records for value measurement include taxpayer sales journals, ledgers, account books, invoices, and other summary records.

(iii) Volume. Volume is measured using amount of product, with volume from qualifying use of the M&E the numerator and total volume from use of the M&E the denominator. Suitable records for volume measurement include production numbers, tonnage, and dimensions.

(iv) Other comparable measurement for comparison. The department may agree to allow a taxpayer to use another measure for comparison, provided that the method results in a comparison between qualifying and nonqualifying uses. For example, if work patterns or routines demonstrate typical behavior, the taxpayer can satisfy the majority use test using work site surveys as proof.

(b) Each piece of M&E does not require a separate record if the taxpayer can establish that it is reasonable to bundle M&E into classes. Classes may be created only from similar pieces of machinery and equipment and only if the uses of the pieces are the same. For example, forklifts of various sizes and models can be bundled together if the forklifts are doing the same work, as in moving wrapped product from the assembly line to a storage area. An example of when not to bundle classes of M&E for purposes of the majority use threshold is the use of a computer that controls a machine through numerical control versus use of a computer that creates a camera ready page for printing.

(c) Typically, whether the majority use threshold is met is decided on a case-by-case basis, looking at the specific manufacturing operation in which the item is being used. However, for purposes of applying the majority use threshold, the department may develop industry-wide standards. For instance, the aggregate industry uses concrete mixer trucks in a consistent manner across the industry. Based on a comparison of selling prices of the processed product picked up by the customer at the manufacturing site and delivery prices to a customer location, and taking into consideration the qualifying activity (interacting with tangible personal property) of the machinery and equipment compared to the nonqualifying activity (delivering the product) of the machinery and equipment, the department has determined that concrete trucks qualify under the majority use threshold. Only in those limited instances where it is apparent that the use of the concrete truck is atypical for the industry would the taxpayer be required to provide recordkeeping on the use of the truck in order to support the exemption.

[Statutory Authority: RCW 82.32.300. 00-11-096, § 458-20-13601, filed 5/17/00, effective 6/17/00.]

**WAC 458-20-138 Personal services rendered to others.** The term "personal services," as used herein, refers generally to the activity of rendering services as distinct from making sales of tangible personal property or of services which have been defined in the law as "sales" or "sales at retail." (See RCW 82.04.040 and 82.04.050.)

The following are illustrative of persons performing personal services which are within the scope of this rule: Attorneys, doctors, dentists, architects, engineers, public accountants, public stenographers, barbers, beauty shop operators. (See also WAC 458-20-224.)

#### **Business and Occupation Tax**

Persons engaged in the business of rendering personal services to others are taxable under the service and other activities classification upon the gross income of such business.

There must be included within gross amounts reported for tax all fees for services rendered and all charges recovered for expenses incurred in connection therewith, such as transportation costs, hotel, restaurant, telephone and telegraph charges, etc.

#### **Retail Sales Tax**

The retail sales tax does not apply to the amount charged or received for the rendition of personal services to others, even though some tangible personal property in the form of materials and supplies is furnished or used in connection with such services.

Persons performing such services are consumers of all materials and supplies used in connection therewith and must pay the retail sales tax upon the purchase of such material and supplies.

If persons engaged in a personal service business sell articles of tangible personal property apart from the rendition of personal services, the retail sales tax must be collected upon the sale of such articles.

Revised June 1, 1970.

[Order ET 70-3, § 458-20-138 (Rule 138), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-139 Trade shops—Printing plate makers, typesetters, and trade binderies.** (Note: This rule covers all the material previously included in WAC 458-20-139 and 458-20-146.)

The term "printing plate makers" includes, among others, photoengravers, electrotypers, stereotypers, and lithographic plate makers.

#### **Business and Occupation Tax**

Printing plate makers, typesetters and trade binderies (referred to in the trade as "trade shops") are primarily engaged in the business of altering or improving tangible personal property owned by them for sale or altering or improving tangible personal property owned by their customers. In either case the gross proceeds (including the value of any property exchanged by the customer in kind) from sales of, or services rendered to, plates, mats, engravings, type, etc., which are delivered in this state are taxable under retailing if the sale is to a "consumer" or wholesaling—all others if the sale is to one who will resell the property in the regular course of business without intervening "use." (See WAC 458-20-

102.) Neither of these classifications is applicable however, if the article sold is delivered to an out-of-state customer at an out-of-state point or if an article is produced for commercial or industrial use (see WAC 458-20-134). In these cases tax is due under the manufacturing classification on the "value of products."

### Retail Sales Tax

Sales to the printing industry and others of tangible personal property, or of services of altering or improving tangible personal property, by printing plate makers, typesetters, and trade binderies are sales at retail and subject to the retail sales tax unless the purchaser resells the article in the regular course of business without any intervening "use." For example, a trade shop must collect and account for the retail sales tax where a printing plate is sold to a printer who uses the plate to produce copy for a customer, even though he subsequently sells and delivers both the plate and the copy to the customer. In this situation the printer has made "intervening use" of the plate as a printing tool and is a "consumer" liable for payment of the retail sales tax to the trade shop.

Sales of plates, engravings, etc., to advertising agencies are retail sales and subject to the retail sales tax.

Sales by supply houses to trade shops of metal or other materials becoming a component part of an article produced for sale are not subject to the retail sales tax. As evidence of this, trade shops are required to furnish their vendors resale certificates in the usual form. On the other hand, sales to trade shops of items for use such as machinery, equipment, tools, and other articles or materials, including chemicals which are used in the production of plates, mats, engravings, type, etc., are retail sales subject to the retail sales tax.

Revised June 1, 1970.

[Order ET 70-3, § 458-20-139 (Rule 139), filed 5/29/70, effective 7/1/70.]

### WAC 458-20-140 Photofinishers and photographers.

#### Business and Occupation Tax

**Retailing.** The gross proceeds of all sales taxable under the retail sales tax are taxable under the retailing classification.

**Wholesaling.** Taxable under the wholesaling classification upon the gross proceeds from sales for resale.

**Manufacturing.** Photofinishers who produce negatives, prints, or slides in Washington and who transfer or deliver such articles to points outside this state are subject to business tax under the manufacturing classification upon the value of products (see Rule 112) [WAC 458-20-112] and are not subject to tax under the retailing or wholesaling classification.

**Processing for hire.** Photofinishers who develop film for others and who make delivery of the film to points outside the state are subject to business tax under the processing for hire classification upon the total charge for the work done. It is immaterial that the customers are located outside the state or that the film was sent in from outside the state for processing.

**Service.** Taxable under the service and other activities classification upon gross income from sales to publishers of newspapers, magazines and other publications of the right to publish photographs.

(2005 Ed.)

### Retail Sales Tax

**Photofinishers.** Photofinishers developing films and selling to consumers the prints made therefrom are making taxable retail sales, and the retail sales tax must be collected upon the full charge made to the customer. Photofinishers developing films and selling to other than consumers the prints made therefrom are sales for resale and not subject to the retail sales tax.

Sales by supply houses to photofinishers of paper upon which prints are made and of chemicals which are to be used in making the prints are sales for resale and are not taxable under the retail sales tax. Sales by supply houses to photofinishers of equipment and materials which do not become a component part of the prints are taxable under the retail sales tax.

**Portrait and commercial photographers.** Photographers who make negatives on special order and sell photographs to customers (other than dealers for resale) must collect the retail sales tax upon such sales.

Sales by supply houses to a portrait or commercial photographer of the paper upon which such photographs are printed are not taxable because such material becomes an ingredient of the final product sold for consumption. Sales of chemicals, such as developing agents, fixing solutions, etc., for use in such process are also nontaxable. However, sales to a photographer of materials and equipment used in processing, whenever such materials do not become a component part of the final photograph or are not chemicals used in processing are taxable under the retail sales tax.

Sales to consumers by photographers of pictures, frames, camera films and other articles are subject to the retail sales tax.

Sales by photographers of the right to publish photographs are primarily licenses to use and not sales of tangible personal property. Such sales are not subject to the retail sales tax.

Photographers tinting and coloring pictures or prints belonging to customers are making retail sales upon which the retail sales tax applies to the total charge made therefor. Sales of oil and water colors to a photographer for use in tinting and coloring pictures or prints belonging to a customer are sales for resale and are not subject to the retail sales tax.

[Statutory Authority: RCW 82.32.300. 83-07-034 (Order ET 83-17), § 458-20-140, filed 3/15/83; Order ET 70-3, § 458-20-140 (Rule 140), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-141 Duplicating industry and mailing bureaus.** The phrase "duplicating industry" includes activities involving photostating, blueprinting, xeroxing, and other reproduction processes.

#### Business and Occupation Tax

Duplicators are taxable under the retailing classification upon the gross proceeds received from sales of photostats, blueprints, copies, etc., to consumers, whether the tangible personal property on which the work is recorded is owned by the duplicator or customer.

The wholesaling-all other classification applies to sales for resale in the regular course of the purchaser's business.

[Title 458 WAC—p. 177]

The duplicator must secure a resale certificate in the usual form.

Neither of these classifications is applicable, however, if the article sold is delivered to an out-of-state customer at an out-of-state point or if an article is produced for commercial or industrial use (see WAC 458-20-134.) In these cases tax is due under the manufacturing classification on the "value of products."

Mailing bureaus mail material for the publishing industry and also mail folders, bulletins, form letters, advertising publications, flyers, and similar material for other customers. As part of these services, the bureaus also label, fold, enclose and seal. All of these activities come within the definition of "sale at retail" (RCW 82.04.050) as constituting "labor and services rendered in respect to . . . the . . . altering, imprinting or improving of tangible personal property of or for consumers."

The gross proceeds received by mailing bureaus from charges made to consumers, whether such charges are itemized or lump sum, are taxable under the retailing classification. The gross proceeds are taxable under the wholesaling-all other classification where charges (lump sum or itemized) are for tangible personal property resold as such to the purchaser or for services rendered to tangible personal property which becomes a component of an article for resale in the regular course of the purchaser's business. In either case mailing bureaus must secure resale certificates in the usual form.

Where a mailing bureau purchases stamps, government postals or stamped envelopes for a customer and the customer is charged therefor, the amount of the postage may be deducted from the measure of the business and occupation tax.

### **Retail Sales Tax**

Sales by duplicators and mailing bureaus of tangible personal property (for example, photostats, blueprints, copies, mailing lists, "Dick" strips, etc.) and/or services rendered to tangible personal property of or for consumers are subject to the retail sales tax. Examples of persons purchasing as "consumers" are, among others, architects, engineers, and advertising agencies.

Where a mailing bureau purchases stamps, government postals or stamped envelopes for a customer and the customer is charged therefor, the amount of the postage may be deducted from the measure of the retail sales tax due.

Vendors selling tangible personal property to duplicators and mailing bureaus which will be resold, without any intervening use, are not required to collect the retail sales tax upon taking a resale certificate in the usual form.

On the other hand, vendors selling to duplicators and mailing bureaus, equipment, supplies or materials which do not become a component part of an article produced for sale, or selling items which are subjected to intervening use before resale, are making retail sales and must collect the retail sales tax.

[Statutory Authority: RCW 82.32.300. 83-07-034 (Order ET 83-17), § 458-20-141, filed 3/15/83; Order ET 70-3, § 458-20-141 (Rule 141), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-142 Photographic equipment and supplies.** Sales of tangible personal property by a photographic

[Title 458 WAC—p. 178]

supply house to persons who purchase such property for personal consumption or use are subject to the retail sales tax. Illustrative of such sales are the following:

Photographic films, paper, chemicals, frames, repair parts for cameras and other equipment sold to customers for personal use.

X-ray materials and equipment sold to doctors, dentists, hospitals, dental and X-ray laboratories.

Equipment sold to photofinishers, portrait and commercial photographers and photoengravers such as cameras, lenses, backgrounds, graduates, trays, utensils, lamps, retouching dope, leads, pencils and sundry materials which do not become an ingredient or component part of the pictures produced for sale.

Photographic films, chemicals and equipment sold to a newspaper publisher.

Photographic films sold to portrait and commercial photographers for use in their business.

Sales of tangible personal property by a photographic supply house to persons who resell such property in the regular course of business or consume the same in producing for sale a new article of which such property is an ingredient or component, or a chemical used in processing the same, are not subject to the retail sales tax. Illustrative of such sales are the following:

Photographic films, photo mailers, cameras, art-corners, etc., sold to a dealer or photographer for the purpose of resale;

Photographic paper, mounts, frames, adhesives, card board, oil and water colors, India ink sold to a photofinisher, portrait or commercial photographer or photoengraver to be used in producing photographic prints for sale.

Envelopes, paper and twine sold to a photographer or photofinisher for use in delivering photographic prints sold.

Chemicals, such as developing agents, fixing agents, etc., sold to a photofinisher, portrait or commercial photographer or photoengraver, which chemicals are used in producing pictures for sale.

The retail sales tax applies upon the charge made for repairing cameras and other equipment, the retouching or alteration of photographs or films, when done for consumers.

[Statutory Authority: RCW 82.32.300. 83-07-034 (Order ET 83-17), § 458-20-142, filed 3/15/83; Order ET 70-3, § 458-20-142 (Rule 142), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-143 Publishers of newspapers, magazines, periodicals.**

### **Business and Occupation Tax**

**Printing and publishing.** Publishers of newspapers, magazines and periodicals are taxable under the printing and publishing classification upon the gross income derived from the publishing business.

Persons who both print and publish books, music, circulars, etc., or any other item, are likewise taxable under the printing and publishing classification. However, persons, other than publishers of newspapers, magazines or periodicals, who publish such things and do not print the same, are taxable under either the wholesaling or retailing classification, measured by gross sales, and taxable under the service

(2005 Ed.)

classification, measured by the gross income received from advertising.

### Retail Sales Tax

Sales of newspapers, whether by publishers or others, are specifically exempt from the retail sales tax.

However, sales of magazines, periodicals, and all publications other than newspapers are subject to the retail sales tax when made to consumers.

**"Newspaper" defined.** The word "newspaper" means a publication of general circulation bearing a title, issued regularly at stated intervals of at least once every two weeks, and formed of printed paper sheets without substantial binding. It must be of general interest, containing information of current events. The word does not include publications devoted solely to a specialized field. It shall include school newspapers, regardless of the frequency of publication, where such newspapers are distributed regularly to a paid subscription list.

Sales to newspapers, magazine and periodical publishers of paper and printers ink which become a part of the publications sold, and sales by printers of printed publications to publishers for sale, are sales for resale and are not subject to the retail sales tax.

With respect to community newspapers which are distributed free of charge, where the publisher has a contract with his advertisers to distribute the newspaper to the subscriber in consideration for the payments made by the advertisers, it will be construed that the publisher sells the newspaper to the advertiser, and, therefore, the retail sales tax will not apply with respect to the charge made by the printer to the publisher for printing the newspaper or with respect to the purchase of ink and paper when the publisher prints his own newspaper.

Sales to newspaper, magazine or periodical publishers of equipment and of supplies and materials which do not become a part of the finished publication which is sold are subject to the retail sales tax. This includes, among others, sales of engravings, fuel, furniture, lubricants, machinery, negatives and plates used in offset printing, photographs, stationery and writing ink. Sales of engravings to publishers are subject to the retail sales tax unless the publisher resells such engravings without intervening use.

Sales to newspaper, magazine or periodical publishers of baseball bats, bicycles, dolls and other articles of tangible personal property which are to be distributed by the publisher as gifts, premiums or prizes are sales for consumption and subject to the retail sales tax.

So-called "sales" by authors and artists to publishers of the right to publish scripts, paintings, illustrations and cartoons are mere licenses to use, not sales of tangible personal property and, therefore, are not subject to the retail sales tax.

### Use Tax

Publishers of newspapers, magazines and periodicals are subject to tax upon the value of articles printed or produced for use in conducting such business.

[Statutory Authority: RCW 82.32.300, 83-16-053 (Order ET 83-5), § 458-20-143, filed 8/1/83; 83-07-034 (Order ET 83-17), § 458-20-143, filed 3/15/83; Order ET 70-4, § 458-20-143 (Rule 143), filed 6/12/70, effective 7/12/70.]

(2005 Ed.)

**WAC 458-20-144 Printing industry.** (Note: This rule contains the material previously included in WAC 458-20-145 which is not currently incorporated in WAC 458-20-141.)

### Definition

The phrase "printing industry" includes letterpress, offset-lithography, and gravure processes as well as multigraph, mimeograph, autotyping, addressographing and similar activities.

### Business and Occupation Tax

Printers are subject to the business and occupation tax under the printing and publishing classification upon the gross income of the business.

### Retail Sales Tax

The printing or imprinting of advertising circulars, books, briefs, envelopes, folders, posters, racing forms, tickets, and other printed matter, whether upon special order or upon materials furnished either directly or indirectly by the customer is a retail sale and subject to the retail sales tax, providing the customer either consumes, or distributes such articles free of charge, and does not resell such articles in the regular course of business. The retail sales tax is computed upon the total charge for printing, and the printer may not deduct the cost of labor, author's alterations, or other service charges in performing the printing, even though such charges may be stated or shown separately on invoices.

Where stamped envelopes or government postals are purchased and printed for customers or where stamps are provided, the amount of the postage may be deducted from the total charge to the customer in determining the selling price for business tax and sales tax.

Sales of printed matter to advertising agencies who purchase for their own use or for the use of their clients, and not for resale in the regular course of business, are sales for consumption and subject to the retail sales tax.

Sales of tickets to theater owners, amusement operators, transportation companies and others are sales for consumption and subject to the retail sales tax. Such tickets are not resold by the theater owners or amusement proprietors as tangible personal property but are used merely as a receipt to the patrons for payment and as evidence of the right to admission or transportation.

Sales of school annuals and similar publications by printers to school districts, private schools or student organizations therein are subject to the retail sales tax.

Sales by printers of books, envelopes, folders, posters, racing forms, stationery, tickets and other printed matter to dealers for resale in the regular course of business are wholesale sales and are not subject to the retail sales tax.

Charges made by bookbinders or printers for imprinting, binding or rebinding of materials for consumers are subject to the retail sales tax.

Sales to printers of equipment, supplies and materials which do not become a component part or ingredient of the finished printed matter sold or which are put to "intervening use" before being resold are subject to the retail sales tax. This includes, among others, sales of fuel, furniture, lubricants, machinery, type, lead, slugs and mats.

[Title 458 WAC—p. 179]

Sales to printers of paper stock and ink which become a part of the printed matter sold are sales for resale and are not subject to retail sales tax.

**Commissions and discounts.** There is a general trade practice in the printing industry of making allowances to advertising agencies of a certain percentage of the gross charge made for printed matter ordered by the agency either in its own name or in the name of the advertiser. This allowance may be a "commission" or may be a "discount."

A "commission" paid by a seller constitutes an expense of doing business and is not deductible from the measure of tax under either business and occupation tax or retail sales tax. On the other hand, a "discount" is a deduction from an established selling price allowed to buyers, and a bona fide discount is deductible under both these classifications.

In order that there may be a definite understanding, printers, advertising agencies and advertisers are advised that tax liability in such cases is as follows:

(1) The allowance taken by an advertising agency will be deductible as a discount in the computation of the printer's liability only in the event that the printer bills the charge on a net basis; i.e., less the discount.

(2) Where the printer bills the gross charge to the agency, and the advertiser pays the sales tax measured by the gross charge, no deduction will be allowed, irrespective of the fact that in payment of the account the printer actually receives from the agency the net amount only; i.e., the gross billing, less the commission retained by the agency. In all cases the commission received is taxable to the agency.

Revised June 1, 1970.

[Order ET 70-4, § 458-20-144 (Rule 144), filed 6/12/70, effective 7/12/70.]

**WAC 458-20-145 Local sales and use tax.** RCW 82.14.030 authorizes counties and cities to levy local sales and use taxes, such local taxes to be collected along with the state tax. By RCW 82.14.045 cities and counties, after voter approval, are authorized to levy an additional tax to finance public transportation, which tax is also to be collected along with the state tax. (See WAC 458-20-237.)

As used herein the term "local tax" shall include either or both the local taxes and transportation sales and/or use taxes. The rule and examples in this administrative rule apply equally to all locally imposed sales and use taxes.

The total tax is to be reported and paid to the state. The local tax portion will be rebated to local governments according to information which retailers show on tax returns. If a business is such that a local tax will be collected for more than one taxing jurisdiction, it is necessary to keep a record of retail sales taxable to each such county or city. Vendors are responsible for determining the appropriate tax rate for each locality in which sales are made and for collecting from their purchasers the correct amount of tax due upon each sale.

"Place of sale" for purposes of local sales tax:

**Rule I.** Retailers of goods and merchandise: The sale occurs at the retail outlet at which or from which delivery is made to the consumer.

**Rule II.** Retailers of labor and services (e.g., construction contractors, repairmen, painters, plumbers, laundries, earth movers, fumigators, house wreckers or movers, tow truck operators, hotels, motels, tourist courts, trailer camps,

amusement and recreation businesses listed in WAC 458-20-183; abstract, title insurance, escrow, credit bureau, auto parking, and storage garage businesses): The retail sales occurs where the labor and services are primarily performed.

**Rule III.** Retailers leasing or renting tangible personal property: The sale occurs at the place of first use by the lessee or renter. For practical purposes the place of business of the lessor will be deemed the place of first use for ordinary, short term rentals. If the rental or lease calls for periodic rental payments, then the place of sale is the primary place of use by the lessee or renter for each period covered by each payment.

"Place of use" for purposes of the use tax:

**Rule IV.** Whenever the state use tax is due, the local use tax will also apply where the property is first used in a county or city levying the local tax.

The following illustrates the application of these rules in various situations:

**Rule I.**

(A) This rule applies to retail sales consisting solely of tangible personal property (i.e., goods or merchandise). If retail labor and services are also involved Rule II applies to the entire sale. Secondly, the total tax is determined by the place at which or from which delivery is made. For most retailers the location of his place of business governs the local tax application. He collects the tax if his place of business is in a jurisdiction levying the local tax, even though he may deliver the goods sold to his customer to a location in the state not levying the tax. On the other hand a merchant whose place of business is in a jurisdiction not levying the local tax collects only the state tax, irrespective of whether delivery is made into a jurisdiction levying the local tax.

To sum up this part of the rule: The origin of the goods determines the local tax and destination or fact of delivery elsewhere in the state are immaterial.

(B) Special applications of the rules for goods located outside the state:

(1) When the state business and occupation tax applies to a sale in which the goods are delivered into Washington from a point outside the state this means a local in-state facility, office, outlet, agent or other representative even though not formally characterized as a "salesman" of the seller participated in the transaction in some way, such as by taking the order, then the location of the local facility, etc., will determine the place of sale for purposes of the local sales tax. However, if the seller, his agent or representative maintains no local in-state facility, office, outlet or residence from which business in some manner is conducted, the local tax shall be determined by the location of the customer.

(2) If the state business and occupation tax does not apply because there was no in-state activity in connection with the sale (e.g., an order was sent by a Washington consumer directly to a seller's out-of-state branch) the state tax due is use tax and the destination-address of the consumer-determines the applicable local use tax.

Rule I examples:

(1) A resident of Everett purchases a sofa from a furniture dealer in Seattle. The dealer delivers the sofa to the customer's home in Everett. The Seattle local sales tax applies, being the place from which the goods were delivered.

(2) A resident of Olympia purchases a refrigerator from a merchant in Tekoa. If Tekoa has not levied the local sales tax, the merchant will collect only the state sales tax. Olympia's use tax is not due even though the property will be used there. Reason: The law makes the local tax collectible at time of the taxable event for the state tax.

## Rule II.

This rule applies to retail sales of labor or services and also applies to sales of tangible personal property when labor and services are rendered in conjunction therewith. The local tax is governed by the place where the labor and services are primarily performed.

(A) Retailers who primarily render their services at their place of business will collect the local sales tax if they are located in a jurisdiction which levies the tax. Examples of retailers normally falling in this class: Auto repair shops, hotels, motels, amusement or recreation businesses, title insurance, credit bureau, escrow businesses, auto parking, storage garages, laundries.

(B) Retailers primarily performing their services at the location of their customers will collect the local sales tax for the jurisdiction in which the customer is located. Examples of this class of retailers are: Construction contractors, painters, plumbers, carpet layers (retailers who install what they sell, as carpet layers often do, fall under Rule II—place where work is done governs the local tax to be applied—if the installation would normally call for an extra charge) earthmovers, house-wreckers.

### Examples:

(1) A dealer sells a TV set, delivers it and puts it in working order in his customer's home. This falls under Rule I, not Rule II, because there is normally no extra charge for "installing" a TV set.

(2) A hardware store sells yard fencing at \$5.00 per running foot including installation. This falls under Rule II because fence installation normally would involve an extra charge.

(3) A home furnishings dealer sells carpeting at \$12.00 per yard and agrees to install it for \$2.00 per yard additional. The entire transaction falls under Rule II and the \$14.00 per yard will be subject to the local tax levied by the jurisdiction in which the customer resides. Rule I is limited to retail transactions consisting **solely** of sales of goods or merchandise.

(C) The primary place of performance for retailers whose services consist largely of moving or transporting is deemed to be the destination (place where the service is completed). Typical of this class are: Tow truck operators and house movers.

### Examples:

(1) A towing service is called to pick up a stalled vehicle just outside the city of Reardan and deliver the vehicle to an automotive repair shop in Spokane. Spokane's local tax applies.

(2) A housemover is hired to move a home from inside the Olympia city limits to a location 4 miles out of town in Thurston County. The housemover will collect only the state tax if Thurston County, the destination, does not levy the local tax.

(2005 Ed.)

## Rule III.

This covers rentals or leases and has two parts, and it is important to distinguish "periodic rentals" from other rentals to know which part of the rule applies.

**Definition.** A periodic rental (or lease) is one in which the lessee or renter has contracted to make regular rental payments at specified intervals. These are normally longer term rentals calling for a rental payment monthly on or before a certain date.

(A) The place of sale for the ordinary, nonperiodic rental is the place of first use (the place where the lessee normally takes possession). In the interest of uniformity and simplicity this will be presumed to be the place of business of the lessor.

(B) The place of sale for the periodic rental is the primary place of use during each period covered by each periodic payment.

(1) In the case of business lessees this will be presumed to be the place of business of the lessee. Where the lessee has several places of business, the place of primary use will be deemed to be the place to which assigned or regularly returned.

(2) In the case of rentals to private individuals the place of use will be presumed to be the residence of the lessee or renter.

### Examples:

(1) Acme Rent-all Co., located in Walla Walla, rents small tools, garden equipment, scaffolding, and many other kinds of tangible personal property. It charges \$2.00 per day for rental of a rototiller. This is not a periodic rental because the lessee merely makes a deposit and pays the full balance of the rent due upon returning the equipment. The lessor will collect the Walla Walla tax on all such rentals, irrespective of where the lessee lives or where the property will be used.

(2) An automobile dealer in Tacoma leases an automobile to a Seattle resident. The agreement calls for \$50.00 per month rental, payable by the 10th of each month. This is a periodic rental, so the place of primary use by the lessee governs collection of the local tax. The Tacoma dealer will collect the Seattle local tax.

## Rule IV.

This rule applies only to transactions which are not subject to sales tax under Rule I, and intends that the local use tax shall be payable at the time and place the state use tax is due.

### Examples:

(1) A Spokane resident purchases an automobile from a private individual in Seattle. He transfers title at the King County auditor's office and makes payment of the state use tax. The King County auditor will collect Spokane's local use tax at the same time.

(2) A Sumner resident places an order with a catalog mail order outlet in Tacoma. The Tacoma local sales tax is due since the transaction falls under Rule I, not Rule IV.

(3) Same as example 2 except the Sumner resident sends a catalog mail order directly to the Portland warehouse rather than going through the Tacoma catalog store. The vendor will collect Sumner's local use tax along with the state use tax.

The above explanation is intended to cover only the most frequently encountered situations. For more intricate or com-

plicated transactions, call the nearest district office of the department of revenue for assistance.

[Statutory Authority: RCW 82.32.300, 83-07-032 (Order ET 83-15), § 458-20-145, filed 3/15/83; Order ET 75-1, § 458-20-145, filed 5/2/75; Order ET 70-3, § 458-20-145 (Rule 145), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-146 National and state banks, mutual savings banks, savings and loan associations and other financial institutions.**

**Business and Occupation Tax**

Effective March 1, 1970, the legislature repealed RCW 82.04.400 which exempted from the business and occupation tax the gross income of national banks, states banks, mutual savings banks, savings and loan associations and certain other financial institutions. Accordingly, the gross income or gross sales of such institutions will become subject to the business and occupation tax according to the following general principles.

**Services and other activities.** Generally, the gross income from engaging in financial businesses is subject to the business and occupation tax under the classification service and other activities. Following are examples of the types of income taxable under this classification: Interest earned (including interest on loans made to nonresidents unless the financial institution has a business location in the state of the borrower's residence which rendered the banking service), commissions earned, dividends earned, fees and carrying charges, charges for bookkeeping or data processing, safety deposit box rentals.

The term "gross income" is defined in the law as follows:

"Gross income of the business" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

The law allows certain deductions from gross income to arrive at the taxable amount (the amount upon which the business and occupation tax is computed). Deductible gross income should be included in the gross amount reported and should then be shown as a deduction and explained on the deduction schedules provided on the reverse side of the reporting form. The deductions generally applicable to financial businesses include the following:

(1) Dividends received by a parent from its subsidiary corporations (RCW 82.04.4281).

(2) Interest received on investments or loans primarily secured by first mortgages or trust deeds on nontransient residential properties. (See WAC 458-20-166 for definition of "transient.") (RCW 82.04.4291.)

(3) Interest received on obligations of the state of Washington, its political subdivisions, and municipal corporations organized pursuant to the laws thereof. (RCW 82.04.4292). A deduction may also be taken for interest received on direct obligations of the federal government, but not for interest

attributable to loans or other financial obligations on which the federal government is merely a guarantor or insurer.

(4) Gross proceeds from sales or rentals of real estate (RCW 82.04.390). These amounts may be entirely excluded from the gross income reported and need not be shown on the return as a deduction.

**Retailing.** Sales of tangible personal property and certain services are defined as "retail sales" and are subject to the business and occupation tax under the classification retailing. Such sales are also subject to the retail sales tax which the seller must collect and remit to the department of revenue. Transactions taxable as sales at retail are not subject to tax under service and other activities.

Following are examples of transactions subject to the retailing classification of the business and occupation tax and to the retail sales tax: Sales of meals or confections, sales of repossessed merchandise, sales of promotional material, leases of tangible personal property, sales of check registers, coin banks, personalized checks. (Note: When the financial institution is not the seller of these items but simply takes orders as agent for the supplier, the supplier is responsible for reporting as the retail seller. The financial institution has liability for reporting the retail sales tax on sales made as an agent only if the supplier is an out-of-state firm not registered with the department of revenue), escrow fees, casual sales (occasional sales of depreciated assets such as used furniture and office equipment—subject to retail sales tax but deductible from the business and occupation tax; see WAC 458-20-106).

**Resale certificates.** When a financial institution buys tangible personal property for resale to its customers without intervening use, the sales tax is not applicable. In this case the financial institution should give the vendor a resale certificate containing the number of its certificate of registration and its statement that the articles purchased are for resale in the course of its business activities. Resale certificates can be given in blanket form covering all future purchases. (See also WAC 458-20-102.)

**Use Tax**

The use tax complements the retail sales tax by imposing a tax of like amount on the use of tangible personal property purchased or acquired without payment of the retail sales tax. Thus, when office equipment or supplies are purchased or leased from an unregistered out-of-state vendor who does not collect the Washington state retail sales tax, the use tax must be paid directly to the department of revenue. Space for the reporting of this tax will be found on the regular excise tax return. (For more information, see WAC 458-20-178.)

**When tax liability arises.** Tax should be reported during the reporting period in which the financial institution receives, becomes legally entitled to receive, or in accord with the system of accounting regularly employed enters the consideration as a charge against the client, purchaser or borrower. Financial institutions may prepare returns to the department of revenue reporting income in periods which correspond to accounting methods employed by each institution for its normal accounting purposes in reporting to its supervisory authority.

**Reporting procedures.** Financial institutions subject to the business and occupation tax, retail sales tax, or use tax

must secure a certificate of registration from the department of revenue and pay a registration fee of \$15.00. Form 2401, application for certificate of registration, is available at all district offices of the department of revenue or may be obtained by writing directly to the Department of Revenue, Olympia, Washington, 98504.

Reporting periods will be assigned by the department on the basis of total tax liability incurred. Most financial institutions will be required to report on a monthly basis, although some smaller institutions may qualify for quarterly reporting. Forms for reporting will be mailed shortly before the close of each reporting period and will be due and payable on or before the 15th day of the month following. No penalties will be charged if the return is postmarked on or before the last day of the month in which the due date falls.

[Statutory Authority: RCW 82.32.300, 83-07-032 (Order ET 83-15), § 458-20-146, filed 3/15/83; Order ET 70-3, § 458-20-146 (Rule 146), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-14601 Financial institutions—Income apportionment. (1) Introduction.**

(a) This section provides tax reporting instructions for financial institutions doing business both inside and outside the state of Washington. Financial businesses that do not meet the definition of "financial institution" in subsection (3)(j) of this section and other businesses taxable under RCW 82.04.290 should refer to WAC 458-20-194 (Doing business inside and outside the state).

(b) Financial institutions engaged in making interstate sales of tangible personal property should also refer to WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property).

**(2) Apportionment and allocation.**

(a) Except as otherwise specifically provided, a financial institution taxable under RCW 82.04.290 and taxable in another state shall allocate and apportion its apportionable income as provided in this section. All gross income that is not includable in apportionable income shall be allocated pursuant to the provisions of chapter 82.04 RCW. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, except such institutions that are exempt under RCW 82.04.315, whose effectively connected income (as defined under the Federal Internal Revenue Code) is taxable both in this state and another state, other than the state in which it is organized, shall allocate and apportion its gross income as provided in this section.

(b) The apportionment percentage is determined by adding the taxpayer's receipts factor (as described in subsection (4) of this section), property factor (as described in subsection (5) of this section), and payroll factor (as described in subsection (6) of this section) together and dividing the sum by three. If one of the factors is missing, the two remaining factors are added together and the sum is divided by two. If two of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero, but it is not missing merely because its numerator is zero.

(c) Each factor shall be computed according to the method of accounting (cash or accrual basis) used by the taxpayer for Washington state tax purposes for the taxable

period. Persons should refer to WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods) for further guidance on the requirements of each accounting method. Generally, financial institutions are required to file returns on a monthly basis. To enable financial institutions to more easily comply with the provisions of this section, financial institutions will file returns using factors calculated based on the most recent calendar year for which information is available. A reconciliation shall be filed for each year within thirty days of the time that the taxpayer files its federal income tax returns for that year, but not later than October 30th of the following year. For example, for returns filed for taxable activities occurring during calendar 1998, a taxpayer would use factors calculated based on its 1996 information. A reconciliation would be filed for 1998 using factors based on 1998 information as soon as the information was available to the taxpayer, but not later than thirty days after the time federal income tax returns were due for 1998, or October 30, 1999. In the case of consolidations, mergers, or divestitures, a taxpayer shall make the appropriate adjustments to the factors to reflect its changed operations.

(d) If the allocation and apportionment provisions of this section do not fairly represent the extent of its business activity in this state, the taxpayer may petition for, or the department may require, in respect to all or any part of the taxpayer's business activity:

- (i) Separate accounting;
- (ii) A calculation of tax liability utilizing the cost of doing business method outlined in RCW 82.04.460(1);
- (iii) The exclusion of any one or more of the factors;
- (iv) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or
- (v) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's receipts.

(3) **Definitions.** The following definitions apply throughout this section:

(a) **"Apportionable income"** means the gross income of the business taxable under RCW 82.04.290, including income received from activities outside this state if the income would be taxable under RCW 82.04.290 if received from activities in this state, less the exemptions and deductions allowable under chapter 82.04 RCW.

(b) **"Billing address"** means the location indicated in the books and records of the taxpayer on the first day of the taxable period (or on such later date in the taxable period when the customer relationship began) as the address where any notice, statement and/or bill relating to a customer's account is mailed.

(c) **"Borrower or credit card holder located in this state"** means:

(i) A borrower, other than a credit card holder, that is engaged in a trade or business which maintains its commercial domicile in this state; or

(ii) A borrower that is not engaged in a trade or business or a credit card holder, whose billing address is in this state.

(d) **"Commercial domicile"** means:

(i) The headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or

(ii) If a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile is deemed for the purposes of this section to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed and directed. It is presumed, subject to rebuttal by a preponderance of the evidence, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable period.

(e) **"Compensation"** means wages, salaries, commissions and any other form of remuneration paid to employees for personal services that are included in such employee's gross income under the Federal Internal Revenue Code. In the case of employees not subject to the Federal Internal Revenue Code, e.g., those employed in foreign countries, the determination of whether such payments would constitute gross income to such employees under the Federal Internal Revenue Code shall be made as though such employees were subject to the Federal Internal Revenue Code.

(f) **"Credit card"** means credit, travel or entertainment card.

(g) **"Credit card issuer's reimbursement fee"** means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

(h) **"Department"** means the department of revenue.

(i) **"Employee"** means, with respect to a particular taxpayer, any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(j) **"Financial institution"** means:

(i) Any corporation or other business entity chartered under Titles 30, 31, 32, 33 RCW, or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

(ii) A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. §§21 et seq.;

(iii) A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. §1813 (b)(1);

(iv) Any bank or thrift institution incorporated or organized under the laws of any state;

(v) Any corporation organized under the provisions of 12 U.S.C. §§611 to 631;

(vi) Any agency or branch of a foreign depository as defined in 12 U.S.C. §3101 that is not exempt under RCW 82.04.315;

(vii) Any credit union, other than a state or federal credit union exempt under state or federal law;

(viii) A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired;

(ix) Any corporation or other business entity who receives gross income taxable under RCW 82.04.290, and whose voting interests are more than fifty percent owned, directly or indirectly, by any person or business entity described in (j)(i) through (viii) of this subsection other than an insurance company liable for the insurance premiums tax under RCW 48.14.020 or any other company taxable under chapter 48.14 RCW;

(x) A corporation or other business entity that derives more than fifty percent of its total gross income for federal income tax purposes from finance leases. For purposes of this subsection, a "finance lease" means a lease which meets two requirements:

(A) It is the type of lease permitted to be made by national banks (see 12 U.S.C. 24(7), 12 U.S.C. 24(10), Comptroller of the Currency-Regulations, Part 23-Leasing (added by 56 Fed. Reg. 28314, June 20, 1991, effective July 22, 1991), and Regulation Y of the Federal Reserve System 12 CFR 225.25, as amended); and

(B) It is the economic equivalent of an extension of credit, i.e., the lease is treated by the lessor as a loan for federal income tax purposes. In no event does a lease qualify as an extension of credit where the lessor takes depreciation on such property for federal income tax purposes.

For this classification to apply, the average of the gross income in the current tax year and immediately preceding two tax years must satisfy the more than fifty percent requirement;

(xi) Any other person or business entity, other than an insurance general agent taxable under RCW 82.04.280(5), an insurance business exempt from the business and occupation tax under RCW 82.04.320, a real estate broker taxable under RCW 82.04.255, a securities dealer or international investment management company taxable under RCW 82.04.290(2), that derives more than fifty percent of its gross receipts from activities that a person described in (j)(ii) through (viii) and (x) of this subsection is authorized to transact. For purposes of this subparagraph, the computation of apportionable income shall not include income from nonrecurring, extraordinary items;

(xii) The department is authorized to exclude any person from the application of (j)(xi) of this subsection upon such person proving, by clear and convincing evidence, that the activity producing the receipts of such person is not in substantial competition with those persons described in (j)(ii) through (viii) and (x) of this subsection.

(k) **"Gross income of the business," "gross income," or "income"** has the same meaning as in RCW 82.04.080 and means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(l) **"Gross rents"** means the actual sum of money or other consideration payable for the use or possession of real property. "Gross rents" includes, but is not limited to:

(i) Any amount payable for the use or possession of real property whether designated as a fixed sum of money or as a percentage of receipts, profits or otherwise;

(ii) Any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other arrangement; and

(iii) A proportionate part of the cost of any improvement to real property made by or on behalf of the taxpayer which reverts to the owner or grantor upon termination of a lease or other arrangement. The amount to be included in gross rents is the amount of amortization or depreciation allowed in computing the taxable income base for the taxable period. However, where a building is erected on leased land by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight and the value of the building is determined in the same manner as if owned by the taxpayer.

(iv) The following are not included in the term "gross rents":

(A) Reasonable amounts payable as separate charges for water and electric service furnished by the lessor;

(B) Reasonable amounts payable as service charges for janitorial services furnished by the lessor;

(C) Reasonable amounts payable for storage, provided such amounts are payable for space not designated and not under the control of the taxpayer; and

(D) That portion of any rental payment which is applicable to the space subleased from the taxpayer and not used by it.

(m) **"Loan"** means any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another. "Loan" includes participations, syndications, and leases treated as loans for federal income tax purposes. "Loan" does not include: Properties treated as loans under Section 595 of the Federal Internal Revenue Code; futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; non-interest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a REMIC, or other mortgage-backed or asset-backed security; and other similar items.

(n) **"Loan secured by real property"** means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation was real property, when valued at fair market value as of the time the original loan or obligation was incurred.

(o) **"Merchant discount"** means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

(p) **"Participation"** means an extension of credit in which an undivided ownership interest is held on a *pro rata* basis in a single loan or pool of loans and related collateral. In

a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(q) **"Person"** has the meaning given in RCW 82.04.030.

(r) **"Principal base of operations"** with respect to transportation property means the place of more or less permanent nature from which said property is regularly directed or controlled. With respect to an employee, the "principal base of operations" means the place of more or less permanent nature from which the employee regularly:

(i) Starts his or her work and to which he or she customarily returns in order to receive instructions from his or her employer; or

(ii) Communicates with his or her customers or other persons; or

(iii) Performs any other functions necessary to the exercise of his or her trade or profession at some other point or points.

(s) **"Real property owned"** and **"tangible personal property owned"** mean real and tangible personal property, respectively:

(i) On which the taxpayer may claim depreciation for federal income tax purposes; or

(ii) Property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes (or could claim depreciation if subject to federal income tax).

Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(t) **"Regular place of business"** means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied and used by employees of the taxpayer.

(u) **"State"** means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States or any foreign country.

(v) **"Syndication"** means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(w) **"Taxable in another state"** means either:

(i) That a taxpayer is subject in another state to a gross receipts or franchise tax for the privilege of doing business, a franchise tax measured by net income, a corporate stock tax (including a bank shares tax), a single business tax, or an earned surplus tax, or any other tax which is imposed upon or measured by gross or net income; or

(ii) That another state has jurisdiction to subject the taxpayer to any of such taxes regardless of whether, in fact, the state does or does not.

(x) **"Taxable period"** means the calendar year during which tax liability is incurred.

(y) **"Transportation property"** means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels and motor vehicles, as well as any equipment or containers attached to such property, such as rolling stock, barges, trailers or the like.

**(4) Receipts factor.**

(a) **General.** Except as provided in subsection (7) of this section, the receipts factor is a fraction, the numerator of which is the gross income of the taxpayer in this state during the taxable period and the denominator of which is the gross income of the taxpayer inside and outside this state during the taxable period. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator.

(b) **Receipts from the lease of real property.** The numerator of the receipts factor includes income from the lease or rental of real property owned by the taxpayer if the property is located within this state or income from the sublease of real property if the property is located within this state.

(c) **Receipts from the lease of tangible personal property.**

(i) Except as described in (c)(ii) of this subsection, the numerator of the receipts factor includes income from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.

(ii) Income from the lease or rental of transportation property owned by the taxpayer is included in the numerator of the receipts factor to the extent that the property is used in this state. The extent an aircraft is used in this state and the amount of income that is to be included in the numerator of this state's receipts factor is determined by multiplying all the income from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft. If the extent of the use of any transportation property within this state cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(d) **Interest from loans secured by real property.**

(i) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the income described in this subparagraph is included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, then the income described in this subparagraph shall be included in the numerator of the receipts factor if the borrower is located in this state.

(ii) The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made and any and all subsequent substitutions of collateral shall be disregarded.

(e) **Interest from loans not secured by real property.** The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.

(f) **Net gains from the sale of loans.** The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded

under the coupon stripping rules of Section 1286 of the Federal Internal Revenue Code.

(i) The amount of net gains (but not less than zero) from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (4)(d) and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The amount of net gains (but not less than zero) from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(g) **Receipts from credit card receivables.** The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and income from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

(h) **Net gains from the sale of credit card receivables.** The numerator of the receipts factor includes net gains (but not less than zero) from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (g) of this subsection and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(i) **Credit card issuer's reimbursement fees.** The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (g) of this subsection and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(j) **Receipts from merchant discount.** The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. Such receipts shall be computed net of any cardholder charge backs, but shall not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

(k) **Loan servicing fees.**

(i)(A) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor under (d) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(B) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor under (e) of this subsection and the denominator of which is the total

amount of interest and fees or penalties in the nature of interest on loans not secured by real property.

(ii) If the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor includes such fees if the borrower is located in this state.

(l) **Receipts from services.** The numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection if the service is performed in this state. If the service is performed both inside and outside this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this section, if a greater proportion of the activity producing the receipts is performed in this state based on cost of performance.

(m) **Receipts from investment assets and activities and trading assets and activities.**

(i) Interest, dividends, net gains (but not less than zero) and other income from investment assets and activities and from trading assets and activities are included in the receipts factor. Investment assets and activities and trading assets and activities include but are not limited to: Investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions. With respect to the investment and trading assets and activities described in (m)(i)(A) and (B) of this subsection, the receipts factor includes the following:

(A) The receipts factor includes the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(B) The receipts factor includes the amount by which interest, dividends, gains and other receipts from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(ii) The numerator of the receipts factor includes interest, dividends, net gains (but not less than zero) and other receipts from investment assets and activities and from trading assets and activities described in (m)(i) of this subsection that are attributable to this state.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (m)(i)(A) of this subsection from such funds and such securities by a frac-

tion, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

(C) The amount of interest, dividends, gains and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book and foreign currency transactions, (but excluding amounts described in (m)(ii)(A) or (B) of this subsection), attributable to this state and included in the numerator is determined by multiplying the amount described in (m)(i)(B) of this subsection by a fraction, the numerator of which is the average value of such trading assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(D) For purposes of this paragraph, average value shall be determined using the rules for determining the average value of tangible personal property set forth in subsection (5) of this section.

(iii) In lieu of using the method set forth in (m)(ii) of this subsection, the taxpayer may elect, or the department may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this paragraph.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross receipts from such assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (m)(i)(A) of this subsection from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.

(C) The amount of interest, dividends, gains and other receipts from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book and foreign currency transactions, (but excluding amounts described in (m)(ii)(a) or (B) of this subsection), attributable to this state and included in the numerator is determined by multiplying the amount described in (m)(i)(B) of this subsection by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(iv) If the taxpayer elects or is required by the department to use the method set forth in (m)(iii) of this subsection, it shall use this method on all subsequent returns unless the taxpayer receives prior permission from the department to use, or the department requires a different method.

(v) The taxpayer has the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. If the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one such regular place of business is in this state and one such regular place of business is outside this state, such asset or activity is considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Such policies and guidelines are presumed, subject to rebuttal by preponderance of the evidence, to be established at the commercial domicile of the taxpayer.

(n) **Attribution of certain receipts to commercial domicile.** All receipts which would be assigned under this section to a state in which the taxpayer is not taxable are included in the numerator of the receipts factor, if the taxpayer's commercial domicile is in this state.

**(5) Property factor.**

(a) **General.** Except as provided in subsection (7) of this section, the property factor is a fraction, the numerator of which is the average value of real property and tangible personal property rented to the taxpayer that is located or used within this state during the taxable period, the average value of the real and tangible personal property owned by the taxpayer that is located or used within this state during the taxable period, and the average value of the taxpayer's loans and credit card receivables that are located within this state during the taxable period, and the denominator of which is the average value of all such property located or used inside and outside this state during the taxable period.

**(b) Value of property owned by the taxpayer.**

(i) The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation or amortization.

(ii) Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged-off in whole or in part for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established under regulatory or financial accounting guidelines which is treated as charged-off for federal income tax purposes shall be treated as charged-off for purposes of this section.

(iii) Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged-off in whole or in part for federal income tax purposes, the portion of the receivable charged-off is not outstanding.

(c) **Average value of property owned by the taxpayer.** The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable period and the value on the last

day of the taxable period and dividing the sum by two. If averaging on this basis does not properly reflect average value, the department may require averaging on a more frequent basis. The taxpayer may elect to average on a more frequent basis. When averaging on a more frequent basis is required by the department or is elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect to property inside and outside this state and on all subsequent returns unless the taxpayer receives prior permission from the department or the department requires a different method of determining average value.

**(d) Average value of real property and tangible personal property rented to the taxpayer.**

(i) The average value of real property and tangible personal property that the taxpayer has rented from another and which is not treated as property owned by the taxpayer for federal income tax purposes, shall be determined annually by multiplying the gross rents payable during the taxable year by eight.

(ii) Where the use of the general method described in this subsection results in inaccurate valuations of rented property, any other method which properly reflects the value may be adopted by the department or by the taxpayer when approved in writing by the department. Once approved, such other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the department or the department requires a different method of valuation.

**(e) Location of real property and tangible personal property owned by or rented to the taxpayer.**

(i) Except as described in (e)(ii) of this subsection, real property and tangible personal property owned by or rented to the taxpayer is considered to be located within this state if it is physically located, situated or used within this state.

(ii) Transportation property is included in the numerator of the property factor to the extent that the property is used in this state. The extent an aircraft will be deemed to be used in this state and the amount of value that is to be included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere during the tax reporting period. If the extent of the use of any transportation property within this state cannot be determined, then the property is deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle is deemed to be used wholly in the state in which it is registered. Thus, a motor vehicle will not be considered as used in Washington if there is no requirement for the vehicle to be licensed or registered in Washington.

**(f) Location of loans.**

(i)(A) A loan is located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.

(B) A loan is properly assigned to the regular place of business with which it has a majority of substantive contacts. A loan assigned by the taxpayer to a regular place of business outside the state shall be presumed to have been properly assigned if:

(I) The taxpayer has assigned, in the regular course of its business, such loan on its records to a regular place of business consistent with federal or state regulatory requirements;

(II) Such assignment on its records is based upon substantive contacts of the loan to such regular place of business; and

(III) The taxpayer uses said records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.

(ii) The presumption of proper assignment of a loan provided in (f)(i)(A) of this subsection may be rebutted by a preponderance of the evidence, showing that the majority of substantive contacts regarding such loan did not occur at the regular place of business to which it was assigned on the taxpayer's records. When such presumption has been rebutted, the loan is located within this state if: The taxpayer had a regular place of business within this state at the time the loan was made; and the taxpayer fails to show, by a preponderance of the evidence, that the majority of substantive contacts regarding such loan did not occur within this state.

(C) If a loan is assigned by the taxpayer to a place outside this state which is not a regular place of business, it is presumed, subject to rebuttal on a preponderance of evidence, that the majority of substantive contacts regarding the loan occurred within this state if, at the time the loan was made the taxpayer's commercial domicile, as defined in subsection (3)(d) of this section, was within this state.

(D) To determine the state in which the majority of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue shall be reviewed on a case-by-case basis and consideration shall be given to such activities as the solicitation, investigation, negotiation, approval and administration of the loan. The terms "solicitation," "investigation," "negotiation," "approval" and "administration" are defined as follows:

(I) *Solicitation.* Solicitation is either active or passive. Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. Such activity is located at the regular place of business which the taxpayer's employee is regularly connected with or working out of, regardless of where the services of such employee were actually performed. Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.

(II) *Investigation.* Investigation is the procedure whereby employees of the taxpayer determine the credit worthiness of the customer as well as the degree of risk involved in making a particular agreement. Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed.

(III) *Negotiation.* Negotiation is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement (e.g., the amount, duration, interest rate, frequency of repayment, currency denomination and security required). Such activity is located at the regular place

of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed.

(IV) *Approval.* Approval is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement. Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed. If the board of directors makes the final determination, such activity is located at the commercial domicile of the taxpayer.

(V) *Administration.* Administration is the process of managing the account. This process includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement and proceeding against the borrower or the security interest if the borrower is in default. Such activity is located at the regular place of business which oversees this activity.

(g) **Location of credit card receivables.** For purposes of determining the location of credit card receivables, credit card receivables are treated as loans and are subject to the provisions of (f) of this subsection.

(h) **Period for which properly assigned loan remains assigned.** A loan that has been properly assigned to a state shall remain assigned to that state for the length of the original term of the loan, absent any change in material fact. If the original term of the loan is modified (extended or reduced), the loan may be properly assigned to another state if the loan has a majority of substantive contact to a regular place of business there.

**(6) Payroll factor.**

(a) **General.** Except as provided in subsection (7) of this section, the payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable period by the taxpayer for compensation of employees and the denominator of which is the total compensation paid both inside and outside this state during the taxable period. The payroll factor shall include all compensation paid to employees.

(b) **Compensation relating to independent contractors.** Payments made to any independent contractor or any other person not properly classifiable as an employee is excluded from both the numerator and denominator of the factor.

(c) **When compensation paid in this state.** Compensation is paid in this state if any one of the following tests, applied consecutively, is met:

(i) The employee's services are performed entirely within this state.

(ii) The employee's services are performed both inside and outside the state, but the service performed without the state is incidental to the employee's service within the state. The term "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction.

(iii) If the employee's services are performed both inside and outside this state, the employee's compensation will be attributed to this state:

(A) If the employee's principal base of operations is inside this state; or

(B) If there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state; or

(C) If the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's residence is in this state.

**(7) Alternative factor calculation.**

(a) **General.** A taxpayer may elect to use the alternative factors calculation as provided in this subsection. The alternative factors calculation requires the use of all three factors provided below. A taxpayer making such an election must keep books and records sufficient to explain the calculations. Such an election, once made, must continue for a full calendar year.

(b) **Receipts factor.** The alternative receipts factor may be calculated by excluding from both the numerator and the denominator of the receipts factor as calculated in subsection (4) of this section gross income attributable to items that would not be subject to tax under the provisions of RCW 82.04.290, whether from activities inside or outside of the state. For example, a taxpayer making the election to use the alternative factors calculation must exclude all receipts from the rental of tangible personal property in Washington from the numerator and all receipts from the rental of tangible personal property, wherever located, in the denominator.

(c) **Property factor.** The alternative property factor may be calculated by excluding from both the numerator and the denominator of the property factor as calculated in subsection (5) of this section property, the income from which would be considered wholesale or retail sales under chapter 82.04 RCW, whether from activities inside or outside the state. For example, a taxpayer making the election to use the alternative factors calculation must exclude all tangible personal property rented to customers in Washington from the numerator and all tangible personal property rented to customers, wherever located, in the denominator.

(d) **Payroll factor.** The alternative payroll factor may be calculated by excluding from both the numerator and the denominator of the payroll factor as calculated in subsection (6) of this section that amount paid to employees in connection with earning gross income which would not be subject to tax under RCW 82.04.290, whether earned from activities inside or outside of the state. For example, a taxpayer making the election to use the alternative factors calculation must exclude all compensation paid to employees in connection with activities that are not taxable under RCW 82.04.290 from the numerator and all compensation paid to employees wherever located that would not be taxable under RCW 82.04.290 if it had been earned in Washington.

**(8) Effective date.**

(a) **General.** This section applies to gross income that is reportable with respect to periods beginning on and after July 1, 1997.

(b) **Transition period election.** A financial institution may notify the department of its intention to apportion its gross receipts in the manner prescribed in RCW 82.04.460(1) and WAC 458-20-194. Such election may continue until the earlier of the date the financial institution elects to report in

accordance with this section, but not later than January 1, 2000.

[Statutory Authority: RCW 82.04.460(2) and 82.32.300. 97-11-033, § 458-20-14601, filed 5/15/97, effective 7/1/97.]

**WAC 458-20-148 Barber and beauty shops.**

**Business and Occupation Tax**

Barber and beauty shops are subject to the business and occupation tax as follows:

**Retailing.** Taxable under the retailing classification upon charges for styling of wigs or hairpieces and upon the gross proceeds of sales of shoe shines and of packaged cosmetics, etc., sold apart from the rendition of personal services.

**Service and other business activities.** Taxable under the service and other business activities classification upon the gross income from charges for the rendition of personal services, such as hair cutting, shaving, shampooing, tinting, bleaching, setting and the like.

**Retail Sales Tax**

Barber and beauty shops primarily render personal services as to hair cutting, shaving, shampooing, tinting, bleaching, setting and the like and, therefore are not required to collect the retail sales tax from the customers paying for such services. Sales by supply houses to barber and beauty shops of such articles of equipment as clippers, razors, barber chairs, hair waving machines, etc., and of such supplies as soaps, hair tonics, lotions, cosmetics, dyes, etc., which are used incidentally in the rendering of such personal services are taxable retail sales upon which the retail sales tax must be collected. Shops must collect retail sales tax upon sales and charges shown as taxable under retailing above.

Sales by barber and beauty shops of packaged cosmetics, hair tonics, lotions and like articles are taxable retail sales when sold apart from the rendition of personal services and are subject to the retail sales tax. Sales of such articles by supply houses to barber and beauty shops are sales for resale and are not taxable under the retail sales tax.

Barber shops operating shoe shine stands are required to collect the retail sales tax upon the charges made for shoe shines rendered to customers. Sales by supply houses of shoe polish, dyes, cleaners, etc., which are resold in rendering a shoe shine service are sales for resale and not taxable under the retail sales tax. However, sales to shoe shine stands of brushes, chairs and other equipment which are not resold in rendering such services are taxable retail sales and the retail sales tax must be collected thereon.

[Statutory Authority: RCW 82.32.300. 83-07-034 (Order ET 83-17), § 458-20-148, filed 3/15/83; Order ET 70-3, § 458-20-148 (Rule 148), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-150 Optometrists, ophthalmologists, and opticians.** (1) **Introduction.** This rule explains the application of Washington's business and occupation (B&O), retail sales, and use taxes to the business activities of optometrists, ophthalmologists, and opticians. It explains the tax liability resulting from the rendering of professional services and the sale of prescription lenses, frames, and other optical merchandise. It also discusses the retail sales tax exemption

for the sale of prescription lenses. The department of revenue (department) has adopted other rules dealing with the taxability of various activities relating to the provision of health care. Readers may want to refer to the following rules for additional information.

(a) WAC 458-20-151 (Dentists and other health care providers, dental laboratories, and dental technicians);

(b) WAC 458-20-168 (Hospitals, medical care facilities, and adult family homes);

(c) WAC 458-20-18801 (Prescription drugs, prosthetic and orthotic devices, ostomic items, and medically prescribed oxygen); and

(d) WAC 458-20-233 (Tax liability of medical and hospital service bureaus and associations and similar health care organizations).

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

(3) **Purchases and sales of optical merchandise by optometrists, ophthalmologists, and opticians.** Sales of optical merchandise to consumers are subject to retailing B&O tax. In addition, the seller must collect retail sales tax unless the sale is specifically exempt by law. For the purposes of this rule, "optical merchandise" includes prescription lenses, frames, springs, bows, cases, and other items or accessories to be worn or used with lenses. It also includes nonprescription lenses or eyeglasses. For purposes of this rule, "prescription lens" means any lens, including contact lens, with power or prism correction for human vision, which has been prescribed in writing by a physician or optometrist. The term "prescription lens" includes all ingredients and component parts of the lens itself, including color, scratch resistant or ultraviolet coating, and fashion tints. It also includes repair parts and replacement parts.

Purchases of optical merchandise by optometrists, ophthalmologists, and opticians for resale without intervening use as a consumer are not subject to the retail sales tax. Thus, optometrists, ophthalmologists, and opticians are not required to pay retail sales or use tax on items which will be given to customers as part of a sale of eyeglasses or contact lenses, such as cleaning supplies, carrying cases, and the like. The department considers these items to be sold along with the eyeglasses or contact lenses. An optometrist, ophthalmologist, or optician purchasing tangible personal property for resale must furnish a properly completed resale certificate to the seller to document the wholesale nature of the sale. Resale certificates can be obtained from the department's website at <http://dor.wa.gov>, or by calling the department's telephone information center at 1-800-647-7706. For additional information regarding resale certificates, refer to WAC 458-20-102 (Resale certificates).

(a) **Are sales of prescription lenses and frames exempt from retail sales tax?** As a result of legislation to implement the national Streamlined Sales and Use Tax Agreement, effective July 1, 2004, sales of prescription lenses and frames for prescription lenses are exempt from retail sales tax as a prosthetic device under RCW 82.08.0283.

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

(b) **Are repairs of prescription lenses and frames subject to retail sales tax?** Beginning July 1, 2004, charges for the repair of prescription lenses or to prescription eyeglass frames, whether the frames are the original frames or replacement frames, are exempt from retail sales tax under RCW 82.08.0283. Before July 1, 2004, charges for the repair of prescription lenses were exempt from retail sales tax. Charges for the repair of frames, however, were subject to retail sales tax.

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

(d) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

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

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

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

The gross proceeds of sales of these items are subject to retailing B&O tax. In addition, Taxpayer must collect retail

sales tax on sales of these items and remit the tax to the department. Because these items are not sold under a prescription, nor are they prescribed, fitted, or furnished for the buyer by a person licensed under the laws of this state to prescribe, fit, or furnish prosthetic devices, they are not exempt from retail sales tax under either RCW 82.08.0281 or 82.08.0283.

(4) **Equipment and supplies used by optometrists, ophthalmologists, and opticians.** Purchases of equipment and supplies used by optometrists, ophthalmologists, and opticians are purchases at retail and are subject to retail sales tax unless specifically exempt by law. If the seller does not collect retail sales tax, the optometrist, ophthalmologist, or optician must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. Deferred sales or use tax should be reported on the buyer's excise tax return. The excise tax return does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's excise tax return. For detailed information about use tax, refer to WAC 458-20-178 (Use tax).

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

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

(c) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

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

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

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

The purchases of the eyeglass and contact lens carrying cases are purchases for resale and are, therefore, not subject to sales tax if Taxpayer provides the seller with a properly

completed resale certificate. The purchases of the saline and cleaning solutions are, however, subject to the retail sales tax. These solutions are consumed while providing professional services and cannot be considered to be purchased for resale. They also do not qualify for a sales tax exemption under RCW 82.08.0281 as prescription drugs. If retail sales tax was not paid on the saline and cleaning solutions at the time of purchase, Taxpayer must remit deferred sales tax or use tax directly to the department.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). 04-17-023, § 458-20-150, filed 8/9/04, effective 9/9/04. Statutory Authority: RCW 82.32.300. 93-19-020, § 458-20-150, filed 9/2/93, effective 10/3/93; 83-07-034 (Order ET 83-17), § 458-20-150, filed 3/15/83; Order 74-2, § 458-20-150, filed 6/24/74; Order ET 70-3, § 458-20-150 (Rule 150), filed 5/29/70, effective 7/1/70.]

#### **WAC 458-20-151 Dentists and other health care providers, dental laboratories, and dental technicians.**

(1) **Introduction.** This rule explains the application of business and occupation (B&O), retail sales, and use taxes to the business activities of dentists and other health care providers, dental laboratories, and dental technicians. For purposes of this rule, a "health care provider" is a person who is licensed under the provisions of Title 18 RCW to provide health care services to humans in the ordinary course of business or practice of a profession. The department of revenue (department) has adopted other rules dealing with the taxability of various activities relating to the provision of health care. Readers may want to refer to the following rules for additional information:

(a) WAC 458-20-150 (Optometrists, ophthalmologists, and opticians);

(b) WAC 458-20-168 (Hospitals, medical care facilities, and adult family homes);

(c) WAC 458-20-18801 (Prescription drugs, prosthetic and orthotic devices, ostomic items, and medically prescribed oxygen); and

(d) WAC 458-20-233 (Tax liability of medical and hospital service bureaus and associations and similar health care organizations).

(2) **Tax-reporting information for dentists and other health care providers.** This subsection provides specific tax-reporting information for dentists and more generalized tax-reporting information for other health care providers. Dentists who employ dental technicians to produce or fabricate dental appliances, devices, restorations, substitutes, or other dental laboratory products should refer to subsection (3)(b) and (d) of this rule for additional information. Dental appliances, devices, restorations, substitutes, or other dental laboratory products are also referred to as "dental prostheses" throughout this rule.

(a) **Taxability of dental and other health care services.** Dentists and other health care providers are subject to the service and other activities B&O tax on their gross income from performing dental and other health care services. The term "gross income" includes any separate charge for drugs, medicines, and other substances administered or provided to a patient as part of the dental or other health care services delivered to the patient. "Gross income" also includes any separate charges for prosthetic devices, includ-

ing dental prostheses, that are provided as part of the dental or other health care services delivered to patients.

For purposes of this rule, "prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for a prosthetic device, worn on or in the body to artificially replace a missing portion of the body, prevent or correct a physical deformity or malfunction, or support a weak or deformed portion of the body.

**(b) Sales of tangible personal property apart from dental and other health care services.** A dentist or other health care provider may make sales of tangible personal property such as drugs, medicines, and bandages as a convenience to a buyer apart from any health care services provided to the buyer. These are sales of tangible personal property only when the dentist or other health care provider does not supply or administer the drug, medicine, or other item in the course of delivering health care services to the buyer. The gross proceeds of these retail sales of tangible personal property are subject to the retailing B&O tax. In addition, the dentist or other health care provider must collect and remit retail sales tax, unless the sale is specifically exempt by law. See WAC 458-20-18801 for detailed information regarding retail sales tax exemptions available for sales of items commonly associated with health care services. Adequate records must be kept by the dentist or other health care provider to distinguish items of tangible personal property that are supplied or administered to patients as part of health care services from those that are sold apart from health care services delivered to the buyer.

Purchases of tangible personal property for resale without intervening use are not subject to the retail sales tax. A dentist or other health care provider purchasing tangible personal property for resale must furnish a resale certificate in the usual form to the seller to document the wholesale nature of the sale. Resale certificates can be obtained from the department's website at <http://dor.wa.gov>, or by calling the department's telephone information center at 1-800-647-7706. For additional information regarding resale certificates, refer to WAC 458-20-102 (Resale certificates).

**(c) Equipment and supplies used by dentists and other health care providers.** Purchases of equipment and supplies used by dentists and other health care providers in performing dental or other health care services are purchases at retail and subject to retail sales tax unless specifically exempt by law. If the seller does not collect retail sales tax, the dentist or other health care provider must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. Deferred sales or use tax should be reported on the buyer's excise tax return. However, the excise tax return does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's excise tax return. For detailed information regarding the use tax, refer to WAC 458-20-178 (Use tax).

Dental prostheses are exempt from retail sales and use taxes if the dental prosthesis meets the definition of "prosthetic device" in subsection (2)(a) of this rule. RCW 82.08-.0283 and 82.12.0277. Exempt items include, but are not limited to, full and partial dentures, crowns, inlays, fillings, braces, retainers, collars, wire, screws, bands, splints, night

guards, gold, silver, alloys, acrylic materials, filling material, reline material, cement, cavity liner, pins, and endo post.

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

(i) Dr. A is a physician who specializes in the treatment of allergies. Dr. A treats many patients with injections of allergy extracts (antigens). Dr. A separately itemizes the charges for the antigen, the administration of the injection, and the office call in patients' billings. Dr. A is subject to service and other activities B&O tax on the entire charge for the antigen, administration of the injection, and office call. Even though Dr. A separately itemizes the charges for antigens, these are not retail sales because Dr. A administers the antigens to the patients.

(ii) Dr. B made mail-order purchases of a computer, books, and magazines for use in Dr. B's dental practice. Dr. B did not pay retail sales tax to the sellers on these purchases. Therefore, Dr. B must remit to the department deferred retail sales or use tax on the computer, books, and magazines.

**(3) Tax-reporting information for dental laboratories and dental technicians.** This subsection provides tax-reporting information for dental laboratories and dental technicians.

**(a) Producing or fabricating dental prostheses for sale.** The production or fabrication of dental appliances, devices, restorations, substitutes, or other dental laboratory products by dental laboratories and dental technicians is a manufacturing activity. RCW 82.04.120. Thus, dental laboratories and dental technicians are subject to manufacturing B&O tax on the value of the dental prostheses they manufacture. The value of products manufactured is generally the gross proceeds of sales of such manufactured products. For additional information about the manufacturing B&O tax, refer to WAC 458-20-136 (Manufacturing, processing for hire, fabricating).

**(i) Sales of dental prostheses manufactured by dental laboratories and dental technicians.** Dental laboratories and dental technicians who make sales within this state of dental prostheses they have manufactured are subject to either the retailing or wholesaling B&O tax, as the case may be. In such cases, the dental laboratory or dental technician must report under the manufacturing B&O tax classification as well as the wholesaling and/or retailing B&O tax classifications. However, a multiple activities tax credit (MATC) may be claimed. For detailed information about the MATC, refer to WAC 458-20-19301 (Multiple activities tax credits). Dental laboratories or dental technicians making wholesale sales must obtain a resale certificate from the buyer to document the wholesale nature of the sale. For additional information regarding resale certificates, refer to WAC 458-20-102.

As noted above in subsection (2)(c) of this rule, sales of dental prostheses including, but not limited to, full and partial dentures, crowns, inlays, fillings, braces, and retainers are exempt from retail sales tax if the dental prosthesis meets the definition of "prosthetic device" in subsection (2)(a) of this rule. RCW 82.08.0283.

**(ii) Dental casts, models, and other articles of tangible personal property manufactured by dental laboratories**

**and dental technicians for commercial or industrial use.** Dental laboratories and dental technicians may manufacture dental casts, models, or other articles of tangible personal property that they use in producing or fabricating dental prostheses. In such cases, the dental laboratory or dental technician is manufacturing a product for commercial or industrial use and is subject to the manufacturing B&O tax on the value of the dental cast, model, or other article of tangible personal property. (See WAC 458-20-112 (Value of products) for information regarding the value of products.) As the consumer of the dental cast, model, or other article of tangible personal property manufactured for commercial or industrial use, the dental laboratory or dental technician is also liable for use tax on the value of the dental cast, model, or other article of tangible personal property, unless the use is specifically exempt by law.

**(b) In-house manufacturing of dental prostheses by dentists.** As noted in this rule, the production or fabrication of dental prostheses by dental laboratories and dental technicians is a manufacturing activity. However, the production or fabrication of dental prostheses by dentists in the course of providing dental care services to their patients is not a manufacturing activity under the law and, therefore, manufacturing B&O tax does not apply to this activity. A dentist may personally produce or fabricate dental prostheses, or the dentist may have an employee who is a dental technician produce or fabricate the dental prostheses. These dental prostheses are considered a tangible representation of professional services provided to the dentist's patients. Dentists who manufacture impressions, dental casts, models, or other articles of tangible personal property that they use in producing or fabricating dental prostheses should refer to subsection (3)(a)(ii) of this rule for tax reporting instructions applicable to this activity.

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.

**(i) Example.** Jane Doe, an employee of Dentist A, fabricates dental prostheses. Dentist A provides these products to patients in the course of rendering dental care services. Dentist A is subject to service and other activities B&O tax on the gross income received for providing dental care services, including any charge for the dental prostheses even if Dentist A separately charges patients for the dental prostheses. (See subsection (2)(a) of this rule.)

**(ii) Example.** The facts are the same as in the previous example except that Dentist A also sells to Dentist B dental prostheses produced by Jane Doe in the course of Jane's employment with Dentist A. For these sales of dental prostheses to Dentist B, Dentist A is acting as a dental laboratory and, therefore, is liable for both manufacturing B&O tax and retailing B&O tax with respect to the manufacture and sale of dental prostheses to Dentist B. Dentist A may also claim a MATC (see subsection (3)(a) and (a)(i) of this rule.) The sales to Dentist B are exempt from retail sales tax under RCW 82.08.0283 if the items qualify as a prosthetic device as defined above in subsection (2)(a) of this rule.

**(c) Equipment and supplies used by dental laboratories and dental technicians.** Purchases of equipment and supplies by dental laboratories and dental technicians for use

in manufacturing dental prostheses are generally purchases at retail and subject to retail sales tax unless specifically exempt by law. If the seller does not collect retail sales tax, the dental laboratory or dental technician must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. Deferred sales or use tax should be reported on the buyer's excise tax return. However, the excise tax return does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's excise tax return. For detailed information regarding use tax, refer to WAC 458-20-178.

**(i) Components of dental prostheses produced for sale.** Purchases of supplies that become components of dental prostheses that are produced for sale are purchases at wholesale and are not subject to retail sales tax if the buyer provides the seller with a properly completed resale certificate to document the wholesale nature of the transaction. WAC 458-20-102.

**(ii) Example.** The following example identifies a number of facts and then states a conclusion. This example 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 dental lab purchases equipment and supplies including gold, silver, alloys, artificial teeth, cement, and tools. The purchases of gold, silver, alloys, artificial teeth, and cement that become components of dental prostheses are wholesale purchases and are not subject to retail sales tax if the buyer provides the seller with a properly completed resale certificate. The tools are subject to retail sales or use tax unless they qualify for the manufacturing machinery and equipment sales and use tax exemption. Additional information about this exemption is provided below in subsection (3)(d) of this rule.

**(d) Sales and use tax exemptions for manufacturing machinery and equipment.** A retail sales and use tax exemption is provided by RCW 82.08.02565 and 82.12.-02565 for sales to or use by manufacturers of certain machinery and equipment used directly in a manufacturing operation. This exemption is limited to machinery and equipment used to manufacture products for sale as tangible personal property. Thus, dental laboratories and dental technicians manufacturing dental prostheses for sale may be eligible for this exemption. The exemption is not available if these products are produced or fabricated by a dentist or an employee of a dentist and are provided to patients in the course of delivering dental care services to the patients (as is the case in the example provided in subsection (3)(b)(i) of this rule). Refer to WAC 458-20-13601 (Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment) for detailed information regarding this exemption.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). 04-17-022, § 458-20-151, filed 8/9/04, effective 9/9/04; 02-21-080, § 458-20-151, filed 10/17/02, effective 11/17/02. Statutory Authority: RCW 82.32.300. 91-15-023, § 458-20-151, filed 7/11/91, effective 8/11/91; 83-07-032 (Order NET 83-15), § 458-20-151, filed 3/15/83; Order 74-2, § 458-20-151, filed 6/24/74; Order NET 70-3, § 458-20-151 (Rule 151), filed 5/19/70, effective 7/1/70.]

**WAC 458-20-153 Funeral directors.** Funeral directors commonly quote a lump sum price for a standard funeral service, which includes the furnishing of a casket, professional

services, care of remains, funeral coach, floral car and the securing of permits.

### Business and Occupation Tax

**Retailing.** The gross amount subject to the retail sales tax as outlined below, is taxable under the retailing classification of the business and occupation tax except that there may be deducted, for purposes of the business tax only, amounts received as reimbursement for expenditures for goods or services supplied by others who are not persons employed by, affiliated, or associated with the funeral home, when such amounts were advanced by the funeral home as an accommodation to the person paying for a funeral; but this deduction is allowed only if such expenditures advanced are billed to the person paying for the funeral at the exact amount of the expenditure advanced and such amounts are separately itemized in the billing statement to such person.

**Service and other business activities.** That portion of the gross income derived from engaging in business as a funeral director which is not taxable under the retailing classification is taxable as service and other business activities.

### Retail Sales Tax

Where the funeral director quotes a lump sum price for a standard funeral service, which includes both the sale of tangible personal property and a charge for the rendering of service, the retail sales tax is collected upon one-half of such lump sum price. Clothing, outside case (a concrete or metal box into which the casket is placed) and other tangible personal property furnished in addition to the casket must be billed separately and the retail sales tax collected thereon.

The retail sales tax is not applicable to sales made to funeral directors of tangible personal property which is resold separate and apart from the rendition of professional services, provided the vendor receives from the funeral director a resale certificate in the usual form. The property so purchased includes the casket, clothing, outside case and acknowledgment cards.

The retail sales tax is applicable to sales to funeral directors of tangible personal property which is consumed in the rendition of professional services. The property so purchased includes all preparation room supplies (embalming fluid and other chemicals, solvents, waxes, cosmetics, eye caps, gauze, cotton, etc.). The sales tax is also applicable to sales to such persons of tools and equipment.

### Use Tax

The use tax applies upon the use within this state of all articles of tangible personal property used in the performance of professional services when such articles have been purchased or acquired under conditions whereby the Washington retail sales tax has not been paid.

[Statutory Authority: RCW 82.32.300. 83-07-033 (Order ET 83-16), § 458-20-153, filed 3/15/83; Order ET 70-3, § 458-20-153 (Rule 153), filed 5/29/70, effective 7/1/70.]

### WAC 458-20-154 Cemeteries, crematories, columbaria.

#### Business and Occupation Tax

**Retailing.** The gross proceeds derived from the sale of tangible personal property taxable under the retail sales tax are also taxable under the retailing classification.

(2005 Ed.)

**Service and other business activities.** Income derived from rendition of interment services is taxable under the service and other business activities classification. Sales or transfers of plots, crypts, and niches for interment of human remains, irrespective of whether the document of transfer is called a deed or certificate of ownership, are charges for the right of interment, an interest similar to a license to use real estate, and the entire gross income therefrom is taxable under the service and other activities classification without any deduction for amounts set aside to funds for perpetual care.

### Retail Sales Tax

Cemeteries, crematories and columbaria are subject to the provisions of the retail sales tax with respect to retail sales of boxes, urns, markers, vases, plants, shrubs, flowers, and other tangible personal property.

Revised June 1, 1978.

Effective July 1, 1978.

[Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-06-083 (Order 78-3), § 458-20-154, filed 6/1/78; Order ET 70-3, § 458-20-154 (Rule 154), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-155 Information and computer services.** Persons rendering information or computer services and persons who manufacture, develop, process, or sell information or computer programs are subject to business and occupation taxes and retail sales or use taxes as explained in this rule.

### Definitions

As used herein:

The term "information services" means every business activity, process, or function by which a person transfers, transmits, or conveys data, facts, knowledge, procedures, and the like to any user of such information through any tangible or intangible medium. The term does not include transfers of tangible personal property such as computer hardware or standard prewritten software programs. Neither does the term include telephone service defined under RCW 82.04.065 and WAC 458-20-245.

The term "computer services" means every method of providing information services through the use of computer hardware and/or software.

\*The term "computer system" means a functional unit, consisting of one or more computers and associated software, that uses common storage for all or part of the data necessary for execution of the program; executes user-written or user-designated programs; performs user-designated data manipulation; including arithmetic operations and logic operations; and that can execute programs that modify themselves during their execution.

\*The term "hardware" means physical equipment used in data processing, as opposed to programs, procedures, rules, and associated documentation.

\*The term "software" means programs, procedures, rules, and any associated documentation pertaining to the operation of a computer system.

The term "custom program" means software which is developed and produced by a provider exclusively for a specific user, and which is of an original, one-of-a-kind nature.

The term "standard, prewritten program," sometimes referred to as "canned" or "off-the-shelf" software, means

[Title 458 WAC—p. 195]

software which is not originally developed and produced for the user.

The term "provider" means the person who makes available information and computer services to a user.

The term "user" means a person for whom information and/or computer services are provided as a consumer.

#### **Distinction Between Sales and Services**

Liability for sales tax or use tax depends upon whether the subject of the sale is a product or a service. If information services, computer services or data processing services are performed, such that the only tangible personal property in the transaction is the paper or medium on which the information is printed or carried, the activity constitutes the rendering of professional services, similar to those rendered by a public accountant, architect, lawyer, etc., and the retail sales tax or use tax is not applicable to such charges. This includes the sales of software in connection with custom programs written to meet a particular customer's specific needs. The programs are considered to be the tangible evidence of a professional service rendered to a client and not subject to retail sales tax or use tax.

If, on the other hand, the sale, lease, or licensing of the computer program is a sale or lease of a product, even though produced through a computer system or process, it is taxable as a retail sale. Standard, prewritten software programs do not constitute professional services rendered to meet the particular needs of specific customers, but rather, are essentially sales of articles of tangible personal property. Articles of this type are no different from a usual inventory of tangible personal property held for sale or lease and, irrespective of any incidental modifications to the program medium or its environment (e.g., adaptation to computer room configuration) to meet a particular customer's needs, the sale or lease of such standard software is a sale at retail subject to retail sales tax or use tax.

#### **Business and Occupation Tax**

The terms "sale" (RCW 82.04.040) and "retail sale" (RCW 82.04.050) include any transfer of possession of tangible personal property for a consideration. This includes transfers of computer hardware and standard, prewritten software for a charge, regardless that outright ownership or title may not pass to the user, and regardless of any express or implied restrictions upon the user.

**Retailing:** All sales, leases, rentals, and licenses to use tangible personal property, including computer systems and all hardware and standard, prewritten software, to users, are subject to the retailing classification of business and occupation tax measured by the gross proceeds of sales derived therefrom. (See RCW 82.04.070.)

**Wholesaling:** When such transfers of tangible personal property as described in the previous paragraph, are for resale by the customer or client in the regular course of business, without intervening use by such persons, they are subject to wholesaling business and occupation tax measured by gross proceeds of sales.

**Service:** Persons who charge for providing information services or computer services (other than retailing or wholesaling as defined above) are subject to the service and other activities classification of business and occupation tax mea-

sured by the gross income of such business. This includes charges for custom program development, charges for on-line information and data, and charges in the nature of royalties for the reproduction, use, and reuse of patented systems and technological components of hardware or software, whether tangible or intangible.

The tax classifications and distinctions explained above will prevail regardless of how the federal government or other tax jurisdictions may classify these transactions for other tax purposes.

#### **Retail Sales Tax**

The retail sales tax applies to all amounts taxable under the retailing classification of business and occupation tax explained earlier. Providers must collect the sales tax from users of computer systems, hardware, equipment, and/or standard, prewritten software and materials delivered in this state. This includes outright sales, leases, rentals, licenses to use, and any other transfer of possession and the right to use such things, however physically packaged, represented, or conveyed.

The retail sales tax also applies to all charges to users for the repair, maintenance, alteration, or modification of hardware, equipment, and/or standard, prewritten software or materials.

#### **Use Tax**

The use tax applies upon the full value of computer systems, hardware, equipment, standard, prewritten software, and materials which are used by consumers in this state and upon which the retail sales tax has not been paid. The person liable for the tax is the user. However, see WAC 458-20-193B for circumstances under which the seller may be required to collect and report the use tax.

Also, the use tax applies upon the full value of such things which are made available to a user without a charge by a provider in the course of rendering any information or computer service. The person liable for the tax is the provider, as a bailor, or the user, as a bailee. See WAC 458-20-178.

#### **Interstate Sales and Services**

Persons who produce computer systems, hardware, equipment, standard, prewritten software, and materials in this state and who sell, lease, license, or otherwise transfer such things to buyers outside this state and deliver such things outside this state are not subject to either retailing or wholesaling business tax. Such persons are subject to the Manufacturing classification of business and occupation tax. See WAC 458-20-136. The measure of tax is the full value of the product manufactured. See WAC 458-20-112. Retail sales tax does not apply to such interstate deliveries. However, see WAC 458-20-193A for the criteria for perfecting interstate tax exempt sales. Persons who do not themselves produce such things in this state but merely sell such things and deliver outside this state are exempt of business tax and retail sales tax.

Providers of information or computer services in interstate commerce who are taxable under the service business tax classification are governed by the provisions of WAC 458-20-194 (doing business inside and outside the state).

\*Definitions marked with an asterisk are taken from *Vocabulary for Data Processing, Telecommunications, and Office Systems, IBM*, seventh edition (July, 1981).

[Statutory Authority: RCW 82.32.300. 85-20-012 (Order ET 85-4), § 458-20-155, filed 9/20/85; Order ET 70-3, § 458-20-155 (Rule 155), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-156 Abstract, title insurance and escrow businesses.** The gross receipts of "abstract," "title insurance" and "escrow" businesses include all service charges representing an abstract fee, a charge for a title insurance fee or premium, or an escrow fee or service charge received by "escrow agents."

The term "escrow" means any transaction wherein any person or persons, for the purpose of effecting and closing the sale, purchase, exchange, transfer, encumbrance, or lease of real or personal property to another person or persons, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by such third person until the happening of a specified event or the performance of a prescribed condition or conditions, when it is then to be delivered by such third person, in compliance with instructions under which he is to act, to a grantee, grantor, promisee, promisor, obligee, obligor, lessee, lessor, bailee, bailor, or any agent or employee thereof.

"Escrow agent" means any sole proprietorship, firm, association, partnership, or corporation engaged in the business of performing for compensation the duties of the third person referred to in the foregoing definition.

### Business and Occupation Tax

Abstract, title insurance and escrow businesses are taxable under the classification retailing on gross receipts from fees or premiums charged to consumers for abstract, title insurance or escrow services.

The gross income from collection contracts which do not involve an escrow as above defined is subject to tax under the classification service and other activities.

### Retail Sales Tax

The retail sales tax must be collected and reported by abstract, title insurance and escrow businesses on fees or premiums charged for such services. The retail sales tax is applicable to sales to such businesses of forms, office supplies and equipment for use in the conduct of such businesses.

[Statutory Authority: RCW 82.32.300. 83-07-033 (Order ET 83-16), § 458-20-156, filed 3/15/83; Order ET 70-3, § 458-20-156 (Rule 156), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-158 Florists and nurserymen.** The word "florist" means a person engaged in the business of selling flowers and ornamental trees, shrubs or vines from an established business location, or one who peddles the same.

The word "nurseryman" means a person who grows, propagates or produces for sale upon his own lands or upon land in which he has a present right of possession, any flowers, trees, shrubs or vines.

(2005 Ed.)

### Business and Occupation Tax

**Retailing.** Florists and nurserymen are taxable under the retailing classification upon gross sales made by them to consumers.

**Wholesaling.** Florists are taxable under the wholesaling classification upon gross sales for resale of articles which were not produced by them as nurserymen. Nurserymen are exempt from business tax with respect to sales at wholesale of articles produced by them in this state, but this exemption does not extend to the taking, cultivating, or raising of Christmas trees or timber.

### Retail Sales Tax

Florists and nurserymen must collect the retail sales tax on sales of cut flowers, bulbs, corsages, bouquets, wreaths, floral designs, displays, potted plants, young trees, shrubs, bushes and other such items of tangible personal property to purchasers for use or consumption. However, sales by nurserymen of fruit and nut trees and berry slips or vines to farmers who use the same for producing fruit, nuts or berries for sale are wholesale sales and are not subject to the retail sales tax.

**Telegraphic delivery.** Where, through the Florist's Telegraphic Delivery Association, one florist takes an order pursuant to which he gives telegraphic instructions to a second florist for delivery of flowers, the sending florist is a retailer of flowers and must collect the retail sales tax from the customer who placed the order on the basis of the total charge. The receiving florist is selling the flowers which he delivers, to the sending florist for resale and is not required to collect the retail sales tax. Thus:

(1) On all orders taken by a Washington florist and telegraphed to a second florist, either in Washington or at a point outside the state of Washington, the florist taking the order will be responsible for the collection of the retail sales tax from the customer placing the order.

(2) In cases where a Washington florist receives telegraphic instructions from a second florist located either within or without Washington for the delivery of flowers, the Washington florist receiving the telegraphic instructions is making a sale for resale to the sending florist on which no tax is to be collected.

**Telephone and telegraph charges.** The income derived by a florist from telephone and telegraph charges is construed to be an advance for the customer when such charges are paid by the florist and the amount thereof is billed to the customer as a separate item.

**Purchase or supplies, materials, equipment, etc.** Sales by supply houses to florists and nurserymen of the following articles are sales for resale upon which the retail sales tax should not be collected:

(1) Sales of paper boxes, wrapping paper, bags, twine, gummed tape or other containers sold to customers along with the flowers, shrubs, etc., sold and contained therein;

(2) Sales of labels, stickers, cards which are permanently affixed to the containers referred to above;

(3) Sales of wire, tin foil, ribbon and other items which are attached to or become a component part of, wreaths, floral displays, bouquets or corsages.

Furthermore, sales to nurserymen of seeds, fertilizers and spray materials for use by them in producing for sale

[Title 458 WAC—p. 197]

flowers, trees, shrubs or vines, are not subject to the retail sales tax. (See WAC 458-20-122.)

However, sales by supply houses to florists and nurserymen of fuel for heating green houses or for other purposes, and sales of equipment and supplies for use or consumption by them are taxable under the retail sales tax.

Revised June 1, 1965.

[Order ET 70-3, § 458-20-158 (Rule 158), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-159 Consignees, bailees, factors, agents and auctioneers.** A consignee, bailee, factor, agent or auctioneer, as used in this ruling, refers to one who has either actual or constructive possession of tangible personal property, the actual ownership of such property being in another, or one calling for bids on such property. The term "constructive possession" means possession of the power to pass title to tangible personal property of others.

### Business and Occupation Tax

**Retailing and wholesaling.** Every consignee, bailee, factor, agent or auctioneer having either actual or constructive possession of tangible personal property, or having possession of the documents of title thereto, with power to sell such tangible personal property in his or its own name and, actually so selling, shall be deemed the seller of such tangible personal property and taxable under the retailing or wholesaling classification of the business and occupation tax, depending upon the nature of the transactions. In such case the consignor, bailor, principal or owner shall be deemed a seller of such property to the consignee, bailee, factor or auctioneer and taxable as a wholesaler with respect to such sales.

The mere fact that consignee, bailee or factor makes a sale raises a presumption that such consignee, bailee or factor actually sold in his or its own name. This presumption is controlling unless rebutted by proof satisfactory to the department of revenue.

**Agents and brokers.** Any person who claims to be acting merely as agent or broker in promoting sales for a principal or in making purchases for a buyer, will have such claim recognized only when the contract or agreement between such persons clearly establishes the relationship of principal and agent and when the following conditions are complied with:

(1) The books and records of the broker or agent show the transactions were made in the name and for the account of the principal, and show the name of the actual owner of the property for whom the sale was made, or the actual buyer for whom the purchase was made.

(2) The books and records show the amount of gross sales, the amount of commissions and any other incidental income derived by the broker or agent from such sales.

**Service and other business activities.** Every consignee, bailee, factor, agent or auctioneer who makes a sale in the name of the actual owner, as agent of the actual owner, or who purchases as agent of the actual buyer, is taxable under the service and other business activities classification upon the gross income derived from such business.

### Retail Sales Tax

#### Consignees, bailees, factors, agents or auctioneers.

Every consignee, bailee, factor, agent or auctioneer authorized, engaged or employed to sell or call for bids on tangible personal property belonging to another, and, so selling or calling, is deemed a seller, and shall collect the retail sales tax upon all retail sales made by him, except sales of certain farm property as hereinafter provided. The tax applies to all such sales even though the sales would have been exempt if made directly by the owner of the property sold.

It shall be the duty of every consignee, bailee, factor, agent or auctioneer to collect and remit the retail sales tax directly to the department with respect to all retail sales made or called by them: Provided, however, That if the owner of the property sold is engaged in the business of selling tangible property and the sale by the consignee, bailee, factor, agent or auctioneer has been made in the owner's name and the owner continues to engage in business, the owner may report and pay the tax collected directly to the department.

If the owner of the property sold discontinues business either before or at the time of the sale, the owner and the consignee, bailee, factor, agent or auctioneer will be held jointly responsible for payment of the tax.

The foregoing does not apply to auction sales made by or through auctioneers of tangible personal property (including household goods) which have been used in conducting a farm activity when the seller thereof is a farmer and the sale is held or conducted upon a farm, since such sales are specifically exempted from the retail sales tax.

Bailees will be relieved from liability for the collection of the sales tax from buyers in those cases where they merely receive a commission on the sale and the entire transaction is closed directly between the owner and the buyer, if such sales are reported to the department by such bailees, within ten days after receipt of the sales commission and such report shows the following:

- (1) Name and address of seller;
- (2) Name and address of buyer;
- (3) Amount for which sold;
- (4) Approximate date of sale;
- (5) Description of property sold.

Those failing to submit such report to the department within the time stated will be held responsible for payment of the sales tax to the state.

Note: For tax liability of certain independent selling agents for the collection of the use tax, see WAC 458-20-221.

[Statutory Authority: RCW 82.32.300. 83-07-033 (Order ET 83-16), § 458-20-159, filed 3/15/83; Order ET 70-3, § 458-20-159 (Rule 159), filed 5/29/70, effective 7/1/70.]

#### WAC 458-20-160 Agricultural commission agents.

Any person whose business consists in selling agricultural products both as a dealer and upon a commission-consignment basis is presumed to be conducting business as a seller of tangible personal property either at wholesale or at retail, unless such person segregates upon his books and records between sales of products purchased and sold as a dealer and those handled strictly upon a commission basis.

### Business and Occupation Tax

**Retailing.** Dealers are taxable under the retailing classification upon gross proceeds derived from retail sales. Persons selling upon a commission-consignment basis who do not segregate upon their books and records between sales made as a dealer and those handled upon a commission basis are taxable as sellers upon gross proceeds of all sales.

**Wholesaling.** Dealers are taxable under the wholesaling classification upon gross proceeds derived from wholesale sales. Persons selling upon a commission-consignment basis who do not segregate upon their books and records between wholesale sales made as a dealer and those handled on a commission basis are taxable as sellers upon gross proceeds of all sales.

**Service and other business activities.** A person may be classified as engaging in service and other business activities with respect to bona fide commission-consignment sales, even though such consigned sales are credited to the "sales" account, providing he has complied with the Commission Merchants' Law of the state of Washington and has prepared and kept the following records supplementary to the regular books of account:

(1) Lot sheets, cards or similar subsidiary records upon which consigned sales are regularly recorded;

(2) An analysis sheet showing the date, lot number, gross proceeds of sales of consigned goods, remittances to consignor, advances, commissions, other charges and taxable amount with respect to consigned accounts. This sheet shall contain a complete analysis of all consigned sales showing the distribution made from lot sheets, cards or similar subsidiary records. Entries in the consigned sales analysis record shall be made as of the date that final distribution is made on lot sheet, card or similar record;

(3) A detailed record of deductions claimed with respect to sales of products purchased. Such records shall show the date of sale, the lot number and the nature of the deductions claimed.

The subsidiary analysis of consigned accounts and record of deductions shall be kept substantially in the following form:

Principal accounts				
Date	Lot Number	Interstate Sales	Other Deductions	Total Deductions

Commission accounts							
Date	Lot No.	Gross Proceeds of Sales	Remittances	Advances	Commission Charged	Other Charges	Taxable Amount

### Retail Sales Tax

Persons engaged in the business of selling agricultural products at retail either as dealers or upon a commission-consignment basis are required to collect the retail sales tax upon all retail sales made by them.

Revised May 1, 1939.

[Order ET 70-3, § 458-20-160 (Rule 160), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-162 Stockbrokers and security houses.** With respect to stockbrokers and security houses, "gross income of the business" means the total of gross income from interest, gross income from commissions, gross income from trading and gross income from all other sources: Provided, That:

(1) Gross income from each account is to be computed separately and on a monthly basis;

(2) Loss sustained upon any earnings account may not be deducted from or offset against gross income upon any other account, nor may a loss sustained upon any earnings account during any month be deducted from the gross income upon any account for any other month;

(3) No deductions are allowed on account of salaries or commissions paid to employees or salesmen, rent, or any other overhead or operating expenses paid or incurred, or on account of losses other than under "2" above;

(4) No deductions are allowed from commissions received from sales of securities which are delivered to buyers outside the state of Washington.

**Gross income from interest.** Gross income from interest includes all interest received upon bonds or other securities held for sale or otherwise, excepting only direct obligations of the federal government and of the state of Washington. No deduction is allowed for interest paid out even though such interest may have been paid to banks, clearing houses or others upon amounts borrowed to carry debit balances of customers' margin accounts.

Interest accrued upon bonds or other securities sold shall be included in gross income where such interest is carried in an interest account and not as part of the selling price. Conversely, interest accrued upon bonds or other securities at the time of purchase may be deducted from gross income where such interest is carried in an interest account and not as a part of the purchase price.

**Gross income from commissions.** Gross income from commissions is the amount received as commissions upon transactions for the accounts of customers over and above the amount paid to other established security houses associated in such transactions: Provided, however, That no deduction or offset is allowed on account of salaries or commissions paid to salesmen or other employees.

**Gross income from trading.** Gross income from trading is the amount received from the sale of stocks, bonds and other securities over and above the cost or purchase price of such stocks, bonds and other securities. In the case of short sales gross earnings shall be reported in the month during which the transaction is closed, that is, when the purchase is made to cover such sales or the short sale contract is forfeited.

**Gross income from all other sources.** Gross income from all other sources includes all income received by the taxpayer, other than from interest, commissions and trading,

such as dividends upon stocks, fees for examinations, fees for reorganizations, etc.

**Services inside and outside the state-apportionment.** Stockbrokers and security houses rendering services and maintaining places of business both inside and outside the state may, in computing tax, apportion to this state that portion of the gross income which is derived from services rendered or activities conducted inside this state. Where such apportionment cannot be made accurately by separate accounting methods, the taxpayer shall apportion to this state that portion of his total income which the cost of doing business inside the state bears to the total cost of doing business both inside and outside the state.

[Statutory Authority: RCW 82.32.300. 83-07-033 (Order ET 83-16), § 458-20-162, filed 3/15/83; Order ET 70-3, § 458-20-162 (Rule 162), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-163 Insurance companies, including surety companies, fraternal benefit societies, fraternal fire insurance associations, beneficiary corporations or societies and Washington state health insurance pool. (1) Exemptions.** The business and occupation tax does not apply to:

(a) Any person with respect to insurance business upon which a tax based on gross premiums is paid to the state of Washington. (RCW 82.04.320.) It should be noted, however, that the law provides expressly that this exemption does not extend to "any person engaging in the business of representing any insurance company, whether as general or local agent, or acting as broker for such companies" or to "any bonding company . . . with respect to gross income derived from the completion of any contract as to which it is a surety, or as to any liability as successor to the liability of the defaulting contractor." The exemption also does not apply to any business engaged in by an insurance company other than its insurance business. An insurance company is subject to the retailing or wholesaling business and occupation tax on sales of salvaged property unless the sales are casual or isolated sales as described in WAC 458-20-106. Also see WAC 458-20-102 for resale certificate requirements for wholesale sales.

(b) Fraternal benefit societies or fraternal fire insurance associations organized or licensed pursuant to Title 48 RCW and as defined in RCW 48.36A.010.

(c) Beneficiary corporations or societies organized under and existing by virtue of Title 24 RCW, if such beneficiary corporations or societies provide in their bylaws for the payment of death benefits. This exemption, however, is limited to gross income from premiums, fees, assessments, dues or other charges directly attributable to the insurance or death benefits provided by such persons. It is not intended that all the varied, regular business activities (e.g., sales of food, liquor, admissions, and amusement devices receipts) of these societies or organizations be exempted from the business and occupation tax. Only that portion of income which can be demonstrated as directly attributable to charges made for providing death benefits is exempt.

(2) **Deductions.** Effective May 18, 1987, a member of the Washington state health insurance pool may take a deduction from the measure of the business and occupation tax for assessments paid by that member to the pool. (See RCW 82.04.4329.) The deduction amount should be shown in the

deduction column of the business and occupation tax section on the combined excise tax return, where it will be subtracted from the gross amounts, to arrive at a net taxable amount upon which the actual business and occupation tax is computed. If the deduction cannot be fully used because the assessment total exceeds the gross receipts reported in the business and occupation tax section of the tax return, the member may carry forward the unused portion of the deduction to future reporting periods until the deduction is fully taken. The explanation of the deduction should be "Amount paid to Washington state health insurance pool, per RCW 82.04.4329 and WAC 458-20-163." This deduction does not apply to a member who has deducted such assessments from the insurance premiums tax, RCW 48.14.020.

(3) **Retail sales and use tax.** Insurance companies are subject to the retail sales tax or use tax upon retail purchases or articles acquired for their own use.

When insurance companies make sales to consumers of salvaged property (e.g., from automobile collisions, fire loss, burglary or theft recoveries) or any other tangible personal property, they must collect and report retail sales tax on those sales.

[Statutory Authority: RCW 82.32.300. 91-05-040, § 458-20-163, filed 2/13/91, effective 3/16/91; 87-19-007 (Order ET 87-5), § 458-20-163, filed 9/8/87; 83-07-033 (Order ET 83-16), § 458-20-163, filed 3/15/83; Order ET 70-3, § 458-20-163 (Rule 163), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-164 Insurance agents, brokers and solicitors. (1) Introduction.** This section explains the taxability of amounts received by insurance agents, brokers, or solicitors.

(2) **Definition.** The words "agent," "broker," and "solicitor" mean a person licensed as such under the provisions of chapter 48.17 RCW.

(3) **Business and occupation tax.** Every person engaging in business as an insurance agent, broker, or solicitor is taxable under the insurance agents and brokers classification upon the gross income of the business .

(a) The gross income of the business is determined by the amount of gross commissions received, not by the gross premiums paid by the insured. The term "gross income of the business" includes gross receipts from commissions, fees or other amounts which the agent, broker, or solicitor receives or becomes entitled to receive. The gross income of the business does not include amounts held in trust for the insurer or the client. (See also WAC 458-20-111, Advances and reimbursements.)

(b) No deduction is allowed for commissions, fees, or salaries paid to other agents, brokers, or solicitors nor for other expenses of doing business.

(c) Every person acting in the capacity of agent, broker, or solicitor is presumed to be engaging in business and subject to the business and occupation tax unless such person can demonstrate he or she is a bona fide employee. The burden is upon such person to establish the fact of his or her status as an employee. (See WAC 458-20-105, Employees.)

(4) **Full-time life insurance salespersons.** After June 30, 1991, persons who sell life insurance on a full-time basis, as provided in section 3121 (d)(3)(B) of the Internal Revenue Code (statutory employee), will be considered employees. Such persons will not be subject to the business and occupa-

tion tax on amounts received in their capacity as statutory employees.

(a) For purposes of this subsection (4), a full-time life insurance salesperson is an individual who meets all of the following criteria:

(i) The person's principal business activity is devoted to the solicitation of life insurance or annuity contracts, or both, primarily for one insurance company;

(ii) The contract between the individual and the primary life insurance company contemplates that substantially all of such services are to be performed personally by such individual;

(iii) The individual does not have a substantial investment in facilities used in connection with the sale of life insurance or annuity contracts (other than in facilities for transportation); and

(iv) The sale of life insurance by such individual occurs in the course of a continuing relationship with the primary life insurance company.

(b) A person's principal business activity is the activity from which he or she generally receives the greatest remuneration. All business activities, including acting as an employee, will be considered in determining a person's principal business activity.

(c) The facilities referred to in (a)(ii) of this subsection include such things as office space, office equipment, and secretarial services. The term facilities does not include such tools, instruments, or clothing as are commonly furnished by employees. An investment is substantial if a deduction for the item is taken in calculating the person's federal income tax liability.

(d) Failure to satisfy any one of the criteria listed in (a) of this subsection will disqualify a person from treatment as an employee under this subsection.

(e) A person will be considered an employee under this subsection (4) only as to amounts received as compensation for the sale of life insurance or annuity contracts, or both, from one life insurance company, regardless of whether the person sells life insurance on behalf of other companies.

(f) A person will be presumed to be a full-time life insurance salesperson within the meaning of section 3121 (d)(3)(B) of the Internal Revenue Code if they receive a Form W-2 (federal income tax wage and tax statement) indicating that they are a statutory employee. A person receiving a W-2 as a statutory employee will be presumed to be an employee under this subsection only as to amounts reported on the W-2 as compensation for the sale of life insurance.

(g) A person who does not receive a properly marked W-2 has the burden of establishing that they are a full-time life insurance salesperson as provided in (a) of this subsection.

(h) Examples.

(i) A person sells life insurance on a full-time basis on behalf of one company. The company issues a Form W-2 which indicates that the person is a statutory employee. Under these circumstances, the person will be presumed an employee as to amounts reported on the Form W-2 as compensation for the sale of life insurance and will not be taxable under the business and occupation tax on such amounts.

(ii) A person sells insurance on behalf of several insurance companies two of which are life insurance companies and the others are casualty insurance companies. The person

sells both life insurance and casualty insurance. One of the life insurance companies issues a Form W-2 indicating that the person is a statutory employee. The person will be presumed an employee as to amounts reported on the Form W-2 as compensation for the sale of life insurance and will not be taxable under the business and occupation tax on such amounts.

(iii) A person sells life insurance on behalf of several life insurance companies and does not engage in any other business activity. Most of the policies sold by the person are written with one company. The person does not receive a Form W-2 from any of the companies for which life insurance is sold. The person's sales activities are conducted from an office which he or she leases. The office lease payments are deducted by the salesperson in computing his or her federal income tax liability. In addition, the salesperson has an employee whose salary is also deducted for federal income tax purposes. Because the person does not receive a Form W-2, he or she will not be presumed to be an employee. Instead, the person has the burden of proving the existence of each of the criteria listed in subsection (4)(a) of this section. In this example, the salesperson will not be considered an employee under this subsection (4) of this section because they have a substantial investment in facilities.

(5) **Special classification for certain managing general agents.** Under RCW 82.04.280(5) persons representing and performing services for fire or casualty insurance companies as independent resident managing general agents are subject to tax at the prevailing rate upon the gross income of the business.

(a) In view of the small number of persons falling in this special category, no separate classification line on the combined excise tax return has been provided for reporting this income; it should be shown on line 1 of the combined excise tax return with the explanatory note: "Income for insurance managing general agent taxable under RCW 82.04.280(5)."

(b) Any person claiming to fall within this tax classification must demonstrate:

(i) That he is licensed as a resident general agent by the insurance commissioner; and

(ii) That he performs the following independent manager functions:

(A) Pays all sales and/or production expense; including salaries of special field representatives, underwriters, and inspectors as well as all office expenses of rent, supplies, secretarial help, etc.

(B) Bills all premiums for the company so represented.

(C) Directly contracts for or hires all selling agents.

(D) Exercises final responsibility with respect to selecting risks and underwriting matters.

(E) Makes all arrangements for reinsurance.

(F) Handles all claims adjustments directly with the insured (by his own staff or through hiring an independent adjuster).

(c) Persons wishing to claim qualification for this special insurance agent classification should request application forms from the department of revenue.

[Statutory Authority: RCW 82.32.300, 92-19-004, § 458-20-164, filed 9/3/92, effective 10/4/92; 83-17-099 (Order ET 83-6), § 458-20-164, filed 8/23/83; Order 70-5, § 458-20-164 (Rule 164), filed 6/22/70.]

**WAC 458-20-165 Laundry, dry cleaning, linen and uniform supply, and self-service and coin-operated laundry services.** (1) **Introduction.** This rule discusses the application of the business and occupation (B&O), retail sales, and use taxes to laundries, dry cleaners, laundry pickup and delivery services, self-service laundries and dry cleaners, and linen and uniform supply services. It also discusses the tax treatment of laundry services provided to nonprofit health care facilities and income received from coin-operated laundry facilities.

(2) **What is a laundry or dry cleaning service?** A "laundry or dry cleaning service" is the activity of laundering, cleaning, dyeing, and pressing of articles such as clothing, linens, bedding, towels, curtains, drapes, and rugs. It also includes incidental mending or repairing. The term applies to services operating their own cleaning establishments as well as those contracting with other laundry or dry cleaning services. It also includes pickup and delivery laundry services performed by persons operating in their independent capacity and not as agent for another laundry or dry cleaning service.

(a) **Sales of laundry or dry cleaning services.** The gross proceeds of sale and selling price of laundry or dry cleaning services provided to consumers are subject to the retailing B&O tax and retail sales tax, respectively. No deduction is available for commissions allowed or amounts paid to another for the performance of all or part of the laundry or dry cleaning service. RCW 82.04.070 and 82.08.010. The retailing B&O and retail sales taxes also apply to sales of soap, bleach, fabric softener, laundry bags, hangers, and other tangible personal property to consumers.

The wholesaling B&O tax applies to the gross proceeds of sale from laundry or dry cleaning services performed for persons reselling these services. The seller must obtain a resale certificate from the buyer to document the wholesale nature of any sale as provided in WAC 458-20-102 (Resale certificates).

(b) **Place of sale.** For the purposes of determining a seller's responsibility to remit B&O tax and/or to collect and remit retail sales tax, the place of sale for laundry and dry cleaning services is the place the laundering or dry cleaning is performed. RCW 82.14.020(4) and 82.04.050. For example, a laundry or dry cleaning service located in Washington must collect sales tax from an Oregon resident who brings clothing items to the business for laundering or dry cleaning. In addition, the gross proceeds are subject to the retailing B&O tax. Even though the customer resides in Oregon, both taxes apply because the laundering or dry cleaning occurs in Washington.

(i) **Seller hiring third-party to perform services.** A customer may purchase laundry or dry cleaning services from a seller who hires another person to perform the actual cleaning activity. In such cases, the customer will drop off and pick up the clothing or other articles to be cleaned at the seller's business location. The place of sale with respect to this sale is the seller's location where the customer drops off and picks up the articles.

(ii) **Seller using agent for pickup and delivery.** If a person providing laundry or dry cleaning services uses an agent such as a hotel or a driver for pickup and delivery of the articles to be cleaned, the place of sale is the seller's location where the cleaning is performed.

(c) **Purchases at wholesale.** The purchase of tangible personal property for resale as tangible personal property or as a component or ingredient of the cleaned article is a purchase at wholesale. Such purchases are not subject to retail sales tax when the buyer provides a resale certificate to the seller as discussed by WAC 458-20-102 (Resale certificates).

The following are examples of items that may be purchased at wholesale:

(i) Dyes, fabric softeners, starches, sizing, and similar articles or substances that become ingredients of the articles cleaned; and

(ii) Soap, bleach, fabric softener, laundry bags, hangers, and other tangible personal property that are not used in performing a laundry or dry cleaning services but are resold as tangible personal property.

(d) **Purchases subject to retail sales or use tax.** A laundry or dry cleaning business that acquires tangible personal property for use as a consumer must pay retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department when the seller fails to collect the appropriate retail sales tax. For further information about the use tax, refer to WAC 458-20-178 (Use tax).

The following are examples of purchases by a laundry or dry cleaning service that are subject to retail sales tax or use tax:

(i) Soaps, cleaning solvents, and other articles or substances that do not become ingredients of the articles cleaned;

(ii) Equipment such as washing machines, dryers, presses, irons, fixtures, and furniture;

(iii) Supplies such as hand tools, sewing notions, scissors, spotting brushes, and stationery; and

(iv) Items given to customers without charge.

(3) **What are linen and uniform supply services?** "Linen and uniform supply services" means the activity of providing customers with a supply of clean linen, towels, uniforms, gowns, protective apparel, clean room apparel, mats, rugs, and/or similar items whether ownership of the item is in the person operating the linen and uniform supply service or in the customer. RCW 82.08.0202. It also means the supply of diapers and bedding. "Linen and uniform supply services" includes supply services operating their own cleaning establishments as well as those contracting with other laundry or dry cleaning businesses.

A person providing linen and uniform supply services performs a number of different activities, often at multiple locations. Many of these activities are the same types of activities performed by a person providing laundry or dry cleaning services, such as: Laundering, dry cleaning, pressing, incidental mending, and/or pickup and delivery. Additional activities not generally performed by a person providing laundry or dry cleaning services may include: Providing linen and uniform items customized by application of the customer's business name, company logo, employee names, etc.; measuring and/or issuing uniforms to the customer's employees; repairing or replacing worn or damaged linen and uniform items; and/or performing various administrative functions for the customer, such as inventory control.

(a) **Sales of linen and uniform supply services.** The gross proceeds of sale and selling price from linen and uniform supply services provided to consumers are subject to the retailing B&O tax and retail sales tax, respectively. No

deduction is available for commissions allowed or amounts paid to another for the performance of all or part of the laundry or dry cleaning service. RCW 82.04.070 and 82.08.010.

(b) **Place of sale.** Effective July 1, 2001, for the purposes of determining a seller of linen and uniform supply services' responsibility to remit B&O tax and to collect and remit retail sales tax, the place of sale is the place of delivery to the customer. For periods before July 1, 2001, the place of sale was the location at which the laundering activity was performed.

For assistance with determining appropriate local sales and use tax rates, the department's geographic information system (GIS) provides a mapping and address lookup system. The system is available on the department's internet site at: <http://dor.wa.gov>.

(c) **Purchases at wholesale.** The purchase of tangible personal property for resale as tangible personal property or as a component or ingredient of the cleaned article is a wholesale sale. Such purchases are not subject to retail sales tax when the buyer provides a resale certificate to the seller as discussed by WAC 458-20-102 (Resale certificates).

The following are examples of items that may be purchased at wholesale:

(i) Linen, uniforms, towels, cabinets, hand soap, and similar property rented or supplied to customers as a part of the laundry and linen supply service; and

(ii) Dyes, fabric softeners, starches, sizing, and similar articles or substances that become ingredients of the articles being cleaned.

(d) **Purchases subject to retail sales or use tax.** A linen or uniform supply service that acquires tangible personal property for use as a consumer must pay retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department when the seller fails to collect the retail sales tax. For further information about the use tax, refer to WAC 458-20-178 (Use tax).

The following are examples of purchases by a linen or uniform supply service that are subject to retail sales tax or use tax:

(i) Soaps, cleaning solvents, and other articles or substances that do not become ingredients of the articles cleaned;

(ii) Equipment such as washing machines, dryers, presses, irons, fixtures, and furniture; and

(iii) Supplies such as hand tools, sewing notions, scissors, spotting brushes, and stationery.

(4) **Customer's responsibility to remit use tax.** Effective July 1, 2002, chapter 367, Laws of 2002, imposes the use tax on certain retail services acquired by consumers without payment of the retail sales tax. Such services include installing, repairing, cleaning, altering, imprinting, or improving tangible personal property. Thus, a consumer must report and pay use tax directly to the department when a seller of laundry or dry cleaning services or linen and uniform supply services fails to collect the retail sales tax.

For example, a person with a restaurant location in Vancouver and another in Portland, Oregon, contracts with an Oregon business for linen and uniform supply services. Each week, the linen and uniform supply service delivers clean linens and uniforms and picks up soiled items for both locations at the person's Portland location. The person's Vancouver location turns in soiled uniforms and linens and receives its

supply of clean items at the person's Portland location. The person is responsible for reporting and paying use tax on the value of the linen and uniform supply services used by its Vancouver location. For further discussion about use tax, refer to WAC 458-20-178.

(5) **Laundry agents collecting and distributing laundry.** Persons who collect and/or distribute laundered or dry cleaned items as an agent for a provider of laundry services, dry cleaning services, or linen and uniform supply services are liable for the service and other activities B&O tax on their gross commissions. See WAC 458-20-159 for the record-keeping requirements for showing agency status. The person providing the laundry service, dry cleaning services, or linen and uniform supply service must collect and remit to the department retail sales tax on the total charge made to the customer (see subsections (2) and (3) of this rule).

(6) **Self-service and coin-operated laundry facilities.** Charges for the use of self-service or coin-operated laundry facilities are subject to the retailing B&O and retail sales taxes, except as discussed below. Likewise sales of soap, bleach, fabric softener and other supplies to consumers are subject to the retailing B&O tax and retail sales tax. For most sales, the law requires a seller to separately state the retail sales tax from the selling price. However, the law allows a seller to deduct the tax from the total amount received in coin-operated machines to arrive at the net amount that becomes the measure of the tax. RCW 82.08.050 and 82.08.-080.

(a) **Coin-operated laundry facilities for the exclusive use of tenants.** Effective July 1, 1998, the definition of a retail sale excludes charges for the use of coin-operated laundry facilities in apartment houses, rooming houses, or mobile home parks when the facilities are provided for the exclusive use of tenants. RCW 82.04.050 (2)(a). As a result, charges for the use of these facilities are not subject to the retailing B&O tax or the retail sales tax. However, the gross proceeds of sale received from these facilities is subject to the service and other activities B&O tax. Before July 1, 1998, these charges were retail sales and subject to the retailing B&O tax and retail sales tax.

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 retailing B&O and retail sales taxes. Persons providing transient lodging should refer to WAC 458-20-166 (Hotels, motels, boarding houses, rooming houses, resorts, trailer camps, etc.).

(b) **Place of sale.** For the purposes of determining a seller's responsibility to remit B&O tax and/or to collect and remit retail sales tax, the place of sale with respect to charges for the use of a self-service or coin-operated laundry facility is the location of the facility.

(c) **Purchases at wholesale.** The purchase of tangible personal property for resale as tangible personal property is a purchase at wholesale. Such purchases are not subject to retail sales tax when the buyer provides a resale certificate to the seller as discussed by WAC 458-20-102 (Resale certificates). Thus, purchases of soap, bleach, fabric softener and other supplies for resale to customers separate from charges for the use of the laundry facilities are wholesale purchases.

(d) **Purchases subject to retail sales or use tax.** A coin-operated laundry facility that acquires tangible personal property for use as a consumer must pay retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department when the seller fails to collect the appropriate retail sales tax. For further information about use tax, refer to WAC 458-20-178 (Use tax).

The following are examples of purchases by a coin-operated laundry facility that are subject to retail sales tax or use tax:

(i) Washing machines, dryers, fixtures, and furniture; and

(ii) Items given to customers without charge.

(7) **Laundry services performed for nonprofit health care facilities.** For the purpose of this rule, "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.

(a) **Sales of laundry services to nonprofit health care facilities.** Effective July 1, 1998, the definition of a retail sale specifically excludes sales of laundry services to nonprofit health care facilities. As a result, charges for laundry services provided to these facilities are not subject to retail sales tax or the retailing B&O tax. However, effective July 1, 1998, the gross proceeds of sale received for providing laundry services to nonprofit health care facilities is subject to the service and other activities B&O tax. For the period of July 1, 1993, through 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.

(b) **Purchases subject to retail sales or use tax.** Persons providing laundry services to nonprofit health care facilities are considered consumers of all items used in providing such services. RCW 82.04.190. As a result, purchases of items such as dyes, fabric softeners, linens, and uniforms are subject to the retail sales tax. The same is true for purchases of washing machines, dryers, fixtures, furniture, and other items of tangible personal property. The buyer must remit retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department when the seller fails to collect the appropriate retail sales tax. For further information about the use tax, refer to WAC 458-20-178 (Use tax).

[Statutory Authority: RCW 82.32.300 and 82.01.060(2), 02-23-034, § 458-20-165, filed 11/13/02, effective 12/14/02. 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 458-20-166 Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc. (1) Introduction.** This section explains the taxation of persons operating establishments such as hotels, motels, and bed and breakfast facilities, which provide lodging and related services to transients for a charge. In addition to retail sales tax and B&O tax, this section explains the special

hotel/motel tax, the convention and trade center tax, and the taxation of emergency housing furnished to the homeless.

(a) In addition to persons operating hotels or motels, this section applies to persons operating the following establishments:

(i) Trailer camps and recreational vehicle parks which charge for the rental of space for transients for locating or parking house trailers, campers, recreational vehicles, mobile homes, tents, etc.

(ii) Educational institutions which sell overnight lodging to persons other than students. See WAC 458-20-167.

(iii) Private lodging houses, dormitories, bunkhouses, etc., operated by or on behalf of business and industrial firms or schools solely for the accommodation of employees of such firms or students which are not held out to the public as a place where sleeping accommodations may be obtained. As will be discussed more fully below, in some circumstances these businesses may not be making retail sales of lodging.

(iv) Guest ranches or summer camps which, in addition to supplying meals and lodging, offer special recreation facilities and instruction in sports, boating, riding, outdoor living, etc. In some cases these businesses may not be making retail sales, as discussed below.

(b) This section does not apply to persons operating the following establishments:

(i) Hospitals, sanitariums, nursing homes, rest homes, and similar institutions. Persons operating these establishments should refer to WAC 458-20-168.

(ii) Establishments such as apartments or condominiums where the rental is for longer than one month. See WAC 458-20-118 for the distinction between a rental of real estate and the license to use real estate.

(2) **Transient defined.** The term "transient" as used in this section means any guest, resident, or other occupant to whom lodging and other services are furnished under a license to use real property for less than one month, or less than thirty continuous days if the rental period does not begin on the first day of the month. An occupant remaining in continuous occupancy for thirty days or more is considered a nontransient upon the thirtieth day. An occupant who contracts in advance and does remain in continuous occupancy for the initial thirty days will be considered a nontransient from the start of the occupancy.

(3) **Business and occupation tax (B&O).** Where lodging is sold to a nontransient, the transaction is a rental of real estate and exempt from B&O tax. (See RCW 82.04.390.) Sales of lodging and related services to transients are subject to B&O tax, including transactions which may have been identified or characterized as membership fees or dues. (See WAC 458-20-114.) The B&O tax applies as follows:

(a) **Retailing.** Amounts derived from the following charges to transients are retail sales and subject to the retailing B&O tax: Rental of rooms for lodging, rental of radio and television sets, coin operated laundries, rental of rooms, space and facilities not for lodging, such as ballrooms, display rooms, meeting rooms, etc., automobile parking or storage, and the sale or rental of tangible personal property at retail. See "retail sales tax" below for a more detailed explanation of the charges included in the retailing classification.

(b) **Service and other business activities.** Commissions, amounts derived from accommodations not available

to the public, and certain unsegregated charges are taxable under this classification.

(i) Hotels, motels, and similar businesses may receive commissions from various sources which are generally taxable under the service and other business activities classification. The following are examples of such commissions:

(A) Commissions received from acting as a laundry agent for guests when someone other than the hotel provides the laundry service (see WAC 458-20-165).

(B) Commissions received from telephone companies for long distance telephone calls where the hotel or motel is merely acting as an agent (WAC 458-20-159) and commissions received from coin-operated telephones (WAC 458-20-245). Refer to the retail sales tax subsection below for a further discussion of telephone charges.

(C) Commissions or license fees for permitting a satellite antenna to be installed on the premises or as a commission for permitting a broadcaster or cable operator to make sales to the guest of the hotel or motel.

(D) Commissions from the rental of videos for use by guests of the hotel or motel when the hotel or motel operator is clearly making such sales as an agent for a seller.

(E) Commissions received from the operation of amusement devices. (WAC 458-20-187.)

(ii) Taxable under this classification are amounts derived from the rental of sleeping accommodations by private lodging houses, and by dormitories, bunkhouses, etc., operated by or on behalf of business and industrial firms and which are not held out to the public as a place where sleeping accommodations may be obtained.

(iii) Summer camps, guest ranches and similar establishments making an unsegregated charge for meals, lodging, instruction and the use of recreational facilities must report the gross income from such charges under the service and other business activities classification.

(iv) Deposits retained by the business as a penalty charged to a customer for failure to timely cancel a reservation is taxable under the service and other business activities classification.

(4) **Retail sales tax.** Persons providing lodging and other services generally must collect retail sales tax on their charges for lodging and other services as discussed below. They must pay retail sales or use tax on all of the items they purchase for use in providing their services.

(a) **Lodging.** All charges for lodging and related services to transients are retail sales. Included are charges for vehicle parking and storage and for space and other facilities, including charges for utility services, in a trailer camp.

(i) An occupant who does not contract in advance to stay at least thirty days does not become entitled to a refund of retail sales tax where the rental period extended beyond thirty days. For example, a tenant rents the same motel room on a weekly basis. The tenant is considered a transient for the first twenty-nine days of occupancy and must pay retail sales tax on the rental charges. The rental charges become exempt of retail sales tax beginning on the thirtieth day. The tenant is not entitled to a refund of retail sales taxes paid on the rental charges for the first twenty-nine days.

(ii) A business providing transient lodging must complete the "transient rental income" information section of the combined excise tax return. The four digit location code must

be listed along with the income received from transient lodging subject to retail sales tax for each facility located within a participating city or county.

(b) **Meals and entertainment.** All charges for food, beverages, and entertainment are retail sales.

(i) Charges for related services such as room service, banquet room services, and service charges and gratuities which are agreed to in advance by customers or added to their bills by the service provider are also retail sales.

(ii) In the case of meals sold under a "two meals for the price of one" promotion, the taxable selling price is the actual amount received as payment for the meals.

(iii) Meals sold to employees are also subject to retail sales tax. See WAC 458-20-119 for retail sales tax applicability on meals furnished to employees.

(iv) Sale of food and other items sold through vending machines are retail sales. See WAC 458-20-187 for reporting income from vending machine sales and WAC 458-20-244 for the distinction between taxable and nontaxable sales of food products.

(v) Except for guest ranches and summer camps, when a lump sum is charged for lodging to nontransients and for meals furnished, the retail sales tax must be collected upon the fair selling price of such meals. Unless accounts are kept showing the fair selling price, the tax will be computed upon double the cost of the meals served. The cost includes the price paid for food and drinks served, the cost of preparing and serving meals, and all other costs incidental thereto, including an appropriate portion of overhead expenses.

(vi) Cover charges for dancing and entertainment are retail sales.

(vii) Charges for providing extended television reception to guests are retail sales.

(c) **Laundry services.** Charges for laundry services provided by a hotel/motel in the hotel's name are retail sales. RCW 82.04.050, which defines retail sales, was amended by chapter 25, Laws of 1993 sp.s. to include charges for the use of coin-operated laundry facilities located in hotels, motels, rooming houses, and trailer camps for the exclusive use of the tenants. This change became effective July 1, 1993. Prior to that date income from charges to tenants for coin-operated laundry facilities was subject to service B&O tax.

(d) **Telephone charges.** Telephone charges to guests, except those subject to service B&O tax as discussed above and in WAC 458-20-245, are retail sales. "Message service" charges are also retail sales.

If the hotel/motel is acting as an agent for a telephone service provider who provides long distance telephone service to the guest, the actual telephone charges are not taxable income to the hotel/motel. These amounts are advances and reimbursements (see WAC 458-20-111 and 458-20-159). Any additional handling or other charge which the hotel/motel may add to the actual long distance telephone charge is a retail sale.

(e) **Telephone lines.** If the hotel/motel leases telephone lines and then provides telephone services for a charge to its guests, these charges are taxable as retail sales. In this case the hotel/motel is in the telephone business. (See WAC 458-20-245.) The hotel/motel may give a resale certificate to the provider of the leased lines and is not subject to the payment of retail sales tax to the provider of the leased lines.

(f) **Rentals.** Rentals of tangible personal property such as movies and sports equipment are retail sales.

(g) **Purchases of tangible personal property for use in providing lodging and related services.** All purchases of tangible personal property for use in providing lodging and related services are retail sales. The charge for lodging and related services is for services rendered and not for the resale of any tangible property.

(i) Included are such items as beds and other furnishings, restaurant equipment, soap, towels, linens, and laundry supply services. Purchases, such as small toiletry items, are included even though they may be provided for guests to take home if not used.

(ii) The retail sales tax does not apply to sales of food products to persons operating guest ranches and summer camps for use in preparing meals served to guests. Sales of prepared meals or other items which require a food handler's permit to persons operating guest ranches and summer camps are subject to retail sales tax. See WAC 458-20-244 for sales of food products.

(h) **Sales to the United States government.** Sales made directly to the United States government are not subject to retail sales tax. Sales to employees of the federal government are fully taxable notwithstanding that the employee ultimately will be reimbursed for the cost of lodging. The department of revenue has identified the following methods of billing or payment which are presumed to be sales directly to the federal government:

(i) The lodging is paid by government voucher or government check payable directly to the hotel/motel.

(ii) Charges made through the use of a VISA I.M.P.A.C. card (International merchant purchase authorization card). The VISA I.M.P.A.C. cards include the embossed legend "U.S. Government Tax Exempt." The account number on each card begins with the prefix "4716."

(iii) For periods prior to November 30, 1993, charges made through Diner's Club Corporate Charge Card (the card contains the statement "for official use only"). There were two Diner's Club Corporate Charge Cards available to federal employees. Only one was sales tax exempt. The card providing the exemption was embossed with the name of the employee followed by the statement "for official use only." This card was used by federal agencies to pay for group lodging. The Diner's Club card program for federal employees ended November 29, 1993.

(iv) Beginning November 30, 1993, charges made through the use of certain American Express charge cards issued for the use of federal government travelers. Only those cards directly charging a government travel account (central bill account) qualify for the exemption. These cards begin with an account number prefix of "3783-9."

(v) A cash purchase made on behalf of the federal government by a federal employee who gives the seller a federal standard form SF 1165. A cash purchase by a federal employee made on behalf of the federal government qualifies for a sales tax exemption provided that the federal employee presents a federal standard form SF 1165 to document the fact that the purchase is made on behalf of the federal agency out of petty cash funds. The vendor (hotel/motel) is required to sign form SF 1165 to signify receipt of cash for the purchase. The vendor must retain a photocopy of SF 1165,

describing the item purchased, to document the sales tax exemption.

(5) **Special hotel/motel tax.** Beginning in October 1987, some locations in the state have been authorized to charge a special hotel/motel tax. (See chapters 67.28 and 36.100 RCW.) If a business is in one of these locations, an additional tax is charged and reported under the special hotel/motel portion of the tax return. The four digit location code, the amount received for the lodging, and the tax rate must be completed for each location in which the lodging is provided. The tax applies without regard to the number of lodging units except that the tax of chapter 36.100 RCW applies only if there are forty or more lodging units. The tax only applies to the charge for the rooms to be used for lodging by transients. Additional charges for telephone services, laundry, or other incidental charges are not subject to the special hotel/motel tax. Neither is the charge for use of meeting rooms, banquet rooms, or other special use rooms subject to this tax. However, the tax does apply to charges for use of camping and recreational vehicle sites.

(6) **Convention and trade center tax.** Businesses selling lodging to transients, having sixty or more units located in King County, must charge their customers the convention and trade center tax and report the tax under the "convention and trade center" portion of the tax return. See RCW 67.40.-090.

(a) A business having more than sixty units which are rented to transients and nontransients will be subject to the convention and trade center tax only if the business has at least sixty rooms which are available or being used for transient lodging. For example, a business with one hundred forty total rooms of which ninety-five are rented to nontransients is not subject to the convention and trade center tax.

(b) The tax only applies to the charge for the rooms to be used for lodging by transients. Additional charges for telephone services, laundry, or other incidental charges are not subject to the convention and trade center tax. Neither is the charge for use of meeting rooms, banquet rooms, or other special use rooms subject to the convention and trade center tax.

(c) The four digit location code, amount received for the lodging, and the tax rate must be completed for each location in which the lodging is provided. However, the tax does apply to charges for camping or recreational vehicle sites. Each camp site is considered a single unit.

(7) **Furnishing emergency lodging to homeless.** The charge made for the furnishing of emergency lodging to homeless persons purchased via a shelter voucher program administered by cities, towns, and counties or private organizations that provide emergency food and shelter services is exempt from the retail sales tax, the convention and trade center tax, and the special hotel/motel tax. This exemption became effective July 1, 1988. This form of payment does not influence the required minimum of transient rooms available for use as transient lodging under the "convention and trade center tax" or under the "special hotel/motel tax."

[Statutory Authority: RCW 82.32.300. 94-05-001, § 458-20-166, filed 2/2/94, effective 3/5/94; 92-05-064, § 458-20-166, filed 2/18/92, effective 3/20/92; 88-20-014 (Order 88-6), § 458-20-166, filed 9/27/88; 83-07-033 (Order ET 83-16), § 458-20-166, filed 3/15/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-166, filed

6/27/78; Order ET 70-3, § 458-20-166 (Rule 166), 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

(2005 Ed.)

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 458-20-168 Hospitals, medical care facilities, and adult family homes. (1) Introduction.** This section provides tax reporting information to persons operating hospitals, medical care facilities, and adult family homes. It includes tax reporting changes resulting from the passage of chapter 25, Laws of 1993 sp.s. which affected nonprofit hospitals and hospitals operated by political subdivisions of the state.

**(2) Definitions.**

(a) The term "hospital" means only institutions defined as hospitals in chapter 70.41 RCW. The term includes privately owned and operated hospitals, hospitals operated as nonprofit corporations, hospitals operated by political subdivisions of the state, and hospitals operated by the state but not owned by the state.

(b) The term "nursing home" means only institutions defined as nursing homes in chapter 18.51 RCW.

(c) The term "adult family home" means private homes licensed by the department of social and health services as adult family homes (see WAC 388-76-030(2)), and those which are specifically exempt from licensing under the rules of the department of social and health services. (See WAC 388-76-140.)

**(3) Business and occupation (B&O) tax.** The sale of tangible personal property which is not part of the medical service being provided to a patient is taxable under the retailing B&O tax classification. There are two B&O tax classifications which can apply to persons providing medical services through the operation of a hospital, with the tax classification dependent on the organizational structure of the hospital. The B&O tax classifications are:

(a) Public or nonprofit hospitals. This B&O tax classification applies to gross income derived from personal and professional services to patients by hospitals that are operated as nonprofit corporations, operated by political subdivisions of the state, or operated but not owned by the state. These hospitals became taxable for hospital services under this B&O tax classification on July 1, 1993. These hospitals were required to report under the service B&O tax classification prior to July 1, 1993, but were entitled to a deduction for services rendered to patients.

(b) Service. The gross income derived from personal and professional services of hospitals (other than hospitals operated as nonprofit corporations or by political subdivisions of the state), nursing homes, convalescent homes, clinics, rest homes, health resorts, and similar health care institutions is subject to business and occupation tax under the service and other activities classification. This classification also applies to nonprofit hospitals for personal or professional services

which are performed for persons other than patients and not otherwise tax classified.

(c) Retailing. The retailing business and occupation tax applies to sales by such persons of tangible personal property sold and billed separately from services rendered. However, this does not include charges to patients for tangible personal property which is used in providing medical services to a patient, even if separately billed. Tangible personal property which is used in providing medical services is not considered to have been sold separately from the medical services simply because those items are separately invoiced. These charges, even if separately itemized, are for providing medical services and are taxable under either the "public or non-profit hospital" classification or the "service and other business activities" classification, depending on the type of organization making the sale. However, making copies of medical records is considered to be a separate activity from that of providing medical services and any income from this activity is subject to the retailing tax and the retail sales tax.

(d) Research and development. There is a separate tax classification which applies to nonprofit corporations and nonprofit associations for income received in performing research and development. See RCW 82.04.260(6).

(4) **Exemptions and deductions.** The following exemptions and deductions apply:

(a) Adult family homes. The gross income derived from personal and professional services of adult family homes which are licensed as such, or which are specifically exempt from licensing under the rules of the department of social and health services, is exempt from the business and occupation tax effective June 9, 1987.

(b) State-owned hospitals. The gross income from a hospital owned by the state of Washington is not subject to B&O tax. (Refer to WAC 458-20-189.) This exemption does not include hospital districts or hospitals which are operated by or for political subdivisions of the state, such as a county government.

(c) Kidney dialysis facilities, certain nursing homes, certain homes for unwed mothers. Nonprofit organizations operating kidney dialysis facilities, homes for unwed mothers where the operating organization is also a religious or charitable organization, and nonprofit nursing homes are exempt from B&O tax on the services they provide to patients or from the sales of prescription drugs. (See WAC 458-20-18801.) However, the exemption applies only if no part of the net earnings received by such an institution inures, directly or indirectly, to any person other than the institution entitled to deduction hereunder. The deduction for income from the operation of kidney dialysis facilities is available to nonprofit hospitals if the hospital accurately identifies and accounts for the income from this activity.

(d) Contributions, donations and endowment funds. Amounts received as contributions, donations and endowment funds may be excluded from gross income, provided that no specific service is performed as a condition for receiving the funds. Amounts received as grants are taxable if specific services are performed as a condition for receiving the grant. (See WAC 458-20-114.)

(e) Health and social welfare services. Refer to WAC 458-20-169 for health and welfare services which may be deductible.

(5) **Adjustments to revenues.** Many hospitals will perform charity care where medical care is given without charge or some portion of a charge will be cancelled. In other cases, medical care is billed to patients at "standard" rates, but later adjusted to reduce the charges to the rates established by contract with Medicare, Medicaid, or with private insurers. In these situations the hospital must initially include the total charges as billed to the patient as gross income unless the hospital's records clearly indicate the amount of income to which it will be entitled under its contracts with insurance carriers. Where tax returns are initially filed based on gross charges, an adjustment may be taken at the time of filing future tax returns after the hospital has adjusted its records to reflect the actual amounts collected. In no event may the hospital reduce its current revenue by amounts which were not previously included in the taxable base. If the tax rate changes from the time the B&O tax was first paid on the gross charges and the time of the adjustment, the hospital must file amended tax returns to report the B&O tax on the transaction as finally completed at the rate in effect at the time the service was performed.

(6) **Retail sales tax.** Retail sales which are subject to retailing business tax, as provided earlier, are also subject to retail sales tax. These businesses are required to pay retail sales tax on purchases of medical supplies, durable equipment, and consumables. (For tax liability of hospitals on sales of meals, see WAC 458-20-119 and 458-20-244.)

(7) **Retail sales and use tax exemptions.** The following exemptions from the retail sales and use tax apply:

(a) Effective on May 6, 1993, all items which are reasonably necessary for the operation of free hospitals may be purchased without payment of retail sales or use tax. This includes all supplies and equipment. It also includes any items which are used in providing health care. "Free hospitals" means a hospital that does not charge patients for health care provided by the hospital. (Refer to chapter 205, Laws of 1993.)

(b) Sales of drugs, medicines, prescription lenses, orthotic devices, medical oxygen, or other substances, prescribed by medical practitioners are exempt of retail sales tax where the written prescription bearing the signature of the issuing medical practitioner and the name of the patient for whom prescribed is retained. Sales of prosthetic devices, hearing aids as defined in RCW 18.35.010(3), and ostomic items whether or not prescribed are also exempt of sales tax. See WAC 458-20-18801.

[Statutory Authority: RCW 82.32.300 and 82.04.260(15). 94-11-097, § 458-20-168, filed 5/17/94, effective 6/17/94. Statutory Authority: RCW 82.32.300. 88-01-050 (Order 87-9), § 458-20-168, filed 12/15/87; 87-05-042 (Order 87-1), § 458-20-168, filed 2/18/87; 83-07-033 (Order ET 83-16), § 458-20-168, filed 3/15/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-168, filed 6/27/78; Order ET 74-2, § 458-20-168, filed 6/24/74; Order ET 70-3, § 458-20-168 (Rule 168), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-169 Nonprofit organizations.** (1) **Introduction.** Unlike most states' and the federal tax systems, Washington's tax system, specifically its business tax, applies to nonprofit organizations. Washington's business tax is imposed upon all entities that generate gross receipts or proceeds, unless there is a specific statutory exemption or deduction. This rule reviews how the business and occupation

(B&O), retail sales, and use taxes apply to activities often performed by nonprofit organizations. Although some nonprofit organizations may be subject to other taxes (e.g., public utility or insurance premium taxes on income from utility or insurance activities), these taxes are not discussed in this rule. The rule describes the most common exemptions and deductions for the B&O, retail and use taxes specifically provided to nonprofit organizations by state law. Other exemptions and/or deductions not specific to nonprofit organizations may also apply.

Other rules that may be relevant to specific activities of nonprofit organizations include the following:

- (a) Artistic or cultural organizations, WAC 458-20-249;
- (b) Educational institutions, school districts, student organizations, and private schools, WAC 458-20-167;
- (c) Hospitals, nursing homes, and adult family homes, WAC 458-20-168;
- (d) Membership organizations, nonprofit groups and clubs providing amusement, recreation, or physical fitness services, WAC 458-20-183; and
- (e) Organizations holding trade shows, conventions, or seminars, WAC 458-20-256.

(2) **Registration requirements.** Nonprofit organizations with \$12,000 or more per year in gross receipts from sales, and/or gross income from services subject to the B&O tax or who are required to collect or pay to the department of revenue (department) retail sales tax or any other tax or fee which the department administers (regardless of the level of annual gross receipts) must register with the department. Nonprofit organizations that have gross receipts of less than \$12,000 per year and who are not required to collect retail sales tax or any other tax or fee administered by the department are not required to register with the department.

For more details on registration requirements see WAC 458-20-101 (Tax registration and tax reporting).

(3) **Filing tax returns.** Nonprofit organizations making retail sales that require the collection of the retail sales tax must file a tax return, regardless of the annual level of gross receipts or gross income and whether or not any B&O tax is due. (See also WAC 458-20-104 (Small business tax relief based on volume of business).) The combined excise tax return with payment is generally filed on a monthly basis. However, under certain conditions the department may authorize taxpayers to file and remit payment on either a quarterly or annual basis. Refer to WAC 458-20-22801 for more information regarding how reporting frequencies are assigned.

Nonprofit organizations that do not have retail sales tax to remit, but are required to register, do not have to file a tax return if they meet certain statutory requirements (e.g., annual gross income of less than \$28,000) and are placed on an "active nonreporting" status by the department. Refer to WAC 458-20-101 for more information regarding the "active nonreporting" status.

(4) **General tax reporting responsibilities.** While Washington state law provides some tax exemptions and deductions specifically targeted toward nonprofit organizations, these organizations otherwise have the same tax-reporting responsibilities as those of for-profit organizations.

(a) **Business and occupation tax.** Chapter 82.04 RCW imposes a B&O tax upon all persons engaged in business

(2005 Ed.)

activities within this state, unless the income is specifically exempt or deductible under state law. The B&O tax applies to the value of products, gross proceeds of sales, or gross income of the business, as the case may be. RCW 82.04.220.

(i) **Common B&O tax classifications.** Chapter 82.04 RCW provides a number of classifications that apply to specific activities. The most common B&O tax classifications that apply to income received by nonprofit organizations are the service and other activities, retailing, and wholesaling classifications. If an organization engages in more than one kind of business activity, the gross income from each activity must be reported under the appropriate tax classification.

(ii) **Measure of tax.** The most common measures of the B&O tax are "gross proceeds of sales" and "gross income of the business." RCW 82.04.070 and 82.04.080, respectively. These measures include the value proceeding or accruing from the sale of tangible personal property or services rendered without any deduction for the cost of property sold, cost of materials used, labor costs, discounts paid, delivery costs, taxes, losses or any other expenses.

(b) **Retail sales tax.** A nonprofit organization must collect and remit retail sales tax on all retail sales, unless the sale is specifically exempt by statute. Examples of retail sales tax exemptions that commonly apply to nonprofit organizations are those for sales of certain food products (see WAC 458-20-244 for more information regarding sales of food products), construction materials purchased by a health or social welfare organization for new construction of alternative housing for youth in crisis, to be licensed as a family foster home (RCW 82.08.02915), and fund-raising activities (see subsection (5)(e) of this rule). New construction includes renovating an existing structure to provide new housing for youth in crisis.

A nonprofit organization must pay retail sales tax when it purchases goods or retail services for its own use as a consumer, unless the purchase is specifically exempt by statute. Items purchased for resale without intervening use are purchases at wholesale and are not subject to the retail sales tax. The purchaser should provide the seller with a resale certificate. (See WAC 458-20-102 for information regarding resale certificates.) Organizations not required to register should indicate on the resale certificate that the group is a qualifying nonprofit organization and the items will be resold at a tax exempt nonprofit fund-raiser.

(c) **Use tax.** The use tax is imposed on every person, including nonprofit organizations, using tangible personal property within this state as a consumer, unless such use is specifically exempt by statute. The use tax applies only if retail sales tax has not previously been paid on the item. The rate of tax is the same as the sales tax rate that applies at the location where the property is first used.

A common application of the use tax occurs when items are purchased from an out-of-state seller who has no presence in Washington. Because the out-of-state seller is under no obligation to collect Washington's retail sales or use tax, the buyer is statutorily required to remit use tax directly to the department. (See also WAC 458-20-178 for more information regarding the use tax.)

Except for fund-raising, exemptions from use tax generally correspond to the retail sales tax exemptions. For example, a use tax exemption for construction materials acquired

by a health or social welfare organization for new construction of alternative housing for youth in crisis, to be licensed as a family foster home, RCW 82.12.02915, corresponds with the retail sales tax exemption described in subsection (4)(b) above for purchasing these construction materials.

(i) **Use tax exemption for donated items.** RCW 82.12.-02595 provides a use tax exemption for property donated to a nonprofit charitable organization. This exemption is available for the nonprofit charitable organization, and the donor if the donor did not previously use the item as a consumer. It also applies to the use of property by a donor who is incorporating the property into a nonprofit organization's real or personal property for no charge.

The exemption also applies to another person using property originally donated to a charitable nonprofit organization that is subsequently donated or bailed to that person by the charitable nonprofit organization, provided that person uses the property in furtherance of the charitable purpose for which the property was originally donated to the charitable nonprofit organization. For example, a hardware store donates an industrial pressure washer to a nonprofit community center for neighborhood cleanup, the community center bails this washer to people enrolled in its neighborhood improvement group for neighborhood clean-up projects. No use tax is due from any of the participants in these transactions. An example of a gift that would not qualify is when a car is donated to a church for its staff and the church gives that car to its pastor. The pastor must pay use tax on the car because it serves multiple purposes. It serves the church's charitable purpose, but it also acts as compensation to the pastor and is available for the pastor's personal use. The subsequent donation of property from the charity to another person must be solely for a charitable purpose. If the property is donated or bailed to the third party for a charitable purpose in line with the nonprofit organization's charitable activities, generally, no additional proof is required that this was the charitable purpose for which the property was originally donated.

(ii) **Use tax implications with respect to fund-raising activities.** Subsection (5)(e) below explains that a retail sales tax exemption is available for certain fund-raising sales. However, there is no comparable use tax exemption provided to the buyer/user of property purchased at these fund-raising sales. While the nonprofit organization is under no obligation to collect use tax from the buyer, the organization is encouraged to inform the buyer of the buyer's possible use tax obligation.

(5) **Exemptions.** The following sources of income are specifically exempt from tax. As such they should not be included or reported as gross income if the organization is required to file a combined excise tax return.

(a) **Adult family homes.** The B&O tax does not apply to income earned by a licensed adult family home or an adult family home exempt from licensing. RCW 82.04.327.

(b) **Camp or conference centers.** RCW 82.04.363 and 82.08.830 respectively provide B&O and retail sales exemptions to amounts received by a nonprofit organization from the sale or furnishing of certain items or services at a camp or conference center conducted on property exempt from the property tax under RCW 84.36.030 (1), (2), or (3).

Income derived from the sale of the following items and services is exempt:

- (i) Lodging, conference and meeting rooms, camping facilities, parking, and similar licenses to use real property;
- (ii) Food and meals;
- (iii) Books, tapes, and other products that are available exclusively to the participants at the camp, conference, or meeting and are not available to the public at large.

The property tax exemptions are further discussed at WAC 458-16-210 (Church camps), WAC 458-16-220 (Nonprofit organizations or associations organized and conducted for nonsectarian purposes), and WAC 458-16-230 (Character building organizations).

(c) **Child care resource and referral services.** The B&O tax does not apply to nonprofit organizations with respect to amounts received for child care resource and referral services. Child care resource and referral services do not include child care services provided directly to children. RCW 82.04.3395.

(d) **Credit and debt services.** RCW 82.04.368 provides a B&O tax exemption for amounts received by nonprofit organizations for providing specialized credit and debt services. These services include:

- (i) Presenting individual and community credit education programs including credit and debt counseling;
- (ii) Obtaining creditor cooperation allowing a debtor to repay debt in an orderly manner;
- (iii) Establishing and administering negotiated repayment programs for debtors; and
- (iv) Providing advice or assistance to a debtor with regard to (i), (ii), or (iii) of this subsection.

(e) **Day care provided by churches.** 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.

(f) **Fund-raising.** RCW 82.04.3651 provides a B&O tax exemption for amounts received from certain fund-raising activities. RCW 82.08.02573 provides a comparable retail sales tax exemption.

It is important to note that these exemptions apply only to the fund-raising income received by the nonprofit organization. For example, the commission income received by a nonprofit organization selling books owned by a for-profit entity on a consignment basis is exempt of tax if the statutory requirements are satisfied. The nonprofit organization is generally responsible for collecting and remitting retail sales tax upon the gross proceeds of sales when selling items for another person (see WAC 458-20-159).

(i) **What nonprofit organizations qualify?** Nonprofit organizations that qualify for this exemption are those that are:

(A) A tax-exempt nonprofit organization described by section 501 (c)(3) (educational and charitable), (4) (social welfare), or (10) (fraternal societies operating as lodges) of the Internal Revenue Code;

(B) A nonprofit organization that would qualify for tax exemption under these codes except that it is not organized as a nonprofit corporation; or

(C) A nonprofit organization that does not pay its members, stockholders, officers, directors, or trustees any

amounts from its gross income, except as payment for services rendered, does not pay more than reasonable compensation to any person for services rendered, and does not engage in a substantial amount of political activity. Political activity includes, but is not limited to, influencing legislation and participating in any campaign on behalf of any candidate for political office.

A nonprofit organization may meet (A), (B), or (C) above.

(ii) **Qualifying fund-raising activities.** For the purpose of this exemption, "fund-raising activity" means soliciting or accepting contributions of money or other property, or activities involving the anticipated exchange of goods or services for money between the soliciting organization and the organization or person solicited, for the purpose of furthering the goals of the nonprofit organization.

(A) Money raised by a nonprofit charitable group from its annual telephone fund drive to fund its homeless shelters where nothing is promised in return for a donor's pledge is exempt as fund-raising contributions of money to further the goals of the nonprofit organization.

(B) A nonprofit group organized as a community playhouse has an annual telephone fund drive. The group gives the caller a mug, jacket, dinner, or vacation trip depending on the amount of pledge made over the phone. The community playhouse does not sell or exchange the mugs, jackets, dinners or trips for cash or property, except during this pledge drive. The money is used to produce the next season's plays. The money earned from the pledges is exempt from both retail sales tax and business and occupation tax to the extent these amounts represent an exchange for goods and services for money to further the goals of the nonprofit group. The money earned from the pledges above the value of the goods and services exchanged is exempt as a fund-raising contribution of money to further the goals of the nonprofit organization.

(C) A nonprofit group sells ice cream bars at booths leased during the two-week runs of three county fairs, for a total of six weeks during the year, to fund youth camps maintained by the nonprofit group. The money earned from the booths is exempt from both retail sales tax and business and occupation tax as a fund-raising exchange of goods for money to further the goals of the nonprofit group.

(iii) **Contributions of money or other property.** The term contributions includes grants, donations, endowments, scholarships, gifts, awards, and any other transfer of money or other property by a donor, provided the donor receives no significant goods, services, or benefits in return for making the gift. For example, an amount received by a nonprofit educational broadcaster from a group that conditions receipt upon the nonprofit broadcaster airing its seminars is not a contribution regardless of how the amount paid was titled by the two organizations.

It is not unusual for the person making a gift to require some accountability for how the gift is used as a condition for receiving the gift or future gifts. Such gifts remain exempt, provided the "accountability" required does not result in a direct benefit to the donor (examples of direct benefits to a donor are: Money given for a report on the soil contamination levels of land owned by the donor, medical services provided to the donor or the donor's family, or market research

benefitting the donor directly). This "accountability" can take the form of conditions or restrictions on the use of the gift for specific charitable purposes or can take the form of written reports accounting for the use of the gift. Public acknowledgment of a donor for the gift does not result in a significant service or benefit simply because the gift is publicly acknowledged.

(iv) **Nonqualifying activities.** Fund-raising activity does not include the operation of a regular place of business in which services are provided or sales are made during regular hours such as a bookstore, thrift shop, restaurant, legal or health clinic, or similar business. It also does not include the operation of a regular place of business from which services are provided or performed during regular hours such as the provision of retail, personal, or professional services. A regular place of business and the regular hours of that business depend on the type of business being conducted.

(A) In the example demonstrating that an amount received by a nonprofit broadcaster was not a contribution because services were given in return for the funds, this activity must also be examined to see whether the exchange was for services as part of a fund-raising activity. The broadcaster was in the business of broadcasting programs. It had a regular site for broadcasting programs and ran broadcasts for 24 hours every day. Broadcasting was a part of its business activity performed from a regular place of business during regular hours. The money received from the group with the requirement that its seminars be broadcast would not qualify as money received from a fund-raising activity even though the parties viewed the money as a "donation."

(B) A nonprofit organization that makes catalog sales throughout the year with a 24-hour telephone line for taking orders has a regular place of business at the location where the sales orders are processed and regular hours of 24 hours a day. Catalog sales are not exempt as fund-raising amounts even though the funds are raised for a nonprofit purpose.

(C) A nonprofit group organized as a community playhouse has three plays during the year at a leased theatre. The plays run for a total of six weeks and the group provides concessions at each of the performances. The playhouse has a regular place of business with regular hours for that type of business. The concessions are done at that regular place of business during regular hours. The concessions are not exempt as fund-raising activities even though amounts raised from the concessions may be used to further the nonprofit purpose of that group.

(D) A nonprofit student group, that raises money for scholarships and other educational needs, sets up an espresso stand that is open for two hours every morning during the school year. The espresso stand is a regular place of business with regular hours for that type of business. The money earned from the espresso stand is not exempt, even though the amounts are raised to further the student group's nonprofit purpose.

(v) **Fund-raising sales by libraries.** RCW 82.04.3651 specifically provides that the sale of used books, used videos, used sound recording, or similar used information products in a library is not the operation of a regular place of business, if the proceeds are used to support the library. The library must be a free public library supported in whole or in part with money derived from taxes. RCW 27.12.010.

(g) **Group training homes.** RCW 82.04.385 provides a B&O tax exemption for amounts received from the department of social and health services for operating a nonprofit group training home. The amounts excluded from gross income must be used for the cost of care, maintenance, support, and training of developmentally disabled individuals. A nonprofit group training home is an approved nonsectarian facility equipped, supervised, managed, and operated on a full-time nonprofit basis for the full-time care, treatment, training, and maintenance of individuals with developmental disabilities.

(h) **Sheltered workshops.** RCW 82.04.385 provides a B&O tax exemption for amounts received by a nonprofit organization for operating a sheltered workshop.

(i) **What is a sheltered workshop?** A sheltered workshop is that part of the nonprofit organization engaged in business activities that are performed primarily to provide evaluation and work adjusted services for a handicapped person or to provide gainful employment or rehabilitation services to a handicapped person. The sheltered workshop can be maintained on or off the premises of the nonprofit organization.

(ii) **What is meant by "gainful employment or rehabilitation services to a handicapped person"?** Gainful employment or rehabilitation services must be an interim step in the rehabilitation process which is provided because the person cannot be readily absorbed into the competitive labor market or because employment opportunities for the person do not exist during that time in the competitive labor market.

"Handicapped," for the purposes of this exemption, means a physical or mental disability that restricts normal achievement, including medically recognized addictions and learning disabilities. However, this term does not include social or economic disadvantages that restrict normal achievement (e.g., prior criminal history or low-income status).

(i) **Student loan services.** RCW 82.04.367 provides a B&O tax exemption for the gross income of nonprofit organizations that are exempt from federal income tax under section 501 (c)(3) of the Internal Revenue Code that:

(i) Are guarantee agencies under the federal guaranteed student loan program or that issue debt to provide or acquire student loans; or

(ii) Provide guarantees for student loans made through programs other than the federal guaranteed student loan program.

(6) **B&O tax deduction of government payments made to health or social welfare organizations.** RCW 82.04.4297 provides a B&O tax deduction to health or social welfare organizations for amounts received from the United States, any instrumentality of the United States, the state of Washington, or any municipal corporation or political subdivision of the state of Washington as compensation for health or social welfare services. A deduction is not allowed, however, for amounts that are received under an employee benefit plan. These deductible amounts should be included in the gross income reported on the return, and then deducted on the return when determining the amount of the organization's taxable income.

(a) **What is a health or social welfare organization?** A health or social welfare organization is a nonprofit organization providing health or social welfare services that is also:

(i) A corporation sole under chapter 24.12 RCW or a not-for-profit corporation under chapter 24.03 RCW. It does not include a corporation providing professional services authorized under chapter 18.100 RCW;

(ii) Governed by a board of not less than eight individuals who are not paid corporate employees when the organization is a not-for-profit corporation;

(iii) Not paying any part of its corporate income directly or indirectly to its members, stockholders, officers, directors, or trustees except as executive or officer compensation or as services rendered by the corporation in accordance with its purposes and bylaws to a member, stockholder, officer, or director or as an individual;

(iv) Only paying compensation to corporate officers and executives for actual services rendered. This compensation must be at a level comparable to like public service positions within Washington;

(v) Irrevocably dedicating its corporate assets to health or social welfare activities. Upon corporate liquidation, dissolution, or abandonment, any distribution or transfer of corporate assets may not inure directly or indirectly to the benefit of any member or individual, except for another health or social welfare organization;

(vi) Duly licensed or certified as required by law or regulation;

(vii) Using government payments to provide health or social welfare services;

(viii) Making its services available regardless of race, color, national origin, or ancestry; and

(ix) Provides access to the corporation's books and records to the department's authorized agents upon request.

(b) **Qualifying health or welfare services.** Health or social welfare services are limited exclusively to the following services:

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

(ii) Family counseling;

(iii) Health care services;

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

(v) Activities, including recreational activities, intended to prevent or ameliorate juvenile delinquency or child abuse;

(vi) Care of orphans or foster children;

(vii) Day care of children;

(viii) Employment development, training, and placement;

(ix) Legal services to the indigent;

(x) Weatherization assistance or minor home repairs for low-income homeowners or renters;

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

(xii) Community services to low-income individuals, families and groups that are designed to have a measurable and potentially major impact on the poverty in Washington.

[Statutory Authority: RCW 82.32.300, 01-09-066, § 458-20-169, filed 4/16/01, effective 5/17/01; 91-21-001, § 458-20-169, filed 10/3/91, effective 11/3/91; 88-21-014 (Order 88-7), § 458-20-169, filed 10/7/88; 86-02-039 (Order ET 85-8), § 458-20-169, filed 12/31/85; 83-07-033 (Order ET 83-16), § 458-20-169, filed 3/15/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300, 78-07-045 (Order ET 78-4), § 458-20-169, filed 6/27/78; Order ET 70-3, § 458-20-169 (Rule 169), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-170 Constructing and repairing of new or existing buildings or other structures upon real property. (1) Definitions.** As used herein:

(a) The term "prime contractor" means a person engaged in the business of performing for consumers, the constructing, repairing, decorating or improving of new or existing buildings or other structures under, upon or above real property, either for the entire work or for a specific portion thereof. The term includes persons who rent or lease equipment to property owners for use in respect to constructing, repairing, etc., buildings or structures upon such property, when the equipment is operated by the lessor.

(b) The word "subcontractor" means a person engaged in the business of performing a similar service for persons other than consumers, either for the entire work or for a specific portion thereof. The term includes persons who rent or lease equipment to prime contractors or subcontractors for use in respect to constructing, repairing, etc., when such equipment is operated by the lessor. When equipment or other tangible personal property is rented without an operator to contractors, subcontractors or others, the transaction is a sale at retail (see RCW 82.04.040 and 82.04.050).

(c) The terms "prime contractor" and "subcontractor" include persons performing labor and services in respect to the moving of earth or clearing of land, cleaning, fumigating, razing, or moving of existing buildings or structures even though such services may not be done in connection with a contract involving the constructing, repairing, or altering of a new or existing building or structure. The terms also include persons constructing streets, roads, highways, etc., owned by the state of Washington.

(d) The term "buildings or other structures" means everything artificially built up or composed of parts joined together in some definite manner and attached to real property. It includes not only buildings in the general and ordinary sense, but also tanks, fences, conduits, culverts, railroad tracks, tunnels, overhead and underground transmission systems, monuments, retaining walls, piling and privately owned bridges, trestles, parking lots, and pavements for foot or vehicular traffic, etc.

(e) The term "constructing, repairing, decorating or improving of new or existing buildings or other structures," in addition to its ordinary meaning, includes: The installing or attaching of any article of tangible personal property in or to real property, whether or not such personal property becomes a part of the realty by virtue of installation; the clearing of land and the moving of earth; and the construction of streets, roads, highways, etc., owned by the state of Washington. The term includes the sale of or charge made for all service activities rendered in respect to such constructing, repairing, etc., regardless of whether or not such services are otherwise defined as "sale" by RCW 82.04.040 or "sales at retail" by RCW 82.04.050. Hence, for example, such service charges as engineering fees, architectural fees or supervisory

fees are within the term when the services are included within a contract for the construction of a building or structure. The fact that the charge for such services may be shown separately in bid, contract or specifications does not establish the charge as a separate item in computing tax liability.

**(2) Speculative builders.**

(a) As used herein the term "speculative builder" means one who constructs buildings for sale or rental upon real estate owned by him. The attributes of ownership of real estate for purposes of this rule include but are not limited to the following: (i) The intentions of the parties in the transaction under which the land was acquired; (ii) the person who paid for the land; (iii) the person who paid for improvements to the land; (iv) the manner in which all parties, including financiers, dealt with the land. The terms "sells" or "contracts to sell" include any agreement whereby an immediate right to possession or title to the property vests in the purchaser.

(b) Where an owner of real estate sells it to a builder who constructs, repairs, decorates, or improves new or existing buildings or other structures thereon, and the builder thereafter resells the improved property back to the owner, the builder will not be considered a speculative builder. In such a case that portion of the resale attributable to the construction, repairs, decorations, or improvements by the builder, shall not be considered a sale of real estate and shall be fully subject to retailing business and occupation tax and retail sales tax. It is intended by this provision to prevent the avoidance of tax liability on construction labor and services by utilizing the mechanism of real property transfers. (RCW 82.04.050 (2)(c).)

(c) Amounts derived from the sale of real estate are exempt from the business and occupation tax. (RCW 82.04.-390.) Consequently, the proceeds of sales by legitimate speculative builders of completed buildings are not subject to such tax. Neither does the sales tax apply to such sales, since such a sale involves no charge made for construction for a consumer, but the price paid is for the sale of real estate.

(d) However, when a speculative builder sells or contracts to sell property upon which he is presently constructing a building, all construction done subsequent to the date of such sale or contract constitutes a retail sale and that portion of the sales price allocable to construction done after the agreement shall be taxed accordingly. Consequently, the builder must pay business and occupation tax under the retailing classification on that part of the sales price attributable to construction done subsequent to the agreement, and shall also collect sales tax from the buyer on such allocable part of the sales price.

(e) Speculative builders must pay sales tax upon all materials purchased by them and on all charges made by their subcontractors. Deductions for such tax paid with respect to materials used or charges made for that part of the construction done after the contract to sell the building should be claimed by the speculative builder on his tax returns in accordance with WAC 458-20-102, under the subheading PURCHASES FOR DUAL PURPOSES.

(f) Persons, including corporations, partnerships, sole proprietorships, and joint ventures, among others, who perform construction upon land owned by their corporate officers, shareholders, partners, owners, co-venturers, etc., are

constructing upon land owned by others and are taxable as sellers under this rule, not as "speculative builders."

**(3) Business and occupation tax.**

(a) Prime contractors are taxable under the retailing classification, and subcontractors under the wholesaling classification upon the gross contract price.

(b) Where no gross contract price is stated in any contract or agreement between the builder and the property owner, then the measure of business and occupation tax is the total amount of construction costs, including any charges for licenses, fees, permits, etc., required for the construction and paid by the builder.

**(4) Retail sales tax.**

(a) Prime contractors are required to collect from consumers the retail sales tax measured by the full contract price. Where no gross contract price is stated, the measure of sales tax is the total amount of construction costs including any charges for licenses, fees, permits, etc., required for construction and paid by the builder.

(b) The retail sales tax does not apply to charges made for janitorial services nor for the mere leveling of land used in commercial farming or agriculture. The tax does apply, however, in respect to contracts for cleaning septic tanks or the exterior walls of buildings, as well as to earth moving, land clearing and the razing or moving of structures, whether or not such services are performed as incidents of a contract to construct, repair, decorate, or improve buildings or structures.

(c) Sales to prime contractors and subcontractors of materials such as concrete, tie rods, lumber, finish hardware, etc., which become part of the structure being built or improved are sales for resale and are not subject to the retail sales tax. Sales of form lumber to such contractors are sales for resale provided that such lumber is used or to be used first by such persons for the molding of concrete in a single contract, project or job and the form lumber is thereafter incorporated into the product of that same contract project or job as an ingredient or component thereof. Sales of form lumber not so incorporated as an ingredient or component are sales at retail.

(d) The retail sales tax applies upon sales and rentals to prime contractors and subcontractors of tools, machinery and equipment, and consumable supplies, such as hand and machine tools, cranes, air compressors, bulldozers, lubricating oil, sandpaper and form lumber which are primarily for use by the contractor rather than for resale as a component part of the finished structure.

(e) The retail sales tax applies upon sales to speculative builders of all tangible personal property, including building materials, tools, equipment and consumable supplies and upon sales of labor, services and materials to speculative builders by independent contractors.

**(5) Use tax.**

The use tax applies generally to the use by prime contractors and subcontractors of tools, machinery, equipment and consumable supplies acquired by them primarily for their own use and upon which the retail sales tax has not been paid. This includes equipment and supplies purchased in a foreign state for use or consumption in performing contracts in this state. The use tax applies generally to the use by speculative builders of all tangible personal property, including building

materials, purchased or acquired by them without payment of the retail sales tax (see also WAC 458-20-178).

[Statutory Authority: RCW 82.32.300, 87-19-007 (Order ET 87-5), § 458-20-170, filed 9/8/87; 83-07-033 (Order ET 83-16), § 458-20-170, filed 3/15/83; Order ET 71-1, § 458-20-170, filed 7/22/71; Order ET 70-3, § 458-20-170 (Rule 170), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-17001 Government contracting—Construction, installations, or improvements to government real property.** (1) Special business and occupation tax applications and special sales/use tax applications pertain for prime and subcontractors who perform certain construction, installation, and improvements to real property of or for the United States, its instrumentalities, or a county or city housing authority created pursuant to chapter 35.82 RCW. These specific construction activities are excluded from the definition of "sale at retail" under RCW 82.04.050. All other sales to the United States, its agencies or instrumentalities are taxable as retail sales or wholesale sales, as appropriate. See WAC 458-20-190.

(2) The definitions of terms and general provisions contained in WAC 458-20-170 apply equally for this rule, as appropriate. In addition, the terms, "clearing land" and "moving earth" include well drilling, core drilling, and hole digging, whether or not casing materials are installed and any grading or clearing of land, including the razing of buildings or other structures.

**Business and Occupation Tax**

(3) Amounts derived from constructing, repairing, decorating, or improving new or existing buildings or other structures, including installing or attaching tangible personal property therein or thereto, and clearing land or moving earth, of or for the United States, its instrumentalities, or county or city housing authorities of chapter 35.82 RCW are taxable under the government contracting classification of business and occupation tax. The measure of the tax is the gross contract price.

(4) Government contractors who manufacture or produce any tangible personal property for their own commercial or industrial use as consumers in performing government contracting activities are subject to the manufacturing classification of business and occupation tax measured by the value of the property manufactured or produced. See also, WAC 458-20-134. The manufacturing tax applies even though the property manufactured or produced for commercial use may be subsequently incorporated into buildings or other structures under the government contract and may thereby enhance the gross contract price.

**Retail Sales Tax**

(5) The retail sales tax does not apply to the gross contract price, or any part thereof, for any business activities taxable under the government contracting classification. Prime and subcontractors who perform such activities are themselves included within the statutory definition of "consumer" under RCW 82.04.190 and are required to pay retail sales tax upon all purchases of materials, including prefabricated and precast items, equipment, and other tangible personal property which is installed, applied, attached, or otherwise incorporated in their government contracting work. This applies

for all such purchases of tangible personal property for installation, etc., even though the full purchase price of such property will be reimbursed by the government or housing authority in the gross contract price. It also applies notwithstanding that the contract may contain an immediate title vesting clause which provides that the title to the property vests in the government or housing authority immediately upon its acquisition by the contractor.

(6) Also, the retail sales tax must be paid by government contractors upon their purchases and leases or rentals of tools, consumables, and other tangible personal property used by them as consumers in performing government contracting.

### Use Tax

(7) The use tax applies upon the value of all materials, equipment, and other tangible personal property purchased at retail, acquired as a bailee or donee, or manufactured or produced by the contractor for commercial or industrial use in performing government contracting and upon which no retail sales tax has been paid by the contractor, its bailor or donor.

(8) Thus the use tax applies to all property provided by the federal government to the contractor for installation or inclusion in the contract work as well as to all government provided tooling.

(9) The use tax is to be reported and paid by the government contractor who actually installs or applies the property to the contract. Where the actual installing contractor pays the tax, no further use tax is due upon such property by any other contractor.

(10) Note to contractors: The United States Supreme Court has sustained the government contracting tax applications for this state, even though the ultimate economic burden of the tax is borne by the United States Government (*Washington v. US*, 75 L.Ed 2d 264, 1983).

(11) This rule does not apply to public road construction. See WAC 458-20-171.

[Statutory Authority: RCW 82.32.300, 86-10-016 (Order ET 86-9), § 458-20-17001, filed 5/1/86.]

**WAC 458-20-171 Building, repairing or improving streets, roads, etc., which are owned by a municipal corporation or political subdivision of the state or by the United States and which are used primarily for foot or vehicular traffic.**

### Definitions

As used herein:

The word "contractor" means a person engaged in the business of building, repairing or improving any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic, either as a prime contractor or as a subcontractor. It does not include persons who merely sell or deliver road materials to such contractors or to the public authority whose property is being improved. It also does not include persons who construct streets, roads, etc. *owned by the state of Washington*. (See WAC 458-20-170 for the tax liability of such persons.)

The term "street, place, road, highway, etc." is used in the ordinary sense that the combination of such words implies. It includes docks used primarily by ferry boats operated in connection with a street, road or highway, but does not include railroads, wharves, moorings, hallways, catwalks, or runways, aprons or taxiways for the landing, take-off or movement of airplanes within airports or landing fields; nor does it include ferry boats, even though the ferry be operated in connection with a street, road or highway. It includes roads and walks which are not open to the public generally, but which may be restricted to use by the military or by employees of a department or instrumentality of the United States.

The word "place" means only an area similar to a street or pedestrian walk, such as thoroughfares in various cities designated "places" for the purpose of preserving the continuity of street names or house numbers; generally, a street of shorter length than others.

The term "building, repairing or improving of a publicly owned street, place, road, etc.," includes clearing, grading, graveling, oiling, paving and the cleaning thereof; the constructing of tunnels, guard rails, fences, walks and drainage facilities, the planting of trees, shrubs and flowers therein, the placing of street and road signs, the striping of roadways, and the painting of bridges and trestles; it also includes the mining, sorting, crushing, screening, washing and hauling of sand, gravel, and rock taken from a public pit or quarry. It also includes the constructing of road and street lighting systems, even though portions of such systems also are used for purposes other than street and road lighting; also the constructing of a drainage system in streets and roads, even though such system is also used for the carrying of sewage: Provided, That the drainage facilities are sufficient for disposal of the normal runoff of surface waters from the particular streets and roads in which the system is constructed or an ordinance authorizing the construction of a combined sewer system is incorporated by reference in the contract and the contract or specifications clearly indicate that the system is designed and intended for the disposal of the normal runoff of surface waters from the streets and roads in which the system is constructed.

The term includes any contract for the readjustment, reconstruction or relocation of the facilities of any public, private or cooperatively owned utility or railroad in the course of building, repairing or improving a street, place, road, etc., which is owned by a municipal corporation or political subdivision of the state or by the United States, the cost of which readjustment, reconstruction, or relocation is the responsibility of the public authority whose street, place, road, etc., is being built, repaired or improved. It also includes building or repairing mass transportation facilities owned by a municipal corporation or political subdivision of the state or by the United States.

Except as provided above, the term does not include the constructing of water mains, telephone, telegraph, electrical power, or other conduits or lines in or above streets or roads, unless such power lines become a part of a street or road lighting system as aforesaid; nor does it include the constructing of sewage disposal facilities, nor the installing of sewer pipes for sanitation, unless the installation thereof is within, and a part of, a street or road drainage system.

### Business and Occupation Tax

Such contractors are taxable under the public road construction classification upon their total contract price.

The business and occupation tax does not apply to the cost of or charge made for labor and services performed in respect to the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, and rock, when such sand, gravel, or rock is taken from a pit or quarry which is owned by or leased to a county or city and such sand, gravel or rock is

(a) Stockpiled in said pit or quarry for placement on the street, road, or highway by the county or city itself using its own employees, or

(b) Placed on the street, road, or highway by the county or city itself using its own employees, or

(c) Sold by the county or city at actual cost to another county or city for road use.

### Retail Sales Tax

The retail sales tax applies upon the sale to such contractors of all materials including prefabricated and precast items, equipment and supplies used or consumed in the performance of such contracts.

The retail sales tax does not apply upon any portion of the charge made by such contractors.

The sales tax does not apply to charges made for labor and services which are exempt from business tax as indicated above.

### Use Tax

The use tax applies to the use by all contractors of all materials including prefabricated and precast items, equipment and supplies upon which the retail sales tax has not been paid. This tax also applies in respect to articles produced or manufactured by them for commercial use. (See WAC 458-20-134.)

The use tax does not apply in respect to the use of any sand, gravel, or rock to the extent of the cost of or charges made for labor and services performed in respect to the mining, sorting, crushing, screening, washing, hauling, and stockpiling such sand, gravel, or rock, when such sand, gravel, or rock is taken from a pit or quarry which is owned by or leased to a county or a city, and such sand, gravel, or rock is either (1) stockpiled in said pit or quarry for placement or is placed on the street, road, place, or highway of the county or city by the county or city itself (i.e., by its own employees), or (2) sold by the county or city to a county or a city at actual cost for placement on a street, road, place, or highway owned by the county or city. This exemption shall not apply to the use of such material to the extent of the cost of or charge made for such labor and services, if the material is used for other than public road purposes or is sold otherwise than as here indicated.

(For lien of unpaid taxes on the retained percentage withheld on public improvement contract, see WAC 458-20-217.)

[Order ET 71-1, § 458-20-171, filed 7/22/71; Order ET 70-3, § 458-20-171 (Rule 171), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-172 Clearing land, moving earth, cleaning, fumigating, razing or moving existing buildings, and janitorial services.** Persons engaged in performing well

drilling, contracts for the grading or clearing of land or the moving of earth, and which do not involve the building, repairing or improving of any streets, roads, etc. which are owned by a municipal corporation or political subdivision of the state or by the United States (see WAC 458-20-171); and persons engaged in performing contracts which involve the cleaning, fumigating, razing or moving of existing buildings or structures and persons performing janitorial services are taxable as follows:

### Business and Occupation Tax

Taxable under the classification retailing upon gross income from contracts to perform such services for consumers, but excluding gross income from contracts providing solely for the performance of janitorial services the mere core drilling of or testing of soil samples, or the mere leveling of land for agricultural purposes.

Taxable under the classification wholesaling—all others upon gross income from subcontracts to perform such services for resale.

Taxable under the classification service and other activities upon gross income from contracts to perform janitorial services the mere core drilling of or testing of soil samples, or the mere leveling of land for agricultural purposes.

The term "janitorial services" includes activities performed regularly and normally by commercial janitor service businesses. Generally, these activities include the washing of interior and exterior window surfaces, floor cleaning and waxing, the cleaning of interior walls and woodwork, the cleaning in place of rugs, drapes and upholstery, dusting, disposal of trash, and cleaning and sanitizing bathroom fixtures. The term "janitorial services" does not include, among others, cleaning the exterior walls of buildings, the cleaning of septic tanks, special clean up jobs required by construction, fires, floods, etc., painting, papering, repairing, furnace or chimney cleaning, snow removal, sandblasting, or the cleaning of plant or industrial machinery or fixtures.

### Retail Sales Tax

Persons engaged in performing contracts for the grading or clearing of land, the moving of earth or the cleaning, fumigating, razing or moving of existing buildings or structures must collect the retail sales tax upon the full contract price when the work is performed for consumers. The retail sales tax is not applicable to charges for janitorial services or the mere leveling of land for agricultural purposes.

The retail sales tax applies upon the sales to such contractors of equipment and supplies used or consumed in the performance of such contracts and which are not resold as a component part of the work.

### Use Tax

The use tax applies to the use by such contractors of equipment and supplies upon which the retail sales tax has not been paid.

[Statutory Authority: RCW 82.32.300, 83-07-033 (Order ET 83-16), § 458-20-172, filed 3/15/83; Order ET 71-1, § 458-20-172, filed 7/22/71; Order ET 70-3, § 458-20-172 (Rule 172), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-173 Installing, cleaning, repairing or otherwise altering or improving personal property of consumers.**

**Business and Occupation Tax**

**Retailing.** Persons installing, cleaning, decorating, beautifying, repairing or otherwise altering or improving tangible personal property of consumers or for consumers are taxable under the retailing classification upon the gross proceeds received from sales of tangible personal property and the rendition of services.

**Wholesaling.** Persons who sell tangible personal property to, or render any of the above services for others than consumers, are taxable under the wholesaling classification upon the gross proceeds of sales received therefrom.

There must be included within gross amounts reported for tax all fees for services rendered and all charges recovered for expenses incurred in connection therewith, such as transportation costs, hotel, restaurant, telephone and telegraph charges, etc.

**Retail Sales Tax**

Persons engaged in the business of installing, cleaning, decorating, beautifying, repairing or otherwise altering or improving tangible personal property of consumers or for consumers are required to collect the retail sales tax upon the total charge made for the rendition of such services, even though no tangible personal property in the form of materials or supplies is sold or used in connection with such services. Where tangible personal property in the form of materials and supplies is sold or used in connection with such services, the retail sales tax applies to the total charges made for the sale of the materials and supplies and the services rendered in connection therewith.

The following are illustrative of services upon which the retail sales tax applies to the total charge made to consumers:

- Laundering, dyeing and cleaning;
- Automobile repairing, washing and painting;
- Boat repairing (see WAC 458-20-175 and 458-20-176 for certain exemptions); shoe repairing and shining;
- Altering or repairing wearing apparel.

In general, the repairing of any personal property, such as radios, refrigerators, machines, watches and jewelry and other articles.

The retail sales tax does not apply to sales to such persons of materials which are resold as a part of the articles of tangible personal property being repaired, altered or improved. Therefore, upon giving a resale certificate the retail sales tax will not apply to purchases such as:

- (1) Parts or paint by an automotive repairman;
- (2) Lumber, chandlery, etc., by a boat repairman;
- (3) Shoe findings, thread, nails, polish and dyes by a shoe repairman;
- (4) Solder, wire, condensers, etc., by a radio or television repairman.

On the other hand the retail sales tax does apply to the purchase of all other supplies which may be consumed and utilized by such persons in the rendition of such services, such as fuel, lubricant, machines, hand tools, stationery and other supplies and equipment.

**REPAIRS FOR OUT-OF-STATE PERSONS.** Persons residing outside this state may ship into this state articles of tangible

personal property for the purpose of having the same repaired, cleaned or otherwise altered, and thereafter returned to them. The retail sales tax is not applicable to the charge made for labor and/or materials, provided the seller, as a requirement of the agreement, delivers the property to the purchaser at a point outside this state or delivers the property to a common or bona fide private carrier consigned to the purchaser at a point outside this state. Proof of exempt sales will be the same as that required for sales of tangible personal property in interstate commerce. WAC 458-20-193, Part A. No deduction is allowed, however, under the business and occupation tax.

For taxability of warranty, service, or maintenance contracts, see WAC 458-20-107.

[Statutory Authority: RCW 82.32.300. 83-07-033 (Order ET 83-16), § 458-20-173, filed 3/15/83; Order ET 70-3, § 458-20-173 (Rule 173), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-174 Sales of motor vehicles, trailers, and parts to motor carriers operating in interstate or foreign commerce.**

(1) **Introduction.** This section explains the retail sales tax exemptions provided by RCW 82.08.0262 and 82.08.0263 for sales to for hire motor carriers operating in interstate or foreign commerce. Addressed are the requirements which must be met and the documents which must be preserved to substantiate a claim of retail sales tax exemption. Motor carriers should refer to WAC 458-20-17401 for a discussion of the use tax and use tax exemptions available to motor carriers for the purchase or use of vehicles and parts under RCW 82.12.0254.

(2) **Business and occupation tax.** Business and occupation (B&O) tax is due on all sales to motor carriers when delivery is made in Washington, notwithstanding that the retail sales tax may not apply because of the specific statutory exemptions provided by RCW 82.08.0262 and 82.08.0263.

(a) **Retailing of interstate transportation equipment.** This B&O tax classification, with respect to sales to motor carriers, applies to retail sales which are exempt from retail sales tax because of the provisions of RCW 82.08.0262 or 82.08.0263. (See RCW 82.04.250.) The retailing of interstate transportation B&O tax applies to the following, but only when the retail sales tax exemption requirements for RCW 82.08.0262 or 82.08.0263 are met:

(i) Sales of motor vehicles, trailers, and component parts thereof;

(ii) The lease of motor vehicles and trailers without operator; and

(iii) Charges for labor and services rendered in respect to constructing, cleaning, repairing, altering or improving vehicles and trailers or component parts thereof. The term "component parts" means any tangible personal property which is attached to and becomes an integral part of the motor vehicle or trailer. It includes such items as motors, motor and body parts, batteries, paint, permanently affixed decals, and tires. "Component parts" includes the axle and wheels, referred to as "converter gear" or "dollies," which is used to connect a trailer behind a tractor and trailer. "Component parts" can include tangible personal property which is attached to the vehicle and used as an integral part of the motor carrier's operation of the vehicle, even if the item is not required mechanically for the operation of the vehicle. It includes cel-

lular telephones, communication equipment, fire extinguishers, and other such items, whether themselves permanently attached to the vehicle or held by brackets which are permanently attached. If held by brackets, the brackets must be permanently attached to the vehicle in a definite and secure manner with these items attached to the bracket when not in use and intended to remain with that vehicle. It does not include antifreeze, oil, grease, and other lubricants which are considered as consumed at the time they are placed into the vehicle, even though required for operation of the vehicle. It does include items such as spark plugs, oil filters, air filters, hoses and belts.

(b) **Retailing.** The retailing B&O tax applies to the following:

(i) Sales and services as described in (a)(i) through (iii) of this subsection, which do not meet the exemption requirements provided in RCW 82.08.0262 or 82.08.0263;

(ii) Sales of equipment, tools, parts and accessories which do not become a component part of a motor vehicle or trailer used in transporting persons or property therein;

(iii) Sales of consumable supplies, such as oil, antifreeze, grease, other lubricants, cleaning solvents and ice; and

(iv) Towing charges.

(c) **Interstate sales deduction for lease income.** Persons who lease motor vehicles and trailers to motor carriers at retail (without operator) may claim an interstate sales deduction for the amount of the lease income attributable to the actual out-of-state use of the vehicles and trailers. Documentation substantiating such a claim must be retained by the lessor. This deduction may be taken even if the vehicle is not used substantially in interstate hauls for hire. The B&O tax applies to that portion of use of the vehicle while the vehicle is being used in Washington, even if the usage is in connection with interstate hauls and the vehicle is used substantially in hauling for hire in interstate commerce. See also WAC 458-20-193.

(3) **Retail sales tax.** RCW 82.08.0262 and 82.08.0263 provide retail sales tax exemptions for certain sales to motor carriers when delivery is made in Washington.

(a) **Sales of motor vehicles and trailers.** RCW 82.08.0263 provides an exemption from the retail sales tax for sales of motor vehicles and trailers to be used for transporting therein persons or property for hire in interstate or foreign commerce. This exemption is available whether such use is by a for hire motor carrier, or by persons operating the vehicles and trailers under contract with a for hire motor carrier. The for hire carrier must hold a carrier permit issued by the Interstate Commerce Commission or its successor agency to qualify for this exemption. The seller, at the time of the sale, must retain as a part of its records an exemption certificate which must be completed in its entirety. The exemption certificate must be in substantially the following form:

**Exemption Certificate**

The undersigned hereby certifies that it is, or has contracted to operate for, the holder of carrier permit No. . . . , issued by the Interstate Commerce Commission or its successor agency, and that the vehicle this date purchased from you being a (specify truck or trailer and make) , Motor No. . . . . , Serial No. . . . . is entitled to exemption from

the Retail Sales Tax under the provisions of RCW 82.08.-0263. This certificate is given with full knowledge of, and subject to, the legally prescribed penalties for fraud and tax evasion.

Dated . . . . .

.....  
(name of carrier-purchaser)

By .....  
(title)

.....  
(address)

The lease of motor vehicles and trailers to motor carriers, without operator, must satisfy all conditions and requirements provided by RCW 82.08.0263 to qualify for the retail sales tax exemption. Failure to meet these requirements will require the lessor to collect the retail sales tax on the lease. However, where the exemption from retail sales tax has not been met, a retail sales tax exemption may continue to apply to that portion of the lease while the vehicle is being used outside Washington, provided the lessor can substantiate the usage outside Washington. (See WAC 458-20-193.)

(b) **Sales of component parts of motor vehicles and trailers and charges for repairs, etc.** RCW 82.08.0262 provides an exemption from the retail sales tax for sales of component parts and repairs of motor vehicles and trailers. This exemption is available only if the user of the motor vehicle or trailer is the holder of a carrier permit issued by the Interstate Commerce Commission or its successor agency which authorizes transportation by motor vehicle across the boundaries of Washington. Since carriers are required to obtain these permits only when the carrier is hauling for hire, the exemption applies only to parts and repairs purchased for vehicles which are used in hauling for hire. The exemption includes labor and services rendered in constructing, repairing, cleaning, altering, or improving such motor vehicles and trailers.

(i) This exemption is available whether the motor vehicles or trailers are owned by, or operated under contract with, persons holding the carrier permit. This exemption applies even if the motor vehicle or trailer to which the parts are attached will not be used substantially in interstate hauls, provided the vehicles are used in hauling for hire.

(ii) The seller must retain as a part of its records a completed exemption certificate. This certificate may be:

(A) Issued for each purchase;

(B) Incorporated in or stamped upon the purchase order;

or

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

(iii) This certificate must be in substantially the following form:

**Exemption Certificate**

The undersigned hereby certifies that it is, or has contracted to operate for, the holder of a carrier permit, No. . . . . , issued by the Interstate Commerce Commission or its successor agency authorizing transportation by motor vehicle across the boundaries of this state. The undersigned further certifies that the motor truck or trailer to be constructed,

repaired, cleaned, altered, or improved by you, or to which the subject matter of this purchase is to become a component part, will be used in direct connection with the business of transporting therein persons or property for hire; and that such sale and/or charges are exempt from the Retail Sales Tax under the provisions of RCW 82.08.0262. This certificate is given with full knowledge of, and subject to, the legally prescribed penalties for fraud and tax evasion.

Dated. . . . .  
.....  
(name of carrier-purchaser)  
.....  
(address)  
By .....  
(title)

(c) **Taxable sales.** The following sales do not qualify for exemption under the provisions of RCW 82.08.0262 or 82.08.0263, and are subject to the retail sales tax when delivery is made in Washington.

(i) Sales of equipment, tools, parts and accessories which do not become a component part of a motor vehicle or trailer used in transporting persons or property for hire. This includes items such as tire chains and tarps which are not custom made for a specific vehicle.

(ii) Sales of consumable supplies, such as oil, antifreeze, grease, other lubricants, cleaning solvents and ice.

(iii) Towing charges.

[Statutory Authority: RCW 82.32.300, 97-11-022, § 458-20-174, filed 5/13/97, effective 6/13/97; 94-18-003, § 458-20-174, filed 8/24/94, effective 9/24/94; 83-07-033 (Order ET 83-16), § 458-20-174, filed 3/15/83; Order ET 71-1, § 458-20-174, filed 7/22/71; Order 70-3, § 458-20-174 (Rule 174), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-17401 Use tax liability for motor vehicles, trailers, and parts used by motor carriers operating in interstate or foreign commerce.** (1) **Introduction.** This section explains the use tax and the use tax exemptions provided by RCW 82.12.0254 which apply to for hire motor carriers operating in interstate or foreign commerce. For hire motor carriers should refer to WAC 458-20-174 for a discussion of the retail sales tax and retail sales tax exemptions which apply to motor carriers for the purchase of vehicles and parts under RCW 82.08.0262 and 82.08.0263.

(2) **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 the retail sales and/or use tax.

(3) **Motor vehicles and trailers.** Purchasers of motor vehicles and trailers should note the differences in the conditions and requirements for the retail sales and use tax exemptions provided by RCW 82.08.0263 and 82.12.0254, respectively. The purchaser of a motor vehicle or trailer may qualify for the retail sales tax exemption at the time of purchase, yet incur a use tax liability for the subsequent use of the same vehicle or trailer.

(a) For vehicles purchased in Washington, RCW 82.12.0254 provides a use tax exemption for the use of any motor vehicle or trailer while being operated under the authority of a trip permit and moving from the point of delivery in this state to a point outside this state.

(b) RCW 82.12.0254 also provides a use tax exemption for the use of any motor vehicle or trailer owned by, or operated under contract with, a for hire motor carrier engaged in the business of transporting persons or property in interstate or foreign commerce if both of the following conditions are met:

(i) The user is, or operates under contract with, a holder of a carrier permit issued by the Interstate Commerce Commission (ICC) or its successor agency; and

(ii) The vehicle is used in substantial part in the normal and ordinary course of the user's business for transporting therein persons or property for hire across the boundaries of the state.

"In substantial part" means that the motor vehicle or trailer for which exemption is claimed actually crosses Washington boundaries and is used a minimum of twenty-five percent in interstate hauling for hire.

(c) The motor carrier must continue to substantially use the motor vehicle or trailer in interstate for hire hauls during each calendar year to retain the exemption from use tax. This requires that at the start of each calendar year the carrier review the usage of each vehicle and trailer for a "view period" consisting of the previous calendar year. If a particular vehicle was purchased or sold during the year so that the vehicle was not available for use during the entire calendar year, the taxpayer at its option may elect to review the usage during the portion of the year during which the vehicle was owned or may use a twelve-month period beginning with the date of purchase of a vehicle or ending with the date of sale of a vehicle. For example, if a vehicle is traded-in on May 30, 1996, the taxpayer must meet the substantial use test for this vehicle for either the period January through May 1996 or for the period June 1, 1995, through May 30, 1996. Use tax is due for those vehicles which have not been used substantially in interstate commerce and on which retail sales or use tax has not been paid.

(d) Carriers who maintain their records on a fiscal year basis may, at their option, elect to review the usage of their vehicles using their fiscal year rather than the calendar year. If a fiscal year is used, it must be used for the entire fleet of vehicles. These carriers may not change to a calendar year basis without first obtaining prior approval from the department.

(e) Usage will be reviewed on a calendar or fiscal year basis and not on a "moving" twelve-month period. For example, a tractor purchased on August 1, 1996, will need to have met the substantial use test for the period August through December 1996, or for the period August 1, 1996, through July 31, 1997, the period selected being at the taxpayer's option, and for the calendar year 1997 and each calendar year thereafter in order to retain the use tax exemption.

(f) The motor carrier may select one of the methods from those listed below to determine if its motor vehicles and trailers satisfy the substantial use threshold for exemption under RCW 82.12.0254. The particular method must be applied to all trucks, tractors, and trailers within the fleet. Regardless of

the method selected, a vehicle will not be considered as used in interstate hauls unless the vehicle actually crosses the boundaries of the state and is used in part outside Washington. The motor carrier may change the method with the prior written consent of the department of revenue. The methods are:

(i) Line crossing. The line crossing method compares the number of interstate for hire hauls made by a particular motor vehicle or trailer to the total number of for hire hauls. The motor vehicle or trailer must actually cross the boundaries of this state or be used for hauls which begin and end outside this state, for the haul to be considered an interstate haul.

(ii) Mileage. The mileage method compares the interstate mileage associated with the for hire hauls made by a particular motor vehicle or trailer, to the total mileage associated with its for hire hauls. All mileage associated with a specific haul which requires the motor vehicle or trailer to actually cross the boundaries of this state, or haul exclusively outside this state, is considered to be interstate mileage. Where a vehicle is returning empty after having delivered an interstate load or is empty on its way to pickup an interstate load, the empty mileage will be considered to be part of the mileage from an interstate haul.

(iii) Revenue. The revenue method compares the interstate for hire revenue generated by the particular motor vehicle or trailer to the total for hire revenue generated. The revenue generated by the motor vehicle or trailer actually crossing the boundaries of this state, or hauling exclusively outside this state, is considered to be interstate revenue for the purposes of determining use tax liability. If the motor carrier uses more than one motor vehicle or trailer to transport the cargo, the revenue generated from hauling this cargo must be allocated between the motor vehicles and/or trailers used. For the purposes of determining use tax liability, a vehicle will not be considered as having interstate revenue even if the haul originates or ends outside Washington unless the vehicle actually crosses the boundaries of the state.

(iv) Other. Any other method may be used when approved in advance and in writing by the department of revenue.

(g) The following examples show how the methods of determining substantial interstate use would be applied to various situations. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(i) ARC Trucking picks up a load of cargo in Spokane, Washington and delivers it to the dock in Seattle, Washington, for subsequent shipment to Japan. While ARC may claim an interstate and foreign sales deduction on its excise tax return for the income attributable to this haul if all of the requirements of RCW 82.16.050(8) are met, the haul itself is considered to be intrastate for the purposes of determining whether the tractor/trailer rig meets the substantial use threshold discussed in RCW 82.12.0254. Both the pickup and delivery points are within the state of Washington.

(ii) DMG Express picks up a load of cargo in Yakima, Washington for ultimate delivery in Billings, Montana. The cargo is initially hauled from the Yakima location to DMG's hub terminal in Spokane, Washington by truck A. It is unloaded from truck A at the hub terminal, reloaded on truck B, and delivered to Billings. For the purposes of determining

qualification for the use tax exemption provided by RCW 82.12.0254, two hauls have taken place. The haul performed by truck A is considered to be an intrastate haul since truck A did not cross the borders of Washington, while the haul performed by truck B is considered interstate for purposes of determining continued exemption from use tax on the trucks, even though the entire hauling income may be deductible from the motor transportation tax.

(iii) AA Express operates one tractor/trailer rig, which has previously met the retail sales and use tax exemption requirements. AA verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis, using the line crossing method. AA makes one hundred for hire hauls within the calendar year. Of these hauls, seventy-one are entirely in Washington, ten are performed entirely outside Washington, and nineteen require AA to cross the borders of Washington. AA Express has not incurred a use tax liability on the tractor/trailer rig as twenty-nine percent of the for hire hauls were interstate in nature.

(iv) BDC Hauling operates one tractor/trailer rig which has previously met the retail sales and use tax exemption requirements. BDC verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis, using the mileage method. BDC makes one hundred for hire hauls within the calendar year, for a total of one hundred thousand miles. Included in this mileage figure are the unladen or "empty" miles BDC incurs from delivery points to its terminal. Fifteen of these hauls were interstate in nature and involved laden travel of twenty thousand miles, including the Washington miles of the interstate hauls where the rig made border crossings. BDC's rig also incurred an additional eight thousand miles as a result of having to drive unladen from the delivery point of an interstate haul to its Washington terminal. BDC Hauling has not incurred a use tax liability for its use of the tractor/trailer rig. Under the mileage method, twenty-eight percent of the tractor/trailer's usage was in interstate hauling.

(v) GV Trucking operates one tractor/trailer rig which has previously met the retail sales and use tax exemption requirements. GV verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis, using the revenue method. GV makes one hundred for hire hauls within the calendar year, for which GV earns eighty thousand dollars. Fifteen of these hauls were interstate in nature, for which GV earned twenty thousand dollars. GV Trucking has not incurred a use tax liability for its use of the tractor/trailer rig. Under the revenue method, twenty-five percent of GV's usage of the tractor/trailer rig was in interstate hauling.

(vi) XYZ Trucking operates a single tractor/trailer rig which has previously met the retail sales and use tax exemption requirements. XYZ picks up two loads of cargo in Seattle, one load for delivery to Kent, Washington and another for delivery to Portland, Oregon. Upon delivery of the cargo to Kent, XYZ picks up another load for delivery to Portland, Oregon. XYZ has performed three separate hauls, even if the loads are combined on the same rig. The Seattle to Portland and Kent to Portland hauls are considered interstate hauls, the Seattle to Kent haul intrastate. If using the mileage method the mileage associated with the Seattle to Portland and Kent to Portland hauls would be combined to determine total inter-

state miles, even though the rig made only one trip to Portland. If using the revenue method, the revenue generated by the Seattle to Portland and Kent to Portland hauls would be considered interstate. The mileage and/or revenue associated with the Seattle to Kent haul would be considered intrastate.

(4) **Special application to trailers.** Motor carriers must keep appropriate records and determine qualification for the use tax exemption provided by RCW 82.12.0254 for each individual truck and tractor. Motor carriers are encouraged to keep similar records for each individual trailer. Where records are maintained to document the use of individual trailers, use tax liability for trailers must be determined on the basis of those records. However, it is recognized that some motor carriers have no system of tracking or documenting the travel of their trailers and it would be an undue burden to require such recordkeeping, particularly where a tractor may be used to pull multiple trailers and the trailers are not assigned to a specific tractor. These motor carriers may elect to determine the use tax liability attributable to their use of trailers on the basis of their actual use of the tractors.

(a) Under this method, it is assumed that there is a direct correlation between the use of tractors and the use of trailers. Whenever use tax is incurred on a tractor because of the failure to maintain the twenty-five percent interstate usage, use tax will also be due on one or more trailers. The number of trailers subject to the use tax under this method shall correspond to the fleetwide trailer to tractor ratio. Any trailer to tractor ratio resulting in a fraction shall be rounded up when determining the number of trailers subject to the use tax. For example, if the fleetwide ratio of trailers to tractors is two and one quarter to one, and one tractor fails to maintain the substantial use threshold in a given year, the motor carrier shall incur a use tax liability on three trailers. However, if two tractors fail to maintain the substantial use threshold in a given year, the motor carrier shall incur a use tax liability on five trailers.

(b) The trailer or trailers subject to use tax under this method shall be those acquired nearest to the purchase date of the tractor triggering the use tax liability for those trailers meeting the following conditions:

(i) The trailer or trailers are compatible for towing with the tractor upon which use tax is incurred; and

(ii) The trailer or trailers have not previously incurred a retail sales or use tax liability; and

(iii) The trailer or trailers have been actively used in hauling for hire in the year tax liability is incurred.

(c) Under this method of reporting, use tax liability is generally incurred on one or more trailers whenever a tractor is subject to the use tax. If a tractor is purchased with the intent that less than twenty-five percent of the hauls will be across state borders, it will be presumed the tractor will also be pulling a trailer or trailers on which use tax is also due. For example, ABC Trucking has eight tractors and fifteen trailers in its fleet. The tractors and trailers met the exemption from retail sales tax and use tax at the time they were purchased, and it was determined during previous annual reviews that the tractors continued to be substantially used on interstate hauls. However, at the time of the annual review for the just-completed calendar year it was determined that one tractor was not used at least twenty-five percent in interstate hauls. Use tax is due on this tractor. Under this method, use tax is

also due on two trailers. The two trailers on which use tax must be reported are the two purchased most nearly to the purchase date of the tractor.

(5) **Valuation.** The value of the motor vehicle or trailer subject to the use tax is its fair market value at the time of first use within the review period for which the exemption cannot be maintained. However, because the taxpayer will not know until the close of the period whether the usage met the exemption requirements, the use tax is due and should be reported on the last excise tax return for that review period. For example, a motor carrier who has previously met the exemption requirements for a particular truck determines this truck no longer was substantially used in interstate hauls during calendar year 1996. Use tax should be reported on the last tax return filed for 1996 with the taxable value based on the value of the truck at January 1, 1996.

(a) The department of revenue will accept independent publications containing values of comparable vehicles if those values are generally accepted in the industry as accurately reflecting the value of used vehicles. The department will also consider notarized valuation opinions signed by qualified appraisers and/or dealers as evidence of the fair market value. In the absence of a readily available fair market value, the department will accept a value based on depreciation schedules used by the department of licensing to determine the value of vehicles for licensing purposes.

(b) The following examples show how use tax liability would be determined in typical situations. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(i) ABC Trucking purchased five trailers for use in both interstate and intrastate for hire hauls on January 1, 1996. All the necessary conditions for exemption under RCW 82.08.-0263 were met; delivery was made in Washington, and the trailers were purchased without payment of the retail sales tax. The taxpayer uses the "line crossing" method for determining interstate use.

ABC Trucking keeps a journal showing the origin and destination for each haul which identifies each truck/tractor and trailer used on a per unit basis. This journal is reviewed at the end of each calendar year to verify compliance with the statutory provision that motor vehicles and trailers be substantially used for transporting therein persons or property for hire across the boundaries of the state. During the first year of use, all five of the trailers met the "substantial use" threshold. However, in reviewing this journal for the 1997 calendar year, ABC Trucking determines that two of the trailers failed to meet the twenty-five percent "substantial use" threshold. ABC Trucking must remit use tax directly to the department on its December 1997 excise tax return, based on the fair market values of the two trailers as of January 1, 1997. Since the taxpayer maintained specific usage records for each trailer, the "substantial use" in interstate hauling must be met by each trailer for which exemption is claimed. If detailed records for usage of trailers had not been kept, use tax liability of the trailers would have been based on the tractors. In any event, use tax liability may not be determined based on the overall experience of a fleet of vehicles. If a vehicle is used both in hauling for hire and in hauling the carrier's own

products, the "substantial use" is determined solely on the usage in hauling for hire.

(ii) DB Carriers is a motor carrier which is engaged in both intrastate and interstate for hire hauls. DB purchases and first uses a truck in Washington on January 1, 1997. All the necessary conditions for exemption under RCW 82.08.0263 were met; delivery was made in Washington, and the truck was purchased without payment of the retail sales tax. DB Carriers uses the "line crossing" method for determining interstate use.

DB Carriers keeps a journal showing the origin and destination for each haul which identifies each truck used on a per unit basis. This journal is reviewed at the end of the 1997 calendar year, and DB determines that the truck failed to meet the twenty-five percent "substantial use" threshold. DB Carriers must remit use tax directly to the department on its December 1997 excise tax return, based on the fair market value of the truck as of January 1, 1997. DB Carriers may not compute the use tax liability based upon the December 31, 1997, fair market value as the vehicle never satisfied the substantial interstate use provision of RCW 82.12.0254.

(6) **Leased vehicles.** The use tax exemption requirements are the same for leased vehicles as for purchased vehicles. Motor vehicles and trailers, leased without operator are exempt from the use tax if the user is, or operates under contract with, a holder of a permit issued by the ICC or its successor agency and the vehicle is used in substantial part in the normal and ordinary course of the user's business for transporting therein persons or property for hire across the boundaries of the state. This requires that the leased vehicle be used a minimum of twenty-five percent in interstate hauls. The taxpayer may elect to use either the fiscal year of the business or a calendar year to determine if the leased vehicle was used substantially in interstate hauls for hire. Where the vehicle lease does not begin or end at the start of the calendar year (or fiscal year if the business uses a fiscal year view period), the same requirements apply to leased vehicles as to purchased vehicles (see subsection (3)(c) of this section).

(a) If the leased vehicle does not meet the substantial use requirement during the "view period," the use tax applies only to the portion of the lease payment which is for use in Washington during the "view period." See the examples in subsection (6)(b) of this section. Mileage is an acceptable basis for determining in-state and out-of-state use. For the purposes of determining in-state and out-of-state use of leased vehicles or trailers where use tax is determined to be due, all miles traveled in Washington by the leased vehicle are in-state miles, notwithstanding that they may be associated with an interstate haul. The motor carrier must maintain accurate records of actual in-state and out-of-state use to substantiate any claim that a portion of any lease payment was exempt of use tax because of out-of-state use. Use tax will be determined for each "view period." For example, if a truck was leased for the years 1996 and 1997 and failed to meet the substantial use requirement in 1996, but met the requirement in 1997, use tax would only be due for the usage in Washington which occurred in 1996.

(b) The following examples show how this method would be applied to typical situations. These examples should be used only as a general guide. The tax status of each

situation must be determined after a review of all of the facts and circumstances.

(i) BG Hauling is a for hire carrier which on January 1, 1996, enters into a lease agreement for a truck without operator. All the necessary conditions for the retail sales and use tax exemptions for the first year of the lease were met. BG Hauling verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis.

BG determines that this truck failed to meet the twenty-five percent substantial use threshold for calendar year 1997. Use tax will be due beginning with the period for which the exemption was not met, in this case beginning with January 1997. However, BG Hauling may report use tax only on that portion of each lease payment attributable to actual in-state use, provided it maintains accurate records substantiating the truck's in-state and out-of-state activity. Only mileage incurred while actually outside Washington will be considered out-of-state mileage. If BG Hauling continues to lease this truck in 1998, usage will again be reviewed for that period and use tax may or may not be due for the 1998 lease payments, depending on whether the vehicle was used substantially in interstate hauls during that year.

(ii) MG Inc. is an equipment distributor which, in addition to hauling its own product to customers, is engaged in hauling for hire activities. MG is a holder of an ICC permit. MG enters into a lease agreement for a truck without operator on January 1, 1996. All conditions for retail sales and use tax exemption are satisfied for the first year of the lease.

Based upon the truck's for hire hauling activities during the 1997 calendar year, MG determines that the use of the truck failed to satisfy the twenty-five percent substantial use threshold. MG must remit use tax upon the amount of lease payments made during 1997 at the time it files its last tax return in 1997. Provided accurate records are maintained to substantiate in-state and of out-of-state use, MG may remit use tax only upon that portion of each lease payment attributable to actual in-state use. While only the hauling for hire activities are reviewed when determining whether the truck satisfies the substantial interstate use threshold, once it is established the exemption cannot be maintained, the use tax liability is based upon all in-state activity, including the motor carrier's hauling of its own product.

(7) **Component parts.** RCW 82.12.0254 also provides a use tax exemption for the use of tangible personal property which becomes a component part of any motor vehicle or trailer used for transporting therein persons or property for hire. This exemption is available for motor vehicles or trailers owned by, or operated under contract with, a person holding a carrier permit issued by the Interstate Commerce Commission or its successor agency authorizing transportation by motor vehicle across the boundaries of this state. Since carriers are required to obtain these permits only when the carrier is hauling for hire, the exemption applies only to tangible personal property purchased for vehicles which are used in hauling for hire. The exemption for component parts will apply even if the parts are for use on a motor vehicle or trailer which is used less than twenty-five percent in interstate hauls for hire, provided the vehicle is used in hauling for hire.

(a) For the purposes of this section, the term "component parts" means any tangible personal property which is attached to and becomes an integral part of the motor vehicle

or trailer. It includes such items as motors, motor and body parts, batteries, paint, permanently affixed decals, and tires. "Component parts" includes the axle and wheels, referred to as "converter gear" or "dollies," which is used to connect a trailer behind a tractor and trailer. "Component parts" can include tangible personal property which is attached to the vehicle and used as an integral part of the motor carrier's operation of the vehicle, even if the item is not required mechanically for the operation of the vehicle. It includes cellular telephones, communication equipment, fire extinguishers, and other such items, whether themselves permanently attached to the vehicle or held by brackets which are permanently attached. If held by brackets, the brackets must be permanently attached to the vehicle in a definite and secure manner with these items attached to the bracket when not in use and intended to remain with that vehicle. It does not include antifreeze, oil, grease, and other lubricants which are considered as consumed at the time they are placed into the vehicle, even though required for operation of the vehicle. It does include items such as spark plugs, oil filters, air filters, hoses and belts.

(b) The following items do not qualify for exemption from the use tax under the provisions of RCW 82.12.0254:

(i) Equipment, tools, parts and accessories which do not become a component part of a motor vehicle or trailer used in transporting persons or property for hire; and

(ii) Consumable supplies, such as oil, grease, other lubricants, cleaning solvents and ice.

[Statutory Authority: RCW 82.32.300, 97-11-022, § 458-20-17401, filed 5/13/97, effective 6/13/97; 94-18-004, § 458-20-17401, filed 8/24/94, effective 9/24/94.]

**WAC 458-20-175 Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce.** The term "private carrier" means every carrier, other than a common carrier, engaged in the business of transporting persons or property for hire.

The term "watercraft" includes every type of floating equipment which is designed for the purpose of carrying therein or therewith persons or cargo. It includes tow boats, but it does not include floating dry docks, dredges or pile drivers, or any other similar equipment.

The term "carrier property" means airplanes, locomotives, railroad cars or watercraft, and component parts of the same.

The term "component part" includes all tangible personal property which is attached to and a part of carrier property. It also includes spare parts which are designed for ultimate attachment to carrier property. The said term does not include furnishings of any kind which are not attached to the carrier property nor does it include consumable supplies. For example, it does not include, among other things, bedding, linen, table and kitchen ware, tables, chairs, ice for icing perishables or refrigerator cars or cooling systems, fuel or lubricants.

"Such persons," and "such businesses" mean the persons and businesses described in the title of this rule.

**Business and Occupation Tax, Public Utility Tax**

Persons engaged in such businesses are not subject to business tax or utility tax with respect to operating income received for transporting persons or property in interstate or foreign commerce. (See WAC 458-20-193.)

When such persons also engage in intrastate business activities they become taxable at the rates and in the manner stated in WAC 458-20-179, 458-20-181 and 458-20-193. For example, such persons are taxable under the retailing business tax classification upon the gross proceeds of sales of tangible personal property, including sales of meals, when such sales are made within this state.

Persons selling tangible personal property to, or performing services for, others engaged in such businesses, are taxable to the same extent as they are taxable with respect to sales of property or services made to other persons in this state. However, on July 1, 1985, a statutory business and occupation tax deduction became effective for sales of fuel for consumption outside the territorial waters of the United States by vessels used primarily in foreign commerce. In order to qualify for this deduction sellers must take a certificate signed by the buyer or the buyer's agent stating: The name of the vessel for which the fuel is purchased; that the vessel is primarily used in foreign commerce; and, the amount of fuel purchased which will be consumed outside of the territorial waters of the United States. Sellers must exercise good faith in accepting such certificates and are required to add their own signed statement to the certificate to the effect that to the best of their knowledge the information contained in the certificate is correct. The following is an acceptable certificate form:

**Foreign Fuel Exemption Certificate**

SELLER: ..... VESSEL: .....

WE HEREBY CERTIFY that this purchase of (kind and amount of product) from (seller) will be consumed as fuel outside the territorial waters of the United States by the above-named vessel. We further certify that said vessel is used primarily in foreign commerce and that none of the fuel purchased will be consumed within the territorial boundaries of the State of Washington.

DATED ....., 19 ..  
.....  
Purchaser  
.....  
Purchaser's Agent  
By: .....  
.....  
Title or Office

When a completed certification such as this is taken in good faith by the seller, the sale is exempt of business and occupation tax, whether made at wholesale or retail, and even though the fuel is delivered to the buyer in this state.

**Retail Sales Tax**

Sales of meals (including those sold to employees, see WAC 458-20-119) and retail sales of other tangible personal property, made by such persons, are subject to the retail sales tax when such sales are made within this state.

By reason of specific exemptions contained in RCW 82.08.0261 and 82.08.0262 the retail sales tax does not apply upon the following sales:

- (1) Sales of airplanes, locomotives, railroad cars, or watercraft for use in conducting interstate or foreign commerce by transporting therein or therewith property and persons for hire;
- (2) Sales of tangible personal property which becomes a component part of such carrier property in the course of constructing, repairing, cleaning, altering or improving the same;
- (3) Sales of or charges made for labor or services rendered with respect to the constructing, repairing, cleaning, altering or improving of such carrier property;
- (4) Sales of any tangible personal property other than the type referred to in 1 and 2 above, for use by the purchaser in connection with such businesses, provided that any actual use thereof in this state shall, at the time of actual use, be subject to the use tax.

Except as to sales of or charges made for labor or services rendered with respect to the constructing, repairing, cleaning, altering or improving of carrier property, the foregoing exemptions are limited to sales of tangible personal property. Hence the retail sales tax applies upon the sales of or charges made for labor or services rendered in respect to (1) the installing, repairing, cleaning, altering, imprinting or improving of any other type of tangible personal property; and in respect to (2) the constructing, repairing, decorating or improving of new or existing buildings or other structures. Thus the retail sales tax applies upon the charge made for repairing within this state of such things as switches, frogs, office equipment, or any other property which is not carrier property. It also applies upon the charge made for laundering linen and bedding. The tax also applies upon the charge made for constructing buildings, such as depots, wharves and hangars, or for repairing, decorating or improving the same.

However, the cost of installing, repairing, cleaning, altering, imprinting or improving of tangible personal property prior to its initial use by the carrier is considered as part of the initial cost of the property involved and therefore exempt from the sales tax. Thus, for example, the treating of railroad ties prior to their initial use is considered as part of the original cost of the ties and therefore exempt from the sales tax under RCW 82.08.0261.

**Exemption certificates required.** Persons selling tangible personal property or performing services which come within any of the foregoing exemptions are required to obtain from the purchaser, or his authorized agent, a certificate evidencing the exempt nature of the transaction. This certificate must identify the operator of the carrier by name and by its department of revenue registration number, if registered, and if not registered, by address.

The certificate may be in blanket form—that is, may certify as to all future purchases, or individual certificates may be made for each purchase. Also the certificate may be incorporated in or stamped upon the purchase order.

The certificate should be in substantially the following form:

**Exemption Certificate**

WE HEREBY CERTIFY that all the tangible personal property to be purchased from you will be for use in connection with our business of operating as a (private or common) carrier by (air, rail or water) in (interstate or foreign) commerce; that all (airplanes, locomotives, railroad cars or watercraft) or component parts thereof, to be constructed, repaired, cleaned, altered or improved by you, will be used in conducting (interstate or foreign) commerce; and that all such sales are entitled to exemption from the Retail Sales Tax under the provisions of RCW 82.08.0261 and 82.08.0262.

Dated . . . . ., 19. . .

.....  
(Purchaser)  
By .....  
(Title-Officer or Agent)  
Address .....

Department of Revenue Registration No.  
.....

**Use Tax**

The use tax does not apply upon the use of airplanes, locomotives, railroad cars or watercraft, including component parts thereof, which are used primarily in conducting such businesses.

"Actual use within this state," as used in RCW 82.08.0261 does not include use of durable goods aboard carrier property while engaged in interstate or foreign commerce. Thus the use tax does not apply upon the use of furnishings and equipment (whether attached to the carrier or not) intended for use aboard carrier property while operating partly within and partly without this state. Included herein are such items as bedding, table linen and wares, kitchen equipment, tables and chairs, hand tools, hawsers, life preservers, parachutes, and other durable goods which are necessary, convenient or desirable for the proper operation of such carrier property.

The use tax does apply upon the actual use within this state of all other types of tangible personal property purchased at retail and upon which the sales tax has not been paid. Included herein are all consumable goods for use on and placed aboard carrier property while within this state, but only to the extent of that portion consumed herein. Thus the tax applies upon the use of the amount consumed in this state of ice, fuel and lubricants which are placed aboard in this state, and upon food supplies or catered meals placed aboard carrier property in this state and served to customers in this state by transportation companies when the meals so served are included in the charge for transportation. (The retail sales tax must be collected upon separate sales within this state of meals or other tangible personal property.) The tax does not apply upon the use within this state of any part of consumable goods for use on carrier property and placed aboard outside this state.

Liability for the use tax arises at the time of actual use thereof in this state.

Due to the difficulty in many cases of determining at the time of purchase whether or not the property purchased or a

part thereof will be put to use in this state and due to the resulting accounting problems involved, persons engaged in the business of operating as private or common carriers by air, rail or water in interstate or foreign commerce will be permitted to pay the use tax directly to the department of revenue rather than to the seller, and such sellers are relieved of the liability for the collection of such tax. This permission is limited, however, to persons duly registered with the department. The registration number given on the certificate which will be furnished to the seller ordinarily will be sufficient evidence that the purchaser is properly registered.

As to persons operating in interstate or foreign commerce as carriers by air, rail or water who are not registered with the department and who, therefore, are not regularly filing tax returns with the department, sellers of durable goods must either collect the use tax at the time of the sale or require from such purchasers a further certificate to the effect that no part of the subject matter of the sale is for actual use in this state.

Similarly, where consumable goods, such as ice, bunker fuel, or lubricants are purchased by or for carriers not registered with the department, and delivered on board a carrier regularly engaged in interstate or foreign commerce for consumption while both within and without the territorial boundaries of the state of Washington, the seller is required to collect from the buyer the amount of use tax applicable to that portion of the products sold which will be consumed within this state.

It will be presumed that the entire amount of the goods purchased will be consumed within this state unless the seller obtains from the buyer a certificate certifying as to the amount thereof which will be consumed while within the territorial boundaries hereof.

The certificate shall be made by the master or chief engineer of the carrier, or by some other person known by the seller to be competent to make the same, and shall be substantially in the following form:

**Certificate**

.....	.....
Seller	Purchaser
.....	.....
Name of Carrier	Name of Owner or Agent

The undersigned does hereby certify as follows:

(1) The purchaser has this day purchased from the seller in the State of Washington certain amounts of (type of goods purchased) and has taken delivery thereof aboard said carrier for its exclusive use while regularly engaged in transporting persons or property for profit in interstate or foreign commerce.

(2) While the said carrier is within the territorial boundaries of the state of Washington, it will consume the following amounts of the commodities purchased:

- ..... barrels of fuel oil
- ..... gallons of lubricants
- ..... pounds of grease
- ..... other consumable goods

Dated ....., 19...

.....  
Name

.....  
Office or Title

[Statutory Authority: RCW 82.32.300, 86-07-005 (Order ET 86-3), § 458-20-175, filed 3/6/86; 83-07-033 (Order ET 83-16), § 458-20-175, filed 3/15/83; Order ET 70-3, § 458-20-175 (Rule 175), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-176 Commercial deep sea fishing—Commercial passenger fishing—Diesel fuel. (1) Definitions.** As used herein:

(a) "Commercial deep sea fishing" means fishing done for profit outside the territorial waters of the state of Washington. It does not include sport fishing or the operation of charter boats for sport fishing. (See WAC 458-20-183 for tax liability of such persons.) Nor does the phrase include the operation or purchase of watercraft for kelping, purse seining, or gill netting, because such fishing methods can be legally performed in Washington only within the territorial waters of the state (the three-mile limit). Therefore, watercraft rigged for fishing by any of these methods will be deemed for use in other than commercial deep sea fishing unless proof, including documentation to be retained by sellers, is furnished that said watercraft will be used for these purposes exclusively outside the Washington territorial limit.

(b) "Watercraft" means every type of floating equipment which is designed for the purpose of carrying therein or therewith fishing gear, fish catch or fishing crews, and used primarily in commercial deep sea fishing operations.

(c) "Component part" includes all tangible personal property which is attached to and a part of a watercraft. It includes dories, gurdies and accessories, bait tanks, baiting tables and turntables. It also includes spare parts which are designed for ultimate attachment to a watercraft. The said term does not include equipment or furnishings of any kind which are not attached to a watercraft, nor does it include consumable supplies. Thus it does not include, among other things, bedding, table and kitchen wares, fishing nets, hooks, lines, floats, hand tools, ice, fuel or lubricants.

(d) "Commercial passenger fishing" means that done from charter boats for sport outside the territorial waters of the state of Washington.

**(2) Business and occupation tax.**

(a) Persons engaged in commercial deep sea fishing are not taxable under the extracting classification with respect to catches obtained outside the territorial waters of this state.

(b) Such persons are taxable under either the retailing or the wholesaling classification with respect to sales made within this state, unless entitled to exemption by reason of the commerce clauses of the federal constitution. (See WAC 458-20-193.)

**(3) Retail sales tax.**

(a) By reason of the exemption contained in RCW 82.08.0262, the retail sales tax does not apply upon sales of watercraft (including component parts thereof) which are primarily for use in conducting commercial deep sea fishing operations, nor does said tax apply to sales of or charges made for labor and services rendered in respect to the constructing, repairing, cleaning, altering or improving of such property.

(b) The retail sales tax applies upon sales made to persons engaged in commercial deep sea fishing of every other

type of tangible personal property and upon sales of or charges made for labor and services rendered in respect to the construction, repairing, cleaning, altering or improving of such other types of property. Thus, the retail sales tax applies upon sales to such persons of such things as fishing nets, hooks, lines, floats and bait; table and kitchen wares; hand tools, ice, fuel except diesel fuel as noted below, and lubricants for use or consumption, except only sales of watercraft and component parts thereof. For sales of food products see WAC 458-20-119 and 458-20-244.

**(4) Exemption certificates required.**

(a) Persons selling watercraft or component parts thereof to persons engaged in commercial deep sea fishing or performing services with respect to such craft or parts, are required to obtain from the purchaser a certificate evidencing the exempt nature of the transaction. This certificate must identify the purchaser by name and address, and by name of the watercraft with respect to which the purchase is made, and must contain a statement to the effect that the property purchased or repaired is for use primarily in commercial deep sea fishing operations.

(b) The certificate should be in substantially the following form:

**Exemption Certificate**

I HEREBY CERTIFY that the . . . . . this day ordered from or purchased from you, will be used primarily in commercial deep sea fishing operations outside the territorial waters of the State of Washington; that the vessel is not for fishing inside such territorial waters, and is not rigged or equipped for such fishing; that the registered name of the watercraft to which said purchase applies is (name of fishing boat); and that said sale is entitled to exemption under the provisions of RCW 82.08.0262.

Dated . . . . ., 19. . .

. . . . .  
(Name of Purchaser)  
By . . . . .  
(Name of officer or agent)  
Address . . . . .

(c) Incidental use within the waters of this state of fishing boats which are used primarily in deep sea fishing operations, will not deprive the owners thereof of the statutory exemption from the retail sales tax.

(d) In the event the fishing boat with respect to which an exemption is claimed is of a type used in the waters of Puget Sound or the Columbia River and the tributaries thereof, and is not practical for use in deep sea fishing, sellers should collect the retail sales tax upon all sales of such boats and component parts thereof and upon charges made for the repair of the same.

(e) It is a gross misdemeanor for a buyer to make a false certificate of exemption for the purpose of avoiding the tax.

**(5) Use tax.**

(a) The use tax does not apply upon the use of watercraft or component parts thereof.

(b) The use tax does apply upon the actual use within this state of all other types of tangible personal property purchased at retail and upon which the sales tax has not been

paid (see WAC 458-20-178) except on diesel fuel as noted below.

**(6) Diesel fuel.**

(a) The law provides for sales and use tax exemptions on diesel fuel for both commercial passenger fishing (charter boats for sport fishing) and commercial deep sea fishing operations.

(b) Neither retail sales nor use tax applies with respect to sales or use of diesel fuel in the operation of watercraft in commercial deep sea fishing operations or commercial passenger fishing operations by persons who are regularly engaged in the business of such operations outside the territorial waters (three-mile limit) of this state. For purposes of this exemption a person is not regularly engaged in either business if the person has gross receipts from the extra territorial operations of less than five thousand dollars a year. For persons involved in both commercial deep sea fishing operations and commercial passenger fishing operations, the receipts from both shall be added together to determine eligibility for this exemption.

(c) This exemption is plenary in scope and it is not required that all of the diesel fuel purchased be used outside of the territorial waters of this state. If a person qualifies for the exemptions by virtue of operating a deep sea fishing vessel, and has the requisite amount of gross receipts from that activity, all diesel fuel purchases and uses by such person for such vessel are tax exempt.

(d) **Diesel fuel exemption certificates required.** Persons selling diesel fuel to such persons are required to obtain from the purchaser a certificate evidencing the exempt nature of the transaction. This certificate must identify the purchaser by name and address, and by the registered name and number of the watercraft with respect to which the purchase is made. It must contain a statement to the effect that the diesel fuel is for use by a person who is engaged in commercial deep sea fishing and/or commercial passenger fishing operations who has annual gross receipts therefrom of at least five thousand dollars. Blanket certificates covering all diesel fuel purchases for specified watercraft may be used, where appropriate. A seller of diesel fuel who accepts such a certificate in good faith shall not be liable for sales tax on the diesel fuel sold. Certificates must be retained by the sellers in their permanent records as evidence of the exempt nature of diesel sales to eligible buyers. It is a gross misdemeanor for a buyer to make a false certificate of exemption for the purpose of avoiding the tax.

(e) The certificate should be in substantially the following form:

**Diesel Fuel Exemption Certificate**

I HEREBY CERTIFY that diesel fuel which I will purchase from (name of dealer) will be used in the operation of a watercraft which is used in commercial deep sea or commercial passenger fishing operations outside the territorial waters of the state of Washington; that the registered name and number of the watercraft to which said purchase applies is (registered vessel name and number); that the owner(s) of said vessel has gross income, based on federal income tax returns, of not less than five thousand dollars a year from such extra territorial fishing operations; and that said sales are entitled to

exemption under the provisions of chapter 494, Laws of 1987.

Dated . . . . ., 19 . . .
(Name of Purchaser)
By . . . . .
(Name of officer or agent)
Address . . . . .

[Statutory Authority: RCW 82.32.300, 88-03-055 (Order 88-1), § 458-20-176, filed 1/19/88; 83-07-033 (Order ET 83-16), § 458-20-176, filed 3/15/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300, 78-07-045 (Order ET 78-4), § 458-20-176, filed 6/27/78; Order ET 70-3, § 458-20-176 (Rule 176), filed 5/29/70, effective 7/1/70.]

WAC 458-20-177 Sales of motor vehicles, campers, and trailers to nonresidents. The scope of this rule is limited to sales by dealers in this state of motor vehicles, campers, and trailers to nonresidents of the state for use outside the state.

For the purposes of this rule, members of the armed services (but not including civilian military employees) who are temporarily stationed in the State of Washington pursuant to military orders will be presumed to be nonresidents unless such persons were residents of this state at the time of their induction; the term "vehicle" as used herein refers to motor vehicles, campers, and trailers.

Business and Occupation Tax

In computing the tax liability of persons engaged in the business of selling vehicles no deduction is allowed by reason of sales made to nonresidents for use outside this state but who take delivery in Washington, and irrespective of the fact that such buyers may be entitled to a statutory exemption from the retail sales tax.

A deduction from gross proceeds of sales will be allowed when, as a necessary incident of the contract of sale, the seller agrees to, and does, deliver the vehicle to the buyer at a point outside the state, or delivers the same to a common carrier consigned to the purchaser outside the state.

The foregoing deduction, however, will be allowed only when the seller has secured and retains in his files satisfactory proof:

- (a) That under the terms of the sales agreement the seller was required to deliver the vehicle to the buyer at a point outside this state; and
(b) That such out-of-state delivery was actually made by the seller or by a common carrier acting as his agent.

For forms of proof acceptable to the department of revenue see below under retail sales tax-out-of-state delivery. For "interstate commerce" deductions, generally, refer to WAC 458-20-193A.

Retail Sales Tax

(1) Sales to nonresidents. Under RCW 82.08.0264 the retail sales tax does not apply to sales of vehicles to nonresidents of Washington for use outside this state, even though delivery be made within this state, but only when either one of the following conditions is met:

(a) Said vehicle will be taken from the point of delivery in this state directly to a point outside this state under the

authority of a trip permit issued by the department of licensing pursuant to the provisions of RCW 46.16.160; or

(b) Said vehicle will be registered and licensed immediately (at the time of delivery) under the laws of the state of the purchaser's residence, will not be used in this state more than three months, and will not be required to be registered and licensed under the laws of this state.

Thus, in determining whether or not this particular exemption from the retail sales tax is applicable the dealer must establish the facts, first, that the purchaser is a bona fide nonresident of Washington and that the vehicle is for use outside this state and, second, that the vehicle is to be driven from his premises under the authority of either (a) a trip permit, or (b) valid license plates issued to that vehicle by the state of the purchaser's residence, with such plates actually affixed to the vehicle at the time of final delivery.

As evidence of the exempt nature of the sales transaction the seller, at the time of sale, is required to take an affidavit from the buyer giving his name, the state of his residence, his address in that state, the name, year and motor or serial number of the vehicle purchased, the date of sale, his declaration that the described vehicle is being purchased for use outside this state and, finally, that the vehicle will be driven from the premises of the dealer under the authority of a trip permit (giving the number) or that the vehicle has been registered and licensed by the state of his residence and will be driven from the premises of the dealer with valid license plates (giving the number) issued by that state affixed thereto. If the vehicle being sold is already licensed with valid Washington plates and the nonresident purchaser wishes to qualify for exemption by transporting the vehicle out-of-state under authority of a trip permit, the dealer is required to remove the Washington plates prior to delivery of the vehicle and retain evidence of such removal to avoid liability for collection and payment of the retail sales tax. The seller must himself certify by appending a certification to the affidavit, to the fact that the vehicle left his premises under the authority of a trip permit or with valid license plates issued by the state of the buyer's residence affixed thereto. The buyer's affidavit and the dealer's certificate must be in the following form:

Affidavit

For use by a NONRESIDENT buyer of a vehicle transporting the same outside this state under the authority of

- (a) [ ] Trip permit
(b) [ ] Nonresident license plates (check appropriate box)

STATE of WASHINGTON }
COUNTY of . . . . . ss.

(Purchaser) being first duly sworn on oath, deposes and says:

That he is a bona fide resident of the State of . . . . . and that his address is (street and number or rural route), (city, town or post office), (state); That on this date he has purchased from (dealer) the following described vehicle, to-wit:

Make . . . . . Model . . . . .
Year . . . . . (Motor Number)
(Serial No.) . . . . .

and that said vehicle is being purchased for use outside this state and that the same will be driven from the premises of the dealer under the authority of (a) a trip permit numbered . . . . . which has been issued to him authorizing the transit of said vehicle, or, (b) that said vehicle is being purchased for use outside this state and will not be used in the State of Washington for more than three months; and That the affiant has licensed said vehicle in the state of . . . and has had issued to him by that state license plates numbered . . . . . which are valid until (expiration date of license) and that said plates have been affixed to said vehicle prior to the time it has left the premises of the dealer.

Dated at . . . . ., Washington, this . . . . . day of . . . . ., 19. . . . .

.....  
(Signature)

.....  
Service No. if Member of Armed Services  
Subscribed and sworn to before me this . . . . . day of . . . . ., 19. . . . .

.....  
Notary Public in and for the State of  
Washington, residing at . . . . .

**Certificate of Dealer**

I hereby certify that before final delivery of the vehicle described in the foregoing affidavit (a) I have examined trip permit No. . . . . which authorizes transit of the vehicle described, or (b) that license plates numbered. . . . ., issued to said vehicle by the state of . . . . . and expiring . . . . ., were affixed thereto. I further certify that I have personally examined two or more of the following items of documentary evidence showing the purchaser's residency in the state of . . . . . :

- . . . . . Driver's license
- . . . . . Voter's registration
- . . . . . Fishing or hunting license
- . . . . . Income tax returns
- . . . . . Other (specify) . . . . .

I further certify that if the vehicle sold was already licensed with valid Washington plates, they were physically removed by . . . . ., agent of the seller.

.....  
(Signature of dealer  
or representative)

.....  
(Title-Officer or Agent)

Failure to take this affidavit and to complete the dealer's certification, in full, at the time of delivery of the vehicle will negate any exemption from the buyer's duty to pay and the dealer's duty to collect the retail sales tax under RCW 82.08.0264. Furthermore, a copy of the completed affidavit and certification must be attached to the dealer's excise tax report submitted for the reporting period in which any such vehicles were sold. Such filing is a procedural requirement and does not conclusively establish the buyer's or seller's right to exemption.

The foregoing affidavit will be prima facie evidence that sales of vehicles to nonresidents have qualified for the sales

tax exemption provided in RCW 82.08.0264 when there are no contrary facts which would negate the presumption that the seller relied thereon in complete good faith. The burden rests upon the seller to exercise a reasonable degree of prudence in accepting statements relative to the nonresidence of buyers. Lack of good faith on the part of the seller or lack of the exercise of the degree of care required would be indicated, for example, if the seller has knowledge that the buyer is living or is employed in Washington, if for the purpose of financing the purchase of the vehicle the buyer gives a local address, if at the time of sale arrangements are made for future servicing of the vehicle in the seller's shop and a local address is shown for the shop customer, or if the seller has ready access to any other information which discloses that the buyer may not be in fact a resident of the state which he claims. A nonresident permit issued by the department of revenue may be accepted as prima facie evidence of the out-of-state residence of the buyer, but does not relieve the seller from obtaining the affidavit and completing the certificate required by this rule.

Members of the armed services who are temporarily stationed in Washington pursuant to military orders will be presumed to be nonresidents unless such persons were residents of this state at the time of their induction. This presumption is not applicable in respect to civilian employees of the armed services.

In all other cases where delivery of the vehicle is made to the buyer in this state, the retail sales tax applies and must be collected at the time of sale. The mere fact that the buyer may be or claims to be a nonresident or that he intends to, and actually does, use the vehicle in some other state are not in themselves sufficient to entitle him to the benefit of this exemption. In every instance where the vehicle is licensed or titled in Washington by the purchaser the retail sales tax is applicable.

(2) Out-of-state deliveries. Out-of-state deliveries to buyers who are bona fide nonresidents are exempt from the retail sales tax when the seller, as a necessary incident to the contract of sale, delivers possession of vehicles to such buyers at points outside Washington and such vehicles are not licensed or titled in this state. If the vehicle being sold bears valid Washington plates and the nonresident wishes to qualify for exemption by taking delivery from the dealer at a point outside the state, the dealer is required to remove the Washington plates prior to delivery and retain evidence of such removal to avoid liability for collection and payment of the retail sales tax.

In such cases, as evidence of the exempt nature of the transaction, the seller must take from the buyer a certificate of out-of-state delivery which shall give the purchaser's name and address, the name, model, year and motor number of the vehicle purchased, and contain the buyer's statement that he is a bona fide resident of the named state, that the vehicle was purchased for use outside Washington state and that under the terms of the sales agreement the dealer was required to and did deliver the vehicle to a named point outside the state of Washington. The certificate shall be signed by the buyer at the place of delivery. Attached to this certificate and made a part thereof shall be a certification by the seller that he delivered the vehicle to the purchaser named at the named place of delivery.

These certificates shall be substantially in the following form:

**Certificate of Out-of-State Delivery**

(To be obtained from the purchaser at the time delivery is made to him at a point outside Washington)

The undersigned hereby certifies that he is a *bona fide* resident of the State of ..... and that his address is (street and number or rural route), (city, town or post office), (state); That on the ..... day of ....., 19....., he purchased from (Dealer) the following described vehicle to wit:

Make ..... Model .....  
Year ..... (Motor Number)  
..... (Serial No.) .....

and that said vehicle was purchased for use outside Washington state;

That under the terms of the sales agreement the dealer was required to, and did on this day, deliver said vehicle to him at (Place of delivery).

Dated at ....., this.... day of ....., 19....  
.....  
(Signature)

.....  
Service No. if Member of Armed Services

**Certification of Dealer**

I hereby certify that I have this day delivered the vehicle hereinabove described to (Name of purchaser), at (Place of delivery).

Dated .....  
.....  
(Signature of dealer or representative)  
.....  
(Title-Officer or Agent)

When such out-of-state delivery is made by a common carrier acting as agent of the seller then, as evidence of the exempt nature of the transaction, the seller shall retain in his files a signed copy of the bill of lading issued by the carrier in which the seller is shown as the consignor and by which the carrier agrees to transport the vehicle to a point outside the state.

The retail sales tax applies upon sales at retail made by local dealers to local residents for use by them in this state, even though delivery may be taken by the purchaser at the factory or other point outside this state, or that shipment may be made direct from outside this state to the purchaser in this state. However, where delivery is taken by local residents in foreign countries the vehicles will be deemed not to be for use in this state and local dealers will not be required to collect the retail sales tax.

(3) Records to be retained by seller. The affidavits and certificates referred to in this rule must be retained by the seller in his files as a part of his permanent records subject to audit by the department of revenue. In the absence of such

proof, claims that transactions were exempt from tax will be disallowed.

[Statutory Authority: RCW 82.32.300, 83-08-026 (Order ET 83-1), § 458-20-177, filed 3/30/83; Order ET 70-3, § 458-20-177 (Rule 177), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-178 Use tax.** (1) Nature of the tax. The use tax supplements the retail sales tax by imposing a tax of like amount upon the use within this state as a consumer of any article of tangible personal property purchased at retail or acquired by lease, gift, repossession, or bailment, or extracted, produced or manufactured by the person so using the same, where the user, donor or bailor has not paid retail sales tax under chapter 82.08 RCW with respect to the property used.

(2) In general, the use tax applies upon the use of any tangible personal property, the sale or acquisition of which has not been subjected to the Washington retail sales tax. Conversely, it does not apply upon the use of any property if the sale to the present user or to the present user's donor or bailor has been subjected to the Washington retail sales tax, and such tax has been paid thereon. Thus, these two methods of taxation stand as complements to each other in the state revenue plan, and taken together, provide a uniform tax upon the sale or use of all tangible personal property, irrespective of where it may have been purchased or how acquired.

(3) When tax liability arises. Tax liability imposed under the use tax arises at the time the property purchased, received as a gift, acquired by bailment, or extracted or produced or manufactured by the person using the same is first put to use in this state. The terms "use," "used," "using," or "put to use" include any act by which a person takes or assumes dominion or control over the article and shall include installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within the state. Tax liability arises as to that use only which first occurs within the state and no additional liability arises with respect to any subsequent use of the same article by the same person. As to lessees of tangible personal property who have not paid the retail sales tax to their lessors, liability for use tax arises as of the time rental payments fall due and is measured by the amount of such rental payments.

(4) Persons liable for the tax. The person liable for the tax is the purchaser, the extractor or manufacturer who commercially uses the articles extracted or manufactured, the bailor or donor and the bailee or donee if the tax is not paid by the bailor or donor, and the lessee (to the extent of the amount of rental payments to a lessor who has not collected the retail sales tax). A lessor who leases equipment with an operator is deemed a user and is liable for the tax on the full value of the equipment.

(5) The law provides that the term "sale at retail" means, among other things, every sale of tangible personal property to persons taxable under the classifications of public road construction, government contracting, and service and other business activities of the business and occupation tax. Hence, persons engaged in such businesses are liable for the payment of the use tax with respect to the use of materials purchased by them for the performance of those activities, when the Washington retail sales tax has not been paid on the purchase thereof, even though title to such property may be transferred

to another either as personal or as real property. Persons engaged in the types of businesses referred to in this paragraph are expressly included within the statutory definition of the word "consumer." (See RCW 82.04.190.) Also liable for tax is any person who distributes or displays or causes to be distributed or displayed any article of tangible personal property, the primary purpose of which is to promote the sale of products and services except newspapers and except printed materials over which the person has taken no direct dominion and control. (See RCW 82.12.010(5).)

(6) Lessors and lessees. Any use tax liability with respect to leased tangible personal property will be that of the lessee and is limited to the amount of rental payments paid or due the lessor. However, when boats, motor vehicles, equipment and similar property are rented under conditions whereby the lessor itself supplies an operator or crew, the lessor itself is the user and the use tax is applicable to the value of the property so used.

(7) Exemptions. Persons who purchase, produce, manufacture, or acquire by lease or gift tangible personal property for their own use or consumption in this state, are liable for the payment of the use tax, except as to the following uses which are exempt under RCW 82.12.0251 through 82.12.034 of the law:

(a) The use of tangible personal property brought into the state of Washington by a nonresident thereof for use or enjoyment while temporarily within the state, unless such property is used in conducting a nontransitory business activity within the state; or

(b) The use by a nonresident of a motor vehicle or trailer which is currently registered or licensed under the laws of the state of the nonresident's residence and which is not required to be registered or licensed under the laws of this state, including motor vehicles or trailers exempt pursuant to a declaration issued by the department of licensing under RCW 46.85.060; or

(c) The use of household goods, personal effects, and private automobiles by a bona fide resident of this state or nonresident members of the armed forces who are stationed in this state pursuant to military orders, if such articles were acquired and used by such person in another state while a bona fide resident thereof and such acquisition and use occurred more than ninety days prior to the time such person entered this state.

(i) Use by a nonresident. The exemptions set forth in (a) and (b) of this subsection, do not extend to the use of articles by a person residing in this state irrespective of whether or not such person claims a legal domicile elsewhere or intends to leave this state at some future time, nor do they extend to the use of property brought into this state by a nonresident for the purpose of conducting herein a nontransitory business activity.

(ii) The term "nontransitory business activity" means and includes the business of extracting, manufacturing, selling tangible and intangible property, printing, publishing, and performing contracts for the constructing or improving of real or personal property. It does not include the business of conducting a circus or other form of amusement when the personnel and property of such business regularly moves from one state into another, nor does it include casual or inci-

idental business done by a nonresident lawyer, doctor or accountant.

(d) The use of any article of tangible personal property purchased at retail or acquired by lease, by bailment or by gift if the sale thereof to or the use thereof by the present user or its bailor or donor has already been subjected to retail sales tax or use tax and such tax has been paid by the present user or by its bailor or donor; or in respect to the use of property acquired by bailment when tax has been paid by the bailee or any previous bailee, based on reasonable rental value as provided by RCW 82.12.060, equal to the amount of tax multiplied by the value of the article used at the time of first use, at the tax rate then applicable, or in respect to the use by a bailee of property acquired prior to June 9, 1961, by a previous bailee from the same bailor for use in the same general activity.

(e) The use of any article of tangible personal property the sale of which is specifically taxable under the public utility tax.

(f) In respect to the use of any airplane, locomotive, railroad car, or water craft used primarily in conducting interstate or foreign commerce by transporting therein or there-with property and persons for hire or used primarily in commercial deep sea fishing operations outside the territorial waters of the state, and;

(g) In respect to the use of tangible personal property which becomes a component part of any such airplane, locomotive, railroad car, or water craft, and in respect to the use by a nonresident of this state of any motor vehicle or trailer used exclusively in transporting persons or property across the boundaries of this state and in intrastate operations incidental thereto when such motor vehicle or trailer is registered and licensed in a foreign state; also in respect to the use by a nonresident of this state of any motor vehicle or trailer so registered and licensed and used within this state for a period not exceeding fifteen consecutive days when the user has furnished the department of revenue with a written statement containing the following information:

(i) Name of registered owner.

(ii) Name of the foreign state in which motor vehicle or trailer is registered.

(iii) License number.

(iv) Make and model.

(v) Purpose of use in Washington.

(vi) Date of first use in Washington.

(vii) Date last used in Washington.

(h) For reasons approved by the department of revenue, fifteen additional days may be granted consecutive to the original period of use. Application for such additional use must be made in writing in advance of the expiration of the original period of use and must set out the justification for and the reason why such additional time should be allowed.

(i) This exemption is not available to persons performing construction or service contracts in this state but is limited to casual or isolated use by a nonresident for servicing of its own facilities.

(j) For the purpose of this exemption the term "nonresident" shall include a user who has one or more places of business in this state as well as in one or more other states, but the exemption for nonresidents shall apply only to those vehicles which are most frequently dispatched, garaged, serviced,

maintained, and operated from the user's place of business in another state, and;

(k) In respect to the use by the holder of a carrier permit issued by the Interstate Commerce Commission of any motor vehicle or trailer used in substantial part in the normal and ordinary course of the user's business for transporting therein persons or property for hire across the boundaries of this state if the first use of which within this state is actual use in conducting interstate or foreign commerce. Also in respect to use by subcontractors to such interstate carriers, (i.e., persons operating their own vehicles under leases with operator) and;

(l) In respect to the use of any motor vehicle or trailer while being operated under the authority of a trip permit issued by the department of motor vehicles pursuant to RCW 46.16.160 and moving upon the highways from the point of delivery in this state to a point outside this state, and;

(m) In respect to the use of tangible personal property which becomes a component part of any motor vehicle or trailer used by the holder of a carrier permit issued by the Interstate Commerce Commission authorizing transportation by motor vehicle across the boundaries of this state. Also in respect to use by subcontractors to such interstate carriers (i.e., persons operating their own vehicles under leases with operator).

(n) The use of any article of tangible personal property which the state is prohibited from taxing under the constitution of the state or under the constitution or laws of the United States;

(o) The use of motor vehicle fuel used in aircraft by the manufacturer thereof for research, development, and testing purposes, and special fuel purchased in this state upon which a refund is obtained as provided in RCW 82.38.180(2), and motor vehicle and special fuel if:

(i) The fuel is used for the purpose of public transportation and the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080(9); or

(ii) The fuel is purchased by a private, nonprofit transportation provider certified under chapter 81.66 RCW and the purchaser is entitled to a refund or an exemption under RCW 82.36.285 or 82.38.080(8); or

(iii) The fuel is taxable under chapter 82.36 or 82.38 RCW: Provided, That the use of motor vehicle and special fuel upon which a refund of the applicable fuel tax is obtained shall not be exempt under this subsection, and the director of licensing shall deduct from the amount of such tax to be refunded the amount of use tax due and remit the same each month to the department of revenue.

(p) In respect to the use of any article of tangible personal property included within the transfer of the title to the entire operating property of a publicly or privately owned public utility, or a complete operating integral section thereof by the state or a political subdivision thereof in conducting any business defined in RCW 82.16.010 (1) through (11).

(q) The use of tangible personal property (including household goods) which has been used in conducting a farm activity, but only when that property was purchased from a farmer at an auction sale held or conducted by an auctioneer upon a farm and not otherwise.

(r) The use of tangible personal property by corporations which have been incorporated under any act of the Congress of the United States of America and whose principal pur-

poses are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities, and to devise and carry on measures for preventing the same. (The Red Cross is the only existing organization that qualifies for this exemption.)

(s) The use of purebred livestock for breeding purposes where said animals are registered in a nationally recognized breed association, and in respect to the use of cattle and milk cows used on the farm.

(t) The use of poultry in the production for sale of poultry or poultry products.

(u) The use of fuel by the extractor or manufacturer thereof when used directly in the operation of the particular extractive operation or manufacturing plant which produced or manufactured the same.

(v) The use of motor vehicles, equipped with dual controls, which are loaned to accredited schools and used in connection with their driver training programs.

(w) The use by a bailee of any article of tangible personal property which is entirely consumed in the course of research, development, experimental and testing activities conducted by the user, provided the acquisition or use of such articles by the bailor was not subject to sales or use tax.

(x) The use by residents of this state of motor vehicles and trailers acquired outside this state and used while such persons are members of the armed services and are stationed outside this state pursuant to military orders, but this exemption does not apply to the use of motor vehicles or trailers acquired less than thirty days prior to the discharge or release from active duty of such person from the armed services. This exemption is not permitted to persons called to active duty for training periods of less than six months.

(y) The use of sand, gravel, or rock to the extent of the cost of or charges made for labor and services performed in respect to the mining, sorting, crushing, screening, washing, hauling, and stockpiling such sand, gravel, or rock, when such sand, gravel, or rock is taken from a pit or quarry which is owned by or leased to a county or a city, and such sand, gravel, or rock is (a) either stockpiled in said pit or quarry for placement or is placed on the street, road, place or highway of the county or city by the county or city itself (i.e., by its own employees), or (b) sold by the county or city to a county or a city at actual cost for placement on a publicly owned street, road, place, or highway. This exemption shall not apply to the use of such material to the extent of the cost of or charge made for such labor and services, if the material is used for other than public road purposes or is sold otherwise than as here indicated.

(z) The use of form lumber by any person engaged in the construction, repairing, decorating or improving of new or existing buildings or other structures under, upon or above real property of or for consumers: Provided, That such lumber is used or to be used first by such person for the molding of concrete in a single such contract, project or job and is thereafter incorporated into the product of that same contract, project or job as an ingredient or component thereof.

(aa) The use of wearing apparel only as a sample for display for the purpose of effecting sales of goods represented by such sample.

(bb) The use of tangible personal property held for sale and displayed in single trade shows for a period not in excess of thirty days, the primary purpose of which is to promote the sale of products or services.

(cc) The use of pollen.

(dd) The use of the personal property of one political subdivision by another political subdivision directly or indirectly arising out of or resulting from the annexation or incorporation of any part of the territory of one political subdivision by another.

(ee) The use of prescription drugs, including the use by the state or a political subdivision or municipal corporation thereof of drugs to be dispensed to patients by prescription without charge.

(ff) The use of returnable containers for beverages and foods, including but not limited to soft drinks, milk, beer, and mixers.

(gg) The use of insulin, prosthetic devices, or orthotic devices prescribed for an individual by a chiropractor, osteopath, or physician, ostomic items, medically prescribed oxygen, and hearing aids which are prescribed or are dispensed and fitted by a licensee under chapter 18.35 RCW.

(hh) The use of food products for human consumption (see WAC 458-20-244), including the use of livestock for personal consumption as food.

(ii) The use of ferry vessels of the state of Washington or of local governmental units in the state of Washington in transporting pedestrian or vehicular traffic within and outside the territorial waters of the state. Also, the use of tangible personal property which becomes a component part of any such ferry vessel.

(jj) Alcohol that is sold in this state for use solely as fuel in motor vehicles, farm implements and machines, or implements of husbandry. This exemption expires December 31, 1986.

(kk) The use of vans used regularly as ride sharing vehicles, as defined in RCW 46.74.010(3), by not less than seven persons, including passengers and driver, if the vans are exempt under the motor vehicle excise tax for thirty-six consecutive months beginning within thirty days of application for exemption under the use tax. This exemption expires January 1, 1988.

(ll) The use of used mobile homes as defined in RCW 82.45.032 and the use of mobile homes acquired by renting or leasing for more than thirty days, except for short term transient lodging.

(mm) The use of special fuel purchased in this state upon which a refund of special fuel tax is obtained as provided in RCW 82.38.180(2), by reason of such fuel having been purchased for use by interstate commerce carriers outside this state. Also, the use of motor vehicle fuel or special fuel by private, nonprofit transportation providers who are entitled to fuel tax refund or exemption under chapter 82.36 or 82.38 RCW.

(nn) The lease of irrigation equipment if:

(i) The irrigation equipment was purchased by the lessor for the purpose of irrigating land controlled by the lessor;

(ii) The lessor has paid tax under RCW 82.08.020 or 82.12.020 in respect to irrigation equipment;

(iii) The irrigation equipment is attached to the land in whole or in part; and

(iv) The irrigation equipment is leased to the lessee as an incidental part of the lease of the underlying land to the lessee and is used solely on such land.

(oo) The use of computers, computer components, computer accessories, or computer software irrevocably donated to any public or private school or college, as defined in chapter 84.36 RCW, in this state.

(pp) The use of semen in the artificial insemination of livestock.

(qq) The use of feed by persons for the cultivating or raising for sale of fish entirely within confined rearing areas on the persons own land or on land in which the person has a present right of possession.

(rr) The use by artistic or cultural organizations of:

(i) Objects of art;

(ii) Objects of cultural value;

(iii) Objects to be used in the creation of a work of art, other than tools; or

(iv) Objects to be used in displaying art objects or presenting artistic or cultural exhibitions or performances.

(ss) The use of used floating homes as defined in RCW 82.45.032 upon which sales tax or use tax has once been paid.

(tt) The use of feed, seed, fertilizer, and spray materials by persons raising agricultural or horticultural products for sale at wholesale including the use of feed in feeding animals at public livestock markets.

(uu) The use of prepared meals or food products used in prepared meals provided to senior citizens, disabled persons, or low income persons by not-for-profit organizations organized under chapter 24.03 or 24.12 RCW.

(vv) The use of property to produce ferrosilicon for further use in the production of magnesium for sale, where such property directly reacts chemically, with ingredients of the ferrosilicon.

(ww) In respect to lease payments by a seller/lessee to a purchaser/lessor after April 3, 1986, under a sale/leaseback agreement covering property used by the seller/lessee primarily in the business of canning, preserving, freezing, or dehydrating fresh fruits, vegetables, and fish; nor in respect to the purchase amount paid by the lessee pursuant to an option to purchase such property at the end of the lease term: Provided, That the seller/lessee paid the retail sales tax or use tax at the time of its original acquisition of the property.

(8) In addition to the exemptions listed earlier, the use tax does not apply to the value of tangible personal property traded in on the purchase of tangible personal property of like kind used in this state. (See WAC 458-20-247.) Also, the use tax does not apply to the use of precious metal bullion or monetized bullion acquired under such conditions that the retail sales tax would not apply to such things in this state. (See WAC 458-20-248.)

(9) See WAC 458-20-24001 and 458-20-24002 for provisions for certain use tax deferrals on materials, labor, and services rendered in the construction of qualified buildings, machinery, and equipment used in new manufacturing and research/development facilities.

(10) RCW 82.08.0251 provides expressly that the exemption therein with respect to casual sales shall not be construed as exempting from the use tax the use of any article of tangible personal property acquired through a casual sale. Thus, while casual sales made by persons who are not regis-

tered with the department of revenue are exempt from the retail sales tax (for the obvious reason that the procedure for collection of that tax is impractical in those cases), the use of property acquired through such sales is not exempt from the use tax, except as provided in RCW 82.12.0251 through 82.12.034.

(11) See also WAC 458-20-106 regarding the use tax on the use of articles purchased at a casual sale.

(12) Credit. When property purchased elsewhere is brought into this state for use or consumption the use tax will apply upon the use thereof, but a credit is allowed for the amount of sales or use tax paid by the user or its bailor or donor on such property to any other state or political subdivision thereof, the District of Columbia, or any foreign country, prior to the use of the property in this state.

(13) Value of the article used. The tax is levied and collected on an amount equal to the value of the article used by the taxpayer. The term "value of the article used" is defined by the law as being the total of the consideration paid or given by the purchaser to the seller for the article used plus any additional amounts paid by the purchaser as tariff or duty with respect to the importation of the article used. In case the article used was extracted or produced or manufactured by the person using the same or was acquired by gift or was sold under conditions where the purchase price did not represent the true value thereof, the value of the article used must be determined as nearly as possible according to the retail selling price, at the place of use, of similar products of like quality, quantity and character. In case the articles used are acquired by bailment, the value of the use of the articles so used shall be in an amount representing a reasonable rental for the use of the articles so bailed, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character. In case the articles used are acquired by lease or rental, use tax liability is measured by the amount of rental payments to a lessor who has not collected the retail sales tax.

(14) In the case of an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product, the value of the article used shall be determined by: (a) The retail selling price of such new or improved product when first offered for sale; or (b) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale. See: RCW 82.04.450, WAC 458-20-112.

(15) In the case of articles owned by a user engaged in business outside the state which are brought into the state for no more than ninety days in any period of three hundred sixty-five consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used shall be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under this chapter or chapter 82.08 RCW upon the full value of the article used.

(16) Returns and registration. Persons subject to the payment of the use tax, and who are not required to register or report under the provisions of chapters 82.04, 82.08, 82.16, or 82.28 RCW, are not required to secure a certificate of registration as provided under WAC 458-20-101. As to such persons, returns must be filed with the department of revenue on or before the fifteenth day of the month succeeding the end of

the period in which the tax accrued. Forms and instructions for making returns will be furnished upon request made to the department at Olympia or to any of its branch offices.

(17) See WAC 458-20-221 for liability of certain selling agents for collection of use tax.

[Statutory Authority: RCW 82.32.300, 87-01-050 (Order ET 86-19), § 458-20-178, filed 12/16/86; Order ET 71-1, § 458-20-178, filed 7/22/71; Order ET 70-3, § 458-20-178 (Rule 178), filed 5/29/70, effective 7/1/70.]

### **WAC 458-20-17802 Collection of use tax by county auditors and department of licensing—Measure of tax.**

(1) **Introduction.** The department of revenue has authorized county auditors and the department of licensing to collect the use tax imposed by chapter 82.12 RCW when a person applies to transfer the certificate of ownership of a motor vehicle acquired without the payment of sales tax. See RCW 82.12.045. This rule explains how county auditors, their sub-agents, and the department of licensing determine the measure of the use tax. This rule does not relieve a seller registered with the department of revenue of the statutory requirement to collect sales tax when selling tangible personal property, including motor vehicles. RCW 82.08.020 and 82.08.0251. The use tax reporting responsibilities of Washington residents in other situations and the general nature of the use tax are addressed in WAC 458-20-178 (Use tax). The various use tax exemptions provided by chapter 82.12 RCW are discussed in WAC 458-20-17801 (Use tax exemptions). The application of tax to vehicles acquired by Indians and Indian tribes is discussed in WAC 458-20-192 (Indians—Indian country).

Vehicle licensing locations and information about vehicle titles and registration are available from the department of licensing on the internet at: <http://www.wa.gov/dol/>, under "vehicles list." This information is also available by contacting the local county auditor's office listed in the government pages of the telephone directory.

(2) **What is use tax based on?** For purposes of computing the amount of use tax due, the value of the article used is the measure of tax. The value of the article used is generally the purchase price. If the purchase price does not represent the true value of the article used, the value must be determined as nearly as possible according to the retail selling price at place of use of similar vehicles of like quality and character. RCW 82.12.010.

(3) **Use of automated system to verify measure of tax.** When a person applies to transfer the certificate of ownership of a motor vehicle, county auditors, their sub-agents, or the department of licensing must verify that the purchase price represents the true value. In doing so, county auditors, their sub-agents, or the department of licensing compare the vehicle's purchase price to the average retail value of comparable vehicles using an automated valuing system. The automated valuing system identifies the average retail value using a data base that is provided by a regional industry standard source specializing in providing valuation services to local, state, and federal governments, and the private sector.

In limited situations, the automated valuing system's data base may not provide the average retail value for a motor vehicle. For example, the automated valuing system's data base does not provide average retail value information for collectible vehicles or vehicles that are over twenty years of

age. In the absence of an average retail value, county auditors, their subagents, or the department of licensing will determine the true value as nearly as possible according to the retail selling price at place of use of similar vehicles of like character and quality. To assist in this process, the department of revenue and the department of licensing may approve the use of alternative valuing authorities as necessary.

**(4) What happens when the purchase price is presumed to represent the true value?** County auditors, their subagents, or the department of licensing will use the purchase price to compute the amount of use tax due when the purchase price represents the vehicle's true value. County auditors, their subagents, or department of licensing will presume the purchase price represents the vehicle's true value if one of the following conditions is met:

(a) The vehicle's average retail value, as provided by the automated valuing system, is less than \$3,000.

For example, a person buys a motor vehicle for \$800. The automated valuing system indicates that the vehicle's average retail value is \$2,900. The purchase price is presumed to represent the vehicle's true value because the average retail value is less than \$3,000.

(b) The vehicle's purchase price is not more than \$2,000 below the average retail value as provided by the automated valuing system.

For example, a person buys a used motor vehicle for \$4,500. The automated valuing system indicates the vehicle's average retail value is \$6,000. When compared to the average retail value, the purchase price is not more than \$2,000 below the average retail value. Consequently, the purchase price is presumed to represent the vehicle's true value.

**(5) What happens when the purchase price is not presumed to represent the true value?** If the vehicle's purchase price is not presumed to be the true value as explained in subsection (4) of this rule, a person may remit use tax based on the average retail value as indicated by the automated valuing system or substantiate the true value of the vehicle using any one of the following methods.

(a) **Industry-accepted pricing guide.** A person applying to transfer a certificate of ownership may provide the county auditor, a subagent, or the department of licensing with documentation from one of the various industry-accepted pricing guides. The value from the industry-accepted pricing guide must represent the retail value of a similarly equipped vehicle of the same make, model, and year in a comparable condition. The purchase price is presumed to represent the vehicle's true value if the purchase price is not more than \$2,000 below the retail value.

For example, a person buys a vehicle for \$3,500. The automated valuing system indicates that the vehicle's average retail value is \$5,700. An industry-accepted pricing guide shows that the retail value of a similarly-equipped vehicle in a comparable condition of the same make, model, and year is \$5,000. When compared to the retail value established by the industry-accepted pricing guide, the purchase price is not more than \$2,000 below the retail value. Consequently, the purchase price is presumed to represent the vehicle's true value.

(b) **Declaration of buyer and seller.** A person applying to transfer a certificate of ownership may provide to the

county auditor, a subagent, or the department of licensing a Declaration of Buyer and Seller Regarding Value of Used Vehicle Sale (REV 32 2501) to substantiate that the purchase price is the true value of the vehicle. The declaration must be signed by both the buyer and the seller and must certify to the purchase price and the vehicle's condition under penalty of perjury. The department of revenue may review a declaration and assess additional tax, interest, and penalties. A person may appeal an assessment to the department of revenue as provided in WAC 458-20-100 (Appeals, small claims and settlements).

The declaration is available from the department of revenue on the internet at <http://dor.wa.gov/> under "other forms and schedules." It is also available at all vehicle licensing locations, department of revenue field offices, or by writing:

Department of Revenue  
Taxpayer Services  
P.O. Box 47478  
Olympia, WA 98504-7478

(c) **Written appraisal.** A person applying to transfer a certificate of ownership may present to the county auditor, a subagent, or the department of licensing a written appraisal from an automobile dealer, insurance or other vehicle appraiser to substantiate the true value of the vehicle. If an automobile dealer performs the appraisal, the dealer must be currently licensed with the department of licensing's dealer services division or be a licensed vehicle dealer in another jurisdiction.

The written appraisal must appear on company stationery or have the business card attached and include the vehicle description, including the vehicle make, model, and identification number (VIN). The person performing the appraisal must certify that the stated value represents the retail selling price of a similarly-equipped vehicle of the same make, model, and year in a comparable condition. The department of revenue may review an appraisal and assess additional tax, interest, and penalties. A person may appeal an assessment to the department of revenue as provided in WAC 458-20-100 (Appeals, small claims and settlements).

(d) **Declaration of use tax.** A person applying to transfer a certificate of ownership may present to the county auditor, a subagent, or the department of licensing a Declaration of Use Tax (REV 32 2486e) to substantiate the true value of the vehicle. An authorized employee of the department of revenue must complete the declaration. Determining the true value may require a visual inspection that is not available at all department of revenue locations.

(e) **Repair estimate.** A person applying to transfer a certificate of ownership may present to the county auditor, a subagent, or the department of licensing a written repair estimate, prepared by an auto repair or auto body repair business. This estimate will then be used to assist with determining the true value of the vehicle. The written estimate must appear on company stationery or have the business card attached. In addition, the written estimate must include the vehicle description, including the vehicle make, model, and identification number (VIN), and an itemized list of repairs. The department of revenue may review an appraisal and assess additional tax, interest, and penalties. A person may appeal

an assessment to the department of revenue as provided in WAC 458-20-100 (Appeals, small claims and settlements).

The purchase price is presumed to represent the true value if the total of the purchase price and the repair estimate is not more than \$2,000 below the average retail value. For example, a person purchases a vehicle with extensive bumper damage for \$1,700. The automated valuing system indicates that the vehicle's average retail value is \$6,000. An estimate from an auto body repair business indicates a cost of \$2,500 to repair the bumper damage. The purchase price is presumed to represent the vehicle's true value because when the total of the purchase price and the repair estimate (\$1,700 + \$2,500 = \$4,200) is compared to the average retail value, the total is not more than \$2,000 below the average retail value (\$6,000).

[Statutory Authority: RCW 82.32.300 and 82.12.045. 01-22-008, § 458-20-17802, filed 10/26/01, effective 11/26/01.]

**WAC 458-20-179 Public utility tax.** (1) Introduction.

Persons engaged in certain public service businesses are taxable under the public utility tax. (See chapter 82.16 RCW.) These businesses are exempt from the business and occupation tax on the gross receipts which are subject to the public utility tax. (See RCW 82.04.310.) However, many persons taxable under the public utility tax are also engaged in some other business activity which is taxable under the business and occupation (B&O) tax. For example, a gas distribution company engaged in operating a plant or system for distribution of natural gas for sale, may also be engaged in selling at retail various gas appliances. Such a company would be taxable under the public utility tax with respect to its distribution of natural gas to consumers, and also taxable under the business and occupation tax with respect to its sale of gas appliances. It should also be noted that some services which generally are taxable under the public utility tax are taxable under the B&O tax if the service is performed for a new customer, prior to receipt of regular utility services by the customer.

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

(a) The term "gross income" means the value proceeding or accruing from the performance of the particular public service or transportation businesses involved. It includes operations incidental to the public utility activity, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(b) The term "service charge" means those specific charges made to a customer for providing a specific service. The term includes the actual charge to a customer for the sale or distribution of water, gas, or electricity. This term does not include utility local improvement district assessments (ULID) or local improvement district assessments (LID).

(c) The term "subject to control by the state" means control by the utilities and transportation commission or any other state department required by law to exercise control of a business of a public service nature as to rates charged or services rendered.

(3) **Persons taxable under the public utility tax.** The term "public service businesses" includes any of the busi-

nesses defined in RCW 82.16.010 (1) through (9), and (11). It also includes any business subject to control by the state, or having the powers of eminent domain, or any business declared by the legislature to be of a public service nature, irrespective of whether the business has the powers of eminent domain or the state exercises its control over the business. It includes, among others, without limiting the scope thereof: Railroad, express, railroad car, water distribution, sewerage collection, light and power, telegraph, gas distribution, urban transportation and common carrier vessels under sixty-five feet in length, motor transportation, tugboat businesses, certain airplane transportation, boom, dock, ferry, pipe line, toll bridge, toll logging road, and wharf businesses. (See WAC 458-20-251 for sewerage collection.) Persons engaged in these business activities are subject to the public utility tax even if they are not publicly recognized as providing that type of service or the amount of income from these activities is not substantial.

(a) "Light and power business" includes charges made for the "wheeling" of electricity for others. "Wheeling" is the activity of delivering or distributing electricity owned by others using power lines and equipment of the person doing the wheeling.

(b) Persons engaged in hauling for hire by motor vehicle should also refer to WAC 458-20-180.

(c) Persons hauling property, other than U.S. mail, by air transportation equipment are taxable under the other public service public utility tax. Income from the hauling of U.S. mail or passengers is not subject to the public utility tax because of specific federal law. (See 49 U.S.C. section 1301 and section 1513(a).)

(d) Persons engaged in hauling persons or property for hire by watercraft between points in Washington are taxable under the public utility tax. Income from operating tugboats of any size and income from the sale of transportation services by vessels over sixty-five feet is taxable under the public service utility tax classification. Income from the sale of transportation services using vessels under sixty-five feet, other than tugboats, is taxable under "vessels under sixty-five feet" public utility tax classification. These classifications include businesses engaged in chartering or transporting persons by water from one location in Washington to another location within this state. This does not include sightseeing tours or activities which are in the nature of guided tours where the tour may include some water transportation. Persons engaged in providing tours should refer to WAC 458-20-258.

(e) Income from activities which are incidental to a public utility activity are generally taxable under the public utility tax when performed for an existing customer. This includes charges for line extensions, connection fees, line drop charges, start up fees, pole replacements, testing, replacing meters, line repairs, line raisings, pole contact charges, load factor charges, meter reading fees, etc. However, if any of these services are performed for a customer prior to sale of a public utility service to the customer, the income is taxable under the business and occupation tax. (See subsection (4) of this section.)

(4) **Business and occupation tax.** As indicated above, services which are incidental to a public utility activity are generally subject to the public utility tax. However, these

types of charges are taxable under the service and other business activities B&O tax classification if performed for a customer prior to receipt of the utility services (gas, water, electricity) by a new customer. A "new customer" is a customer who previously has not received utility services, such as water, gas, or electricity, at the location where the charge for a specific service was provided. For example, a customer of a water supplier who currently receives water at a residence constructs a new residence a short distance from the first location. This customer will be considered a "new customer" with respect to any charges for services performed at the new location until the customer actually receives water at the new location, even though this customer may be receiving services at a different location. The charge for installing a meter or a connection charge for this customer at the new location would be taxable under the service and other activities B&O tax classification.

Amounts charged to customers as interest or penalties are generally taxable under the service and other business activities B&O tax classification. This includes interest charged for failure to timely pay for utility services or for special services which were performed prior to the customer receiving services, such as connection charges. However, any interest and/or penalty charged because of the failure to timely pay a LID or ULID assessment will not be taxable for the public utility tax or the B&O tax.

(5) **Tax rates.** The rates of tax for each business activity are imposed under RCW 82.16.020 and set forth on appropriate lines of the combined excise tax return forms.

(6) **Uniform system of accounts.** In distinguishing gross income taxable under the public utility tax from gross income taxable under the business and occupation tax, the department of revenue will be guided by the uniform system of accounts established for the specific type of utility concerned. However, because of differences in the uniform systems of accounts established for various types of utility businesses, such guides will not be deemed controlling for the purposes of classifying revenue under the Revenue Act.

(7) **Volume exemption.** Persons subject to the public utility tax are exempt from the payment of this tax if the taxable income from utility activities does not meet a minimum threshold. Prior to July 1, 1994, there was a similar exemption for the business and occupation tax with different threshold amounts. Beginning July 1, 1994, the law provides for a B&O tax credit for taxpayers who have a minimal B&O tax liability. (See WAC 458-20-104.) The volume exemption for the public utility tax applies independently of the business and occupation tax credit or exemption. The volume exemption for the public utility tax applies for any reporting period in which taxable income reported under the combined total of all public utility tax classifications does not equal or exceed the minimum taxable amount for the reporting periods assigned to such persons according to the following schedule:

Monthly reporting basis . . . . .	\$500 per month
Quarterly reporting basis . . . . .	\$1500 per quarter
Annual reporting basis . . . . .	\$6000 per annum

(8) **Exemption of amounts or value paid or contributed to any county, city, town, political subdivision, or municipal corporation for capital facilities.** RCW 82.04.-

417 previously provided an exemption from the public utility tax and the business and occupation tax for amounts received by cities, counties, towns, political subdivisions, or municipal corporations representing contributions for capital facilities. These contributions are often referred to as "contributions in aid of construction." This law was repealed effective July 1, 1993, and this exemption is no longer available after that date. (See chapter 25, Laws of 1993 sp.s.) However, contributions in the form of equipment or facilities will not be considered as taxable income. For example, if an industrial customer purchases and installs transformers which it donates to a public utility district as a condition of receiving future service, the public utility district will not be subject to the public utility tax or B&O tax on the receipt of the donated transformers. For a water or sewerage collection business, the value of pipe, valves, pumps, or similar items donated by a developer to the utility business would not be taxable income to the utility business. Monetary payments are considered to be payments for installation of facilities so that a customer may receive the public utility commodity or service. When the facilities are installed or constructed by the customer and subsequently given to the utility business, there is no payment for installation of the facilities.

(9) **Specific deductions.** Amounts derived from the following sources may be deducted from the gross income under the public utility tax if included in the gross amounts reported:

(a) Amounts derived by municipally owned or operated public services businesses directly from taxes levied for the support thereof, but not including service charges which are spread on the property tax rolls and collected as taxes. LID and ULID assessments, including interest and penalties on such assessments, will not be considered part of the taxable income because they are exercises of the jurisdiction's taxing authority. These assessments may be composed of a share of the costs of capital facilities, installation labor, connection fees, etc. A deduction may be taken for these amounts if they are included in the LID or ULID assessments.

(b) Amounts derived from the sale of commodities to persons in the same public service business as the seller, for resale as such within this state. This deduction is allowed only with respect to water distribution, light and power, gas distribution or other public service businesses which furnish water, electrical energy, gas or any other commodity in the performance of a public service business.

(c) Amounts actually paid by a taxpayer to another person taxable under chapter 82.16 RCW as the latter's portion of the consideration due for services jointly furnished by both. This includes the amount paid to a ferry company for the transportation of a vehicle and its contents (but not amounts paid to state owned or operated ferries) when such vehicle is carrying freight or passengers for hire and is being operated by a person engaged in the business of urban transportation or motor transportation. It does not include amounts paid for the privilege of moving such vehicles over toll bridges. However, this deduction applies only to the purchases of services and does not include the purchase of commodities. The following examples show how this deduction and the deduction for sales of commodities would apply:

(i) CITY Water Department purchases water from Neighboring City Water Department. CITY sells the water to

its customers. Neighboring City Water Department may take a deduction for its sales of water to CITY since this is a sale of water (commodities) to a person in the same public service business. CITY may not take a deduction for its payment to Neighboring City Water as "services jointly furnished." The service or sale of water to the end consumers was made solely by CITY and was not a jointly furnished service.

(ii) Customer A hires ABC Transport to haul goods from Tacoma, Washington to a manufacturing facility at Bellingham. ABC Transport subcontracts part of the haul to XYZ Transport and has XYZ haul the goods from Tacoma to Everett where the goods are loaded into ABC's truck. ABC may deduct the payments it makes to XYZ as a "jointly furnished service."

(d) Amounts derived from the distribution of water through an irrigation system, solely for irrigation purposes.

(e) Amounts derived from the transportation of commodities from points of origin in this state to final destination outside this state, or from points of origin outside this state to final destination in this state with respect to which the carrier grants to the shipper the privilege of stopping the shipment in transit at some point in this state for the purpose of storing, manufacturing, milling, or other processing, and thereafter forwards the same commodity, or its equivalent, in the same or converted form, under a through freight rate from point of origin to final destination.

(f) Amounts derived from the transportation of commodities from points of origin in the state to an export elevator, wharf, dock or shipside on tidewater or navigable tributaries thereto from which such commodities are forwarded, without intervening transportation, by vessel, in their original form, to an interstate or foreign destination: Provided, That no deduction will be allowed when the point of origin and the point of delivery to such export elevator, wharf, dock, or shipside are located within the corporate limits of the same city or town. The following examples show how this deduction applies:

(i) ABC Trucking delivers logs to a storage area which is adjacent to the dock from where shipments are made by vessel to a foreign country. The logs go through a peeling process at the storage area prior to being placed on the vessel. The peeling process changes the form of the original log. Because the form of the log is changed, ABC Trucking may not take a deduction for the haul to the storage area. It is immaterial that the trucker may be paid based on an "export" rate.

(ii) ABC Trucking hauls logs from the woods to a log storage area which is adjacent to the dock. The logs will be sorted prior to being placed in the hold of the vessel, but no further processing will be performed. The storage area is quite large and the logs will be moved by log stacker and will be placed alongside the ship. The logs are loaded using the ship's tackle and then transported to a foreign country. ABC Trucking may take a deduction for the amounts received for transporting the logs from the woods to the log storage area. The movement of the logs within the log storage area is not considered to be "intervening transportation," but is part of the stevedoring activity.

(iii) ABC Trucking hauls logs from the woods to a "staging area" where the logs are sorted. After sorting, XY Hauling will transport some of the logs from the staging area to local mills for lumber manufacturing and other logs to the

dock which is located approximately five miles from the staging area where the logs immediately are loaded on a vessel for shipment to Japan. The dock and staging area are not within the corporate city limits of the same city. ABC Trucking may not take a deduction for amounts received for hauling logs to the staging area. Even though some of these logs ultimately will be exported, ABC Trucking is not delivering the logs directly to the dock where the logs will be loaded on a vessel.

However, XY Hauling may take a deduction for the income from hauls to the dock. Its haul was the final transportation prior to the logs being placed on the vessel for shipment to Japan. The logs remained in their original form with no additional processing. The haul also did not originate or terminate within the corporate city limits of the same city or town. All the conditions were met for XY Hauling to claim the deduction.

(g) Amounts derived from the distribution of water by a nonprofit water association which are used for capital improvements by that association.

(h) Amounts received from sales of power which is delivered by the seller out-of-state. A deduction may also be taken for the sale of power to a person who will resell the power outside Washington where the power is delivered in Washington. These sales of power are also not subject to the manufacturing B&O tax.

(i) Amounts received for providing commuter share riding or ride sharing for the elderly and the handicapped in accordance with RCW 46.74.010.

(j) Amounts expended to improve consumers' efficiency of energy end use or to otherwise reduce the use of electrical energy or gas by the consumer. (For details see WAC 458-20-17901.)

(k) Income from transporting persons or property by air, rail, water, or by motor transportation equipment where either the origin or destination of the haul is outside the state of Washington.

(10) **Other deductions.** In addition to the deductions discussed above there also may be deducted from the reported gross income (if included within the gross), the following:

(a) The amount of cash discount actually taken by the purchaser or customer.

(b) The amount of credit losses actually sustained.

(c) Amounts received from insurance companies in payment of losses.

(d) Amounts received from individuals and others in payment of damages caused by them to the utility's plant or equipment.

(11) **Exchanges by light and power businesses.** There is no specific exemption which applies to an "exchange" of electrical energy or the rights thereto. However, exchanges of electrical energy between light and power businesses do qualify for deduction in computing the public utility tax as being sales of power to another light and power business for resale. An exchange is a transaction which is considered to be a sale and involves a delivery or transfer of energy or the rights thereto by one party to another for which the second party agrees, subject to the terms and conditions of the agreement, to deliver electrical energy at the same or another time.

Examples of deductible exchange transactions include, but are not limited to, the following:

(a) The exchange of electric power for electric power between one light and power business and another light and power business;

(b) The transmission or transfer of electric power by one light and power business to another light and power business pursuant to the agreement for coordination of operations among power systems of the pacific northwest executed as of September 15, 1964;

(c) The Bonneville Power Administration's acquisition of electric power for resale to its Washington customers in the light and power business;

(d) The residential exchange of electric power entered into between a light and power business and the administrator of the Bonneville Power Administration (BPA) pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501, Sec. 5(c), 16 U.S.C. 839(c) (Supp. 1982). In some cases, power is not physically transferred, but the purpose of the residential exchange is for BPA to pay a "subsidy" to the exchanging utilities. For public utility tax reporting purposes, these subsidies will be treated as a non-taxable adjustment (rebate or discount) for purchases of power from BPA.

**(12) Customer billing information.** RCW 82.16.090 requires that customer billings issued by light or power businesses or gas distribution businesses serving more than twenty thousand customers shall include the following information:

(a) The rates and amounts of taxes paid directly by the customer upon products or services rendered by such businesses; and

(b) The rate, origin and approximate amount of each tax levied upon the revenue of such businesses which has been added as a component of the amount charged to the customer. This does not include taxes levied by the federal government or taxes levied under chapters 54.28, 80.24, or 82.04 RCW.

**(13) Motor or urban transportation.** For specific rules pertaining to the classifications of "urban transportation" and "motor transportation," see WAC 458-20-180.

[Statutory Authority: RCW 82.32.300. 94-13-034, § 458-20-179, filed 6/6/94, effective 7/7/94; 86-18-069 (Order 86-16), § 458-20-179, filed 9/3/86; 85-22-041 (Order 85-6), § 458-20-179, filed 11/1/85; 83-01-059 (Order ET 82-13), § 458-20-179, filed 12/15/82; Order ET 71-1, § 458-20-179, filed 7/22/71; Order ET 70-3, § 458-20-179 (Rule 179), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-17901 Public utility tax—Energy conservation and cogeneration deductions.** (1) Introduction. This section explains certain deductions from the public utility tax which are intended to be an incentive to promote conservation and efficiency of energy. The question of the deductibility of any expenditures not expressly covered in this rule must be submitted to the department in writing for a ruling before the deduction may be taken. The incentive programs for energy efficiency are discussed in RCW 82.16.052 and 82.16.055. Most of the provisions in RCW 82.16.052 expired on December 31, 1989, and were replaced by RCW 82.16.052 which became effective on March 1, 1990. These incentive programs are discussed below.

(2) Deductions under RCW 82.16.055. In chapter 149, Laws of 1980 (RCW 80.28.024, 80.28.025, and 82.16.055), the legislature finds and declares that the potential for meeting future energy needs through conservation measures, including energy conservation loans, energy audits, and the use of renewable resources, such as solar energy, wind energy, wood, wood waste, municipal waste, agricultural products and wastes, hydroelectric energy, geothermal energy, and end-use waste heat, may not be realized without incentives to public and private utilities. The deductions under this law apply only to new facilities for the production or generation of energy from cogeneration or renewable energy resources on which construction was begun after June 12, 1980, and before January 1, 1990, and for measures to improve the efficiency of energy end-use which were begun after June 12, 1980, and before January 1, 1990.

(a) The legislature has implemented its intent by adding a new section to chapter 82.16 RCW, codified as RCW 82.16.055, for deductions relating to energy conservation or production from renewable resources. The law states that in computing tax under this chapter there shall be deducted from the gross income:

(i) An amount equal to the cost of production at the plant for consumption within the state of Washington of electrical energy produced or generated from cogeneration as defined in RCW 82.35.020; and

(ii) An amount equal to the cost of production at the plant for consumption within the state of Washington of electrical energy or gas produced or generated from renewable energy resources such as solar energy, wind energy, hydroelectric energy, geothermal energy, wood, wood wastes, municipal wastes, agricultural products and wastes, and end-use waste heat.

(b) The law also contained a deduction for those amounts expended to improve consumers' efficiency of energy end-use or to otherwise reduce the use of electrical energy or gas by the consumer, provided the installation of the measures to improve the efficiency was begun prior to January 1, 1990.

(c) Deductions under subsection (2)(a) of this section shall be allowed for a period not to exceed thirty years after the project is placed in operation.

(d) Measures or projects encouraged under subsection (2) of this section shall at the time they are placed in service be reasonably expected to save, produce, or generate energy at a total incremental system cost per unit of energy delivered to end-use which is less than or equal to the incremental system cost per unit of energy delivered to end-use from similarly available conventional energy resources which utilize nuclear energy or fossil fuels and which the gas or electric utility could acquire to meet energy demand in the same time period.

(e) The provisions of subsection (2)(a)(i) through (ii) of this section, deal with new facilities designed and intended for the production of energy. The department will rule upon eligibility of such facilities and the attendant cost of energy production for purposes of determining deductibility from the public utility tax upon an individual project basis using the cost figures reported on the appropriate Federal Energy Regulatory Commission (FERC) schedules that are required to be filed by public and private electric utilities and by private gas utilities. The allowable deductions consist of production

expenses, eligible fuel costs and book depreciation of capital costs. Eligible fuel costs are all fuels if used for cogeneration or nonfossil fuel costs if not a cogeneration facility. Plans for the construction of such facilities and pertinent details, including energy production and production costs projections relative to the planned facility or construction details and energy production costs for facilities already in service must be submitted to the department for determination of eligibility for tax deductions.

(3) Deductions under RCW 82.16.052. This law provides a deduction from the public utility tax for certain energy efficiency programs. The law took effect on March 1, 1990, and expires on January 1, 1996.

(a) The law provides for a deduction from the gross income in computing tax under the public utility tax for payments made under RCW 19.27A.035. RCW 19.27A.035 requires that electric utilities make payments to owners at the time of construction of residential buildings if certain energy code requirements are met.

(b) Until July 1, 1992, utilities could deduct from the amount of tax paid under the public utility tax fifty percent of the payments made under RCW 19.27A.055, excluding any federal funds that are passed through to a utility for the purpose of retraining local code officials. RCW 19.27A.055 provides a training account for the purpose of providing training for the enforcement by local governments of the Washington state energy code.

(c) RCW 82.16.052 provides a deduction for amounts expended on additional programs that improve the efficiency of energy end-use if priority is given to senior citizens and low-income citizens in the course of carrying out such programs. The department of revenue has determined the eligibility of individual measures to improve consumers' efficiency of energy end-use or otherwise reduce the use of electrical energy or gas by the consumer. Such measures include residential and commercial buildings weatherization programs as well as energy end-user conservation programs, however designated and however funded or financed.

(i) "Senior citizens" means those persons who are sixty-two years of age or older.

(ii) "Low-income citizens" means a single person, family or unrelated persons living together whose adjusted income is less than eighty percent of the median family income of those families within the area served by the utility service provider. (See RCW 43.185A.010.)

(iii) Utility businesses may show that priority is given to senior citizens or low-income citizens by various means. For example, it will be presumed that priority has been given these citizens when the utility business can show that it spends disproportionate larger amounts for energy conservation and efficiency measures for these citizens. Priority is also considered given to senior and low-income citizens when the utility can show that these citizens are given preference for participation in programs that improve the efficiency of energy end-use when program resources are limited and all applicants are not able to receive assistance in a timely manner and the utility communicates to senior and low-income citizens the availability of energy efficiency programs through fliers, brochures, posters, newspaper announcements, and billing inserts.

(2005 Ed.)

(d) Under the general rules of statutory construction, tax exemption provisions must be strictly construed against the person claiming the exemption and in favor of imposing tax. Also, under such general rules the words and terms used in statutes must be given their common and ordinary meaning. By the terms of RCW 82.16.052 (1)(b) deductions are restricted to amounts expended for programs and measures which have as their purpose some reduction of energy use by utilities' customers. Some incidental and generally related costs which may be incurred in the development and implementation of energy conservation measures may be too remote from the purpose of improving energy efficiency or reducing consumers' energy consumption. For these reasons and pursuant to RCW 82.16.052(2) the department has consulted with publicly and privately operated utilities to determine the kinds of costs which will satisfy the statutory intent by achieving the purpose of reducing energy consumption.

(e) Accordingly, the term "amounts expended to improve consumers' efficiency of energy end-use" means the costs incurred by public and private utilities which are exclusively attributable to the development and implementation of energy end-use conservation projects and measures. This term does not include the costs attributable to the operation of a public or private utility business which were incurred before, or are incurred separate from the development and implementation of energy conservation programs. A portion of expenditures for personnel and facilities serving both energy conservation purposes and other utility purposes may be deducted if the portion attributable to energy conservation is supported by direct cost accounting records prepared during the tax reporting period for which such energy conservation expenditures are claimed for deduction. However, merely estimating an allocable portion of costs or apportioning some percentage of total overhead expense claimed to be related to energy conservation projects or measures will not support a deduction. The accounting should be based on actual experience. For example, expenditures for personnel or such facilities as computers could be accounted for on a time-use basis. However the expenses are accounted for, the burden rests upon the utility company to clearly show the direct relationship between any costs claimed for deduction and the energy conservation projects or measures claimed to have generated such costs.

(f) **Eligible costs.** Under the remoteness test, the department has determined the following specific costs to be eligible for tax deduction:

(i) **Construction and installation.** All costs actually incurred by a utility representing the value of materials and labor applied or installed in any facility of or for an energy end-user, whether provided by the utility itself or by third party prime or subcontractors. Such eligible costs include, but are not limited to:

(A) Insulation for floors, ceilings, walls, water pipes and the complete installation thereof.

(B) Weatherstripping, caulking, batting, and any similar materials applied for weatherization of facilities and the complete installation thereof.

(C) Storm windows, insulated and other weather resistant glass or similar materials and installation.

(D) Electric or gas thermostatic controls and installation.

(E) Water heater wraps, shower head restrictors, and all similar devices installed to reduce heat loss or reduce the actual units of energy consumed, and the installation thereof.

(F) Energy efficient lighting, lighting controls, and installation.

(G) Energy efficient motors and adjustable speed drives.

(H) Improved energy efficient heating, ventilation, and air conditioning systems.

(ii) **Energy audits and post installation inspection.** All direct costs actually incurred for providing:

(A) Energy audit training.

(B) Auditor payroll.

(C) Auditor uniforms.

(D) Special tools and equipment specifically needed for carrying out audit programs.

(E) Auditor and inspector private vehicle mileage allowance.

(F) Post installation inspection, labor, and materials costs.

(iii) **Administration.** All administrative, clerical, professional, and technical salary and payroll costs actually and directly incurred for:

(A) Conservation program management and supervision including but not limited to audit, BPA buy-back, commercial, solar, and loan programs.

(B) Secretarial and clerical expense.

(C) Data entry and information processing operators.

(D) Engineering.

(E) Outside legal expense and inhouse legal expense which is directly cost accounted.

(F) General energy conservation employee training.

(G) Conservation programs accounting and auditing.

(H) Separate telephone and third party provided services separately billed.

(iv) **Consumable supplies and equipment.** The cost of consumable materials and equipment utilized in energy conservation programs and directly cost accounted or separately billed, including but not limited to:

(A) Equipment rental.

(B) Custom software programs.

(C) Computer lease time.

(D) Computer print-out paper.

(E) Special conservation program stationery, program instruction and installation manuals and office clerical supplies.

(F) Periodic costs of capital equipment and rolling stock if such equipment and rolling stock are attributable to an energy end-user conservation program; and such costs are incurred during the duration of such program.

(G) Direct costs of repair and maintenance of the above items.

(v) **Financing.** Deduction is allowed for all direct financing and loan expenses relative to:

(A) Loan manager, supervisor, inspectors, secretaries, and clerks payroll which is directly cost accounted.

(B) Net interest differential (loans to consumers at lower than the utilities' interest rates on such acquired funds).

(vi) **Advertising and education.**

(A) Information, dissemination, and advertising charges for radio, television, newspaper services, bill stuffers, brochures, handouts, displays, and related costs of producing and

presenting such advertising materials, which are exclusively dedicated to promoting energy conservation projects and measures.

(B) Community education and outreach efforts conducted for the exclusive purpose of promoting energy conservation and achieving reduction of end-user energy consumption.

(g) **Ineligible costs.** The department has determined the following specific costs as being ineligible for tax deduction for the reason that they are too remote from the purpose of improving energy efficiency and reducing end-user's consumption:

(i) Legislative services.

(ii) Dues, memberships and subscriptions.

(iii) Information, dissemination, and advertising charges for radio, television, newspaper services, bill stuffers, brochures, handouts, displays, and related costs of producing advertising materials which are not exclusively for the purpose of encouraging or promoting energy conservation.

(iv) Experimental programs. Caveat: If and when experimental programs and the facilities, projects, or measures developed through such experimentation, research, and development are actually placed in service or placed in the rate base, and upon written approval of eligibility by the department, the total of expenditures for such facilities, projects, or measures including experimental stage costs may be allowed for deduction.

(v) Community education and outreach efforts which are not exclusively dedicated to energy conservation projects and measures.

(vi) Allocated facility costs which are not directly cost accounted.

(vii) Allocated vehicle rolling stock costs which are not directly cost accounted.

(viii) Convention, meals, and entertainment expense.

(ix) Out-of-state travel expenses, except that the percentage of such expenses allocable to miles traveled within this state will be allowed for deduction.

(4) **Timing of the deduction.** Utilities may deduct from the measure of public utility tax deductible expenses as set forth in this rule at the time such costs are actually incurred and may include such deductions on excise tax returns covering the period during which the costs were actually incurred. For purposes of reporting public utility tax liability, utilities must include and report Bonneville Power Administration (BPA) and other providers' cash grants, reimbursements, and buy-back payments attributable to energy conservation programs as gross income of the business when it is received. "Gross income of the business" shall also include the value of electrical energy units from BPA for performing approved energy conservation services. Any recurring costs determined to be eligible for deduction under this rule shall cease to be eligible in whole or in part at time of termination of any energy conservation measure or project which originally authorized the deduction under RCW 82.16.052.

[Statutory Authority: RCW 82.32.300, 93-07-066, § 458-20-17901, filed 3/17/93, effective 4/17/93; 86-01-077 (Order 85-7), § 458-20-17901, filed 12/18/85.]

**WAC 458-20-17902 Brokered natural gas—Use tax.****(1) Definitions.**

(a) "Brokered natural gas" as used in this section is natural gas purchased by a consumer from a source out of the state and delivered to the consumer in this state.

(b) "Value of gas consumed or used" as used in this section shall be the purchasing price of the gas to the consumer and generally shall include all or part of the transportation charges as explained later.

(2) **Applicability of use tax.** The distribution and sale of natural gas in this state is generally taxed under the state and city public utility taxes. With changing conditions and federal regulations, it is now possible to have natural gas brokered from out of the state and sold directly to the consumer. If this occurs and the public utility taxes have not been paid, RCW 82.12.022 (state) and RCW 82.14.230 (city) impose a use tax on the brokered natural gas at the same rate as the state and city public utility taxes.

(3) **State tax.** When the use tax applies, the rate of tax imposed is equal to the public utility tax on gas distribution business under RCW 82.16.020 (1)(c). The rate of tax applies to the value of the gas consumed or used and is imposed upon the consumer.

(4) **City tax.** Cities are given the authority to impose a use tax on brokered natural gas. When imposed and applicable, the rate of tax is equal to the tax on natural gas business under RCW 35.21.870 on the value of gas consumed or used and is imposed on the consumer.

**(5) Transportation charges.**

(a) If all or part of the transportation charges for the delivery of the brokered natural gas are separately subject to the state's and cities' public utility taxes (RCW 82.16.020 (1)(c) and RCW 35.21.870), those transportation charges are excluded from measure of the use tax. The transportation charges not subject to the public utility taxes are included in the value of the gas consumed or used.

**(b) Examples.**

(i) Public university purchases natural gas from an out of the state source through a broker. The natural gas is delivered by interstate pipeline to the local gas distribution system who delivers it to the university. The university pays the supplier for the gas, the pipeline for the interstate transportation charge, and the gas distribution system for its local transportation charge. The transportation charge by the pipeline is not subject to public utility tax because it is an interstate transportation charge. The transportation charge paid to the local gas distribution system is subject to the public utility taxes as an intrastate delivery. The value of the gas consumed or used is the purchase price paid to the supplier plus the transportation charge paid to pipeline company.

(ii) The above factual situation applies except that the natural gas is delivered directly by the interstate pipeline to the university. The university pays the supplier for the gas and the pipeline for the transportation charge. As the transportation charge is not subject to the public utility tax, it will be included in the measure of the tax. The value of the gas consumed or used is the purchase price plus the transportation charge paid to the pipeline.

**(6) Credits against the taxes.**

(a) A credit is allowed against the use taxes described in this section for any use tax paid by the consumer to another

state which is similar to this use tax and is applicable to the gas subject to this tax. Any other state's use tax allowed as a credit shall be prorated to the state's and cities' portion of the tax based on the relative rates of the two taxes.

(b) A credit is also allowed against the use tax imposed by the state for any gross receipts tax similar that imposed pursuant to RCW 82.16.020 (1)(c) by another state on the seller of the gas with respect to the gas consumed or used.

(c) A credit is allowed against the use tax imposed by the cities for any gross receipts tax similar to that imposed pursuant to RCW 35.21.870 by another state or political subdivision of the state on the seller of the gas with respect to the gas consumed or used.

(7) **Reporting requirements.** The person who delivers the gas to the consumer shall make a report to the miscellaneous tax division of the department by the fifteenth day of the month following a calendar quarter. The report shall contain the following information:

(a) The name and address of the consumer to whom gas was delivered,

(b) The volume of gas delivered to each consumer during the calendar quarter, and,

(c) Service address of consumer if different from mailing address.

(8) **Collection and administration.** A separate quarterly return for use tax on brokered natural gas shall be filed with the department by the consumer on or before the last day of the month following a calendar quarter accompanied by the remittance of the tax. The collection and administration for the cities of the use tax described in this section shall be done by the department under RCW 82.14.050.

[Statutory Authority: RCW 82.32.300, 90-17-068, § 458-20-17902, filed 8/16/90, effective 9/16/90.]

**WAC 458-20-180 Motor transportation, urban transportation.** The term "motor transportation business" means the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, and includes, but is not limited to the operation of any motor propelled vehicle as an auto transportation company (except urban transportation business), common carrier or contract carrier as defined by RCW 81.68.010 and 81.80.010.

It includes the business of hauling for hire any extracted or manufactured material, over the highways of the state and over private roads but does not include the transportation of logs or other forest products exclusively upon private roads.

It does not include the hauling of any earth or other substance excavated or extracted from or taken to the right of way of a publicly owned street, place, road or highway, by a person taxable under the classification of public road construction of the business and occupation tax. (See WAC 458-20-171.)

The term "urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, insofar as (A) operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof, or (B) operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof. Included

herein, but without limiting the scope thereof, is the business of operating passenger vehicles of every type and also the business of operating cartage, pickup or delivery services, including in such services the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property.

It does not include the business of operating any vehicle for the conveyance of persons or property for hire when such operating extends more than five miles beyond the corporate limits of any city (or contiguous cities) through which it passes. Thus an operation extending from a city to a point which is more than five miles beyond its corporate limits does not constitute urban transportation, even though the route be through intermediate cities which enables the vehicle, at all times to be within five miles of the corporate limits of some city.

The terms "motor transportation" and "urban transportation" include the business of renting or leasing trucks, trailers, busses, automobiles and similar motor vehicles to others for use in the conveyance of persons or property when as an incident of the rental contract such motor vehicles are operated by the lessor or by an employee of the lessor. These terms include the business of operating taxicabs, armored cars, and contract mail delivery vehicles, but do not include the businesses of operating auto wreckers or towing vehicles (taxable as sales at retail or wholesale under RCW 82.04.-050), school busses, ambulances, nor the collection and disposal of refuse and garbage (taxable under the business and occupation tax classification, service and other activities). Amounts received for providing commuter share riding or ride sharing for the elderly and the handicapped in accordance with RCW 46.74.010 are not subject to tax.

#### **Retail Sales Tax**

Persons engaged in the business of motor transportation or urban transportation are required to collect the retail sales tax upon gross retail sales of tangible personal property sold by them. The retail sales tax must also be collected upon retail sales of services defined as "sales" in RCW 82.04.040 and "sales at retail" in RCW 82.04.050, including charges for the rental of motor vehicles or other equipment without an operator.

Persons engaged in the business of motor transportation or urban transportation must pay the retail sales tax to their vendors when purchasing motor vehicles, trailers, equipment, tools, supplies and other tangible personal property for use in the conduct of such businesses. (See WAC 458-20-174 for limited exemptions allowed in the act for motor carriers operating in interstate or foreign commerce.) Persons buying motor vehicles, trailers and similar equipment solely for the purpose of renting or leasing the same without an operator are making purchases for resale and are not required to pay the retail sales tax to their vendors.

#### **Business and Occupation Tax**

**Retailing.** Persons engaged in either of said businesses are taxable under the retailing classification upon gross retail sales of tangible personal property sold by them and upon

retail sales of services defined as "sales" in RCW 82.04.040 or "sales at retail" in RCW 82.04.050.

**Service and other business activities.** Persons engaged in either of said businesses are taxable under the service and other activities classification upon gross income received from checking service, packing and crating, the mere loading or unloading for others, commissions on sales of tickets for other lines, travelers' checks and insurance, etc. and the transportation of logs and other forest products exclusively over private roads.

#### **Public Utility Tax**

Persons engaged in the business of urban transportation are taxable under the urban transportation classification upon the gross income from such business.

Persons engaged in the business of motor transportation are taxable under the motor transportation classification upon the gross income from such business.

Persons engaged in the business of both urban and motor transportation are taxable under the motor transportation classification upon gross income, unless a proper segregation of such revenue is shown by the books of account of such persons. (See WAC 458-20-193 for interstate and foreign commerce.)

[Statutory Authority: RCW 82.32.300. 83-07-033 (Order ET 83-16), § 458-20-180, filed 3/15/83; Order ET 70-3, § 458-20-180 (Rule 180), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-181 Vessels, including log patrols, tugs and barges, operating upon waters in the state of Washington.**

#### **Business and Occupation Tax**

**Retailing.** Persons engaged in the business of operating such vessels and tugs are taxable under the retailing classification upon the gross sales of meals (including meals to employees) and other tangible personal property taxable under the retail sales tax.

**Service and other business activities.** The business of operating lighters is a service business taxable under the service and other business activities classification upon the gross income from such service. Also taxable under this classification is gross income from operation of vessels to provide scenic cruises.

#### **Retail Sales Tax**

Sales of meals and other tangible personal property by persons operating such vessels and tugs are sales at retail and the retail sales tax must be collected thereon. For applicability of retail sales tax where meals are furnished to members of the crew or to other employees as a part of their compensation for services rendered, see WAC 458-20-119.

Sales of foodstuff and other articles to such operators for resale aboard ship are not subject to retail sales tax.

Sales to all such operators of fuel, lubricants, machinery, equipment and supplies which are not resold are sales at retail and the retail sales tax must be paid thereon, unless exempt by law.

Charges made by others for the repair of any boat or barge are also sales at retail and the retail sales tax must be paid upon the total charge made for both labor and materials.

Charges made for drydocking are not subject to the retail sales tax provided such charges are shown as an item separate from charges made for repairing.

### Use Tax

The use tax applies upon the use within this state of all articles of tangible personal property purchased at retail and upon which the retail sales tax has not been paid, unless exempt by law.

### Public Utility Tax

The business of operating upon waters wholly within the state of Washington vessels which are common carriers regulated by the utilities and transportation commission is taxable under the public utility tax as follows:

(1) Vessels under sixty-five feet in length, taxable under the classification vessels under sixty-five feet upon gross income.

(2) Vessels sixty-five feet or more in length, taxable under the classification other public service business upon gross income.

The other public service classification of the public utility tax applies to the business of operating tugs, barges, and log patrols.

[Statutory Authority: RCW 82.32.300. 83-07-033 (Order ET 83-16), § 458-20-181, filed 3/15/83; Order ET 70-3, § 458-20-181 (Rule 181), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-182 Warehouse businesses.** (1) **Definitions.** For purposes of this section the following terms and meanings will apply:

(a) "Warehouse" means every structure wherein facilities are offered for the storage of tangible personal property.

(b) "Storage warehouse" means a building or structure, or any part thereof, in which goods, wares, or merchandise are received for storage for compensation, except field warehouses, fruit warehouses, fruit packing plants, warehouses licensed under chapter 22.09 RCW (which are agricultural commodities warehouses), public garages storing automobiles, railroad freight sheds, docks and wharves, and "self-storage" or "mini-storage" facilities whereby customers have direct access to individual storage areas by separate access.

(c) "Cold storage warehouse" means a storage warehouse used to store fresh and/or frozen perishable fruits or vegetables, meat, seafood, dairy products, or fowl, or any combination thereof, at a desired temperature to maintain the quality of the product for orderly marketing. This term does not include freezer space or frozen food lockers.

(d) "Automobile storage garage" means any off-street building, structure, or area where vehicles are parked or stored, for any period of time, for a charge.

(2) **Business and occupation tax.** Warehouse businesses are taxable according to the nature of their operations and the specific kinds of goods stored, as follows:

(a) Persons engaged in operating any "storage warehouse" or "cold storage warehouse," as defined herein, are subject to tax under the warehousing classification, measured by the gross income of the business. (See RCW 82.04.280.)

(b) Persons engaged in operating any automobile storage garage are subject to tax under the retailing classification,

(2005 Ed.)

measured by gross proceeds of such operations. (See RCW 82.04.050 (3)(d).)

(c) Persons engaged in operating any warehouse business, other than those of (a) and (b) of this subsection, are subject to tax under the service classification, measured by the gross income of the business. (See RCW 82.04.290.) This includes cold storage and frozen food lockers, field warehouses, fruit warehouses, agricultural commodities warehouses, and freight storage warehouses.

(d) Effective July 1, 1986, no warehouse business or operation of any kind is subject to tax under the public utility tax of chapter 82.16 RCW.

(3) **Tax measure.** The gross income of the business of operating a warehouse includes all income from the storing, handling, sorting, weighing, measuring, and loading or unloading for storage of tangible personal property.

(4) Where a grain warehouseman purchases or owns grain stored in such warehouse, there shall be included in taxable gross income:

(a) An amount equal to the charges at the customary rate for all services rendered in connection with such grains up to the time of purchase by the warehouseman; and

(b) The amount of any charges for services that are rendered during the period of the warehouseman's ownership thereof billed and stated, as such, separately from the price of the grains on the invoice to the purchaser at the time of the sale by the warehouseman.

(5) **Retail sales tax.** Persons operating automobile garage storage businesses must collect and report retail sales tax upon the gross selling price of such parking/storage services.

(6) **Consumables.** Persons engaged in operating any of the business activities covered by this section must pay retail sales tax upon their purchases of consumable supplies, equipment, and materials for their own use as consumers in operating such businesses.

(7) **Use tax.** The use tax is due upon the value of all tangible personal property used as consumers by persons operating warehouse businesses, upon which the retail sales tax has not been paid.

For specific provisions covering temporary holding of goods in foreign or interstate movement by water, see WAC 458-20-193D respecting stevedoring and associated activities.

[Statutory Authority: RCW 82.32.300. 87-05-042 (Order 87-1), § 458-20-182, filed 2/18/87; Order ET 74-1, § 458-20-182, filed 5/7/74; Order ET 70-3, § 458-20-182 (Rule 182), filed 5/29/70, effective 7/1/70.]

### WAC 458-20-183 Amusement, recreation, and physical fitness services.

(1) **Introduction.** This section provides tax reporting instructions for persons who provide amusement, recreation, and physical fitness services, including persons who receive their income in the form of dues and initiation fees. Section 301, chapter 25, Laws of 1993 sp. sess., amended RCW 82.04.050 to include as a retail sale "physical fitness services." This change became effective July 1, 1993. Physical fitness services were previously taxed under the service and other business activities classification. Amusement and recreation services were retail sales prior to the 1993 law amendment and the tax classification remains unchanged for these activities.

(a) Local governmental agencies that provide amusement, recreation, and physical fitness services should also refer to WAC 458-20-189 (Sales to and by the state of Washington, counties, cities, school districts, and other municipal subdivisions).

(b) Persons engaged in operating coin operated amusement devices should refer to WAC 458-20-187 (Coin operated vending machines, amusement devices and service machines).

(c) Persons engaged in providing camping and outdoor living facilities should refer to WAC 458-20-118 (Sale or rental of real estate, license to use real estate) and WAC 458-20-166 (Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc.).

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

(a) "Amounts derived" means gross income from whatever source and however designated. It includes "gross proceeds of sales" and "gross income of the business" as those terms are defined by RCW 82.04.070 and 82.04.080, respectively. It shall also include income attributable to bona fide "initiation fees" and bona fide "dues."

(b) "Amusement and recreation services" include, but are not limited to: Golf, pool, billiards, skating, bowling, swimming, bungee jumping, ski lifts and tows, basketball, racquet ball, handball, squash, tennis, and all batting cages. "Amusement and recreation services" also include the provision of related facilities such as basketball courts, tennis courts, handball courts, swimming pools, and charges made for providing the opportunity to dance. The term "amusement and recreation services" does not include instructional lessons to learn a particular activity such as tennis lessons, swimming lessons, or archery lessons.

(c) "Any additional charge" means a price or payment other than bona fide initiation fees or dues, paid by persons for particular goods and services received. The additional charge must be reasonable and any business and/or sales taxes must be paid upon such charges in order to qualify other income denominated as "bona fide dues" or "fees" to be deductible. The reasonableness of any additional charge will be based on one of the following two criteria:

(i) It must cover all costs reasonably related to furnishing the goods or services; or

(ii) It must be comparable with charges made for similar goods or services by other comparable businesses.

(d) "Direct overhead costs" include all items of expense immediately associated with the specific goods or services for which the costs of production method is used. For example, the salary of a swimming pool lifeguard or the salary of a golf club's greenskeeper are both direct overhead costs in providing swimming and golfing respectively.

(e) "Dues" are those amounts periodically paid by members solely for the purpose of entitling those persons to continued membership in the club or similar organization. It shall not include any amounts paid for goods or services rendered to the member by the club or similar organization.

(f) "Entry fees" means those amounts paid solely to allow a person the privilege of entering a tournament or other type of competition. The term does not include any amounts charged for the underlying activity.

(g) "Goods or services rendered" shall include those amusement, recreation, and physical fitness services defined to be retail sales in (m) of this subsection. Also see, WAC 458-20-166 (Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc.) and WAC 458-20-244 (Food products). The term shall include the totality or aggregate of goods or services available to members. It is not determinative that some members actually receive more goods or actually enjoy more services than others so long as the totality of the goods or services offered are made available to members in general.

(h) "Indirect overhead costs" means overhead costs incurred by the service provider that are not immediately associated with the specific goods and services. These costs include a pro rata share of total operating costs, including all executive salaries and employee salaries that are not "direct overhead costs" as that term is defined in (d) of this subsection, as well as a pro rata share of administrative expenses and the cost of depreciable capital assets.

(i) "Initiation fees" means those amounts paid solely to initially admit a person as a member to a club or organization. "Bona fide initiation fees" within the context of this rule shall include only those one-time amounts paid which genuinely represent the value of membership in a club or similar organization. It shall not include any amount paid for or attributable to the privilege of receiving any goods or services other than mere nominal membership.

(j) "League fees" means those amounts paid solely for the privilege of allowing a person or a person's team to join an association of sports teams or clubs that compete chiefly amongst themselves. The term does not include any amounts charged for the underlying activity.

(k) "Nonprofit youth organization" means a nonprofit organization engaged in character building of youth which is exempt from property tax under RCW 84.36.030.

(l) "Physical fitness services" include, but are not limited to: All exercise classes, whether aerobic, dance, water, jazzercise, etc., providing running tracks, weight lifting, weight training, use of exercise equipment, such as treadmills, bicycles, stair-masters and rowing machines, and providing personal trainers (i.e., a person who assesses an individual's workout needs and tailors a physical fitness workout program to meet those individual needs). "Physical fitness services" do not include instructional lessons such as those for self-defense, martial arts, yoga, and stress-management. Nor do these services include instructional lessons for activities such as tennis, golf, swimming, etc. "Instructional lessons" can be distinguished from "exercise classes" in that instruction in the activity is the primary focus in the former and exercise is the primary focus in the latter.

(m) "Sale at retail" or "retail sale" include the sale or charge made by persons engaged in providing "amusement and recreation services" and "physical fitness services" as those terms are defined in (b) and (l) of this subsection. The term "sale at retail" or "retail sale" does not include: The sale of or charge made for providing facilities where a person is merely a spectator, such as movies, concerts, sporting events, and the like; the sale of or charge made for instructional lessons, or league fees and/or entry fees; charges made for carnival rides where the customer purchases tickets at a central ticket distribution point and then the customer is subse-

quently able to use the purchased tickets to gain admission to an assortment of rides or attractions; or, the charge made for entry to an amusement park or theme park where the predominant activities in the area are similar to those found at carnivals.

(n) "Significant amount" relates to the quantity or degree of goods or services rendered and made available to members by the organization. "Significant" is defined as having great value or the state of being important.

(o) "Value of such goods or services" means the market value of similar goods or services or computed value based on costs of production.

**(3) Business and occupation tax.**

(a) **Retailing classification.** Gross receipts from the kind of amusement, recreation, and physical fitness services defined to be retail sales in subsection (2)(m) of this section are taxable under the retailing classification. Persons engaged in providing these activities are also taxable under the retailing classification upon gross receipts from sales of meals, drinks, articles of clothing, or other property sold by them.

(b) **Service and other activities classification.** Gross receipts from activities not defined to be retail sales, such as tennis lessons, golf lessons, and other types of instructional lessons, are taxable under the service and other activities classification. Persons providing licenses to use real estate, such as separately itemized billings for locker rentals, are also taxable under this classification. See WAC 458-20-118 (Sale or rental of real estate, license to use real estate).

**(4) Receiving income in the form of dues and/or initiation fees.**

(a) **General principles.** For the purposes of the business and occupation tax, all amounts derived from initiation fees and dues must be reported as gross income which then must be apportioned between taxable and deductible income. The following general principles apply to providing amusement, recreation, and physical fitness services when income is received in the form of dues and/or initiation fees:

(i) RCW 82.04.4282 provides for a business and occupation tax deduction for amounts derived from activities and charges of essentially a nonbusiness nature. The scope of this statutory deduction is limited to situations where no business or proprietary activity (including the rendering of goods or services) is engaged in which directly generates the income claimed for deduction. Many for-profit or nonprofit entities may receive "amounts derived," as defined in this section, which consist of a mixture of tax deductible amounts (bona fide initiation fees and dues) and taxable amounts (payment for significant goods and services rendered). To distinguish between these kinds of income, the law requires that tax exemption provisions be strictly construed against the person claiming exemption. Also, RCW 82.32.070 requires the maintenance of suitable records as may be necessary to determine the amount of any tax due. The result of these statutory requirements is that all persons must keep adequate records sufficient to establish their entitlement to any claimed tax exemption or deduction.

(ii) The law does not contemplate that the deduction provided for by RCW 82.04.4282 should be granted merely because the payments required to be made by members or customers are designated as "initiation fees" or "dues." The statutory deduction is not available for outright sales of tangi-

ble personal property or for providing facilities or services for a specific charge. Neither is it available if dues are in exchange for any significant amounts of goods or services rendered by the recipient thereof to members without any additional charge to the member, or if the dues are graduated upon the amount of goods or services rendered. Thus, it is only those initiation fees and dues which are paid solely and exclusively for the express privilege of belonging as a member of a club, organization, or society, which are deductible.

(iii) In applying RCW 82.04.4282, no distinction is made between the kinds of clubs, organizations, associations, or other entities which may be eligible for this deduction. They may be operated for profit or nonprofit. They may be owned by the members, incorporated, or operating as a partnership, limited liability company, joint venture, sole proprietorship, or cooperative group. They may be of a charitable, fraternal, social, political, benevolent, commercial, or other nature. The availability of the deduction is determined solely by the nature of the activity or charge which generates the "amounts derived" as that term is defined in subsection (2)(a) of this section.

(iv) Nonprofit youth organizations, as defined in subsection (2)(k) of this section, may deduct fees or dues received from members even though the members are entitled to use the organization's facilities, including camping and recreational facilities, in return for such payments. (See RCW 82.04.4271.)

(b) **Allocation of income.** Persons who derive income from initiation fees and dues may find that they have incurred business and occupation tax liability under both the retailing and service and other activities classifications. For example, an organization may furnish exercise equipment as well as provide lessons in martial arts to its members in return for payment of dues. The former is a retailing taxable activity while the latter is taxable under the service business tax. These taxes are at different rates. Once the income has been allocated between taxable and deductible amounts, the parts of taxable income attributable to either retailing activities or service activities must be reported on the combined excise tax return under the appropriate classification and under the prevailing tax rates. In addition, state and local retail sales taxes measured by the retailing portions must be separately collected from dues paying members, reported, and remitted with the same excise tax return.

(c) **Alternative methods of reporting.** Persons who receive any "amounts derived" from initiations fees and/or dues may report their tax liabilities and determine the amount of tax reportable under different classifications (retailing or service) by use of two alternative allocation methods. The taxpayer may only change its selected allocation method annually and all changes are prospective only. These mutually exclusive methods are:

**(i) Actual records of facilities usage.**

(A) Persons may allocate their income based upon such actual records of facilities usage as are maintained. This method is accomplished by either: The allocation of a reasonable charge for the specific goods or services rendered; or, the average comparable charges for such goods or services made by other comparable businesses. In no case shall any charges under either method be calculated to be less than the actual cost of providing the respective good or service. When

using the average comparable charges method the term "comparable businesses" shall not include subsidized public facilities when used by a private facility.

(B) The actual records of facilities usage method must reflect the nature of the goods or services and the frequency of use by the membership, either from an actual tally of times used or a periodic study of the average membership use of facilities. Actual usage reporting may also be based upon a graduated or sliding fees and dues structure. For example, an organization may charge different initiation fees or dues rates for a social membership than for a playing membership. The difference between such rates is attributable to the value of the goods or services rendered. It constitutes the taxable portion of the "amounts derived" allocable to that particular activity. Because of the broad diversification of methods by which "amounts derived" may be assessed or charged to members, the actual records of usage method of reporting may vary from organization to organization.

(C) Organizations which provide more than one kind of "goods or services" as defined in subsection (2)(g) of this section, may provide such actual records for each separate kind of goods or services rendered. Based upon this method, the total of apportioned "taxable" income may be subtracted from total gross income to derive the amount of gross income which is entitled to deduction as "bona fide initiation fees and dues" under RCW 82.04.4282; or

**(ii) Cost of production method.**

(A) The cost of production allocation method is based upon the cost of production of goods or services rendered. Persons using this method are advised to seek the department's review of the cost accounting methods applied, in order to avoid possible tax deficiency assessment if records are audited. In such cases, the cost of production shall include all items of expense attributable to the particular facility (goods or services) made available to members, including direct and indirect overhead costs.

(B) No portion of assets which have been fully depreciated will be included in computing overhead costs, nor will there be included any costs attributable to membership recruitment and advertising, or providing members with the indicia of membership (membership cards, certificates, contracts of rights, etc.).

(C) The cost of production method is performed by multiplying gross income (all "amounts derived") by a fraction, the numerator of which is the direct and indirect costs associated with providing any specific goods or service, and the denominator of which is the organization's total operating costs. The result is the portion of "amounts derived" that is allocable to the taxable facility (goods or services rendered). If more than one kind of facility (goods or services) is made available to members, this formula must be applied for each facility in order to determine the total of taxable and deductible amounts and to determine the amount of taxable income to report as either retailing taxable or service taxable. The balance of gross amounts derived is deductible as bona fide initiation fees or dues.

(D) Under very unique circumstances and only upon advance written request and approval, the department will consider variations of the foregoing accounting methods as well as unique factors.

(E) Unless income accounting and reporting are accomplished by one or a combination of methods outlined in this section, or under a unique reporting method authorized in advance by the department, it will be presumed that all "amounts derived" by any person who provides "goods or services" as defined herein, constitute taxable, nondeductible amounts.

**(5) Retail sales tax.**

(a) The retail sales tax must be collected upon charges for admissions, the use of facilities, equipment, and exercise classes by all persons engaged in the amusement, recreation, and physical fitness services that are defined to be retail sales in subsection (2)(m) of this section. The retail sales tax must also be collected upon sales of food, drinks and other merchandise by persons engaging in such businesses. See WAC 458-20-244 (Food products). In the case of persons who receive their income in the form of dues and/or initiation fees, the amount of gross receipts determined to be taxable under the retailing business and occupation classification shall be used to determine the person's retail sales tax liability under this subsection.

(b) When the charge for merchandise is included within a charge for admission which is not a "sale at retail" as defined herein, the retail sales tax applies to the charge made for both merchandise and admission, unless a proper segregation of such charge is made in the billing to the customer and upon the books of account of the seller.

(c) The retail sales tax applies upon the purchase or rental of all equipment and supplies by persons providing amusement, recreation, and physical fitness services, other than merchandise that is actually resold by them. For example, the retail sales tax applies to purchases of such things as soap or shampoo provided at no additional charge to members of a health club.

**(6) Transitory provisions for nonprofit youth organizations.** The 1993 amendment of RCW 82.04.050 resulted in "physical fitness services" provided by nonprofit youth organizations being classified as retail sales. However, section 1, chapter 85, Laws of 1994, amended RCW 82.08.0291 and thereby exempted from the definition of retail sale, the sale of such services by a nonprofit youth organization to members of the organization. This change became effective July 1, 1994. Therefore, nonprofit youth organizations are only liable for retail sales tax on the sale or charge made for "physical fitness services" from July 1, 1993, to June 30, 1994. Nonprofit youth organizations were previously exempt from the collection of retail sales tax on "amusement and recreation services" (RCW 82.08.0291) and were previously not subject to retailing business and occupation tax on both the provision of "physical fitness services" and "amusement and recreation services" (RCW 82.04.4271). Nonprofit youth organizations, however, may have tax liabilities for other types of activities, such as retail sales of food, retail sales of tangible personal property, or the license to use real estate, as discussed above.

[Statutory Authority: RCW 82.32.300. 95-22-100, § 458-20-183, filed 11/1/95, effective 12/2/95; 84-12-046 (Order ET 84-2), § 458-20-183, filed 6/1/84. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-183, filed 6/27/78; Order ET 70-3, § 458-20-183 (Rule 183), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-185 Tax on tobacco products. (1) Introduction.** This rule explains the tax liabilities of persons engaged in business as a retailer, distributor or subjobber of tobacco products. The tax on tobacco products is in addition to all other taxes owed. For example, retailers, distributors, and subjobbers are liable for business and occupation tax on their retailing or wholesaling activities, use tax on tobacco products distributed as samples, and litter tax on the value of the tobacco products. See WAC 458-20-186 for tax liabilities associated with taxes which apply exclusively to cigarettes.

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

(a) "Tobacco products" means all tobacco products except cigarettes as defined in RCW 82.24.010. The term includes:

- (i) Cigars, cheroots, stogies, and periques;
- (ii) Granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco;
- (iii) Snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut, and other chewing tobaccos; and
- (iv) Shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.

(b) "Manufacturer" means a person who manufactures and sells tobacco products.

(c) "Distributor" means:

(i) Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale;

(ii) Any person who makes, manufactures, or fabricates tobacco products in this state for sale in this state;

(iii) Any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers; or

(iv) Any person engaged in the business of selling tobacco products in this state who handles for sale any tobacco products that are within this state but upon which tax has not been imposed.

(d) "Subjobber" means any person, other than a tobacco manufacturer or distributor, who buys tobacco products from a distributor and sells them to persons other than the ultimate consumers.

(e) "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers.

(f) "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person. It includes all gifts by persons engaged in the business of selling tobacco products, for advertising, as a means of evading the provisions of chapter 82.26 RCW, or for any other purposes whatsoever.

(g) "Wholesale sales price" means the established price for which a manufacturer sells tobacco product to the distributor, exclusive of any discount or other reduction.

(i) A wholesale sales price that is an established price must reflect the fair market value of the tobacco products. In the case where a seller and buyer establish a sales price that does not reflect fair market value, such as may occur in certain sales between affiliated companies, the wholesale sales

price is the fair market value of the tobacco product and not the sales price established by the seller and buyer.

(ii) The phrase "discount or other reduction" includes any reduction from the established wholesale sales price made to a specific customer or class of customers.

**Example.** Pursuant to a half-price promotion, a manufacturer sells tobacco products to a distributor. The invoice lists \$100 as the price of the product less a \$50 discount resulting in a net invoice of \$50. The tax is due on \$100 which is the wholesale sales price exclusive of any discount or other reduction.

(h) "Business" means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state.

(i) "Place of business" means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train, or vending machine.

(j) "Retail outlet" means each place of business from which tobacco products are sold to consumers.

(k) "Department" means the department of revenue.

(l) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the state and its departments and institutions, political subdivision of the state of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise. The term excludes any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(m) "Indian country" means the same as defined in WAC 458-20-192.

(3) **Rate and measure of tax.** The Washington state tobacco products tax is an excise tax levied on the wholesale sales price on all tobacco products sold, used, consumed, handled, or distributed within the state.

The rate of tax is a combination of statutory percentage rates found in RCW 82.26.020, 82.26.025, and 82.26.028. The total current rate of tax is shown on the current combined excise tax return.

(4) **Imposition of tax.** The tax is imposed once on all tobacco products sold, used, consumed, handled, or distributed within this state.

(a) **When tax is imposed.** The tax is imposed at the time the distributor:

(i) Brings, or causes to be brought, into this state from without the state tobacco products for sale; or

(ii) Makes, manufacturers, or fabricates tobacco products in this state for sale in this state; or

(iii) Ships or transports tobacco products to retailers in this state, to be sold by those retailers; or

(iv) Handles for sale any tobacco products that are within this state but upon which tax has not been imposed. For example, a retailer with a place of business in this state purchases for sale tobacco products from an enrolled tribal member of a federally recognized tribe located within Indian

country. Because the tax was not imposed on the enrolled tribal member, the retailer must pay the tax.

(b) **Additional occasion when tax may be imposed.** Any retailer who fails to keep invoices as required under chapter 82.32 RCW and which invoices do not conform to the requirements set forth in subsection (5)(b) of this rule is liable for the tax on any uninvoiced tobacco product which that retailer handles for sale.

(c) **When an out-of-state person is a distributor who must pay the tax.** A person located out-of-state who is selling tobacco products to Washington wholesalers from a stock of goods located outside this state is not a distributor and therefore is not liable for the tax.

(i) On the other hand, a person located out-of-state who is selling and shipping tobacco products to Washington retailers from an out-of-state stock of goods is a distributor and is subject to the tax. If the out-of-state person is not required to register and pay taxes in Washington, the retailers to whom it sells must pay the tax. However, such out-of-state persons may elect to register with the state and pay the tax.

(ii) A Washington retailer who purchases tobacco from an out-of-state stock of goods from a person located out-of-state who is not required to register and pay taxes in Washington may provide to that person a certificate affirming that the Washington retailer will remit to the state the tax due. Both the out-of-state person and the Washington retailer should retain a copy of such certificate. The certificate should substantially conform to the example shown below:

Retailer's Certificate of Remittance of Tax

The undersigned retailer hereby certifies that the undersigned will remit to the state the tax due on the tobacco products specified below purchased from seller. This certificate shall be considered a part of each order which the undersigned may give to the seller, unless otherwise specified, and shall be valid until revoked by the undersigned in writing or until it expires, whichever occurs first. This certificate expires four years from the effective date.

Name of Seller: . . . . .  
Name of Retailer. . . . . Effective Date. . . . .  
UBI/Registration # . . . . .  
Address of Retailer . . . . .  
Tobacco products purchased. . . . .  
Agent for Retailer (print) . . . . .  
Signature. . . . .

(iii) A person who is located out-of-state and who is required to register and pay taxes in Washington may sell and ship tobacco products to a Washington customer who is both a wholesaler and retailer. Under this circumstance, the person, the customer, and the department may enter into a written agreement that identifies the person who will remit to the state the tax due as to those particular sales. The written agreement will contain such other terms and conditions that are acceptable to the department.

(iv) When a person located outside Washington distributes samples in this state, that person must pay the tax on those samples.

(5) **Books and records.** Since the tobacco products tax is paid on returns as computed by the taxpayer rather than by

affixing of stamps or decals, the law contains stringent provisions requiring that accurate and complete records be maintained. The records must include all pertinent papers and documents relating to the purchase, sale, or disposition of tobacco products and must be kept for a period of at least five years after the date of the document or the date of the entry appearing in the records.

(a) **Distributors.** Distributors must keep at each registered place of business complete and accurate records for that place of business. The records to be kept by distributors include itemized invoices of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state or shipped or transported to retailers in this state, and of all sales of tobacco products except retail sales. The itemized invoice for each purchase or sale must be legible and must show the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. Itemized invoices must be preserved for five years from the date of sale.

(b) **Retailers and subjobbers.** Retailers and subjobbers must secure itemized invoices of all tobacco products purchased. The itemized invoice for each purchase must be legible and must show the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. Itemized invoices must be preserved for five years from the date of sale.

(c) **Warehouses.** Records of all deliveries or shipments (including ownership, quantities) of tobacco products from any public warehouse of first destination in this state must be kept by the warehouse.

(6) **Nonpayment of tax by retailers.** If the department finds that any nonpayment of tax by the retailer was willful, penalties and interest shall be assessed in accordance with chapter 82.32 RCW. In the case of a second or plural nonpayment of tax by the retailer, penalties and interest will be assessed in accordance with chapter 82.32 RCW without regard to willfulness.

(a) Example. In the course of an audit of Retailer, the department determines that on several occasions Retailer failed to pay the tax. The department does not find the nonpayment to be willful. Retailer owes the tax due on all occasions of nonpayment and the penalties and interest is assessed on all but the first occasion of nonpayment. A few years later Retailer is audited again. The department finds one occasion of nonpayment of tax. In addition to the tax due, penalties and interest will be assessed in accordance with chapter 82.32 RCW.

(b) Example. In the course of an audit of Retailer #2, the department determines that on several occasions Retailer #2 failed to pay the tax. The department determines that the nonpayment of tax was willful. In addition to the tax due on all occasions of nonpayment, Retailer #2 owes penalties and interest on all occasions.

(7) **Reports and returns.** The tax is reported on the combined excise tax return to be filed according to the reporting frequency assigned by the department. Detailed instructions for preparation of these returns may be secured from the department.

Out-of-state wholesalers or distributors selling directly to retailers in Washington should apply for a certificate of

registration, and the department will furnish returns for reporting the tax.

Retailers, distributors, and subjobbers may be required to file a report with the department in compliance with the provisions of the National Uniform Tobacco Settlement when purchasing tobacco products from certain manufacturers. Please see WAC 458-20-264 and chapter 70.157 RCW.

(8) Interstate sales and sales to U.S.

(a) The tax does not apply to tobacco products sold to federal government agencies, nor to deliveries to retailers outside the state for resale by such retailers, and a credit may be taken for the amount of tobacco products tax previously paid on such products. RCW 82.26.110. The credit is not available for sales made for delivery outside this state other than sales for resale to retailers. For example, no credit may be taken for a sale of tobacco products delivered to a consumer outside the state.

(b) To document that the tobacco products were sold to a retailer outside the state for resale by such retailer, the person may obtain from the retailer a certificate which substantially conforms to the following:

Retailer's Certification of Purchase of Tobacco Products for Resale Outside Washington

The undersigned buyer/retailer hereby certifies that the tobacco products specified below are purchased for resale outside this state by the undersigned. This certificate shall be considered a part of each order which the undersigned may give to the seller, unless otherwise specified, and shall be valid until revoked in writing by the undersigned or until it expires, whichever occurs first. This certificate expires four years from the effective date.

Name of Seller . . . . . Effective Date . . . . .
UBI/Registration # . . . . .
Name of Buyer/Retailer Business . . . . .
Address . . . . .
Items purchased for resale . . . . .
Agent for buyer/retailer (print) . . . . .
Signature . . . . .

(9) Returned or destroyed goods. A credit may also be taken for tobacco products destroyed or returned to the manufacturer on which tax was previously paid. If the credit is claimed against tax owed by the taxpayer or as a refund of tax paid, taxpayers must retain in their records appropriate documentation, affidavits or certificates conforming to those illustrated below:

(a) Certificate of taxpayer.

Claim for Credit on Tobacco Products Tax Merchandise Destroyed

The undersigned certifies under penalty of perjury under the laws of the state of Washington that the following is true and correct to the best of his/her knowledge:

That he/she is (Title) of the (Business Name), a dealer in tobacco products; that the dealer has destroyed merchandise unfit for sale, said tobacco products having a wholesale sales price of \$ . . . . . ; that tobacco tax had been paid on such tobacco products; that the tobacco products were

destroyed in the following manner and in the presence of an authorized agent of the department of revenue:

(State date and manner of destruction)

Attested to: By . . . . .
Date . . . . . Signature of Taxpayer or
Authorized Representative.
Position with Dealer
Dealer
Address of Dealer

APPROVED:
Authorized Agent of
Department of Revenue of the
State of Washington.

(b) Certificate of manufacturer.

Claim for Credit on Tobacco Products Tax Merchandise Returned:

The undersigned certifies under penalty of perjury under the laws of the state of Washington that the following is true and correct to the best of his/her knowledge:

That he/she is (Title) of the (Business Name), a manufacturer of tobacco products; that the manufacturer has received from (Dealer), (Address), a dealer in tobacco products within the State of Washington, certain tobacco products which were unfit for sale, the tobacco products having a wholesale sales price of \$ . . . . . ; that the tobacco products were destroyed in the following manner:

(Indicate date and manner of destruction)

Credit issued on Memo No. . . . .
credit approved by: Signature of Taxpayer or
Authorized Representative
Name of Manufacturer
Address

(10) Enforcement. Pursuant to RCW 82.26.121 and 66.44.010, enforcement officers of the liquor control board may enforce all provisions of the law with respect to the tax on tobacco products. Retailers, distributors, and subjobbers must allow department personnel and enforcement officers of the liquor control board free access to their premises to inspect the tobacco products contained in the premises and to examine the books and records of the business. Failure to allow free access or to hinder or interfere with department personnel and/or enforcement officers of the liquor control board may result in the revocation of the business license.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). 03-12-058, § 458-20-185, filed 6/2/03, effective 7/3/03. Statutory Authority: RCW 82.32.300. 94-10-061, § 458-20-185, filed 5/3/94, effective 6/3/94; 90-04-038, § 458-20-185, filed 1/31/90, effective 3/3/90; 83-07-032 (Order ET 83-15), § 458-

20-185, filed 3/15/83; Order ET 71-1, § 458-20-185, filed 7/22/71; Order ET 70-3, § 458-20-185 (Rule 185), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-186 Tax on cigarettes. (1) Introduction.**

This rule addresses those taxes and licensing activities that apply exclusively to cigarettes as defined by RCW 82.24.010. See WAC 458-20-185 for tax liabilities and registration requirements associated with tobacco products other than cigarettes. The tax on cigarettes is in addition to all other taxes owed. For example, retailers and wholesalers are liable for business and occupation tax on their retailing or wholesaling activities, and must collect and remit sales tax on retail sales of cigarettes. Consumers pay the cigarette tax in addition to sales or use tax on purchases of cigarettes for consumption within this state. (Wholesalers not licensed in the state of Washington who are making sales of cigarettes to Indians in accordance with a cigarette tax contract authorized by RCW 43.06.455 must comply with the specific terms of their individual contracts. See also WAC 458-20-192 regarding sales in Indian country.)

(2) **Organization of rule.** The information provided in this rule is divided into seven parts:

(a) Part I explains the tax liabilities of persons who sell, use, consume, handle, possess, or distribute cigarettes in this state.

(b) Part II explains the licensing requirements and responsibilities for persons making wholesale or retail sales of cigarettes in this state.

(c) Part III explains the stamping requirements and how the cigarette tax rates are calculated.

(d) Part IV describes the exemptions from the tax and the procedures that must be followed to qualify for exemption.

(e) Part V explains the requirements and responsibilities for persons transporting cigarettes in Washington.

(f) Part VI explains the requirements and responsibilities for persons engaged in making delivery sales of cigarettes into this state.

(g) Part VII explains the enforcement and administration of the cigarette tax.

**Part I - Tax on Cigarettes**

(101) **In general.** The Washington state cigarette tax is due and payable by the first person who sells, uses, consumes, handles, possesses, or distributes the cigarettes in this state.

(a) **Possession.** For the purpose of this rule, a "possessor" of cigarettes is anyone who personally or through an agent, employee, or designee, has possession of cigarettes in this state.

(b) **Payment.** Payment of the cigarette tax is made through the purchase of stamps from banks authorized by the department of revenue (department) to sell the stamps. Only licensed wholesalers may purchase or obtain cigarette stamps. Except as specifically provided in Part IV of this rule, it is unlawful for any person other than a licensed wholesaler to possess unstamped cigarettes in this state. However, as explained in subsection (102)(b) of this rule, certain consumers may possess unstamped cigarettes for personal consumption if they pay the tax as provided in this rule.

(c) **Imposition of tax.** Ordinarily, the tax obligation is imposed on and collected from the first possessor of

unstamped cigarettes. However, failure of an exempt entity with an obligation to collect and remit the tax does not relieve a subsequent nonexempt possessor of unstamped cigarettes from liability for the tax.

(d) **Promotions.** Cigarettes given away for advertising or any other purpose are taxed in the same manner as if they were sold, used, consumed, handled, possessed, or distributed in this state, but are not required to have the stamp affixed. Instead, the manufacturer of the cigarettes must pay the tax on a monthly return filed with the department. See subsection (702) of this rule.

**(102) Possession of cigarettes in Washington state.**

(a) Every person who is (i) in possession of unstamped cigarettes in this state, and (ii) is not specifically exempt by law, is liable for payment of the cigarette tax as provided in chapter 82.24 RCW and this rule.

(b) Consumers who buy unstamped cigarettes or who purchase cigarettes from sources other than licensed retailers in this state must pay the cigarette tax as provided in subsection (702) of this rule when they first bring the cigarettes into this state or first possess them in this state. This requirement includes, but is not limited to, delivery sales as described in Part VI of this rule.

(c) **Cigarettes purchased from Indian retailers.** Special rules apply to cigarettes purchased from Indian retailers.

(i) Indians purchasing cigarettes in Indian country are exempt from the state cigarette tax; however, these sales must comply with WAC 458-20-192. Other consumers may purchase cigarettes for their personal consumption from "qualified Indian retailers" without incurring liability for state cigarette tax. A "qualified Indian retailer" is one who is subject to the terms of a valid cigarette tax contract with the state pursuant to RCW 43.06.455.

(ii) Consumers who purchase cigarettes from Indian retailers who are not subject to a cigarette tax contract with the state must comply with the reporting requirements and remit the cigarette tax as explained in subsection (702) of this rule. These consumers are also liable for the use tax on their purchases. See WAC 458-20-178.

(iii) It is the duty of the consumer in each instance to ascertain his or her responsibilities with respect to such purchases.

(d) **Cigarettes purchased on military reservations.** Active duty or retired military personnel, and their dependants, may purchase cigarettes for their own consumption on military reservations without paying the state tax (see Part IV). However, such persons are not permitted to give or resell those cigarettes to others.

(e) **Counterfeit cigarettes.** It is unlawful for any person to manufacture, sell, or possess counterfeit cigarettes. A cigarette is counterfeit if (i) it or its packaging bears any logo or marking used by a manufacturer to identify its own cigarettes, and (ii) the cigarette was not manufactured by the owner of that logo or trademark or by any authorized licensee of the manufacturer. RCW 82.24.570.

(f) Possession of unstamped and untaxed cigarettes, and possession of counterfeit cigarettes, are criminal offenses in this state. See Part VII.

## Part II - Wholesale and Retail Cigarette Vendor Licensing Requirements and Responsibilities

(201) **License required.** No person, other than a government instrumentality or an Indian retailer as set forth in Part IV of this rule, may engage in the retail or wholesale distribution of cigarettes in this state without a license. No person may engage in the business of sampling within this state unless that person has first obtained a sampler's license. Failure to obtain the required license prior to sampling or selling cigarettes at wholesale or retail is a criminal act. RCW 70.155.050.

(202) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) **"Place of business"** means any location where business is transacted with, or sales are made to, customers. The term includes, but is not limited to, any vehicle, truck, vessel, or the like at which sales are made.

(b) **"Retailer"** means every person, other than a wholesaler, who purchases, sells, offers for sale, or distributes cigarettes, regardless of quantity or amount, or the number of sales, and all persons operating under a retailer's registration certificate.

(c) **"Retail selling price"** means the ordinary, customary, or usual price paid by the consumer for each package of cigarettes, less the tax levied by the state.

(d) **"Wholesaler"** means every person who purchases, sells, or distributes cigarettes, as defined in chapter 82.24 RCW, to retailers for the purpose of resale only.

(203) **Wholesale license.** Prior to the sale or distribution of cigarettes at wholesale, each wholesaler must first obtain a wholesale cigarette license from the department of licensing.

(a) **Background check.** Each wholesaler must undergo a criminal background check before a license will be issued. RCW 82.24.510. The background check must be completed to the satisfaction of the liquor control board and the department. Failure to provide information sufficient to complete the background check may, in the department's discretion, result in denial of the license.

(b) **Application.** Application for license or renewal of license is made on forms supplied by the department of licensing and must be accompanied by the annual license fee as provided in chapter 82.24 RCW. A wholesale cigarette license is valid for one year from the date it is issued.

(c) **Multiple locations.** If the wholesaler sells, or intends to sell, cigarettes at more than one place of business, whether temporary or permanent, a separate license with a license fee as provided in chapter 82.24 RCW is required for each additional place of business. Each license must be exhibited in the place of business for which it is issued.

(d) **Bond required.** Each licensed wholesaler must file a bond with the department in an amount determined by the department, but not less than \$5,000.00. The bond must be executed by the wholesaler as principal, and by a corporation approved by the department of licensing and authorized to engage in business as a surety company in this state, as surety. The bond must run concurrently with the wholesaler's license.

(2005 Ed.)

(204) **Duties and responsibilities of licensed wholesalers.**

(a) **Stamps.** Only licensed wholesalers may purchase or obtain cigarette stamps. Wholesalers are prohibited by law from selling or providing stamps to any other wholesaler or person.

(b) **Numbering.** Each roll of stamps, or group of sheets, has a separate serial number. The department keeps records of which wholesaler purchases each roll or group of sheets. Wholesalers are prohibited from possessing stamps other than those specifically issued to them.

(c) **Sales restricted.** Wholesalers selling cigarettes in this state may sell cigarettes only to Washington retailers who have a current retail cigarette license, to other licensed wholesalers, or to Indian tribal entities authorized to possess cigarettes that are not taxed by the state.

(d) **Unstamped cigarettes.** Except as explained in Part IV of this rule, no person other than a licensed wholesaler may possess unstamped cigarettes in this state. (For the purpose of this rule, the term "unstamped cigarette" means any cigarette that does not bear a Washington state cigarette stamp as described in Part III of this rule.) Licensed wholesalers may possess unstamped cigarettes in this state only in the following circumstances:

(i) Licensed wholesalers may possess unstamped cigarettes for up to 72 hours after receipt; however, the cigarettes must be stamped on or before sale or transfer to any other party other than another licensed wholesaler. Licensed wholesalers may possess unstamped cigarettes for more than 72 hours after receipt if they receive prior written permission from the department to do so.

(ii) Licensed wholesalers who have furnished a surety bond in an amount determined by the department may set aside, without stamping, that portion of their stock reasonably necessary for conducting sales to persons outside this state or to instrumentalities of the federal government. All unstamped stock must be kept separate and apart from stamped stock.

(e) **Transfers.** Wholesalers in possession of unstamped cigarettes under subsection (204)(d) of this rule that are transferred by the wholesaler to another facility within this state must be transferred in compliance with RCW 82.24.250.

(205) **Retail license.** Prior to the retail sale or distribution of cigarettes, each retailer must first be issued a retail cigarette license from the department of licensing. A license is required for each location at which cigarettes are sold at retail. Each license must be exhibited at the place of business for which it is issued.

(a) **Application.** Applications for license or renewal of license are made on forms supplied by the department of licensing and must be accompanied by the annual license fee as provided in chapter 82.24 RCW. A retail cigarette license is valid for one year from the date it is issued.

(b) **Vending machines.** Retailers operating cigarette vending machines are required to pay an additional annual fee as set forth in chapter 82.24 RCW for each vending machine.

(206) **Duties and responsibilities of retailers.**

(a) No retailer in this state may possess unstamped cigarettes unless he or she is also a licensed wholesaler.

[Title 458 WAC—p. 253]

(b) Retailers may obtain cigarettes only from cigarette wholesalers licensed by this state.

(207) **Additional requirements for manufacturers, wholesalers, retailers, and samplers.** Persons making wholesale or retail sales or engaged in the business of sampling cigarettes in this state must comply with all the provisions of chapters 70.155 and 70.158 RCW. All cigarettes sold, delivered, or attempted to be delivered, in violation of RCW 70.155.105 are subject to seizure and forfeiture. RCW 82.24.130.

(208) **Suspension or revocation of wholesale or retail cigarette licenses.**

(a) The department has full power and authority to revoke or suspend the license of any wholesale or retail cigarette dealer in the state upon sufficient showing that the license holder has violated the provisions of chapter 82.24 RCW or this rule. See RCW 82.24.550 and WAC 458-20-10001 for information on the procedures pertaining to suspension or revocation of cigarette licenses.

(b) Any person whose license has been revoked must wait one year following the date of revocation before requesting a hearing for reinstatement. Reinstatement hearings are held pursuant to WAC 458-20-10001.

### Part III - Stamping and Rates

#### (301) Cigarette stamps.

(a) Stamps indicating payment of the cigarette tax must be affixed prior to any sale, use, consumption, handling, possession, or distribution of all cigarettes other than those specifically exempted as explained in Part IV of this rule. The stamp must be applied to the smallest container or package, unless the department, in its sole discretion, determines that it is impractical to do so. Stamps must be of the type authorized by the department and affixed in such a manner that they cannot be removed from the package or container without being mutilated or destroyed.

(b) Licensed wholesalers may purchase state-approved cigarette stamps from authorized banks. Payment for stamps must be made at the time of purchase unless the wholesaler has prior approval of the department to defer payment and furnishes a surety bond equal to the proposed monthly credit limit. Payments under a deferred plan are due within 30 days following purchase. Licensed wholesalers are allowed a discount of \$6.00 per thousand stamps affixed ("stamping allowance"), which amount is offset against the purchase price.

#### (302) Rates.

(a) The Washington state cigarette tax is imposed on a per cigarette basis. The rate of the tax is a combination of statutory rates found in RCW 82.24.020, 82.24.027, and 82.24.028.

(b) When the rate of tax increases, the first person who sells, uses, consumes, handles, possesses, or distributes previously taxed cigarettes after the rate increase is liable for the additional tax.

(303) **Refunds.** Any person may request a refund of the face value of the stamps when the tax is not applicable and the stamps are returned to the department. Documentation supporting the claim must be provided at the time the claim for refund is made.

(a) Refunds for stamped untaxed cigarettes sold to Indian tribal members or tribal entities will include the stamping allowance and will be approved by an agent of the department.

(b) Refunds for stamped cigarettes will not include the stamping allowance if the stamps are:

(i) Damaged, or unfit for sale, and as a result are destroyed or returned to the manufacturer or distributor; or

(ii) Improperly or partially affixed through burns, jams, double stamps, stamped on carton flaps, or improperly removed from the stamp roll.

(c) The claim for refund must be filed on a form provided by the department. An affidavit or a certificate from the manufacturer for stamped cigarettes returned to the manufacturer for destruction or by an agent of the department verifying the voiding of stamps and authorizing the refund must accompany the claim for refund.

### Part IV - Exemptions

(401) **In general.** There are limited exemptions from the cigarette tax provided by law. This part discusses exemptions and the procedures that must be followed to qualify for an exemption.

(402) **Government sales.** The cigarette tax does not apply to the sale of cigarettes to:

(a) The United States Army, Navy, Air Force, Marine Corps, or Coast Guard exchanges and commissaries and Navy or Coast Guard ships' stores;

(b) The United States Veteran's Administration; or

(c) Any person authorized to purchase from the federal instrumentalities named in (a) or (b) above, if the cigarettes are purchased from the instrumentality for personal consumption.

#### (403) Sales in Indian country.

(a) The definitions of "Indian," "Indian country," and "Indian tribe," in WAC 458-20-192 apply to this rule. "Cigarette contract" means an agreement under RCW 43.06.450 through 43.06.460.

(b) The cigarette tax does not apply to cigarettes taxed by an Indian tribe in accordance with a cigarette contract under RCW 43.06.450 through 43.06.460.

(c) The cigarette tax does not apply to cigarettes sold to an Indian in Indian country for personal consumption; however, those sales must comply with the allocation provisions of WAC 458-20-192. Sales made by an Indian cigarette outlet to nontribal members are subject to the tax, except as provided in (b) above.

(d) See WAC 458-20-192 for information on making wholesale sales of cigarettes to Indians and Indian tribes.

(404) **Interstate commerce.** The cigarette tax does not apply to cigarettes sold to persons licensed as cigarette distributors in other states when, as a condition of the sale, the seller either delivers the cigarettes to the buyer at a point outside this state, or delivers the same to a common carrier with the shipment consigned by the seller to the buyer at a location outside this state. Any person engaged in making sales to licensed distributors in other states or making export sales or in making sales to the federal government must furnish a surety bond in a sum equal to twice the amount of tax that would be affixed to the cigarettes that are set aside for the conduct of such business without affixing cigarette stamps.

The unstamped stock must be kept separate and apart from any stamped stock.

#### Part V - Transporting Cigarettes in Washington

(501) **Transportation of cigarettes restricted.** No person other than a licensed wholesaler may transport unstamped cigarettes in this state except as specifically set forth in RCW 82.24.250 and this rule, or as may be allowed under a cigarette tax contract subject to the provisions of RCW 43.06.455. Licensed wholesalers transporting unstamped cigarettes in this state must do so only in their own vehicles unless they have given prior notice to the liquor control board of their intent to transport unstamped cigarettes in a vehicle belonging to another person.

(502) **Notice required.** Persons other than licensed wholesalers intending to transport unstamped cigarettes in this state must first give notice to the liquor control board of their intent to do so.

(503) **Transportation of unstamped cigarettes.** All persons transporting unstamped cigarettes must have in their actual possession invoices or delivery tickets for such cigarettes. The invoices or delivery tickets must show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes transported. It is the duty of the person responsible for the delivery or transport of the cigarettes to ensure that all drivers, agents, or employees have the delivery tickets or invoices in their actual possession for all such shipments.

(504) **Consignment.** If the cigarettes transported pursuant to subsection (501), (502), or (503) of this rule are consigned to or purchased by any person in this state, that purchaser or consignee must be a person who is authorized by chapter 82.24 RCW to possess unstamped cigarettes in this state.

(505) **Out-of-state shipments.** Licensed wholesalers shipping cigarettes to a point outside Washington or to a federal instrumentality must, at the time of shipping or delivery, report the transaction to the department. The report must show both (a) complete details of the sale or delivery, and (b) whether stamps have been affixed to the cigarettes.

The report may be made either by submitting a duplicate invoice or by completing a form provided by the department, and must be filed with the department as set forth in subsection (702) of this rule.

(506) **Compliance required.** No person may possess or transport cigarettes in this state unless the cigarettes have been properly stamped or that person has fully complied with the requirements of RCW 82.24.250 and this rule. Failure to comply with the requirements of RCW 82.24.250 is a criminal act. Cigarettes in the possession of persons who have failed to comply are deemed contraband and are subject to seizure and forfeiture under RCW 82.24.130.

#### Part VI - Delivery Sales of Cigarettes

(601) **Definitions.** The definitions in this subsection apply throughout this rule.

(a) **"Delivery sale"** means any sale of cigarettes to a consumer in the state where either: (i) The purchaser submits an order for a sale by means of a telephonic or other method of voice transmission, mail delivery, any other delivery ser-

vice, or the internet or other online service; or (ii) the cigarettes are delivered by use of mail delivery or any other delivery service. A sale of cigarettes made in this manner is a delivery sale regardless of whether the seller is located within or outside the state. (For example, "Royal Tax-free Smokes," located in the state of Vermont, offers sales via the internet and a toll-free telephone number, and ships its products to consumers in this state. These transactions are delivery sales.) A sale of cigarettes not for personal consumption to a person who is a wholesaler licensed under chapter 82.24 RCW or a retailer licensed under chapter 82.24 RCW is not a delivery sale.

(b) **"Delivery service"** means any private carrier engaged in the commercial delivery of letters, packages, or other containers, that requires the recipient of that letter, package, or container to sign to accept delivery.

(602) **Tax liability.** Cigarettes delivered in this state pursuant to a delivery sale are subject to tax as provided in Part I of this rule. Persons making delivery sales in this state are required to provide prospective consumers with notice that the sales are subject to tax pursuant to chapters 82.24 and 82.12 RCW, with an explanation of how the tax has been or is to be paid with respect to such sales.

(603) **Additional requirements.** Persons making delivery sales of cigarettes in this state must comply with all the provisions of chapter 70.155 RCW. All cigarettes sold, delivered, or attempted to be delivered, in violation of RCW 70.155.105 are subject to seizure and forfeiture. RCW 82.24.130.

#### Part VII - Enforcement and Administration

(701) **Books and records.** An accurate set of records showing all transactions related to the purchase, sale, or distribution of cigarettes must be retained. RCW 82.24.090. These records may be combined with those required in connection with the tobacco products tax (see WAC 458-20-185), if there is a segregation therein of the amounts involved. All records must be preserved for five years from the date of the transaction.

(702) **Reports and returns.** The department may require any person dealing with cigarettes in this state to complete and return forms, as furnished by the department, setting forth sales, inventory, and other data required by the department to maintain control over trade in cigarettes.

(a) Manufacturers and wholesalers selling stamped, unstamped, or untaxed cigarettes must submit a complete record of sales of cigarettes in this state monthly. This report is due no later than the 15th day of the calendar month and must include all transactions occurring in the previous month.

(b) Persons making sales of tax-exempt cigarettes to Indian tribes or Indian retailers pursuant to WAC 458-20-192 (9)(a) must transmit a copy of the invoice for each such sale to the special programs division of the department prior to shipment.

(c) Wholesalers selling stamped cigarettes manufactured by nonparticipating manufacturers as defined in WAC 458-20-264 must report all such sales to the special programs division no later than the 25th day of the calendar month and must include all transactions occurring in the previous month.

(d) Persons making sales of cigarettes into this state to other than a licensed wholesaler or retailer must file a report

as required under Title 15, Chapter 10A, section 376 of the U.S. Code (commonly referred to as the "Jenkins Act" report). This report is due no later than the 10th day of each calendar month and must include all transactions occurring in the previous month.

(e) Persons shipping or delivering any cigarettes to a point outside of this state must submit a report showing full and complete details of the interstate sale or delivery as set forth in Part V of this rule. This report is due no later than the 15th day of the calendar month immediately following the shipment or delivery.

(f) Persons giving away unstamped cigarettes for advertising, promotional, or any other purpose, must report and pay the tax on the number of cigarettes distributed in this state.

(g) Consumers who buy unstamped cigarettes or who purchase cigarettes from sources other than licensed retailers in this state must pay the tax when they first bring the cigarettes into this state or first possess them in this state. The tax is paid with a "Tax Declaration for Cigarettes," which may be obtained from the department.

(703) **Criminal provisions.** Chapter 82.24 RCW prohibits certain activities with respect to cigarettes. Persons handling cigarettes within this state must refer to these statutes. The prohibited activities include, but are not limited to, the following:

(a) **Transportation or possession of 60,000 or fewer cigarettes.** Transportation or possession of 60,000 or fewer unstamped cigarettes is prohibited unless the notice requirements set forth in RCW 82.24.250 have been met; failure to meet those notice requirements is a gross misdemeanor. RCW 82.24.110 (1)(m).

(b) **Transportation or possession of more than 60,000 cigarettes.** Transportation or possession of more than 60,000 unstamped cigarettes is prohibited unless the notice requirements set forth in RCW 82.24.250 have been met; failure to meet those notice requirements is a felony. RCW 82.24.110 (2).

(c) **Forgery or counterfeiting of stamps.** Alteration, fabrication, forgery, and counterfeiting of stamps are felonies. RCW 82.24.100.

(d) **Counterfeit cigarettes.** The manufacture, sale, or possession of counterfeit cigarettes in this state is a felony. RCW 82.24.570.

(704) **Search, seizure, and forfeiture.** The department or the liquor control board may search for, seize, and subsequently dispose of unstamped cigarette packages and containers, counterfeit cigarettes, conveyances of all kinds (including aircraft, vehicles, and vessels) used for the transportation of unstamped and/or counterfeit cigarettes, and vending machines used for the sale of unstamped and/or counterfeit cigarettes. See RCW 82.24.130, et seq., for provisions relating to search, seizure, and forfeiture of property, possible redemption of property, and for treatment of such property in the absence of redemption.

(705) **Penalties.** RCW 82.24.120 provides a penalty for failure to affix the cigarette stamps or to cause the stamps to be affixed as required, or to pay any tax due under chapter 82.24 RCW. In addition to the tax deemed due, a penalty equal to the greater of \$10.00 per package of unstamped cigarettes or \$250.00 will be assessed. Interest is also assessed

on the amount of the tax at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment. The department may, in its sole discretion, cancel all or part of the penalty for good cause.

[Statutory Authority: RCW 82.24.235, 82.32.300, and 82.01.060(1). 05-02-035, § 458-20-186, filed 12/30/04, effective 1/30/05. Statutory Authority: RCW 82.32.300. 94-10-062, § 458-20-186, filed 5/3/94, effective 6/3/94; 90-24-036, § 458-20-186, filed 11/30/90, effective 1/1/91; 90-04-039, § 458-20-186, filed 1/31/90, effective 3/3/90; 87-19-007 (Order ET 87-5), § 458-20-186, filed 9/8/87; 83-07-032 (Order ET 83-15), § 458-20-186, filed 3/15/83; Order ET 75-1, § 458-20-186, filed 5/2/75; Order ET 73-2, § 458-20-186, filed 11/9/73; Order ET 71-1, § 458-20-186, filed 7/22/71; Order ET 70-3, § 458-20-186 (Rule 186), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-187 Coin operated vending machines, amusement devices and service machines.** (1) **Definitions.** As used herein the term "vending machines" means machines which, through the insertion of a coin will return to the patron a predetermined specific article of merchandise or provide facilities for installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers. It includes machines which vend photographs, toilet articles, cigarettes and confections as well as machines which provide laundry and cleaning services.

(2) The term "amusement devices" means those devices and machines which, through the insertion of a coin, will permit the patron to play a game. It includes slot and pinball machines and those machines or devices which permit the patron to see, hear or read something of interest.

(3) The term "service machines" means any coin operated machines other than those defined as "vending machines" or "amusement devices." It includes, for example, scales and luggage lockers, but does not include coin operated machines used in the conduct of a public utility business, such as telephones and gas meters; also excluded are shuffleboards and pool games.

(4) **Business and occupation tax.** Persons operating vending machines are engaged in a retailing business and must report and pay tax under the retailing classification with respect to the gross proceeds of sales.

(5) Persons operating amusement devices, except shuffleboard, pool, and billiard games, are taxable under the service and other business activities classification on the gross receipts therefrom.

(6) Persons engaged in operating shuffleboards or games of pool or billiards are taxable under the retailing classification on the gross receipts therefrom and are responsible for collecting and reporting to the department the retail sales tax measured by the gross receipts therefrom.

(7) Persons operating service machines are taxable under the service and other business activities classification upon the gross income received from the operation of such machines.

(8) When coin operated machines are placed at a location owned or operated by a person other than the owner of the machines, under any arrangement for compensation to the operator of the location, the person operating the location has granted a license to use real property and will be responsible for reporting and paying tax upon his gross compensation therefor under the service classification.

(9) Where the owner of amusement devices which are placed at the location of another has failed to pay the gross

receipts tax and/or retail sales tax due, the department may proceed directly against the operator of the location for full payment of all tax due.

(10) Retail sales tax. The retail sales tax applies to the sale of merchandise through vending machines and persons owning and operating such machines are liable for the payment of such tax. (However, see WAC 458-20-244 for vending machine sales of food.) For practical purposes such persons are authorized to absorb the amount of the tax on the individual sales and to pay directly to the department the retail sales tax on the total amount received from such machines.

(11) Effective March 11, 1986, on all retail sales through vending machines the tax need not be stated separately from the selling price or collected separately from the buyer. (See RCW 82.08.050.) The seller may deduct the tax from the total amount received in the machines to arrive at the net amount which becomes the measure of the tax.

(12) Where a vending machine is designed or adjusted so that single sales are made exclusively in amounts less than the minimum sale on which a 1¢ tax may be collected from the purchaser, and the kind of merchandise sold through such machines is not sold by the operator over the counter or other than through vending machines at that location, the selling price for purposes of the retail sales tax shall be 60% of the gross receipts of the vending machine through which such sales are made. This 60% basis of reporting is available only to persons selling tangible personal property through vending machines.

(13) In order to qualify for the foregoing reduction in the measure of the retail sales tax, the books and records of the operator must show for each vending machine for which such reduction is claimed: (a) The location of the machine, (b) the selling price of sales made through the machine, (c) the type and brands of merchandise vended through the machine and (d) the gross receipts from that machine. The foregoing records may be maintained for each location, rather than for each machine, in cases where several machines are maintained by the same operator at the same location, provided that all of such machines make sales exclusively in amounts less than the minimum sale on which a 1¢ tax may be collected. The reduction will be disallowed in any instance where sales made through vending machines in such amounts are not clearly and accurately segregated from other sales by the operator and the burden is on the operator to make sales under such conditions and to maintain such records as to demonstrate absolute compliance with this requirement.

(14) Every operator or owner of a vending machine, before taking a deduction from gross sales through certain vending machines, shall file with the department annually an addendum to his application for registration with the department, on a form provided by the department, which form shall contain the following information:

(a) Number of vending machines in his ownership making sales under the above minimum.

(b) Value of such sales in the most recent calendar year.

(c) A statement that no sales are made by the owner or operator at any machine location of articles or products sold through such machines, except by vending machines and no provision is made either through the machine or otherwise,

(2005 Ed.)

for multiple sales under circumstances where the tax may legally be collected from the buyer.

(15) The department will require a bond sufficient to assure recovery of any disallowed discount of tax due in any instance of registration where the department has reason to feel such recovery could be in jeopardy.

(16) Sales of vending machines, service machines and amusement devices to persons who will operate the same are sales at retail and the retail sales tax is applicable to all such sales.

(17) Use tax. The use tax applies to all tangible personal property used by persons making sales through vending machines, upon which the retail sales tax has not been paid, except inventory items resold through such machines.

Revised April 28, 1978.

Effective July 1, 1978.

[Statutory Authority: RCW 82.32.300. 86-18-022 (Order ET 86-15), § 458-20-187, filed 8/26/86. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-187, filed 6/27/78; Order ET 73-1, § 458-20-187, filed 11/2/73; Order ET 71-1, § 458-20-187, filed 7/22/71; Order ET 70-3, § 458-20-187 (Rule 187), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-18801 Prescription drugs, prosthetic and orthotic devices, ostomic items, and medically prescribed oxygen.** (1) **Definitions.** As used in this section:

(a) "Prescription drugs" are medicines, drugs, prescription lenses, or other substances, other than food for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or other ailment in humans ordered by (i) the written prescription to a pharmacist by a practitioner authorized by the laws of this state or laws of another jurisdiction to issue prescriptions, or (ii) an oral prescription of such practitioner which is reduced promptly to writing and filled by a duly licensed pharmacist, or (iii) by refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is promptly reduced to writing and filled by the pharmacist, or (iv) physicians or optometrists by way of written directions and specifications for the preparation, grinding, and fabrication of lenses intended to aid or correct visual defects or anomalies of humans.

(b) "Prescription" means a formula or recipe or an order written by a medical practitioner for the composition, preparation and use of a healing, curative or diagnostic substance, and also includes written directions and specifications by physicians or optometrists for the preparation, grinding, and fabrication of lenses intended to aid or correct visual defects or anomalies of humans.

(c) "Other substances" means products such as catalytics, hormones, vitamins, and steroids, but the term generally does not include devices, instruments, equipment, and similar articles. However, "other substances" does include the needles, tubing, and the bag which are part of an intravenous set for delivery of prescription drugs. It also includes infusion pumps and catheters when used to deliver prescription drugs to a specific patient. These items are not conceptually distinct from the prescription drug solution. This same rationale applies to tubing and needles which are used in placing prescribed nutritional products in the patient's system. The stand which holds the intravenous set is not included nor are plain

glass slides, plain specimen collection devices, and similar items which are used in the laboratory. This term does include diagnostic substances and reagents, including prepared slides, tubes and collection specimens devices which contain diagnostic substances and reagents at the time of purchase by a laboratory.

(d) "Medical practitioner" means a person within the scope of RCW 18.64.011(9) who is authorized to prescribe drugs, but excluding veterinarians, and for the purposes of this rule includes also persons licensed by chapter 18.53 RCW to issue prescriptions for lenses.

(e) "Licensed dispensary" means a drug store, pharmacy, or dispensary licensed by chapter 18.64 RCW or a dispensing optician licensed by chapter 18.34 RCW.

(f) "Prosthetic devices" are artificial substitutes which generally replace missing parts of the human body, such as a limb, bone, joint, eye, tooth, or other organ or part thereof, and materials which become ingredients or components of prostheses.

(g) "Orthotic devices" are apparatus designed to activate or supplement a weakened or atrophied limb or function. They include braces, collars, casts, splints, and other similar apparatus as well as parts thereof. Orthotic devices do not include durable medical equipment such as wheelchairs, crutches, walkers, and canes nor consumable supplies such as embolism stockings, arch pads, belts, supports, bandages, and the like, whether prescribed or not.

(h) "Ostomic items" are medical supplies used by colostomy, ileostomy, and urostomy patients. These include bags, tapes, tubes, adhesives, deodorants, soaps, jellies, creams, germicides, and sundry related supplies.

(i) "Medically prescribed oxygen" means oxygen prescribed for the use in the treatment of a medical condition. For periods after July 27, 1991, this term shall include, but is not limited to, the sale or rental of oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems for use by an individual under a prescription. (See RCW 82.08.0283.)

(j) "Legend drugs" are those drugs which may not be legally dispensed without a prescription. These drugs are listed in the official United States pharmacopeia or similar source. (See RCW 69.41.010(8).) WAC 246-865-010(5) requires legend drugs to have a label stating that federal law prohibits dispensing without a prescription. Also refer to RCW 69.41.010(9).

(k) "Nutrition products" are prescribed dietary substances formulated to provide balanced nutrition as a sole source of nourishment.

(2) **Business and occupation tax.** The business and occupation tax applies to the gross proceeds from sales of drugs, medicines, prescription lenses, or other substances used for diagnosis, cure, mitigation, treatment, or prevention of disease or other ailments in humans. Sales of these items to persons for resale are taxable under the wholesaling classification. Sales to consumers are taxable under the retailing classification. Persons who provide medical services to patients are taxable under the service and other business activities classification on the gross charge to the patient, notwithstanding that some prescription drugs may be separately charged to the patient. Persons who provide medical services

should refer to WAC 458-20-151 and 458-20-168 for additional tax reporting information.

(3) **Deductions.** The following may be deducted from gross proceeds for computing business and occupation tax:

(a) Sales of prescription drugs and other medical and healing supplies furnished as an integral part of services rendered by a publicly operated or nonprofit hospital, nonprofit kidney dialysis facility, nursing home, or home for unwed mothers operated as a religious or charitable organization which meets all the conditions for exemption for services generally under RCW 82.04.4288 or 82.04.4289 (see WAC 458-20-168).

(4) **Retail sales tax.** The retail sales tax applies upon all retail sales of tangible personal property unless expressly exempted by law.

(5) **Exemptions.** The following exemptions apply from the retail sales tax and use tax.

(a) Legend drugs are exempt from retail sales tax or use tax when sold for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or other ailments of humans. This exemption applies to all levels of sales and distribution of legend drugs, including legend drugs given away as samples. Legend drugs are exempt from sales tax when sold to hospitals, doctors, dentists, or any other medical practitioner, as well as to patients. Sellers of legend drugs are not required to retain a resale certificate or other exemption documentation from the legend drug purchaser. The exemption applies at the time of purchase even if the hospital or medical practitioner who makes such purchases will not resell the legend drug as a separate line item charge to its patient.

(b) The retail sales tax does not apply to sales of nonlegend drugs, nutrition products including dietary supplements or dietary adjuncts, medicines, prescription lenses, or other substances, but only when

(i) Dispensed by a licensed dispensary

(ii) Pursuant to a written prescription

(iii) Issued by a medical practitioner

(iv) For diagnosis, cure, mitigation, treatment, or prevention of disease or other ailment in humans. (See RCW 82.08.0281.)

(c) Laboratory reagents and other diagnostic substances are exempt from retail sales tax when used as part of a test prescribed to diagnose disease in humans. These items include, among others, reagents, calibrators, chemicals, gases, vacutainers with heparin or other chemicals or medicines, and prepared media. Control reagents are exempt, but only when the control reagents are used in performing tests prescribed for a patient. Reagents which are used to merely calibrate equipment and are not related to a test prescribed for a specific patient are not exempt.

(d) The retail sales tax exemption applies also to intravenous sets, including the needles and tubing, when used for the administration of drugs prescribed to a patient. This also includes catheters, infusion pumps, syringes, and similar items when used for the delivery of prescription drugs. Medical gas delivery system components, including tubes, nebulizers, ventilators, masks, cannulae and similar items, are not conceptually distinct from the prescribed gases they deliver and are exempt from retail sales or use tax. The medical delivery system includes airway devices (tubes) which are

prescribed to keep a patient's airways open and to deliver medical gases.

(e) The retail sales tax does not apply to sales of prosthetic devices, orthotic devices prescribed by physicians, osteopaths, or chiropractors, nor to sales of ostomic items. (See RCW 82.08.0283.) Sutures, pacemakers, hearing aids, and kidney dialysis machines are examples of prosthetic devices. Drainage devices which are particularly prescribed for use on or in a specific patient are exempt from sales or use taxes as prostheses because they either replace missing body parts or assist dysfunctional ones, either on a temporary or permanent basis. A prosthetic device can include a device that is implanted for cosmetic reasons. Hearing aids are also exempt when dispensed or fitted by a person licensed under chapter 18.35 RCW. A heart-lung machine used by a hospital in its surgical department is not an exempt prosthetic device.

(f) The sale of medically prescribed oxygen is not subject to retail sales or use tax when sold to an individual having a prescription issued by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual.

(g) The retail sales tax does not apply to the purchase of anesthesia gases, medical gases, contrast media, or irrigation solutions when these items are used under a physician's order as part of a medical treatment for a specific patient.

(6) **Proof of exemption.** Persons selling legend drugs need only to substantiate that the drugs meet the definition of legend drugs and are for use in the diagnosis, cure, mitigation, treatment, prevention of disease or other ailments in humans. Resale certificates or other exemption certificates are not required for these sales. For sales to consumers of nonlegend drugs, sellers must retain in their files the written prescription bearing the signature of the medical practitioner who issued the prescription and the name of the patient for whom prescribed. See also WAC 458-20-150 Optometrists, ophthalmologists, and oculists; 458-20-151 Dentists, dental laboratories and physicians; and 458-20-168 Hospitals.

(a) Hospitals and physicians who purchase drugs for use in providing medical services to patients may purchase the drugs without payment of retail sales tax if the drugs will only be dispensed under a physician's order. It is not required that the hospital or physician make a specific charge to the patient for drugs dispensed under a physician's order for the drug purchase to be exempt from retail sales or use tax. This also includes the purchases of intravenous sets, catheters, infusion pumps, syringes, and similar items which will be used for delivery of prescription drugs. The hospital or physician may give the nonlegend drug supplier an exemption certificate. The certificate should be retained by the seller for a period of five years after the last sale covered by the certificate. Certificates should not be sent to the department of revenue. The certificate should be in the following form:

**Prescription drug exemption certificate**

.....  
**(name of purchaser)**  
.....  
**(address of purchaser)**

**I hereby certify:** That I am a registered Washington taxpayer. I may legally prescribe or dispense drugs or other substances. I further certify that the drugs and other substances listed below purchased from ..... (name of vendor) will be prescribed and used for the treatment of illness or ailments of human beings. I shall maintain invoices and prescriptions or such other records as are necessary to account for the disposition of the drugs or other substances for which I have not paid retail sales tax. In the event that any such drug or substance is used without a prescription being issued, it is understood that I am required to report and pay use tax measured by its purchase price. If I have indicated that this is a blanket certificate, this certificate shall be considered part of each order which I may hereafter give to you, unless otherwise specified, and shall be valid for a period of four years or until revoked by me in writing. Description of drugs and other substances to be purchased:

.....  
.....  
.....  
Dated: .....  
Single Purchase ..... Blanket Certificate .....  
(indicate by check mark if certificate is for a single purchase or continuing purchases)  
.....  
(signature of purchaser or authorized agent)  
(title)  
.....  
(Revenue registration number of buyer)

(b) A blanket exemption certificate may be given if there will be continuing purchases from a particular supplier. Blanket exemption certificates should be renewed at intervals not to exceed four years. The purchaser should indicate by an appropriate check mark on the certificate whether the certificate is being used for a single purchase or will be for continuing purchases. It is unnecessary to list each and every drug on the exemption certificate if all drugs purchased from a particular supplier are exempt.

(7) **Use tax.** The use tax does not apply to the use of articles and products which are exempt from sales tax as specified herein. (See RCW 82.12.0277.) This includes legend drugs which are given away as samples.

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

(a) ABC Hospital purchases both legend and nonlegend drugs. These drugs are held in inventory and dispensed to patients only under the written order of the patient's physician. These drugs are not billed specifically to the patient, but the cost is recovered through a general floor charge to the patient. ABC Hospital may purchase these drugs without payment of sales or use tax.

(b) ABC Hospital purchases reagents for use in its laboratory which are nonlegend drugs. Laboratory reagents are chemical compounds used to promote reactions in the laboratory to aid in determining disease pathology and are not administered directly to the patient. These reagents are used for three purposes consisting of tests on the tissue from a spe-

cific patient, a control reagent which is not applied to the tissue from the patient but is used to measure or control the reaction, and a reagent used to calibrate equipment. The reagents used for the first two purposes may be purchased without payment of sales or use tax. The reagents for the calibration of equipment are also exempt if the equipment is calibrated as part of tests for a specific patient. Reagents used to calibrate equipment that is not part of a prescribed test for a patient are taxable.

(c) XY Blood Bank purchases reagents which are nonlegend drugs. These reagents are used in determining the blood type and presence of disease. The blood is sold to local hospitals. The purchase of these reagents is taxable since they are not used to provide treatment for a specific patient.

[Statutory Authority: RCW 82.32.300. 92-05-065, § 458-20-18801, filed 2/18/92, effective 3/20/92; 87-05-042 (Order 87-1), § 458-20-18801, filed 2/18/87; 83-07-032 (Order ET 83-15), § 458-20-18801, filed 3/15/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-18801 (Rule 188), filed 6/27/78; Order 74-2, § 458-20-188 (codified as WAC 458-20-18801), filed 6/24/74.]

**WAC 458-20-189 Sales to and by the state of Washington, counties, cities, towns, school districts, and fire districts. (1) Introduction.** This section discusses the business and occupation (B&O), retail sales, use, and public utility tax applications to sales made to and by the state of Washington, counties, cities, towns, school districts, and fire districts. Hospitals or similar institutions operated by the state of Washington, or a municipal corporation thereof, should refer to WAC 458-20-168. School districts should also refer to WAC 458-20-167. Persons providing physical fitness activities and amusement and recreation activities should also refer to WAC 458-20-183.

Persons providing public utility services may also want to refer to the following sections of chapter 458-20 WAC:

- (a) WAC 458-20-179 (Public utility tax);
- (b) WAC 458-20-180 (Motor transportation, urban transportation);
- (c) WAC 458-20-250 (Refuse-solid waste collection business—Core deposits and credits, battery core charges, and tires); and
- (d) WAC 458-20-251 (Sewerage collection business).

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

(a) "Municipal corporations" means counties, cities, towns, school districts, and fire districts of the state of Washington.

(b) "Public service business" means any business subject to control by the state, or having the powers of eminent domain, or any business declared by the legislature to be of a public service nature, irrespective of whether the business has the powers of eminent domain or the state exercises its control over the business. It includes, among others and without limiting the scope hereof, water distribution, light and power, public transportation, and sewer collection.

(c) "Subject to control by the state," as used in (b) of this subsection, means control by the utilities and transportation commission or any other state department required by law to exercise control of a business of a public service nature as to rates charged or services rendered.

(d) "Enterprise activity" means an activity financed and operated in a manner similar to a private business enterprise. The term includes those activities which are generally in competition with private business enterprises and which are over fifty percent funded by user fees. The term does not include activities which are exclusively governmental.

(3) **Persons taxable under the business and occupation tax.**

(a) Sellers are subject to the B&O tax upon sales to the state of Washington, its departments and institutions, or to municipal corporations of the state.

(b) The state of Washington, its departments and institutions, as distinct from its corporate agencies or instrumentalities, are not subject to the provisions of the B&O tax. RCW 82.04.030.

(c) Municipal corporations are not subject to the B&O tax upon amounts derived from activities which are exclusively governmental. RCW 82.04.419. Thus, the B&O tax does not apply to license and permit fees, inspection fees, fees for copies of public records, reports, and studies, pet adoption and license fees, processing fees involving fingerprinting and environmental impact statements, and taxes, fines, or penalties, and interest thereon. Also exempt are fees for on-street metered parking and on-street parking permits.

Municipal corporations are also exempt from the B&O tax on grants received from the state of Washington, or the United States government. RCW 82.04.418.

(d) Municipal corporations deriving income, however designated, from any enterprise or public service business activity for which a specific charge is made are subject to the provisions of the B&O or public utility tax. Charges between departments of a particular municipal corporation are interdepartmental charges and not subject to tax. (See also WAC 458-20-201 on interdepartmental charges.)

(i) When determining whether an activity is an enterprise activity, user fees derived from the activity must be measured against total costs attributable to providing the activity, including direct and indirect overhead. This review should be performed on the fiscal or calendar year basis used by the entity in maintaining its books of account.

For example, a city operating an athletic and recreational facility determines that the facility generated two hundred fifty thousand dollars in user fees for the fiscal year. The total costs for operating the facility were four hundred thousand dollars. This figure includes direct operating costs and direct and indirect overhead, including asset depreciation and interest payments for the retirement of bonds issued to fund the facility's construction. The principal payments for the retirement of the bonds are not included because these costs are a part of the asset depreciation costs. The facility's operation is an enterprise activity because it is more than fifty percent funded by user fees.

(ii) An enterprise activity which is operated as a part of a governmental or nonenterprise activity is subject to the B&O tax. For example, City operates Community Center, a large athletic and recreational facility, and three smaller neighborhood centers. Community Center operates with its own budget, and the three neighborhood centers are lumped together and operated under a single separate budget. Community Center and the neighborhood centers are operated as a part of

an overall parks and recreation system, which is not more than fifty percent funded by user fees.

Each budget must be independently reviewed to determine whether these facilities are operated as enterprise activities. The operation of Community Center would be an enterprise activity only if the user fees account for more than fifty percent of Community Center's operating budget. The total user fees generated by the three neighborhood centers would be compared to the total costs of operating the three centers to determine whether they, as a whole, were operated as enterprise activity. Had each neighborhood center operated under an individual budget, the user fees generated by each neighborhood center would have been compared to the costs of operating that center.

**(4) Business and occupation tax.**

(a) Municipal corporations engaging in public service business activities should refer to the sections of chapter 458-20 WAC mentioned in subsection (1)(a) through (d) of this section to determine their B&O tax liability. Municipal corporations engaging in enterprise activities are subject to the B&O tax as follows:

(i) **Service and other business activities tax.** Amounts derived from, but not limited to, special event admission fees for concerts and exhibits, user fees for lockers and checkrooms, charges for moorage (less than thirty days), and the granting of a license to use real property are subject to the service and other business activities tax if these activities are considered enterprise activities. (See also WAC 458-20-118 on the sale or rental of real estate.) The service tax applies to fees charged for instruction in amusement and recreation activities, such as tennis or swimming lessons.

Prior to July 1, 1993, fees charged for physical fitness activities and saunas were subject to the service tax. These activities are a retail sale beginning July 1, 1993. Physical fitness activities include weight lifting, exercise facilities, aerobic classes, etc. (See also WAC 458-20-183 on amusement and recreation activities, etc.)

(ii) **Extracting tax.** The extracting of natural products for sale or for commercial use is subject to the extracting B&O tax. The measure of tax is the value of products. (See WAC 458-20-135 on extracting.) Counties and cities are not, however, subject to the extracting tax upon the cost of labor and services performed in the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, or rock taken from a pit or quarry owned by or leased to the county or city when these products are either stockpiled for placement or are placed on a street, road, place, or highway of the county or city by the county or city itself. Nor does the extracting tax apply to the cost of or charges for such labor and services if the sand, gravel, or rock is sold by the county or city to another county or city at actual cost for placement on a publicly owned street, road, place, or highway. RCW 82.04.415.

(iii) **Manufacturing tax.** The manufacturing of products for sale or for commercial use is subject to the manufacturing B&O tax. The measure of tax is the value of products. (See WAC 458-20-136 on manufacturing.) The manufacturing tax does not apply to the value of materials printed by counties, cities, towns, or school districts solely for their own use. RCW 82.04.397.

(iv) **Wholesaling tax.** The wholesaling tax applies to the gross proceeds derived from sales or rentals of tangible personal property to persons who resell the same without intervening use. The wholesaling tax does not, however, apply to casual sales. (See WAC 458-20-106 on casual sales.) Sellers must obtain resale certificates from their customers to support the wholesale nature of any transaction. (Refer to WAC 458-20-102 on resale certificates.)

(v) **Retailing tax.** User fees for off-street parking and garages, and charges for the sale or rental of tangible personal property to consumers are taxable under the retailing B&O tax. The retailing tax does not, however, apply to casual sales. (See WAC 458-20-106.) Fees for amusement and recreation activities, such as golf, swimming, racquetball, and tennis, are retail sales and subject to the retailing tax if the activities are considered enterprise activities. Charges for instruction in amusement and recreation activities are subject to the service tax. (See also WAC 458-20-183 and (a)(i) of this subsection.)

On and after July 1, 1993, charges for physical fitness and sauna services are classified as retail sales and subject to the retailing tax. (See chapter 25, Laws of 1993 sp. sess.) While a retail sales tax exemption for physical fitness classes provided by local governments is available on and after July 1, 1994, (see subsection (6)(h) of this section), the retailing B&O tax continues to apply.

(b) Persons selling products which they have extracted or manufactured must report, unless exempt by law, under both the "production" (extracting and/or manufacturing) and "selling" (wholesaling or retailing) classifications of the B&O tax, and claim a tax credit under the multiple activities tax credit system. (See WAC 458-20-19301 on multiple activities tax credits.)

**(5) Retail sales tax.**

(a) The retail sales tax generally applies to all retail sales made to the state of Washington, its departments and institutions, and to municipal corporations of the state.

(b) The state of Washington, its departments and institutions, and all municipal corporations are required to collect retail sales tax on all retail sales of tangible personal property or services classified as retail services unless specific exemptions apply. Retail sales tax must be collected and remitted even though the sale may be exempt from the retailing B&O tax. For example, a city police department must collect retail sales tax on casual sales of unclaimed property to consumers, even though this activity is not subject to the B&O tax because these sales are considered casual sales. (See also WAC 458-20-106.)

(c) Sales between a department or institution of the state and a municipal corporation, or between municipal corporations are retail sales. For example, State Agency sells office supplies to County. State Agency is making a retail sale. State Agency must collect and remit retail sales tax upon the amount charged, even though the B&O tax does not apply to this sale. The amount of retail sales tax must be separately itemized on the sales invoice. RCW 82.08.050. State Agency may claim a tax paid at source deduction for any retail sales or use tax previously paid on the acquisition of the office supplies. (See WAC 458-20-102 on purchases for dual purposes.)

(d) Departments or institutions of the state of Washington are not considered sellers when making sales to other

departments or institutions of the state because the state is considered to be a single entity. RCW 82.08.010(2). Therefore, the "selling" department or institution is not required by statute to collect the retail sales tax on these sales.

All departments or institutions of the state of Washington are, however, considered "consumers." RCW 82.08.010 (3). A department or institution of the state purchasing tangible personal property from another department or institution is required to remit to the department of revenue the retail sales or use tax upon that purchase, unless it can document that the "selling" institution previously paid the appropriate retail sales or use tax on that item.

(6) **Retail sales tax exemptions.** The retail sales tax does not apply to the following:

(a) Sales to city or county housing authorities which were created under the provisions of the Washington housing authorities law, chapter 35.82 RCW. However, prime contractors and subcontractors for city or county housing authorities should refer to WAC 458-20-17001 (Government contracting—Construction, installations, or improvements to government real property) to determine their tax liability.

(b) Charges to municipal corporations and the state of Washington for that portion of the selling price of contracts for watershed protection or flood control which is reimbursed by the United States government according to the provisions of the Watershed Protection and Flood Prevention Act, Public Law 566, as amended. RCW 82.08.0271.

(c) Sales of the entire operating property of a publicly or privately owned public utility, or of a complete operating integral section thereof, to the state or a municipal corporation thereof for use in conducting any public service business except a tugboat business. RCW 82.08.0256.

(d) Sales of or charges made for labor and services in the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, or rock taken from a pit or quarry owned or leased to a county or city, when the materials are either stockpiled in the pit or quarry, placed on the public road by the county or city itself, or sold at cost to another county or city for use on public roads. RCW 82.08.0275.

(e) Sales to one municipal corporation by another municipal corporation directly or indirectly arising out of, or resulting from, the annexation or incorporation of any part of the territory of one municipal corporation by another. RCW 82.08.0278.

(f) Sales to the state of Washington, or a municipal corporation in the state, of ferry vessels and component parts thereof, and charges for labor and services in respect to construction or improvement of such vessels. RCW 82.08.0285.

(g) Sales to the United States. However, sales to federal employees are subject to the retail sales tax, even if the federal employee will be reimbursed for the cost by the federal government. (See WAC 458-20-190 on sales to the United States.)

(h) On and after July 1, 1994, charges for physical fitness classes, such as aerobics classes, provided by local governments. RCW 82.08.0291. (See also chapter 85, Laws of 1994.) Local governments must collect retail sales tax on charges for other physical fitness activities such as weight lifting, exercise equipment, and running tracks.

This exemption does not apply if a person other than a local government provides the physical fitness class, even if the class is conducted at a local government facility.

(7) **Deferred sales or use tax.**

(a) If the seller fails to collect the appropriate retail sales tax, the state of Washington, its departments and institutions, and all municipal corporations are required to pay the deferred sales or use tax directly to the department.

(b) Purchases of cigarette stamps, vehicle license plates, license plate tabs, disability decals, or other items to evidence payment of a license, tax, or fee are purchases for consumption by the state or municipal corporation, and subject to the retail sales or use tax.

(c) Where tangible personal property or taxable services are purchased by the state of Washington, its departments and institutions, for the purpose of resale to any other department or institution of the state of Washington, or for the purpose of consuming the property purchased in manufacturing or producing for use or for resale to any other department or institution of the state of Washington a new article of which such property is an ingredient or component part, the transaction is deemed a purchase at retail and the retail sales tax applies.

(d) Persons producing or manufacturing products for commercial or industrial use are required to remit use tax upon the value of those products, unless a specific use tax exemption applies. RCW 82.12.020. This value must correspond as nearly as possible to the gross proceeds from retail sales of similar products. (See WAC 458-20-112 and 458-20-134 on value of products and commercial or industrial use, respectively.)

For example, a municipal corporation operating a print shop and producing forms or other documents for its own use must remit use tax upon the value of those products, even though a B&O tax exemption is provided by RCW 82.04.-397. The municipal corporation may claim a credit for retail sales tax previously paid on materials, such as paper or ink, which are incorporated into the manufactured product. The process of putting an internal communication, such as a memorandum to employees, on a blank form or document is not considered a manufacturing activity, even when multiple copies of the resulting internal communication are reproduced for wide distribution to employees.

(i) Counties and cities are not subject to use tax upon the cost of labor and services in the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, and rock taken from a pit or quarry owned or leased to a county or city when the materials are for use on public roads. RCW 82.12.0269.

(ii) If a department or institution of the state of Washington manufactures or produces tangible personal property for use or resale to any other department or institution of the state, use tax must be remitted upon the value of that article even though the state is not subject to the B&O tax.

For example, State Agency manufactures office furniture for resale to other departments or institutions of the state of Washington. State Agency will also on occasion use office furniture it has manufactured for its own offices. Use tax is due on the office furniture sold to the other departments or institutions of this state, and on the office furniture State Agency puts to its own use. The taxable value of the office furniture sold to the other departments or institutions of this

state is the selling price. The taxable value for the office furniture State Agency puts to its own use is the selling price at which State Agency sells comparable furniture to other departments or institutions of the state. When computing and remitting use tax upon the value of manufactured furniture, State Agency may claim a credit for retail sales or use taxes previously remitted on materials incorporated into that furniture. A department or institution of this state purchasing office furniture from State Agency must remit use tax upon the value of that furniture, unless it can document that State Agency paid use tax upon the appropriate value of the furniture. (See also subsection (5)(d) of this section.)

(e) A donee is generally subject to use tax upon the use of any donated item of tangible personal property, if the appropriate retail sales or use tax was not paid by the donor. Effective May 1, 1995, a use tax exemption is available to state or local governmental entities using tangible personal property donated to them. (See chapter 201, Laws of 1995.) The donor, however, remains liable for the retail sales or use tax on the donated property, even though the state or local governmental entity's use of the property is exempt of tax.

**(8) Persons subject to the public utility tax.**

(a) Persons deriving income subject to the provisions of the public utility tax may not claim a deduction for amounts received as compensation for services rendered to the state of Washington, its departments and institutions, or to municipal corporations thereof.

(b) The public utility tax does not apply to income received by the state of Washington, or its departments and institutions from providing public utility services.

(c) Municipal corporations operating public service businesses should refer to WAC 458-20-179 (Public utility tax), WAC 458-20-180 (Motor transportation, urban transportation), WAC 458-20-250 (Refuse-solid waste collection business—Core deposits and credits, battery core charges, and tires) and WAC 458-20-251 (Sewerage collection business) to determine their public utility tax liability.

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

(a) City operates a community center which provides a number of activities and services. The center charges fees for court activities including tennis and racquetball, general admission to the swimming pool, swimming lessons, aerobics classes, and the use of weight equipment. The community center also provides programs targeted at youth and senior populations. These programs include arts and craft classes, dance instruction classes, and day camps providing a wide variety of activities such as picnics, nature walks, volleyball, and other games. The center provides banquet and meeting rooms to civic groups for a fee, but does not provide a meal service with the banquet facilities. The community center's operation is an enterprise activity, because it is more than fifty percent funded by user fees.

City's tax liability for the fees charged by the community center are as follows:

(i) Retailing B&O and retail sales taxes apply to all charges for the court activities, general admission to the swimming pool, and the use of weight equipment;

(ii) The retailing B&O tax applies to fees charged for aerobics classes. Retail sales tax does not apply because of the sales tax exemption for physical fitness classes provided by local governments;

(iii) Service and other business activities B&O tax applies to all fees for swimming lessons, the arts and crafts classes, dance instruction classes, day camps, and the rental of the banquet and meeting rooms. Retail sales tax does not apply to any part of the charge for the day camp because the portion of the day camp activities considered to be retail is minimal.

(b) City operates a swimming pool located at a high school. This swimming pool is open to the public in the evenings. City charges user fees for swimming lessons, water exercise classes, and general admission to the pool. City will occasionally "rent" the pool to a private organization for the organization's own use. In these cases, the private organization controls the overall operation and admission to the facility. City has no authority to control access and/or use when "renting" the pool to these organizations. City compares the user fees generated by the swimming pool to the total costs associated with the operation of the pool on an annual basis. The user fees never total "more than fifty percent" of the cost of pool operation, therefore the operation of the pool is not an enterprise activity.

City must collect and remit retail sales tax on all retail sales for which a retail sales tax exemption is not available, even though the B&O tax does not apply. Retail sales tax must be charged and collected on all general admission charges. Retail sales tax does not apply to the water exercise classes because of the retail sales tax exemption provided for physical fitness classes provided by local governments. City would not collect retail sales tax on the charges for the swimming lessons or the "rental" of the pool to private businesses (license to use real estate) because these charges are not retail sales.

(c) City sponsors various baseball leagues as a part of City's efforts to provide recreational activities to its citizens. Teams joining a league are charged a "league fee." Individual participants are charged a "participation fee." The league fee entitles a team to join the league, and reserve the use of the ball fields for league games. The participation fee entitles an individual team member to participate in the baseball activity. City does not account for the operation of the ball fields under a single specific budget. The user fees generated from the baseball fields, as well as the costs of operating and maintaining these fields, are accounted for in City's overall parks and recreation system budget, which is not an enterprise activity.

The participation fees are retail sales and subject to the retail sales tax, because the team members pay these fees for the right to actually engage in an amusement and recreation activity. The league fees are not retail sales, because they simply entitle the teams to join an association of baseball teams that compete amongst themselves. (Refer also to WAC 458-20-183 on amusement and recreational activities.) The participation fees and league fees are not subject to the B&O tax, because these baseball fields are not operated as an enterprise activity. Had these fields been operated as an enterprise activity, the participation fees and league fees would also

have been subject to the retailing and service and other business activities B&O tax classifications, respectively.

(d) Jane Doe enters into a contract with City to provide an aerobics class at City's community center. Jane is responsible for providing the aerobics class. City merely "rents" a room to Jane under a license to use agreement.

Jane Doe must collect and remit retail sales tax upon the charges for the aerobics classes. The charges for the aerobics classes do not qualify for the retail sales tax exemption provided by RCW 82.08.0291 merely because the classes are held at a local government facility. Jane Doe is not entitled to the retail sales tax exemption available to local governments.

[Statutory Authority: RCW 82.32.300, 95-24-104, § 458-20-189, filed 12/6/95, effective 1/6/96; 86-18-069 (Order 86-16), § 458-20-189, filed 9/3/86; 85-22-041 (Order 85-6), § 458-20-189, filed 11/1/85; 85-04-016 (Order 85-1), § 458-20-189, filed 1/29/85; 83-07-033 (Order ET 83-16), § 458-20-189, filed 3/15/83; Order ET 70-3, § 458-20-189 (Rule 189), filed 5/29/70, effective 7/1/70.]

### **WAC 458-20-190 Sales to and by the United States, its departments, institutions and instrumentalities—Sales to foreign governments.**

#### **Business and Occupation Tax**

The United States, its departments, institutions and instrumentalities, including corporate instrumentalities, are not subject to tax under chapter 82.04 RCW.

In computing business tax liability of others, no deduction from value of products, gross sales or gross income is allowed in respect to business transacted with the United States, its departments, institutions or instrumentalities.

#### **Retail Sales Tax**

The retail sales tax does not apply to sales to the United States, its departments, institutions and instrumentalities, except sales to such institutions as have been chartered or created under federal authority, but which are not directly operated and controlled by the government for the benefit of the public generally.

Departments, instrumentalities or agencies which are directly operated and controlled by the federal government for the benefit of the public generally include, among others, the departments of Agriculture, Commerce, Interior (including the Bonneville Power Administration and the Tennessee Valley Authority), Justice, Labor, Post Office, State, and Treasury, also the National Military Establishment which includes the departments of the Army, the Navy and the Air Force. Also, the following federal agencies are exempt from payment of sales tax either by reason of congressional exemption in the course of their establishment or by reason of specific federal statutory exemption: The Civil Service Commission, Farm Credit Administration, Federal Housing Administration (including Housing and Urban Development), Federal Land Banks, Federal Reserve Banks, Home Owner's Loan Corporation, Interstate Commerce Commission, Rural Electrification Administration, Social Security Board, United States Maritime Commission, Veterans' Administration, and federally chartered credit unions, federal home loan banks, farm credit banks, export-import bank, Federal Savings and Loan Insurance Corporation, Federal Deposit Insurance Corporation, Federal Home Loan Mortgage Corporation, Government National Mortgage Association,

Federal National Mortgage Association, Farm Loan Associations, and Central Banks for Cooperatives, the stock of which is owned by the United States.

The retail sales tax does not apply to sales made by the United States, or any instrumentality thereof, or by voluntary unincorporated organizations of Army or Navy personnel to authorized purchasers within a federal area. The term "authorized purchasers" means civil employees and members of the armed forces of the United States who are permitted to purchase from such organizations under regulation by the secretaries of Navy, Army, Air Force, or Defense.

Sales to persons in the Army or Navy service of the United States, including civilian employees in such service, are not exempt from the retail sales tax, except where such sales are made to them as authorized purchasers by an instrumentality of the United States operating exclusively within a federal area. Furthermore, no exemption is permitted with respect to sales to or by voluntary unincorporated organizations of Army or Navy personnel which are not instrumentalities of the United States, national banking associations, persons licensed to engage in private businesses under federal statutes, or contractors engaged in performing contracts for the United States government. Likewise, the retail sales tax applies upon the sales made to the department of employment security of the state of Washington, irrespective of whether or not such department is reimbursed therefor with federal funds.

Sales to federal employees or representatives of the federal government are subject to sales tax, even though the federal government may reimburse them for all or a part of such expenses. Direct purchases by the federal government are sales tax exempt, but purchases by others whether with federal funds or through a reimbursement arrangement are fully subject to the retail sales tax.

**Foreign governments.** The retail sales tax does not apply to sales to a foreign government or to any department thereof.

#### **Use Tax**

The use tax does not apply upon the use of any article by the United States, its departments, institutions and instrumentalities, except institutions chartered or created under federal authority, but which are not directly operated and controlled by the government for the benefit of the public generally, nor does said tax apply upon the use of any article by a foreign government.

#### **Public Utility Tax**

In computing the public utility tax no deduction is allowed with respect to gross operating revenue derived from services supplied or furnished to the United States, its departments, institutions or instrumentalities.

[Statutory Authority: RCW 82.32.300, 83-07-033 (Order ET 83-16), § 458-20-190, filed 3/15/83; Order ET 75-1, § 458-20-190, filed 5/2/75; Order ET 70-3, § 458-20-190 (Rule 190), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-191 Federal reservations.** The state of Washington has jurisdiction and authority to levy and collect taxes under the provisions of the Revenue Act of 1935, as amended, upon persons residing within, or with respect to business transactions conducted upon federal reservations: Provided however, That no tax may be levied upon or col-

lected from the United States, its departments, institutions and instrumentalities or from any authorized purchaser therefrom. (See WAC 458-20-190.)

A concessionaire, operating within a federal area under a grant or permit issued by the United States or by a department or instrumentality thereof, is not exempt from state excise taxes, but is taxable to the same extent as any private operator engaging in a similar business outside a federal area and without specific authority from the United States.

The term "federal reservation," as used herein, means any land or premises within the exterior boundaries of the state of Washington which are held or acquired by and for the use of the United States, its departments, institutions or instrumentalities.

### **Business and Occupation Tax**

**Retailing and wholesaling.** Persons making retail or wholesale sales to persons residing within or conducting business upon federal reservations are taxable upon gross proceeds of sales under the retailing or wholesaling classification.

With respect to the tax liability of sales to the United States, its departments, institutions or instrumentalities under these classifications, see WAC 458-20-190.

**Service and other business activities.** Persons performing services within federal reservations are taxable under the service and other business activities classification upon the gross income derived therefrom, irrespective of the fact that such services are rendered for the United States, its departments, institutions or instrumentalities, or for military personnel.

### **Retail Sales Tax**

The retail sales tax applies to all retail sales made to or by persons residing within or conducting business upon federal reservations, excepting sales made to the United States, and also excepting sales made by the United States or an instrumentality thereof to authorized purchasers.

The retail sales tax applies upon retail sales made by concessionaires to military personnel and others.

### **Use Tax**

Persons residing within or conducting business upon federal reservations who produce or manufacture tangible personal property for commercial use or who purchase tangible personal property under conditions wherein the Washington retail sales tax has not been paid are subject to the provisions of the use tax.

The use tax does not apply to the use of property by the United States or any instrumentality thereof nor to the use of property sold by the United States or any instrumentality thereof to any authorized purchaser for use in such reservation. The term "authorized purchaser," as used herein, means and includes those persons who are permitted to purchase from voluntary unincorporated organizations of military personnel operating exclusively within federal reservations and authorized by the Secretary of Defense.

### **Cigarette Tax**

Washington cigarette tax stamps must be affixed to all cigarettes sold to persons residing within or conducting business upon federal reservations: Provided however, That such stamps need not be affixed to cigarettes sold to the United States or any instrumentality thereof including voluntary organizations of military personnel authorized by the Secretary of Defense or the Secretary of the Navy or by the United States or any instrumentality thereof to authorized purchasers, for use in such reservation.

ness upon federal reservations: Provided however, That such stamps need not be affixed to cigarettes sold to the United States or any instrumentality thereof including voluntary organizations of military personnel authorized by the Secretary of Defense or the Secretary of the Navy or by the United States or any instrumentality thereof to authorized purchasers, for use in such reservation.

[Statutory Authority: RCW 82.32.300. 83-07-033 (Order ET 83-16), § 458-20-191, filed 3/15/83; Order ET 75-1, § 458-20-191, filed 5/2/75; Order ET 70-3, § 458-20-191 (Rule 191), filed 5/29/70, effective 7/1/70.]

## **WAC 458-20-192 Indians—Indian country. (1)**

### **Introduction.**

(a) Under federal law the state may not tax Indians or Indian tribes in Indian country. In some instances the state's authority to impose tax on a nonmember doing business in Indian country with an Indian or an Indian tribe is also preempted by federal law. This rule only addresses those taxes administered by the department of revenue (department).

(b) The rules of construction used in analyzing the application of tax laws to Indians and nonmembers doing business with Indians are:

(i) Treaties are to be construed in the sense in which they would naturally have been understood by the Indians; and

(ii) Statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.

(c) This rule reflects the harmonizing of federal law, Washington state tax law, and the policies and objectives of the Centennial Accord and the Millennium Agreement. It is consistent with the mission of the department of revenue, which is to achieve equity and fairness in the application of the law.

(d) It is the department's policy and practice to work with individual tribes on a government-to-government basis to discuss and resolve areas of mutual concern.

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

(a) "Indian" means a person on the tribal rolls of an Indian tribe. A person on the tribal rolls is also known as an "enrolled member" or a "member" or an "enrolled person" or an "enrollee" or a "tribal member."

(b) "Indian country" has the same meaning as given in 18 U.S.C. 1151 and means:

(i) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights of way running through the reservation;

(ii) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and

(iii) All Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.

(c) "Indian tribe" means an Indian nation, tribe, band, community, or other entity recognized as an "Indian tribe" by the United States Department of the Interior. The phrase "federally recognized Indian tribe" and the term "tribe" have the same meaning as "Indian tribe."

(d) "Indian reservation" means all lands, notwithstanding the issuance of any patent, within the exterior boundaries of areas set aside by the United States for the use and occupancy of Indian tribes by treaty, law, or executive order and that are areas currently recognized as "Indian reservations" by the United States Department of the Interior. The term includes lands within the exterior boundaries of the reservation owned by non-Indians as well as land owned by Indians and Indian tribes and it includes any land that has been designated "reservation" by federal act.

(e) "Nonmember" means a person not on the tribal rolls of the Indian tribe.

(f) "State sales and use tax" includes local sales and use tax.

(3) **Federally recognized Indian tribes.** As of the effective date of this rule there are twenty-eight federally recognized Indian tribes in the state of Washington. You may contact the governor's office of Indian affairs for an up-to-date list of federally recognized Indian tribes in the state of Washington at its website, [www.goia.wa.gov](http://www.goia.wa.gov) or at:

Governor's Office of Indian Affairs  
531 15th Ave. S.E.  
P.O. Box 40909  
Olympia, WA 98504-0909  
360-753-2411

(4) **Recordkeeping.** Taxpayers are required to maintain appropriate records on the tax exempt status of transactions. For example, in the case of the refuse collection tax, the refuse collection company must substantiate the tax-exempt status of its customers. This could be done, for example, one of two ways. The tribe can provide the refuse collection company with a list of all of the tribal members living in Indian country or the individual members can provide exemption certificates to the company. A buyer's retail sales tax exemption certificate that can be used for this purpose is located on the department's website ([www.dor.wa.gov/forms/other.htm](http://www.dor.wa.gov/forms/other.htm)) or may be obtained by contacting the department. The company must then keep the list or the certificates in its files as proof of the tax exempt status of the tribe and its members. Individual businesses may contact the department to determine how best to keep records for specific situations.

(5) **Enrolled Indians in Indian country. Generally.** The state may not tax Indians or Indian tribes in Indian country. For the purposes of this rule, the term "Indian" includes only those persons who are enrolled with the tribe upon whose territory the activity takes place and does not include Indians who are members of other tribes. An enrolled member's spouse is considered an "Indian" for purposes of this rule if this treatment does not conflict with tribal law. This exclusion from tax includes all taxes (e.g., B&O tax, public utility tax, retail sales tax, use tax, cigarette tax). If the incidence of the tax falls on an Indian or a tribe, the tax is not imposed if the activity takes place in Indian country or the activity is treaty fishing rights related activity (see subsection (6)(b) of this rule). "Incidence" means upon whom the tax falls. For example, the incidence of the retail sales tax is on the buyer.

(a)(i) **Retail sales tax - tangible personal property - delivery threshold.** Retail sales tax is not imposed on sales to Indians if the tangible personal property is delivered to the

member or tribe in Indian country or if the sale takes place in Indian country. For example, if the sale to the member takes place at a store located on a reservation, the transaction is automatically exempt from sales tax and there is no reason to establish "delivery."

(ii) **Retail sales tax - services.** The retail sales tax is not imposed if the retail service (e.g., construction services) is performed for the member or tribe in Indian country. In the case of a retail service that is performed both on and off Indian country, only the portion of the contract that relates to work done in Indian country is excluded from tax. The work done for a tribe or Indian outside of Indian country, for example road work that extends outside of Indian country, is subject to retail sales tax.

(b) **Use tax.** Use tax is not imposed when tangible personal property is acquired in Indian country by an Indian or the tribe for at least partial use in Indian country. For purposes of this rule, acquisition in Indian country creates a presumption that the property is acquired for partial use in Indian country.

(c) **Tax collection.** Generally, sales to persons other than Indians are subject to the retail sales tax irrespective of where in this state delivery or rendition of services takes place. Sellers are required to collect and remit to the state the retail sales tax upon each taxable sale made by them to nonmembers in Indian country. A tribe and the department may enter into an agreement covering the collection of state tax by tribal members or the tribe. (See also the discussion regarding preemption of tax in subsection (7) of this rule.)

In order to substantiate the tax-exempt status of a retail sale to a person who is a tribal member, unless the purchaser is personally known to the seller as a member, the seller must require presentation of a tribal membership card or other suitable identification of the purchaser as an enrollee of the Indian tribe. A tribe and the department may enter into an agreement covering identification of enrolled members, in which case the terms of the agreement govern.

A person's tax status under the Revenue Act does not change simply because he or she is making a tax-exempt sale to a tribe or tribal member. For example, a person building a home for a nonmember/consumer is entitled to purchase subcontractor services and materials to be incorporated into the home at wholesale. See RCW 82.04.050. A person building a home for a tribal member/consumer in Indian country is similarly entitled to purchase these services and materials at wholesale. The fact that the constructing of the home for the tribal member/consumer is exempt from retail sales tax has no impact on the taxability of the purchases of materials, and the materials continue to be purchased for resale.

(d) **Corporations or other entities owned by Indians.** A state chartered corporation comprised solely of Indians is not subject to tax on business conducted in Indian country if all of the owners of the corporation are enrolled members of the tribe except as otherwise provided in this section. The corporation is subject to tax on business conducted outside of Indian country, subject to the exception for treaty fishery activity as explained later in this rule. Similarly, partnerships or other entities comprised solely of enrolled members of a tribe are not subject to tax on business conducted in Indian country. In the event that the composition includes a family member who is not a member of the tribe, for instance a busi-

ness comprised of a mother who is a member of the Chehalis Tribe and her son who is a member of the Squaxin Island Tribe, together doing business on the Chehalis reservation, the business will be considered as satisfying the "comprised solely" criteria if at least half of the owners are enrolled members of the tribe.

**(6) Indians outside Indian country.**

(a) **Generally.** Except for treaty fishery activity, Indians conducting business outside of Indian country are generally subject to tax (e.g., the B&O, the public utility tax, retail sales tax). Indians or Indian tribes who conduct business outside Indian country must register with the department as required by RCW 82.32.030. (See also WAC 458-20-101 for more registration information.)

(b) **Treaty fishery - preemption.** For the purpose of this rule, "treaty fishery" means the fishing and shellfish rights preserved in a tribe's treaty, a federal executive order, or an act of Congress. It includes activities such as harvesting, processing, transporting, or selling, as well as activities such as management and enforcement.

(i) **Indians - B&O tax.** The gross income directly derived from treaty fishing rights related activity is not subject to state tax. This exclusion from tax is limited to those businesses wholly owned and operated by Indians/tribe who have treaty fishing rights. If a business wholly owned and operated by Indians/tribe deals with both treaty and nontreaty fish, this exclusion from tax is limited to the business attributable to the treaty fish. "Wholly owned and operated" includes entities that meet the qualifications under 26 U.S.C. 7873, which requires that:

(A) Such entity is engaged in a fishing rights-related activity of such tribe;

(B) All of the equity interests in the entity are owned by qualified Indian tribes, members of such tribes, or their spouses;

(C) Except as provided in the code of federal regulations, in the case of an entity which engages to any extent in any substantial processing or transporting of fish, ninety percent or more of the annual gross receipts of the entity is derived from fishing rights-related activities of one or more qualified Indian tribes each of which owns at least ten percent of the equity interests in the entity; and

(D) Substantially all of the management functions of the entity are performed by members of qualified Indian tribes.

(ii) **Indians - sales and use tax.** The retail sales tax and use tax do not apply to the services or tangible personal property for use in the treaty fishery, regardless of where delivery of the item or performance of the service occurs. Gear, such as boats, motors, nets, and clothing, purchased or used by Indians in the treaty fishery is not subject to sales or use tax. Likewise, retail services in respect to property used in the treaty fishery, such as boat or engine repair, are not subject to sales tax.

(iii) **Sales to nonmembers.** Treaty fish and shellfish sold by members of the tribe are not subject to sales tax or use tax, regardless of where the sale takes place due to the sales and use tax exemption for food products.

(iv) **Government-to-government agreement.** A tribe and the department may enter into an agreement covering the treaty fishery and taxable activities of enrolled members, in which case the terms of the agreement govern.

(7) **Nonmembers in Indian country - preemption of state tax.** Generally, a nonenrolled person doing business in Indian country is subject to tax. Unless specifically described as preempted by this rule, the department will review transactions on a case-by-case basis to determine whether tax applies. A nonmember who is not taxable on the basis of preemption should refer to WAC 458-20-101 (tax registration) to determine whether the person must register with the department.

(a) **Preemption of tax on nonmembers - gaming.** Gaming by Indian tribes is regulated by the federal Indian Gaming Regulatory Act. Nonmembers who operate or manage gaming operations for Indian tribes are not subject to tax for business conducted in Indian country. This exclusion from tax applies to taxes imposed on income attributable to the business activity (e.g., the B&O tax), and to sales and use tax on the property used in Indian country to conduct the activity. Sales tax will apply if delivery of property is taken outside of Indian country.

Nonmembers who purchase tangible personal property at a gaming facility are subject to retail sales or use tax, unless:

(i) The item is preempted based on the outcome of the balancing test. For example, depending on the relative state, tribal, and federal interests, tax on food at restaurants or lounges owned and operated by the tribe or a tribal member or sales of member arts and crafts at gift shops might be preempted. See the balancing test discussion in subsection (c) below; or

(ii) The item is purchased for use in the gaming activity at the facility, such as bingo cards or daubers.

(b) **Preemption of B&O and public utility tax - sales of tangible personal property or provision of services by nonmembers in Indian country.** As explained in this subsection, income from sales in Indian country of tangible personal property to, and from the performance of services in Indian country for, tribes and tribal members is not subject to B&O (chapter 82.04 RCW) or public utility tax (chapters 82.16 and 54.28 RCW). The taxpayer is responsible for maintaining suitable records so that the taxpayer and the department can distinguish between taxable and nontaxable activities.

(i) **Sales of tangible personal property.** Income from sales of tangible personal property to the tribe or to tribal members is not subject to B&O tax if the tangible personal property is delivered to the buyer in Indian country and if:

(A) The property is located in Indian country at the time of sale; or

(B) The seller has a branch office, outlet, or place of business in Indian country that is used to receive the order or distribute the property; or

(C) The sale of the property is solicited by the seller while the seller is in Indian country.

(ii) **Provision of services.** Income from the performance of services in Indian country for the tribe or for tribal members is not subject to the B&O or public utility tax. Services performed outside of Indian country are subject to tax. In those instances where services are performed both on and off of Indian country, the activity is subject to state tax to the extent that services are substantially performed outside of Indian country.

(A) It will be presumed that a professional service (e.g., accounting, legal, or dental) is substantially performed outside of Indian country if twenty-five percent or more of the time taken to perform the service occurs outside of Indian country. The portion of income subject to state tax is determined by multiplying the gross receipts from the activity by the quotient of time spent outside of Indian country performing the service divided by total time spent performing the service.

For example, an accountant with an office outside of Indian country provides accounting services to a tribal member. The accountant performs some of the work at the office and some work at the business of the tribal member in Indian country. If at least twenty-five percent of the time performing the work is spent outside of Indian country, the services are substantially performed outside of Indian country and therefore a portion is subject to state tax. As explained above, the accountant must maintain suitable records to distinguish between taxable and nontaxable income in order to provide for a reasonable approximation of the amount of gross income subject to B&O tax. In this case, suitable records could be a log of the time and location of the services performed for the tribal matter by the accountant, his or her employees, and any contractors hired by the accountant.

(B) For services subject to the retailing and/or wholesaling B&O tax (e.g., building, installing, improving, or repairing structures or tangible personal property), the portion of income relative to services actually performed outside of Indian country is subject to state tax.

For example, a contractor enters into a contract with a tribe to install a sewer line that extends off reservation. Only the income attributable to the installation of the portion of the sewer line off reservation is subject to state tax.

(C) For public utility services under chapters 82.16 and 54.28 RCW it will be presumed that the service is provided where the customer receives the service.

(c) **Preemption of tax on nonmembers - balancing test - value generated on the reservation.** In certain instances state sales and use tax may be preempted on nonmembers who purchase goods or services from a tribe or tribal members in Indian country. The U.S. supreme court has identified a number of factors to be considered when determining whether a state tax borne by non-Indians is preempted, including: The degree of federal regulation involved, the respective governmental interests of the tribes and states (both regulatory and revenue raising), and the provision of tribal or state services to the party the state seeks to tax. See *Salt River Pima-Maricopa Indian Community v. Waddell*, 50 F.3d 734, (1995). This analysis is known as the "balancing test." This preemption analysis does not extend to subsequent transactions, for example if the purchaser buys for resale the tax imposed on the consumer in the subsequent sale is not preempted. However, because these balancing test determinations are so fact-based, the department will rule on these issues on a case-by-case basis. For such a ruling please contact the department at:

Department of Revenue  
Executive  
P.O. Box 47454  
Olympia, WA 98504-7454

(d) **Federal contractors.** The preemption analysis does not extend to persons who are doing work for the federal government in Indian country. For example, a nonmember doing road construction for the Bureau of Indian Affairs within an Indian reservation is subject to state tax jurisdiction.

(e) **Indian housing authorities.** RCW 35.82.210 provides that the property of housing authorities and the housing authorities themselves are exempt from taxes, such as state and local sales and use taxes, state and local excise taxes, state and local property taxes, and special assessments. This covers tribal housing authorities and intertribal housing authorities both on and off of Indian land. Please note that tribal housing authorities, like all other housing authorities, are exempt from tax anywhere in the state, and the delivery requirement and other geographic thresholds are not applicable.

Not all assessments are exempted under RCW 35.82.-210. See *Housing Authority of Sunnyside v. Sunnyside Valley Irrigation District*, 112 Wn2d 262 (1989).

For the purposes of the exemption:

(i) "Intertribal housing authority" means a housing authority created by a consortium of tribal governments to operate and administer housing programs for persons of low income or senior citizens for and on behalf of such tribes.

(ii) "Tribal government" means the governing body of a federally recognized Indian tribe.

(iii) "Tribal housing authority" means the tribal government or an agency or branch of the tribal government that operates and administers housing programs for persons of low income or senior citizens.

(8) **Motor vehicles, trailers, snowmobiles, etc., sold to Indians or Indian tribes.** Sales tax is not imposed when a motor vehicle, trailer, snowmobile, off-road vehicle, or other such property is delivered to an Indian or the tribe in Indian country or if the sale is made in Indian country. Similarly, use tax is not imposed when such an item is acquired in Indian country by an Indian or the tribe for at least partial use in Indian country. For purposes of this rule, acquisition in Indian country creates a presumption that the property is acquired for partial use in Indian country.

(a) **Registration of vehicle, trailer, etc.** County auditors, subagencies appointed under RCW 46.01.140, and department of licensing vehicle licensing offices must collect use tax when Indians or Indian tribes apply for an original title transaction or transfer of title issued on a vehicle or vessel under chapters 46.09, 46.10, 46.12, or 88.02 RCW unless the tribe/Indian shows that they are not subject to tax. To substantiate that they are not subject to tax the Indian/tribe must show that they previously paid retail sales or use tax on their acquisition or use of the property, or that the property was acquired on or delivered to Indian country. The person claiming the exclusion from tax must sign a declaration of delivery to or acquisition in Indian country. A statement in substantially the following form will be sufficient to establish eligibility for the exclusion from sales and use tax.

(b) **Declaration.**

*DECLARATION OF DELIVERY OR ACQUISITION IN INDIAN COUNTRY*

The undersigned is (circle one) an enrolled member of the tribe/authorized representative of the tribe or tribal enter-

prise, and the property was delivered/acquired within Indian country, for at least partial use in Indian country.

name of buyer  
date of delivery/acquisition  
address of delivery/acquisition

(9) **Miscellaneous taxes.** The state imposes a number of excise taxes in addition to the most common excise taxes administered by the department (e.g., B&O, public utility, retail sales, and use taxes). The following is a brief discussion of some of these taxes.

(a) **Cigarette tax.** The statutory duties applicable to administration and enforcement of the cigarette tax are divided between the department and the liquor control board. Enforcement of nonvoluntary compliance is the responsibility of the liquor control board. Voluntary compliance is the responsibility of the department of revenue. See chapter 82.24 RCW for specific statutory requirements regarding purchase of cigarettes by Indians and Indian tribes. For a specific ruling regarding the taxability of and stamping requirements for cigarettes manufactured by Indians or Indian tribes in Indian country, please contact the department at:

Department of Revenue  
Executive  
P.O. Box 47454  
Olympia, WA 98504-7454

Where sales of cigarettes are the subject of a government-to-government cooperative agreement, the provisions of that agreement supersede conflicting provisions of this subsection.

(i) Sales of cigarettes to nonmembers by Indians or Indian tribes are subject to the cigarette tax. The wholesaler is obligated to make precollection of the tax. Therefore, Indian or tribal sellers making sales to non-Indian customers must (A) purchase a stock of cigarettes with Washington state cigarette tax stamps affixed for the purpose of making such sales or (B) they may make purchases of cigarettes from licensed cigarette distributors for resale to qualified purchasers or (C) may purchase a stock of untaxed unstamped cigarettes for resale to qualified purchasers if the tribal seller gives advance notice under RCW 82.24.250 and Rule 186.

For purposes of this rule, "qualified purchaser" means an Indian purchasing for resale within Indian country to other Indians or an Indian purchasing solely for his or her use other than for resale.

(ii) Delivery or sale and delivery by any person of stamped exempt cigarettes to Indians or tribal sellers for sale to qualified purchasers may be made only in such quantity as is approved in advance by the department. Approval for delivery will be based upon evidence of a valid purchase order of a quantity reasonably related to the probable demand of qualified purchasers in the trade territory of the seller. Evidence submitted may also consist of verified record of previous sales to qualified purchasers, the probable demand as indicated by average cigarette consumption for the number of qualified purchasers within a reasonable distance of the seller's place of business, records indicating the percentage of such trade that has historically been realized by the seller, or such other statistical evidence submitted in support of the proposed transaction. In the absence of such evidence the department may restrict total deliveries of stamped exempt

cigarettes to Indian country or to any Indian or tribal seller thereon to a quantity reasonably equal to the national average cigarette consumption per capita, as compiled for the most recently completed calendar or fiscal year, multiplied by the resident enrolled membership of the affected tribe.

(iii) Any delivery, or attempted delivery, of unstamped cigarettes to an Indian or tribal seller without advance notice to the department will result in the treatment of those cigarettes as contraband and subject to seizure. In addition, the person making or attempting such delivery will be held liable for payment of the cigarette tax and penalties. See chapter 82.24 RCW.

Approval for sale or delivery to Indian or tribal sellers of stamped exempt cigarettes will be denied where the department finds that such Indian or tribal sellers are or have been making sales in violation of this rule.

(iv) Delivery of stamped exempt cigarettes by a licensed distributor to Indians or Indian tribes must be by bonded carrier or the distributor's own vehicle to Indian country. Delivery of stamped exempt cigarettes outside of Indian country at the distributor's dock or place of business or any other location outside of Indian country is prohibited unless the cigarettes are accompanied by an invoice.

(b) **Refuse collection tax.** Indians and Indian tribes are not subject to the refuse collection tax for service provided in Indian country, regardless of whether the refuse collection company hauls the refuse off of Indian country.

(c) **Leasehold excise tax.** Indians and Indian tribes in Indian country are not subject to the leasehold excise tax. Leasehold interests held by nonenrolled persons are subject to tax.

(d) **Fish tax.** Chapter 82.27 RCW imposes a tax on the commercial possession of enhanced food fish, which includes shellfish. The tax is imposed on the fish buyer. The measure of the tax is the value of the enhanced food fish at the point of landing. A credit is allowed against the amount of tax owed for any tax previously paid on the same food fish to any legally established taxing authority, which includes Indian tribes. Transactions involving treaty fish are not subject to the fish tax, regardless of where the transaction takes place.

(e) **Tobacco tax.** The tobacco tax is imposed on "distributors" as that term is defined in RCW 82.26.010. Tobacco tax is not imposed on Indian persons or tribes who take delivery of the tobacco in Indian country. Effective July 1, 2002, persons who handle for sale any tobacco products that are within this state but upon which tax has not been imposed are subject to the tobacco tax. Chapter 325, Laws of 2002. Thus, persons purchasing tobacco products for resale from Indians who are exempt from the tobacco tax are subject to tobacco tax on the product. See WAC 458-20-185, Tax on tobacco products.

(f) **Real estate excise tax.** The real estate excise tax is imposed on the seller. A sale of land located in Indian country by a tribe or a tribal member is not subject to real estate excise tax. A sale of land located within Indian country by a nonmember to the tribe or to a tribal member is subject to real estate excise tax.

(g) **Timber excise tax.** Payment of the timber excise tax is the obligation of the harvester. The tribe or tribal members are not subject to the timber excise tax in Indian country.

Generally, timber excise tax is due from a nonmember who harvests timber on fee land within Indian country. Timber excise tax is not due if the timber being harvested is on trust land or is owned by the tribe and located in Indian country, regardless of the identity of the harvester. There are some instances in which the timber excise tax might be preempted on non-Indians harvesting timber on fee land in Indian country due to tribal regulatory authority. For such a ruling please contact the department at:

Department of Revenue  
Executive  
P.O. Box 47454  
Olympia, WA 98504-7454

[Statutory Authority: RCW 82.32.300, 02-14-133, § 458-20-192, filed 7/2/02, effective 8/2/02; 00-24-050A, § 458-20-192, filed 11/30/00, effective 1/1/01; 80-17-026 (Order ET 80-3), § 458-20-192, filed 11/14/80; Order ET 76-4, § 458-20-192, filed 11/12/76; Order ET 74-5, § 458-20-192, filed 12/16/74; Order ET 70-3, § 458-20-192 (Rule 192), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-193 Inbound and outbound interstate sales of tangible personal property.** (1) **Introduction.** This section explains Washington's B&O tax and retail sales tax applications to interstate sales of tangible personal property. It covers the outbound sales of goods originating in this state to persons outside this state and of inbound sales of goods originating outside this state to persons in this state. This section does not include import and export transactions.

(2) **Definitions:** For purposes of this section the following terms mean:

(a) "State of origin" means the state or place where a shipment of tangible personal property (goods) originates.

(b) "State of destination" means the state or place where the purchaser/consignee or its agent receives a shipment of goods.

(c) "Delivery" means the act of transferring possession of tangible personal property. It includes among others the transfer of goods from consignor to freight forwarder or for-hire carrier, from freight forwarder to for-hire carrier, one for-hire carrier to another, or for-hire carrier to consignee.

(d) "Receipt" or "received" means the purchaser or its agent first either taking physical possession of the goods or having dominion and control over them.

(e) "Agent" means a person authorized to receive goods with the power to inspect and accept or reject them.

(f) "Nexus" means the activity carried on by the seller in Washington which is significantly associated with the seller's ability to establish or maintain a market for its products in Washington.

(3) **Outbound sales.** Washington state does not assess its taxes on sales of goods which originate in Washington if receipt of the goods occurs outside Washington.

(a) Where tangible personal property is located in Washington at the time of sale and is received by the purchaser or its agent in this state, or the purchaser or its agent exercises ownership over the goods inconsistent with the seller's continued dominion over the goods, the sale is subject to tax under the retailing or wholesaling classification. The tax applies even though the purchaser or its agent intends to and thereafter does transport or send the property out-of-state for use or resale there, or for use in conducting interstate or for-

eign commerce. It is immaterial that the contract of sale or contract to sell is negotiated and executed outside the state or that the purchaser resides outside the state.

(b) Where the seller delivers the goods to the purchaser who receives them at a point outside Washington neither retailing nor wholesaling business tax is applicable. This exemption applies even in cases where the shipment is arranged through a for-hire carrier or freight consolidator or freight forwarder acting on behalf of either the seller or purchaser. It also applies whether the shipment is arranged on a "freight prepaid" or a "freight collect" basis. The shipment may be made by the seller's own transportation equipment or by a carrier for-hire. For purposes of this section, a for-hire carrier's signature does not constitute receipt upon obtaining the goods for shipment unless the carrier is acting as the purchaser's agent and has express written authority from the purchaser to accept or reject the goods with the right of inspection.

**(4) Proof of exempt outbound sales.**

(a) If either a for-hire carrier or the seller itself carries the goods for receipt at a point outside Washington, the seller is required to retain in its records documentary proof of the sales and delivery transaction and that the purchaser in fact received the goods outside the state in order to prove the sale is tax exempt. Acceptable proofs, among others, will be:

(i) The contract or agreement of sale, if any, **And**

(ii) If shipped by a for-hire carrier, a waybill, bill of lading or other contract of carriage indicating the seller has delivered the goods to the for-hire carrier for transport to the purchaser or the purchaser's agent at a point outside the state with the seller shown on the contract of carriage as the consignor (or other designation of the person sending the goods) and the purchaser or its agent as consignee (or other designation of the person to whom the goods are being sent); or

(iii) If sent by the seller's own transportation equipment, a trip-sheet signed by the person making delivery for the seller and showing:

The seller's name and address,

The purchaser's name and address,

The place of delivery, if different from purchaser's address,

The time of delivery to the purchaser together with the signature of the purchaser or its agent acknowledging receipt of the goods at the place designated outside the state of Washington.

(b) Delivery of the goods to a freight consolidator, freight forwarder or for-hire carrier merely utilized to arrange for and/or transport the goods is not receipt of the goods by the purchaser or its agent unless the consolidator, forwarder or for-hire carrier has express written authority to accept or reject the goods for the purchaser with the right of inspection. See also WAC 458-20-174, 458-20-175, 458-20-176, 458-20-177, 458-20-238 and 458-20-239 for certain statutory exemptions.

**(5) Other B&O taxes - outbound and inbound sales.**

(a) **Extracting, manufacturing.** Persons engaged in these activities in Washington and who transfer or make delivery of such produced articles for receipt at points outside the state are subject to business tax under the extracting or manufacturing classification and are not subject to tax under the retailing or wholesaling classification. See also WAC

458-20-135 and 458-20-136. The activities taxed occur entirely within the state, are inherently local, and are conducted prior to the commercial journey. The tax is measured by the value of products as determined by the selling price in the case of articles on which the seller performs no further manufacturing after transfer out of Washington. It is immaterial that the value so determined includes an additional increment of value because the sale occurs outside the state. If the seller performs additional manufacturing on the article after transferring the article out-of-state, the value should be measured under the principles contained in WAC 458-20-112.

(b) **Extracting or processing for hire, printing and publishing, repair or alteration of property for others.** These activities when performed in Washington are also inherently local and the gross income or total charge for work performed is subject to business tax, since the operating incidence of the tax is upon the business activity performed in this state. No deduction is permitted even though the articles produced, imprinted, repaired or altered are delivered to persons outside the state. It is immaterial that the customers are located outside the state, that the work was negotiated or contracted for outside the state, or that the property was shipped in from outside the state for such work.

(c) **Construction, repair.** Construction or repair of buildings or other structures, public road construction and similar contracts performed in this state are inherently local business activities subject to B&O tax in this state. This is so even though materials involved may have been delivered from outside this state or the contracts may have been negotiated outside this state. It is immaterial that the work may be performed in this state by foreign sellers who performed preliminary services outside this state.

(d) **Renting or leasing of tangible personal property.** Lessors who rent or lease tangible personal property for use in this state are subject to B&O tax upon their gross proceeds from such rentals for periods of use in this state. Proration of tax liability based on the degree of use in Washington of leased property is required.

It is immaterial that possession of the property leased may have passed to the lessee outside the state or that the lease agreement may have been consummated outside the state. Lessors will not be subject to B&O tax if all of the following conditions are present:

(i) The equipment is not located in Washington at the time the lessee first takes possession of the leased property; and

(ii) The lessor has no reason to know that the equipment will be used by the lessee in Washington; and

(iii) The lease agreement does not require the lessee to notify the lessor of subsequent movement of the property into Washington and the lessor has no reason to know that the equipment may have been moved to Washington.

(6) **Retail sales tax - outbound sales.** The retail sales tax generally applies to all retail sales made within this state. The legal incidence of the tax is upon the purchaser, but the seller is obligated to collect and remit the tax to the state. The retail sales tax applies to all sales to consumers of goods located in the state when goods are received in Washington by the purchaser or its agent, irrespective of the fact that the purchaser may use the property elsewhere. However, as indicated in subsection (4)(b), delivery of the goods to a freight consoli-

dator, freight forwarder or for-hire carrier arranged either by the seller or the purchaser, merely utilized to arrange for and/or transport the goods out-of-state is not receipt of the goods by the purchaser or its agent in this state, unless the consolidator, forwarder or for-hire carrier has express written authority to accept or reject the goods for the purchaser with the right of inspection.

(a) The retail sales tax does not apply when the seller delivers the goods to the purchaser who receives them at a point outside the state, or delivers the same to a for-hire carrier consigned to the purchaser outside the state. This exemption applies even in cases where the shipment is arranged through a for-hire carrier or freight consolidator or freight forwarder acting on behalf of either the seller or the purchaser. It also applies regardless of whether the shipment is arranged on a "freight prepaid" or a "freight collect" basis and regardless of who bears the risk of loss. The seller must retain proof of exemption as outlined in subsection (4), above.

(b) RCW 82.08.0273 provides an exemption from the retail sales tax to certain nonresidents of Washington for purchases of tangible personal property for use outside this state when the nonresident purchaser provides proper documentation to the seller. This statutory exemption is available only to residents of states and possessions or Province of Canada other than Washington when the jurisdiction does not impose a retail sales tax of three percent or more. These sales are subject to B&O tax.

(c) A statutory exemption (RCW 82.08.0269) is allowed for sales of goods for use in states, territories and possessions of the United States which are not contiguous to any other state (Alaska, Hawaii, etc.), but only when, as a necessary incident to the contract of sale, the seller delivers the property to the purchaser or its designated agent at the usual receiving terminal of the for-hire carrier selected to transport the goods, under such circumstance that it is reasonably certain that the goods will be transported directly to a destination in such noncontiguous states, territories and possessions. As proof of exemption, the seller must retain the following as part of its sales records:

(i) A certification of the purchaser that the goods will not be used in the state of Washington and are intended for use in the specified noncontiguous state, territory or possession.

(ii) Written instructions signed by the purchaser directing delivery of the goods to a dock, depot, warehouse, airport or other receiving terminal for transportation of the goods to their place of ultimate use. Where the purchaser is also the carrier, delivery may be to a warehouse receiving terminal or other facility maintained by the purchaser when the circumstances are such that it is reasonably certain that the goods will be transported directly to their place of ultimate use.

(iii) A dock receipt, memorandum bill of lading, trip sheet, cargo manifest or other document evidencing actual delivery to such dock, depot, warehouse, freight consolidator or forwarder, or receiving terminal.

(iv) The requirements of (i) and (ii) above may be complied with through the use of a blanket exemption certificate as follows:

Exemption Certificate

We hereby certify that all of the goods which we have purchased and which we will purchase from you will not be used in the State of Washington but are for use in the state, territory or possession of. . . . .

You are hereby directed to deliver all such goods to the following dock, depot, warehouse, freight consolidator, freight forwarder, transportation agency or other receiving terminal:

.....  
.....

for the transportation of those goods to their place of ultimate use.

This certificate shall be considered a part of each order that we have given you and which we may hereafter give to you, unless otherwise specified, and shall be valid until revoked by us in writing.

DATED . . . . .

.....  
(Purchaser)  
By . . . . .  
(Officer or Purchaser's  
Representative)  
Address . . . . .

(v) There is no business and occupation tax deduction of the gross proceeds of sales of goods for use in noncontiguous states unless the goods are received outside Washington.

(d) See WAC 458-20-173 for explanation of sales tax exemption in respect to charges for labor and materials in the repair, cleaning or altering of tangible personal property for nonresidents when the repaired property is delivered to the purchaser at an out-of-state point.

(7) **Inbound sales.** Washington does not assert B&O tax on sales of goods which originate outside this state unless the goods are received by the purchaser in this state and the seller has nexus. There must be both the receipt of the goods in Washington by the purchaser and the seller must have nexus for the B&O tax to apply to a particular sale. The B&O tax will not apply if one of these elements is missing.

(a) Delivery of the goods to a freight consolidator, freight forwarder or for-hire carrier located outside this state merely utilized to arrange for and/or transport the goods into this state is not receipt of the goods by the purchaser or its agent unless the consolidator, forwarder or for-hire carrier has express written authority to accept or reject the goods for the purchaser with the right of inspection.

(b) When the sales documents indicate the goods are to be shipped to a buyer in Washington, but the seller delivers the goods to the buyer at a location outside this state, the seller may use the proofs of exempt sales contained in subsection 4 to establish the fact of delivery outside Washington.

(c) If a seller carries on significant activity in this state and conducts no other business in the state except the business of making sales, this person has the distinct burden of establishing that the instate activities are not significantly associated in any way with the sales into this state. Once nexus has been established, it will continue throughout the statutory period of RCW 82.32.050 (up to five years), not-

withstanding that the instate activity which created the nexus ceased. Persons taxable under the service B&O tax classification should refer to WAC 458-20-194. The following activities are examples of sufficient nexus in Washington for the B&O tax to apply:

(i) The goods are located in Washington at the time of sale and the goods are received by the customer or its agent in this state.

(ii) The seller has a branch office, local outlet or other place of business in this state which is utilized in any way, such as in receiving the order, franchise or credit investigation, or distribution of the goods.

(iii) The order for the goods is solicited in this state by an agent or other representative of the seller.

(iv) The delivery of the goods is made by a local outlet or from a local stock of goods of the seller in this state.

(v) The out-of-state seller, either directly or by an agent or other representative, performs significant services in relation to establishment or maintenance of sales into the state, even though the seller may not have formal sales offices in Washington or the agent or representative may not be formally characterized as a "salesperson".

(vi) The out-of-state seller, either directly or by an agent or other representative in this state, installs its products in this state as a condition of the sale.

(8) **Retail sales tax - inbound sales.** Persons engaged in selling activities in this state are required to be registered with the department of revenue. Sellers who are not required to be registered may voluntarily register for the collection and reporting of the use tax. The retail sales tax must be collected and reported in every case where the retailing B&O tax is due as outlined in subsection 7. If the seller is not required to collect retail sales tax on a particular sale because the transaction is disassociated from the instate activity, it must collect the use tax from the buyer.

(9) **Use tax - inbound sales.** The following sets forth the conditions under which out-of-state sellers are required to collect and remit the use tax on goods received by customers in this state. A seller is required to pay or collect and remit the tax imposed by chapter 82.12 RCW if within this state it directly or by any agent or other representative:

(i) Has or utilizes any office, distribution house, sales house, warehouse, service enterprise or other place of business; or

(ii) Maintains any inventory or stock of goods for sale; or

(iii) Regularly solicits orders whether or not such orders are accepted in this state; or

(iv) Regularly engages in the delivery of property in this state other than by for-hire carrier or U.S. mail; or

(v) Regularly engages in any activity in connection with the leasing or servicing of property located within this state.

(a) The use tax is imposed upon the use, including storage preparatory to use in this state, of all tangible personal property acquired for any use or consumption in this state unless specifically exempt by statute. The out-of-state seller may have nexus to require the collection of use tax without personal contact with the customer if the seller has an extensive, continuous, and intentional solicitation and exploitation of Washington's consumer market. (See WAC 458-20-221).

(b) Every person who engages in this state in the business of acting as an independent selling agent for unregis-

tered principals, and who receives compensation by reason of sales of tangible personal property 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.

(10) **Examples - outbound sales.** The following examples show how the provisions of this section relating to interstate sales of tangible personal property will apply when the goods originate in Washington (outbound sales). The examples presume the seller has retained the proper proof documents and that the seller did not manufacture the items being sold.

(a) Company A is located in Washington. It sells machine parts at retail and wholesale. Company B is located in California and it purchases machine parts from Company A. Company A carries the parts to California in its own vehicle to make delivery. It is immaterial whether the goods are received at either the purchaser's out-of-state location or at any other place outside Washington state. The sale is not subject to Washington's B&O tax or its retail sales tax because the buyer did not receive the goods in Washington. Washington treats the transaction as a tax exempt interstate sale. California may impose its taxing jurisdiction on this sale.

(b) Company A, above, ships the parts by a for-hire carrier to Company B in California. Company B has not previously received the parts in Washington directly or through a receiving agent. It is immaterial whether the goods are received at either Company B's out-of-state location or any other place outside Washington state. It is immaterial whether the shipment is freight prepaid or freight collect. Again, Washington treats the transaction as an exempt interstate sale.

(c) Company B, above, has its employees or agents pick up the parts at Company A's Washington plant and transports them out of Washington. The sale is fully taxable under Washington's B&O tax and, if the parts are not purchased for resale by Company B, Washington's retail sales tax also applies.

(d) Company B, above, hires a carrier to transport the parts from Washington. Company B authorizes the carrier, or another agent, to inspect and accept the parts and, if necessary, to hold them temporarily for consolidation with other goods being shipped out of Washington. This sale is taxable under Washington's B&O tax and, if the parts are not purchased for resale by Company B, Washington's retail sales tax also applies.

(e) Washington will not tax the transactions in the above examples (a) and (b) if Company A mails the parts to Company B rather than using its own vehicles or a for-hire carrier for out-of-state receipt. By contrast, Washington will tax the transactions in the above examples (c) and (d) if for some reason Company B or its agent mails the parts to an out-of-state location after receiving them in Washington. The B&O tax applies to the latter two examples and if the parts are not purchased for resale by Company B then retail sales tax will also apply.

(f) Buyer C who is located in Alaska purchases parts for its own use in Alaska from Seller D who is located in Washington. Buyer C specifies to the seller that the parts are to be delivered to the water carrier at a dock in Seattle. The buyer has entered into a written contract for the carrier to inspect

the parts at the Seattle dock. The sale is subject to the B&O tax because receipt took place in Washington. The retail sales tax does not apply because of the specific exemption at RCW 82.08.0269. This transaction would have been exempt of the B&O tax if the buyer had taken no action to receive the goods in Washington.

(11) **Examples - inbound sales.** The following examples show how the provisions of this section relating to interstate sales of tangible personal property will apply when the goods originate outside Washington (inbound sales). The examples presume the seller has retained the proper proof documents.

(a) Company A is located in California. It sells machine parts at retail and wholesale. Company B is located in Washington and it purchases machine parts for its own use from Company A. Company A uses its own vehicles to deliver the machine parts to its customers in Washington for receipt in this state. The sale is subject to the retail sales and B&O tax if the seller has nexus, or use tax if nexus is not present.

(b) Company A, above, ships the parts by a for-hire carrier to Company B in Washington. The goods are not accepted by Company B until the goods arrive in Washington. The sale is subject to the retail sales or use tax and is also subject to the B&O tax if the seller has nexus in Washington. It is immaterial whether the shipment is freight prepaid or freight collect.

(c) Company B, above, has its employees or agents pick up the parts at Company A's California plant and transports them into Washington. Company A is not required to collect sales or use tax and is not liable for B&O tax on the sale of these parts. Company B is liable for payment of use tax at the time of first use of the parts in Washington.

(d) Company B, above, hires a carrier to transport the parts from California. Company B authorizes the carrier, or an agent, to inspect and accept the parts and, if necessary, to hold them temporarily for consolidation with other goods being shipped to Washington. The seller is not required to collect retail sales or use tax and is not liable for the B&O tax on these sales. Company B is subject to use tax on the first use of the parts in Washington.

(e) Company B, above, instructs Company A to deliver the machine parts to a freight consolidator selected by Company B. The freight consolidator does not have authority to receive the goods as agent for Company B. Receipt will not occur until the parts are received by Company B in Washington. Company A is required to collect retail sales or use tax and is liable for B&O tax if Company A has nexus for this sale. The mere delivery to a consolidator or for-hire carrier who is not acting as the buyer's receiving agent is not receipt by the buyer.

(f) Transactions in examples (11)(a) and (11)(b) will also be taxable if Company A mails the parts to Company B for receipt in Washington, rather than using its own vehicles or a for-hire carrier. The tax will continue to apply even if Company B for some reason sends the parts to a location outside Washington after the parts were accepted in Washington.

(g) Company W with its main office in Ohio has one employee working from the employee's home located in Washington. The taxpayer has no offices, inventory, or other employees in Washington. The employee calls on potential customers to promote the company's products and to solicit

sales. On June 30, 1990 the employee is terminated. After this date the company no longer has an employee or agent calling on customers in Washington or carries on any activities in Washington which is significantly associated with the seller's ability to establish or maintain a market for its products in Washington. Washington customers who had previously been contacted by the former employee continue to purchase the products by placing orders by mail or telephone directly with the out-of-state seller. The nexus which was established by the employee's presence in Washington will be presumed to continue through December 31, 1994 and subject to B&O tax. Nexus will cease on December 31, 1994 if the seller has not established any new nexus during this period. Company W may disassociate and exclude from B&O tax sales to new customers who had no contact with the former employee. The burden of proof to disassociate is on the seller.

(h) Company X is located in Ohio and has no office, employees, or other agents located in Washington or any other contact which would create nexus. Company X receives by mail an order from Company Y for parts which are to be shipped to a Washington location. Company X purchases the parts from Company Z who is located in Washington and requests that the parts be drop shipped to Company Y. Since Company X has no nexus in Washington, Company X is not subject to B&O tax or required to collect retail sales tax. Company X has not taken possession or dominion or control over the parts in Washington. Company Z may accept a resale certificate from Company X which will bear the registration number issued by the state of Ohio. Company Y is required to pay use tax on the value of the parts.

(i) Company ABC is located in Washington and purchases goods from Company XYZ located in Ohio. Upon receiving the order, Company XYZ ships the goods by a for-hire carrier to a public warehouse in Washington. The goods will be considered as having been received by Company ABC at the time Company ABC is entitled to receive a warehouse receipt for the goods. Company XYZ will be subject to the B&O tax at that time if it had nexus for this sale.

(j) P&S Department Stores has retail stores located in Washington, Oregon, and in several other states. John Doe goes to a P&S store in Portland, Oregon to purchase luggage. John Doe takes physical possession of the luggage at the store and elects to finance the purchase using a credit card issued to him by P&S. John Doe is a Washington resident and the credit card billings are sent to him at his Washington address. P&S does not have any responsibility for collection of retail sales or use tax on this transaction because receipt of the luggage by the customer occurred outside Washington.

(k) JET Company is located in the state of Kansas where it manufactures specialty parts. One of JET's customers is AIR who purchases these parts as components of the product which AIR assembles in Washington. AIR has an employee at the JET manufacturing site who reviews quality control of the product during fabrication. He also inspects the product and gives his approval for shipment to Washington. JET is not subject to B&O tax on the sales to AIR. AIR receives the parts in Kansas irrespective that JET may be shown as the shipper on bills of lading or that some parts eventually may be returned after shipment to Washington because of hidden defects.

[Statutory Authority: RCW 82.32.300, 91-24-020, § 458-20-193, filed 11/22/91, effective 1/1/92. Formerly WAC 458-20-193A and 458-20-193B.]

#### **WAC 458-20-19301 Multiple activities tax credits.**

(1) Introduction. Under the provisions of RCW 82.04.440 as amended effective August 12, 1987, Washington state's business and occupation taxes imposed under chapter 82.04 RCW were adjusted to achieve constitutional equality in the tax treatment of persons engaged in intrastate commerce (within this state only) and interstate commerce (between Washington and other states). The business and occupation tax system taxes the privilege of engaging in specified business activities based upon "gross proceeds of sales" (RCW 82.04.070) and the "value of products" (RCW 82.04.450) produced in this state. In order to maintain the integrity of this taxing system, to eliminate the possibility of discrimination between taxpayers, and to provide equal and uniform treatment of persons engaged in extracting, manufacturing, and/or selling activities regardless of where performed, a statutory system of internal and external tax credits was adopted, effective August 12, 1987. This tax credits system replaces the multiple activities exemption which, formerly, assured that the gross receipts tax would be paid only once by persons engaged in more than one taxable activity in this state in connection with the same end products. Unlike the multiple activities exemption which only prevented multiple taxation from within this state, the credits of the new system apply for gross receipts taxes paid to other taxing jurisdictions outside this state as well.

(2) Definitions. For purposes of this section the following terms will apply.

(a) "Credits" means the multiple activities tax credit(s) authorized under this statutory system also referred to as MATC.

(b) "Gross receipts tax" means a tax:

(i) Which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax; and

(ii) Which is not, pursuant to law or custom, separately stated from the selling price.

(c) "Extracting tax" means a gross receipts tax imposed on the act or privilege of engaging in business as an extractor, and includes the tax imposed by RCW 82.04.230 (tax on extractors) and similar gross receipts taxes paid to other states.

(d) "Manufacturing tax" means a gross receipts tax imposed on the act or privilege of engaging in business as a manufacturer, and includes:

(i) The taxes imposed in RCW 82.04.240 (tax on manufacturers) and subsections (2) through (5) and (7) of RCW 82.04.260 (tax on special manufacturing activities) and

(ii) Similar gross receipts taxes paid to other states.

The term "manufacturing tax," by nature, includes a gross receipts tax upon the combination of printing and publishing activities when performed by the same person.

(e) "Selling tax" means a gross receipts tax imposed on the act or privilege of engaging in business as a wholesaler or retailer of tangible personal property in this state or any other state. The term "selling" has its common and ordinary mean-

ing and includes the acts of making either wholesale sales or retail sales or both.

(f) "State" means:

(i) The state of Washington,

(ii) A state of the United States other than Washington or any political subdivision of such other state,

(iii) The District of Columbia,

(iv) Territories and possessions of the United States, and

(v) Any foreign country or political subdivision thereof.

(g) "Taxes paid" means taxes legally imposed and actually paid in terms of money, credits, or other emoluments to a taxing authority of any "state." The term does not include taxes for which liability for payment has accrued but for which payment has not actually been made. This term also includes business and occupation taxes being paid to Washington state together with the same combined excise tax return upon which MATC are taken.

(h) "Business," "manufacturer," "extractor," and other terms expressly defined in RCW 82.04.020 through 82.04.212 have the meanings given in those statutory sections regardless of how the terms may be used for other states' taxing purposes.

(3) Scope of credits. This integrated tax credits system is intended to assure that gross receipts from sales or the value of products determined by such gross receipts are taxed only one time, whether the activities occur entirely within this state or both within and outside this state. External tax credits arise when activities are taxed in this state and similar activities with respect to the same products produced and sold are also subject to similar taxes outside this state. There are five ways in which external tax credits may arise because of taxes paid in other states.

(a) Products or ingredients are extracted (taken from the ground) in this state and are manufactured or sold and delivered in another state which imposes a gross receipts tax on the latter activity(s). The credit created by payment of the other state's tax may be used to offset the Washington extracting tax liability.

(b) Products are manufactured, in whole or in part, in this state and sold and delivered in another state which imposes a gross receipts tax on the selling activity. Again, payment of the other state's tax may be taken as a credit against the Washington manufacturing tax liability.

(c) Conversely, products or ingredients are extracted outside this state upon which a gross receipts tax is paid in the state of extracting, and which are sold and delivered to buyers here. The other state tax payment may be taken as a credit against Washington's selling taxes.

(d) Similarly, products are manufactured, in whole or in part, outside this state and sold and delivered to buyers here. Any other state's gross receipts tax on manufacturing may be taken as a credit against Washington's selling tax.

(e) Products are partly manufactured in this state and partly in another state and are sold and delivered here or in another state. The combination of all other states' gross receipts taxes paid may be taken as credits against Washington's manufacturing and/or selling taxes.

Thus, the external tax credits may arise in the flow of commerce, either upstream or downstream from the taxable activity in this state, or both. Products extracted in another state, manufactured in Washington state, and sold and deliv-

ered in a third state may derive credits for taxes paid on both of the out-of-state activities.

Internal tax credits arise from multiple business activities performed entirely within this state, all of which are now subject to tax, but with the integrated credits offsetting the liabilities so that tax is only paid once on gross receipts. Under this system Washington extractors and manufacturers who sell their products in this state at wholesale and/or retail must report the value of products or gross receipts under each applicable tax classification. Credits may then be taken in the amount of the extracting and/or manufacturing tax paid to offset the selling taxes due. There are three ways in which credits may arise because of taxes paid exclusively in this state.

(f) Products are extracted in Washington and directly sold in Washington. Extracting business and occupation tax and selling business and occupation tax must both be reported but the payment of the former is a credit against the latter.

(g) Similarly, ingredients are extracted in Washington and manufactured into new products in this state. The extracting business and occupation tax reported and paid may be taken as a credit against manufacturing tax reported.

(h) Products manufactured in Washington are sold in Washington. Again, the payment of the manufacturing tax reported may be credited against the selling tax (wholesaling and/or retailing business and occupation tax) reported.

All of the external and internal tax credits derived from any flow of commerce may be used, repeatedly if necessary, to offset other tax liabilities related to the production and sale of the same products.

(4) Eligibility for taking credits. Statutory law places the following eligibility requirements and limitations upon the MATC system.

(a) The amount of the credit(s), however derived, may not exceed the Washington tax liability against which the credit(s) may be used. Any excess of credit(s) over liability may not be carried over or used for any purpose.

(b) The person claiming the credit(s) must be the same person who is legally obligated to pay both the taxes which give rise to the credit(s) and the taxes against which the credit is claimed. The MATC is not assignable.

(c) The taxes which give rise to the credit(s) must be actually paid before credit may be claimed against any other tax liability. Tax liability merely accrued is not creditable.

(d) The business activity subject to tax, and against which credit(s) is claimed, must involve the same ingredients or product upon which the tax giving rise to the credit(s) was paid. The credits must be product-specific.

(e) The effective date for developing and claiming credit(s) for products manufactured in Washington state and sold and delivered in other states which impose gross receipts selling taxes is June 1, 1987.

(f) The effective date for developing and claiming all credits other than those explained in subsection (e) above, is August 12, 1987.

(g) Persons who are engaged only in making wholesale or retail sales of tangible personal property which they have not extracted or manufactured are not entitled to claim MATC. Also, persons engaged in rendering services in this state are not so entitled, even if such services have been

defined as "retail sales" under RCW 82.04.050. (See WAC 458-20-194 for rules governing apportionment of gross receipts from interstate services.)

(5) Other states' qualifying taxes. The law defines "gross receipts tax" paid to other states to exclude income taxes, value added taxes, retail sales taxes, use taxes, or other taxes which are generally stated separately from the selling price of products sold. Only those taxes imposed by other states which include gross receipts of a business activity within their measure or base are qualified for these credit(s). The burden rests with the person claiming any MATC for other states' taxes paid to show that the other states' tax was a tax on gross receipts as defined herein. Gross receipts taxes generally include:

(a) Business and occupation privileges taxes upon extracting, manufacturing, and selling activities which are similar to those imposed in Washington state in that the tax measure or base is not reduced by any allocation, apportionment, or other formulary method resulting in a downward adjustment of the tax base. If costs of doing business may be generally or routinely deducted from the tax base, the tax is not one which is similar to Washington state's gross receipts tax.

(b) Severance taxes measured by the selling price of the ingredients or products severed (oil, logs, minerals, natural products, etc.) rather than measured by costs of production, stumpage values, the volume or number of units produced, or some other formulary tax base.

(c) Business franchise or licensing taxes measured by the gross volume of business in terms of gross receipts or other financial terms rather than units of production or the volume of units sold.

Other states' tax payments claimed for MATC must be identifiable with the same ingredients or products which incurred tax liability in Washington state, i.e., they must be product specific.

(d) The department will periodically publish an excise tax bulletin listing current taxes in other jurisdictions which are either qualified or disqualified for credit under the MATC system.

(6) Deductions in combination with MATC. Effective August 12, 1987, with the enactment of the MATC system, the liability for actual payment of tax by persons who extract, manufacture, and sell products in this state was shifted from the selling activity (wholesaling or retailing) to the production activity (extracting and/or manufacturing). As explained, the payment of the production taxes may now be credited against the liability for selling taxes on the same products. However, the deductions from tax provided by chapter 82.04 RCW (business and occupation tax deductions) may still be taken before tax credits are computed and used, with noted exceptions. In order for the MATC system to result in the correct computation of tax liabilities and credit applications, the tax deductions which may apply for any reporting period must be taken equally against both levels of tax liability reported, i.e., at both the production and selling levels. Failure to report tax deductions in this manner will result in overreporting tax due and may result in overpayment of tax. Thus, with the exceptions noted below, tax deductions formerly reported only against selling activities should now be reported against production activities as well. All such

deductions, the result of which is to reduce the measure of tax reported, should be taken against both the production taxes (extracting or manufacturing) and the selling taxes (wholesaling and/or retailing) equally.

(a) Example:

(i) A company manufactures products in Washington which it also sells at wholesale for \$5,000 and delivers to a buyer in this state. The buyer defaults on part of the payment and the seller incurs a \$2,000 credit loss which it writes off as a bad debt during the tax reporting period. The bad debt deduction provided by RCW 82.04.4284 must be shown on both the manufacturing-other line and the wholesaling-other line of the combined excise tax return. Taking the deduction on only one of those activities results in overreported tax liability on the \$2,000 loss.

(b) Exceptions. The deductions generally provided by RCW 82.04.4286, for interstate or foreign sales (where goods are sold and delivered outside this state) may not be taken against tax reported at the production level (extracting or manufacturing). This is because the MATC system itself provides for tax credits instead of tax deductions on gross receipts from transactions involving goods produced in this state and sold in interstate or foreign commerce. Thus, deductions which eliminate transactions from tax reporting may be taken only against selling taxes.

(c) Applicable deductions should be shown on the front of the combined excise tax return (Column #3) on each applicable tax classification line and detailed on the back side of the return, as usual, before MATC is taken.

(d) It is not the intent of the MATC law to invalidate or nullify the business and occupation tax exemption for taxable amounts below minimum (see WAC 458-20-104). Thus any person whose gross receipts or value of products reported under any single tax classification with respect to the production and sale of any product is less than the minimum taxable amount will not incur tax liability merely because of the requirement to report those gross receipts or value of products on the same product under other tax classifications as well.

(i) Example: A person both manufactures and sells at wholesale \$2,000 worth of widgets in the first quarter of a tax year. The requirement to report the \$2,000 tax measure under both the manufacturing-other classification and the wholesaling-other classification gives the false appearance of \$4,000 in gross receipts during this quarter. However, only the amount reported under the manufacturing-other classification need be considered to determine eligibility for the amount-below-minimum exemption.

(7) How and when to take MATC. The credits available under the MATC system are all to be taken on the combined excise tax return beginning in August, 1987 and thereafter. The return form has been modified to accommodate these credits. Each tax return upon which MATC has been taken must be accompanied by a completed Schedule C. This schedule details the business activities and credits computations. The line by line instructions insure that no more or no less credits are claimed than are authorized under the law.

(8) Consolidation of tax liabilities and credits. Under the MATC system a person's Washington tax liability for all activities involved in that person's production and sale of the same ingredients or products (extracting, and/or manufactur-

ing, and/or selling) is to be reported only at the time of the sale of such products or at the time of that person's own use of such products for commercial or industrial consumption. All of the taxable activities are to be reported on that same periodic excise tax return. Also, all external and internal tax credits derived from the payment of any gross receipts taxes on any of these activities are to be taken at that time. Thus, the taxable activities and the tax credits are procedurally consolidated for reporting. This consolidation generally overcomes any need to track ingredients or products from their extraction to their sale. It also overcomes any need to report and pay Washington tax liability during one reporting period and to take credits against that tax liability in a different reporting period. Thus, except as noted below, there can be no credit carryovers or carrybacks under this system.

(a) Exception. Where different tax reporting periods are assigned by Washington state and another state to a company doing business both within and outside Washington state, the other state's gross receipts tax on the same products may not yet have been paid when the Washington tax is due for reporting and payment. In such cases the Washington tax due must be timely reported and paid during the period in which the sale is made. The external credit arising later, when the other state's tax is paid, may be taken as a credit against any Washington business and occupation tax reported during that later period. Thus, the limitation that the MATC must be product-specific by being limited to the amount of Washington tax paid on the same products does not mean that the credit(s) can only be used against precisely those same Washington taxes paid.

(i) In the situation described in subsection (a) above, if there is not sufficient Washington business and occupation tax due for payment in the later period, when the external tax credit arises, to allow for utilization of the entire credit, the amount of any overage may be carried forward and taken against Washington taxes reported in subsequent reporting periods until fully used.

When filing such exception returns, the full amount of any credits should be claimed, even though that credit amount will exceed the amount of tax liability reported for that period. The department of revenue itself will make the necessary adjustments and will perform the carrying over of any excess credits into future reporting periods.

(ii) In the same situation, if the person entitled to claim such credit overage is no longer engaged in taxable business in this state or for any other reason does not incur sufficient Washington business and occupation tax liability to fully utilize the perfected credit overage, a tax refund will be issued.

(iii) No tax refunds, MATC carryovers, or MATC carrybacks will be allowed under any circumstances other than those explained above.

(b) Special circumstances may arise where it is not possible to specifically identify ingredients or products as they move from production to sale (e.g., fungible commodities from various sources stored in a common warehouse). In such cases the taxpayer should seek advance approval from the department, in writing, for tax reporting and credit taking on a test period, formulary, or volume percentage basis, subject to audit verification.

(9) Recordkeeping requirements. Persons claiming the MATC must keep and preserve such records and documents

as may be necessary to prove their entitlement to any credits taken under this system (RCW 82.32.070). It is not required to submit copies of such proofs when credits are claimed or together with the Schedule C detail. Rather, such records must be kept for a period no less than five years from the date of the tax return upon which the related tax credits are claimed. Such records are fully subject to audit for confirmation of the validity and amounts of credits taken. Records which must be preserved by persons claiming external tax credits include:

(a) Copies of sales contracts, or other written or memorialized evidence of any sales agreements, including purchase and billing invoices showing the origin state and destination state of products sold.

(b) Copies of shipping or other delivery documents identifying the products sold and delivered, reconcilable with the selling documents of subsection (a) above, if appropriate.

(c) Copies of production reports, transfer orders, and similar such documents which will reflect the intercompany or interdepartmental movement of extracted ingredients or manufactured products where no sale has occurred.

(d) Copies of tax returns or reports filed with other states' taxing authorities showing the kinds and amounts of taxes paid to such other states for which MATC is claimed.

(e) Copies of cancelled checks or other proofs of actual tax payment to the other state(s) giving rise to the MATC claimed.

(f) Copies of any other state(s) taxing statutes, laws, ordinances, and other appropriate legal authorities necessary to establish the nature of the other states' tax as a gross receipts tax, as defined in this section.

(g) Failure to keep and preserve proofs of entitlement to the MATC will result in the denial of credits claimed and the assessment of all taxes offset or reduced by such credits as well as the additional assessment of interest and penalties as required by law. (See RCW 82.32.050.)

(10) MATC in combination with other credits. The tax credits authorized under this system may be taken in combination with other tax credits available under Washington law. Such other credit programs, however, authorize credit carryovers from reporting period to period until the credits are fully utilized. Thus, the MATC must be computed and used to offset business and occupation tax liabilities during any tax reporting period before any other program credits to which a claimant may be entitled are claimed or applied. Failure to compute and take the MATC before applying other available credits may result in the loss of the other credit benefits.

(11) Superseding provisions. The MATC provisions of this section supersede and control the provisions of other sections of chapter 458-20 WAC (other tax rules) relating to intrastate, interstate, and foreign transactions to the extent that such provisions are or appear to be contrary or conflicting.

(12) Unique or special credit situations—Appeals. The provisions of this section generally explain the nature of the MATC system and the tax credit qualifications, limitations, and claiming procedures. The complexity of the integrated tax reporting and credit taking procedures may develop situations or questions which are not addressed herein. Such matters and requests for specialized rulings should be submitted to the department of revenue for prior determination before credits are claimed. Generally, prior determinations will be

provided within sixty days after the department receives the information necessary to make such a ruling. Adverse rulings, tax credit denials, or tax assessments resulting from audits or other examinations of returns upon which the MATC is claimed may be administratively appealed under the provisions of chapter 82.32 RCW and WAC 458-20-100.

[Statutory Authority: RCW 82.32.300, 87-23-008 (Order 87-8), § 458-20-19301, filed 11/6/87.]

**WAC 458-20-193C Imports and exports—Sales of goods from or to persons in foreign countries.**

WAC 458-20-193 deals with interstate and foreign commerce and is published in four separate parts:

- Part A. Sales of goods originating in Washington to persons in other states.
- Part B. Sales of goods originating in other states to persons in Washington.
- Part C. Imports and exports: Sales of goods from or to persons in foreign countries.
- Part D. Transportation, communication, public utility activities, or other services in interstate or foreign commerce.

Part C.

**Foreign Commerce**

Foreign commerce means that commerce which involves the purchase, sale or exchange of property and its transportation from a state or territory of the United States to a foreign country, or from a foreign country to a state or territory of the United States.

**Imports.** An import is an article which comes from a foreign country (not from a state, territory or possession of the United States) for the first time into the taxing jurisdiction of a state.

Taxation of such goods is impermissible while the goods are still in the process of importation, i.e., while they are still in import transportation. Further, such goods are not subject to taxation if the imports are merely flowing through this state on their way to a destination in some other state.

**Exports.** An export is an article which originates within the taxing jurisdiction of the state destined for a purchaser in a foreign country. Thus ships stores and supplies are not exports.

**Business and Occupation Tax**

**Wholesaling and Retailing.**

**Imports.** Sales of imports by an importer or his agent are not taxable and a deduction will be allowed with respect to the sales of such goods, if at the time of sale such goods are still in the process of import transportation. Immunity from tax does not extend: (1) To the sale of imports to Washington customers by the importer thereof or by any person after completion of importation whether or not the goods are in the original unbroken package or container; nor (2) to the sale of imports subsequent to the time they have been placed in use in this state for the purpose for which they were imported; nor (3) to sales of products which, although imports, have been processed or handled within this state or its territorial waters.

**Exports.** A deduction is allowed with respect to export sales when as a necessary incident to the contract of sale the seller agrees to, and does deliver the goods (1) to the buyer at a foreign destination; or (2) to a carrier consigned to and for transportation to a foreign destination; or (3) to the buyer at shipside or aboard the buyer's vessel or other vehicle of transportation under circumstances where it is clear that the process of exportation of the goods has begun, and such exportation will not necessarily be deemed to have begun if the goods are merely in storage awaiting shipment, even though there is reasonable certainty that the goods will be exported. The intention to export, as evidenced for example, by financial and contractual relationships does not indicate "certainty of export" if the goods have not commenced their journey abroad; there must be an actual entrance of the goods into the export stream.

In all circumstances there must be (a) a certainty of export and (b) the process of export must have started.

It is of no importance that title and/or possession of the goods pass in this state so long as delivery is made directly into the export channel. To be tax exempt upon export sales, the seller must document the fact that he placed the goods into the export process. That may be shown by the seller obtaining and keeping in his files any one of the following documentary evidence:

(1) A bona fide bill of lading in which the seller is shipper/consignor and by which the carrier agrees to transport the goods sold to the foreign buyer/consignee at a foreign destination; or

(2) A copy of the shipper's export declaration, showing that the seller was the exporter of the goods sold; or

(3) Documents consisting of:

(a) Purchase orders or contracts of sale which show that the seller is required to get the goods into the export stream, e.g., "f.a.s. vessel"; and

(b) Local delivery receipts, tripsheets, waybills, warehouse releases, etc., reflecting how and when the goods were delivered into the export stream; and

(c) When available, United States export or customs clearance documents showing that the goods were actually exported; and

(d) When available, records showing that the goods were packaged, numbered, or otherwise handled in a way which is exclusively attributable to goods for export.

Thus, where the seller actually delivers the goods into the export stream and retains such records as above set forth, the tax does not apply. It is not sufficient to show that the goods ultimately reached a foreign destination; but rather, the seller must show that he was required to, and did put the goods into the export process.

Sales of tangible personal property, of ships stores, and supplies to operators of steamships, etc., are not deductible irrespective of the fact that the property will be consumed on the high seas, or outside the territorial jurisdiction of this state, or by a vessel engaged in conducting foreign commerce. However, on July 1, 1985, a statutory business and occupation tax deduction became effective for sales of fuel for consumption outside the territorial waters of the United States by vessels used primarily in foreign commerce. In order to qualify for this deduction sellers must take a certificate signed by the buyer or the buyer's agent stating: The

name of the vessel for which the fuel is purchased; that the vessel is primarily used in foreign commerce; and, the amount of fuel purchased which will be consumed outside of the territorial waters of the United States. Sellers must exercise good faith in accepting such certificates and are required to add their own signed statement to the certificate to the effect that to best of their knowledge the information contained in the certificate is correct. The following is an acceptable certificate form:

**Foreign Fuel Exemption Certificate**

SELLER: . . . . . VESSEL: . . . . .

WE HEREBY CERTIFY that this purchase of     (kind and amount of product)     from     (seller)     will be consumed as fuel outside the territorial waters of the United States by the above-named vessel. We further certify that said vessel is used primarily in foreign commerce and that none of the fuel purchased will be consumed within the territorial boundaries of the State of Washington.

DATED. . . . ., 19. . . . .  
. . . . . Purchaser  
. . . . . Purchaser's Agent  
By: . . . . .  
. . . . . Title or Office

When a completed certification such as this is taken in good faith by the seller, the sale is exempt of business and occupation tax, whether made at wholesale or retail, and even though the fuel is delivered to the buyer in this state.

**Extracting, manufacturing.** Persons engaged in these activities in Washington and who transfer or make delivery of articles produced to points outside the state are subject to business tax under the extracting or manufacturing classification and are not subject to business tax under the retailing or wholesaling classification. See also WAC 458-20-135 and 458-20-136. The activities taxed occur entirely within the state, are inherently local, and are conducted prior to the commercial journey. The tax is measured by the value of products as determined by the selling price. See WAC 458-20-112. It is immaterial that the value so determined includes an additional increment of value because the sale occurs outside the state.

**Retail Sales Tax**

The same principles apply to the retail sales tax as are set forth for business and occupation tax above, except that certain statutory exemptions may apply. (See WAC 458-20-174, 458-20-175, 458-20-176, 458-20-177, 458-20-238 and 458-20-239.)

**Use Tax**

The use tax is imposed upon the use, including storage, of all tangible personal property acquired for any use or consumption in this state unless specifically exempt by statute.

[Statutory Authority: RCW 82.32.300, 86-07-005 (Order ET 86-3), § 458-20-193C, filed 3/6/86; 83-07-033 (Order ET 83-16), § 458-20-193C, filed 3/15/83; Order ET 76-3, § 458-20-193C, filed 8/31/76; Order ET 70-3, § 458-20-193C (Rule 193 Part C), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-193D Transportation, communication, public utility activities, or other services in interstate or foreign commerce.**

WAC 458-20-193 deals with interstate and foreign commerce and is published in four separate parts:

- Part A. Sales of goods originating in Washington to persons in other states.
- Part B. Sales of goods originating in other states to persons in Washington.
- Part C. Imports and Exports: Sales of goods from or to persons in foreign countries.
- Part D. Transportation, communication, public utility activities, or other services in interstate or foreign commerce.

Part D.

**Business and Occupation Tax, Public Utility Tax**

In computing tax there may be deducted from gross income the amount thereof derived as compensation for performance of services which in themselves constitute interstate or foreign commerce to the extent that a tax measured thereby constitutes an impermissible burden upon such commerce. A tax does not constitute an impermissible burden upon interstate or foreign commerce unless the tax discriminates against that commerce by placing a burden thereon that is not borne by intrastate commerce, or unless the tax subjects the activity to the risk of repeated exactions of the same nature from other states. Transporting across the state's boundaries is exempt, whereas supplying such transporters with facilities, arranging accommodations, providing funds and the like, by which they engage in such commerce is taxable.

**Examples of Exempt Income:**

- (1) Income from those activities which consist of the actual transportation of persons or property across the state's boundaries is exempt.
- (2) That portion of commissions received by local brokers or commission merchants for interstate or foreign sales which was paid to out-of-state independent agents is exempt.
- (3) Income from services rendered by an out-of-state branch or office of the taxpayer regularly maintained outside the state is exempt. (See WAC 458-20-194.)

**Examples of Taxable Income:**

- (1) Compensation received by persons engaged in business within this state for performance of business activities which are only ancillary to transportation across the state's boundaries is taxable.
- (2) Compensation received by merchandise brokers or commission merchants for services rendered within this state to principals engaged in interstate or foreign commerce is taxable.
- (3) Compensation received by contracting, stevedoring or loading companies for services performed within this state is taxable.

Persons engaged in stevedoring and associated activities involving the movement of goods and commodities in waterborne interstate or foreign commerce are subject to business tax at the rate .0033 upon the gross proceeds from such activities. Stevedoring and associated activities means all activities of a labor, service, or transportation nature whereby cargo is loaded or unloaded to or from vessels or barges, passing over, onto, or under a wharf, pier, or similar structure, including also the moving of cargo to a warehouse or similar holding or storage yard or area to await further movement in import or export; also the movement to a consolidation freight station to be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loading on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

Persons engaging in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, or international air cargo agent are subject to business tax at the rate .0033 upon gross income with respect to such international activities.

In computing public utility tax, there may be deducted from gross income so much thereof as is derived from actually transporting persons or property or transmitting communications or electrical energy, from this state to another state or territory or to a foreign country and vice versa.

Persons, including dock companies or wharfage companies, are permitted no deduction from gross income of amounts received for services performed in this state consisting of the handling of cargo or freight even though such cargo or freight has moved or will move across the state's boundaries.

No deduction is permitted with respect to gross income derived from activities which are ancillary to transportation across the state's boundaries, such as income received by a wharf company or warehouse company for the storage of goods. The mere ownership or operation of facilities by means of which others engage in foreign or interstate commerce is an activity ancillary to such commerce and any income received therefrom is taxable.

Insofar as the transportation of goods is concerned, the interstate movement of cargo or freight ceases when the goods have arrived at the destination to which it was billed by the out-of-state shipper, and no deduction is permitted of the gross income derived from transporting the same from such point of destination in this state to another point within this state. Thus, freight is billed from San Francisco, or a foreign point, to Seattle. After arrival in Seattle it is transported to Spokane. No deduction is permitted of the gross income received for the transportation from Seattle to Spokane.

Again, freight is billed from San Francisco, or a foreign point, to a line carrier's terminal, or a public warehouse in Seattle. After arrival in Seattle it is transported from the line carrier's terminal or public warehouse to the buyer's place of business in Seattle. No deduction is permitted of the gross income received as transportation charges from the line carrier's terminal or public warehouse to the buyer's place of business in Seattle.

The interstate movement of cargo or freight begins when the goods are committed to a carrier for transportation out of the state, which carrier will start the transportation to a point outside the state.

[Statutory Authority: RCW 82.32.300, 83-07-033 (Order ET 83-16), § 458-20-193D, filed 3/15/83; Order ET 74-1, § 458-20-193D, filed 5/7/74; Emergency Order ET 74-6, filed 9/30/74 and Emergency Order ET 74-7, filed 10/3/74, effective 1/1/75; Order ET 70-3, § 458-20-193D (Rule 193 Part D), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-194 Doing business inside and outside the state.** Persons domiciled outside this state who (1) sell or lease personal property to buyers or lessees in this state, or (2) perform construction or installation contracts in this state, or (3) render services to others herein, are doing business in this state, irrespective of the domicile of such persons and irrespective of whether or not such persons maintain a permanent place of business in this state.

Persons domiciled in and having a place of business in this state, who (1) sell or lease personal property to buyers or lessees outside this state, or (2) perform construction or installation contracts outside this state, or (3) render services to others outside this state, are doing business both inside and outside this state. Whether or not such persons are subject to business tax under the law depends upon the kind of business and the manner in which it is transacted. The following general principles govern in determining tax liability or tax immunity.

#### **Business and Occupation Tax**

When the business involves a transaction in or related to interstate or foreign commerce, see WAC 458-20-193.

When the business involves a construction or installation contract in this state, no deduction from the measure of the tax is permitted, even though the contractor is domiciled outside this state and maintains a place of business outside this state which may contribute to the contract performed in this state. See WAC 458-20-137, 458-20-170, 458-20-171 and 458-20-172.

When the business involves a construction or installation contract outside this state, the tax does not apply to any part of the income derived therefrom (except such part of the income as may be applicable to the manufacture in this state by the contractor of articles used or incorporated in such construction or installation), even though the contractor is domiciled in this state and maintains a place of business herein which may contribute to the contract performed outside this state. See WAC 458-20-136.

When the business involves a transaction taxable under the classification service and other business activities, the tax does not apply upon any part of the gross income received for services incidentally rendered to persons in this state by a person who does not maintain a place of business in this state and who is not domiciled herein. However, the tax applies

upon the income received for services incidentally rendered to persons outside this state by a person domiciled herein who does not maintain a place of business within the jurisdiction of the place of domicile of the person to whom the service is rendered.

For example, persons domiciled herein, but having no place of business outside this state, are taxable upon the following types of income:

- (1) An insurance agency upon commissions received for insurance placed without the state.
- (2) An attorney upon fees received from persons without the state, even though a portion of his services were necessarily performed without the state.
- (3) A collection agency upon income received from clients without the state or with respect to collections made from persons without the state.
- (4) An accountant upon income received from persons for services performed without the state.
- (5) A financial business upon income received from loans placed without the state.
- (6) A commodity broker upon commissions received from persons without the state.
- (7) An advertising agency upon income received from advertising solicited and secured from firms without the state.
- (8) An employment agency upon income received for securing employees for firms without the state.
- (9) A physician upon income received from the treatment of patients without the state.
- (10) A purchasing agency upon commissions received from clients without the state or with respect to purchases made without the state.

Persons engaged in a business taxable under the service and other business activities classification and who maintain places of business both inside and outside this state which contribute to the performance of a service, shall apportion to this state that portion of gross income derived from services rendered by them in this state. Where it is not practical to determine such apportionment by separate accounting methods, the taxpayer shall apportion to this state that proportion of total income which the cost of doing business within this state bears to the total cost of doing business both within and without this state.

For purposes of apportionment under RCW 82.04.460 and this rule the term "place of business" generally means a location at which regular business of the taxpayer is conducted and which is either owned by the taxpayer or over which the taxpayer exercises legal dominion and control. The term does not include locations or facilities at which the taxpayer acquires merely transient lodging nor does it include mere telephone number listings or telephone answering services.

**Public Utility Tax**

Persons engaged in a public service business in this state are not taxable with respect to gross income derived from conducting business outside this state, nor in respect to conducting business in interstate or foreign commerce.

[Statutory Authority: RCW 82.32.300, 83-08-026 (Order ET 83-1), § 458-20-194, filed 3/30/83; Order ET 70-3, § 458-20-194 (Rule 194), 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.

(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 another allowable deduction, such as credit losses.

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 (including leaking underground storage tank 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 for use in highway vehicles and motorboats . . . . .	26 U.S.C.A. Sec. 4081.

(4) **Taxes collected as an agent of municipalities, the state, or the federal government.** The amount of taxes collected by a taxpayer, as agent for municipalities, the state of Washington or its political subdivisions, or 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 a municipality, 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 communications services (telephone and teletype-writer exchange services) . . . . . 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—  
 Aviation fuel tax collected from buyers by a distributor as defined by RCW 82.42-010 . . . . . chapter 82.42 RCW;  
 Leasehold excise tax collected from lessees . . . . . chapter 82.29A RCW;  
 Oil spill response tax collected from taxpayers by marine terminal operators . . . . . chapter 82.23B RCW;  
 Retail sales tax collected from buyers . . . . . chapter 82.08 RCW;  
 Solid waste collection tax collected from buyers . . . . . chapter 82.18 RCW;  
 State enhanced 911 tax collected from subscribers . . . . . chapter 82.14B RCW;  
 Use tax collected from buyers . . . . . chapter 82.12 RCW;  
 MUNICIPAL—  
 City admission tax . . . . . RCW 35.21.280;  
 County admissions and recreations tax . . . . . chapter 36.38 RCW;  
 County enhanced 911 tax collected from subscribers . . . . . chapter 82.14B RCW;  
 Local retail sales and use taxes collected from buyers . . . . . chapter 82.14 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. 4091;  
 Distilled spirits, wine and beer taxes . . . . . 26 U.S.C.A. chapter 51;  
 Diesel and special motor fuel tax for fuel used for purposes other than motor vehicles and motor-boats . . . . . 26 U.S.C.A. Sec. 4041;  
 Employment taxes . . . . . 26 U.S.C.A. chapters 21-25;  
 Estate taxes . . . . . 26 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 . . . . . 26 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;

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 —  
 Ad valorem property taxes . . . . . Title 84 RCW;  
 Alcoholic beverages licenses and stamp taxes (Breweries, distillers, distributors and wineries) . . . . . chapter 66.24 RCW;  
 Aviation fuel tax when not collected as agent for the state . . . . . chapter 82.42 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;  
 Hazardous substance tax . . . . . chapter 82.21 RCW;  
 Litter tax . . . . . chapter 82.19 RCW;  
 Pollution liability insurance fee . . . . . RCW 70.149.080;  
 Parimutuel tax . . . . . RCW 67.16.100;  
 Petroleum products - underground storage tank tax . . . . . chapter 82.23A RCW;  
 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;  
 MUNICIPAL—  
 Local use tax when not collected as agent for cities or counties . . . . . chapter 82.14 RCW;  
 Municipal utility taxes . . . . . chapter 54.28 RCW;  
 Municipal and county real estate excise taxes . . . . . chapter 82.46 RCW.

[Statutory Authority: RCW 82.32.300. 00-16-015, § 458-20-195, filed 7/21/00, effective 8/21/00; 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 458-20-196 Credit losses, bad debts, recoveries.**

**Business and Occupation Tax**

In computing business and occupation tax there may be deducted by taxpayers whose regular books of accounts are kept upon an accrual basis, the amount of business credit losses actually sustained, providing that such deduction will be allowed only with respect to transactions upon which a tax has been previously paid and providing that the amount

thereof has not been otherwise deducted and that credits have not been issued with respect thereto.

Bad debt deductions must be taken by the taxpayer during the tax reporting period during which such bad debts were actually charged off on the taxpayer's books of account.

In cases where the amount of bad debts legitimately charged off in a particular reporting period exceeds the gross income for such period, the excess of the amount of the bad debts charged off during such period may be deducted from the gross income of the subsequent tax reporting period.

A dishonored (bad) check which proves to be uncollectible is a bad debt, to the extent it was taken as payment for goods or services on which business tax was previously reported and paid.

**Extracting or manufacturing, special application.**

Bad debt deductions will be allowed under the extracting or manufacturing classifications only when the value of products is computed on the basis of gross proceeds of sales.

**Retail Sales Tax**

A seller is entitled to a credit or refund for sales taxes previously paid on debts which are deductible, on and after January 1, 1983, as worthless for federal income tax purposes.

**Public Utility Tax**

In computing public utility tax credit losses may be deducted under the same conditions set out under the business and occupation tax. However, the special provisions set out for the extracting and manufacturing classifications are not applicable to the public utility tax.

**Methods of determining credit losses.** The amount of credit losses actually sustained must be determined in accordance with one of the following methods:

(1) Specific charge-off method. The amount which is charged off within the tax reporting period with respect to debts ascertained to be worthless.

(a) Worthlessness of a debt is usually evidenced when all the surrounding and attending circumstances indicate that legal action to enforce payment would result in an uncollectible judgment.

(b) A "charge-off" of a debt, either wholly or in part, must be evidenced by entry in the taxpayer's books of account.

(2) Reserve method. In the discretion of the department of revenue a reasonable addition to a reserve for bad debts will be authorized to taxpayers who charge off credit losses at the end of their taxable year but who desire to apportion such losses on a monthly basis.

(a) This will be permitted, in lieu of the specific charge-off method, only to taxpayers who have established or are allowed by the Internal Revenue Service to use for federal income tax purposes, the reserve method of treating bad debts, or who, upon securing permission from the department adopt that method.

(b) What constitutes a reasonable addition to a reserve for bad debts must be determined in light of the facts and will vary between classes of business and with conditions of business prosperity. The addition to the reserve allowed as a deduction by the Internal Revenue Service for federal income

tax purposes, in the absence of evidence to the contrary, will be presumed reasonable.

If the taxpayer actually determines and charges off bad debts on a tax reporting period basis, the amount so charged off each period shall be considered prima facie as a proper deduction for such period.

When bad debt losses are ascertained annually upon specific charge-off method, the deduction must be taken against the gross amount reported for the period in which the bad debts were actually charged off.

When the reserve method is employed in taking deductions for bad debts on returns and the amount of debts actually ascertained to be wholly or partially worthless and charged against the reserve account during the taxable year and reported do not agree with the amount of reserve set up therefor, adjustment of the amount of loss deducted shall be made to make the total amount claimed for the tax year coincide with the amount of loss actually sustained.

**Recoveries.** Amounts subsequently received on account of a bad debt or on account of a part of such debt previously charged off and allowed as a deduction for business tax purposes, must be included in gross proceeds of sales (including value of products when measured by gross proceeds of sales) or gross income of the business reported for the taxable period in which received. This is true even though the recoveries during such period exceed the amount of the bad debt charge-off.

[Statutory Authority: RCW 82.32.300, 83-07-032 (Order ET 83-15), § 458-20-196, filed 3/15/83; Order ET 70-3, § 458-20-196 (Rule 196), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-197 When tax liability arises.** (1) Gross proceeds of sales and gross income shall be included in the return for the period in which the value proceeds or accrues to the taxpayer. For the purpose of determining tax liability of persons making sales of tangible personal property, a sale takes place when the goods sold are delivered to the buyer in this state. With respect to leases or rentals of tangible personal property, liability for retail sales tax arises as of the time the rental payments fall due (see WAC 458-20-211).

**(2) Accrual basis.**

(a) When returns are made upon the accrual basis, value accrues to a taxpayer at the time:

(i) The taxpayer becomes legally entitled to receive the consideration, or,

(ii) In accord with the system of accounting regularly employed, enters as a charge against the purchaser, customer, or client the amount of the consideration agreed upon, whether payable immediately or at a definitely determined future time.

(b) Amounts actually received do not constitute value accruing to the taxpayer in the period in which received if the value accrues to the taxpayer during another period. It is immaterial if the act or service for which the consideration accrues is performed or rendered, in whole or in part, during a period other than the one for which return is made. The controlling factor is the time when the taxpayer is entitled to receive, or takes credit for, the consideration.

**(3) Cash receipts basis.**

(a) When returns are made upon cash receipts and disbursements basis, value proceeds to a taxpayer at the time the

taxpayer receives the payment, either actually or constructively. It is immaterial that the contract is performed, in whole or in part, during a period other than the one in which payment is received.

(b) See: WAC 458-20-199 for limitation as to persons who may report on the cash receipts basis.

**(4) Special application, contractors.**

Value accrues for a building or construction contractor who maintains his accounting records on the accrual basis, as of the time the contractor becomes entitled to compensation under the contract.

(a) If by the terms of the contract the taxpayer becomes entitled to compensation upon estimates as the work progresses, value, to the extent of such estimates, accrues as of the time that each estimate is made and the balance at the time of the completion of the work or of the final estimate.

(b) If by the terms of the contract the taxpayer becomes entitled to compensation only upon the completion of the work, value accrues as of the earlier of the completion of the work, or, any use of the facilities being constructed, or, 60 days after the facility is substantially complete.

(i) Example: A contractor agrees to build two buildings for a buyer. Under the terms of the contract, payment is to be made only upon completion of both buildings. One building is substantially completed and occupied on April 15, 1991, the other building is substantially completed on May 15, 1991 and occupied on July 1, 1991. The work on both buildings is completed under the contract on June 15, 1991. Value accrues for the first building on April 15, 1991, the date it was used. Value accrues for the remainder of the contract on June 15, 1991, the date the work was completed.

(ii) Example: A contractor agrees to build a building for a buyer. Under the terms of the contract, the buyer is to make payment for the building only upon completion of the building. The building is completed, except for minor alterations, and available for planned occupancy on August 15, 1990. However, because of a contract dispute between the buyer and his tenant for the building, the buyer is unable to pay the contractor until February 25, 1991 when the building is finally occupied. The building is completed under the contract on November 15, 1990. Value accrues on the building for sales tax and B&O tax purposes on October 14, 1990, 60 days after August 15, 1991, the date the building was substantially complete.

**(5) Warehousemen.** In the case of warehousemen value proceeds or accrues to the taxpayer as follows:

(a) When the taxpayer is reporting upon the accrual basis, value accrues at the time the charge is entered against the owner of the goods stored in accordance with the terms of the contract between the parties and the regular system of accounting employed by the taxpayer.

(i) Value accrues when the charge is entered whether the consideration for storage is at a fixed rate per unit per month or other period, or, at a flat charge regardless of the length of time, or, whether payable periodically or at the time of withdrawal.

(ii) Thus, where a warehouseman, keeping books on accrual basis, customarily enters as a charge to the owner of the goods and a credit to storage income the full amount of a flat storage charge as of the time the goods are received, even though the time for payment is deferred until withdrawal of

the goods, value accrues as of the time the goods are received. However, if the warehouseman customarily does not enter such charge until the time of withdrawal, value accrues as of such later date.

(b) When the taxpayer is reporting upon a cash receipts basis, value proceeds at the time the payment for storage is received.

For effect of rate changes, see WAC 458-20-235.

[Statutory Authority: RCW 82.32.300. 90-10-082, § 458-20-197, filed 5/2/90, effective 6/2/90; Order ET 70-3, § 458-20-197 (Rule 197), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-198 Conditional and installment sales, method of reporting.**

**Business and Occupation Tax**

Persons making conditional sales or other installment sales of tangible personal property must report the total selling price of such sales in the tax reporting period in which the sale is made.

A deduction from gross proceeds of sales as a credit loss is allowed to such sellers for the amount of the unpaid balance of the contract price on any installment sale if and when the property purchased is repossessed upon default by the buyer.

**Retail Sales Tax, Use Tax**

Persons making conditional sales or other installment sales of tangible personal property must report the total selling price of such sales in the tax period in which the sale is made.

The foregoing is true irrespective of the fact that such sellers arrange to receive payment of tax in installments or that a contract may be discounted or pledged with or sold to a finance company. In the latter case, although as a part of the agreement with the seller the finance company actually makes collection of the tax from the buyer as the installments fall due, the finance company should not report to the department of revenue the amount of tax collected since the total tax already has been reported by the seller.

Revised July 1, 1956.

[Statutory Authority: RCW 82.32.300. 83-07-032 (Order ET 83-15), § 458-20-198, filed 3/15/83; Order ET 70-3, § 458-20-198 (Rule 198), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-199 Accounting methods. (1) Introduction.** In computing tax liability under the business and occupation tax and the retail sales tax, one of the following accounting methods must be used. This is true for all businesses, whether their activity involves the sale of tangible personal property or the rendering of services. (See WAC 458-20-197 for an explanation of when tax liability arises under the accrual method versus the cash receipts method.)

**(2) Method one, cash basis.** A taxpayer may file excise tax returns in each reporting period with figures based upon cash receipts only if the taxpayer's books of account are regularly kept on a cash receipts basis. (See RCW 82.04.090.) A taxpayer whose books of account recognize income at the time a sale is made or a service is rendered, regardless of when payment is received, is keeping its records on an accrual basis and must report and pay tax on the accrual basis. For those taxpayers who maintain formal accounting records,

the department of revenue will generally look to the revenue accounts of the general ledger of the taxpayer and to the method of accounting used for reporting of federal income taxes to determine when the income is recognized. However, all records of the taxpayer will be considered by the department in determining whether the records are being kept on an accrual basis, particularly for those taxpayers who do not maintain formal records such as a general ledger.

The fact that a taxpayer makes sales "on account" and has records to identify the accounts receivable does not preclude the taxpayer from reporting on a cash receipts basis. Taxpayers can have accounts receivable and still report on the cash basis, provided the accounting records, such as the general ledger or federal income tax returns, do not record the sales on account as income until the cash is actually received. If a taxpayer keeps a general ledger on an accrual basis and federal income tax returns on a cash basis, the taxpayer may elect to report state tax returns on either the cash basis or the accrual basis. However, once a reporting basis is selected, the reporting basis may not be changed without authorization from the department unless the method for reporting federal taxes changes or the method used in keeping the records changes. A taxpayer who maintains its records throughout the year on a cash basis, including a general ledger, and elects to make a worksheet adjustment at year-end to report federal taxes on an accrual basis, will be permitted to report state taxes on a cash basis.

(3) **Method two, accrual basis.** A taxpayer who does not regularly keep books of account on a cash receipts basis must file returns with figures based on the accrual method. These taxpayers must report the gross proceeds from all cash sales made in the tax reporting period in which the sales are made, together with the total amount of charge sales during such period. The law does not require a taxpayer to use a particular accounting system. However, the taxpayer must report based on the system of accounting used by the business, regardless of the taxpayer's reasons for selecting a particular accounting system. It will be presumed that a taxpayer who is permitted under federal law or regulations to report its federal income taxes on a cash basis and does so is maintaining the records on a cash basis. A taxpayer who maintains a general ledger on an accrual basis and files federal tax returns on an accrual basis must also report state tax returns on an accrual basis.

(a) Taxpayers who make installment sales or leases of tangible personal property must use the accrual method when they compute their tax liability. (See RCW 82.08.090, WAC 458-20-198 and 458-20-211.)

(b) In the case of rentals or leases, the income is considered to have accrued to the seller in the tax reporting period in which the seller is entitled to receive the rental or lease payment.

(4) **Constructive receipt.** "Constructive receipt" means income that a cash basis taxpayer is entitled to receive, but will not receive because of an action taken by the taxpayer. Constructive receipts are taxable in the tax reporting period in which the taxpayer gives up the entitlement to actual future receipt of the income. The following examples show how this applies to a cash basis taxpayer.

(a) XYZ has \$10,000 in accounts receivable which XYZ expects to collect over the next six months. XYZ elects to sell

these accounts receivable for eighty percent of their face value. Even though the taxpayer only receives \$8,000 from the sale of the accounts receivable, XYZ is taxable on the full \$10,000 because it has taken constructive receipt of the full \$10,000 by taking an action to give up entitlement to the \$2,000.

(b) XYZ has \$1,500 in accounts receivable from customers who are delinquent in making payment. XYZ turns these accounts receivable over to a collection agency with the understanding that the collection agency may keep half of whatever is collected. The collection agency over the next month collects \$500 and keeps \$250 of this amount for its services. XYZ is taxable on the full \$500 collected by the collection agency. XYZ has constructive receipt of this amount and the \$250 retained by the collection agency is a cost of doing business to the taxpayer.

(c) XYZ is involved in a bankruptcy proceeding. The receipt of cash from accounts receivable will be placed in an escrow account. These funds will be used to pay creditors and a portion of these amounts will be given to the taxpayer. The full amount of the accounts receivable collected and going into the escrow is taxable income to XYZ. XYZ has received the full benefit of the cash received from the accounts receivable through payment of XYZ's creditors.

[Statutory Authority: RCW 82.32.300, 96-12-024, § 458-20-199, filed 5/30/96, effective 6/30/96; 92-03-026, § 458-20-199, filed 1/8/92, effective 2/8/92; 83-07-032 (Order ET 83-15), § 458-20-199, filed 3/15/83; Order ET 70-3, § 458-20-199 (Rule 199), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-200 Leased departments.** (1) Any person leasing departments of the business conducted may include in its tax returns the business done and sales made by the lessee where such lessor keeps the books for the lessee and makes collection on the latter's account: Provided, however, That each lessee must apply for and obtain from the department of revenue a certificate of registration, as provided under WAC 458-20-101. The lessee will remain liable for its tax liability if the lessor fails to make the proper return or fails to pay taxes due.

(2) **Business and occupation tax and retail sales tax.** Any taxpayer making returns for any leased department shall report the total tax liability thereof under both the business and occupation tax and the retail sales tax, including therein all cash and charge sales. The leased department in such case is not entitled to the taxable minimum provided in WAC 458-20-104.

(a) Where the lessor receives a flat monthly rental or a percentage of sales as rental for a leased department, such income is presumed to be from the rental of real estate and is not taxable. In a determination of whether an occupancy is a rental of real estate, all the facts and circumstances, including the actual relationship of the parties, are to be considered (see: WAC 458-20-118). Written agreements, while not required, are preferred and are given considerable weight in deciding the nature of the occupancy. While the fact that the written agreement may identify the occupancy as a "lease" is not controlling, agreements which contain the following provisions support the presumption that the occupancy is a rental of real estate:

i. The occupant is granted exclusive possession and control of the space.

ii. The occupancy is for a time certain which is more than 30 days, i.e. month to month, yearly, etc.

iii. The parties are required to notify each other in the event of termination of the occupancy.

(b) If the lessor provides any clerical, credit, accounting, janitorial, or other services to the lessee, the lessor must report the income from these services under the service B&O tax classification. The amounts for providing these services must be segregated from the amounts received from the rental of real estate. In the absence of a reasonable segregation, it will be presumed that the entire income is for providing these services.

(3) Examples. The following examples identify a number of facts and then state a conclusion as to whether the situation is a rental of real estate. These examples should be used only as a general guide. The tax status of each occupancy must be determined after a review of the agreement and all of the facts and circumstances.

(a) A retailer enters into a written occupancy agreement for rental of space within a mall for a one year term. The agreement can be terminated upon 30 days written notice of either party, subject to some penalty provisions for early termination. The agreement provides that the retailer can decorate the store and arrange the inventory in any manner desired by the retailer so long as the facility does not create a safety hazard to the mall or other tenants and is consistent with the overall decor of the mall. The mall owner may enter the premises of the retailer during nonbusiness hours only with the consent of the retailer except for emergencies where physical property is at risk. The retailer's area is separated from other lessees by walls with the exception of the front area which is open to the mall common area and is used as the entrance by potential customers and the retailer. The retailer does have a movable partition that can be locked and is used to close off the entrance from the mall common area. The agreement calls for the retailer to be open for business at all times during the hours stipulated by the mall.

This is a rental of real estate with the rental term being for a fixed period. The agreement and the facts and circumstances have established a rental of real estate. The retailer has exclusive possession and control over a specific area as indicated by the control the retailer has over the premises, even to the exclusion of the mall owner. The restriction which requires the retailer to maintain the same business hours as other lessees does not make this a license to use real estate. The lessor can exclude from the B&O tax that portion of the income which is from the rental of the real estate. The lessor must identify and pay a B&O tax on the portion of the income which is from providing services such as security, janitorial, or accounting.

(b) A hairdresser enters into an oral occupancy agreement with the operator of a hair salon for the use of a work station. The hairdresser has use of a specific work station during specific hours of every day. A particular work station may be used by more than one hairdresser during a particular month or even during a given day. This work station can not be closed off from other areas within the shop. The hairdresser must obtain advance permission from the owner to make any changes to the work area. This hairdresser also shares a sink, telephone, and other facilities with others in the shop.

This occupancy is not a rental of real estate. The hairdresser does not have EXCLUSIVE possession and control over the premises to the exclusion of others as is indicated by the requirement that the hairdresser must obtain approval for any changes in the work area. This is further indicated by hairdressers use of a specific work station only during specific hours of every day with multiple users of the same work station. The work station could not be closed off from other areas of the shop, but this in itself is not determinative of whether this is a rental of real estate or a license to use. The presence of walls or the lack of walls is not controlling. The fact that the agreement uses the term "lease" is also not controlling. This is a "license to use" taxable under the service B&O tax classification.

(c) Department store agrees to sell household paint for a paint supplier. The paint supplier checks on the inventory on a monthly basis and provides additional paint as needed. The department store handles stocking of shelves and all aspects of the sale. The department store makes a charge to the paint supplier based on the space required to maintain the inventory. By agreement of the parties, the department store agrees to report the retailing and retail sales tax on paint sales.

This is not a leased department or a rental of real estate. The income is merely tied to the amount of space being used. However, the income is a commission from the sale of merchandise for the paint supplier and held on consignment. The retailing tax is the liability of the paint supplier and is paid by the department store only by agreement. The commission is taxable under the service B&O tax classification. See WAC 458-20-159.

[Statutory Authority: RCW 82.32.300. 91-02-057, § 458-20-200, filed 12/28/90, effective 1/28/91; Order ET 70-3, § 458-20-200 (Rule 200), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-201 Interdepartmental charges.** The term "interdepartmental charges" means amounts credited to the sales account or other gross income account of a taxpayer for goods, materials or services furnished by one department or branch of a business organization to another department or branch of the same business concern or firm.

Tax may be due upon interdepartmental charges covering transfers of goods from a central location to two or more retail outlets. See WAC 458-20-231, Tax on internal distributions. Tax is also due upon the value of products extracted or manufactured by one branch or department of a business for commercial or industrial use of another branch or department of the same business. See WAC 458-20-134. In other cases amounts representing interdepartmental charges may be excluded in computing tax due. This does not permit the exclusion or deduction of charges against or income derived from an affiliated corporation or other affiliated association.

Municipal corporations are entitled to an exclusion of interdepartmental charges in computing tax whether or not the charges represent an actual transfer of money or merely a bookkeeping entry (see WAC 458-20-189).

[Statutory Authority: RCW 82.32.300. 83-08-026 (Order ET 83-1), § 458-20-201, filed 3/30/83; Order ET 70-3, § 458-20-201 (Rule 201), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-202 Pool purchases.** The term "pool purchase" means the joint purchase by two or more persons, engaging in independent business activities, of commodities in carload or truck load quantities for the purpose of obtaining a purchase price or freight rate which is less than when purchased or delivered in smaller quantities.

The term "principal member" means that member of the pool to whom the goods are charged by the vendor of the commodities purchased.

In computing tax liability of the principal member under chapter 82.04 RCW, there may be deducted from gross proceeds of sales the amount received by him from other members of the pool of their proportionate share of the cost thereof of the commodities purchased.

This deduction is allowed only when all of the following conditions are met:

(1) The amount received is included in gross proceeds of sales.

(2) The pool purchase agreement was entered into prior to the time of placing the order for the commodities purchased.

(3) The pool purchase agreement provides that each member shall accept a specific portion of the shipment.

(4) Division of the shipment is made prior to warehousing of the commodities by a member of the pool.

In no event will a "pool purchase" deduction be allowed when an agreement relative to the amount of the share to be distributed to any member is made after the date of the purchase order, or where one member of a pool pays an amount for his portion in excess of the proportionate amount paid by another member.

Revised June 1, 1970.

[Order ET 70-3, § 458-20-202 (Rule 202), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-203 Corporations, Massachusetts trusts.** Each separately organized corporation is a "person" within the meaning of the law, notwithstanding its affiliation with or relation to any other corporation through stock ownership by a parent corporation by the same group of individuals.

Each corporation shall file a separate return and include therein the tax liability accruing to such corporation. This applies to each corporation in an affiliated group, as the law makes no provision for filing of consolidated returns by affiliated corporations or for the elimination of intercompany transactions from the measure of tax.

Each unincorporated association organized under the Massachusetts Trust Act of 1959 (chapter 23.90 RCW) is likewise taxable in the same way as are separate corporations.

Revised June 20, 1959.

[Order ET 70-3, § 458-20-203 (Rule 203), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-204 Outdoor advertising and advertising display services.** The term "outdoor advertising" means the business of rendering an advertising service to others by posting or painting advertising copy upon billboards owned or controlled by the outdoor advertiser.

The term "advertising display service" means the business of installing and maintaining advertising displays upon

(2005 Ed.)

property of others, when title to the property used in the display is retained by the person engaged in such business.

### Business and Occupation Tax

**Service and other business activities.** Taxable under the service and other business activities classification upon the gross income from advertising services.

### Retail Sales Tax

Persons engaged in the business of outdoor advertising or advertising display services are performing an advertising service, and are not required to collect the retail sales tax. Persons purchasing or producing tangible personal property for use in the performance of advertising services are required to pay the retail sales tax upon purchasing such property, or the use tax upon the value of the property produced and used in the performance of such services.

Revised May 1, 1943.

[Order ET 70-3, § 458-20-204 (Rule 204), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-205 Sales of utility services by building companies.** When building companies, apartment house owners or other real estate owners or lessors furnish utility services such as heat and electrical energy to their own tenants of office buildings, apartment houses and storerooms under circumstances indicating it is a part of the normal and customary landlord-tenant relationship and the charge made therefor is the cost of this utility service to the owner or lessor prorated among his tenants based upon the use or consumption of such services, the income derived therefrom is construed to be incidental to and a part of gross income from the renting or leasing of real estate and not subject to the provisions of the business and occupation tax. This is true whether the charge therefor is included in a lump sum rental or is billed separately. However, when the furnishing of utility services is not in accordance with the foregoing, the income derived therefrom is considered to be a separate business activity and is taxable under the appropriate chapter of the Revenue Act.

Revised June 1, 1970.

[Order ET 70-3, § 458-20-205 (Rule 205), filed 5/29/70, effective 7/1/70.]

**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.** Gross income from legal, arbitration, or mediation services is subject to the service and other activities 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 reimbursed 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 sepa-

rately 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, Abstract, title insurance, and escrow business).

(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 documents 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, Abstract, title insurance, and escrow business).

(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 and 82.01.060(2), 04-13-091, § 458-20-207, filed 6/18/04, effective 7/19/04. 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 458-20-208 Exemptions for wholesale sales of new motor vehicles between new car dealers and for accommodation sales.** (1) **Introduction.** This rule discusses the business and occupation (B&O) tax exemptions for certain wholesale sales of new motor vehicles between new car dealers. The rule also discusses the B&O tax exemption for accommodation sales and clarifies the applicability of the accommodation sale exemption to exchanges of fungible products, such as gasoline and oil.

(2) **Wholesale sales of new motor vehicles by new car dealers.** Effective July 1, 2001, RCW 82.04.422 provides a B&O tax exemption for wholesale sales of new motor vehicles by new car dealers to other new car dealers. This exemption does not apply to amounts derived by a manufacturer, distributor, or factory branch as defined in chapter 46.70 RCW.

New car dealers will in most cases find the statutory requirements of this exemption to be less restrictive than those of the accommodation sales exemption discussed in subsection (3) of this rule. Unlike the exemption for accommodations sales, there is no restriction on the amount that the selling dealer can charge the buying dealer, nor is there any requirement that the sale be made to fill an existing order from a customer. While these circumstances may be present in a particular transaction, there is no need to use or rely upon the B&O tax exemption for accommodation sales when the requirements for the exemption for wholesale sales between new car dealers are met. The exemption for wholesale sales of new motor vehicles between new car dealers provided by RCW 82.04.422 is subject to the following conditions.

(a) **New motor vehicle.** The property sold must be a new motor vehicle. For the purposes of this rule, "new motor vehicle" means every motor vehicle that is self-propelled and is required to be registered and titled under Title 46 RCW, has not been previously titled to a retail purchaser, and is not a "used motor vehicle" as defined under RCW 46.04.660, RCW 46.70.011. Examples of motor vehicles include passenger cars, trucks, motorcycles, and motor homes.

(b) **Wholesale sale between new car dealers selling the same make of new motor vehicles.** The sale must be a wholesale sale and must occur between new car dealers selling the same make of vehicle. For purposes of determining whether the exemption applies to transactions involving trades, the trade of each new motor vehicle is considered a separate sale.

(i) **Example 1.** A new car dealer sells a new light pickup truck, Make A, to another new car dealer. The purchasing dealer also sells new Make A passenger vehicles. This sale qualifies for the exemption.

(ii) **Example 2.** New Car Dealer ABC and New Car Dealer XYZ both sell new motor vehicles by Make A and Make X. New Car Dealer ABC sells Make A passenger vehicle to Dealer XYZ. Dealer XYZ sells Make X passenger vehicle to Dealer ABC. Both dealers regularly engage in the business of selling both new motor vehicle makes. Both sales qualify for the exemption.

(iii) **Example 3.** A new car dealer sells a new passenger vehicle, Make X, to another new car dealer. The purchasing dealer is not regularly engaged in the business of selling new Make X vehicles. This sale does not qualify for the exemption.

(iv) **Example 4.** New Car Dealer DEF sells new motor vehicles by Make A and Make X. New Car Dealer LMN sells new motor vehicles by Make A and Make Y. New Car Dealer DEF sells Make A passenger truck to New Car Dealer LMN. New Car Dealer LMN sells Make Y passenger truck to New Car Dealer DEF. Both dealers regularly engage in the business of selling Make A new motor vehicles while only New Car Dealer DEF engages in the business of selling Make Y. The sale of new motor vehicle Make A by Dealer DEF qualifies for the exemption while the sale of Make Y by Dealer LMN does not.

(c) **Documentation.** A person claiming the B&O tax exemption under RCW 82.04.422 for a wholesale sale of a new motor vehicle must maintain sufficient documentation to verify the exemption. The documentation should identify:

- (i) The buyer's name and address;
- (ii) The seller's name and address;
- (iii) The buyer's UBI/tax registration number;
- (iv) The make, model, and serial number of the motor vehicle;
- (v) The date of purchase;
- (vi) That the buyer and seller both regularly engage in making sales of the same make of new motor vehicle; and
- (vii) The buyer's signature and title.

(3) **Accommodation sales.** RCW 82.04.425 provides a B&O tax exemption for wholesale sales of tangible personal property by persons who regularly engage in making sales of the type of property so sold to other persons who similarly engage in the business of selling such property.

The following conditions must be satisfied for the exemption to apply.

(a) **Amount paid by buyer may not exceed amount paid by seller.** The amount the buyer pays to the seller may not exceed the amount the seller paid to the seller's vendor in the acquisition of the property. Thus, a seller who manufactured the property sold cannot claim the exemption because the property has not been acquired from a vendor.

(i) **Expenses associated with preparing property for sale.** A seller may add reasonable expenses for preparing the property for sale, such as actual freight or delivery costs incurred by the seller and billed as such to the buyer. Questions concerning whether the exemption is available when other costs are included should be submitted to the department for determination at:

Department of Revenue  
Taxpayer Services  
P.O. Box 47478  
Olympia, WA 98504-7478

(ii) **What is the effect of holdbacks or discounts on amount paid?** The amount paid by the seller may not be reduced by the amount of any manufacturer's holdbacks or discounts received after an article has been sold to adjust inventory levels even though the seller may retain such holdbacks or discounts.

For the following examples, presume an equipment dealer receives two tractors from the manufacturer on June 1st. The manufacturer's sales invoice indicates an invoice price of \$16,600 and a holdback of \$500 for each tractor. The dealer is entitled to receive the holdback on July 1st, thirty days after being billed for the tractors by the manufacturer.

(A) **Example 1.** The equipment dealer sells one of the tractors to another equipment dealer on June 10th. The amount paid by the selling dealer in the acquisition of the vehicle is \$16,600.

(B) **Example 2.** The equipment dealer sells the other tractor to another equipment dealer on July 18th. The amount paid by the selling dealer in the acquisition of the vehicle is \$16,100.

(b) **Sale is an accommodation to fill an existing order.** The sale must occur as an accommodation to allow the buyer to fill a bona fide existing order of a customer or occur within fourteen days to reimburse in-kind a previous accommodation sale by the buyer to the seller. A bona fide existing order is present if there is a commitment by the buyer's customer to purchase the property. The buyer must retain records demonstrating the customer's commitment to purchase, such as a written agreement or deposit.

For example, Recreational Vehicle Dealer A purchases a fifth-wheel trailer from Recreational Vehicle Dealer B as an accommodation. Ten days later, Dealer A sells a travel trailer to Dealer B as reimbursement in-kind of the previous accommodation sale. For Dealer A to claim the B&O tax exemption for the sale of the travel trailer to Dealer B, Dealer A must keep sufficient records to document a bona fide existing customer order for the fifth-wheel trailer purchased from Dealer B.

(c) **Documentation.** A person claiming the exemption for an accommodation sale must maintain sufficient documentation to verify the exemption. In addition to the documentation noted above establishing, where pertinent, the existence of a bona fide existing customer order, this documentation must include:

- (i) The buyer's name and address;
- (ii) The seller's name and address;
- (iii) The buyer's UBI/tax registration number;
- (iv) Description of the property purchased, including make, model, and serial numbers as appropriate;
- (v) The date of purchase and the purchase price;
- (vi) A statement by the buyer as to whether the purchase is to fill a bona fide existing order or to reimburse a previous in-kind accommodation sale, including information identifying the previous accommodation sale; and
- (vii) The buyer's signature and title.

(4) **Exchanges of fungible products.** Persons engaged in the selling and distributing of fungible products often enter into exchange agreements. An exchange is a sale regardless of whether it results in a profit because a transfer of the ownership of, title to, or possession of property for valuable con-

sideration occurs. RCW 82.04.040. Exchanges are subject to the B&O tax unless otherwise exempt by law.

(a) **What is a fungible product?** Fungible products are products that lose their physical identity to the point that they cannot be distinguished from like-kind items when commingled. Examples of fungible products include gasoline, bulk oil products, grains, logs, wood chips, fruits, and vegetables.

(b) **What is an exchange?** Under typical exchange agreements, a person is required to furnish products to another person selling and distributing the same products, sometimes receiving payment in-kind or with a substitute product at a later date. Exchange agreements may require the person to arrange for direct delivery from his or her vendor to the third party distributor. In some cases, actual title and/or possession of the product may pass directly from the vendor to the third-party distributor.

Persons exchanging fungible products often do so on a regular and continuing basis to cover shortages occurring because of a lack of storage or production facilities, and/or to effect savings in transportation costs. Exchanges may be carried as loans on the books of account (in which case the exchanges are often referred to as "intercompany loans"). Products acquired via an exchange may or may not be carried as regular inventory on the books of account.

(c) **May an exchange of fungible products qualify as an accommodation sale?** The fact that the product sold is a fungible product does not preclude a claim that the sale is exempt as an accommodation sale. However, such a claim will be recognized only if the statutory requirements of RCW 82.04.425 are met.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). 04-17-025, § 458-20-208, filed 8/9/04, effective 9/9/04. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 34.05.230. 03-07-066, § 458-20-208, filed 3/17/03, effective 4/17/03; Order ET 70-3, § 458-20-208 (Rule 208), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-209 Farming for hire and horticultural services performed for farmers.** (1) **Introduction.** This section provides tax reporting information for persons performing horticultural services for farmers. Persons providing horticultural services to persons other than farmers should refer to WAC 458-20-226. Farmers and persons making sales to farmers may also want to refer to the following sections of chapter 458-20 WAC:

- (a) WAC 458-20-122 (Sales of feed, seed, fertilizer, spray materials, and other tangible personal property for farm use);
- (b) WAC 458-20-210 (Sales of agricultural products by farmers); and
- (c) WAC 458-20-239 (Sales to nonresidents of farm machinery or implements).

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

(a) "Farmer" means any person engaged in the business of growing or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product whatsoever for sale. "Farmer" does not include a person using such products as ingredients in a manufacturing process, or a person growing or producing such products for the person's own consumption. The term does not include a person selling any animal or

substance obtained therefrom in connection with the person's business of operating a stockyard, slaughter or packing house. "Farmer" does not include any person in respect to the business of taking, cultivating, or raising timber. RCW 82.04.213.

(b) "Agricultural product" means any product of plant cultivation or animal husbandry including, but not limited to a product of horticulture, grain cultivation, vermiculture, or viticulture. "Agricultural product" includes plantation Christmas trees, animals, birds, insects, or the substances obtained from such animals. RCW 82.04.213. On and after July 1, 1993, "agricultural product" includes products of "aquaculture" and animals that are "cultured aquatic products," as those terms are defined by RCW 15.85.020. Also effective July 1, 1993, "turf" was added to the definition of "agricultural product," and "animals intended to be pets" were specifically excluded. (See chapter 25, Laws of 1993 sp.s.)

(c) "Horticultural services" include services related to the cultivation of vegetables, fruits, grains, field crops, ornamental floriculture, and nursery products. The term "horticultural services" includes, but is not limited to, the following:

- (i) Soil preparation services such as plowing or weed control before planting;
- (ii) Crop cultivation services such as planting, thinning, pruning, or spraying; and
- (iii) Crop harvesting services such as threshing grain, mowing and baling hay, or picking fruit.

(3) **Business and occupation tax.** Persons performing horticultural services for farmers are generally subject to the service and other business activities B&O tax upon the gross proceeds. However, if the person providing horticultural services also sells tangible personal property for a separate and distinct charge, the charge made for the tangible personal property will be subject to either the wholesaling or retailing B&O tax, depending on the nature of the sale. Persons making sales of tangible personal property to farmers should refer to WAC 458-20-122 to determine whether the wholesaling or retailing tax applies, and under what circumstances retail sales tax must be collected.

(a) A farmer who occasionally assists another farmer in planting or harvesting a crop is generally not considered to be engaged in the business of performing horticultural services. These activities are generally considered to be casual and incidental to the farming activity. For example, a farmer owning baling equipment which is used primarily for baling hay produced by the farmer, but who may occasionally accommodate neighboring farmers by baling small quantities of hay produced by them, is not considered to be in business with respect thereto.

(b) The extent to which horticultural services are performed for others is determinative of whether or not they are considered taxable business activities. Persons who advertise or hold themselves out to the public as being available to perform farming for hire will be considered as being engaged in business. For example, a person who regularly engages in baling hay or threshing grain for others is engaged in business and taxable upon the gross proceeds derived therefrom, irrespective of the amount of such business or that this person also does some farming of his or her own land.

(c) In cases where doubt exists in determining whether or not a person is engaged in the business of performing horti-

cultural services, all pertinent information should be submitted to the department of revenue for a specific ruling.

(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 machinery, machinery parts and repair, tools, and cleaning materials by persons performing horticultural services are subject to retail sales tax.

(b) Persons taxable under the service and other business activities B&O tax classification are defined as consumers of anything they use in performing their services. (Refer to RCW 82.04.190.) As such, these persons are required to pay retail sales or use tax upon the purchase of all items used in performing the service, such as fertilizers, spray materials, and baling wire, which are not sold separate and apart from the service they perform.

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

(a) John Doe is a wheat farmer owning threshing equipment which is generally used only for threshing his own wheat. Occasionally a neighbor's threshing equipment may break down and John will use his own equipment to assist the neighbor in completing the neighbor's wheat harvest. While John receives payment for providing the threshing assistance, this activity is considered to be a casual and isolated sale. John does not hold himself out as being in the business of performing farming (threshing) for hire. John Doe is not considered to be engaging in taxable business activities. The amounts John Doe receives for assisting in the harvest of his neighbors' wheat is not subject to tax.

(b) X Spraying applies fertilizer to orchards owned by Farmer A. The sales invoice provided to Farmer A by X Spraying reflects a "lump sum" amount with no segregation of charges for the fertilizer and the application. When reporting its tax liability, X Spraying would report the total charge under the service B&O tax classification. X Spraying must also remit retail sales or use tax upon the purchase of the fertilizer. The entire amount charged by X Spraying is for horticultural services, and X Spraying is considered the consumer of the fertilizer.

(c) Z Flying aerial sprays pesticides on crops owned by Farmer B. The sales invoice Z Flying provides to Farmer B segregates the charge for the pesticides and the charge for the application. When reporting its tax liability, Z Flying would report the charge for the application under the service B&O tax classification. The charge for the sale of the spray materials is subject to the wholesaling B&O tax, provided Z Flying obtains a resale certificate from Farmer B. (See WAC 458-20-122.) Z Flying's purchase of the pesticides is a purchase for resale and not subject to the retail sales tax.

[Statutory Authority: RCW 82.32.300, 94-07-050, § 458-20-209, filed 3/10/94, effective 4/10/94; 83-08-026 (Order ET 83-1), § 458-20-209, filed 3/30/83; Order ET 70-3, § 458-20-209 (Rule 209), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-210 Sales of tangible personal property for farming—Sales of agricultural products by farmers.**

(1) **Introduction.** This rule explains the application of busi-

ness and occupation (B&O), retail sales, and use taxes to the sale and/or use of feed, seed, fertilizer, spray materials, and other tangible personal property for farming. This rule also explains the application of B&O, retail sales, and litter taxes to the sale of agricultural products by farmers. Farmers should refer to WAC 458-20-101 to determine whether they must obtain a tax registration endorsement or a temporary registration certificate from the department of revenue (department).

Farmers and persons making sales to farmers may also want to refer to the following rules for additional information:

- (a) WAC 458-20-209 (Farming for hire and horticultural services provided to farmers);
- (b) WAC 458-20-222 (Veterinarians);
- (c) WAC 458-20-239 (Sales to nonresidents of farm machinery or implements, and related services); and
- (d) WAC 458-20-262 (Retail sales and use tax exemptions for agricultural employee housing).

(2) **Who is a farmer?** A "farmer" is any person engaged in the business of growing, raising, or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product to be sold. A "farmer" does not include a person growing, raising, or producing agricultural products for the person's own consumption; a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard, slaughterhouse, or packing house; or a person in respect to the business of taking, cultivating, or raising timber. RCW 82.04.213 and chapter 118, Laws of 2001.

(3) **What is an agricultural product?** An "agricultural product" is any product of plant cultivation or animal husbandry including, but not limited to: A product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as defined in RCW 15.85.020; plantation Christmas trees; short-rotation hardwoods as defined in RCW 84.33.035 (as of July 22, 2001); turf; or any animal, including, but not limited to, an animal that is a private sector cultured aquatic product as defined in RCW 15.85.020, a bird, an insect, or the substances obtained from such animals. An "agricultural product" does not include animals defined under RCW 16.70.020 as "pet animals." RCW 82.04.213 and chapter 118, Laws of 2001.

(4) **Sales to farmers.** Persons making sales of tangible personal property to farmers are generally subject to wholesaling or retailing B&O tax, as the case may be, on the gross proceeds of sales. Sales of some services performed for farmers, such as installing or repairing tangible personal property, are retail sales and subject to retailing B&O tax on the gross proceeds of such sales. Persons making retail sales must collect retail sales tax from the buyer, unless the sale is specifically exempt by law. Readers should refer to subsection (6) of this rule for information about specific sales tax exemptions available for sales to farmers.

(a) **Documenting wholesale sales.** A seller must obtain a resale certificate from the buyer to document the wholesale nature of any transaction. (Refer to WAC 458-20-102 for detailed information about resale certificates.)

(b) **Buyer's responsibility when the seller does not collect retail sales tax on a retail sale.** If the seller does not collect retail sales tax on a retail sale, the buyer must pay the

retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department, unless the sale is specifically exempt by law. The "Combined Excise Tax Return" does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's Combined Excise Tax Return. If a deferred sales tax or use tax liability is incurred by a farmer who is not required to obtain a tax registration endorsement from the department (see WAC 458-20-101), the farmer must report the tax on a "Consumer Use Tax Return" and remit the appropriate tax to the department. Refer to WAC 458-20-178 for detailed information regarding use tax.

The Consumer Use Tax Return can be obtained by calling the department's telephone information center at 1-800-647-7706. The return may also be obtained from the department's website at: <http://dor.wa.gov>.

(c) **Feed, seed, seedlings, fertilizer, spray materials, and agents for enhanced pollination.** Sales to farmers of feed, seed, seedlings, fertilizer, spray materials, and agents for enhanced pollination, including insects such as bees, to be used for the purpose of producing an agricultural product, whether for wholesale or retail sale, are wholesale sales.

However, when these items are sold to consumers for purposes other than producing agricultural products for sale, the sales are retail sales. For example, sales of feed to riding clubs, racetrack operators, boarders, or similar persons who do not resell the feed at a specific charge are retail sales. Sales of feed for feeding pets or work animals, or for raising animals for the purpose of producing agricultural products for personal consumption are also retail sales. Sales of seed, fertilizer, and spray materials for use on lawns and gardens, or for any other personal use, are likewise retail sales.

(i) **What is feed?** "Feed" is any substance used as food to sustain or improve animals, birds, fish, or insects, including whole and processed grains or mixtures thereof, hay and forages or meals made therefrom, mill feeds and feeding concentrates, stock salt, hay salt, bone meal, fish meal, cod liver oil, double purpose limestone grit, oyster shell, and other similar substances. Food additives that are given for their beneficial growth or weight effects are "feed."

Hormones or similar products that do not make a direct nutritional or energy contribution to the body are not "feed," nor are products used as medicines.

(ii) **What is seed?** "Seed" is the propagative portions of plants commonly used for seeding or planting whether true seed, bulbs, plants, seed-like fruits, seedlings, or tubers.

(iii) **What is fertilizer?** "Fertilizer" is any substance containing one or more recognized plant nutrients and is used for its plant nutrient content and/or is designated for use in promoting plant growth. "Fertilizer" includes limes, gypsum, and manipulated animal and vegetable manures. There is no requirement that fertilizers be applied directly to the soil.

(iv) **What are spray materials?** "Spray materials" are any substance or mixture of substances in liquid, powder, granular, dry flowable, or gaseous form, which is intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mollusk, fungus, weed, and any other form of plant or animal life normally considered to be a pest. The term includes treated materials, such as grains, that are intended to destroy, control, or repel such pests. "Spray mate-

rials" also include substances that act as plant regulators, defoliants, desiccants, or spray adjuvants.

(v) **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) Sue grows vegetables for retail sale at a local market. Sue purchases fertilizers and spray materials that she applies to the vegetable plants. She also purchases feed for poultry that she raises to produce eggs for her personal consumption. Because the vegetables are an agricultural product produced for sale, retail sales tax does not apply to Sue's purchases of fertilizers and spray materials, provided she gives the seller a resale certificate. Retail sales tax does apply to her purchases of poultry feed, as the poultry are raised to produce eggs for Sue's personal consumption.

(B) WG Vineyards (WG) grows grapes that it uses to manufacture wine for sale. WG purchases pesticides and fertilizers that are applied to its vineyards. WG may purchase these pesticides and fertilizers at wholesale, provided WG gives the seller a resale certificate.

(C) Seed Co. contracts with farmers to raise seed. Seed Co. provides the seed and agrees to purchase the crop if it meets specified standards. The contracts provide that ownership of the crop is retained by Seed Co., and the risk of crop loss is borne by the farmers. The farmers are obligated to pay for the seed whether or not the crop meets the specified standard. The transfer of the possession of the seed to the farmers is a wholesale sale, provided Seed Co. obtains a resale certificate from the farmers.

(d) **Chemical sprays or washes.** Sales of chemical sprays or washes, whether to farmers or other persons, for the purpose of post-harvest treatment of fruit for the prevention of scald, fungus, mold, or decay are wholesale sales.

(e) **Farming equipment.** Sales to farmers of farming equipment such as machinery, machinery parts and repair, tools, and cleaning materials are retail sales and subject to retailing B&O and retail sales taxes, unless specifically exempt by law. Refer to subsections (4)(i) and (6) of this rule for information about sales tax exemptions available to farmers.

(f) **Packing materials and containers.** Sales of packing materials and containers, or tangible personal property that will become part of a container, to a farmer who will sell the property to be contained therein are wholesale sales, provided the packing materials and containers are not put to intervening use by the farmer. Thus, sales to farmers of binder twine for binding bales of hay that will be sold or wrappers for fruit and vegetables to be sold are subject to wholesaling B&O tax. However, sales of packing materials and containers to a farmer who will use the items as a consumer are retail sales and subject to retailing B&O and retail sales taxes. Thus, sales of binder twine to a farmer for binding bales of hay that will be used to feed the farmer's livestock are retail sales.

(g) **Purchases for dual purposes.** A buyer normally engaged in both consuming and reselling certain types of tangible personal property and not able to determine at the time of purchase whether the particular property purchased will be consumed or resold must purchase according to the general nature of his or her business. RCW 82.08.130. If the buyer

principally consumes the articles in question, the buyer should not give a resale certificate for any part of the purchase. If the buyer principally resells the articles, the buyer may issue a resale certificate for the entire purchase. For the purposes of this subsection, the term "principally" means greater than fifty percent.

If a buyer makes a purchase for dual purposes and does not give a resale certificate for any of the purchase and thereafter resells some of the articles purchased, the buyer may claim a "taxable amount for tax paid at source" deduction. Refer to WAC 458-20-102 for additional information regarding purchases for dual purposes and the "taxable amount for tax paid at source" deduction.

(i) **Potential deferred sales tax liability.** If the buyer gives a resale certificate for all purchases and thereafter consumes some of the articles purchased, the buyer is liable for deferred sales tax and must remit the tax directly to the department. Refer to subsection (4)(b) of this rule and WAC 458-20-102 for more information regarding deferred sales tax.

(ii) **Example.** A farmer purchases binder twine for binding bales of hay. Some of the hay will be sold and some will be used to feed the farmer's livestock. More than fifty percent of the binder twine is used for binding bales of hay that will be sold. Because the farmer principally uses the binder twine for binding bales of hay that will be sold, the farmer may issue a resale certificate to the seller for the entire purchase. The farmer is liable for deferred sales tax on the binder twine used for binding bales of hay that are used to feed the farmer's livestock and must remit the tax directly to the department.

(h) **"Fruit bin rentals" by fruit packers.** Fruit packers often itemize their charges to farmers for various services related to the packing and storage of fruit. An example is a charge for the bins which the packer uses in the receiving, sorting, inspecting, and storing of fruit (commonly referred to as "bin rentals"). The packer delivers the bins to the grower, who fills them with fruit for eventual storage in the packer's warehouse. Charges by fruit packers to farmers for such bin rentals do not constitute the rental of tangible personal property to the farmer where the bins are under the control of the packer for use in the receiving, sorting, inspecting, and storing of fruit. These charges are income to the packer related to the receipt or storage of fruit. The packer, as the consumer of the bins, is subject to retail sales or use tax on the purchase or use of the bins. (Information regarding the taxability of fruit packing is contained in WAC 458-20-214.)

(i) **Machinery and equipment used directly in a manufacturing operation.** Machinery and equipment used directly in a manufacturing operation by a manufacturer or processor for hire is exempt from sales or use tax provided that all requirements for the exemption are met. RCW 82.08.02565 and 82.12.02565. This exemption is commonly referred to as the M&E exemption. Farmers who use agricultural products that they have grown, raised, or produced as ingredients in a manufacturing process may be entitled to the M&E exemption on the acquisition of machinery and equipment used directly in their manufacturing operation. Refer to WAC 458-20-13601 for detailed information regarding the M&E exemption.

See subsection (5)(b) of this rule for an example illustrating a farmer using agricultural products that the farmer has grown as an ingredient in a manufacturing process.

(5) **Sales by farmers.** Farmers are not subject to B&O tax on wholesale sales of agricultural products. RCW 82.04.330. Farmers who manufacture products using agricultural products that they have grown, raised, or produced should refer to subsection (5)(b) of this rule for tax-reporting information.

Farmers are subject to retailing B&O tax on retail sales of agricultural products and retailing or wholesaling B&O tax on sales of nonagricultural products, as the case may be, unless specifically exempt by law. Also, B&O tax applies to sales of agricultural products that the seller has not grown, raised, or produced upon the seller's own land or upon land in which the seller has a present right of possession, whether these products are sold at wholesale or retail. Likewise, B&O tax applies to sales of animals or substances derived from animals in connection with the business of operating a stockyard, slaughterhouse, or packing house. Farmers may be eligible to claim a small business B&O tax credit if the amount of B&O tax liability in a reporting period is under a certain amount. For detailed information about this credit, refer to WAC 458-20-104.

(a) **Litter tax.** The gross proceeds of sales of certain products, including food for human or pet consumption, are subject to litter tax. RCW 82.19.020. Litter tax does not apply to sales of agricultural products that are exempt from B&O tax under RCW 82.04.330. RCW 82.19.050 and chapter 118, Laws of 2001. Thus, farmers are not subject to litter tax on wholesale sales of agricultural products but are liable for litter tax on the gross proceeds of retail sales of agricultural products that constitute food for human or pet consumption. Also, farmers that manufacture products for use and consumption within this state (e.g., a farmer who produces wine from grapes that the farmer has grown) may be liable for litter tax measured by the value of the products manufactured. For detailed information about the litter tax, refer to chapter 82.19 RCW and WAC 458-20-243.

For example, RD Orchards (RD) grows apples at its orchards. Most apples are sold at wholesale, but RD operates a seasonal roadside fruit stand from which it makes retail sales of apples. The wholesale sales of apples are exempt from both B&O and litter taxes. The retail sales of apples are subject to retailing B&O and litter taxes but are exempt from sales tax because the apples are sold as a food product for human consumption. (See subsection (6)(d) of this rule for information about the retail sales tax exemption applicable to sales of food products for human consumption.)

(b) **Farmers using agricultural products in a manufacturing process.** The B&O tax exemption provided by RCW 82.04.330 does not apply to any person selling manufactured substances or articles. Thus, farmers who manufacture products using agricultural products that they have grown, raised, or produced are subject to manufacturing B&O tax on the value of products manufactured. Farmers who sell their manufactured products at retail or wholesale in the state of Washington are also generally subject to the retailing or wholesaling B&O tax, as the case may be. In such cases, a multiple activities tax credit (MATC) may be available. For detailed information regarding the manufacturing

B&O tax and the MATC, refer to WAC 458-20-136 and 458-20-19301, respectively.

For example, WG Vineyards (WG) produces wine from grapes that it grows in its vineyards located within this state. WG makes wholesale sales of its wine to customers both within and outside of this state. WG is subject to manufacturing B&O tax on the value of the wine it produces. WG is also subject to wholesaling B&O tax on wholesale sales of wine delivered to buyers within this state, and WG is entitled to a multiple activities tax credit. In addition, WG is subject to litter tax on the value of wine sold within this state. (See subsection (5)(a) of this rule for information on the litter tax.)

(i) **Special B&O tax rate for manufacturing fresh fruits and vegetables.** A special lower B&O tax rate is provided by RCW 82.04.260 to persons manufacturing fresh fruits or vegetables by canning, preserving, freezing, processing, or dehydrating. Thus, farmers and other persons manufacturing fresh fruits and vegetables using these processes should report their manufacturing activity under the manufacturing fresh fruits and vegetables B&O tax classification.

Wholesale sales of fresh fruits or vegetables canned, preserved, frozen, processed, or dehydrated by the seller and sold to purchasers who transport the goods out of this state in the ordinary course of business are also subject to the lower B&O tax rate provided by RCW 82.04.260.

(ii) **Special B&O tax rate for manufacturing dairy products.** Effective September 20, 2001, a special lower B&O tax rate is provided by RCW 82.04.260 to persons manufacturing dairy products that, as of that date, are identified in 21 CFR, chapter 1, parts 131, 133, and 135. These products include milk, buttermilk, cream, yogurt, cheese, and ice cream, and also include by-products from the manufacturing of dairy products such as whey and casein. Thus, farmers and other persons manufacturing qualifying dairy products should report their manufacturing activity under the manufacturing dairy products B&O tax classification. This special rate does not apply, however, when dairy products are used merely as an ingredient or component of a manufactured product that is not a dairy product (e.g., milk-based soups or pizza).

The special B&O tax rate provided by RCW 82.04.260 also applies to persons selling manufactured dairy products to purchasers who transport the goods outside of this state in the ordinary course of business. Unlike the special B&O tax rate for certain wholesale sales of fresh fruits or vegetables (see subsection (5)(b)(i) of this rule), the special B&O tax rate for sales of qualifying dairy products does not require that the sales be made by the person who manufactured the dairy products nor that they be sales at wholesale.

(c) **Raising cattle for wholesale sale.** Persons who raise cattle for wholesale sale are exempt from B&O tax under RCW 82.04.330 provided that the cattle are held for at least sixty days prior to the sale. Persons who purchase and hold cattle for fewer than sixty days before reselling the cattle are not considered to be engaging in the normal activities of growing, raising, or producing livestock for sale.

For example, a feedlot operation purchases cattle and feeds them until they attain a good market condition. The cattle are then sold at wholesale. The feedlot operator is exempt from B&O tax on wholesale sales of cattle if the cattle are held for at least sixty days while they are prepared for market.

However, the feedlot operator is subject to wholesaling B&O tax on wholesale sales of cattle held for fewer than sixty days prior to the sale.

(d) **B&O tax exemptions available to farmers.** In addition to the exemption for wholesale sales of agricultural products, there are several other B&O tax exemptions available to farmers which are discussed in this subsection.

(i) **Growing, raising, or producing agricultural products owned by other persons.** RCW 82.04.330 exempts amounts received by a farmer for growing, raising, or producing agricultural products owned by others, such as custom feed operations.

For example, a farmer is engaged in the business of raising cattle owned by others (commonly referred to as "custom feeding"). After the cattle attain a good market condition, the owner then sells them. Amounts received by the farmer for custom feeding are exempt from B&O tax under RCW 82.04.330, provided that the cattle are held by the farmer for at least sixty days. Farmers are not considered to be engaging in the activity of raising cattle for sale unless the cattle are held for at least sixty days while the cattle are prepared for market. (See subsection (5)(c) of this rule.)

(ii) **Sales of hatching eggs or poultry.** RCW 82.04.410 exempts amounts received for the sale of hatching eggs or poultry by farmers producing hatching eggs or poultry, when these agricultural products are for use in the production for sale of poultry or poultry products.

(iii) **Processed hops shipped outside Washington for first use.** RCW 82.04.337 exempts amounts received by hop growers or dealers for hops shipped outside the state of Washington for first use, if those hops have been processed into extract, pellets, or powder in this state. However, the processor or warehouse of such products is not exempt on amounts charged for processing or warehousing such products.

(e) **B&O tax credit to encourage alternatives to field burning.** Persons who qualify for a sales or use tax exemption under RCW 82.08.840 or 82.12.840 (machinery, equipment, or structures that reduce emissions from field burning) also qualify for a B&O tax credit. RCW 82.04.4459. The amount of the credit is equal to fifty percent of the amount of costs expended for constructing structures or acquiring machinery and equipment for which an exemption was taken under RCW 82.08.840 or 82.12.840. (See subsection (6)(l) of this rule for information about the sales and use tax exemptions provided by RCW 82.08.840 and 82.12.840.) No application is necessary for the credit. Persons taking the credit must keep records necessary for the department to verify eligibility for the credit. This credit is subject to the following limitations:

- (i) No credit may be taken in excess of the amount of B&O tax that would otherwise be due;
- (ii) Credit may not be carried over to subsequent calendar years;
- (iii) The credit must be claimed by the due date of the last tax return for the calendar year in which the payment is made;
- (iv) Any unused credit expires;
- (v) Refunds will not be given in place of credits;
- (vi) The credit may not be claimed for expenditures that occurred before March 22, 2000; and

(vii) The credit expires on January 1, 2006.

(6) **Retail sales and use tax exemptions.** This subsection provides information about a number of retail sales tax and corresponding use tax exemptions available to farmers and persons buying tangible personal property at retail from farmers. Some exemptions require the buyer to provide the seller with an exemption certificate. Readers should refer to subsection (7) of this rule for additional information regarding exemption certificates.

This subsection contains a number of examples which illustrate these exemptions. The examples identify a number of facts and then state a conclusion. The 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) **Pollen.** Pollen is exempt from retail sales and use taxes. RCW 82.08.0277 and 82.12.0273.

(b) **Semen.** Semen used in the artificial insemination of livestock is exempt from retail sales and use taxes. RCW 82.08.0272 and 82.12.0267.

(c) **Feed for livestock at public livestock markets.** Feed to be consumed by livestock at a public livestock market is exempt from retail sales and use taxes. RCW 82.08.0296 and 82.12.0296.

(d) **Food products.** Food products for human consumption are exempt from retail sales and use taxes. RCW 82.08.0293 and 82.12.0293. This exemption also applies to the sale and/or use of livestock for personal consumption as food. For detailed information about food products that qualify for this exemption, refer to WAC 458-20-244.

(e) **Auction sales of farm property.** Retail sales and use taxes do not apply to tangible personal property, including household goods, which have been used in conducting a farm activity, if the property was purchased from a farmer at an auction sale held or conducted by an auctioneer upon a farm. RCW 82.08.0257 and 82.12.0258.

(f) **Poultry.** Poultry used in the production for sale of poultry or poultry products is exempt from retail sales and use taxes. RCW 82.08.0267 and 82.12.0262.

For example, a poultry hatchery produces poultry from eggs. The resulting poultry are sold to egg producers. These sales are exempt from retail sales taxes under RCW 82.08.0267. (They are also exempt from B&O tax. See subsection (5)(d)(ii) of this rule.)

(g) **Leases of irrigation equipment.** Retail sales and use taxes do not apply to the lease or use of irrigation equipment, but only if:

- (i) The lessor purchased the irrigation equipment for the purpose of irrigating land controlled by the lessor;
- (ii) The lessor has paid retail sales or use tax upon the irrigation equipment;
- (iii) The irrigation equipment is attached to the land in whole or in part; and
- (iv) The irrigation equipment is leased to the lessee as an incidental part of the lease of the underlying land and is used solely on such land. RCW 82.08.0288 and 82.12.0283.

(h) **Beef and dairy cattle.** Beef and dairy cattle to be used by a farmer in producing an agricultural product are exempt from retail sales and use taxes. RCW 82.08.0259 and 82.12.0261.

For example, John operates a farm where he raises beef and dairy cattle for sale. He also raises other livestock for sale including hogs, sheep, and goats. All of John's sales of dairy and beef cattle for use on a farm are exempt from retail sales tax. However, John must collect retail sales tax on all retail sales of sheep, goats, and hogs unless the sales qualify for either the food products exemption described in subsection (6)(d) of this rule, or the exemption for sales of livestock for breeding purposes which is described immediately below.

(i) **Livestock for breeding purposes.** The sale or use of livestock, as defined in RCW 16.36.005, for breeding purposes where the animals are registered in a nationally recognized breed association is exempt from retail sales and use taxes. RCW 82.08.0259 and 82.12.0261. This exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.

For example, ABC Farms raises and sells quarter horses registered in the American Quarter Horse Association (AQHA). Quarter horses are generally recognized as a definite breed of horse, and the AQHA is a nationally recognized breed association. Therefore, ABC Farms is not required to collect sales tax on retail sales of quarter horses for breeding purposes, provided it receives a completed exemption certificate from the buyer.

(j) **Bedding materials for chickens.** Retail sales and use taxes do not apply to bedding materials used by farmers to accumulate and facilitate the removal of chicken manure provided that the farmer is raising chickens that are sold as agricultural products. RCW 82.08.920 and 82.12.920. The exemption became effective September 20, 2001, and is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.

(i) **What are bedding materials?** "Bedding materials" are wood shavings, straw, sawdust, shredded paper, and other similar materials.

(ii) **Example.** Farmer raises chickens for use in producing eggs for sale. When the chickens are no longer useful for producing eggs, Farmer sells the chickens to food processors for soup and stew meat. Farmer purchases bedding materials used to accumulate and facilitate the removal of chicken manure. The purchases of bedding materials by Farmer are exempt from retail sales tax. The law merely requires that the chickens be sold as agricultural products. It is immaterial that Farmer primarily raises the chickens to produce eggs.

(k) **Propane or natural gas used to heat structures housing chickens.** Retail sales and use taxes do not apply to propane or natural gas used by farmers to heat structures used to house chickens. The propane or natural gas must be used exclusively to heat the structures, and the structures must be used exclusively to house chickens that are sold as agricultural products. RCW 82.08.910 and 82.12.910. The exemption became effective September 20, 2001, and is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.

(i) **What are "structures"?** "Structures" are barns, sheds, and other similar buildings in which chickens are housed.

(2005 Ed.)

(ii) **Example.** Farmer purchases natural gas that is used to heat structures housing chickens. The natural gas is used exclusively to heat the structures, and the structures are used exclusively to house chickens. The chickens are used to produce eggs. When the chickens are no longer useful for producing eggs, Farmer sells the chickens to food processors for soup and stew meat. The purchase of natural gas by Farmer is exempt from retail sales tax. The law merely requires that the chickens be sold as agricultural products. It is immaterial that Farmer primarily houses these chickens to produce eggs.

(iii) **Example.** Farmer purchases natural gas that is used to heat structures used in the incubation of chicken eggs and structures used for washing, packing, and storing eggs. The natural gas used to heat these structures is not exempt from retail sales tax because the structures are not used exclusively to house chickens that are sold as agricultural products.

(l) **Machinery, equipment, and structures used to reduce emissions from field burning.** RCW 82.08.840 and 82.12.840 provide a sales and use tax exemption for certain property used to reduce field burning of cereal grains and field and turf grass grown for seed, or to reduce air emissions resulting from such field burning. The retail sales tax exemption applies to sales of machinery and equipment, and to services rendered in respect to constructing structures, installing, constructing, repairing, cleaning, decorating, altering, or improving of structures or eligible machinery and equipment, and to sales of tangible personal property that becomes an ingredient or component of eligible structures or eligible machinery and equipment, if all of the requirements for the exemption listed below in this subsection are met. The sales tax exemption is effective March 22, 2000. The use tax exemption applies to the use of machinery and equipment, and of tangible personal property that becomes an ingredient or component of eligible machinery and equipment, if all of the requirements for the exemption listed below in this subsection are met. This use tax exemption is also effective March 22, 2000. The use tax exemption also applies to the use of services rendered in respect to installing, repairing, cleaning, altering, or improving of eligible machinery and equipment, if all of the requirements for the exemption are met. This component of the use tax exemption is effective June 1, 2002.

These exemptions expire January 1, 2006. Persons taking an exemption must keep records necessary for the department to verify eligibility for the exemption. Persons who have taken an exemption and then discover that they do not meet the requirements for the exemption are subject to a deferred sales tax or use tax liability. (For additional information about deferred sales tax and use tax, refer to subsection (4)(b) of this rule.)

(i) **Majority use requirement.** To qualify for an exemption, the machinery, equipment, or structure must be used more than half (50%) of the time:

(A) For gathering, densifying, processing, handling, storing, transporting, or incorporating straw or straw-based products that results in a reduction in field burning of cereal grains and field and turf grass grown for seed; or

(B) To decrease air emissions resulting from field burning of cereal grains and field and turf grass grown for seed.

(ii) **Exemption certificates.** For the sales tax exemption, the buyer must provide the seller with an exemption certificate in a form and manner prescribed by the department.

(iii) **Examples.** The following examples illustrate this exemption:

(A) Farmer cultivates turf grass. Farmer purchases spray equipment. As an alternative to field burning, the fields in which the spray equipment is used must be sprayed five times instead of twice. The use of the spray equipment meets the requirement that the equipment be used more than half of the time to decrease air emissions resulting from field burning; therefore, the purchase of the spray equipment is exempt.

(B) Farmer, who performs custom baling, purchases a new baler for use in baling hay and straw. The purchase of the baler is exempt if it will be used more than half of the time to bale straw, which results in a reduction in field burning.

(C) Farmer purchases a new combine for use in harvesting wheat. In addition to cutting the stalks, separating the kernels from the chaff, and unloading the kernels, the combine also chops the residual chaff before discharging it onto the field. While the need for field burning may decrease because the smaller residue more readily decomposes, the purchase of the combine does not qualify for the exemption. The combine is not used more than half of the time to decrease air emissions from field burning.

(m) **Dairy nutrient management equipment and facilities.** RCW 82.08.890 and 82.12.890 provide a sales and use tax exemption for persons operating dairy nutrient management equipment and facilities. The retail sales tax exemption applies to sales to eligible persons of services rendered in respect to operating, repairing, cleaning, altering, or improving of dairy nutrient management equipment and facilities, or to sales of tangible personal property that becomes an ingredient or component of the equipment and facilities. The sales tax exemption became effective July 13, 2001. The use tax exemption applies to the use by an eligible person of tangible personal property that becomes an ingredient or component of dairy nutrient management equipment and facilities. This use tax exemption also became effective July 13, 2001. The use tax exemption also applies to the use of labor and services rendered in respect to repairing, cleaning, altering, or improving eligible tangible personal property. This component of the use tax exemption is effective June 1, 2002. The sales and use tax exemption applies to sales made or to the use of tangible personal property or labor and services made after the dairy nutrient management plan is certified under chapter 90.64 RCW.

(i) These exemptions are available only if all of the following requirements are met:

(A) The equipment and facilities must be used exclusively for activities necessary to maintain a dairy nutrient management plan as required under chapter 90.64 RCW; and

(B) The buyer provides the seller with an exemption certificate in a form and manner prescribed by the department which must be retained in the seller's files. The department will provide an exemption certificate to an eligible person upon application. A sample letter for use in applying for an exemption certificate can be obtained from the department as provided in subsection (7) of this rule.

(ii) For purposes of this exemption, the following definitions apply:

(A) "Eligible person" means a person licensed to produce milk under chapter 15.36 RCW who has a certified dairy nutrient management plan by December 31, 2003, as required by chapter 90.64 RCW.

(B) "Dairy nutrient management equipment and facilities" means machinery, equipment, and structures used exclusively in the handling and treatment of dairy manure, such as aerators, agitators, alley scrapers, augers, dams, gutter cleaners, loaders, lagoons, pipes, pumps, separators, and tanks. The term also includes tangible personal property that becomes an ingredient or component of the equipment and facilities, including repair and replacement parts.

(n) **Animal pharmaceuticals.** Certain animal pharmaceuticals are exempt from retail sales and use taxes when sold to, or used by, farmers or veterinarians. RCW 82.08.880 and 82.12.880. To qualify for the exemption, the animal pharmaceutical must be administered to an animal that is raised by a farmer for the purpose of producing an agricultural product for sale. Also, the animal pharmaceutical must be approved by the United States Department of Agriculture (USDA) or the United States Food and Drug Administration (FDA).

This exemption became effective August 1, 2001, and is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.

(i) **What is a "veterinarian"?** A "veterinarian" means a person who is licensed to practice veterinary medicine, surgery, or dentistry under chapter 18.92 RCW.

(ii) **How can I determine whether the FDA or USDA has approved an animal pharmaceutical?** The FDA and USDA have an established approval process set forth in federal regulations. The FDA maintains a list of all approved animal pharmaceuticals called the "*Green Book*." The USDA maintains a list of approved biotechnology products called the "*Veterinary Biologics Product Catalogue*." Pharmaceuticals that are not on either of these lists have not been approved and are not eligible for the exemption.

(iii) **Example.** Dairy Farmer purchases sterilizing agents. The sterilizing agents are applied to the equipment and facilities where Dairy Farmer's cows are milked. Dairy Farmer also purchases teat dips, antiseptic udder washes, and salves that are not listed in either the FDA's *Green Book* of approved animal pharmaceuticals or the USDA's *Veterinary Biologics Product Catalogue* of approved biotechnology products. The purchases of sterilizing agents are not exempt as animal pharmaceuticals because the sterilizing agents are not administered to animals. The teat dips, antiseptic udder washes, and salves are likewise not exempt because they have not been approved by the FDA or USDA. This is the case even if these products are approved by the United States Environmental Protection Agency or any other governmental agency.

(iv) **What type of animal must the pharmaceutical be administered to?** As noted above, the exemption is limited to the sale and/or use of animal pharmaceuticals administered to an animal that is raised by a farmer for the purpose of producing an agricultural product for sale. The conditions under which a farmer may purchase tax-exempt animal pharmaceuticals are similar to those under which a farmer may purchase feed at wholesale. Both types of purchases require that the particular product be sold to a farmer (or a veterinarian in the

case of animal pharmaceuticals), and that the product be given or administered to an animal raised by a farmer for the purpose of producing an agricultural product for sale.

(v) **Examples of animals raised for the purpose of producing agricultural products for sale.** The animal pharmaceutical exemption is available in the following nonexclusive list of examples because the animals are being raised for the purpose of producing an agricultural product for sale, presuming all other requirements for the exemption are met:

(A) Horses, cattle, or other livestock raised by a farmer for sale;

(B) Cattle raised by a farmer for the purpose of slaughtering, if the resulting products are sold;

(C) Milk cows raised and/or used by a dairy farmer for the purpose of producing milk for sale;

(D) Horses raised by a farmer for the purpose of producing foals for sale;

(E) Sheep raised by a farmer for the purpose of producing wool for sale; and

(F) "Private sector cultured aquatic products" as defined by RCW 15.85.020 (e.g., salmon, catfish, and mussels) raised by an aquatic farmer for the purpose of sale.

(vi) **Examples of animals that are not raised for the purpose of producing agricultural products for sale.** The animal pharmaceutical exemption is not available in the following nonexclusive list of examples because the animals are not being raised for the purpose of producing an agricultural product for sale:

(A) Cattle raised for the purpose of slaughtering if the resulting products are not produced for sale;

(B) Sheep and other livestock raised as pets;

(C) Dogs or cats, whether raised as pets or for sale. Dogs and cats are pet animals; therefore, they are not considered to be agricultural products. (See subsection (3) of this rule); and

(D) Horses raised for the purpose of racing, showing, riding, and jumping. However, if at some time in the future the horses are no longer raised for racing, showing, riding, or jumping and are instead being raised by a farmer for the purpose of producing foals for sale, the exemption will apply if all other requirements for the exemption are met.

(vii) **Do products that are used to administer animal pharmaceuticals qualify for the exemption?** Sales of products that are used to administer animal pharmaceuticals (e.g., syringes) do not qualify for the exemption, even if they are later used to administer a tax-exempt animal pharmaceutical. However, sales of tax-exempt animal pharmaceuticals contained in a product used to administer the animal pharmaceutical (e.g., a dose of a tax-exempt pharmaceutical contained in a syringe or cotton applicator) do qualify for the exemption.

(7) **Sales tax exemption certificates.** As indicated in subsection (6) of this rule, certain sales of tangible personal property and retail services either to or by farmers are exempt from retail sales tax. Except as provided below, for those exemptions that require the buyer to provide the seller with an exemption certificate at the time of sale, farmers may use the department's "Farmers' Retail Sales Tax Exemption Certificate" or another certificate with substantially the same information as it relates to the claimed exemption. Sellers must retain a copy of the exemption certificate in their files.

Without proper documentation, sellers are liable for payment of the retail sales tax on sales claimed as exempt.

The Farmers' Retail Sales Tax Exemption Certificate cannot be used for the dairy nutrient management exemption discussed in subsection (6)(m) of this rule. However, as noted above, the department will provide eligible persons, upon application, with an exemption certificate for this exemption. The Farmers' Retail Sales Tax Exemption Certificate and a sample letter for use in applying for the Dairy Nutrient Management Exemption Certificate can be obtained by calling the department's taxpayer information center at 1-800-647-7706. These documents can also be downloaded from the department's website at <http://dor.wa.gov/>.

[Statutory Authority: RCW 82.01.060(2), 82.32.300, and 34.05.230. 03-18-024, § 458-20-210, filed 8/25/03, effective 9/25/03. Statutory Authority: RCW 82.32.300. 94-07-048, § 458-20-210, filed 3/10/94, effective 4/10/94; 86-21-085 (Order ET 86-18), § 458-20-210, filed 10/17/86; 86-07-005 (Order ET 86-3), § 458-20-210, filed 3/6/86; 83-08-026 (Order ET 83-1), § 458-20-210, filed 3/30/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-210, filed 6/27/78; Order ET 70-3, § 458-20-210 (Rule 210), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-211 Leases or rentals of tangible personal property, bailments.** (1) **Introduction.** This section explains how persons are taxable who rent or lease tangible personal property or rent equipment with an operator. RCW 82.04.050(4) was amended by chapter 25, Laws of 1993 sp. sess. to specifically include the rental of equipment with an operator as a retail sale. However, as will be explained in more detail below, some activities performed by operated equipment may be taxable under classifications other than retail sales if the operator and equipment perform activities as a prime contractor or subcontractor and these activities are specifically classified under other tax classifications by the revenue act.

(2) **Definitions.**

(a) The terms "leasing" and "renting" are used interchangeably and refer generally to the act of granting to another the right of possession to and use of tangible personal property for a consideration. When "lease," "leasing," "lessee," or "lessor" are used in this section, these terms are intended to include rentals as well, even if not specifically stated.

Persons may not claim to be leasing or renting equipment to themselves since they are not granting to another the right of possession.

(b) The term "bailment" refers to the act of granting to another the temporary right of possession to and use of tangible personal property for a stated purpose without consideration to the grantor.

(c) The term "subcontractor" refers to a person who has entered into a contract for the performance of an act with the person who has already contracted for its performance. A subcontractor is generally responsible for performing the work to contract specification and determines how the work will be performed. In purchasing subcontract services, the customer is primarily purchasing the knowledge, skills, and expertise of the contractor to perform the task, as distinguished from the operation of the equipment.

(d) The term "rental of equipment with operator" means the provision of equipment with an operator to a lessee to perform work under the specific direction of the lessee. In such

cases the lessor is generally not responsible for performing work to contract specification and does not determine how the work will be performed. Though not controlling, persons who rent equipment with an operator typically bill on the basis of the amount of time the equipment was used.

(e) The term "true object test" as it relates to this section means the analysis of a transaction involving equipment and an operator to determine if the lessee is simply purchasing the use of the equipment or purchasing the knowledge, skills, and expertise of the operator beyond those needed to operate the equipment. Even if it is determined that the customer is purchasing the knowledge, skills, and expertise of the operator, the transaction may still be a retail sale if the activity is specifically included by statute within the definition of a retail sale. This test can also be applied to rentals of tangible personal property when the seller performs some service in connection with the rental.

(f) The term "true lease" (often referred to as an "operating lease") refers to the act of leasing property to another for consideration with the property under the dominion and control of the lessee for the term of the lease with the intent that the property will revert back to the lessor at the conclusion of the lease.

(g) The term "financing lease" (often referred to as a "capital lease") typically involves the lease of property for a stated period of time with ownership transferring to the "lessee" at the conclusion of the lease for a nominal or minimal payment. The transaction is structured as a lease, but retains some elements of an installment sale. Financing leases will generally be taxed as if they are installment sales. The presence of some or all of the following factors indicates a financing lease with the transaction treated as an installment sale:

- (i) The lessee is given an option to purchase the equipment, and, if so, the option price is nominal (sometimes referred to as a "bargain purchase option");
- (ii) The lessee acquires equity in the equipment;
- (iii) The lessee is required to bear the entire risk of loss;
- (iv) The lessee pays all the charges and taxes imposed on ownership;
- (v) There is a provision for acceleration of rent payments; and
- (vi) The property was purchased specifically for lease to this lessee.

(3) A true lease, rental, or bailment of personal property does not arise unless the lessee or bailee, or employees or independent operators hired by the lessee or bailee actually takes possession of the property and exercises dominion and control over it. Where the owner/lessor of the equipment or the owner's/lessor's employees or agents maintain dominion and control over the personal property and actually operate it, the owner/lessor has not generally relinquished sufficient control over the property to give rise to a true lease, rental, or bailment of the property.

(4) RCW 82.04.050 excludes from the definition "retail sale" any purchases for the purpose of resale, "as tangible personal property." Persons who use equipment in performing services either as prime contractors or as subcontractors are not purchasing the equipment for purposes of reselling the equipment as tangible personal property. These contractors must pay retail sales tax or use tax at the time the equipment is acquired. Generally persons who rent equipment with

an operator are not purchasing the equipment for resale as tangible personal property and must pay retail sales or use tax at the time the equipment is acquired. Persons renting operated equipment to others may purchase the equipment without payment of retail sales tax only when the equipment is rented as tangible personal property. This can be demonstrated only when:

- (a) The agreement between the parties is designated as an outright lease or rental, without reservations; and
- (b) The lessee acquires the right of possession, dominion, and control of the equipment, even to the exclusion of the lessor.

This last requirement is a factual question and the burden of proof is upon the owner/operator of the equipment to establish that the degree of control has been relinquished necessary to constitute a lessor-lessee relationship. Weight will be given to such factors as who has physical, operating control of the equipment; who is responsible for its maintenance, fueling, repair, storage, insurance (risk of loss or damage), safety and security of operation, and whether the operator is a loaned employee. If control of these factors is left with the owner/operator, then as a matter of fact, there has not been a relinquishing of control of the equipment to the degree necessary to create a lessor-lessee relationship for the rental of tangible personal property. This is true, even though the customer exercises some constructive control over such matters as when and where the equipment is used in connection with the construction work being performed, i.e., the contractor controls the job site.

**(5) Business and occupation (B&O) tax.**

(a) Outright rentals of bare (unoperated) equipment or other tangible personal property as well as leases of operated equipment are generally subject to the retailing classification of the business and occupation tax.

(i) When a lessor purchases equipment for bare rental or lease, the seller of the equipment is making a wholesale sale to the lessor and is required to obtain a resale certificate from the lessor as provided in WAC 458-20-102.

(ii) Under unique circumstances when equipment is rented for re-rent by the lessee, without intervening use, then the original rental is subject to the wholesaling classification of tax and the subsequent rental is subject to the retailing classification. The original seller is required to obtain a resale certificate for these wholesale sales.

(iii) Persons who purchase equipment for use as prime contractors or subcontractors are considered to be the consumers of these purchases. They are the consumers because they are not specifically reselling the tangible personal property. Persons selling equipment to these persons are retailers and subject to the retailing B&O tax.

(b) Persons who provide equipment or other tangible personal property and, in addition, operate the equipment or supply an employee to operate the same for a charge, without relinquishing substantial dominion and control to the customer, are providing a service that is classified as a retail sale unless the nature of the activity is specifically classified under another tax classification. Where a specific tax classification applies to the activity, the income is subject to the business and occupation tax (or public utility tax) according to the classification of the activities performed by the equipment and operator. In the case of building construction, it will

be presumed that the rental of equipment with operator to a contractor is a retail sale unless the operator has responsibility for performing construction to contract specifications and assumes control over how the work will be performed.

(c) Under some circumstances, the leasing or renting of tangible personal property can be subject to the special "retailing of interstate transportation equipment" B&O tax classification. This classification applies if the sale is exempt from retail sales tax because of the specific tax exemptions of RCW 82.08.0261, 82.08.0262, or 82.08.0263. These exemptions apply primarily to sales to private or common carriers who are engaged in interstate or foreign commerce.

(d) The following examples show how the tax would be applied to certain situations.

(i) The charge made by a subcontractor to a prime construction contractor for use of equipment with an operator used in the paving of a parking lot as part of the construction of a building would be taxable under wholesaling—other when the subcontractor has the responsibility to perform the work to contract specification and determines how the work will be performed.

(ii) A contractor performing work to contract specification making a charge to a city for use of equipment and operator in the construction of a publicly owned road would be taxable under public road construction.

(iii) Income for loading of a vessel using equipment with an operator is taxable under the stevedoring classification.

(iv) Income from transporting persons or property for hire by motor vehicle, including leasing or renting motor carrier equipment with driver, is generally taxable under either motor transportation or urban transportation.

(v) A customer rents scaffolding and the seller is responsible for a technician to setup, move, and dismantle it. This is the rental of tangible personal property since the true object of the transaction is having the scaffolding available for use by the customer. The customer also assumes dominion or control over the scaffolding by determining who will use the scaffolding and by controlling the use of the scaffolding.

(vi) Income from transporting persons or property for hire by vessel is not a retail equipment rental with operator.

(6) **Retail sales tax.** Persons who rent or lease tangible personal property to users or consumers are required to collect from their lessees the retail sales tax measured by gross income from rentals as of the time the rental payments fall due.

(a) RCW 82.04.050 excludes from the definition of the term "retail sale," purchases for resale "as tangible personal property." Thus the retail sales tax does not apply upon sales of tangible personal property to persons who purchase the same solely for the purpose of renting or leasing such property without operators. However, the retail sales tax applies upon sales to persons who provide such property with operators for a charge, without relinquishing substantial dominion and control, or who intend to make some use of the property other than or in addition to renting or leasing.

(b) Financing leases are treated for state tax purposes as installment sales. The retail sales tax applies to the full selling price. Refer to WAC 458-20-198.

(c) The retail sales tax does not apply to lease payments made by a seller/lessee under a sale/leaseback agreement in respect to property, equipment, and components used by the

seller/lessee primarily in the business of canning, preserving, freezing, or dehydrating fresh fruits, vegetables, and fish. Nor does the sales tax apply to the purchase amount paid by the lessee pursuant to an option to purchase this specific kind of processing equipment at the end of the lease term. (See RCW 82.08.0295.) In both situations the availability of this special sales tax exemption is contingent upon the seller/lessee having paid retail sales tax or use tax at the time of acquisition of such special processing property, equipment, and components. The use tax will also not apply if the sales tax does not apply.

(7) **Use tax and/or deferred retail sales tax.** Consumers who rent or lease tangible personal property from others and who have not paid the retail sales tax to their lessors are liable for the retail sales tax or use tax on the amount of the rental payments as of the time the payments fall due unless an exemption from the tax applies. However, if the rental payments do not represent a reasonable rental value for the article, the taxable value shall be determined according to the rental charges made by other sellers of similar articles of like quality and character. This can include using the rate of return as a percentage of the capitalized value that lessors of the particular type of property are generally using in rate setting.

In some cases lessors may lease articles wherein the lease payments do not include property taxes or insurance. These leases are often referred to as "net leases" with the insurance and taxes paid directly by the lessee. If the lessor is the party insured and the party legally liable for payment of the taxes, the payments made directly by the lessee must be treated as additional consideration to the lessor and subject to the retailing and retail sales tax.

(a) **Bailment.** The value of tangible personal property held or used under bailment is subject to use tax if the property was purchased or acquired under conditions whereby the retail sales tax was not paid by the bailor. Tax liability is that of the bailor, or of the bailee if the bailor has not paid the tax. The measure of the tax to the bailor is the fair market value of the article at the time the article was first put to use in Washington. The measure of the use tax to the bailee for articles acquired by bailment is the reasonable rental with the value to be determined as nearly as possible according to the rental price at the place of use of similar products of like quality and character. In the absence of rental prices for similar products, the reasonable rental may be computed by prorating the retail selling price over the period of possession had by a bailee and payable in monthly installments. No further use tax is due upon property acquired by bailment after tax has been paid by the bailee or any previous bailee upon the full original value of the article.

(b) Use tax does not apply to use by a bailee of any article of tangible personal property which is entirely consumed in the course of research, development, experimental, and testing activities conducted by the user, providing the acquisition or use of such articles by the bailor are exempt from sales or use tax. (RCW 82.12.0265.)

(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. In some situations it may be dif-

difficult to determine if the transaction is a retail equipment rental with operator. If in doubt as to whether a particular rental with an operator is a retail sale, taxpayers should contact the department for a specific ruling.

(a) ABC Crane is hired to supply a crane and operator to lift air conditioning equipment from the ground and hold it in place on the roof of a six-story building while the prime construction contractor bolts the unit down. ABC Crane's operator will retain control over the crane. ABC Crane has no responsibility to attach wiring, plumbing, or otherwise make the unit operational. ABC Crane is renting equipment with an operator since it has no responsibility to perform actual construction to contract specification. The activity of renting a crane with an operator is a service included within the definition of a retail sale and is not otherwise tax classified elsewhere within the revenue act. The purchase of the crane by ABC is also a retail transaction because ABC retained control over the crane and is not renting the crane as tangible personal property.

(b) ABC Crane is hired by a prime contractor to install a neon sign on the side of a new six-story building which is being constructed. ABC is responsible for making certain that the sign is correctly fastened to the side of the building and for installation of the electrical connections and meets the proper building codes. ABC is directly involved in construction and performs work to contract specification. Since the work is being done for the prime contractor for further resale, this is a wholesale sale, provided a resale certificate is obtained. Had ABC only been hired to hold the sign in place while the prime contractor fastened it, this would have been a retail rental of equipment with operator.

(c) XYZ Concrete Pumping is hired by a prime contractor to supply a concrete pump and operator to pump concrete from a premix concrete delivery truck to the location of the forms. XYZ has no responsibility to build forms, do the concrete finishing, or otherwise see that the concrete meets or is placed according to contract specifications. In short, the pump functions similarly to a wheelbarrow, but in a more efficient manner. XYZ is not a subcontractor and is making a retail rental of equipment with an operator.

(d) ABC Company purchases a crane which it rents to others as a bare rental. It periodically rents the crane to lessees on this basis for two years. Beginning in the third year of ownership of this crane, ABC decides to start providing these customers with an employee to operate the crane. The employee will operate under the direction of ABC with ABC retaining dominion and control over the crane. Does ABC owe use tax on the crane, and if so, what is the measure of the use tax?

ABC owes use tax upon the first use of the crane as a consumer. This occurred in the third year of ownership when ABC began supplying an operator. The measure of the tax is the retail market value of the crane at the time it is put to use by ABC.

(e) Farm Services, Inc. specializes in the cutting and baling of hay for farmers. The hay, after being cut and baled, is sold by the farmer. Farm Services is not making a retail rental of equipment with operator, but is engaged in a farming for hire activity which is taxable under the service and other business activities B&O tax classification. See WAC 458-20-209.

(f) Helicopter, Inc. contracts with Logs, Inc. to move logs from where they have been cut in the woods to a landing approximately one mile away where the logs will be sorted, loaded on trucks, and transported to a mill. Total control over the helicopter operation rests with Helicopter, Inc. This is not a rental of equipment with an operator, nor is it considered as an air transportation service. This activity is directly part of the timber extracting and harvesting activity and is taxable as extracting for hire.

(g) ABC Sound Productions provides lighting, amplifying equipment, and speakers as part of the services it sells to entertainment promoters. ABC also provides several operators of the equipment. This is a rental of equipment with operator. In applying the true object test, the promoter is primarily purchasing the use of the lighting and sound equipment. The performer or promoter could be expected to specify the color, location, and degree of lighting and may also request changes and modifications to the level of sound amplification during the performance.

(h) John Doe purchased a vessel which will be rented to others as a bare boat rental. The rentals will be arranged through an agent at a marina. The marina receives a commission based on any usage of the vessel, including usage by the owner. The rental of the boat is a retail sale when the boat is rented to others. The usage of the boat by John Doe is not a rental. Since John Doe will be using the boat at times for his own use, he may not purchase the boat for resale.

[Statutory Authority: RCW 82.32.300 and 82.08.010(1). 96-03-139, § 458-20-211, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 82.32.300. 87-17-015 (Order 87-4), § 458-20-211, filed 8/11/87; 83-08-026 (Order ET 83-1), § 458-20-211, filed 3/30/83; Order ET 71-1, § 458-20-211, filed 7/22/71; Order ET 70-3, § 458-20-211 (Rule 211), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-212 Insurance adjusters.** The word "adjuster," as used herein, means a person licensed as such under the provisions of chapter 48.17 RCW.

### **Business and Occupation Tax**

Persons engaged in business as insurance adjusters are taxable under the service and other business activities classification upon the gross income of the business.

There must be included within gross income all fees received for services rendered, and all charges recovered for expenses incurred in performing services, such as transportation costs, hotel, restaurant, telephone and telegraph charges, etc.

In computing tax liability, there may be deducted from gross income (if included therein) money or credits received as reimbursement of advances made for towing, storage of and repairs to damaged automobiles, or advances for doctor, hospital, and ambulance fees and charges, and other such expenditures made with respect to damaged property or injured persons, payment of which was the obligation of the insurer or the insured.

Revised May 1, 1947.

[Order ET 70-3, § 458-20-212 (Rule 212), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-214 Cooperative marketing associations and independent dealers acting as agents of others with respect to the sale of fruit and produce.** (1) Persons

(2005 Ed.)

engaged in the business of buying and selling fruit or produce, as agents of others, are taxable under the provisions of the business and occupation tax and the retail sales tax as provided in this section. Tax is due on the business activities of such persons, irrespective of whether the business is conducted as a cooperative marketing association or as an independent produce agent.

(2) Persons who derive income from receiving, washing, sorting, packing, or otherwise preparing for sale, perishable horticultural products for others are also subject to business and occupation tax, except when such activities are performed for the growers of such products (RCW 82.04.4287.)

(3) Business and occupation tax.

(a) Retailing. Taxable with respect to the sale of ladders, picking bags, and similar equipment to consumers.

(b) Wholesaling. Taxable with respect to:

(i) The sale of boxes, nails, labels and similar supplies sold to growers for their use in packing fruit and produce for sale;

(ii) The sale of insecticides used as spray for fruits and produce;

(c) Warehousing. Taxable with respect to gross income from cold storage warehousing, but not including the rental of cold storage lockers. See also WAC 458-20-182.

(d) Service and other business activities. Taxable with respect to:

(i) Commissions for buying or selling;

(ii) Charges made for interest, no deduction being allowed for interest paid;

(iii) Charges for handling;

(iv) Charges for receiving, washing, sorting, and packing of fresh perishable horticultural products and the material and supplies used therein, when performed for persons other than the growers thereof;

(v) Rentals of cold storage lockers; and

(vi) Other miscellaneous charges, including analysis fees, but excepting actual charges made for foreign brokerage and bona fide charges for receiving, washing, sorting and packing fresh perishable horticultural crops and the materials and supplies used therein when performed for the grower, either as agent or independent contractor.

(4) Where a seller performs packing services for the grower and furnishes the materials and supplies used therein, the amount of the charge therefor is deductible, even though the boxes and other packing material are loaned or charged to the grower prior to the time the fruit or produce is received for packing, provided that the boxes and packing materials are returned by the grower to the seller for use in packing fruit and produce for the grower.

(5) Retail sales tax.

(a) The retail sales tax applies to sales of ladders, picking bags, and other equipment sold to consumers, whether sold by associations to members, or by agents to their principals.

(b) Retail sales tax does not apply to sales of materials and supplies directly used by cooperative marketing associations, agents, or independent contractors for the purpose of packing fresh perishable horticultural products for the growers thereof. "Growers" are those persons described as exempt orchardists or farmers under RCW 82.04.330.

(c) Sales of food products are not subject to retail sales tax. See WAC 458-20-244.

(6) Use tax.

(a) The use tax applies upon the use by consumers of any article of tangible personal property which is subject to retail sales tax as noted above, but upon which retail sales tax has not been paid for any reason.

[Statutory Authority: RCW 82.32.300. 88-20-014 (Order 88-6), § 458-20-214, filed 9/27/88; 83-08-026 (Order ET 83-1), § 458-20-214, filed 3/30/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-214, filed 6/27/78; Order ET 70-3, § 458-20-214 (Rule 214), 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 provides 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 depart-

ment 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 458-20-217 Lien for taxes. (1) Introduction.**

This rule provides an overview of the administrative collection remedies and procedures available to the department of revenue (department) to collect unpaid and overdue tax liabilities. It discusses tax liens and the liens that apply to probate, insolvency, assignments for the benefit of creditors, bankruptcy and public improvement contracts. The rule also explains the personal liability of persons in control of collected but unpaid sales tax. Although the department may use

judicial remedies to collect unpaid tax, most of the department's collection actions are enforced through the administrative collection remedies discussed in this rule.

(2) **Tax liens.** The department is not required to obtain a judgment in court to have a tax lien. A tax lien is created when a warrant issued under RCW 82.32.210 is filed with a superior court clerk who enters it into the judgment docket. A copy of the warrant may be filed in any county in this state in which the department believes the taxpayer has real and/or personal property. The department is not required to give a taxpayer notice prior to filing a tax warrant. *Peters v Sjoholm*, 95 Wn.2d 871, 877, 631 P.2d 937 (1981) *appeal dismissed, cert. denied* 455 U.S. 914 (1982). The tax lien is an encumbrance on property. The department may enforce a tax lien by administrative levy, seizure or through judicial collection remedies.

(a) **Attachment of lien.** The filed warrant becomes a specific lien upon all personal property used in the conduct of the business and a general lien against all other real and personal property owned by the taxpayer against whom the warrant was issued.

(i) The specific lien attaches to all goods, wares, merchandise, fixtures, equipment or other personal property used in the conduct of the business of the taxpayer. Other personal property includes both tangible and intangible property. For example, the specific lien attaches to business assets such as accounts receivable, chattel paper, royalties, licenses and franchises. The specific lien also attaches to property used in the business which is owned by persons other than the taxpayer who have a beneficial interest, direct or indirect, in the operation of the business. (See subsection (3) below for what constitutes a beneficial interest.) The lien is perfected on the date it is filed with the superior court clerk. The lien does not attach to property used in the business that was transferred prior to the filing of the warrant. It does attach to all property existing at the time the warrant is filed as well as property acquired after the filing of the warrant. No sale or transfer of such personal property affects the lien.

(ii) The general lien attaches to all real and personal non-business property such as the taxpayer's home and nonexempt personal vehicles.

(b) **Lien priorities.** The department does not need to levy or seize property to perfect its lien. The lien is perfected when the warrant is filed. The tax lien is superior to liens that vest after the warrant is filed.

(i) The lien for taxes is superior to bona fide interests of third persons that vested prior to the filing of the warrant if such persons have a beneficial interest in the business.

(ii) The lien for taxes is also superior to any interest of third persons that vested prior to the warrant if the interest is a mortgage of real or personal property or any other credit transaction that results in the mortgagee or the holder of the security acting as the trustee for unsecured creditors of the taxpayer mentioned in the warrant.

(iii) In most cases, to have a vested or perfected security interest in personal property, the secured party must file a UCC financing statement indicating its security interest. RCW 62A.9-301. See RCW 62A.9-302 for the exceptions to this general rule. The financing statement must be filed prior to the filing of the tax warrant for the lien to be superior to the department's lien.

(c) **Period of lien.** A filed tax warrant creates a lien that is enforceable for the same period as a judgment in a civil case that is docketed with the clerk of the superior court. RCW 82.32.210(4). A judgment lien expires ten years from the date of filing. RCW 4.56.310. The department may extend the lien for an additional ten years by filing a petition for an order extending the judgment with the clerk of the superior court. The petition must be filed within ninety days of the expiration of the original ten-year period. RCW 6.17.020.

(3) **Persons who have a beneficial interest in a business.** A third party who receives part of the profit, a benefit, or an advantage resulting from a contract or lease with the business has a beneficial interest in the operation of the business. A party whose only interest in the business is securing the payment of debt or receiving regular rental payments on equipment does not have a beneficial interest. Also, the mere loaning of money by a financial institution to a business and securing that debt with a UCC filing does not constitute a beneficial interest in the business. Rather, a party who owns property used by a delinquent taxpayer must also have a beneficial interest in the operation of that business before the lien will attach to the party's property. The definition of the term "beneficial interest" for purposes of determining lien priorities is not the same as the definition used for tax free transfers described in WAC 458-20-106.

(a) **Third party.** A third party is simply a party other than the taxpayer. For example, if the taxpayer is a corporation, an officer or shareholder of that corporation is a "third party" with a beneficial interest in the operation of the business. If the corporate insider has a security interest in property used by the business, the tax lien will be superior even if the corporate insider's lien was filed before the department's lien.

(b) **Beneficial interest of lessor.** In some cases a lessor or franchisor will have a beneficial interest in the leased or franchised business. For example, an oil company that leases a gas station and other equipment to an operator and requires the operator to sell its products is a third party with a beneficial interest in the business. Factors which support a finding of a beneficial interest in a business include the following:

(i) The business operator is required to pay the lessor or franchisor a percentage of gross receipts as rent;

(ii) The lessor or franchisor requires the business operator to use its trade name and restricts the type of business that may be operated on the premises;

(iii) The lease places restrictions on advertising and hours of operation; and/or

(iv) The lease requires the operator to sell the lessor's products.

(c) A third party who has a beneficial interest in a business with a filed lien is not personally liable for the amounts owing. Instead, the amount of tax, interest and penalties as reflected in the warrant becomes a specific lien upon the third party's property that is used in the business.

(4) **Notice and order to withhold and deliver.** A tax lien is sufficient to support the issuance of a writ of garnishment authorized by chapter 6.27 RCW. RCW 82.32.210(4). A tax lien also allows the department to issue a notice and order to withhold and deliver. A notice and order to withhold and deliver (order) is an administrative garnishment used by

the department to obtain property of a taxpayer from a third party such as a bank or employer. See RCW 82.32.235. The department may issue an order when it has reason to believe that a party is in the possession of property that is or shall become due, owing or belonging to any taxpayer against whom a warrant has been filed.

(a) **Service of order.** The department may serve an order to withhold and deliver to any person, or to any political subdivision or department of the state. The order may be served by the sheriff or deputy sheriff of the county where service is made, by any authorized representative of the department, or by certified mail.

(b) **Requirement to answer order.** A person upon whom service has been made is required to answer the order in writing within twenty days of service of the order. The date of mailing or date of personal service is not included when calculating the due date of the answer. All answers must be true and made under oath. If an answer states that it cannot presently be ascertained whether any property is or shall become due, owing, or belonging to such taxpayer, the person served must answer when such fact can be ascertained. RCW 82.32.235.

(i) If the person served with an order possesses property of the taxpayer subject to the claim of the department, the party must deliver the property to the department or its duly authorized representative upon demand. If the indebtedness involved has not been finally determined, the department will hold the property in trust to apply to the indebtedness involved or for return without interest in accordance with the final determination of liability or nonliability. In the alternative, the department must be furnished a satisfactory bond conditioned upon final determination of liability. RCW 82.32.235.

(ii) If the party upon whom service has been made fails to answer an order to withhold and deliver within the time prescribed, the court may enter a default judgment against the party for the full amount claimed owing in the order plus costs. RCW 82.32.235.

(c) **Continuing levy.** A notice and order to withhold and deliver constitutes a continuing levy until released by the department. RCW 82.32.237.

(d) **Assets that may be attached.** Both tangible assets, as a vehicle, and intangible assets may be attached. Examples of intangible assets that may be attached by an order to withhold and deliver include, but are not limited to, checking or savings accounts; accounts receivable; refunds or deposits; contract payments; wages and commissions, including bonuses; liquor license deposits; rental income; dealer reserve accounts held by service stations or auto dealers; and funds held in escrow pending sale of a business. Certain insurance proceeds are subject to attachment such as the cash surrender value of a policy. The department may attach funds in a joint account that are owned by the delinquent taxpayer. Funds in a joint account with the right of survivorship are owned by the depositors in proportion to the amount deposited by each. RCW 30.22.090. The joint tenants have the burden to prove the separate ownership.

(e) **Assets exempt from attachment.** Examples of assets which are not attachable include Social Security, railroad retirement, welfare, and unemployment benefits payable by the federal or state government.

(5) **Levy upon real and/or personal property.** The department may issue an order of execution, pursuant to a filed warrant, directing the sheriff of the county in which the warrant was filed to levy upon and sell the real and/or personal property of the taxpayer in that county. RCW 82.32.-220. If the department has reason to believe that a taxpayer has personal property in the taxpayer's possession that is not otherwise exempt from process or execution, the department may obtain a warrant to search for and seize the property. A search warrant is obtained from a superior or district court judge in the county in which the property is located. See RCW 82.32.245.

(6) **Probate, insolvency, assignment for the benefit of creditors or bankruptcy.** In all of these cases or conditions, the claim of the state for unpaid taxes and increases and penalties thereon, is a lien upon all real and personal property of the taxpayer. RCW 82.32.240. All administrators, executors, guardians, receivers, trustees in bankruptcy, or assignees for the benefit of creditors are required to notify the department of such administration, receivership, or assignment within sixty days from the date of their appointment and qualification. In cases of insolvency, this includes the duty of the person who is winding down the business to notify the department.

(a) The state does not have to take any action to perfect its lien. The lien attaches the date of the assignment for the benefit of creditors or of the initiation of the probate or bankruptcy. In cases of insolvency, the lien attaches at the time the business becomes insolvent. The lien, however, does not affect the validity or priority of any earlier lien that may have attached in favor of the state under any other provision of the Revenue Act.

(b) Any administrator, executor, guardian, receiver, or assignee for the benefit of creditors who does not notify the department as provided above is personally liable for payment of the taxes and all increases and penalties thereon. The personal liability is limited to the value of the property subject to administration that otherwise would have been available to pay the unpaid liability.

(c) In probate cases in which a surviving spouse is separately liable for unpaid taxes and increases and penalties thereon, the department does not need to file a probate claim to protect the state's interest against the surviving spouse. The department may collect from the surviving spouse's separate property and any assets formerly community property which become the surviving spouse's property. If the deceased spouse and/or the community also was liable for the tax debt, the claim also could be asserted in the administration of the deceased spouse's estate.

(7) **Lien on retained percentage of public improvement contracts.** Every public entity engaging a contractor under a public improvement project of twenty thousand dollars or more, shall retain five percent of the total contract price, including all change orders, modifications, etc. This retainage is a trust fund held for the benefit of the department and other statutory claimants. In lieu of contract retainage, the public entity may require a bond. All taxes, increases, and penalties due or to become due under Title 82 RCW from a contractor or the contractor's successors or assignees with respect to a public improvement contract of twenty thousand dollars or more shall be a lien upon the amount of the retained

percentage withheld by the disbursing officer under such contract. RCW 60.28.040.

(a) **Priorities.** The employees of a contractor or the contractor's successors or assignees who have not been paid the prevailing wage under the public improvement contract have a first priority lien against the bond or retainage. The department's lien for taxes, increases, and penalties due or to become due under such contract is prior to all other liens. The amount of all other taxes, increases and penalties due from the contractor is a lien upon the balance of the retained percentage after all other statutory lien claims have been paid. RCW 60.28.040.

(b) **Release of funds.** Upon final acceptance by the public entity or completion of the contract, the disbursing officer shall contact the department for its consent to release the funds. The officer cannot make any payment from the retained percentage until the department has certified that all taxes, increases, and penalties due have been paid or are readily collectible without recourse to the state's lien on the retained percentage. RCW 60.28.050 and 60.28.051.

(8) **Personal liability for unpaid trust funds.** The retail sales tax is to be held in trust. RCW 82.08.050. As a trust fund, the retail sales tax is not to be used to pay other corporate or personal debts. RCW 82.32.145 imposes personal liability on any responsible person who willfully fails to pay or cause to be paid any collected but unpaid retail sales tax. Collection authority and procedures prescribed in chapter 82.32 RCW apply to the collection of trust fund liability assessments.

(a) **Responsible person.** A responsible person is any officer, member, manager, or other person having control or supervision of retail sales tax funds collected and held in trust or who has the responsibility for filing returns or paying the collected retail sales tax.

(i) A responsible person may have "control and supervision" of collected retail sales tax or the responsibility to report the tax under corporate bylaws, job description, or other proper delegation of authority. The delegation of authority may be established by written documentation or by conduct.

(ii) A responsible person must have significant but not necessarily exclusive control or supervision of the trust funds. Neither a sales clerk who only collects the tax from the customer nor an employee who only deposits the funds in the bank has significant supervision or control of the retail sales tax. An employee who has the responsibility to collect, account for, and deposit trust funds does have significant supervision or control of the tax.

(iii) A person is not required to be a corporate officer or have a proprietary interest in the business to be a responsible person.

(iv) A member of the board of directors, a shareholder, or an officer may have trust fund liability if that person has the authority and discretion to determine which corporate debts should be paid and approves the payment of corporate debts out of the collected retail sales trust funds.

(v) More than one person may have personal liability for the trust funds if the requirements for liability are present for each person.

(b) **Requirements for liability.** In order for a responsible person to be held personally liable for collected and unpaid retail sales tax:

(i) The tax must be the liability of a corporate or limited liability business;

(ii) The corporation must be terminated, dissolved, or abandoned;

(iii) The failure to pay must be willful; and

(iv) The department must not have a reasonable means of collecting the tax from the corporation.

(c) **Willful failure to pay.** A willful failure to pay means that the failure was an intentional, conscious, and voluntary course of action. An intent to defraud or a bad motive is not required. For example, using collected retail sales tax to pay other corporate obligations is a willful failure to pay the trust funds to the state.

(i) A responsible person depositing retail sales tax funds in a bank account knowing that the bank might use the funds to off-set amounts owing to it is engaging in a voluntary course of action. It is a willful failure to pay if the bank does exercise its right of set off which results in insufficient funds to pay the corporate retail sales tax that was collected and deposited in the account. To avoid personal liability in such a case, the responsible party can set aside the collected retail sales tax and not commingle it with other funds that are subject to attachment or set off.

(ii) If the failure to pay the trust funds to the state was due to reasons beyond that person's control, the failure to pay is not willful. For example, if the person responsible for remitting the tax provides evidence that the trust funds were unknowingly stolen or embezzled by another employee, the failure to pay is not considered willful. To find that a failure to pay the trust funds to the state was due to reasons beyond that person's control, the facts must show both that the circumstances caused the failure to pay the tax and that the circumstances were beyond the person's control.

(iii) If a responsible person instructs an employee or hires a third party to remit the collected sales tax, the responsible person is not relieved of personal liability for the tax if the tax is not paid.

(d) **Extent of liability.** Trust fund liability includes the collected but unpaid retail sales tax as well as the interest and penalties due on the tax.

(i) An individual is only liable for trust funds collected during the period he or she had the requisite control, supervision, responsibility, or duty to remit the tax, plus interest and penalties on those taxes. RCW 82.32.145(2).

(ii) Any retail sales taxes that were paid to the department but not collected may be deducted from the retail sales taxes collected but not paid.

(e) **No reasonable means of collection.** The department has "no reasonable means of collection" if the costs of collection would be more than the amount that could be collected; if the amount that might be recovered through a levy, foreclosure or other collection action would be negligible; or if the only means of collection is against a successor corporation.

(f) **Appeal of personal liability assessment.** Any person who receives a personal liability assessment is encouraged to request a supervisory conference if the person disagrees with the assessment. The request for the conference should be made to the department representative that issued

the assessment or the representative's supervisor at the department's field office. A supervisory conference provides an opportunity to resolve issues with the assessment without further action. If unable to resolve the issue, the person receiving the assessment is entitled to administrative and judicial appeal procedures. RCW 82.32.145(4). See also RCW 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

While encouraged to request a supervisory conference, any person receiving a personal liability assessment may elect to forego the supervisory conference and proceed directly with an appeal of the assessment. Refer to WAC 458-20-100 for information about the department's administrative appeal procedures, including how to timely file a petition for appeal.

[Statutory Authority: RCW 82.32.300. 02-15-158, § 458-20-217, filed 7/23/02, effective 8/23/02; 00-16-016, § 458-20-217, filed 7/21/00, effective 8/21/00; 88-01-050 (Order 87-9), § 458-20-217, filed 12/15/87; Order ET 71-1, § 458-20-217, filed 7/22/71; Order ET 70-3, § 458-20-217 (Rule 217), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-218 Advertising agencies.** Advertising agencies are primarily engaged in the business of rendering professional services, but may also make sales of tangible personal property to their clients or others or make purchases of such articles as agents in behalf of their clients. Articles acquired or produced by advertising agencies may be for their own use in connection with the rendition of an advertising service or may be for resale as tangible personal property to their clients.

#### **Business and Occupation Tax**

The gross income received for advertising services, including commissions or discounts received upon articles purchased as agents in behalf of clients, is taxable under the service and other business activities classification. (See WAC 458-20-144 for discounts or commissions allowed by printers.) Included in this classification are amounts attributable to sales of tangible personal property, unless charges for such articles are separately stated in billings rendered to clients.

The retailing or wholesaling classification applies to articles of tangible personal property sold to persons for whom no advertising service is rendered and also to charges to clients for such articles if separately stated from charges for advertising services in billings rendered.

The manufacturing classification applies to articles manufactured for sale or commercial or industrial use (see WAC 458-20-134), and also to interstate sales of manufactured articles separately stated from advertising services. (General principles covering sales or services to persons in other states are contained in WAC 458-20-193.)

#### **Retail Sales Tax**

The retail sales tax applies upon all sales of plates, engravings, electrotypes, etchings, mats, and other articles to advertising agencies for use by them in rendering an advertising service and not resold to clients.

The retail sales tax must be paid by advertising agencies to vendors upon retail purchases made by them as agent in behalf of clients.

Advertising agencies are required to collect the retail sales tax upon charges taxable under the retailing classification as indicated hereinabove, and resale certificates may be given by advertising agencies in respect to purchases of such articles.

#### **Use Tax**

The use tax applies upon the use of articles purchased or manufactured for use in rendering an advertising service. Articles acquired without payment of retail sales tax which are resold to clients, but not separately stated from charges for advertising service, are also subject to use tax.

[Statutory Authority: RCW 82.32.300. 83-08-026 (Order ET 83-1), § 458-20-218, filed 3/30/83; Order ET 70-3, § 458-20-218 (Rule 218), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-221 Collection of use tax by retailers and selling agents.** (1) **Statutory requirements.** RCW 82.12.040(1) provides that every person who maintains a place of business in this state, maintains a stock of goods in this state, or engages in business activities within this state must obtain a certificate of registration and must collect use tax from purchasers at the time it makes sales of tangible personal property for use in this state. The legislature has directed the department of revenue to specify, by rule, activities which constitute engaging in business activities within this state. These are activities which are sufficient under the Constitution of the United States to require the collection of use tax.

#### **(2) Definitions.**

(a) "Maintains a place of business in this state" includes:

(i) Maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business; or

(ii) Soliciting sales or taking orders by sales agents or traveling representatives.

(b) "Engages in business activities within this state" includes:

(i) Purposefully or systematically exploiting the market provided by this state by any media-assisted, media-facilitated, or media-solicited means, including, but not limited to, direct mail advertising, unsolicited distribution of catalogues, computer-assisted shopping, telephone, television, radio or other electronic media, or magazine or newspaper advertisements or other media; or

(ii) Being owned or controlled by the same interests which own or control any seller engaged in business in the same or similar line of business in this state; or

(iii) Maintaining or having a franchisee or licensee operating under the seller's trade name in this state if the franchisee or licensee is required to collect use tax.

(c) "Purposefully or systematically exploiting the market provided by this state" is presumed to take place if the gross proceeds of sales of tangible personal property delivered from outside this state to destinations in this state exceed five hundred thousand dollars during a period of twelve consecutive months.

(3) **Liability of buyers for use tax.** Persons in this state who buy articles of tangible personal property at retail are lia-

ble for use tax if they have not paid sales tax. See WAC 458-20-178.

(4) **Obligation of sellers to collect use tax.** Persons who obtain a certificate of registration, maintain a place of business in this state, maintain a stock of goods in this state, or engage in business activities within this state are required to collect use tax from persons in this state to whom they sell tangible personal property at retail and from whom they have not collected sales tax. Use tax collected by sellers shall be deemed to be held in trust until paid to the department. Any seller failing to collect the tax or, if collected, failing to remit the tax is personally liable to the state for the amount of tax. (For exceptions as to sale to certain persons engaged in interstate or foreign commerce see WAC 458-20-175.)

(5) **Local use tax.** Persons who are obligated to collect use tax solely because they are engaged in business activities within this state as defined in subsection (2)(b)(i) of this section may elect to collect local use tax at a uniform statewide rate of .005 without the necessity of reporting taxable sales to the local jurisdiction of delivery. Amounts collected under the uniform rate shall be allocated by the department to counties and cities in accordance with ratios reflected by the distribution of local sales and use taxes collected from all other taxpayers. Persons not electing to collect at the uniform statewide rate or not eligible to collect at the uniform state rate shall collect local use tax in accordance with WAC 458-20-145.

(6) **Reporting frequency.** Persons who are obligated to collect use tax solely because they are engaged in business activities within this state as defined in subsection (2)(b) of this section shall not be required to file returns and remit use tax more frequently than quarterly.

(7) **Selling agents.** RCW 82.12.040 of the law provides, among other things, as follows:

(a) "Every person who engages in this state in the business of acting as an independent selling agent for persons who do not hold a valid certificate of registration, and who receives compensation by reason of sales of tangible personal property of his principals made for use in this state, shall, at the time such sales are made, collect from the purchasers the tax imposed under this chapter, and for that purpose shall be deemed a retailer as defined in this chapter."

(b) However, in those cases where the agent receives compensation by reason of a sale made pursuant to an order given directly to his principal by the buyer, and of which the agent had no knowledge at the time of sale, the said agent will be relieved of all liability for the collection of or payment of the tax. Furthermore, in other cases where payment is made by the buyer direct to the principal and the agent is unable to collect the tax from the buyer, the agent will be relieved from all liability for the collection of the tax from the buyer and for payment of the tax to the department, provided that within ten days after receipt of commission on any such sale, the agent shall forward to the department a written statement showing the following: Name and address of purchaser, date of sale, type of goods sold, and selling price. (Agents may avoid all liability for collection of this tax, provided their principals obtain a certificate of registration.)

(8) **Time and manner of collection.** The use tax is computed upon the value of the property sold. At the time of making a sale of tangible personal property, the use of which is

(2005 Ed.)

taxable under the use tax, the seller must collect the tax from the purchaser and upon request give to the purchaser a receipt therefor. This receipt need not be in any particular form, and may be an invoice which identifies the property sold, shows the sale price thereof and the amount of the tax. It is a misdemeanor for a retailer to refund, remit, or rebate to a purchaser or transferee, either directly or indirectly, by whatever means, all or any part of the use tax.

(9) **Effective date.** This rule shall take effect on April 1, 1989.

[Statutory Authority: RCW 82.32.300, 89-06-016 (Order 89-4), § 458-20-221, filed 2/23/89, effective 4/1/89; 83-08-026 (Order ET 83-1), § 458-20-221, filed 3/30/83; Order ET 70-3, § 458-20-221 (Rule 221), 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 retail-

ing 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 458-20-223 Persons performing contracts on the basis of time and material, or cost-plus-fixed-fee.**

**Business and Occupation Tax**

Such persons are subject to business tax in accordance with the principles laid down in the department of revenue's published rules, as follows:

As to manufacturing or processing for hire, WAC 458-20-136;

As to constructing and repairing of new or existing buildings, WAC 458-20-170;

As to building or improving of publicly owned roads, etc., WAC 458-20-171;

As to contracts involving only the grading and clearing of land, WAC 458-20-172;

As to service and other business activities, WAC 458-20-224.

The measure of the tax under each of the foregoing types of contracts is the amount of profit or fixed fee received, plus the amount of reimbursements or prepayments received on account of sales of materials and supplies, on account of labor costs, on account of taxes paid, on account of payments made to subcontractors, and on account of all other costs and expenses incurred by the contractor, plus all payments made by his principal direct to a creditor of the contractor in payment of a liability incurred by the latter.

**Retail Sales Tax**

The retail sales tax applies upon sales made to or by contractors to the extent set forth in said WAC 458-20-136, 458-20-170, 458-20-171, 458-20-172 and 458-20-224.

[Statutory Authority: RCW 82.32.300, 83-08-026 (Order ET 83-1), § 458-20-223, filed 3/30/83; Order ET 70-3, § 458-20-223 (Rule 223), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-224 Service and other business activities.** (1) Chapter 82.04 RCW imposes a tax upon every person for the privilege of engaging in business in this state. Persons engaged in the certain specifically named business activities are subject to a tax rate set out in the statute which is measured by value of products, gross sales or gross income, e.g.: Extracting, manufacturing, retailing, wholesaling, printing and publishing, and building and repairing of publicly owned streets and roads.

(2) Persons engaged in any business activity, other than or in addition to those for which a specific rate is provided in the statute, are taxable under a classification known as service and other business activities, and so designated upon return forms. In general, it includes persons rendering professional or personal services to persons (as distinguished from services rendered to personal property of persons) such as accountants, aerial surveyors and map makers, agents, ambulances, appraisers, architects, assayers, attorneys, automobile brokers, barbers, baseball clubs, beauty shop owners, brokers, chemists, chiropractors, collection agents, community television antenna owners, court reporters, dentists, detectives, employment agents, engineers, financiers, funeral

(2005 Ed.)

directors, refuse collectors, hospital owners, janitors, kennel operators, laboratory operators, landscape architects, lawyers, loan agents, music teachers, oculists, orchestra or band leaders contracting to provide musical services, osteopathic physicians, physicians, real estate agents, school bus operators, school operators, sewer services other than collection, stenographers, warehouse operators who are not subject to other specific statutory tax classifications, teachers, theater operators, undertakers, veterinarians, and numerous other persons.

(3) It does not include persons engaged in the business of cleaning, repairing, improving, etc., the personal property of others, such as automobile, house, jewelry, radio, refrigerator and machinery repairmen, laundry or dry cleaners. Also, it does not include certain personal and professional services specifically included within the definition of the term "sale at retail" in RCW 82.04.050, such as amusement and recreation businesses of a participatory nature (see WAC 458-20-183); abstract, title insurance and escrow businesses, credit bureau businesses and automobile parking and storage garage businesses. Furthermore, it does not include persons who render services to others in the capacity of employees as distinguished from independent contractors. (See WAC 458-20-105.)

(4) Business and occupation tax. Persons engaged in any business activity, other than or in addition to those for which a specific rate is provided in chapter 82.04 RCW, are taxable under the service and other business activities classification upon gross income from such business.

(5) Persons engaged in a public service business taxable under chapter 82.16 RCW (see WAC 458-20-179) are exempt from business tax under chapter 82.04 RCW with respect to such businesses.

(6) Retail sales tax. The retail sales tax applies upon all sales of tangible personal property made to persons for use or consumption in performing a business activity which is taxable under the service and other business activities classification of chapter 82.04 RCW.

[Statutory Authority: RCW 82.32.300, 86-18-069 (Order 86-16), § 458-20-224, filed 9/3/86; 83-17-099 (Order ET 83-6), § 458-20-224, filed 8/23/83; 83-07-032 (Order ET 83-15), § 458-20-224, filed 3/15/83; Order ET 70-3, § 458-20-224 (Rule 224), filed 5/29/70, effective 7/1/70.]

**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 classification 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 458-20-227 Subscriber television services. (1) Definitions.** The following definitions apply to this section.

(a) "Subscriber television" refers to all businesses providing television programming to consumers for a fee. It includes, but is not limited to, cable television and satellite television. Subscriber television often transmits to its customers special channels offering a variety of programming such as movies, sporting events, children's entertainment, news and other informational services.

(b) "Fee" includes the amount paid by the subscriber to receive the subscription television service. Generally, the fee consists of an amount for installation and a monthly charge for maintenance or service.

(2) **Business and occupation tax.** Persons engaging in the business of subscriber television are subject to the business and occupation tax as follows:

(a) Gross income derived from the charge made for installation and the monthly rental or service fee is subject to tax under the classification service and other activities. (See WAC 458-20-224.)

(b) Gross income derived from advertising revenues is subject to tax under the classification radio and television broadcasting. (See WAC 458-20-241.)

(c) No deductions from gross income may be taken for affiliate fees, video service fees, satellite fees, copyright fees, or any other amounts paid to other firms for special programming provided to subscribers.

(3) **Use tax.** Persons engaging in the business of subscriber television are subject to retail sales tax or use tax on all purchases of tangible personal property utilized or required in providing service to subscribers. (See WAC 458-20-178.)

[Statutory Authority: RCW 82.32.300, 91-05-039, § 458-20-227, filed 2/13/91, effective 3/16/91; 83-08-026 (Order ET 83-1), § 458-20-227, filed 3/30/83; Order ET 70-3, § 458-20-227 (Rule 227), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-228 Returns, remittances, penalties, extensions, interest, stay of collection. (1) Introduction.**

This rule discusses the responsibility of taxpayers to timely pay their tax liabilities, and the acceptable methods of payment. It discusses the interest and penalties that are imposed by law when a taxpayer fails to correctly or timely pay a tax liability. It also discusses the circumstances under which the law allows the department of revenue (department) to waive interest or penalties.

Washington's tax system is based largely on voluntary compliance. Taxpayer's have a legal responsibility to become informed about applicable tax laws, to register with the department, to seek instruction from the department, to file accurate returns, and to pay their tax liability in a timely manner (chapter 82.32A RCW, Taxpayer rights and responsibilities). The department has instituted a taxpayer services program to provide taxpayers with accurate tax-reporting assistance and instructions. The department staffs local district offices, maintains a toll-free question and information phone line (1-800-647-7706), provides information and forms on the internet (<http://dor.wa.gov>), and conducts free public workshops on tax reporting. The department also publishes notices, interpretive statements, and rules discussing important tax issues and changes.

(2) **Returns.** A "return" is defined as any document a person is required to file by the state of Washington in order to satisfy or establish a tax or fee obligation which is administered or collected by the department, and that has a statutorily defined due date. RCW 82.32.090(8).

(a) Returns and payments are to be filed with the department by every person liable for any tax which the department administers and/or collects, except for the taxes imposed under chapter 82.24 RCW (Tax on cigarettes), which are collected through sales of revenue stamps. Returns must be made upon forms, copies of forms, or by other means, provided or accepted by the department. The department provides tax returns upon request or when a taxpayer opens an active tax reporting account. Tax returns are generally mailed to all registered taxpayers prior to the due date of the tax. However, it remains the responsibility of the taxpayers to timely request a return if one is not received, or to otherwise insure that their return is filed in a timely manner.

(b) Taxpayers whose accounts are placed on an "active nonreporting" status do not automatically receive a tax return and must request a return if they no longer qualify for this reporting status. (See WAC 458-20-101, Tax registration, for an explanation of the active nonreporting status.)

(c) Consumers that are not required to register with the department and obtain a tax registration endorsement (see subsection (2)(a)) may be required to pay use tax directly to the department if they have purchased items without paying Washington's sales tax. Use tax returns are available from the department at any of the local district offices, by fax, or through the internet. The interest and penalty provisions of this rule may apply to delinquent use tax liabilities, and unregistered consumers should refer to WAC 458-20-178

(Use tax) for an explanation of their tax reporting responsibilities.

(3) **Method of payment.** Payment may be made by cash, check, cashier's check, money order, and in certain cases by electronic funds transfers, or other electronic means approved by the department.

(a) Payment by cash should only be made at an office of the department to ensure that the payment is safely received and properly credited.

(b) Payment may be made by uncertified bank check, but if the check is not honored by the financial institution on which it is drawn, the taxpayer remains liable for the payment of the tax, as well as any applicable interest and penalties. RCW 82.32.080. The department may refuse to accept any check which, in its opinion, would not be honored by the financial institution on which that check is drawn. If the department refuses a check for this reason the taxpayer remains liable for the tax due, as well as any applicable interest and penalties.

(c) The law requires that certain taxpayers pay their taxes through electronic funds transfers. The department notifies taxpayers who are required to pay their taxes in this manner, and can explain how to set up the electronic funds transfer process. (See WAC 458-20-22802 on electronic funds transfers.)

(4) **Due dates.** RCW 82.32.045 provides that payment of the taxes due with the combined excise tax return must be made monthly and within twenty-five days after the end of the month in which taxable activities occur, unless the department assigns the taxpayer a longer reporting frequency. Payment of taxes due with returns covering a longer reporting frequency are due on or before the last day of the month following the period covered by the return. (For example, payment of the tax liability for a first quarter tax return is due on April 30th.) WAC 458-20-22801 (Tax reporting frequency—Forms) explains the department's procedure for assigning a quarterly or annual reporting frequency.

(a) If the date for payment of the tax due on a tax return falls upon a Saturday, Sunday, or legal holiday, the filing shall be considered timely if performed on the next business day. RCW 1.12.070 and 1.16.050.

(b) The postmark date as shown by the post office cancellation mark stamped on the envelope will be considered conclusive evidence by the department in determining if a tax return or payment was timely filed or received. RCW 82.32.080. It is the responsibility of the taxpayer to mail the tax return or payment sufficiently in advance of the due date to assure that the postmark date is timely.

Refer to WAC 458-20-22802 (Electronic funds transfer) for more information regarding the electronic funds transfer process, due dates, and requirements.

(5) **Penalties.** Various penalties may apply as a result of the failure to correctly or accurately compute the proper tax liability, or to timely pay the tax. Separate penalties may apply and be cumulative for the same tax. Interest may also apply if any tax has not been paid when it is due, as explained in subsection (7) of this rule. Penalties apply as follows.

(a) **Late payment of a return.** RCW 82.32.090(1) imposes a five percent penalty if the tax due on a return to be filed by a taxpayer is not paid by the due date. A ten percent penalty is imposed if the tax due is not paid on or before the

last day of the month following the due date, and a twenty percent penalty is imposed if the tax due is still not paid on or before the last day of the second month following the due date. The minimum penalty for late payment is five dollars. The department may refuse to accept any return which is not accompanied by payment of the tax shown to be due on the return. If the return is not accepted, the taxpayer is considered to have failed or refused to file the return. RCW 82.32.080. If the tax return is accepted without payment and payment is not made by the due date, the late penalties will apply.

(i) **Unregistered taxpayer.** Except as noted below, the late payment of return penalty does not apply to those tax-reporting periods during which a person is unregistered if the person voluntarily registers prior to being contacted by the department. "Voluntarily registers" means properly completing and submitting a master application to any agency or entity participating in the unified business identifier (UBI) program for the purpose of obtaining a UBI number. For example, the department will consider a person properly completing and submitting a master application to the department of labor and industries for the purpose of obtaining a UBI number to have voluntarily registered. A person has not voluntarily registered if a UBI number is obtained by any means other than submitting a properly completed master application. WAC 458-20-101 (Tax registration and tax reporting) provides additional information regarding the UBI program.

The late payment of return penalty will apply, even if the person has voluntarily registered as explained above, if the person:

(A) Collected retail sales tax from customers and failed to remit it to the department; or

(B) Engaged in evasion or misrepresentation with respect to reporting tax liabilities or other tax requirements; or

(C) Engaged in taxable business activities during a period of time in which the person's previously open tax reporting account has been closed.

(ii) **Active-nonreporting status taxpayer.** The active-nonreporting status allows persons, under certain conditions, to engage in business activities subject to the Revenue Act without having to file combined excise tax returns with the department. Persons placed on an active-nonreporting status by the department are required to timely notify the department if their business activities no longer meet the conditions for active-nonreporting status. One of the conditions is that the person is not required to collect or pay a tax the department is authorized to collect. The late payment of return penalty will be imposed if any tax due from unreported business activities while on active-nonreporting status is not paid by the due dates used for taxpayers that are on an annual reporting basis. Refer to WAC 458-20-101 for more information regarding the active-nonreporting status.

(b) **Late payment of an assessment.** An additional penalty of ten percent of the tax due will be added to any taxes assessed by the department if payment of the taxes assessed is not received by the due date specified in the notice, or any extension of that due date. The minimum for this penalty is five dollars. RCW 82.32.090(2).

(c) **Issuance of a warrant.** If the department issues a tax warrant for the collection of any fee, tax, increase, or penalty,

an additional penalty will immediately be added in the amount of five percent of the amount of the tax due, but not less than ten dollars. RCW 82.32.090(3). Refer to WAC 458-20-217 for additional information on the application of warrants and tax liens.

(d) **Disregard of specific written instructions.** If the department finds that all or any part of a deficiency resulted from the disregard of specific written instructions as to reporting of tax liabilities, an additional penalty of ten percent of the additional tax found due will be imposed because of the failure to follow the instructions. RCW 82.32.090(4).

(i) The taxpayer will be considered to have disregarded specific written instruction when the department has informed the taxpayer in writing of its tax obligations and specifically advised the taxpayer that failure to act in accordance with those instructions may result in this penalty being imposed. The specific written instructions may be given as a part of a tax assessment, audit, determination, or closing agreement. The penalty may be applied only against the taxpayer given the specific written instructions. However, the taxpayer will not be considered to have disregarded the instructions if the taxpayer has appealed the subject matter of the instructions and the department has not issued its final instructions or decision.

(ii) The penalty will not be applied if the taxpayer has made a good faith effort to comply with specific written instructions.

(e) **Evasion.** If the department finds that all or any part of the deficiency resulted from an intent to evade the tax due, a penalty of fifty percent of the additional tax found to be due shall be added. RCW 82.32.090(5). The evasion penalty is imposed when a taxpayer knows a tax liability is due but attempts to escape detection or payment of the tax liability through deceit, fraud, or other intentional wrongdoing. An intent to evade does not exist where a deficiency is the result of an honest mistake, miscommunication, or the lack of knowledge regarding proper accounting methods. The department has the burden of showing the existence of an intent to evade a tax liability through clear, cogent and convincing evidence.

(i) To the extent that the evasion involved only specific taxes, the evasion penalty will be added only to those taxes. The evasion penalty will not be applied to those taxes which were inadvertently underpaid. For example, if the department finds that the taxpayer intentionally understated the purchase price of equipment in reporting use tax and also inadvertently failed to collect or remit the sales tax at the correct rate on retail sales of merchandise, the evasion penalty will be added only to the use tax deficiency and not the sales tax.

(ii) The following is a nonexclusive list of actions that are generally considered to establish an intent to evade a tax liability. This list should only be used as a general guide. A determination of whether an intent to evade exists may be ascertained only after a review of all the facts and circumstances.

(A) The use of an out-of-state address by a Washington resident to register property to avoid a Washington excise or use tax, when at the time of registration the taxpayer does not reside at the out-of-state address on a more than temporary basis. Examples of such an address include, but are not limited to, the residence of a relative, mail forwarding or post

office box location, motel, campground, or vacation property;

(B) The willful failure of a seller to remit retail sales taxes collected from customers to the department of revenue; and

(C) The alteration of a purchase invoice or misrepresentation of the price paid for property (e.g., a used vehicle) to reduce the amount of tax owing.

(f) **Misuse of resale certificates.** Any buyer who uses a resale certificate to purchase items or services without payment of sales tax, and who is not entitled to use the certificate for the purchase, will be assessed a penalty of fifty percent of the tax due. RCW 82.32.291. The penalty can apply even if there was no intent to evade the payment of the tax. For more information concerning this penalty or the proper use of a resale certificate, refer to WAC 458-20-102 (Resale certificates).

(g) **Failure to remit sales tax to seller.** The department may assert an additional ten percent penalty against a buyer who has failed to pay the seller the retail sales tax on taxable purchases, if the department proceeds directly against the buyer for the payment of the tax. This penalty is in addition to any other penalties or interest prescribed by law. RCW 82.08.050.

(h) **Failure to obtain the contractor's unified business identifier (UBI) number.** If a person who is liable for any fee or tax imposed by chapters 82.04 through 82.27 RCW contracts with another person or entity for work subject to chapter 18.27 RCW (Registration of contractors) or chapter 19.28 RCW (Electricians and electrical installations), that person must obtain and preserve a record of the UBI number of the person or entity performing the work. A person failing to do so is subject to the public works contracting restrictions in RCW 39.06.010 (Contracts with unregistered or unlicensed contractors prohibited), and a penalty determined by the director, but not to exceed two hundred and fifty dollars. RCW 82.32.070 (1)(b).

(6) **Statutory restrictions on imposing penalties.** Depending on the circumstances, the law may impose more than one type of penalty on the same tax liability. However, those penalties are subject to the following restrictions:

(a) The aggregate of the penalties imposed for the late payment of a return, the late payment of an assessment, and issuance of a warrant (see subsection (5)(a) through (c) of this rule) may be applied against the same tax, but may not exceed a total of thirty-five percent of the tax due, or twenty dollars, whichever is greater. This thirty-five percent penalty limitation does not prohibit or restrict full application of other penalties authorized by law, even when they are applied against the same tax. RCW 82.32.090(6).

(b) The department may impose either the evasion penalty (subsection (5)(e)) or the penalty for disregarding specific written instructions (subsection (5)(d)), but may not impose both penalties on the same tax.

RCW 82.32.090(7). The department also will not impose the penalty for the misuse of a resale certificate (subsection (5)(f)) in combination with either the evasion penalty or the penalty for disregarding specific written instructions on the same tax.

(7) **Interest.** The department is required by law to add interest to assessments for tax deficiencies and overpay-

ments. RCW 82.32.050. Interest applies to taxes only. (Refer to WAC 458-20-229 for a discussion of interest as it relates to refunds and WAC 458-20-230 for a discussion of the statute of limitations as applied to interest.)

(a) For tax liabilities arising before January 1, 1992, interest will be added at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until the date of payment, or December 31, 1998, whichever comes first. Any interest accrued on these liabilities after December 31, 1998, will be added at the annual variable interest rates described in subsection (7)(e). RCW 82.32.050.

(b) For tax liabilities arising after December 31, 1991, and before January 1, 1998, interest will be added at the annual variable interest rates described in subsection (7)(e), from the last day of the year in which the deficiency is incurred until the date of payment.

(c) For interest imposed after December 31, 1998, interest will be added from the last day of the month following each calendar year included in a notice, or the last day of the month following the final month included in a notice if not the end of the calendar year, until the due date of the notice. However, for 1998 taxes only, interest may not begin to accrue any earlier than February 1, 1999, even if the last period included in the notice is not at the end of calendar year 1998. If payment in full is not made by the due date of the notice, additional interest will be due until the date of payment. The rate of interest continues at the annual variable interest rates described in subsection (7)(e). RCW 82.32.050.

(d) The following is an example of how the interest provisions apply. Assume that a tax assessment is issued with a due date of June 30, 2000. The assessment includes periods from January 1, 1997, through September 30, 1999.

(i) For calendar year 1997 tax, interest begins January 1, 1998, (from the last day of the year). When the assessment is issued the interest is computed through June 30, 2000, (the due date of the assessment).

(ii) For calendar year 1998 tax, interest begins February 1, 1999, (from the last day of the month following the end of the calendar year). When the assessment is issued interest is computed through June 30, 2000, (the due date).

(iii) For the 1999 tax period ending with September 30, 1999, interest begins November 1, 1999, (from the last day of the month following the last month included in the assessment period). When the assessment is issued interest is computed through June 30, 2000, (the due date).

(iv) Interest will continue to accrue on any portion of the assessed taxes which remain unpaid after the due date, until the date those taxes are paid.

(e) The annual variable interest rate will be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate will be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually, for the months of January, April, July, and October of the immediately preceding calendar year as published by the United States Secretary of the Treasury. The interest rate will be adjusted on the first day of January of each year.

(f) If the assessment contains tax deficiencies in some years and overpayments in other years with the net difference being a tax deficiency, the interest rate for tax deficiencies

will also be applied to the overpayments. (Refer to WAC 458-20-229 for interest on refunds.)

(8) **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. RCW 82.32.080.

(a) In applying a partial payment to a tax assessment, the payment will first be applied against the oldest tax liability. For purposes of RCW 82.32.145 (Termination, dissolution, or abandonment of corporate business—Personal liability of person in control of collected sales tax funds), it will be assumed that any payments applied to the tax liability will be first applied against any retail sales tax liability. For example, an audit assessment is issued covering a period of two years, which will be referred to as "YEAR 1" (the earlier year) and "YEAR 2" (the most recent year). The tax assessment includes total interest and penalties for YEAR 1 and YEAR 2 of five hundred dollars, retail sales tax of four hundred dollars for YEAR 1, six hundred dollars retail sales tax for YEAR 2, two thousand dollars of other taxes for YEAR 1, and seven thousand dollars of other taxes for YEAR 2. The order of application of any payments will be first against the five hundred dollars of total interest and penalties, second against the four hundred dollars retail sales tax in YEAR 1, third against the two thousand dollars of other taxes in YEAR 1, fourth against the six hundred dollars retail sales tax of YEAR 2, and finally against the seven thousand dollars of other taxes in YEAR 2.

(9) **Waiver or cancellation of penalties.** RCW 82.32.105 authorizes the department to waive or cancel penalties under limited circumstances.

(a) **Circumstances beyond the control of the taxpayer.** The department will waive or cancel the penalties imposed under chapter 82.32 RCW upon finding that the underpayment of the tax, or the failure to pay any tax by the due date, was the result of circumstances beyond the control of the taxpayer. Refer to WAC 458-20-102 (Resale certificates) for examples of circumstances which are beyond the control of the taxpayer specifically regarding the penalty for misuse of resale certificates found in RCW 82.32.291.

(i) 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 taxpayer bears the burden of establishing that the circumstances were beyond its control and directly caused the late payment. The request should be made in the form of a letter; however, verbal requests may be accepted and considered. Any petition for correction of assessment submitted to the department's appeals division for waiver of penalties must be made within the period for filing under RCW 82.32.160 (within thirty days after the issuance of the original notice of the amount owed or within the period covered by any extension of the due date granted by the department), and must be in writing, as explained in WAC 458-20-100 (Appeals, small claims and settlements). Refund requests must be made within the statutory period.

(ii) The circumstances beyond the control of the taxpayer must actually cause the late payment. Circumstances beyond the control of the taxpayer are generally those which are immediate, unexpected, or in the nature of an emergency. Such circumstances result in the taxpayer not having reasonable time or opportunity to obtain an extension of the due

date or otherwise timely file and pay. Circumstances beyond the control of the taxpayer include, but are not necessarily limited to, the following.

(A) The return payment was mailed on time but inadvertently sent to another agency.

(B) Erroneous written information given to the taxpayer by a department officer or employee caused the delinquency. A penalty generally will not be waived when it is claimed that erroneous oral information was given by a department employee. The reason for not cancelling the penalty in cases of oral information is because of the uncertainty of the facts presented, the uncertainty of the instructions or information imparted by the department employee, and the uncertainty that the taxpayer fully understood the information given. Reliance by the taxpayer on incorrect advice received from the taxpayer's legal or accounting representative is not a basis for cancellation of a penalty.

(C) The delinquency was directly caused by death or serious illness of the taxpayer, or a member of the taxpayer's immediate family. The same circumstances apply to the taxpayer's accountant or other tax preparer, or their immediate family. This situation is not intended to have an indefinite application. A death or serious illness which denies a taxpayer reasonable time or opportunity to obtain an extension or to otherwise arrange timely filing and payment is a circumstance eligible for penalty waiver.

(D) The delinquency was caused by the unavoidable absence of the taxpayer or key employee, prior to the filing date. "Unavoidable absence of the taxpayer" does not include absences because of business trips, vacations, personnel turnover, or terminations.

(E) The delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.

(F) The delinquency was caused by an act of fraud, embezzlement, theft, or conversion on the part of the taxpayer's employee or other persons contracted with the taxpayer, which the taxpayer could not immediately detect or prevent, provided that reasonable safeguards or internal controls were in place. See subsection (9)(a)(iii)(E).

(G) The taxpayer, prior to the time for filing the return, made timely application to the Olympia or district office for proper forms and the forms were not furnished in sufficient time to permit the completed return to be paid before its due date. In this circumstance, the taxpayer kept track of pending due dates and reasonably fulfilled its responsibility by timely requesting replacement returns from the department.

(iii) The following are examples of circumstances that are generally not considered to be beyond the control of the taxpayer and will not qualify for a waiver or cancellation of penalty:

(A) Financial hardship;

(B) A misunderstanding or lack of knowledge of a tax liability;

(C) The failure of the taxpayer to receive a tax return form, EXCEPT where the taxpayer timely requested the form and it was still not furnished in reasonable time to mail the return and payment by the due date, as described in subsection (9)(a)(ii)(G), above;

(D) Registration of an account that is not considered a voluntary registration, as described in subsection (5)(a)(ii);

(E) Mistakes or misconduct on the part of employees or other persons contracted with the taxpayer (not including conduct covered in subsection (9)(a)(ii)(F), above); and

(F) Reliance upon unpublished, written information from the department that was issued to and specifically addresses the circumstances of some other taxpayer.

(b) **Waiver of the late payment of return penalty.** The late payment of return penalty (see subsection (5)(a) above) may be waived either as a result of circumstances beyond the control of the taxpayer (RCW 82.32.105(1) and subsection (9)(a) of this rule) or after a twenty-four month review of the taxpayer's reporting history, as described below.

(i) If the late payment of return penalty is assessed on a return but is not the result of circumstances beyond the control of the taxpayer, the penalty will still be waived or canceled if the following two circumstances are satisfied:

(A) The taxpayer requests the penalty waiver for a tax return which was required to be filed under RCW 82.32.045 (taxes reported on the combined excise tax return), RCW 82.23B.020 (oil spill response tax), RCW 82.27.060 (tax on enhanced food fish), RCW 82.29A.050 (leasehold excise tax), RCW 84.33.086 (timber and forest lands), RCW 82.14B.030 (tax on telephone access line use); and

(B) The taxpayer has timely filed and paid all tax returns due for that specific tax program for a period of twenty-four months immediately preceding the period covered by the return for which the waiver is being requested. RCW 82.32.-105(2).

If a taxpayer has obtained a tax registration endorsement with the department and has engaged in business activities for a period less than twenty-four months, the taxpayer is eligible for the waiver if the taxpayer had no delinquent tax returns for periods prior to the period covered by the return for which the waiver is being requested. (See also WAC 458-20-101 for more information regarding the tax registration and tax reporting requirements.) This is the only situation under which the department will consider a waiver when the taxpayer has not timely filed and paid tax returns covering an immediately preceding twenty-four month period.

(ii) A return will be considered timely for purpose of the waiver if there is no tax liability on it when it is filed. Also, a return will be considered timely if any late payment penalties assessed on it were waived or canceled due to circumstances beyond the control of the taxpayer (see subsection (9)(a)). The number of times penalty has been waived due to circumstances beyond the control of the taxpayer does not influence whether the waiver in this subsection will be granted. A taxpayer may receive more than one of the waivers in this subsection within a twenty-four month period if returns for more than one of the listed tax programs are filed, but no more than one waiver can be applied to any one tax program in a twenty-four month period.

For example, a taxpayer files combined excise tax returns as required under RCW 82.32.045, and timber tax returns as required under RCW 84.33.086. This taxpayer may qualify for two waivers of the late payment of return penalty during the same twenty-four month period, one for each tax program. If this taxpayer had an unwaived late payment of return penalty for the combined excise tax return during the previous twenty-four month period, the taxpayer may still qualify for a penalty waiver for the timber tax program.

(iii) The twenty-four month period reviewed for this waiver is not affected by the due date of the return for which the penalty waiver is requested, even if that due date has been extended beyond the original due date.

For example, assume a taxpayer's January 1999 return has had the original due date of March 1st extended to April 30th. The return and payment are received after the April 30th extended due date. A penalty waiver is requested. Since the delinquent return represented the month of January, 1999, the twenty-four months which will be reviewed begin on January 1, 1997, and end with December 31, 1998, (the twenty-four months prior to January, 1999). All of the returns representing that period of time will be included in the review. The extension of the original due date has no effect on the twenty-four month period under review.

(10) **Waiver or cancellation of interest.** The department will waive or cancel interest imposed under chapter 82.32 RCW only in the following situations:

(a) The failure to pay the tax prior to issuance of the assessment was the direct result of written instructions given the taxpayer by the department; or

(b) The extension of the due date for payment of an assessment was not at the request of the taxpayer and was for the sole convenience of the department. RCW 82.32.105(3).

(11) **Stay of collection.** RCW 82.32.190 allows the department to initiate a stay of collection, without the request of the taxpayer and without requiring any bond, for certain tax liabilities when they may be affected by the outcome of a question pending before the courts (see subsection (11)(a) of this rule). RCW 82.32.200 provides conditions under which the department, at its discretion, may allow a taxpayer to file a bond in order to obtain a stay of collection on a tax assessment (see subsection (11)(b) of this rule). The department will grant a taxpayer's stay of collection request, as described in RCW 82.32.200, only when the department determines that a stay is in the best interests of the state.

(a) Circumstances under which the department may consider initiating a stay of collection without requiring a bond (RCW 82.32.190) include, but are not necessarily limited to, the existence of the following:

(i) A constitutional issue to be litigated by the taxpayer, the resolution of which is uncertain;

(ii) A matter of first impression for which the department has little precedent in administrative practice; or

(iii) An issue affecting other similarly situated taxpayers for whom the department would be willing to stay collection of the tax.

(b) The department will give consideration to a request for a stay of collection of an assessment (RCW 82.32.200) if:

(i) A written request for the stay is made prior to the due date for payment of the assessment; and

(ii) Payment of any unprotested portion of the assessment and other taxes due is made timely; and

(iii) The request is accompanied by an offer of a cash bond, or a security bond that is guaranteed by a specified authorized surety insurer. The amount of the bond will generally be equal to the total amount of the assessment, including any penalties and interest. However, where appropriate, the department may require a bond in an increased amount not to exceed twice the amount for which the stay is requested.

(c) Claims of financial hardship or threat of litigation are not grounds that justify the granting of a stay of collection. However, the department will consider a claim of significant financial hardship as grounds for staying collection procedures, but this will be done only if a partial payment agreement is executed and kept in accordance with the department's procedures and with such security as the department deems necessary.

(d) If the department grants a stay of collection, the stay will be for a period of no longer than two calendar years from the date of acceptance of the taxpayer request, or thirty days following a decision not appealed from by a tribunal or court of competent jurisdiction upholding the validity of the tax assessed, whichever date occurs first. The department may extend the period of a stay originally granted, but only for good cause shown.

(e) Interest will continue to accrue against the unpaid tax portion of a liability under stay of collection. Effective January 1, 1997, the interest rates prescribed by RCW 82.32.190 and 82.32.200 changed from nine percent and twelve percent per annum, respectively, to the same predetermined annual variable rates as are described in subsection (7)(e), above.

(12) **Extensions.** The department, for good cause, may extend the due date for filing any return. Any permanent extension more than ten days beyond the due date, and any temporary extension in excess of thirty days, must be conditional upon deposit by the taxpayer with the department of an amount equal to the estimated tax liability for the reporting period or periods for which the extension is granted. This deposit is credited to the taxpayer's account and may be applied to the taxpayer's liability upon cancellation of the permanent extension or upon reporting of the tax liability where a temporary extension of more than thirty days has been granted.

The amount of the deposit is subject to departmental approval. The amount will be reviewed from time to time, and a change may be required at any time that the department concludes that such amount does not approximate the tax liability for the reporting period or periods for which the extension was granted.

[Statutory Authority: RCW 82.32.300, 01-05-022, § 458-20-228, filed 2/9/01, effective 3/12/01; 00-04-028, § 458-20-228, filed 1/24/00, effective 2/24/00; 92-03-025, § 458-20-228, filed 1/8/92, effective 2/8/92; 85-04-016 (Order 85-1), § 458-20-228, filed 1/29/85; 83-16-052 (Order ET 83-4), § 458-20-228, filed 8/1/83; Order ET 74-1, § 458-20-228, filed 5/7/74; Order ET 71-1, § 458-20-228, filed 7/22/72; Order ET 70-3, § 458-20-228, filed 5/29/70, effective 7/1/70.]

### **WAC 458-20-22801 Tax reporting frequency—**

**Forms.** (1) Introduction. Every person liable for an excise tax imposed by the laws of the state of Washington for which the department of revenue has primary or secondary administrative responsibility, i.e., Title 82 RCW and chapters 67.28 (Hotel/motel tax), 70.93 (Litter tax), 70.95 (Tax on tires), and 84.33 RCW (Forest excise tax), shall file a tax return with the department of revenue accompanied by a payment of the tax due; Provided, The taxes under chapter 82.24 RCW (Tax on cigarettes) shall be collected through sales of revenue stamps.

(2) Reporting frequency—Forms. Combined excise tax returns with payments of the tax due are to be filed monthly. However, the department may relieve any taxpayer or class of taxpayers from this monthly obligation and may require

(2005 Ed.)

the return to cover other longer reporting periods, but not in excess of one year. See: RCW 82.32.045.

(a) General rule. Unless otherwise provided by the department, a taxpayer shall report and pay taxes due according to the following schedule:

IF ANNUAL ESTIMATED TAX LIABILITY IS:	REPORTING FREQUENCY
Over \$4800.00 per year	Monthly returns:
Between \$1050.00 & \$4800.00 per year	Quarterly returns:
Less than \$1050.00 per year	Annual returns:

(b) When requested by a taxpayer or group of taxpayers, the department may approve more frequent or less frequent reporting if, in the opinion of the department, the change assists the department in the efficient and effective administration of the tax laws of this state.

(c) For the same reasons, the department may require a taxpayer or group of taxpayers to report more frequently or less frequently. Changes in reporting frequency are effective only after the department has consented to or required the change, and notice of the change has been given by the department to the taxpayer or group of taxpayers.

(d) Situations when changes in reporting frequency may be approved or required include, but are not limited to, the following:

(i) An increase or decrease in the estimated annual tax liability of a taxpayer results in a different threshold as provided in section (2)(a) above;

(ii) A taxpayer or group of taxpayers has substantial periods of no taxable business activity during the calendar year, i.e., seasonal businesses;

(iii) The department finds a taxpayer or a group of taxpayers has repeatedly failed to comply with tax reporting and/or payment obligations.

(e) Notice. No change in reporting frequency shall be effective except upon at least thirty days advance written notice from the department to the taxpayer at the taxpayer's last reported business address.

(f) Forms. Returns shall be made upon forms provided or approved and accepted by the department. Forms provided by the department are mailed to all registered taxpayers prior to the due date of the tax.

(g) Taxes not reported upon the combined excise tax return, i.e. forest excise tax, etc. shall be reported at such times and upon such forms as are otherwise provided by the department.

(3) See WAC 458-20-228 for information on returns, remittances, penalties, extensions, stay of collection.

[Statutory Authority: RCW 82.32.300 and 82.32.045, 90-05-044, § 458-20-22801, filed 2/15/90, effective 3/18/90.]

### **WAC 458-20-22802 Electronic funds transfer. (1)**

**Introduction.** Certain taxpayers are required to pay the taxes reported on the combined excise tax return with an electronic funds transfer (EFT). RCW 82.32.080. Taxpayers who are not required to pay by EFT may still use this method of payment if they notify the department of their desire to pay by EFT in advance of making their first EFT payment. EFT merely changes the method of payment and no other tax return procedures or requirements are changed. Taxpayers who are either required or voluntarily choose to pay their excise tax returns by EFT must furnish the department with

[Title 458 WAC—p. 319]

the necessary information, as described in subsection (9) of this rule.

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

(a) "Electronic funds transfer" or "EFT" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

(b) "ACH" or "automated clearing house" means a central distribution and settlement system for the electronic clearing of debits and credits between financial institutions.

(c) "ACH debit" means the electronic transfer of funds cleared through the ACH system that is generated by the taxpayer instructing the department's bank to charge the taxpayer's account and deposit the funds to the department's account.

(d) "ACH credit" means the electronic transfer of funds cleared through the ACH system that is generated by the taxpayer instructing the taxpayer's bank to charge the taxpayer's account and deposit the funds to the department's account.

(e) "Department's bank" means the bank with which the department of revenue has a contract to assist in the receipt of taxes and includes any agents of the bank.

(f) "Collectible funds" actually means collected funds that have completed the electronic funds transfer process and are available for immediate use by the state.

(g) "ACH CCD + addenda" and "ACH CCD + record" mean the information in a required ACH format that needs to be transmitted to properly identify the payment.

(h) "Service access key" means a unique code that allows an ACH debit transaction to occur.

(3) **Taxpayers required to pay by EFT.** Taxpayers who have taxes due of \$240,000 or more in a calendar year are required to pay by EFT. Total taxes due from the last complete calendar year will be used to determine whether a taxpayer is required to pay by EFT. When a calendar year total indicates a taxpayer is required to pay by EFT, the department will notify that taxpayer. The notification will be made at least three months prior to the date that the first EFT payment is required.

The requirement to pay by EFT will be waived if the taxpayer reasonably shows to the department that it will not meet or exceed the EFT threshold for taxes due in the calendar year.

(4) **Taxes covered.** The taxes covered by the EFT payment are taxes reported on the combined excise tax return. The included taxes are those administered by the department under chapter 82.32 RCW except city and town taxes on financial institutions (chapter 82.14A RCW), county tax on telephone access lines (chapter 82.14B RCW), cigarette tax (chapter 82.24 RCW), enhanced food fish tax (chapter 82.27 RCW), leasehold excise tax (chapter 82.29A RCW), and forest tax (chapter 84.33 RCW).

(5) **Refunds by EFT.** Overpayments of tax will be either credited to future tax liabilities or, at the taxpayer's request, will be refunded. If the taxpayer is required to pay the taxes on the combined excise tax return by EFT, the taxpayer is entitled to a refund of those taxes by EFT. However, if the taxpayer wishes to have the refund made by EFT, the tax-

payer must provide the department with the information necessary to make an appropriate EFT or the refund will be issued as a warrant (check).

(6) **EFT methods.** Taxpayers required to pay by EFT must do so through the use of the ACH debit or ACH credit methods. All other taxpayers paying via EFT must do so through the use of ACH debit, ACH credit or other electronic payment methods approved by the department. In an emergency, the taxpayer should contact the department for alternative methods of payment. Contact information will be included in the notification materials sent to all EFT remitters.

(7) **Due date of EFT payment.** The EFT payment is due on or before the banking day following the tax return due date. An EFT is timely when the state receives collectible U.S. funds on or before 5:00 p.m., Pacific Time, on the EFT payment due date. The ACH system, either ACH debit or ACH credit, requires that the necessary information be in the originating bank's possession on the banking day preceding the date for completion of the transaction. Each bank generally has its own transaction deadlines and it is the responsibility of the taxpayer to insure timely payment.

(a) The tax return due date is the next business day after the statutory due date if the statutory due date falls on a Saturday, Sunday, or legal holiday. Legal holidays are determined under state of Washington law and banking holidays are those recognized by the Federal Reserve System in the state of Washington.

(b) Example. The tax return due date is December 25th, a legal and banking holiday, which, for the example, falls on a Friday. The next business day is Monday, December 28th, and this is the new tax return due date. EFT must be completed by 5:00 p.m., Pacific Time, Tuesday, December 29th, which is the next banking day after the new due date. For an ACH debit user, the department's bank must have the appropriate information by 5:00 p.m., Pacific Time, on Monday, December 28th.

(8) **Coordinating return and payment.** The filed return and the EFT payment will be coordinated by the department. A return will be considered timely filed only if it is received by the department on or before the due date. If the return is sent by United States mail, it will be considered received on the date shown by the post office cancellation mark stamped on the envelope. RCW 82.32.080. In addition, the EFT payment must be received by the next banking day after the tax return due date. If both events occur, there is timely filing and payment and no penalties apply.

(9) **Form and contents of EFT.** The form and content of EFT will be as follows:

(a) If the taxpayer wishes to use the ACH debit system of EFT, the taxpayer will furnish the department with the information needed to complete the transaction. The department's bank will provide a service access key only to the taxpayer and all transactions must be initiated by the taxpayer.

(b) If the taxpayer wishes to use the ACH credit system of the EFT, the taxpayer is responsible to see that its bank has the information necessary for timely completion. The taxpayer must provide the information necessary for its bank to complete the ACH CCD + addenda for transmittal to the department's bank.

(c) If the taxpayer wishes to use any other electronic payment method approved by the department, the taxpayer must provide the information necessary for the payment processing institution to timely process the payment.

(10) **Crediting and proof of payment.** The department will credit the taxpayer with the amount paid as of the date the payment is received by the department's bank. The proof of payment by the taxpayer will depend on the means of transmission.

(a) An ACH debit transaction may be proved by use of the verification number received from the department's bank that the transaction was initiated and bank statements or other evidence from the bank that the transaction was settled.

(b) An ACH credit transaction is initiated by the taxpayer through the taxpayer's bank. The taxpayer is responsible for completion of the transaction. The taxpayer generally will be given a verification number by the taxpayer's bank. This verification number with proof of the ACH CCD + record showing the department's bank and account number, plus confirmation that the transaction has been settled will constitute proof of payment.

(c) Taxpayers using any other electronic payment method are responsible for completion of the transaction. Proof of payment will include transaction initiation date and any other evidence from a financial institution that the transaction was settled.

(11) **Correcting errors.** Errors in the EFT process will result in either an underpayment or an overpayment of the tax. In either case, the taxpayer needs to contact the department to arrange for appropriate action. Overpayments may be used as a credit or the taxpayer may apply for a refund. The department will expedite a refund where it is caused by an error in transmission. Underpayments should be corrected by the taxpayer immediately to avoid any penalties.

(12) **Penalties.** There are no special provisions for penalties when payment is made by EFT. The general provisions for all taxpayers apply. To avoid the imposition of penalties, it is necessary for the payment to be timely. WAC 458-20-228 discusses the various penalties that may apply and the limited circumstances under which they may be waived.

(a) In an ACH debit transaction, the department's bank is the originating bank and is responsible for the accuracy of transmission. If the taxpayer has timely initiated the ACH debit, received a verification number, and shows adequate funds were available in the account, no penalties will apply with respect to those funds authorized.

(b) In an ACH credit transaction, the taxpayer's bank is the originating bank and the taxpayer is primarily responsible for its accuracy. The taxpayer must have timely initiated the transaction, provided the correct information for the ACH CCD + record, and shown that there were sufficient funds in the account, in order to prove timely compliance. If the taxpayer can make this showing, then no penalties will apply as to those funds authorized if the transaction is not completed.

(c) With the use of other electronic payment methods, the taxpayer's financial institution is the originator of the payment transaction and the taxpayer is primarily responsible for the accuracy of this transaction. The taxpayer must have timely initiated the transaction and shown that there were sufficient funds in the account in order to prove timely compliance. If the taxpayer can make this showing, then no penalties

will apply as to those funds authorized if the transaction is not completed.

[Statutory Authority: RCW 82.32.300 and 82.32.085. 01-07-017, § 458-20-22802, filed 3/13/01, effective 4/13/01. Statutory Authority: RCW 82.32.300. 91-24-070, § 458-20-22802, filed 12/2/91, effective 1/2/92; 90-19-052, § 458-20-22802, filed 9/14/90, effective 10/15/90.]

**WAC 458-20-229 Refunds. (1) Introduction.** This section explains the procedures relating to refunds or credits for overpayment of taxes, and penalties or interest. It indicates the statutory period for refunds and the interest rate which applies to those refunds.

**(2) Statute of limitations for refunds or credits.**

(a) With the exception of (b) of this subsection, no refund or credit may be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which a refund or credit application is made or examination of records by the department is completed.

(b) Where a taxpayer has executed a written waiver of the limitations governing assessment under RCW 82.32.050 or 82.32.100, a refund or credit may be granted for taxes, penalties, or interest paid during, or attributable to, the years covered by such waiver if, prior to expiration of the waiver period, an application for a refund or credit of such taxes, penalties, or interest is made by the taxpayer or the department discovers a refund or credit is due. (Refer to WAC 458-20-230 for the circumstances under which the department may request a taxpayer to execute a statute of limitations waiver.)

**(3) Refund/credit procedures.** Refunds are initiated in the following ways:

(a) Departmental review. When the department audits or examines the taxpayer's records and determines the taxpayer has overpaid its taxes, penalties, or interest, the department will issue a refund or a credit, at the taxpayer's option. When overpayments are discovered by the department within the statute of limitations, the taxpayer does not need to file a petition or request for a refund or credit.

(b) Taxpayer request. When a taxpayer discovers that it has overpaid taxes, penalties, or interest, it may file an amended return or a petition for refund or credit with the department. The petition or amended tax return must be submitted within the statute of limitations. Refund or credit requests should generally be made to the division of the department to which payment of the tax, penalty, or interest was originally made. The amended tax returns or petitions are subject to future verification or examination of the taxpayer's records. If it is later determined that the refund or credit exceeded the amount properly due the taxpayer, an assessment may be issued to recover the excess amount, provided the assessment is made within four years of the close of the tax year in which the taxes were due or prior to the expiration of a statute of limitations waiver. The following are examples of refund or credit requests:

(i) A taxpayer discovers in January 1992 that the June 1991 combined excise tax return was prepared using incorrect figures which overstated its sales resulting in an overpayment of tax. The taxpayer files an amended June 1991 tax return with the department's taxpayer account administration division. The department treats the taxpayer's amended June 1991 tax return as a petition for refund or credit of the

amounts overpaid during that tax period and may take whatever action it considers appropriate under the circumstances to verify the overpayment.

(ii) A customer of a seller pays retail sales tax on a transaction which the customer later believes was not taxable. The customer should request a refund or credit directly from the seller from whom the purchase was made. If the seller determines the tax was not due and issues a refund or credit to the customer, the seller may request a refund or credit from the department. It is generally to the advantage of a consumer to seek a refund directly from the seller for retail sales tax believed to have been paid in error. This is because the seller has the source records to know if retail sales tax was collected on the original sale, knows the customer, knows the circumstances surrounding the original sale, is aware of any disputes between itself and the customer concerning the product, may already be aware of the circumstances as to why a refund of sales tax is appropriate such as the return of the merchandise. When in doubt as to whether sales tax should be refunded, a seller may contact the department and request advice. However, in certain situations, upon presentation of acceptable proof of payment of retail sales tax, the department will consider making refunds of retail sales tax directly to consumers. These situations are as follows:

(A) The seller is no longer engaged in business.

(B) The seller has moved and the consumer can not locate the seller.

(C) The seller is insolvent and is financially unable to make the refund.

(D) The consumer has attempted to obtain a refund from the seller and can document that the seller refuses to refund the retail sales tax. However, the department will not consider making refunds directly to consumers when the law leaves it at the discretion of the seller to collect the tax. See, for example, RCW 82.08.0273.

(iii) The department completes an audit of the taxpayer's records relating to taxes reported on combined excise tax returns and an assessment is issued. After the assessment is paid, but within the statute of limitations for refund or credit, the taxpayer locates additional records which would have reduced the tax, penalties, or interest liability if these records had been available in the audit. The taxpayer contacts the department's audit division, requests that a reexamination of the appropriate records be performed, and files a petition for a refund or credit of overpaid amounts. The statute of limitations will be determined based on the date the assessment was paid for an adjustment of taxes, penalties, or interest assessed in the audit. For taxes, penalties, or interest paid through the filing of combined excise tax returns by the taxpayer, the statute of limitations will be based on the date the amounts were paid without regard to when the audit was completed or the assessment was issued.

(c) Taxpayer appeal. If the taxpayer believes that the tax, penalties, or interest overpayment is the result of a difference of legal opinion with the department as to the taxability of a transaction, the application of penalties or the inclusion of interest, the taxpayer may appeal to the department as provided in WAC 458-20-100 or directly to Thurston County superior court.

(d) Court decision. Refunds or credits will be made by the department as required by decisions of any court of com-

petent jurisdiction when the decision of the court is not being appealed.

(i) In the case of court actions regarding refund or credit of retail sales taxes, the department will not require that consumers obtain a refund of retail sales tax directly from the seller if it would be unreasonable and an undue burden on the person seeking the refund to obtain the refund from the seller. In this case the department may make the refunds directly to the claimant and may use the public media to attempt to notify all persons who may be entitled to refunds or credits.

(ii) Forms for applications for refunds for these situations will be available either by mail or at the department's offices and the claimant will need to file an application for refund. The application will request the appropriate information needed to identify the claimant, item purchased, amount of sales tax to be refunded, and the seller. The department may at its discretion request additional documentation which the claimant could reasonably be expected to retain, based on the particular circumstances and value of the transaction. Such refund requests shall be approved or denied within thirty days after all documentation has been submitted by the claimant and legal questions have been resolved. If approved for refund, such refunds shall be made within sixty days after all documentation has been submitted.

(4) **Prompt refunds.** Taxpayers may expect refund requests to be processed promptly by the department. Refunds can generally be processed faster if the taxpayer provides the following information at the time a refund application is made:

(a) The taxpayer should include its registration number on all documents.

(b) The taxpayer should include the telephone number and name of the person the department should contact in case the department needs additional information or has questions.

(c) The taxpayer should include a detailed description or explanation of the claimed overpayment.

(d) Amended tax returns or worksheets should be attached to the refund or credit application and clearly identify the tax reporting periods involved.

(e) If the refund or credit request involves a situation where a seller has refunded retail sales tax to a customer and the seller is now seeking a refund or credit of the tax from the department, proof of refund to the customer should be attached.

(f) Generally, refund or credit requests require verification by the department through a review of specific taxpayer records which have a bearing on the refund or credit request. If the refund or credit request relates to a year for which the statute of limitations will expire within a short period, the department may be able to more promptly issue a refund by delaying the verification process until it is more convenient to the taxpayer and/or the department if the taxpayer will execute a statute of limitations waiver.

(5) **Interest on refunds or credits.** Interest will be allowed on credits or refunds.

(a) Interest is paid at the rate of three percent per annum for refunds and credits of taxes or penalties which were paid by the taxpayer prior to January 1, 1992.

(b) For amounts overpaid by a taxpayer after December 31, 1991, the rate of interest on refunds and credits is the average of the federal short-term rate as defined in 26 U.S.C.

Sec. 1274(d) plus one percentage point. The rate will be adjusted on the first day of January of each year by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually, for the months of January, April, July, and October of the immediately preceding calendar year as published by the United States Secretary of Treasury.

(c) The department will include interest on credit notices with the interest computed to the date the taxpayer could reasonably be expected to use the credit notice, generally the due date of the next tax return.

(d) If a taxpayer requests that a credit notice be converted to a refund, interest will be recomputed to the date the refund (warrant) is issued, but not to exceed the interest which would have been granted through the credit notice.

(6) **Offsetting overpayments against deficiencies.** The department may apply overpayments against existing deficiencies/assessments for the same legal entity. However, a potential deficiency which is yet to be determined will not be reason to delay the processing of an overpayment where an overpayment has been conclusively determined. The following examples illustrate the use of offsets:

(a) The taxpayer's records are audited for the period 1988 through 1991. The audit disclosed underpayments in 1989 and overpayments in 1991. The department will apply the overpayments in 1991 to the deficiencies in 1989. The resulting amount will indicate whether a refund or credit is owed the taxpayer or whether the taxpayer owes additional amounts.

(b) The department has determined that the taxpayer has overpaid its real estate excise tax in 1991. The department believes that the taxpayer may owe additional B&O taxes, but this has yet to be established. The department will not delay the processing of the refund of the real estate excise tax while it proceeds with scheduling and performing of an audit for the B&O taxes.

(c) The department simultaneously performed a timber tax audit and a B&O tax audit of a taxpayer. The department determined that the taxpayer underpaid its B&O tax and overpaid its timber tax. Separate assessments were issued on the same date, one showing additional taxes due and the other overpayments. The department may offset the overpayment against the tax deficiency assessment since both the underpayment and overpayment have been established.

[Statutory Authority: RCW 82.32.300, 93-04-077, § 458-20-229, filed 2/1/93, effective 3/4/93; 83-08-026 (Order ET 83-1), § 458-20-229, filed 3/30/83; Order ET 70-3, § 458-20-229 (Rule 229), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-230 Statutory limitations on assessments.** (1) **Introduction.** This section explains the time period during which the department of revenue may issue a tax assessment. It also explains the circumstances under which the department may request that a taxpayer complete a statute of limitations waiver.

(2) **Assessment period.** Tax assessments must be made within four years after the close of the tax (calendar) year in which the tax was incurred with the following exceptions:

(a) Against a taxpayer who was not registered as required by chapter 82.32 RCW.

(b) Upon a showing of fraud or of misrepresentation of a material fact by the taxpayer.

(c) Where the taxpayer has executed a written waiver of such limitation.

(d) Sales tax collected by a seller upon retail sales and not remitted to the department.

(3) **Unregistered taxpayer.** Except for evasion or misrepresentation, if the department of revenue discovers any unregistered taxpayer doing business in this state, the department will assess taxes, interest, and penalties for a period of seven years plus the current year. If a taxpayer voluntarily registers before being contacted by the department, assessments will not exceed four years plus the current year, provided the taxpayer has made a good faith attempt to report correctly and there is no evidence of intent to evade tax under RCW 82.32.050. It will be presumed that a taxpayer has registered with the department if the taxpayer voluntarily files for an identification number under the Unified Business Identifier (UBI) system prior to any contact from the department of revenue.

(4) **Evasion or misrepresentation.** There is no limitation for the period in which an assessment or correction of an assessment can be made upon a showing of evasion or of misrepresentation of a material fact. Evasion involves a situation where the taxpayer knows a tax liability is due and the taxpayer attempts to escape detection through deceit, fraud, or other intentional wrongdoing. The evasion must be shown by clear, cogent, and convincing evidence which is objective and creditable. However, in the case of evasion or misrepresentation, any assessment for taxes which extends beyond four years and the current year will be limited to taxes which were underpaid as a result of the evasion or misrepresentation. (See RCW 82.32.050 and 82.32.090.)

(5) **Statute of limitations waiver.** The department may request that a taxpayer complete a waiver of the statute of limitations in those cases where the delay in timely completing an audit or issuance of an assessment is the result of actions of the taxpayer. If the department requests that a statute of limitations waiver be completed, the waiver will also hold open the period during which the department may refund taxes discovered to have been overpaid. The department may also request that a taxpayer complete a waiver of the statute of limitations in connection with a request from a taxpayer for a refund or credit for overpaid taxes. If the refund or credit request relates to a year for which the statute of limitations will expire within a short period, the department may be able to more promptly issue a refund by delaying the verification process until it is more convenient to the taxpayer and/or the department if the taxpayer will execute a statute of limitations waiver. (Refer to WAC 458-20-229.)

(6) **Trust funds.** Retail sales tax which is collected by a seller must be remitted to the department of revenue. These amounts are deemed to be held in trust by the seller until paid to the department. The statute of limitations does not apply to retail sales tax which was collected and not remitted to the department.

(7) **Revised assessments.** The department may issue an assessment to correct errors found in examining tax returns or it may issue an assessment to correct errors based on a review of the taxpayer's records. Assessments which are based on a review of the tax returns are subject to further review and

revision by future audit. Once issued, the department may revise an audit assessment subject to the following restrictions.

(a) The assessment generally may not be increased from the amount originally assessed for those years for which the statute of limitations would have expired if this were an original assessment. For these years an assessment can be reduced, but not increased.

(b) An assessment may be increased upon discovery of fraud/evasion or misrepresentation of a material fact.

(8) **Assessments following conditional refunds or credits.** Taxpayers may petition for a credit or refund of overpaid taxes by following the procedures in WAC 458-20-229. The department at its option may grant such credits or refunds without further immediate verification. If it is later determined that a refund was granted in error and that there was no fraud/evasion or misrepresentation of a material fact, the department may issue an assessment to recover the taxes and interest which were refunded in error, provided the assessment is issued within four years from the close of the tax year in which the tax was incurred or within a period covered by a statute of limitations waiver.

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

(a) ABC Manufacturing has manufacturing plants in Oregon and Washington. This taxpayer properly registered with the department of revenue when first engaging in business in Washington a number of years ago and has remained registered. In 1987 the taxpayer transferred equipment from its Oregon plant and used the equipment in its Washington plant. (See RCW 82.12.010 for a definition of use.) This transfer was recorded in the accounting records in 1987, but the taxpayer inadvertently failed to report the use tax. The taxpayer's records were audited in 1992 at which time this transfer and the failure to report the use tax came to the department's attention. Since the department discovered the use tax had not been paid more than four years after the close of 1987 and none of the exceptions as stated in subsection (2) of this section apply, the department is barred by the statute of limitations from now assessing the use tax. The department can expand the statute of limitations to seven years plus the current year if the taxpayer was required to be registered and failed to do so.

(b) The department issued its assessment on December 20, 1992, for use taxes owed by ABC Manufacturing covering the period January 1, 1988, through September 30, 1992. The taxpayer contacted the department in April 1994 and provided documentation to support that retail sales tax had been paid on some items assessed for use tax in the tax years 1989 and 1990. In the process of reviewing the documentation, the department discovered that the auditor inadvertently had failed to assess use tax on some assets purchased in the year 1988 which would have resulted in a larger tax assessment for that year than originally assessed. The department issued a revised assessment on June 15, 1994, covering the period January 1, 1988, through September 30, 1992 which reflected the deletion of the use tax assessed in error for 1989 and 1990. The revised assessment did not increase the tax

assessment for taxes owed in 1988 because this would have resulted in the assessment being increased more than four years after the close of the 1988 tax year. Any petition for refund must be made within four years of the close of the tax year in which the tax was paid.

(c) The department contacted XYZ Distributing on September 1, 1992, to schedule a routine audit of its records. The taxpayer requested that the department delay the start of the audit until December 1, 1992, because its records are maintained on a fiscal year ending September 30 and the audit would be extremely disruptive to its year end closing if begun immediately. This delay would not allow the department sufficient time to complete the review of the records for 1988 and timely make an assessment for any taxes found to be due. The department may request the taxpayer to complete a statute of limitations waiver for the year 1988 in exchange for delaying the start of the audit. The completion of the waiver by the taxpayer will also hold open the year 1988 for refund or credit of any taxes found to have been overpaid in this period until such time as an assessment is issued or the waiver expires.

(d) ABC Manufacturing was being audited by the department for the period January 1, 1988, through September 30, 1992. During the process of examining the records, the department discovered that ABC had collected retail sales tax on sales in 1986 which had never been remitted to the department. There was no fraud or misrepresentation involved in the taxpayer's failure to remit the tax. The department appropriately expanded the period covered by the assessment to include the unremitted retail sales tax in the year 1986. Retail sales tax collected by a seller is deemed to be held in trust until paid to the department and the statute of limitations does not apply. (See RCW 82.08.050.)

(e) The department, through staff at its Seattle office, was unable to find a registration for ARC Company. The department contacted ARC by letter inquiring about its business activities in Washington and asking ARC for its registration number. ARC had not registered with the department of revenue, nor had it registered with any other state agencies through the UBI system. Shortly after being contacted by the department's Seattle staff, ARC contacted the Olympia office of the department and completed an application for registration without disclosing the earlier contact by the Seattle office. ARC subsequently argued that the assessment should be restricted to four years plus the current year. The department appropriately made its assessment for seven years plus the current year because the taxpayer was unregistered at the time of being first contacted by the department.

(f) John Smith lives in Washington part of the year, votes in Washington, has a Washington driver's license, and uses his Washington address in filing federal tax returns. He spends the winters in Arizona. In 1986, while in Arizona, he purchased a new motor home which he licensed in Arizona. He assumed that it was appropriate to license the vehicle in Arizona since he spends a considerable part of the year there and was not aware that he should pay use tax on the first use in Washington which occurred later that year. In 1992 he traded this motor home for a new motor home which he purchased from an Arizona dealer. Shortly thereafter, he returned to Washington and the department became aware of Mr. Smith's use of both of these motor homes in Washington.

The department concluded that use tax was due. However, because the department could not show any evidence of evasion or misrepresentation and the taxpayer was not required to be registered with the department, the statute of limitations had expired on the 1986 purchase. Use tax was properly due and assessed on the 1992 purchase with the value based on the total purchase price after allowing a deduction for the trade-in value.

(g) In 1992 the department audited the records of XYZ Hauling for the years 1988 through 1991. The audit disclosed that some income from hauling performed in 1988 had not been reported and issued an assessment in 1992 for additional taxes owed under the motor transportation public utility tax. The taxpayer paid the assessment in 1992. In 1994 the taxpayer contacted the department with additional records which disclosed that part of the hauling for which motor transportation tax was assessed for the year 1988 should have been assessed under the urban transportation classification, a lower tax rate. The taxpayer requested that all of the motor transportation tax be refunded and argued that the urban transportation tax could not be assessed since the statute of limitations had expired for the year 1988. The department issued a revised assessment in which it subtracted the tax that should have been paid under urban transportation from the motor transportation tax which was assessed. The department refunded the difference. The revised assessment did not result in additional taxes being assessed, but was a reduction of the original assessment.

[Statutory Authority: RCW 82.32.300, 93-03-004, § 458-20-230, filed 1/8/93, effective 2/8/93; Order ET 70-3, § 458-20-230 (Rule 230), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-233 Tax liability of medical and hospital service bureaus and associations and similar health care organizations.** All medical service bureaus, medical service corporations, hospital service associations and similar health care organizations engaging in business within this state are subject to the provisions of the business and occupation tax and are taxable under the service and other business activities classification upon their gross income. The term "gross income" as defined in RCW 82.04.080 is construed to include the total contributions, fees, premiums or other receipts paid in by the members or subscribers. Insofar as tax liability is concerned it is immaterial that such organizations may be incorporated as charitable or nonprofit corporations.

Certain of these organizations operate under contracts by the terms of which the bureau or association acts solely as the agent of a physician, hospital, or ambulance company in offering to its members or subscribers medical and surgical services, hospitalization, nursing, and ambulance services. In computing tax liability such bureaus and associations, therefore, will be entitled to deduct from their gross income the amounts paid to member physicians, hospitals and ambulance companies. No deduction will be allowed with respect to amounts retained as surplus or reserve accounts or to amounts expended for the purchase of supplies or for any other expense of the bureau or association other than as provided herein.

Under contracts wherein these organizations furnish to their members medical and surgical, hospitalization and

(2005 Ed.)

ambulance services as a principal and not as an agent, no such deduction is allowed.

Revised July 1, 1956.

[Order ET 70-3, § 458-20-233 (Rule 233), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-235 Effect of rate changes on prior contracts and sales agreements.** The term "retail sales tax" as used herein means the state sales tax of chapter 82.08 RCW as well as the local sales taxes of chapter 82.14 RCW. The following principles govern the applicability of changes in the rates of tax imposed under the Revenue Act with respect to contracts and sales agreements made prior to the effective date of the change:

When an unconditional contract to sell tangible personal property is entered into prior to the effective date of a rate change, and the goods are delivered after that date, the new rates will be applicable to the transaction. When an unconditional contract to sell tangible property is entered into prior to the effective date, and the goods are delivered prior to that date, the tax rates in effect for the prior period will be applicable.

When a contract to sell tangible personal property contains a specific provision to pass title at some time prior to delivery of the goods, such a specific provision will be deemed controlling and the tax rates in effect at that time will be applicable.

The retail sales tax and business and occupation tax due on conditional and installment sales must be wholly reported during the period in which the sale is made (see WAC 458-20-198), irrespective of the fact that the seller may elect to receive payment of the sales tax in installments. Therefore, sellers who receive installment payments after the effective date of a rate change on conditional and installment sales made prior to that date must collect the sales tax due on such installments at the rate applicable when the contract was written and the sale was made.

Lessors who lease tangible personal property are required to collect from their lessees the retail sales tax measured by the gross income from rentals as of the time the rental payments fall due (WAC 458-20-211). Lessors must collect the retail sales tax and pay the business and occupation tax at the new rates on all rental payments which fall due on and after the effective date of a rate change, including rental payments on leases entered into prior to that date.

Persons installing, repairing, cleaning, altering, imprinting or improving tangible personal property for others, or constructing, repairing, decorating or improving buildings or other structures upon the real property of others will collect retail sales tax and pay the business and occupation tax at the new rates with respect to all such services performed and billed on and after the effective date of a rate change. With respect to contracts requiring the above services or construction which were executed prior to the effective date of a change in rates, the new rates will be applicable to the full contract price unless the contract work is completed and accepted prior to the effective date. If, however, under the terms of the contract, the seller is entitled to periodic payments which amounts are calculated to compensate the seller for the work completed to the date of payment, the applicable tax rates upon such payments (including, in the case of public

[Title 458 WAC—p. 325]

works contracts, the percentage retained by the public agency pursuant to the provisions of RCW 60.28.010) will be those in effect at the time the contractor becomes entitled to receive said payments.

Taxpayers filing returns on the cash basis (i.e., reporting charge sales at the time payment is received rather than at the time of sale) must make an accounts receivable adjustment (see WAC 458-20-199) at the time of a change in tax rates. For example, if a change of tax rate becomes effective July 1, a cash basis taxpayer should report along with the June cash receipts all accounts receivable outstanding as of June 30.

Intricate questions should be submitted in writing to the department of revenue for specific rulings.

[Statutory Authority: RCW 82.32.300, 83-07-032 (Order ET 83-15), § 458-20-235, filed 3/15/83; Order ET 70-3, § 458-20-235 (Rule 235), filed 5/29/70, effective 7/1/70.]

### **WAC 458-20-236 Baseball clubs and other sport organizations.**

#### **Business and Occupation Tax**

Baseball clubs and other sport organizations are taxable under the classification of service and other business activities upon the total income derived from games for which such clubs are the sponsors or hosts, even though a fixed amount or a certain percentage of such income is paid to another team or club.

Conversely, amounts received by baseball clubs or other sport organizations as their share of the proceeds from games for which they are not the sponsor or host may be excluded from the measure of tax.

Issued July 1, 1956.

[Order ET 70-3, § 458-20-236 (Rule 236), filed 5/29/70, effective 7/1/70.]

### **WAC 458-20-238 Sales of watercraft to nonresidents.**

(1) **Introduction.** This rule explains the retail sales tax exemption provided by RCW 82.08.0266 for sales to nonresidents of watercraft requiring United States Coast Guard documentation or state registration. It also explains the retail sales tax exemption provided by RCW 82.08.02665 for sales of watercraft to residents of foreign countries. These statutes provide the exclusive authority for granting a retail sales tax exemption for sales of such watercraft when delivery is made within Washington. This rule explains the requirements to be met, and the documents which must be preserved, to substantiate a claim of exemption. It also discusses use tax exemptions for nonresidents bringing watercraft into Washington for enjoyment and/or repair.

This rule primarily deals with the retail sales and use taxes where delivery takes place in Washington. Sellers should refer to WAC 458-20-193 if they deliver the vessel to the purchaser at an out-of-state location. Purchasers also should be aware that there is a watercraft excise tax which may apply to the purchase or use of watercraft in Washington. (See chapter 82.49 RCW.) In addition, purchasers of commercial vessels may have annual liability for personal property tax. (See RCW 84.08.065.)

(2) **Business and occupation tax.** Retailing B&O tax is due on all sales of watercraft to consumers if delivery is made within the state of Washington, even though the sale may qualify for an exemption from the retail sales tax. If the seller

is also the manufacturer of the vessel, the seller must report under both the manufacturing and wholesaling or retailing classifications of the B&O tax, and claim a multiple activities tax credit (MATC). Manufacturers should also refer to WAC 458-20-136 (Manufacturing, processing for hire, fabricating) and WAC 458-20-19301 (Multiple activities tax credits).

(3) **Retail sales tax.** The retail sales tax generally applies to the sale of watercraft to consumers when delivery is made within the state of Washington. Under certain conditions, however, retail sales tax exemptions are available for sales of watercraft to nonresidents of Washington, even when delivery is made within Washington.

(a) **Exemptions.** RCW 82.08.0266 provides an exemption from the retail sales tax for sales of watercraft to residents of states other than Washington for use outside this state, even when delivery is made within Washington. The exemption provided by RCW 82.08.0266 is limited to sales of watercraft requiring United States Coast Guard documentation or registration with the state in which the vessel will be principally used, but only when that state has assumed the registration and numbering function under the Federal Boating Act of 1958.

RCW 82.08.02665 provides a retail sales tax exemption for sales of vessels to residents of foreign countries for use outside this state, even when delivery is made in Washington. This exemption is not limited to the types of watercraft qualifying for the exemption provided by RCW 82.08.0266. The term "vessel," for the purposes of RCW 82.08.02665, means every watercraft used or capable of being used as a means of transportation on the water, other than a seaplane.

(b) **Exemption requirements.** The following requirements must be met to perfect any claim for exemption under RCW 82.08.0266 and 82.08.02665:

(i) The watercraft must leave Washington waters within forty-five days of delivery;

(ii) The seller must examine acceptable proof that the buyer is a resident of another state or a foreign country; and

(iii) The seller, at the time of the sale, must retain as a part of its records a completed exemption certificate to document the exempt nature of the sale. This requirement may be satisfied by using the department's "buyer's retail sales tax exemption certificate," or another certificate with substantially the information as it relates to the exemption provided by RCW 82.08.0266 and 82.08.02665. The certificate must be completed in its entirety, and retained by the seller. A blank certificate can be obtained via the internet at <http://dor.wa.gov>, by facsimile by calling Fast Fax at (360) 786-6116 or (800) 647-7706 (using menu options), or by writing to: Taxpayer Services, Washington State Department of Revenue, P.O. Box 47478, Olympia, Washington 98504-7478. The seller should not accept an exemption certificate if the seller becomes aware of any information prior to the completion of the sale which is inconsistent with the purchaser's claim of residency, such as a Washington address on a credit application.

(c) **Component parts and repairs.** The exemptions provided by RCW 82.08.0266 and 82.08.02665 apply only to sales of watercraft. For the purposes of these exemptions, the term "watercraft" includes component parts which are installed in or on the watercraft prior to delivery to and acceptance by the buyer, but only when these parts are sold by the

seller of the watercraft. "Component part" means tangible personal property which is attached to and used as an integral part of the operation of the watercraft, even if the item is not required mechanically for the operation of the watercraft. Component parts include, but are not necessarily limited to, motors, navigational equipment, radios, depthfinders, and winches, whether themselves permanently attached to the watercraft or held by brackets which are permanently attached. If held by brackets, the brackets must be permanently attached to the watercraft in a definite and secure manner.

These exemptions do not extend to the sale of boat trailers, repair parts, or repair labor. These exemptions also do not extend to a separate seller of unattached component parts, even though these parts may be manufactured specifically for the watercraft and/or permanently installed in or on the watercraft prior to the watercraft being delivered to and accepted by the buyer.

(4) **Deferred retail sales or use tax.** If Washington retail sales tax has not been paid, persons using watercraft on Washington waters are required to report and remit to the department such sales tax (commonly referred to as deferred retail sales tax) or use tax, unless the use is specifically exempt by law. A credit against Washington's use tax is allowed for retail sales or use tax previously paid by the user or the user's bailor or donor with respect to the property to any other state of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof, prior to the use of the property in Washington. RCW 82.12.035. See also WAC 458-20-178.

(a) Tax is due on the use by any nonresident of watercraft purchased from a Washington vendor and first used within this state for more than forty-five days if retail sales or use tax has not been paid by the user. Tax is due notwithstanding the watercraft qualified for retail sales tax exemption at the time of purchase.

(b) Use tax does not apply to the temporary use or enjoyment of watercraft brought into this state by nonresidents while temporarily within this state. Except as otherwise provided in this rule, it will be presumed that use within Washington exceeding sixty days in any twelve-month period is more than temporary use and use tax is due.

Effective January 1, 1998, nonresident individuals (whether residents of other states or foreign countries) may temporarily bring watercraft into this state for their use or enjoyment without incurring liability for the use tax if such use does not exceed a total of six months in any twelve-month period. To qualify for this six-month exemption period, the watercraft must be issued a valid number under federal law or by an approved authority of the state of principal operation, be documented under the laws of a foreign country, or have a valid United States customs service cruising license. The watercraft must also satisfy all identification requirements under RCW 88.02.030 for any period after the first sixty days. Failure to meet the applicable documentation and identification requirements will result in a loss of the exemption. Prior to January 1, 1998, the temporary use exemption period was limited to sixty days for all nonresident users of watercraft.

(c) Watercraft owned by nonresidents and in this state exclusively for repair, alteration, or reconstruction are

exempt from the use tax if removed from this state within sixty days. If repair, alteration, or reconstruction cannot be completed within this period, the exemption may be extended by filing with the department of revenue compliance division an affidavit as required by RCW 88.02.030 verifying the vessel is located upon the waters of this state exclusively for repair, alteration, reconstruction, or testing. This document, titled "Nonresident Out-of-State Vessel Repair Affidavit," is effective for sixty days. If additional extensions of the exemption period are needed, additional affidavits must be sent to the department. Failure to file this affidavit can also result in requiring that the vessel be registered in Washington and subject to the use tax.

(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 results of other situations must be determined after a review of all facts and circumstances. In all examples, retailing B&O tax is due from the seller for all sales of watercraft and parts, and all charges for repair parts and labor.

(a) Mr. Kelley, a resident of California, pilots his cabin cruiser which is registered in that state into Puget Sound for his enjoyment. On the sixtieth day of his stay, Mr. Kelley obtains an identification document for the cabin cruiser under RCW 88.02.030 for the boat from the department of licensing. To further extend his stay in Washington waters, he applies for a second identification document within the prescribed period. In the middle of his fifth month on Puget Sound, Mr. Kelley departs and returns the craft to its home port in California. The stay would not subject Mr. Kelley to use tax. On the other hand, if Mr. Kelley were a resident of Vancouver, British Columbia, bringing a vessel registered in Canada, he would also have to timely obtain and display the appropriate identification document required by RCW 88.02.030 to allow his temporary use of the watercraft in Washington.

(b) Company A sells a yacht to John Doe, an Oregon resident, who takes delivery in Washington. The yacht is required to be registered by the state of Oregon. The vessel is removed from Washington waters within forty-five days of delivery. Company A examines a driver's license confirming John Doe to be an Oregon resident, and records this information in the sales file. Company A does not complete and retain the required exemption certificate.

The sale of the yacht is subject to the retail sales tax. The exclusive authority for granting a retail sales tax exemption for this sale is provided by RCW 82.08.0266. Completion of an exemption certificate is a statutorily imposed condition for obtaining this exemption. Company A has not satisfied the conditions and requirements necessary to grant an exemption under this statute. The exemption provisions under RCW 82.08.0273 for sales to nonresidents of states having less than three percent retail sales tax can not be used for purchases of vessels which require United States Coast Guard documentation, or registration in the state of principal use. If the exemption certificate had been properly completed at the time of sale, this sale would have qualified for retail sales tax exemption.

(c) Mr. Jones, a California resident, contracts Company B to manufacture a pleasure yacht. Mr. Jones purchases a boat motor from Company Y with instructions that delivery

be made to Company B for installation on the yacht. The yacht is required to be registered with the state of California, which has assumed the registration and numbering function under the Federal Boating Act of 1958. Company B examines Mr. Jones' driver's license to verify Mr. Jones is a nonresident of Washington, and retains the proper exemption certificate at the time of sale. Delivery is made in Washington, and Mr. Jones removes the vessel from Washington waters within forty-five days of delivery.

The sale of the yacht by Company B to Mr. Jones is not subject to the retail sales tax, as the requirements and conditions for exemption have been satisfied. Retail sales tax does, however, apply to the sale of the motor by Company Y to Mr. Jones. The exemption provided by RCW 82.08.0266 does not extend to a separate seller of unattached component parts, even though the parts are installed in the watercraft prior to delivery.

(d) Mr. Smith, a resident of British Columbia, Canada, brings his yacht into Washington with the intention of temporarily using the yacht for personal enjoyment. Mr. Smith obtains the required identification document issued by the department of licensing. After four months of personal use, the yacht experiences mechanical difficulty. The yacht is taken to a repair facility and due to the extensive nature of the damage the yacht remains at the repair facility for six months. As explained in subsection (4)(c) above, Mr. Smith makes a timely filing of each required "Nonresident Out-of-State Vessel Repair Affidavit." An employee of the repair facility is on board the yacht during all testing, and there is no personal use by Mr. Smith during this period. Upon completion of the repairs and testing, Mr. Smith takes delivery at the repair facility.

Mr. Smith may personally use the yacht in Washington waters for up to two months after taking delivery of the repaired yacht. He will not incur liability for use tax because the instate use of the yacht for personal enjoyment will not exceed six months in a twelve-month period. The time the yacht is at the repair facility exclusively for repair does not count against the period of time Mr. Smith is considered to be "temporarily" using the yacht in Washington for personal enjoyment. Retail sales tax is due, and must be paid, however, on all charges for repair parts and labor. The exemption from sales tax for purchases of vessels does not extend to repairs.

[Statutory Authority: RCW 82.32.300. 00-23-003, § 458-20-238, filed 11/1/00, effective 12/2/00; 95-24-103, § 458-20-238, filed 12/6/95, effective 1/6/96; 83-21-061 (Order ET 83-7), § 458-20-238, filed 10/17/83; 83-08-026 (Order ET 83-1), § 458-20-238, filed 3/30/83; Order ET 70-3, § 458-20-238 (Rule 238), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-239 Sales to nonresidents of farm machinery or implements, and related services.** (1) **Introduction.** This rule explains the retail sales tax exemption provided by RCW 82.08.0268 for sales to nonresidents of farming machinery and implements, parts for farming machinery and implements, and related labor and services. The rule also explains the documents that must be preserved to substantiate a claim of exemption. Sellers should refer to WAC 458-20-193 if they deliver farm machinery or implements to the purchaser at an out-of-state location.

(2) **Tax-reporting requirements.** Retailing B&O and retail sales taxes generally apply to all sales of tangible personal property, parts, and repair labor in Washington.

(a) RCW 82.08.0268 provides an exemption from retail sales tax for sales to nonresidents of the following when used in conducting a farm activity outside the state of Washington:

- (i) Machinery and implements;
- (ii) Parts for machinery and implements; and
- (iii) Labor and services for repair of machinery, implements, and parts.

(b) To qualify for the exemption, the machinery, implements, or parts must be transported outside the state immediately after sale or completion of the repair or service. Prior to June 11, 1998, the exemption applied only to farm machinery and implements, and repair parts and components if attached to the machinery or implements. The exemption did not apply to labor and services.

(c) This exemption is allowed even though the property sold or serviced is delivered to the purchaser in this state, but only when the seller receives from the buyer an exemption certificate, and examines acceptable proof that the buyer is a resident of a state or country other than the state of Washington.

(d) The exempt nature of the transaction must be documented by using the department's "buyer's retail sales tax exemption certificate," or another certificate with substantially the same information as it relates to the exemption provided by RCW 82.08.0268. The certificate must be completed in its entirety, and retained by the seller.

A blank certificate can be obtained via the internet at <http://dor.wa.gov>, by facsimile by calling Fast Fax at (360) 786-6116 or (800) 647-7706 (using menu options), or by writing to Taxpayer Services, Washington State Department of Revenue, Post Office Box 47478, Olympia, Washington 98504-7478. If, prior to completion of the sale, the seller becomes aware of any information inconsistent with the purchaser's claim of residency, such as a Washington address on a credit application, the seller should not accept an exemption certificate.

[Statutory Authority: RCW 82.32.300. 00-09-092, § 458-20-239, filed 4/19/00, effective 5/20/00; 83-08-026 (Order ET 83-1), § 458-20-239, filed 3/30/83; Order ET 70-3, § 458-20-239 (Rule 239), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-240 Manufacturer's new employee tax credits.** (1) **Introduction.** Chapter 82.62 RCW provides business and occupation (B&O) tax credits to certain persons engaged in manufacturing and research and development activities. These credits are intended to stimulate the economy by creating employment opportunities in specific rural counties and community empowerment zones of this state. The credits are as much as \$4,000 per qualified employment position. This rule explains the eligibility requirements and application procedures for this program. It is important to note that an application for the tax credits must be submitted to the department of revenue before the actual hiring of qualified employment positions. See subsection (6) of this rule for additional information regarding this application requirement. This tax credit program is a companion to the tax deferral program under chapter 82.60 RCW; however, the eligible geographic areas in the two programs are not identical.

The department of employment security and the department of community, trade, and economic development administer programs for rural counties and job training. These agencies should be contacted directly for information concerning those programs.

(2) **Who is eligible for these tax credits?** Subject to certain qualifications, an applicant (person applying for a tax credit under chapter 82.62 RCW) who is engaged in an eligible business project is entitled to the tax credits provided by chapter 82.62 RCW.

(a) **What is an eligible business project?** An "eligible business project" means manufacturing, commercial testing, or research and development activities conducted by an applicant in an eligible area at a specific facility, subject to the restriction noted in the following paragraph. An "eligible business project" does not include any portion of a business project undertaken by a light and power business or any portion of a business project creating employment positions outside an eligible area.

To be considered an "eligible business project," the applicant's number of average full-time qualified employment positions at the specific facility must be at least fifteen percent greater in the calendar year for which credit is being sought than the number of positions at the same facility in the immediately preceding calendar year. Subsection (4) of this rule explains how to determine whether this threshold is satisfied.

(b) **What is an eligible area?** As noted above, the facility must be located in an eligible area to be considered an eligible business project. An "eligible area" is:

(i) A rural county, which is a county with fewer than one hundred persons per square mile or, on and after April 1, 2004, a county smaller than two hundred twenty-five square miles, as determined annually by the office of financial management and published by the department of revenue effective for the period of July 1st through June 30th (see RCW 82.62.010(3)); or

(ii) A community empowerment zone (CEZ). CEZ means an area meeting the requirements of RCW 43.31C.020 and officially designated by the director of the department of community, trade, and economic development.

(iii) **How to determine whether an area is an eligible area.** Rural county designation information can be obtained from the office of financial management internet website at [www.ofm.wa.gov/popden/rural.htm](http://www.ofm.wa.gov/popden/rural.htm). The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's internet website at [www.dor.wa.gov](http://www.dor.wa.gov).

(c) **What are manufacturing and research and development activities?** Manufacturing or research and development activities must be conducted at the facility to be considered an eligible business project.

(i) **Manufacturing.** "Manufacturing" has the meaning given in RCW 82.04.120. In addition, for the purposes of chapter 82.62 RCW "manufacturing" also includes computer programming, the production of computer software, other computer-related services, and the activities performed by

research and development laboratories and commercial testing laboratories.

(ii) **Research and development.** "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. "Commercial sales" does not include sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(iii) **Computer-related services.** "Computer-related services," for the purposes of chapter 82.62 RCW's definition of "manufacturing," are services that are connected with or interact directly in the manufacture of computer hardware or software or the programming of the manufactured hardware. "Computer-related services" includes the manufacture of hardware such as chips, keyboards, monitors, and any other hardware, and the components of these items. "Computer-related services" also includes creating operating systems and software that will be copied and sold as canned software. The activities performed by the manufacturer to test, correct, revise, or upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services. "Computer-related services" does not include services such as information services.

(3) **What are the hiring requirements?** The average full-time qualified employment positions at the specific facility during the calendar year for which credits are claimed must be at least fifteen percent greater than the average full-time qualified employment positions at the same facility for the preceding calendar year.

(a) **What is a qualified employment position?** A "qualified employment position" means a position filled by a permanent full-time employee employed at an eligible business project for twelve consecutive months. Once a full-time position is established and filled it will continue to qualify for twelve consecutive periods so long as any person fills the position. The position is considered "filled" even during periods of vacancy, provided these periods do not exceed thirty consecutive days and the employer is training or actively recruiting a replacement employee.

(b) **What is a "permanent full-time employee"?** A "permanent full-time employee" is a position that is filled by an employee who satisfies any one of the following minimum thresholds:

(i) Works thirty-five hours per week for fifty-two consecutive weeks;

(ii) Works four hundred fifty-five hours, excluding overtime, each quarter for four consecutive quarters; or

(iii) Works one thousand eight hundred twenty hours, excluding overtime, during a period of twelve consecutive months.

(c) **"Permanent full-time employee" - Seasonal operations.** For applicants that regularly operate on a seasonal basis only and that employ more than fifty percent of their employees for less than a full twelve month continuous period, a "permanent full-time employee" is a permanent full-time employee as described above or an equivalent in full time equivalent (FTE) work hours.

(4) **How to determine if the fifteen percent employment increase requirement is met.** Qualification for tax credits depends upon whether the applicant hires enough new

positions to meet the fifteen percent average increase requirement.

(a) **Determining the fifteen percent increase.** To determine the projected number of permanent full-time qualified employment positions necessary to satisfy the fifteen percent employment increase requirement:

(i) Determine the average number of permanent full-time qualified employment positions that existed at the facility during the calendar year prior to the year in which tax credit is being claimed.

(ii) Multiply the average number of full-time positions from subsection (i) by .15 or fifteen percent. The resulting number equals the number of positions that must be filled to meet the fifteen percent increase. Numbers are rounded up to the nearest whole number at point five (.5).

(b) **When does hiring have to occur?** All hiring increases must occur during the calendar year for which credits are being sought for purposes of meeting the fifteen percent threshold test. Positions hired in a calendar year prior to making an application are not eligible for a credit but the positions are used to calculate whether the fifteen percent threshold has been met.

(c) **The department will assist applicants to determine their hiring requirements.** Accompanying the tax credit application is a worksheet to assist the applicant in determining if the fifteen percent qualified employment threshold is satisfied. Based upon the information provided in the application, the department will advise applicants of their minimum number of hiring needs for which credits are being sought.

(d) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(i) ABC Company anticipates increasing employment during the 2001 calendar year at a manufacturing facility by an average of 15 full-time qualified employment positions for a total of 113 positions. The average number of full-time qualified employment positions during the 2000 calendar year was 98. To qualify for the tax credit program the minimum average number of full-time qualified employment positions required for the 2001 calendar year is  $98 \times .15 = 14.7$  (rounding up to 15 positions). Therefore, ABC Company's plan to hire 15 full-time qualified employment positions for 2001 meets the 15% employment increase requirement.

(ii) ABC anticipates increasing employment at this same manufacturing facility by an average of 15 additional full-time qualified employment positions during the 2002 calendar year to a total of 128 positions. To qualify for the tax credit program the minimum average number of full-time qualified employment positions required for the 2002 calendar year is  $17$  ( $113 \times .15 = 16.95$ , rounding up to 17). Therefore, ABC Company's plan to hire 15 full-time qualified employment positions for 2002 does not meet the 15% employment increase requirement.

(5) **Restriction against displacing existing jobs within Washington.** The law provides that no recipient may use tax credits approved under this program to decertify a union or to displace existing jobs in any community of the state. Thus,

the average expected increase of employment positions at the specific facility for which application is made must reflect a gross increase in the applicant's employment of persons at all locations in this state. Transfers of personnel from existing positions outside of an eligible area to new positions at the specific facility within an eligible area will not be allowed for purposes of approving tax credits. Also, layoffs or terminations of employment by the recipient at other locations in Washington but outside an eligible area for the purpose of hiring new positions within an eligible area will result in the withdrawal of any credits taken or approved.

(6) **Application procedures.** A taxpayer must file an application with and obtain approval from the department of revenue to receive tax credits under this program. A separate application must be submitted for each calendar year for which credits are claimed. RCW 82.62.020 requires that application for the tax credits be made prior to the actual hiring of qualified employment positions. Applications failing to satisfy this statutory requirement will be disapproved.

(a) **How to obtain and file applications.** Application forms will be provided by the department upon request either by calling 360-902-7175 or via the department's internet website at [www.dor.wa.gov](http://www.dor.wa.gov) under forms. The completed application may be sent by fax to 360-586-0527 or mailed to the following address:

State of Washington  
Department of Revenue  
Taxpayer Account Administration  
P.O. Box 47476  
Olympia, WA 98504-7476

The U.S. Post Office postmark or fax date will be used as the date of application.

(b) **Confidentiality.** Information contained in applications, reports, or any other information received by the department in connection with this tax credit program is not confidential and is subject to disclosure. All other taxpayer information is subject to the confidentiality provisions in RCW 82.32.330.

(c) **Department to act upon application within sixty days.** The department will determine if the applicant qualifies for tax credits on the basis of the information provided in the application and will approve or disapprove the application within sixty days. If approved, the department will issue a credit approval notice containing the dollar amount of tax credits available for use and the procedures for taking the credit. If disapproved, the department will notify the applicant in writing of the specific reasons for disapproval. The applicant may seek administrative review of the department's disapproval of an application by filing a petition for review with the department. The petition must be filed within thirty days from the date of notice of the disallowance pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements.

(d) **No adjustment of credit after approval.** After an application is approved and tax credits are granted, no upward adjustment or amendments of the application will be made for that calendar year.

(7) **How much is the tax credit?** The amount of tax credit is based on the number of and the wages and benefits paid to qualified employment positions created.

(a) **How much tax credit may I claim for each qualified employment position?** The amount of tax credit that may be claimed for each position created is as follows:

(i) Two thousand dollars for each qualified employment position that pays forty thousand dollars or less in wages and benefits annually and is employed in an eligible business project; and

(ii) Four thousand dollars for each qualified employment position that pays more than forty thousand dollars in wages and benefits annually and is employed in an eligible business project.

(b) **What qualifies as wages and benefits?** For the purposes of chapter 82.62 RCW, "wages" means compensation paid to an individual for personal services, whether denominated as wages, salary, commission, bonus, or otherwise. "Benefits" means compensation not paid as wages and includes Social Security, retirement, health care, life insurance, industrial insurance, unemployment compensation, vacation, holiday, sick leave, military leave, and jury duty. "Benefits" does not include any amount reported as wages.

(8) **How to claim approved credits.** The recipients must take the tax credits approved under this program on their regular combined excise tax return for their regular assigned tax reporting period. These tax credits may not exceed the B&O tax liability. The amount of credit taken should be entered into the "credit" section of the return form, with a copy of the credit approval notice issued to the recipient attached to the return.

(a) **When can credits be used?** The credits may be used as soon as hiring of the projected qualified employment positions begins or may accrue until they are most beneficial for the recipient's use. For example, if a recipient has been approved for \$12,000 of tax credits based upon projections to hire five new positions, that recipient may use \$2,000 or \$4,000 of tax credit at the time it hires each new employee, depending on the wage/benefit level of the position filled.

(b) **No refunds for unused credits.** No tax refunds will be made for any tax credits which exceed tax liability during the life of this program. If tax credits derived from qualified hiring exceed the recipients' business and occupation tax liability in any one calendar year under this program, they may be carried forward to the next calendar year(s), until used.

(9) **Annual report to be filed by recipient.** A recipient of tax credits under this program must complete and submit an annual report of employment activities to substantiate that he or she has complied with the hiring and retention requirements for approved credits. RCW 82.62.050. This report must be filed with the department by January 31st of the year following the calendar year for which credit was approved by the department. Based upon this report the department will verify that the recipient is entitled to the tax credits approved by the department when the application was reviewed. The completed annual report may be sent by FAX to 360-586-0527 or mailed to the following address:

State of Washington  
Department of Revenue  
Taxpayer Account Administration  
P.O. Box 47476  
Olympia, WA 98504-7476

The U.S. Post Office postmark or FAX date will be used as the date of filing.

(a) **Verification of annual report.** The department will use the same report the recipient provides to the department of employment security, which is known as the quarterly employment security report, to verify the recipient's eligibility for tax credits. The recipient must maintain copies of the quarterly employment report for the year prior to the year for which credits are claimed, the year credits are claimed, and for the four quarters following the hiring of persons to fill the qualified employment positions. (The recipient does not have to forward copies of the quarterly employment report to the department each quarter.) The department may use other wage information provided to the department by the department of employment security. The taxpayer must provide additional information to the department, as the department finds necessary to calculate and verify wage eligibility.

(b) **Failure to file report.** The law provides that if any recipient fails to submit a report or submits an inadequate report, the department may declare the amount of taxes for which credit has been used to be immediately due and payable. An inadequate report is one which fails to provide information necessary to confirm that the requisite number of employment positions has been created and maintained for twelve consecutive months.

(10) **What if the required number of positions is not created?** The law provides that if the department finds that a recipient is not eligible for tax credits for any reason, other than failure to create the required number of qualified employment positions, the amount of taxes for which any credit has been used will be immediately due. No interest or penalty will be assessed in such cases. However, if the department finds that a recipient has failed to create the specified number of qualified employment positions, the department will assess interest, but not penalties, on the taxes against which the credit has been used. This interest on the assessment is mandatory and will be assessed at the statutory rate under RCW 82.32.050, retroactively to the date the tax credit was used. The interest will accrue until the taxes for which the credit was used are fully repaid. RCW 82.32.050. The interest rates under RCW 82.32.050 can be obtained from the department's internet website at [www.dor.wa.gov](http://www.dor.wa.gov) or by calling the department's information center at 1-800-647-7706.

(11) **Program thresholds.** The department cannot approve any credits that will cause the total credits approved to exceed seven million five hundred thousand dollars in any fiscal year. RCW 82.62.030. A "fiscal year" is the twelve-month period of July 1st through June 30th. If all or part of an application for credit is disallowed due to cap limitations, the disallowed portion will be carried over for approval the next fiscal year. However, the applicant's carryover into the next fiscal year is only permitted if the total credits approved for the next fiscal year does not exceed the cap for that fiscal year as of the date on which the department has disallowed the application.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). 05-01-079, § 458-20-240, filed 12/10/04, effective 1/10/05. Statutory Authority: RCW 82.32.300, 82.62.070 and chapter 82.62 RCW. 01-17-069, § 458-20-240, filed 8/15/01, effective 9/15/01. Statutory Authority: RCW 82.32.300, 88-17-047 (Order 88-5), § 458-20-240, filed 8/16/88; 87-19-007 (Order ET 87-5), § 458-20-240, filed 9/8/87; 86-14-019 (Order ET 86-13), § 458-20-240,

filed 6/24/86; 83-08-026 (Order ET 83-1), § 458-20-240, filed 3/30/83; Order ET 71-1, § 458-20-240, filed 7/22/71; Order ET 70-3, § 458-20-240 (Rule 240), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-24001 Sales and use tax deferral—Manufacturing and research/development activities in distressed areas—Applications filed after July 31, 1999.**

(1) **Introduction.** Chapter 82.60 RCW establishes a sales and use tax deferral program. The purpose of the program is to promote economic stimulation, create employment opportunities, and reduce poverty in certain areas of the state. The legislature established this program to be effective solely in those areas and under circumstances where the deferral is for investments that result in the creation of a specified minimum number of jobs or investment for a qualifying project.

(a) This deferral program applies to taxes imposed on the construction of qualified buildings or acquisition of qualified machinery and equipment and requires the recipient of the deferral to maintain the manufacturing or research and development activity for an eight-year period. This rule does not address RCW 82.08.02565 and 82.12.02565, which provide a statewide sales and use tax exemption for machinery and equipment used directly in a manufacturing operation. Refer to WAC 458-20-13601 for more information regarding the statewide exemption.

(b) This program was first enacted in 1985. The legislature made major revisions to program criteria in 1993, 1994, 1995, 1996, and 1999, specifically to the definitions of "eligible area," "eligible investment project," and "qualified building." Each revision created additional criteria for prospective applicants. This rule sets forth the requirements for applications made after July 31, 1999. For applications made prior to August 1, 1999, see WAC 458-20-24001A.

(c) The employment security department and the department of community, trade, and economic development administer programs for distressed areas and job training and should be contacted directly for information concerning these programs.

(2) **Definitions.** The following definitions apply to applications made after July 31, 1999.

(a) "Acquisition of equipment or machinery" means the equipment and machinery is under the dominion and control of the recipient.

(b) "Applicant" means a person applying for a tax deferral under chapter 82.60 RCW.

(c) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(d) "Computer-related services" means activities such as programming for the manufactured product. It includes creating operating systems, software, and other similar goods that will be copied and sold as canned software. "Computer-related services" does not include information services, such as data or information processing. The activities performed by the manufacturer to test, correct, revise, or upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services.

(e) "Date of application" means the date of the U.S. Post Office postmark, fax, or electronic transmittal, or when the application is hand delivered to the department. The statute in effect on the "date of application" will determine the program criteria the applicant must satisfy.

(f) "Department" means the department of revenue.

(g) "Eligible area" means:

(i) Rural county. A rural county is a county with fewer than one hundred persons per square mile as determined annually by the office of financial management and published by the department of revenue effective for the period July 1st through June 30th; or

(ii) Community empowerment zone (CEZ). A "community empowerment zone" means an area meeting the requirements of RCW 43.31C.020 and officially designated as a CEZ by the director of the department of community, trade, and economic development or a county containing a CEZ.

(h) "Eligible investment project" means an investment project in an eligible area. "Eligible investment project" does not include an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. It also does not include an investment project that has already received a deferral under chapter 82.60 RCW.

(i) "Industrial fixture" means an item attached to a building or to land. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and improvements to land such as concrete slabs.

(j) "Initiation of construction," in regards to the construction, expansion, or renovation of buildings, means the commencement of on-site construction work. Neither planning nor land clearing prior to excavation of the building site constitutes the commencement of on-site construction work.

(k) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project. When an application for sales and use tax deferral is timely submitted, costs incurred before the application date are allowable, if they otherwise qualify.

(l) "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing also includes computer programming, the production of computer software, and other computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories.

(m) "Operationally complete" means the project is capable of being used for its intended purpose as described in the application.

(n) "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of chapter 82.60 RCW. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, or equipment vests in the lessor/owner, or unless the lessor has by written contract agreed to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(o) "Qualified buildings" means construction of new structures and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for manufacturing and research and development activities.

"Qualified buildings" are limited to structures used for manufacturing and research and development activities. "Qualified buildings" include plant offices and warehouses if such facilities are essential to or an integral part of a factory, mill, plant, or laboratory. "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. "Warehouse" means buildings or facilities used for the storage of raw materials or finished goods.

(p) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of twelve consecutive months. Full-time means at least thirty-five hours a week, four hundred fifty-five hours a quarter, or one thousand eight hundred twenty hours a year.

(q) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes computers, desks, filing cabinets, photocopiers, printers, software, data processing equipment, laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

(r) "Recipient" means a person receiving a tax deferral under this program.

(s) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(t) "Resident" means the person who fills the qualified employment position makes his or her home in the CEZ. A mailing address alone is insufficient to establish that a person is a resident.

(3) **Issuance of deferral certificate.** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral for which the recipient is eligible. Recipients must keep track of how much tax is deferred.

(4) **Eligible investment amount.** There may or may not be a hiring requirement, depending on the location of the project.

(a) **No hiring requirements.** There are no hiring requirements for qualifying projects located in counties with fewer than one hundred persons per square mile. Monitoring and reporting procedures are explained in subsection (12) of this rule. Buildings that will be used partly for manufacturing

or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (5) of this rule explains the procedure for apportionment.

(b) **Hiring requirements.** There are hiring requirements for qualifying projects located in CEZs or in counties containing CEZs. The applicant applies for a deferral of investment that correlates to the estimated number of persons to be hired based on the following formula:

Number of qualified employment positions to be hired x \$750,000 = amount of investment eligible for deferral

Applicants must make good faith estimates of anticipated hiring. The recipient must fill the positions by persons who at the time of hire are residents of the CEZ. The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's internet website at <http://www.dor.wa.gov>. A recipient must fill the qualified employment positions by the end of the calendar year following the year in which the project is certified as operationally complete and retain the position during the entire tax year. If the recipient does not fill the qualified employment positions by the end of the second calendar year following the year in which the project is certified as operationally complete, all deferred taxes are immediately due.

(5) **Apportionment of costs between qualifying and nonqualifying investments.** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of existing buildings used in manufacturing, research and development, or commercial testing laboratories.

(a) Where a building(s) is used partly for manufacturing or research and development and partly for purposes that do not qualify for deferral under this rule, the deferral will be determined by one of the following apportionment methods. The first method of apportionment is based on square footage and does not require tracking the costs of materials for the qualifying/nonqualifying areas of a building. The second method of apportionment tracks the costs of materials used in the qualifying/nonqualifying areas and is primarily used by those industries with specialized building requirements.

(i) The applicable tax deferral will be determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing or research and development purposes bears to the square footage of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent Eligible}$$

$$\text{Percent Eligible} \times \text{Total Project Costs} = \text{Eligible Costs.}$$

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways and bathrooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is

multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

Eligible Tax Deferred = Eligible Cost x Tax Rate.

(ii) If a building is used partly for manufacturing, research and development, or commercial testing and partly for other purposes, the applicable tax deferral shall be determined as follows:

(A) Tax on the cost of construction of areas devoted solely to manufacturing, research and development, or commercial testing may be deferred.

(B) Tax on the cost of construction of areas not used at all for manufacturing, research and development, or commercial testing may not be deferred.

(C) Tax on the cost of construction of areas used in common for manufacturing, research and development, or commercial testing and for other purposes, such as hallways, bathrooms, and conference rooms, may be deferred by apportioning the costs of construction on a square footage basis. The apportioned costs of construction eligible for deferral are established by using the ratio, expressed as a percentage, of the square feet of the construction, expansion, or renovation devoted to manufacturing, research and development, or commercial testing, excluding areas used in common to the total square feet of the construction, expansion, or renovation, excluding areas used in common. That percentage is applied to the cost of construction of the common areas to determine the costs of construction eligible for tax deferral. Expressed as a formula, apportionment of the cost of the common areas is determined by:

$$\frac{\text{Square feet devoted to manufacturing, research and development, or commercial testing, excluding square feet of common areas}}{\text{Total square feet, excluding square feet of common areas}} = \text{Percentage of total cost of construction of common areas eligible for deferral}$$

(b) Qualified machinery and equipment is not subject to apportionment.

(6) **Leased equipment.** The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

(7) **Application procedure and review process.** An application for sales and use tax deferral under this program must be made prior to the initiation of construction, prior to the acquisition of machinery and equipment, and prior to the filling of qualified employment positions. Persons who apply after construction is initiated or finished or after acquisition of machinery and equipment are not eligible for the program. Applications for persons subject to hiring requirements must include information regarding the estimated total project cost and the qualified employment positions.

(a) Application forms will be supplied to the applicant by the department upon request. The completed application may be sent by fax to 360-586-2163 or mailed to the following address:

State of Washington  
Department of Revenue  
Special Programs  
P.O. Box 47477  
Olympia, WA 98507-7477

Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.)

(b) In considering whether to approve or deny an application for a deferral, the department will not approve an application for a project involving construction unless:

(i) The construction will begin within one year from the date of the application; or

(ii) If the construction will not begin within one year of construction, the applicant shows proof that there is a specific and active program to begin construction of the project within two years from the date of application. Proof may include, but is not limited to:

(A) Affirmative action by the board of directors, governing body, or other responsible authority of the applicant toward an active program of construction;

(B) Itemized reasons for the proposed construction;

(C) Clearly established plans for financing the construction; or

(D) Building permits.

Similarly, after an application has been granted, a deferral certificate is no longer valid and should not be used if construction has not begun within one year from the date of application or there is not a specific and active program to begin construction within two years from the date of application. However, the department will grant requests to extend the period for which the certificate is valid if the holder of the certificate can demonstrate that the delay in starting construction is due to circumstances beyond the certificate holder's control such as the acquisition of building permit(s).

(c) The department will verify the information contained in the application and approve or disapprove the application within sixty days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval.

(d) The applicant may seek administrative review of the department's disapproval of an application within thirty days from the date of notice of the disallowance pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

(8) **Program termination.** No applications for deferral of taxes will be accepted after June 30, 2004.

(9) **Eligible area criteria.** The office of financial management will determine annually the counties with fewer than one hundred persons per square mile. The department will update and distribute the list each year. The list will be effective on July 1 of each year.

If an investment project is located in an area that qualifies under more than one type of eligible area, the department will automatically assign the project to the eligible area that imposes the least burden on the taxpayer and with the greatest benefit to the taxpayer. If the applicant elects to be bound by the requirements of the other potential eligible area, the applicant must make a written statement to that effect. For exam-

ple, on October 1, 1999, the city of Yakima qualifies as a CEZ, and the entire county of Yakima has fewer than one hundred persons per square mile. The CEZ requirements are more restrictive than counties containing fewer than one hundred persons per square mile. The department will assign the project to the "fewer than one hundred persons per square mile designation" unless the applicant elects to be bound by the CEZ requirements.

(10) **Use of the certificate.** A tax deferral certificate issued under this program is for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified building or qualified machinery and equipment as defined in this rule. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment. In addition, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

The tax deferral certificate is to be used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102, Resale certificates. The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller will be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales.

(11) **Project operationally complete.** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral taxes are requested. Requests must be mailed or faxed to the department.

(b) The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project is operationally complete. The recipient of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

(12) **Reporting and monitoring procedure.** Requirement to submit annual reports. Each recipient of a tax deferral under chapter 82.60 RCW must submit a report on December 31st of the year in which the investment project is certified by the department as having been operationally completed and on December 31st of each of the seven succeeding calendar years. The report must be made to the department in a form and manner prescribed by the department. If the recipient fails to submit a report or submits an inadequate or falsified report, the department may declare the amount of deferred

taxes outstanding to be immediately due and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

(13) **Repayment of deferred taxes.** Repayment of tax deferred under chapter 82.60 RCW is excused, except as otherwise provided in RCW 82.60.070 and this subsection.

(a) Repayment of tax deferred under chapter 82.60 RCW is not required, and interest and penalties under RCW 82.60.070 will not be imposed, on machinery and equipment that qualifies for exemption under RCW 82.08.02565 or 82.12.02565.

(b) The following subsections describe the various circumstances under which repayment of the deferral may occur. Outstanding taxes are determined by reference to the following table. The table presumes the taxpayer maintained eligibility for the entire year.

Repayment Year	Percentage of Deferred Tax Waived
1 (Year operationally complete)	0%
2	0%
3	0%
4	10%
5	15%
6	20%
7	25%
8	30%

Any action taken by the department to disqualify a recipient for tax deferral or assess interest will be subject to administrative review pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

(c) **Failure of investment project to satisfy general conditions.** If, on the basis of the recipient's annual report or other information, including that submitted by the employment security department, the department of revenue finds that an investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, the department will declare the amount of deferred taxes outstanding to be immediately due. An example of a disqualification under this section is a facility not being used for a manufacturing or research and development operation.

(d) **Failure of investment project to satisfy required employment positions conditions.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project has been operationally complete for three years and has failed to create the required number of qualified employment positions, the amount of taxes deferred will be immediately due. There is no proration of the amount owed under this subsection. No penalties or interest will be assessed on the deferred sales/use tax; however, all other penalties and interest applicable to excise tax assessments may be assessed and imposed.

(14) **Debt not extinguished because of insolvency or sale.** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes. Transfer of owner-

ship does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of chapter 82.60 RCW, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient of the deferral.

(15) **Disclosure of information.** Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.)

[Statutory Authority: RCW 82.01.060(2) and 82.32.300. 04-01-127, § 458-20-24001, filed 12/18/03, effective 1/18/04. Statutory Authority: RCW 82.32.300. 01-12-041, § 458-20-24001, filed 5/30/01, effective 6/30/01; 88-17-047 (Order 88-5), § 458-20-24001, filed 8/16/88; 87-19-139 (Order 87-6), § 458-20-24001, filed 9/22/87; 86-14-019 (Order ET 86-13), § 458-20-24001, filed 6/24/86; 85-21-013 (Order ET 85-5), § 458-20-24001, filed 10/7/85.]

**WAC 458-20-24001A Sales and use tax deferral—Manufacturing and research/development activities in distressed areas—Applications filed prior to August 1, 1999. Introduction.** Chapter 82.60 RCW establishes a sales and use tax deferral program. The purpose of the program is to promote economic stimulation, create employment opportunities, and reduce poverty in certain areas of the state. The legislature established this program to be effective solely in those areas and for those circumstances where the deferral is for investments that result in the creation of a specified minimum number of jobs or investment for a qualifying project.

The program applies to sales and use taxes on materials and labor and services rendered in the construction of qualified buildings or acquisition of qualified machinery and equipment and requires the recipient of the deferral to maintain the manufacturing or research and development activity for an eight-year period. This rule does not address RCW 82.08.02565 and 82.12.02565, which provide a statewide sales and use tax exemption for machinery and equipment used directly in a manufacturing operation. Refer to WAC 458-20-13601 for more information regarding the statewide exemption.

This program was enacted in 1985. The legislature made major revisions to program criteria in 1993, 1994, 1995, 1996, and 1999, specifically to the definitions of "eligible area," "eligible investment project," and "qualified building." Each revision created additional criteria for prospective applicants. This rule is written in three parts and covers applications made prior to July 31, 1999. Each part sets forth the requirements on the basis of the period of time in which application is made. Refer to the year during which application was made for information on an individual application. For applications made after July 31, 1999, see WAC 458-20-24001.

The employment security department and the department of community, trade, and economic development administer additional programs for distressed areas and job training and should be contacted directly for information concerning these programs.

## PART I

### Applications after July 1, 1995, to July 31, 1999

(1) **Definitions.** For the purposes of this part, the following definitions apply for applications made on and after July 1, 1995, and before August 1, 1999:

(a) "Acquisition of equipment or machinery" means the equipment and machinery is under the dominion and control of the recipient.

(b) "Applicant" means a person applying for a tax deferral under chapter 82.60 RCW.

(c) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(d) "Computer-related services" means services that are connected or interact directly in the manufacture of computer hardware or software or the programming of the manufactured hardware. This includes the manufacture of hardware such as chips, keyboards, monitors, any other hardware, and the components of these items. It includes creating operating systems and software that will be copied and sold as canned software. "Computer-related services" does not include information services. The activities performed by the manufacturer to test, correct, revise, or upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services.

(e) "Department" means the department of revenue.

(f) "Eligible area" means one of the areas designated according to the following classifications:

(i) Unemployment county. A county in which the average level of unemployment for the three calendar years preceding the year in which an application is filed exceeds the average state unemployment for those years by twenty percent. In making this calculation, the department will compare the county's average unemployment rate in the prior three years to one hundred twenty percent of the state's average unemployment rate based on official unemployment figures published by the department of employment security;

(ii) Median income county. On and after June 6, 1996, a county that has a median household income that is less than seventy-five percent of the state median income for the previous three years;

(iii) MSA. A metropolitan statistical area, as defined by the Office of Federal Statistical Policy and Standards, United States Department of Commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under chapter 82.60 RCW exceeds the average state unemployment for such calendar year by twenty percent;

(iv) CEZ and county containing a CEZ. A designated community empowerment zone (CEZ) approved under RCW 43.63A.700 or a county containing such a community empowerment zone;

(v) Timber impact area towns. A town with a population of less than twelve hundred persons that is located in a county that is a timber impact area, as defined in RCW 43.31.601, but that is not an unemployment county as defined in Part I;

(vi) Governor's designation county. A county designated by the governor as an eligible area under RCW 82.60.047; or

(vii) Contiguous county. A county that is contiguous to an unemployment county or a governor's designation county.

(g)(i) "Eligible investment project" means:

(A) An investment project in an unemployment county, a median income county, an MSA, a timber impact area town, or a governor's designation county; or

(B) That portion of an investment project in a CEZ, a county containing a CEZ, or a contiguous county, that is directly utilized to create at least one new full-time qualified employment position for each seven hundred fifty thousand dollars of investment.

(ii) "Eligible investment project" does not include an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. It also does not include an investment project that has already received a deferral under chapter 82.60 RCW.

(h) "Industrial fixture" means an item attached to a building or to land. Fixtures become part of the real estate to which they are attached and upon attachment are classified as real property, not personal property. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and certain concrete slabs.

(i) "Initiation of construction," in regards to the construction, expansion, or renovation of buildings, means the commencement of on-site construction work. Land clearing prior to excavation of the building site does not commence construction nor does planning commence construction.

(j) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project. When an application for sales and use tax deferral is timely submitted, costs incurred before the application date are allowable, if they otherwise qualify.

(k) "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing, for purposes of the distressed area deferral program, also includes computer programming, the production of computer software, and other computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories.

(l) "Operationally complete" means the project is capable of being used for its intended purpose as described in the application.

(m) "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of chapter 82.60 RCW. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, or equipment vests exclusively in the lessor/owner, or unless the lessor has by written contract agreed to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(n) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for manufacturing and research and development activities.

"Qualified buildings" are limited to structures used for manufacturing and research and development activities. "Qualified buildings" include plant offices and warehouses if

such facilities are essential or an integral part of a factory, mill, plant, or laboratory. "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. "Warehouse" means facilities used for the storage of raw materials or finished goods.

(o) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of twelve consecutive months. "Full time" means at least 35 hours a week, 455 hours a quarter, or 1,820 hours a year.

(p) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes computers, desks, filing cabinets, photocopiers, printers, software, data processing equipment, laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

(q) "Recipient" means a person receiving a tax deferral under this program.

(r) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(2) **Issuance of deferral certificate.** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral for which the recipient is eligible. Recipients must keep track of how much tax is deferred.

(3) **Eligible investment amount.** There may or may not be a hiring requirement, depending on the location of the project.

(a) **No hiring requirements.** There are no hiring requirements for qualifying projects located in distressed counties, MSAs, median income counties, governor-designated counties, or timber impact towns. Monitoring and reporting procedures are explained in subsection (10) of this rule. Buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (4) of this rule explains the procedure for apportionment.

(b) **Hiring requirements.** There are hiring requirements for qualifying projects located in CEZs, in counties containing CEZs, or in contiguous counties. Total qualifying project costs, including any part of the project that would qualify

under RCW 82.08.02565 and 82.12.02565, must be examined to determine the number of positions associated with the project. An applicant who knows at the time of application that he or she will not fill the required qualified employment positions is not eligible for the deferral. Applicants must make good faith estimates of anticipated hiring. The applicant applies for a deferral of investment that correlates to the estimated number of persons to be hired. The investment must include the sales price of machinery and equipment eligible for the sales and use tax exemption under RCW 82.08.02565 and 82.12.02565. An applicant can amend the number of persons hired until completion of the project. The qualified employment positions filled by December 31 of the year of completion are the benchmark to be used during the next seven years in determining hiring compliance.

(i) Total qualifying project costs are divided by seven hundred fifty thousand, the result being the qualified employment positions.

(ii) In addition, the number of qualified employment positions created by an investment project will be reduced by the number of full-time employment positions maintained by the recipient in any other community in this state that are displaced as a result of the investment project. This reduction requires a reexamination of whether the seventy-five percent hiring requirement (as explained below) is met.

(iii) This number, which is the result of (i) and (ii) of this subsection, is the number of positions used as the benchmark over the life of the deferral. For recipients locating in a CEZ or a county containing a CEZ, seventy-five percent of the new positions must be filled by residents of a CEZ located in the county where the project is located. The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's internet website at <http://www.dor.wa.gov>. For recipients located in a contiguous county, residents of an adjacent unemployment or governor-designated county must fill seventy-five percent of the new positions.

(iv) The qualified employment positions are reviewed each year, beginning December 31st of the year the project is operationally complete and each year for seven years. If the recipient has failed to create the requisite number of positions, the department will issue an assessment as explained under subsection (11) of this rule.

(v) In addition to the hiring requirements for new positions under (b) of this subsection, the recipient of a deferral for an expansion or diversification of an existing facility must ensure that he or she maintains the same percentage of employment positions filled by residents of the contiguous county or the CEZ that existed prior to the application being made. This percentage must be maintained for seven years.

(vi) Qualified employment positions do not include those positions filled by persons hired in excess of the ratio of one employee per required dollar of investment for which a deferral is granted. In the event an employee is either voluntarily or involuntarily separated from employment, the employment position will be considered filled if the employer is either training or actively recruiting a replace-

ment employee, so long as the position is not actually vacant for any period in excess of thirty consecutive days.

(4) **Apportionment of costs between qualifying and nonqualifying investments.** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of existing buildings used in manufacturing, research and development, or commercial testing.

(a) Where a building(s) is used partly for manufacturing, research and development, or commercial testing and partly for purposes that do not qualify for deferral under this rule, the deferral will be determined by apportionment of the total project costs. The applicable tax deferral will be determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing, research and development, or commercial testing purposes bears to the square footage of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent Eligible}$$

$$\text{Percent Eligible} \times \text{Total Project Costs} = \text{Eligible Costs.}$$

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways and bathrooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

$$\text{Eligible Tax Deferred} = \text{Eligible Cost} \times \text{Tax Rate.}$$

(b) Qualified machinery and equipment is not subject to apportionment.

(5) **Leased equipment.** The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

(6) **Application procedure and review process.** An application for sales and use tax deferral under this program must be made prior to the initiation of construction and the acquisition of machinery and equipment. Persons who apply after construction is initiated or after acquisition of machinery and equipment are not eligible for the program. Applications for persons subject to hiring requirements must include information regarding the estimated total project cost and the qualified employment positions.

(a) Application forms will be supplied to the applicant by the department upon request. The completed application may be sent by fax to 360-586-2163 or mailed to the following address:

State of Washington  
Department of Revenue  
Special Programs  
P.O. Box 47477  
Olympia, WA 98507-7477

(b) The department will verify the information contained in the application and approve or disapprove the application within sixty days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval. The U.S. Post Office postmark or fax date will be used as the date of application.

(c) The applicant may seek administrative review of the department's disapproval of an application within thirty days from the date of notice of disallowance pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

(7) **Eligible area criteria.** The statewide and county unemployment statistics last published by the department will be used to determine eligible areas based on unemployment. Median income county designation is based on data produced by the office of financial management and made available to the department on November 1 of each year. The timber impact town designation is based on information provided by the department of employment security.

If an investment project is located in an area that qualifies under more than one type of eligible area, the department will automatically assign the project to the eligible area that imposes the least burden on the taxpayer and with the greatest benefit to the taxpayer. If the applicant elects to be bound by the requirements of the other potential eligible area, the applicant must make a written statement to that effect. For example, on May 1, 1998, the city of Yakima qualifies as a CEZ, and the entire county of Yakima qualifies as an unemployment county. The CEZ requirements are more restrictive than the unemployment county requirements. The department will assign the project to the distressed area eligible area unless the applicant elected to be bound by the CEZ requirements.

(8) **Use of the certificate.** A tax deferral certificate issued under this program is for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified building or qualified machinery and equipment as defined in this Part I. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment. In addition, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

The tax deferral certificate is used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102, Resale certificates. The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller is relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales.

(9) **Project operationally complete.** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following

approval of the application and issuance of a deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral is requested. Requests must be mailed or faxed to the department.

(b) The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project was operationally complete. The recipient of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

(10) **Reporting and monitoring procedure.** Requirement to submit annual reports. Each recipient of a deferral granted after July 1, 1995, must submit a report to the department on December 31st of the year in which the investment project is certified by the department as having been operationally completed, and on December 31st of each of the seven succeeding calendar years. The report must be made to the department in a form and manner prescribed by the department. The report must contain information regarding the actual employment related to the project and any other information required by the department. If the recipient fails to submit a report or submits an inadequate or falsified report, the department may declare the amount of deferred taxes outstanding to be immediately due and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

(11) **Repayment of deferred taxes.** Repayment of tax deferred under chapter 82.60 RCW is excused, except as otherwise provided in RCW 82.60.070 and this subsection, on an investment project for which a deferral has been granted under chapter 82.60 RCW after June 30, 1994.

(a) Taxes deferred under this chapter need not be repaid on machinery and equipment for lumber and wood product industries, and sales of or charges made for labor and services, of the type which qualified for exemption under RCW 82.08.02565 or 82.12.02565.

(b) The following describes the various circumstances under which repayment of the deferral may be required. Outstanding taxes are determined by reference to the following table. The table presumes the taxpayer maintained eligibility for the entire year.

Repayment Year	Percentage of Deferred Tax Waived
1 (Year operationally complete)	0%
2	0%
3	0%
4	10%
5	15%
6	20%
7	25%
8	30%

Any action taken by the department to disqualify a recipient for tax deferral or require payment of all or part of deferred taxes is subject to administrative review pursuant to the provisions of WAC 458-20-100, Appeals, small claims

and settlements. The filing of a petition for review with the department starts a review of departmental action. See subsection (11)(d) of this rule for repayment and waiver for deferrals with hiring requirements.

(c) **Failure of investment project to satisfy general conditions.** If, on the basis of the recipient's annual report or other information, including that submitted by the department of employment security, the department finds that an investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, the department will declare the amount of deferred taxes outstanding to be immediately due. For example, a reason for disqualification would be that the facilities are not used for a manufacturing or research and development operation.

(d) **Failure of investment project to satisfy required employment positions conditions.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project has been operationally complete for three years and has failed to create the required number of qualified employment positions, the amount of taxes deferred will be immediately due. The department will assess interest at the rate and as provided for delinquent excise taxes under RCW 82.32.050 (retroactively to the date the application was filed). There is no proration of the amount owed under this subsection. No penalties will be assessed.

(e) **Failure of investment project to satisfy employee residency requirements.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project under RCW 82.60.040 (1)(b) or (c) has failed to comply with any requirement of RCW 82.60.045 for any calendar year for which reports are required under this subsection, twelve and one-half percent of the amount of deferred taxes will be immediately due. For each year a deferral's requirements are met twelve and one-half percent of the amount of deferred taxes will be waived. The department will assess interest at the rate provided for delinquent excise taxes under RCW 82.32.050, retroactively to the date the application was filed. Each year the employment requirement is met, twelve and one-half percent of the deferred tax will be waived, if all other program requirements are met. No penalties will be assessed.

(f) The department of employment security makes and certifies to the department all determinations of employment and wages required under this subsection.

(12) **Debt not extinguished because of insolvency or sale.** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient.

(13) **Disclosure of information.** Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.)

## PART II

### Applications from July 1, 1994, to June 30, 1995

(14) **Definitions.** For the purposes of this part, the following definitions apply for applications made on and after July 1, 1994 and before July 1, 1995.

(a) "Acquisition of equipment or machinery" means the date the equipment and machinery is under the dominion and control of the recipient.

(b) "Applicant" means a person applying for a tax deferral under chapter 82.60 RCW.

(c) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(d) "Computer-related services" means services that are connected or interact directly in the manufacture of computer hardware or software or the programming of the manufactured hardware. This includes the manufacture of hardware such as chips, keyboards, monitors, any other hardware, and the components of these items. It includes creating operating systems and software that will be copied and sold as canned software. "Computer-related services" does not include information services. The activities performed by the manufacturer to test, correct, revise, and upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services in this instance.

(e) "Department" means the department of revenue.

(f) "Eligible area" means:

(i) Unemployment county. A county in which the average level of unemployment for the three calendar years preceding the year in which an application is filed exceeds the average state unemployment for those years by twenty percent. The department may compare the county's average unemployment rate in the prior three years to one hundred twenty percent of the state's average unemployment rate based on official unemployment figures published by the department of employment security;

(ii) MSA. A metropolitan statistical area, as defined by the Office of Federal Statistical Policy and Standards, United States Department of Commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under chapter 82.60 RCW exceeds the average state unemployment for such calendar year by twenty percent;

(iii) CEZ. A designated community empowerment zone approved under RCW 43.63A.700;

(iv) Timber impact area towns. A town with a population of less than twelve hundred persons that is located in a county that is a timber impact area, as defined in RCW 43.31.601, but that is not an unemployment county as defined in this subsection;

(v) Contiguous county. A county that is contiguous to an unemployment county or a governor's designation county; or

(vi) Governor's designation county. A county designated by the governor as an eligible area under RCW 82.60.047.

(g)(i) "Eligible investment project" means that portion of an investment project which:

(A) Is directly utilized to create at least one new full-time qualified employment position for each seven hundred fifty thousand dollars of investment on which a deferral is requested; and

(B) Either initiates a new operation, or expands or diversifies a current operation by expanding, equipping, or renovating an existing facility with costs in excess of twenty-five percent of the true and fair value of the facility prior to improvement. "Improvement" means the physical alteration by significant expansion, modernization, or renovation of an existing facility, excluding land, where the cost of such expansion, etc., exceeds twenty-five percent of the true and fair value of the existing facility prior to the initiation of the expansion or renovation. The term "improvement" is further defined to include those portions of an existing facility which do not increase the usable floor space, but is limited to the renovation, modernization, or any other form of alteration or addition and the equipment and machinery installed therein during the course of construction. The twenty-five percent test may be satisfied by considering the value of both the building and machinery and equipment; however, at least forty percent of the total renovation costs must be attributable to the physical renovation of the building structure alone. "True and fair value" means the value listed on the assessment roles as determined by the county assessor for the buildings or equipment for ad valorem property tax purposes at the time of application.

(ii) "Eligible investment project" does not include either an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than cogeneration projects that are both an integral part of a manufacturing facility and owned at least fifty percent by the manufacturer, or investment projects that have already received deferrals under chapter 82.60 RCW.

(h) "Industrial fixture" means an item attached to a building or to land. Fixtures become part of the real estate to which they are attached and upon attachment are classified as real property, not personal property. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and certain concrete slabs.

(i) "Initiation of construction," in regards to the construction of new buildings, means the commencement of on-site construction work.

(j) "Initiation of construction," in regards to the construction of expanding or renovating existing structures for the purpose of increasing floor space or production capacity used for manufacturing and research and development, means the commencement of the new construction by renovation, modernization, or expansion, by physical alteration.

(k) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project. A person who does not build or remodel his or her own building, but leases from a third party, is eligible for sales and use tax deferral on the machinery and equipment provided that an investment in qualified machinery and equipment is made by such person and a new structure used to house the manufacturing activities is constructed.

(l) "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing, for purposes of the distressed area deferral program, also includes computer programming, the production of computer software, and other computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories.

(m) "Operationally complete" means the project is capable of being used for its intended purpose as described in the application.

(n) "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of chapter 82.60 RCW. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, or equipment vests exclusively in the lessor/owner, or unless the lessor has by written contract agreed to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(o) "Qualified buildings" are limited to structures used for manufacturing and research and development activities. "Qualified buildings" include plant offices and warehouses if such facilities are essential or an integral part of a factory, mill, plant, or laboratory. "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. "Warehouse" means facilities used for the storage of raw materials or finished goods.

(p) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of twelve consecutive months. "Full time" means at least 35 hours per week, 455 hours a quarter, or 1,820 hours a year.

(q) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing operation or research and development operation. "Qualified machinery and equipment" includes: Computers, software, data processing equipment, laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

(r) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(s) "Recipient" means a person receiving a tax deferral under this program.

(15) **Issuance of deferral certificate.** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral

for which the recipient is eligible. Recipients must keep track of how much tax is deferred.

**(16) Eligible investment amount.**

(a) Projects located in unemployment counties, MSAs, governor-designated counties, or timber impact towns are eligible for a deferral on the portion of the investment project that represents one new qualified employment position for each seven hundred fifty thousand dollars of investment. The eligible amount is computed by dividing the total qualifying project costs by seven hundred fifty thousand, the result being the qualified employment positions. In addition, the number of qualified employment positions created by an investment project will be reduced by the number of full-time employment positions maintained by the recipient in any other community in this state that are displaced as a result of the investment project. This is the number of positions used as the hiring benchmark. The qualified employment positions must be filled by the end of year three. Monitoring and reporting procedures are set forth in subsection (23) of this rule. In addition, buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (17) of this rule explains the procedure for apportionment.

(b) Projects located in CEZs, counties containing CEZs, or counties contiguous to an eligible county, are eligible for a deferral if the project meets specific hiring requirements. The recipient is eligible for a deferral on the portion of the investment project that represents one new qualified employment position for each seven hundred fifty thousand dollars of investment. The eligible amount is computed by dividing the total qualifying project costs by seven hundred fifty thousand, the result being the qualified employment positions. This is the number of positions used as the hiring benchmark over the life of the deferral. The qualified employment positions are reviewed each year, beginning December 31st of the year the project is operationally complete and each year for seven years. Monitoring and reporting procedures are set forth in subsection (23) of this rule. In addition, buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (17) of this rule explains the procedure for apportionment.

(c) In addition to the hiring requirements for new positions under (b) of this subsection, the recipient of a deferral for an expansion or diversification of an existing facility must ensure that he or she maintains the same percentage of employment positions filled by residents of the contiguous county or the CEZ that existed prior to the application being made. This percentage must be maintained for seven years. The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's internet website at <http://www.dor.wa.gov>.

(d) Qualified employment positions does not include those persons hired in excess of the ratio of one employee per required dollar of investment for which a deferral is granted. In the event an employee is either voluntarily or involuntarily separated from employment, the employment position will be

considered filled if the employer is either training or actively recruiting a replacement employee so long as the position is not actually vacant for any period in excess of thirty consecutive days.

**(17) Apportionment of costs between qualifying and nonqualifying investments.** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of existing buildings used in manufacturing, research and development.

(a) Where a building(s) is used partly for manufacturing or research and development and partly for purposes which do not qualify for deferral under this rule, the deferral will be determined by apportionment of the total project costs. The applicable tax deferral will be determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing or research and development purposes bears to the square footage of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent Eligible}$$

$$\text{Percent Eligible} \times \text{Total Project Costs} = \text{Eligible Costs.}$$

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways and bathrooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

$$\text{Eligible Tax Deferred} = \text{Eligible Cost} \times \text{Tax Rate.}$$

(b) Qualified machinery and equipment is not subject to apportionment.

**(18) Leased equipment.** The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

**(19) Application procedure and review process.** An application for sales and use tax deferral under this program must be made prior to the initiation of construction and the acquisition of machinery and equipment. Persons who apply after construction is initiated or after acquisition of machinery and equipment are not eligible for the program.

(a) Application forms will be supplied to the applicant by the department upon request. The completed application may be sent by fax to 360-586-2163 or mailed to the following address:

State of Washington  
Department of Revenue  
Special Programs  
P.O. Box 47477  
Olympia, WA 98507-7477

(b) The department will verify the information contained in the application and approve or disapprove the application within sixty days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval. The U.S. Post Office postmark or fax date will be used as the date of application.

(c) The applicant may seek administrative review of the department's disapproval of an application within thirty days from the date of notice of disallowance pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

(20) **Eligible area criteria.** The department will use the statewide and county unemployment statistics as last published by the department. Timber impact town designation is based on information provided by the department of employment security. The department will update the list of eligible areas by county, annually.

(21) **Use of the certificate.** A tax deferral certificate issued under this program will be for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified buildings or qualified machinery and equipment as defined in this Part II. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment. In addition, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient. The tax deferral certificate is used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102, Resale certificates. The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller will be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales.

(22) **Project operationally complete.** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral of sales and use taxes is requested. Requests must be mailed or faxed to the department.

(b) The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project was operationally complete. The recipient of the

deferral must maintain the manufacturing or research and development activity for eight years from this date.

(c) The recipient will be notified in writing of the total amount of deferred taxes, the date(s) upon which the deferred taxes must be paid, and any reports required to be submitted in the subsequent years. If the department disallows any portion of the amount of sales and use taxes requested for deferral, the recipient may seek administrative review of the department's action within thirty days from the date of the notice of disallowance pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

(23) **Reporting and monitoring procedure.** Requirement to submit annual reports. Each recipient of a sales and use tax deferral must submit a report to the department on December 31st of the year in which the investment project is certified by the department as having been operationally completed, and on December 31st of each of the seven succeeding calendar years. The report must be made to the department in a form and manner prescribed by the department. The report must contain information regarding the actual employment related to the project and any other information required by the department. If the recipient fails to submit a report or submits an inadequate or falsified report, the department may declare the amount of deferred taxes outstanding to be immediately due and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

(24) **Repayment of deferred taxes.** Repayment of tax deferred under chapter 82.60 RCW is excused, except as otherwise provided in RCW 82.60.070 and this subsection on an investment project for which a deferral has been granted under chapter 82.60 RCW after June 30, 1994.

(a) The following describes the various circumstances under which repayment of the deferral may be required. Outstanding taxes are determined by reference to the following table. The table presumes the taxpayer maintained eligibility for the entire year. See subsection (c) for repayment and waiver for deferrals with hiring requirements.

Repayment Year	Percentage of Deferred Tax Waived
1 (Year operationally complete)	0%
2	0%
3	0%
4	10%
5	15%
6	20%
7	25%
8	30%

Any action taken by the department to disqualify a recipient for tax deferral or require payment of all or part of deferred taxes is subject to administrative review pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

(b) **Failure of investment project to satisfy general conditions.** If, on the basis of the recipient's annual report or other information, including that submitted by the department of employment security, the department finds that an

investment project is not eligible for tax deferral, other than failure to create the required number of positions, the department will declare the amount of deferred taxes outstanding to be immediately due. For example, a reason for disqualification would be that the facility is not used for manufacturing or research and development operations.

(c) **Failure of investment project to satisfy employment positions conditions.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project has been operationally complete for three years and has failed to create the required number of qualified employment positions, the amount of taxes deferred will be immediately due. The department will assess interest at the rate and as provided for delinquent excise taxes under RCW 82.32.050 (retroactively to the date of deferral). No penalties will be assessed.

(d) **Failure of investment project to satisfy employee residency requirements.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project under RCW 82.60.040 (1)(b) or (c) has failed to comply with the special hiring requirements of RCW 82.60.045 for any calendar year for which reports are required under this subsection, twelve and one-half percent of the amount of deferred taxes will be immediately due. For each year a deferral's requirements are met twelve and one-half percent of the amount of deferred taxes will be waived. The department will assess interest at the rate provided for delinquent excise taxes under RCW 82.32.050, retroactively to the date of deferral. No penalties will be assessed.

(e) The department of employment security makes and certifies to the department all determinations of employment and wages required under this subsection, per request.

(25) **Debt not extinguished because of insolvency or sale.** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient.

(26) **Disclosure of information.** Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.)

### PART III

#### Applications from July 1, 1992, to June 30, 1994

(27) **Definitions.** For the purposes of this part, the following definitions apply for applications made after July 1, 1992, but before July 1, 1994:

(a) "Acquisition of equipment or machinery" means the equipment and machinery is under the dominion and control of the recipient.

(b) "Applicant" means a person applying for a tax deferral under chapter 82.60 RCW.

(c) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(d) "Computer-related services" means services that are connected or interact directly in the manufacture of computer hardware or software or the programming of the manufactured hardware. This includes the manufacture of hardware such as chips, keyboards, monitors, any other hardware, and the components of these items. It includes creating operating systems and software that will be copied and sold as canned software. "Computer-related services" does not include information services. The activities performed by the manufacturer to test, correct, revise, and upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services in this instance.

(e) "Department" means the department of revenue.

(f) "Eligible area" means:

(i) Unemployment county. A county in which the average level of unemployment for the three calendar years preceding the year in which an application is filed exceeds the average state unemployment for those years by twenty percent. The department may compare the county's average unemployment rate in the prior three years to one hundred twenty percent of the state's average unemployment rate based on official unemployment figures published by the department of employment security;

(ii) MSA. A metropolitan statistical area, as defined by the Office of Federal Statistical Policy and Standards, United States Department of Commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under chapter 82.60 RCW exceeds the average state unemployment for such calendar year by twenty percent; or

(iii) CEZ. Beginning July 1, 1993, a designated community empowerment zone approved under RCW 43.63A.700.

(g)(i) "Eligible investment project" means that portion of an investment project which:

(A) Is directly utilized to create at least one new full-time qualified employment position for each three hundred thousand dollars of investment on which a deferral is requested; and

(B) Either initiates a new operation, or expands or diversifies a current operation by expanding, or renovating an existing building with costs in excess of twenty-five percent of the true and fair value of the plant complex prior to improvement. "Improvement" means the physical alteration by significant expansion, modernization, or renovation of an existing plant complex, excluding land, where the cost of such expansion, etc., exceeds twenty-five percent of the true and fair value of the existing plant complex prior to the initiation of the expansion or renovation. The term "improvement" is further defined to include those portions of an existing building which do not increase the usable floor space, but is limited to the renovation, modernization, or any other form of alteration or addition and the equipment and machinery installed therein during the course of construction. The twenty-five percent test may be satisfied by considering the value of both the building and machinery and equipment; however, at least forty percent of the total renovation costs must be attributable to the physical renovation of the building structure alone. "True and fair value" means the value listed on the assessment rolls as determined by the county assessor

for the land, buildings, or equipment for ad valorem property tax purposes at the time of application; or

(C) Acquires machinery and equipment to be used for either manufacturing or research and development. The lessor/owner of the structure is not eligible for a deferral unless the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person.

(ii) "Eligible investment project" does not include any portion of an investment project undertaken by a light and power business as defined in RCW 82.16.010 or investment projects that have already received deferrals under chapter 82.60 RCW.

(h) "Industrial fixture" means an item attached to a building or to land. Fixtures become part of the real estate to which they are attached and upon attachment are classified as real property, not personal property. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and certain concrete slabs.

(i) "Initiation of construction," in regards to the construction of new buildings, means the commencement of on-site construction work.

(j) "Initiation of construction," in regards to the construction of expanding or renovating existing structures for the purpose of increasing floor space or production capacity used for manufacturing and research and development, means the commencement of new construction by renovation, modernization, or expansion, by physical alteration.

(k) "Investment project" means an investment in qualified buildings and qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

(l) "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing, for purposes of the distressed area deferral program, also includes computer programming, the production of computer software, and other computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories.

(m) "Operationally complete" means the project is capable of being used for its intended purpose as described in the application.

(n) "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of this chapter. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, or equipment vests in the lessor/owner.

(o) "Qualified buildings" are limited to structures used for manufacturing and research and development activities. "Qualified buildings" include plant offices and warehouses if such facilities are essential or an integral part of a factory, mill, plant, or laboratory. "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building, its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. "Warehouse" means facilities used for the storage of raw materials or finished goods.

(p) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of twelve consecutive months. "Full time" means at least 35 hours a week, 455 hours a quarter, or 1,820 hours a year.

(q) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing operation or research and development operation. "Qualified machinery and equipment" includes: Computers, software, data processing equipment, laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a long- or short-term lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

(r) "Recipient" means a person receiving a tax deferral under this program.

(s) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(28) **Issuance of deferral certificate.** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral for which the recipient is eligible. Recipients must keep track of how much deferral is taken.

(29) **Eligible investment amount.** Recipients are eligible for a deferral on investment used to create employment positions.

(a) Total qualifying project costs must be examined to determine the number of positions associated with the project. Total qualifying project costs are divided by three hundred thousand, the result being the qualified employment positions. This is the number of positions used as the hiring benchmark at the end of year three. The qualified employment positions are reviewed in the third year, following December 31st of the year the project is operationally complete. If the recipient has failed to create the requisite number of positions, the department will issue an assessment under subsection (37) of this rule. Buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (30) of this rule explains the procedure for apportionment.

(b) Qualified employment positions does not include those persons hired in excess of the ratio of one employee per required dollar of investment for which a deferral is granted. In the event an employee is either voluntarily or involuntarily separated from employment, the employment position will be considered filled if the employer is either training or actively recruiting a replacement employee so long as the position is

not actually vacant for any period in excess of thirty consecutive days.

(30) **Apportionment of costs between qualifying and nonqualifying investments.** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of existing buildings directly used in manufacturing, research and development, or commercial testing laboratories.

(a) Where a building(s) is used partly for manufacturing or research and development, or commercial testing and partly for purposes, which do not qualify for deferral under this rule, the deferral will be determined by apportionment of the total project costs. The applicable tax deferral will be determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing or research and development purposes bears to the square footage of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent Eligible}$$

Percent Eligible x Total Project Costs = Eligible Costs.

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways and bathrooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

Eligible Tax Deferred = Eligible Cost x Tax Rate.

(b) Qualified machinery and equipment is not subject to apportionment.

(31) **Leased equipment.** The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

(32) **Application procedure and review process.** An application for sales and use tax deferral under this program must be made prior to the initiation of construction and the acquisition of equipment or machinery. Persons who apply after construction is initiated or finished or after acquisition of machinery and equipment are not eligible for the program.

(a) Application forms will be supplied to the applicant by the department upon request. The completed application may be sent by fax to 360-586-2163 or mailed to the following address:

State of Washington  
Department of Revenue  
Special Programs  
P.O. Box 47477  
Olympia, WA 98507-7477

(b) The department will verify the information contained in the application and either approve or disapprove the appli-

cation within sixty days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval. The U.S. Post Office postmark or fax date will be used as the date of application.

(c) The applicant may seek administrative review of the department's refusal to issue a certificate pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements, within thirty days from the date of notice of the department's refusal, or within any extension of such time granted by the department. The filing of a petition for review with the department starts a review of departmental action.

(33) **Unemployment criteria.** For purposes of making application for tax deferral and of approving such applications, the statewide and county unemployment statistics last published by the department will be used to determine eligible areas. The department will update the list of eligible areas by county, on an annual basis.

(34) **Use of the certificate.** A tax deferral certificate issued under this program is for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified buildings or qualified machinery and equipment as defined in this Part III. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment.

The tax deferral certificate is to be used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102, Resale certificates. The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller will be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales. The deferral certificate is to defer the taxes of the recipient. For example, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

(35) **Project operationally complete.** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral of sales and use taxes is requested. Requests must be mailed or faxed to the department.

(b) The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project was operationally complete. The recipient of the

deferral must maintain the manufacturing or research and development activity for eight years from this date.

(c) The recipient will be notified in writing of the total amount of deferred taxes, the date(s) upon which the deferred taxes must be paid, and any reports required to be submitted in the subsequent years. If the department disallows all or any portion of the amount of sales and use taxes requested for deferral, the recipient may seek administrative review of the department's action pursuant to the provisions of WAC 458-20-100, within thirty days from the date of the notice of disallowance.

**(36) Reporting and monitoring procedure.** Requirement to submit annual reports. Each recipient of a sales and use tax deferral must submit a report to the department on December 31st of each year during the repayment period until the tax deferral is repaid. The report must be made to the department in a form and manner prescribed by the department. The report must contain information regarding the actual employment related to the project and any other information required by the department. If the recipient fails to submit a report or submits an inadequate or falsified report, the department may declare the amount of deferred taxes outstanding to be immediately assessed and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

**(37) Repayment of deferred taxes.** The recipient must begin paying the deferred taxes in the third year after the date certified by the department as the date on which the construction project has been operationally completed.

(a) The first payment will be due on December 31st of the third calendar year after such certified date, with subsequent annual payments due on December 31st of the following four years, with amounts of payment scheduled as follows:

Repayment Year (Year certified operationally complete)	Percentage of Deferred Tax Repaid
1	0%
2	0%
3	0%
4	10%
5	15%
6	20%
7	25%
8	30%

(b) The department may authorize an accelerated repayment schedule upon request of the recipient. Interest will not be charged on any taxes deferred under this part during the period of deferral, although other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for any delinquent payments during the repayment period pursuant to chapter 82.32 RCW.

(c) Taxes deferred on the sale or use of labor directly applied in the construction of an investment project for which deferral has been granted need not be repaid, provided eligibility for the granted tax deferral has been perfected by meeting all of the eligibility requirements, based upon the recipient's annual December 31 reports and any other information available to the department. The recipient must establish, by

clear and convincing evidence, the value of all construction and installation labor for which repayment of sales tax is sought to be excused. Such evidence must include, but is not limited to: A written, signed, and dated itemized billing from construction/installation contractors or independent third party labor providers which states the value of labor charged separately from the value of materials. This information must be maintained in the recipient's permanent records for the department's review and verification. In the absence of such itemized billings in its permanent records, no recipient may be excused from repayment of sales tax on the value of labor in an amount exceeding thirty percent of its gross construction or installation contract charges. The value of labor for which an excuse from repayment of sales or use tax may be received will not exceed the value which is subject to such taxes under the general provisions of chapters 82.08 and 82.12 RCW.

**(d) Failure of investment project to satisfy general conditions.** If, on the basis of the recipient's annual report or other information, including that submitted by the department of employment security, the department finds that an investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, the department will declare the amount of deferred taxes outstanding to be immediately due. For example, a reason for disqualification would be the facility is not used for a manufacturing or research and development operation.

**(e) Failure of investment project to satisfy required employment positions.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project has been operationally complete for three years and has failed to create the required number of qualified employment positions, the department will assess interest but not penalties, on the deferred taxes for the project. The department will assess interest at the rate provided for delinquent excise taxes under RCW 82.32.050, retroactively to the date of the date of deferral. No penalties will be assessed.

(f) The department of employment security makes and certifies to the department all determinations of employment and wages required under this subsection, per request.

(g) Any action taken by the department to assess interest or disqualify a recipient for tax deferral will be subject to administrative review pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

**(38) Debt not extinguished because of insolvency or sale.** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project will be liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient.

(39) **Disclosure of information.** Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.)

[Statutory Authority: RCW 82.01.060(2) and 82.32.300. 04-01-127, § 458-20-24001A, filed 12/18/03, effective 1/18/04. Statutory Authority: RCW 82.32.300. 01-12-041, § 458-20-24001A, filed 5/30/01, effective 6/30/01.]

**WAC 458-20-24002 Sales and use tax deferral—New manufacturing and research/development facilities.** (1)

Introduction. Chapter 82.61 RCW, as amended, establishes a sales and use tax deferral program for certain manufacturing or research and development investment projects. The deferral will be granted only to persons not currently engaged in manufacturing or research and development activities in the state of Washington on June 14, 1985, the effective date of the deferral program. Applications for the tax deferral may be accepted up through June 30, 1994; a holder of a tax deferral certificate must initiate construction of the investment project within one hundred eighty days of receiving approval from the department and issuance of the tax deferral certificate. In general, the deferral applies to the construction of new buildings and the acquisition of related machinery and equipment.

(2) In addition to the tax deferral benefits of this program, the department of employment security administers economic incentives and funding programs which encourage "first source contract" hiring of unemployed persons and state public assistance recipients. The employment security department should be contacted directly for information concerning such nontax-related programs.

(3) Definition of terms. Unless the context clearly requires otherwise, the definitions in this section apply throughout this rule.

(4) "Applicant" means a person applying for a tax deferral under this section.

(5) "Person" has the meaning given in RCW 82.04.030. It means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof. For purposes of this section the relationship of landlord and tenant between separate persons, at arms length, shall not be considered as any of the types of relationships which are identified above as "persons".

(6) "Eligible investment project" means construction of new buildings and the acquisition of new related machinery and equipment when the buildings, machinery, and equipment are to be used for either manufacturing or research and development activities, which construction is commenced prior to December 31, 1994. (See subsection (37) of this section for special provisions relating to aluminum plants.)

(7) "Manufacturing" means all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different, or useful substance or article of tangible personal property is produced for sale or commercial or industrial use

and includes the production or fabrication of specially made or custom-made articles.

(8) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun.

(9) "Buildings" means only those new structures used for either manufacturing or research and development activities, including plant offices and warehouses or other facilities for the storage of raw materials or finished goods if such facilities are an essential or integral part of a factory, mill, plant, or laboratory used for manufacturing or research and development purposes. If a building is used partly for manufacturing or research and development purposes and partly for other purposes, the applicable tax deferral shall be determined by apportionment of the costs of construction under this section.

(10) "Machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation.

(11) "Qualified machinery and equipment" includes computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control or operate the machinery. For purposes of this definition, new machinery and equipment means either new to the taxing jurisdiction of the state or new to the certificate holder. Used machinery and equipment are eligible for deferral if the certificate holder either brings the machinery and equipment into Washington for the first time or makes a retail purchase of the machinery and equipment in Washington.

(12) "Acquisition of equipment and machinery" shall have the meaning given to the term "sale" in RCW 82.04.040. It means any transfer of the ownership of, title to, or possession of, tangible personal property for a valuable consideration. A sale takes place when the goods sold are actually or constructively delivered to the buyer in this state.

(13) "Recipient" means a person receiving a tax deferral under this section.

(14) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(15) "Operationally complete" means that the eligible investment project is constructed or improved to the point of being fully and functionally useable for the intended purpose as described in the application.

(16) "Initiation of construction" means that date upon which on-site construction commences.

(17) "Plant complex" shall mean land, machinery, and buildings adapted to commercial, industrial, or research and development use as a single functional or operational unit for the designing, assembling, processing or manufacturing of finished or partially finished products from raw materials or fabricated parts.

(18) "Investment project" means an investment in qualified buildings and qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project. A person who does not build its own building, but leases from a third party, is eligible for sales and use tax deferral provided that an investment in qualified machinery and equipment is made by such per-

son and a new structure used to house the manufacturing activities is constructed. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, and equipment vests in the same persons. An eligible investment project does not include any project which or person who have previously been the recipient of a tax deferral under Washington law.

(19) Application procedures. An application for sales and use tax deferral under this program must be made prior to either the initiation of construction or the acquisition of equipment or machinery, as defined above, whichever occurs first. Application forms will be supplied to the applicant by the department upon request. The completed application is to be sent in duplicate to the following address:

State of Washington  
Department of Revenue  
Audit Procedures & Review  
Olympia, WA 98504  
Mail Stop AX-02

(20) The application shall contain information regarding the location of the investment project, estimated or actual costs, time schedules for completion and operation, and other information required by the department, including information relating to employment at the investment project.

(21) The department will examine and verify the information contained in the application and either approve or disapprove the application within sixty days. If approved, a tax deferral certificate will be issued effective as of the date the application was received by the department. If disapproved, the department shall notify the applicant as to the reason(s) for disapproval. The applicant may seek administrative review of the department's refusal to issue a certificate pursuant to the provisions of WAC 458-20-100 within twenty days from the date of notice of the department's refusal, or within any extension of such time granted by the department. A certificate holder shall initiate construction of the investment project within one hundred eighty days of receiving approval from the department and issuance of the tax deferral certificate.

(22) A tax deferral certificate shall only be issued to persons who, on June 14, 1985, are not engaged in manufacturing or research and development activities within this state. For purposes of this section, a person shall not be considered to be engaged in manufacturing or research and development activities where the only activities performed by such person in this state are sales, installation, repair, or promotional activities in respect to products manufactured outside this state. Any person who has succeeded by merger, consolidation, incorporation, or any other form or change of identity to the business of a person engaged in manufacturing or research and development activities in this state on June 14, 1985 and any person who is a subsidiary of a person engaged in manufacturing or research and development activities in this state on June 14, 1985 shall also be ineligible to receive a tax deferral certificate.

(23) No application for deferral of taxes shall be accepted after June 30, 1994. For purposes of this regulation, the time of receipt of an application shall be determined by the date shown by the post office cancellation mark stamped upon the envelope containing the application if transmitted

by the United States Postal Service, the date stamped on the envelope if transmitted by another carrier, or the date of receipt if hand delivered to an office of the department.

(24) Use of the certificate. A tax deferral certificate issued under this program shall be for the use of the recipient thereof for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified buildings, machinery, and equipment as defined in this section. Thus, sales and use taxes cannot be deferred on items which do not become part of the qualified buildings, machinery, and equipment.

(25) The tax deferral certificate shall be used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102. The certificate holder shall provide its vendors with a copy of the tax deferral certificate at the time goods or services are purchased. The seller or vendor shall be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller or vendor shall retain a copy of the certificate as part of its permanent records. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller or vendor is liable for reporting business and occupation tax on all deferral sales.

(26) Audit procedures. The certificate holder shall notify the department in writing when the construction project is operationally complete. Upon receipt of such notification or other information, the department shall conduct a final audit of the investment project. The certificate holder shall open its books and records to the department and make available the final cost figures for the investment project. The department may request reasonable supporting documentation and other proof to justify the final cost of the project.

(27) Upon completion of the audit the department shall certify the amount of sales and use taxes subject to deferral and the date on which the project was operationally complete. The recipient shall be notified in writing of the total amount of deferred taxes, the date(s) upon which the deferred taxes shall be paid, and any reports required to be submitted in the subsequent years. If the department disallows all or any portion of the amount of sale and use taxes requested for deferral, the recipient may seek administrative review of the department's action pursuant to the provisions of WAC 458-20-100, within twenty days from the date of the notice of disallowance.

(28) The deferral is allowable only in respect to investment in the construction of a new plant complex used in manufacturing or research and development activities, as defined above. Where a plant complex is used partly for manufacturing or research and development purposes and partly for purposes which do not qualify for deferral under this section and it is not possible to identify the nonqualifying items through separate accounting, the applicable tax deferral shall be determined by apportionment according to the ratio which the construction cost per square foot of that portion of the plant complex directly used for manufacturing purposes bears to the construction cost per square foot of the total plant complex.

(29) The amount of tax deferral allowable for leased equipment shall be calculated upon that amount of the consideration paid by the lessee/recipient to the lessor:

(a) Over the initial term of the lease, excluding any period of extension or option to renew, where the lease term ends on or before the last date for repayment of the deferred taxes; or

(b) Over that portion of the lease term to the last date for repayment of deferred taxes as provided hereinafter, where the lease term, excluding any period of extension or option to renew extends beyond such repayment date.

(30) After that date the lessee/recipient shall pay the appropriate sales tax to the lessor for the remaining term of the lease.

(31) No taxes may be deferred under this section prior to June 14, 1985. No applications for deferral of taxes will be accepted after June 30, 1994, nor will sales or use tax deferral certificates be issued after August 29, 1994. A certificate holder must commence construction of the investment project within one hundred eighty days of receiving approval from the department and issuance of the tax deferral certificate but no later than December 31, 1994.

(32) Reporting and monitoring procedure. An applicant must provide the department with the estimated cost of the investment project at the time the application is made. The applicant shall also provide information relative to the number of jobs contemplated to be created by the project.

(33) The department and the department of trade and economic development shall jointly make two reports to the legislature about the effect of this deferral law on new manufacturing and research and development activities and projects in Washington. The report shall contain information concerning the number of deferral certificates granted, the amount of state and local sales and use taxes deferred, the number of jobs created, and other information useful in measuring such effects. The departments shall submit their joint reports to the legislature by January 1, 1986 and by January 1 of each year through 1995.

(34) Any recipient of a sales and use tax deferral may be asked to submit reports to the department or department of trade and economic development during any period of time the recipient is receiving benefits under this deferral law. The report shall be made to the department in a form and manner prescribed by the department. The recipient may be asked to report information regarding the actual average employment related to the project, the actual wages of the employees related to the project, and any other information required by the department. If the recipient fails to submit a report, the department may not impose any penalties or sanctions against the recipient.

(35) Payment procedures. The recipient of sales and use tax deferral under this program shall begin paying the deferred taxes in the third year after the date certified by the department as the date on which the construction project was operationally complete. The first payment will be due on December 31st of the third calendar year after such certified date, with subsequent annual payments due on December 31st of the following four years, with amounts of payment scheduled as follows:

Repayment Year	Percentage of Deferred Tax Repaid
1	10%
2	15%

Repayment Year	Percentage of Deferred Tax Repaid
3	20%
4	25%
5	30%

(36) The department may authorize an accelerated repayment schedule upon request of the recipient. Interest shall not be charged on any taxes deferred under this program during the period of deferral, although other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for any delinquent payments during the repayment period pursuant to chapter 82.32 RCW. The debt for deferred taxes shall not be extinguished by insolvency or other failure of the recipient nor shall the debt for the deferred taxes be extinguished by the sale, exchange, or other disposition of the recipient's business. Any person who becomes a successor (see WAC 458-20-216) to such investment project shall be liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient.

(37) Special provisions affecting aluminum production facilities. Effective May 19, 1987, the law makes special provisions for sales and use tax deferrals for new or used equipment, machinery and operating property, and labor and services in connection with the startup or continued operation of aluminum smelter facilities which were in operation before 1975, but which have ceased operations (or are in imminent danger of ceasing operations). Also, such special provisions may apply to modernization projects involving the construction, acquisition, or upgrading of new or used equipment and machinery to increase the operating efficiency of aluminum smelters or aluminum rolling mills and facilities. Such special provisions entail consultation with collective bargaining units for existing employees as well as the concurrence by such bargaining units with the deferral requested. Persons who operate such facilities should contact the department of revenue to determine if the sales and use tax deferrals are available in any specific case.

(38) Disclosure of information. The law provides that information contained in applications, reports, and other information received by the department in connection with this tax deferral program shall not be confidential and shall be subject to disclosure.

[Statutory Authority: RCW 82.32.300, 88-17-047 (Order 88-5), § 458-20-24002, filed 8/16/88; 87-19-007 (Order ET 87-5), § 458-20-24002, filed 9/8/87; 86-14-019 (Order ET 86-13), § 458-20-24002, filed 6/24/86; 85-21-013 (Order ET 85-5), § 458-20-24002, filed 10/7/85.]

**WAC 458-20-24003 Tax incentives for high technology businesses.** (1) **Introduction.** This rule explains the tax incentives, contained in chapter 82.63 RCW and RCW 82.04.4452, which apply to businesses engaged in research and development or pilot scale manufacturing in Washington in five high technology areas: Advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology. Eligibility for high technology or research and development tax incentives offered by the federal government or any other jurisdiction does not establish eligibility for Washington's programs.

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

(a) "Advanced computing" means technologies used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to super computers, and peripheral equipment.

(b) "Advanced materials" means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials.

(c) "Applicant" means a person applying for a tax deferral under chapter 82.63 RCW.

(d) "Biotechnology" means the application of technologies, such as recombinant DNA techniques, biochemistry, molecular and cellular biology, genetics, including genomics, gene expression and genetic engineering, cell fusion techniques, and new bioprocesses, using living organisms, or parts of organisms, to produce or modify products, to improve plants or animals, to develop microorganisms for specific uses, to identify targets for small molecule pharmaceutical development, or to transform biological systems into useful processes and products or to develop microorganisms for specific uses.

(e) "Electronic device technology" means technologies involving microelectronics; semiconductors; electronic equipment and instrumentation; radio frequency, microwave, and millimeter electronics; optical and optic-electrical devices; and data and digital communications and imaging devices.

(f) "Eligible investment project" means an investment project which either initiates a new operation, or expands or diversifies a current operation by expanding, renovating, or equipping an existing facility. The lessor or owner of the qualified building is not eligible for a deferral unless the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(g) "Environmental technology" means assessment and prevention of threats or damage to human health or the environment, environmental cleanup, and the development of alternative energy sources.

(i) The assessment and prevention of threats or damage to human health or the environment concerns assessing and preventing potential or actual releases of pollutants into the environment that are damaging to human health or the environment. It also concerns assessing and preventing other physical alterations of the environment that are damaging to human health or the environment.

(A) Pollutants include waste materials or by-products from manufacturing or other activities.

(B) Environmental technology includes technology to reduce emissions of harmful pollutants but does not include technology to increase fuel economy. Where technology both reduces emissions and increases fuel economy, it is environmental technology if the primary purpose is to reduce emissions. That reducing emissions is the primary purpose of technology can be demonstrated by showing the technology is developed to meet governmental emission standards.

(C) Environmental technology does not include technology for preventive health measures for, or medical treatment of, human beings.

(ii) Environmental cleanup is corrective or remedial action to protect human health or the environment from releases of pollutants into the environment.

(iii) Alternative energy sources are those other than traditional energy sources such as fossil fuels, nuclear power, and hydroelectricity. However, when traditional energy sources are used in conjunction with the development of alternative energy sources, all the development will be considered the development of alternative energy sources.

(h) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction or improvement of the project.

(i) "Person" has the meaning given in RCW 82.04.030.

(j) "Pilot scale manufacturing" means design, construction, and testing of preproduction prototypes and models in the fields of biotechnology, advanced computing, electronic device technology, advanced materials, and environmental technology other than for commercial sale. "Commercial sale" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(k) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for pilot scale manufacturing or qualified research and development, including plant offices and other facilities that are an essential or an integral part of a structure used for pilot scale manufacturing or qualified research and development.

(i) If a building is used partly for pilot scale manufacturing or qualified research and development and partly for other purposes, the applicable tax deferral shall be determined as follows:

(A) Tax on the cost of construction of areas devoted solely to pilot scale manufacturing or research and development may be deferred.

(B) Tax on the cost of construction of areas not used at all for pilot scale manufacturing or research and development may not be deferred.

(C) Tax on the cost of construction of areas used in common for pilot scale manufacturing or research and development and for other purposes, such as hallways, bathrooms, and conference rooms, may be deferred by apportioning the costs of construction on a square footage basis. The apportioned costs of construction eligible for deferral are established by using the ratio, expressed as a percentage, of the square feet of the construction, expansion, or renovation devoted to pilot scale manufacturing or qualified research and development, excluding areas used in common to the total square feet of the construction, expansion, or renovation, excluding areas used in common. That percentage is applied to the cost of construction of the common areas to determine the costs of construction eligible for tax deferral. Expressed as a formula, apportionment of the cost of the common areas is determined by:

Square feet devoted to research and development or pilot scale manufacturing, excluding square feet of common areas

= Percentage of total cost of construction of common areas eligible for deferral

Total square feet, excluding square feet of common areas

(D) The apportionment method described in (A), (B), and (C) above shall be used unless the applicant or recipient can demonstrate that another method better represents a reasonable apportionment of costs, considering all the facts and circumstances.

(ii) Building construction does not include the construction of landscaping or most other work outside the building itself. However, it does include the construction of parking lots connected to or adjacent to the building if the parking lots are for the use of workers performing pilot scale manufacturing or research and development in the building.

(l) "Qualified machinery and equipment" means fixtures, equipment, and support facilities that are an integral and necessary part of a pilot scale manufacturing or qualified research and development operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment, instrumentation, and other devices used in a process of experimentation to develop a new or improved pilot model, plant process, product, formula, invention, or similar property; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; vats, tanks, and fermenters; operating structures; and all other equipment used to control, monitor, or operate the machinery. For purposes of this rule, qualified machinery and equipment must be either new to the taxing jurisdiction of the state or new to the certificateholder, except that used machinery and equipment may be treated as qualified machinery and equipment if the certificateholder either brings the machinery and equipment into Washington or makes a retail purchase of the machinery and equipment in Washington or elsewhere.

(i) Machinery and equipment is an integral and necessary part of pilot scale manufacturing or qualified research and development if the pilot scale manufacturing or qualified research and development could not be accomplished without it. A laboratory table would be integral and necessary to qualified research and development. Decorative artwork would not be integral and necessary to qualified research and development.

(ii) Qualified machinery and equipment must be used exclusively for pilot scale manufacturing or qualified research and development to qualify for the deferral. However, *de minimis* nonqualifying use will not cause the loss of the deferral. An example of *de minimis* use is the occasional use of a computer for personal e-mail.

(iii) Unlike buildings, if machinery and equipment is used for both qualifying and nonqualifying purposes, the costs may not be apportioned. Sales or use tax may not be

deferred on the purchase or use of machinery and equipment used for both qualifying and nonqualifying purposes.

(m) "Qualified research and development" means research and development performed within this state in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology.

(n) "Qualified research and development expenditures" means operating expenses, including wages, compensation of a proprietor or a partner in a partnership, benefits, supplies, and computer expenses, directly incurred in qualified research and development by a person claiming the business and occupation tax credit provided by RCW 82.04.4452. The term does not include amounts paid to a person other than a public educational or research institution to conduct qualified research and development. Nor does the term include capital costs and overhead, such as expenses for land, structures, or depreciable property.

(i) In order for an operating expense to be a qualified research and development expenditure, it must be directly incurred in qualified research and development. If an employee performs qualified research and development activities and also performs other activities, only the wages and benefits proportionate to the time spent on qualified research and development activities are qualified research and development expenditures under this rule. The wages of employees who supervise or are supervised by persons performing qualified research and development are qualified research and development expenditures to the extent the work of those supervising or being supervised involves qualified research and development.

(ii) The compensation of a proprietor or a partner is determined in one of two ways:

(A) If there is net income for federal income tax purposes, the amount reported subject to self-employment tax is the compensation.

(B) If there is no net income for federal income tax purposes, reasonable cash withdrawals or cash advances are the compensation.

(iii) Depreciable property within the meaning of this rule is any property with a useful life that extends beyond the accounting year in which it is acquired, regardless of whether the property is depreciated or currently expensed. Expenditures related to depreciable property are not qualified research and development expenditures within the meaning of this rule even though they are currently expensed.

(iv) Computer expenses do not include the purchase, lease, rental, or repair of equipment. They do include internet subscriber fees, run time on a mainframe computer, and outside processing.

(v) Training expenses for employees are qualified research and development expenditures if the training is directly related to the research and development being performed. Training expenses include registration fees, materials, and travel expenses. Although the research and development must occur in Washington, training may take place outside of Washington.

(vi) Qualified research and development expenditures include the cost of clinical trials for drugs and certification by Underwriters Laboratories.

(vii) Qualified research and development expenditures do not include legal expenses, patent fees, or any other expense not incurred directly for qualified research and development.

(viii) Stock options granted as compensation to employees performing qualified research and development are qualified research and development expenditures to the extent they are reported on the W-2 forms of the employees and are taken as a deduction for federal income tax purposes by the employer.

(ix) Preemployment expenses related to employees who perform qualified research and development are qualified research and development expenditures. These expenses include recruiting and relocation expenses and employee placement fees.

(o) "Research and development" means activities performed to discover technological information, and technical and nonroutine activities concerned with translating technological information into new or improved products, processes, techniques, formulas, inventions, or software.

The term includes exploration of a new use for an existing drug, device, or biological product if the new use requires separate licensing by the Federal Food and Drug Administration under chapter 21 CFR, as amended.

The term does not include adaptation or duplication of existing products where the products are not substantially improved by application of the technology, nor does the term include surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software developed for internal use, and research in areas such as improved style, taste, and seasonal design.

(i) A person need not both discover technological information and translate technological information into new or improved products, processes, techniques, formulas, inventions, or software in order to engage in research and development. A person may perform either activity alone and be engaged in research and development.

(ii) To discover technological information means to gain knowledge of technological information through purposeful investigation. The knowledge sought must be of something not previously known or, if known, only known by persons who have not made the knowledge available to the public.

(iii) Technological information is information related to the application of science, especially with respect to industrial and commercial objectives. Industrial and commercial objectives include both sale and internal use (other than internal use software). The translation of technological information into new or improved products, processes, techniques, formulas, inventions, or software does not require the use of newly discovered technological information to qualify as research and development.

(iv) The translation of technological information requires both technical and nonroutine activities. An activity is technical if it involves the application of scientific, engineering, or computer science methods or principles. The term "nonroutine" refers to the specific activities undertaken to achieve a desired result. A customized or unique result is not by itself conclusive proof that it was the product of nonrou-

tine activities. Indicia of nonroutine activities include, but are not limited to:

(A) The activity involves overcoming one or more technological barriers under circumstances where the outcome is not certain;

(B) The activity has not been done before; or

(C) The activity involves a process of experimentation.

(v) A product is substantially improved when it functions fundamentally differently because of the application of technological information. This fundamental difference must be objectively measured. Examples of objective measures include increased value, faster operation, greater reliability, and more efficient performance.

(vi) Computer software is developed for internal use if it is to be used only by the person by whom it is developed. If it is to be available for sale, lease, or license, it is not developed for internal use, even though it may have some internal applications. If it is to be available for use by persons, other than the person by whom it is developed, who access or download it remotely, such as through the internet, it is not usually deemed to be developed for internal use. However, remotely accessed software is deemed to be developed for internal use if its purpose is to assist users in obtaining goods, services, or information provided by or through the person by whom the software is developed. For example, software is developed for internal use if it enables or makes easier the ordering of goods from or through the person by whom the software is developed. On the other hand, a search engine used to search the World Wide Web is an example of software that is not developed for internal use because the search engine itself is the service sought.

(vii) Research and development is complete when the product, process, technique, formula, invention, or software can be reliably reproduced for sale or commercial use. However, the improvement of an existing product, process, technique, formula, invention, or software may qualify as research and development.

(p) "Research and development spending" means qualified research and development expenditures plus eighty percent of amounts paid to a person other than a public educational or research institution to conduct qualified research and development.

(q) "Taxable amount" means the taxable amount subject to business and occupation tax required to be reported on the person's combined excise tax returns for the year for which the credit is claimed, less any taxable amount for which a multiple activities tax credit is allowed under RCW 82.04.440. See WAC 458-20-19301 for information on the multiple activities tax credit.

(3) **Sales and use tax deferral.** Chapter 82.63 RCW provides for the deferral of sales and use taxes on eligible investment projects. These are projects that involve research and development or pilot scale manufacturing in five high technology areas: Advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology.

(a) **Application process.**

(i) Applicants must apply for deferral to the department of revenue before the initiation of construction of, or acquisition of equipment or machinery for the investment project.

The date of application is the earlier of the postmark date or the date of receipt by the department.

(A) Construction is initiated when workers start on-site building tasks. The initiation of construction does not include land clearing or site preparation prior to excavation of the building site. Also, the initiation of construction does not include design or planning activities.

(B) Equipment or machinery is acquired at the time the applicant or its agent obtains dominion and control of the equipment or machinery.

(ii) Application forms may be obtained at department of revenue district offices, by downloading from the department's website ([dor.wa.gov](http://dor.wa.gov)), by telephoning the telephone information center (800-647-7706), or by contacting the department's special programs division at:

Department of Revenue  
Special Programs Division  
Post Office Box 47477  
Olympia, WA 98504-7477  
FAX 360-586-2163

(iii) Applicants must mail or fax applications to the special programs division at the address or fax number given above.

(iv) The application form shall include information regarding the location of the investment project, the applicant's average employment in Washington for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, and time schedules for completion and operation. The application form may also include other information relevant to the project and the applicant's eligibility for deferral.

(v) Applicants must agree to supply the department with nonproprietary information necessary to measure the results of the tax deferral program.

(vi) Applications and other information received by the department in connection with the deferral program are not confidential and are subject to public disclosure.

(vii) The department must rule on an application within sixty days. If an application is denied, the department must explain in writing the basis for the denial. An applicant may appeal a denial within thirty days under WAC 458-20-100.

**(b) Deferral certificate.**

(i) If an application is approved, the department must issue the applicant a sales and use tax deferral certificate.

(ii) The certificate provides for deferral of state and local sales and use taxes on the eligible investment project. The certificate will state the amount of tax deferral for which the recipient is eligible. It will also state the date by which the project will be operationally complete. The deferral is limited to investment in qualified buildings or qualified machinery and equipment. The deferral does not apply to the taxes of persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

(iii) A successful applicant, hereafter referred to as a recipient, must present a copy of the certificate to sellers of goods or retail services provided in connection with the eligible investment project in order to avoid paying sales or use tax. Sellers who accept these certificates in good faith are relieved of the responsibility to collect sales or use tax on

transactions covered by the certificates. Sellers must retain copies of certificates as documentation for why sales or use tax was not collected on a transaction.

(iv) In cases of leases of qualifying machinery and equipment, the deferral certificate allows for deferral of tax on payments made during the initial term of the lease, and does not allow for deferral for extensions or renewals of the lease. Deferral of tax is not allowed for lease payments for any period after the seventh calendar year following the calendar year for which the project is certified as operationally complete.

(v) The certificate may not be used to defer tax on repairs to, or replacement parts for, qualified machinery and equipment.

(vi) The department may not issue a certificate for an investment project that has already received a deferral under chapters 82.60, 82.61, or 82.63 RCW, except that an investment project for qualified research and development that has already received a deferral may also receive an additional deferral certificate for adapting the investment project for use in pilot scale manufacturing. However, a certificate may be amended or a certificate issued for a new investment project at an existing facility.

**(c) Amendment of application or certificate.**

(i) Applicants and recipients may make written requests to the special programs division to amend an application or certificate.

(ii) Grounds for requesting amendment include, but are not limited to:

(A) The project will exceed the costs originally stated;

(B) The project will take more time to complete than originally stated;

(C) The original application is no longer accurate because of changes in the project;

(D) Transfer of ownership of the project.

(iii) The department must rule on the request within sixty days. If the request is denied, the department must explain in writing the basis for the denial. An applicant or recipient may appeal a denial within thirty days under WAC 458-20-100.

**(d) Certification.**

(i) When the building, machinery, or equipment is ready for use, the recipient must notify the special programs division in writing that the eligible investment project is operationally complete. The department shall, after appropriate investigation: Certify that the project is operationally complete; not certify the project; or certify only a portion of the project. The certification will include the year in which the project is operationally complete.

(ii) If all or any portion of the project is not certified, the recipient must repay all or a proportional part of the deferred taxes. The department will notify the recipient of the amount due, including interest, and the due date.

(iii) The department must explain in writing the basis for not certifying all or any portion of a project. The decision of the department to not certify all or a portion of a project may be appealed under WAC 458-20-100 within thirty days.

**(e) Repayment of deferred taxes.**

(i) Deferred taxes need not be repaid if the investment project is used only for qualified research and development or pilot scale manufacturing during the calendar year for which the department certifies the investment project as oper-

ationally complete and during the succeeding seven calendar years.

(ii) Deferred taxes must be repaid if an investment project is used for purposes other than qualified research and development or pilot scale manufacturing during the calendar year for which the department certifies the investment project as operationally complete or at any time during any of the succeeding seven calendar years. Taxes are immediately due according to the following schedule:

Year in which nonqualifying use occurs	% of deferred taxes due
1	100%
2	87.5%
3	75%
4	62.5%
5	50%
6	37.5%
7	25%
8	12.5%

Interest on the taxes, but not penalties, must be paid retroactively to the date of deferral.

(iii) However, if the investment project is used for purposes other than qualified research and development or pilot scale manufacturing during the first eight years, deferred taxes need not be repaid on particular items if the purchase or use of the item would have qualified for the machinery and equipment sales and use tax exemptions provided by RCW 82.08.02565 and 82.12.02565 (discussed in WAC 458-20-13601) at the time of purchase or first use.

(iv) Deferred taxes need not be repaid if qualified machinery and equipment on which the taxes were deferred is destroyed, becomes inoperable and cannot be reasonably repaired, wears out, or becomes obsolete and is no longer practical for use in the project. The use of machinery and equipment which becomes obsolete for purposes of the project and is used outside the project is subject to use tax at the time of such use.

(f) **Transfer of deferral.** Transfer of ownership does not terminate the deferral. The deferral may be transferred to the new owner if the new owner meets all eligibility requirements for the remaining periods of the deferral. The new owner must apply for an amendment to the deferral certificate. If the deferral is transferred, the new owner is liable for repayment of deferred taxes under the same terms as the original owner. If the new owner is a successor to the previous owner under the terms of WAC 458-20-216 and the deferral is not transferred, the new owner's liability for deferred taxes is limited to those that are due for payment at the time ownership is transferred.

(g) **No extinguishment of debt.** The debt for deferred taxes will not be extinguished by the insolvency or other failure of the recipient.

(h) **Expiration of sales and use tax deferral program.** The authority of the department to issue deferral certificates expires July 1, 2004.

**(4) Examples relating to the sales and use tax deferral program.**

(a) Lessor and lessee examples.

(i) Prior to the initiation of construction, Owner/Lessor A enters into an agreement with Lessee B, a company

(2005 Ed.)

engaged in qualified research and development. Under the agreement, A will build a building to house B's research and development activities, will apply for a tax deferral on construction of the building, will lease the building to B, and will pass on the value of the deferral through reduced rent payments. A applies for the deferral before construction begins. A is entitled to a deferral on building construction costs.

(ii) After construction has begun, Lessee C asks that certain tenant improvements be added to the building. Lessor D and Lessee C each agree to pay a portion of the cost of the improvements. C and D each apply for a deferral on the costs of the tenant improvements before work on the tenant improvements has begun. Both applications may be approved. While construction of the building was initiated before the applications were submitted, tenant improvements on a building under construction are deemed to be the expansion or renovation of an existing structure.

(iii) After construction has begun but before machinery or equipment has been acquired, Lessee E applies for a deferral on machinery and equipment. The application will be approved. Even though it is too late to apply for a deferral of tax on building costs, it is not too late to apply for a deferral for the machinery and equipment.

(b) **Apportionment of building costs.** A building to be constructed will be partially devoted to research and development and partially devoted to marketing, a nonqualifying purpose. The total area of the building is one hundred thousand square feet. Sixty thousand square feet are used only for research and development, twenty thousand square feet are used only for marketing, and the remaining twenty thousand square feet are used in common by research and development employees and marketing employees. Tax on the cost of constructing the sixty thousand square feet used only for research and development may be deferred. Tax on the cost of constructing the twenty thousand square feet used only for marketing may not be deferred. Tax on seventy-five percent of the cost of constructing the common areas may be deferred. (Sixty thousand square feet devoted solely to research and development divided by eighty thousand square feet devoted solely to research and development and marketing results in a ratio expressed as seventy-five percent.)

(5) **Business and occupation tax credit.** RCW 82.04.4452 provides for a business and occupation tax credit for persons engaging in research and development in Washington in five areas of high technology: Advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology.

(a) **Eligibility for the credit.** Persons are eligible for the credit if their research and development spending in the calendar year for which credit is claimed exceeds 0.92 percent of the person's taxable amount for the same calendar year.

(b) **Calculating the credit.**

(i) Prior to July 1, 1998. The amount of the credit is equal to the greater of:

the person's qualified research and development expenditures

or

eighty percent of amounts received by a person other than a public educational or research institu-

tion as compensation for conducting qualified research and development

multiplied by 0.00515 in the case of a nonprofit corporation or association, and

multiplied by 0.025 in the case of all other persons.

(ii) On and after July 1, 1998. The amount of the credit is equal to the greater of:

the person's qualified research and development expenditures

or

eighty percent of amounts received by a person other than a public educational or research institution as compensation for conducting qualified research and development

multiplied by 0.00484 in the case of a nonprofit corporation or association, and

multiplied by 0.015 in the case of all other persons.

(iii) Persons calculating the credit on the basis of amounts received for conducting qualified research and development must actually perform the research and development themselves. Amounts received for conducting qualified research and development that are paid to other persons who actually perform some or all of the qualified research and development contracted for may not be included in the calculation.

(iv) The credit for any calendar year may not exceed the lesser of two million dollars or the amount of business and occupation tax otherwise due for the calendar year.

(v) Credits may not be carried forward or carried back to other calendar years.

(c) Claiming the credit.

(i) The first time persons claim the credit they must complete an Initial Survey, Research and Development Credit form (26 0005) and mail it to the address indicated on the form. The purpose of the initial survey is to gather information necessary to measure the results of the credit program. By law, persons claiming the credit must agree to provide this information.

(ii) Credits are claimed on the person's combined excise tax return. Every time a credit is claimed, the person making the claim must complete and attach a Declaration, Research and Development Credit form (26 0003) to the return.

(iii) The Initial Survey and Declaration forms used in the credit program may be obtained at department of revenue district offices, by downloading from the department's website ([dor.wa.gov](http://dor.wa.gov)), or by telephoning the telephone information center (800-647-7706).

(d) **Assignment of the credit.**

(i) A person entitled to the credit because of qualified research and development conducted under contract for another person may assign all or a portion of the credit to the person who contracted for the performance of the qualified research and development.

(ii) The assignment is accomplished by use of the Declaration, Research and Development Credit form, referred to in (c)(ii) of this subsection.

(iii) Both the person assigning the credit and the person receiving the credit must be eligible under (a) of this subsection for the assignment to be valid.

(iv) The total of the credit claimed and the credit assigned by a person assigning credit may not exceed the lesser of two million dollars or the amount of business and occupation tax otherwise due from the assignor in any calendar year.

(v) The total of the credit claimed, including credit received by assignment, may not exceed the lesser of two million dollars or the amount of business and occupation tax otherwise due from the assignee in any calendar year.

(e) **Expiration.** The business and occupation tax credit program for high technology businesses expires December 31, 2004.

(6) **Examples relating to the credit program.**

(a) A business, not a nonprofit corporation or association, which engages in qualified research and development has a taxable amount of ten million dollars in 2002. It pays eighty thousand dollars in 2002 in wages and benefits to employees directly engaged in qualified research and development. Also during 2002, it pays twenty thousand dollars to a person that is not a public educational or research institute to conduct qualified research and development. It is eligible to claim the credit for 2002. Its research and development spending, ninety-six thousand dollars (eighty thousand dollars in wages plus eighty percent of twenty thousand dollars for contracted research and development) is more than ninety-two thousand dollars (0.92 percent of its taxable amount, ten million dollars).

The amount of credit is one thousand two hundred dollars. This is determined by multiplying its qualified research and development expenditures, eighty thousand dollars, by 0.015. The contracted amount is not included in the credit computation.

(b) A company that engages in environmental cleanup contracted to clean up a site. It had never faced exactly the same situation before, but guaranteed at the outset that it could do the job. It used a variety of existing technologies to accomplish the task in a combination it had never used before. The company was not engaged in research and development in performing this contract. It applied existing technologies in a routine manner, considering the nature of its business, and the outcome was certain.

(c) Company A is engaged in research and development in biotechnology and needs to perform standard blood tests as part of its development of a drug. It contracts with a lab, B, to perform the tests. The costs of the tests are qualified research and development expenditures for A, the company engaged in the research and development. Although the tests themselves are routine, they are only a part of what A is doing in the course of developing the drug. B, the lab contracted to perform the testing, is not engaged in research and development with respect to the drug being developed. B is neither discovering technological information nor is it translating technological information into new or improved products, processes, techniques, formulas, inventions, or software. B is not entitled to a credit on account of the compensation it receives for conducting the tests.

(d) Company C is engaged in research and development. It enters into a contract with Company D requiring Company

D to provide employees to work under the direction of Company C. Company D's only obligation is to provide employees. It is not obligated to perform any other task. Company D's provision of employees is not research and development and it is not entitled to the credit on account of the contract. Company D is neither discovering technological information nor is it translating technological information into new or improved products, processes, techniques, formulas, inventions, or software.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.63.010. 03-12-053, § 458-20-24003, filed 5/30/03, effective 6/30/03.]

#### **WAC 458-20-241 Radio and television broadcasting.**

For the purpose of this rule:

"Broadcast" or "broadcasting" includes both radio and television commercial broadcasting stations unless it clearly appears from the context to refer only to radio or television.

"Local advertising" means all broadcast advertising other than national, network, or regional advertising as herein defined.

"National advertising" means broadcast advertising paid for by sponsors which supply goods or services on a national or international basis.

"Network advertising" means broadcast advertising originated by national or regional broadcast networks from outside the state of Washington, the broadcast advertising being supplied by national or regional network broadcasting companies.

"Regional advertising" means broadcast advertising paid for by sponsors which supply goods or services on a regional basis over two or more states.

#### **Business and Occupation Tax**

**Radio and television broadcasting.** Taxable on gross income from the sale of radio or television advertising, and any other gross income from broadcasting, excluding sales to other broadcasters of the right to broadcast material on processed film, sound recorded magnetic tape, and other transcriptions (see service and other activities).

##### **Deductions from gross income from advertising:**

(1) **Agency fees.** It is a general trade practice in the broadcasting industry to make allowances to advertising agencies in the form of the deduction or exclusion of a certain percentage of the gross charge made for advertising ordered by the agency for the advertiser. This allowance will be deductible as a discount in the computation of the broadcaster's tax liability in the event that the allowance is shown as a discount or price reduction in the billing or that the billing is on a net basis, i.e., less the discount.

(2) **Gross receipts from national, network, and regional advertising.** The taxpayer may deduct either actual gross receipts from national, network, and regional advertising as herein defined, as included in the gross amount reported under radio and television broadcasting, or may take a "standard deduction" as provided by RCW 82.04.280, as amended by chapter 149, Laws of 1967 ex. sess., which will be a percentage arrived at annually for all broadcast stations in the state of Washington which use the standard deduction method. This percentage will be determined by dividing the total broadcast advertising receipts in the nation from net-

work, national, and regional advertising by the total broadcast advertising receipts in the nation.

This standard deduction will be based on the most current figures published at the beginning of the calendar year and shall be used throughout that calendar year notwithstanding the publishing of the following year's figures within that calendar year. Previously the Federal Communications Commission published the figures used to compute the standard deduction. The Federal Communications Commission no longer publishes these figures and henceforth it will be the responsibility of the industry to annually provide these figures to the department of revenue. The figures used will be subject to verification by the department.

Example of computation:

The standard deduction for persons engaged in radio and television broadcasting was 64% for the calendar year 1970. The deduction was computed as follows:

1. Total radio advertising receipts 1968	\$1,076,300,000
2. Total television advertising receipts 1968	2,087,600,000
3. Total broadcast advertising receipts	3,163,900,000
4. Total national, network, regional advertising receipts, radio, 1968	379,200,000
5. Total national, network, regional advertising receipts, television, 1968	1,635,100,000
6. Total broadcast advertising receipts from national, network, and regional advertising	2,014,300,000
7. Standard deduction for 1970 will be the quotient of line 6 divided by line 3 or	64%

(3) **Interstate business, allocation.** It is recognized that radio and television broadcasting is an interstate business and that under the Constitution of the United States a tax is prohibited upon so much of the revenue of a radio or television broadcasting station as is derived from the service of broadcasting to persons in other states or foreign countries. Accordingly, revenues from local advertising shall be allocated to remove from the tax base the gross income from advertising which is intended to reach potential customers of the advertiser who are located outside the state of Washington.

It will be presumed that the entire gross income of radio and television stations located within the state of Washington from local advertising as herein defined is subject to tax unless and until the taxpayer submits proof to the department of revenue that some portion of such income is exempt according to the principles set forth herein and until a specific allocation formula has been approved by the department.

**Method of allocation.** When the total daytime listening area of a radio or television station extends beyond the boundaries of the state of Washington, the allowable deduction is that portion of revenue represented by the out-of-state audience computed as a ratio to the station's total audience as measured by the 100 microvolt signal strength and delivery

by wire, if any. The out-of-state audience may therefore be determined by delivery "over the air" and by community antenna television systems. However, community antenna television audiences may not be claimed by a station in the same area in which it claims an audience served over the air, thus eliminating a claim for double exemption.

The most current United States and Canadian census figures will be used to determine the in-state and out-of-state audience.

An engineer holding at least a first class operator's license from the Federal Communications Commission must compute the 100 microvolt contour for the station claiming the exemption. The 100 microvolt contour will be applicable to all broadcasting stations, whether standard (AM), frequency modulation (FM), or television (TV), and the applicable contour will be the daytime ground-wave contour. The computation must be submitted to the department of revenue in map form, showing the scale used in miles, with the contour drawn on the map and the counties or cities within the contour indicated. The map must be certified as being correct by the personal signature of the engineer making the computation. The type of license held by the engineer should be indicated. The map must have attached to it the population covered both within and without the state according to the applicable United States and Canadian census.

In the event that cable antenna television subscribers are claimed as part of the out-of-state audience, the name of the systems, the location, and the number of subscribers must also be attached to the map. The number of subscribers will be multiplied by a factor of 3, representing the average size household family.

The foregoing exhibits must be forwarded to the Department of Revenue, Olympia, Washington 98504, and must be approved by the department before any deduction is allowable.

**Service and other activities.** Taxable on gross income from personal or professional services, including gross income from producing and making custom commercials or special programs, fees for providing writers, directors, artists and technicians, charges for the granting of a license to use facilities (as distinct from the leasing or renting of tangible personal property, see WAC 458-20-211), and charges to other broadcasters for the mere right to broadcast material on processed film, sound recorded magnetic tape, and other transcriptions when the material is returned to the original broadcaster.

**Retailing or wholesaling.** Taxable on gross proceeds of sales of tangible personal property, including gross proceeds from sales of films and tape produced for general distribution and from sales of copies of commercials, programs, films, etc., even though the original was not subjected to sales tax. The sale of custom-made programs, commercials, films, etc., is not taxable under this classification. (See subheading **Service and other activities** above.)

**Manufacturing.** Taxable on the cost to produce special programs, such as public affairs, religious, travelogues, and other general programming, which are vended to other broadcasters under a lease or contract granting a mere license to use. This tax does not apply to a recording made for the broadcaster's own use, including news, delayed programs,

commercials and promotions, special and syndicated programming, and "entire day" programming.

**Retail sales tax.** Sales to broadcasters of equipment, supplies and materials for use and not for resale are subject to the retail sales tax. This includes sales of raw or unprocessed film or magnetic tape and other transcription material as well as processed film, recorded magnetic tape or other transcriptions unless vended under a lease or contract granting a mere license to use.

If the tapes, films, etc., upon which the sales tax has been paid are later sold by the broadcaster in the regular course of business, the provisions of WAC 458-20-102 concerning purchases for dual purposes will apply.

Sales to broadcasters of the right to broadcast the material on processed film, sound recorded magnetic tape, and other transcriptions under a right or license granted by lease or contract are not retail sales and the retail sales tax is not applicable.

The broadcaster must collect retail sales tax on sales of packaged films, programs, etc., produced for general distribution, including training and industrial films, and also on sales of copies of films, commercials, programs, etc., even though the original was not subjected to sales tax.

**Use tax.** Acquisition or exercise of the right to broadcast processed film, recorded magnetic tape or other transcriptions under a right or license granted by lease or contract is not the use of tangible personal property by the broadcaster and the use tax is not applicable.

Broadcasters of radio and television programs are subject to use tax on the value of articles manufactured or produced by them for their own use (excluding custom produced commercials or special programs which includes, but is not necessarily limited to, recordings of news, delayed programs, commercials and promotions, special and syndicated programming, and "entire day" programming) and on the use of tangible personal property purchased or acquired under conditions whereby the retail sales tax has not been paid. The broadcaster is liable for use tax on the value (cost of production) of processed film, sound recorded magnetic tape, and other transcriptions when the broadcaster vends merely the right to broadcast such material under a right or license granted by lease or contract.

Effective September 1, 1982.

[Statutory Authority: RCW 82.32.300. 83-08-026 (Order ET 83-1), § 458-20-241, filed 3/30/83; Order ET 70-3, § 458-20-241 (Rule 241), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-242A Pollution control exemption and/or credits for single purpose facilities added to existing production plants to meet pollution control requirements and which are separately identifiable equipment principally for pollution control.** Rule 242 deals with pollution control facilities and is published in two parts:

Part A. Single purpose facilities added to existing production plants as separately identifiable equipment principally for pollution control and which are not designed for production of products other than recovered products which but for the facility would be released as pollutants.

Part B. Dual purpose facilities which consist of new plant equipment which achieves pollution control in the process of production of the plant's products rather than through the add on of a pollution device to existing plant equipment at some point in processing or upon completion of processing.

### Definition of Terms

For purposes of this rule:

(1) "Facility" shall mean an "air pollution control facility" or a "water pollution control facility" as herein defined:

(a) "Air pollution control facility" includes any treatment works, control devices and disposal systems, machinery, equipment, structures, property or any part or accessories thereof, installed or acquired for the primary purpose of reducing, controlling or disposing of industrial waste which if released to the outdoor atmosphere could cause air pollution. "Air pollution control facility" shall not mean any motor vehicle air pollution control devices used to control the emission of air contaminants from any motor vehicle.

(b) "Water pollution control facility" includes any treatment works, control device or disposal system, machinery, equipment, structures, property or any accessories thereof installed or acquired for the primary purpose of reducing, controlling or disposing of sewage and industrial waste, which if released to a water course could cause water pollution; provided, that the word "facility" shall not be construed to include any control device, machinery, equipment, structure, disposal system or other property installed or constructed for a municipal corporation or for the primary purpose of connecting any commercial establishment with the waste collecting facilities of public or privately owned utilities.

(c) For purposes of this exemption or credit, the terms "commercial establishment" and "other commercial establishment" do not include contractors or their suppliers who install pollution control equipment in facilities of and for another person.

(2) For the purpose of tax credit or exemption, "cost" shall be limited to capital expenditures directly related to the acquisition and installation of the control facility as described in the application. For the purposes of this definition, capital expenditures may include engineering, architecture, legal fees, overhead and other costs which may be directly attributed to the control facility.

(3) "Net commercial value of recovered products" shall mean the value of recovered products less the costs incurred in processing, including overhead costs, and costs attributable to their sale, or other disposition for value. The term shall not include a deduction for the cost or the depreciation of the facility.

(4) "Certificate" shall mean a pollution control tax exemption and credit certificate for which application has been timely made.

(5) "Appropriate control agency" shall mean the state department of ecology; or the operating local or regional air pollution control agency within whose jurisdiction a facility is or will be located.

(6) For the purposes of this rule "depreciation" shall be determined by the straight line method. That is, the cost of the facility, less the salvage or residual value, divided by months of useful life yields the amount by which the facility is depreciated monthly. In computing depreciation for purposes of obtaining a certificate, depreciation shall be computed through the last full month prior to the month in which the application for certificate is filed.

(7) "Department" shall mean the Washington state department of revenue.

### Filing Application and Issuance of Certificates

An application for a certificate will be made available by the department to cover the following conditions:

(1) Existing facilities, to provide the basis for a tax credit and for sales tax paid.

(2) Proposed facilities

(a) To provide the basis for a tax exemption on the purchase of material and equipment;

(b) To provide the basis for a tax credit.

The application must show the cost of the facility, specifically stating costs of materials and equipment incorporated into it. When the certificate is for the purposes referred to in "2" above, estimated costs must be shown. The certificate issued on an application based on estimated costs will not permit the holder to claim the credit referred to in "2b" above until an application showing actual costs has been filed and a supplement to the certificate issued.

Applications showing actual costs must also show the total depreciation which is applicable to the facility to the date of the application, the net commercial value of all materials recovered or captured by the facility during the entire period of operation prior to the date of application, and the amount of federal tax credit taken on federal tax returns filed prior to the date of application.

If, subsequent to the issuance of a certificate for a facility, a determination is made to modify or replace such facility, the certificate holder may file an application for a new or a supplemental certificate covering the modification or replacement following the same procedures provided for making application for original certificate. After the issuance by the department of any new certificate or supplement, all subsequent tax exemption and credits for the modified replacement facility shall be based thereon.

The application will be submitted to the department which will forward it to the appropriate control agency within ten days of its receipt from the applicant. The determination that a facility is designed and operated or is intended to be operated primarily for the control, capture and removal of pollutants from the air, or for the control and reduction of water pollution, and that the facility is suitable and reasonably adequate, and meets the intent and purposes of chapter 70.94 RCW (air pollution) or chapter 90.48 RCW (water pollution) will be made by the appropriate control agency. The control agency will notify the department of its findings within thirty days of the date the application was received for approval. The department will make the final determination of cost.

In making a determination, the appropriate control agency will afford to the applicant an opportunity for a hear-

ing. If the local or regional air pollution control agency fails to act or if the applicant feels aggrieved by the action of the local board, the applicant may appeal to the department of ecology pursuant to rules and regulations established by that department.

Upon notification of the action taken by the control agency the department will issue a certificate or notice of denial within thirty days of the receipt of the application from the control agency. The department will send a certificate or supplement, when issued, by certified mail. Notice of refusal to issue a certificate will likewise be sent by certified mail.

**Time limitations.** Application must be made no later than December 31, 1969, except that with respect solely to a facility required to be installed in an industrial, manufacturing, waste disposal, utility, or other commercial establishment which is in operation or under construction as of July 30, 1967, such application will be deemed timely if made within one year after the effective date of specific requirements for such facility promulgated by the appropriate control agency; whether or not the determination is made before or after the limitation date of December 31, 1969. The "effective date of specific requirements" refers to the compliance order's date for completion of engineering.

**Revocation of certificate.** The department may revoke an issued certificate upon subsequent discovery that it was improperly issued for reason of illegality, fraud, mistake, or the ineligibility of the applicant.

#### Utilization of Exemption and Credit

**Sales tax exemption.** The original acquisition of a facility, or the modification (meaning a substantial improvement resulting from added capacity in the removal of pollutants from the air or water) of an existing facility by the holder of a certificate shall be exempt from sales tax imposed by chapter 82.08 RCW and use tax subsequent to the effective date of the certificate. For applications filed subsequent to January 1, 1975 certificate holders shall receive credit for sales and use tax paid on acquisition of the facility prior to receiving certification. This exemption does not extend to servicing, maintenance, repairs or replacement parts after a facility is complete and placed in service.

Subsequent to July 30, 1967, a certificate holder may elect to pay sales or use tax on the acquisition and installation of a control facility and, subsequently, take a credit against future liability under business and occupation, use, or public utility tax to the extent of the foregoing exemption, except that a person so electing may not take any further manufacturing tax credit as provided in RCW 82.04.435 on the same facility.

**Business and Occupation, Use, or Public Utility Tax Credit.** With respect to a facility which has been placed in operation and for which a certificate has been issued, a tax credit not exceeding 2 percent of the cost of a new facility or of the depreciated cost of an existing facility may be taken for each year the certificate is in force. Such credit may be claimed against business and occupation, use, or public utility tax liability; however, it shall not exceed 50 percent of the tax liability for any reporting period for which it is claimed nor shall the cumulative amount of credit allowed for any facility exceed 50 percent of the cost of the facility.

**Credits to be reduced.** Credits claimed will be reduced by the net commercial value of materials captured or recovered by the pollution control facility. The value of such material shall first reduce the credit available in the current reporting period and then be applied against the cumulative credit balance which has been established but which may not be currently available to the certificate holder. Applicants and certificate holders shall provide the department with information required to establish the net commercial value of recovered or captured material and will be required to make books and records available to the department to verify the correctness of information furnished. The cumulative credit will also be reduced by the amount of federal investment tax credit or other federal tax credits allowed to the certificate holder which are applicable to the facility. The federal tax credits shall be taken as an offset against a pollution control tax credit claimed in the first reporting period following the date of filing the tax return on which the federal tax credit was taken, and thereafter as an offset against a credit hereunder as it becomes available to the certificate holder. The applicant shall advise the department of adjustments to the federal tax credits, either increase or decrease, resulting from either an audit by the internal revenue service, or otherwise. Adjustments to the credit allowable under this rule will be made by the department accordingly.

The department will issue instructions and forms to the certificate holder covering the accounting for the credit for which the certificate holder is eligible. Where a certificate holder is also eligible for manufacturing tax credit, the department may issue special instructions covering the separate accounting for the tax credits.

Credit will be allowable only in any period in which a certificate is in force.

[Statutory Authority: RCW 82.32.300, 83-08-026 (Order ET 83-1), § 458-20-242A, filed 3/30/83; Order ET 77-1, § 458-20-242A, filed 12/8/77 (formerly codified WAC 458-20-242); Order ET 70-3, § 458-20-242 (Rule 242), filed 5/29/70, effective 7/1/70.]

**WAC 458-20-242B Pollution control exemption and/or credits for dual purpose facilities which are constructed to meet pollution control requirements and which achieve pollution control in the process of production of the plant's products.** Rule 242 deals with pollution control facilities and is published in two parts:

- Part A. Single purpose facilities added to existing production plants as separately identifiable equipment principally for pollution control and which are not designed for production of products other than recovered products which but for the facility would be released as pollutants.
- Part B. Dual purpose facilities which consist of new plant equipment which achieves pollution control in the process of production of the plant's products rather than through the add on of a pollution device to existing plant equipment at some point in processing or upon completion of processing.

This rule sets out instructions for determining pollution control tax exemption and/or credit for a dual purpose pollution control facility.

A dual purpose pollution control facility is defined as a single, integrated facility which is installed to meet standards for air or water pollution, or both, and which is also necessary to the manufacture of products. It refers to a facility in which the portion of the total facility to be identified as for the purpose of pollution control is so integrated into the total facility that physical separation into identifiable component parts—that is, that which is for manufacturing and that which is for pollution control—is not possible. If these criteria are met, the following net cost approach shall be used to determine tax exemption and/or credit.

The application for certification shall be filed with the department of revenue in accordance with chapter 82.34 RCW and WAC 458-20-242A. Upon approval by the appropriate control agency, subject to the qualification that the facility described in the application is a dual purpose facility and that all requirements outlined in chapter 82.34 RCW are met, an exemption/credit certificate shall be issued. To determine the net cost attributable to the pollution control element of the dual function facility, the computations described in the following steps are required.

(1) Obtain cost estimates (for facilities under construction) and final cost figures (for completed facilities) directly related to the new dual function facility. (Actual allowable credits will be based on final costs of completed facilities.) Add to this final cost the amount of unrecovered depreciation on existing equipment replaced, if any. Subtract from this the salvage value of the replaced equipment, if any. Sales and use tax paid shall not be included as part of the facility cost.

(2) Determine the percentage that actual production capacity per unit of time of the existing plant equipment (before installation of the control facility) is of the actual capacity per unit of time of the new dual purpose facility. If the percentage so obtained is equal to or greater than 100 percent, use the figure obtained in step (1) for calculations commencing at step (3).

If the percentage so obtained is less than 100 percent, multiply that percentage times the figure derived in step (1) above. This figure represents the gross cost of constructing the new facility which meets pollution control requirements and obtains productive capacity of the existing plant. Productive capacity shall include all production of commercial or industrial value other than recovered or captured materials deductible from credits under provisions of RCW 82.34.060.

(3) All computations used to adjust the gross cost (as determined in step (2) above) shall be expressed in terms of current dollars at the start up date as defined in this step (3). To this end, a discount rate suitable for determining the present value of future income or expenditures is required. The basis of the discount rate will be the average cost of borrowed capital based on Aa Industrial Bonds as reported in Moody's Bond Record and the cost of equity capital as established by the price earnings ratio for the particular industry class as reported in the value line. This will be the average of amounts so reported for the 12 months preceding and 12 months succeeding the start up date. This date is the first date the new dual purpose facility is both in operation and in compliance with the requirements of the appropriate pollution control agency.

The discount rate to be applied will be a combination of these rates. The two rates shall be weighted 50/50. The same

discount rate shall be used for all adjustments to the gross cost.

(4) The next step in the procedure is to calculate the present value of future capital that will not be spent at some specific future date due to the expenditure now of the amount determined in (2) above. This "specific future date" is the date determined by the department as the date of projected replacement of the existing plant absent the need to meet pollution control requirements. This will be the amount of expenditure calculated in (2) above multiplied by the discount factor (as determined by use of the discount rate as calculated in (3) above) which will equal the present worth of that amount of money received or expended on the date representing the end of the useful life of the existing plant by the new installation (the date of "projected replacement"). This calculated amount shall be reduced by the present value, if any, of the undepreciated balance that would remain after the end of the depreciation period for the new facility if construction had been delayed to the date used as the end of the useful life of the facility replaced. This net calculation is then subtracted from the amount computed as the "gross cost" in (2).

(5) From the amount determined in (4) deduct the present value, after deduction of a percentage equal to the maximum corporate federal income tax rate as of the start up date, of operating savings expected to accrue to the date of projected replacement used in (4) applying the discount factor for annual savings based on the discount rate calculated in (3). Operating savings shall not include the net commercial value of materials captured or recovered by virtue of the new installation deductible under RCW 82.34.060 (2)(b).

(6) The next step is to deduct from the balance as computed in (5) the present net value of federal income tax savings to be derived from depreciation of the gross cost of the dual purpose facility due to its construction sooner than at the date of projected replacement using straight line depreciation over the useful life of the facility. The determination of net present value of federal income tax reductions due to depreciation allowances will consist of three steps.

(a) Calculate the present value of depreciation allowances from date of completion of the new facility using straight line depreciation to the projected replacement date.

(b) Deduct from (a) the present value of depreciation that would have been allowable after the date of full depreciation of the new dual purpose facility if construction of the new facility had been delayed until the projected replacement date of the existing facility.

(c) Multiply the result of (a) minus (b) by the maximum corporate federal income tax rate as of the start up date.

The net amount of federal tax benefits arrived at in (c) shall then be deducted from the balance determined in step (5).

(7) The remaining amount from that calculated in (2) after adjustments provided for in steps (3) through (6) is the "net cost" of pollution control equipment to be used as the base for calculation of credits.

#### Calculation of credits

(A) Determine 2 percent of the amount computed in step 7. This is the gross annual credit.

(B) Multiply the amount shown in step (7) by 50 percent to determine maximum total credit allowable.

(C) The gross credit allowable per year must first be reduced by the net commercial value of captured or recovered materials. Captured or recovered materials means materials which, but for compliance with pollution control requirements, would be discharged into the air or water and which discharge is required to be reduced or eliminated by requirements of the appropriate pollution control agency. The result is the *net* credit allowable per year.

The formula for "C" is the value of materials captured or recovered from the new plant less the value of materials which would have been captured or recovered over a comparable period of time from the existing plant, but for compliance with pollution control requirements, multiplied by the percentage derived by dividing net cost (step 7) by total cost (step 1).

If the net commercial value of recovered materials exceeds the gross credit allowable per year, the excess must be carried forward for purposes of reducing credits for future years. The amount of the net commercial value of recovered materials reduces both the annual and total credit allowable.

(D) Determine the total amount of Federal Investment Tax Credit or other federal tax credit actually received. Then multiply this tax credit by the percentage which the net cost portion (step 7) is to the total cost of the facility (step 1) to arrive at the portion of the tax credit applicable to the pollution control element of the dual purpose facility.

(E) Deduct the amount determined in step (D) from the amount determined in step (C) until total federal tax credits are totally offset. This is to be an annual calculation.

(F) If the annual amount of net credit to be taken after computation through step (E) exceeds 50 percent of the firm's tax liability under chapters 82.04, 82.12, and 82.16 RCW, it must be reduced to 50 percent of such tax liability.

Adopted December 8, 1977.

[Order ET 77-1, § 458-20-242B (Rule 242 Part B), filed 12/8/77.]

**WAC 458-20-243 Litter tax.** RCW 70.93.120 levies an annual litter assessment upon manufacturers, wholesalers, and retailers of certain products. The rate of this special tax is .00015 (.015%) and it applies to sales within this state made on and after May 21, 1971.

The tax is to be computed on and paid with the last return for the calendar year. A designated space on this return is to be used for reporting the litter tax.

The measure of the tax is the gross proceeds of the sales of the business and will apply to places of business on sales of products falling into the thirteen categories listed in RCW 70.93.130 which are defined as follows:

(1) **Food for human or pet consumption** means any substance, except drugs, the chief general use of which is for human or pet nourishment, including candy, chewing gum, and condiments. It includes sales of meals, snacks, lunches, or other food by restaurants, drive-ins, snack bars, concessions, and taverns. Drugs means substances or products appearing in the latest listing of United States pharmacopoeia or national formulary the chief general use of which is as medicine for treating disease, healing, or relieving pain, but excluding devices, apparatus, instruments, prostheses and the like.

(2) **Groceries** means all products, except drugs, sold by persons in a place of business selling food for off premises consumption, but excluding building materials, clothing, furniture, and appliances.

(3) **Cigarettes and tobacco products** include all of the products subject to the excise taxes of chapters 82.24 and 82.26 RCW.

(4) **Soft drinks and carbonated waters** means all beverages, excluding liquor as defined by Title 66 RCW or rules and regulations of the Washington state liquor control board, but including fruit juices, milk, and all mixtures or dilutions of nonalcoholic beverages.

(5) **Beer and other malt beverages** means all beverages defined as beer or malt liquor by Title 66 RCW or rules and regulations of the Washington state liquor control board.

(6) **Wine** means all alcoholic beverages defined as wine in Title 66 RCW or rules and regulations of the Washington state liquor control board.

(7) **Newspapers and magazines** means all daily and periodical publications.

(8) **Household paper and paper products** means materials or substances made into sheets or leaves from natural organic or synthetic fibrous material for home or other personal use. It includes also products or articles made from such sheets or leaves for home or other personal use.

(9) **Glass containers** means articles made wholly or in substantial part of processed silicates which can be, or are, used to hold other things within themselves.

(10) **Metal containers** means articles made wholly or in substantial part of materials such as iron, steel, tin, aluminum, copper, zinc, lead, silver and any alloys thereof and which can be, or are, used to hold other things within themselves.

(11) **Plastic or fiber containers made of synthetic material** means articles which can be, or are, used to hold other things within themselves and which are made of synthetically produced ethylene derivatives, resins, waxes, adhesives, or polymers or by synthesis of fiber materials with adhesives, polymers, waxes, resins, or other materials. It includes containers made of paper, pasteboard, or cardboard in which the container materials consists of fibrous substances synthesized with other materials. Synthetic material means that produced by synthesis which is the process of making or building up by a composition or union of simpler parts or elements as distinguished from the process of extraction or refinement.

(12) **Cleaning agents** means all soaps, detergents, solvents, or other cleansing substances used for cleaning buildings, places, persons, animals, or other things.

**Toiletries** means all substances such as soap, powder, cologne, perfume, cosmetics, toothpaste, etc., used in connection with personal dressing or grooming.

(13) **Nondrug drugstore sundry products** means all products, goods, or articles, except drugs, sold by persons in a place of business selling drugs, but excluding building materials, clothing, furniture, and appliances.

"Place of business" for purposes of this rule means any location, department, or division even though it be a part of a larger business operation provided it is separate from such other or additional business physically, operationally, and in its books and records. Thus, a department store which con-

sists of a grocery department and a clothing department, each with its own space and having separate employees, cash registers, and accounting records would not be subject to the groceries litter tax on the sales of its clothing department merely because it was located in the same building and under the same ownership as the grocery department.

"Gross proceeds of the sales of the business" means the value proceeding or accruing from the sale of tangible personal property and/or for services rendered without any deduction for costs or expenses. In the case of publishers of newspapers and magazines the measure of the litter tax is the same as specified in WAC 458-20-143 for business and occupation tax; i.e., gross income from the publishing business including advertising income.

The law intends that the tax be limited to sales within this state and therefore there may be deducted from the measure of the tax sales to persons in other states or transfers to points outside the state without sale. Out-of-state firms making sales in or into Washington will be subject to the litter tax under the principles set out for business and occupation tax in WAC 458-20-193B.

Persons operating drugstores may report and pay the litter tax measured by 50% of total sales in lieu of separately accounting for sales of drugstore sundry products. Persons operating grocery stores may report and pay the litter tax measured by 95% of total sales in lieu of separately accounting for grocery and nongrocery products sold.

[Statutory Authority: RCW 82.32.300, 83-08-026 (Order ET 83-1), § 458-20-243, filed 3/30/83; Order ET 71-2, § 458-20-243, filed 10/27/71.]

**WAC 458-20-244 Food and food ingredients. (1)**

**Introduction.** RCW 82.08.0293 and 82.12.0293 provide retail sales tax and use tax exemptions for certain foods sold for human consumption. In 2003, the legislature adopted the food definitions set forth in the national Streamlined Sales and Use Tax Agreement. The 2003 amendments to these statutes significantly change how sales of food and food ingredients are taxed on and after January 1, 2004. This rule provides guidelines for determining if the sale of a food or food ingredient is subject to retail sales tax.

There is no general business and occupation (B&O) tax exemption for sales of food and food ingredients. Therefore, even if a sale of food is exempt from retail sales tax, the income from that sale is included in gross proceeds when calculating the business's retailing B&O tax.

(2) **Related rules.** The department has adopted other rules that provide important tax reporting information to persons who sell food and prepared meals:

- (a) WAC 458-20-119 (Sales of meals);
- (b) WAC 458-20-124 (Restaurants, cocktail bars, taverns and similar businesses);
- (c) WAC 458-20-12401 (Special stadium sales and use tax);
- (d) WAC 458-20-166 (Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc.);
- (e) WAC 458-20-167 (Education institutions, school districts, student organizations, and private schools);
- (f) WAC 458-20-168 (Hospitals, medical care facilities, and adult family homes); and
- (g) WAC 458-20-169 (Nonprofit organizations).

(2005 Ed.)

(3) **"Food and food ingredients" defined.** "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

"Food and food ingredients" does not include:

- (a) "Alcoholic beverages," which means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume; and
- (b) "Tobacco," which means cigarettes, cigars, chewing or pipe tobacco, or any other items that contain tobacco.

(4) **Taxability of prepared food.** The exemption for "food and food ingredients" provided in RCW 82.08.0293 does not apply to prepared food. The sale of prepared food is subject to retail sales tax, unless otherwise exempt by law. See subsection (5) of this section for information about the taxability of soft drinks and subsection (6) of this section for information about the taxability of dietary supplements.

(a) **Prepared food.** "Prepared food" means:

- (i) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food;
- (ii) Food sold in a heated state or heated by the seller; or
- (iii) Two or more food ingredients mixed or combined by the seller for sale as a single item, except:

(A) Food that is only cut, repackaged, or pasteurized by the seller;

(B) Raw eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, part 401.11 of *The Food Code*, published by the Food and Drug Administration, as amended or renumbered as of January 1, 2003, so as to prevent foodborne illness; or

(C) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

(b) **Food sold with eating utensils.** Food sold with eating utensils provided by the seller is prepared food and thus subject to tax, even if the seller does not otherwise prepare the food.

(i) **Eating establishments that sell food with eating utensils.** Generally food sold by an eating establishment is subject to sales tax. An eating establishment may be mobile or in a fixed location and may or may not provide seating accommodations for its customers. Eating establishments include restaurants, caterers, pizzerias, bars, taverns, night clubs, yogurt or ice cream stores/stands, coffee or donut shops, diners, refreshment stands, drive-ins, fast food restaurants, bagel shops, lunch counters, cafeterias, private and social clubs, sandwich shops, snack bars, hot dog carts, espresso stands, concession stands at a fair or a mall, sidewalk vendors or like places of business where food is served to individuals and is customarily sold for consumption shortly after it is sold.

(A) All food served at eating establishments is subject to tax unless the seller maintains adequate records for sale of food items that are generally not sold with eating utensils and do not otherwise qualify as prepared food, such as gallons of milk, loaves of bread, whole pies, a dozen donuts, wedding or birthday cakes, and packages of rolls or muffins. The infor-

[Title 458 WAC—p. 363]

mation shown on invoices, cash register receipts, or sales tickets must provide an adequate description of the food items sold to show that the sale was not of food items that are generally served with eating utensils or do not otherwise qualify as prepared food.

(B) Food sold by grocery stores, convenience stores, and department stores is generally not considered to be sold with eating utensils provided by the seller, even though eating utensils may be available to customers (e.g., napkins on the counter). For example, the sale of yogurt is not subject to retail sales tax even if napkins are available for the customer's use at the checkout stand. The food may be taxable if it is generally served with eating utensils (see part (ii) below). A grocery store is a business primarily engaged in the retail sale of a wide variety of food products. They generally contain the following departments: Dairy, baked goods, canned and dry goods, frozen foods, meats, fresh fruits and vegetables and household supplies.

Grocery stores, department stores, and convenience stores that have a separately identifiable eating establishment, such as a salad bar, sushi bar, or deli, are required to collect the tax on food items sold at that establishment unless the store maintains adequate records for sale of food items that are generally not sold with eating utensils or do not otherwise qualify as prepared food.

(ii) **Food that is generally sold with eating utensils.** Food that is generally sold with eating utensils, including plates, knives, forks, spoons, glasses, cups, napkins, or straws, is subject to tax, even if the seller does not *in all cases* actually provide the utensils. For example, sales from salad bars or "make your own sandwich" bars at a grocery store are taxable since salads and sandwiches are generally eaten with eating utensils (a fork for the salad and a napkin for the sandwich). "Make your own ice cream sundae" bars are taxable for the same reason. These items are taxable regardless of where they are sold. Cold cut platters, cheese platters, vegetable and fruit platters are taxable since the platter is an eating utensil.

(A) Box lunches are taxable since they are generally sold with eating utensils provided by the seller.

(B) If the eating utensil is provided by the manufacturer rather than by the seller, the sale of the food is not subject to retail sales tax. For example, a box of crackers and cheese that includes a spreader, is not subject to tax since the seller does not provide the spreader.

(c) **"Prepared food" examples.** The examples in this subsection identify a number of facts and then state a conclusion. These examples should only be used as a general guide. Similar determinations for other situations can be made only after a review of all facts and circumstances.

(i) If a carton of milk is purchased from a grocery store, the sale is exempt from retail sales tax because the milk, in this case, is an exempt food item. If an individual purchases a glass of milk from a restaurant, however, it is subject to retail sales tax because the seller provided an eating utensil, a glass.

(ii) A grocery store deli sells pasta salad that it prepares itself and potato salad that it purchases in bulk. The deli packages the pasta salad for sale, and repackages the potato salad the deli purchased in bulk into smaller containers. Sales of the potato salad are exempt from retail sales tax because "prepared food" does not include food that is merely repack-

aged. Sales of the pasta salad are subject to retail sales tax because the deli mixed or combined two or more food ingredients, doing something more than cutting or repackaging the food ingredients.

(iii) A grocery store meat department prepares ready-to-bake stuffed pork chops. The stuffed pork chops are not "prepared foods" and are not subject to tax even though the seller combined two or more ingredients because "prepared foods" does not include raw meat, or foods containing raw animal foods that require cooking by the consumer, to prevent food-borne illness.

(iv) **Pizza.** The taxability of pizza depends on who prepares it and in what form it is sold. The following examples explain the taxability of pizza in its various forms:

(A) Pizza prepared by the seller and sold in a heated state. Pizza sold by the slice and whole hot pizzas ready to eat, including delivered pizzas, are taxable because they are sold in a heated state. Additionally, the sale of the pizza is a taxable sale of a "prepared food" because the seller mixed or combined two or more food ingredients.

(B) Ready-to-bake pizzas prepared by the seller. Fresh or frozen ready-to-bake pizza prepared by the seller is taxable as a "prepared food" because the seller mixed or combined two or more food ingredients.

(C) Ready-to-bake pizzas prepared by a third party. Fresh or frozen ready-to-bake pizza procured by the seller from a third party or wholesaler is exempt from sales tax because it does not fall under the definition of "prepared food" as the seller did not mix or combine two or more food ingredients.

(d) **Exemption from taxation for certain meals (prepared food).** Notwithstanding subsection (4)(a) and (b), above, 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, and 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 are exempt from retail sales and use tax. There is a sales tax exemption for meal sales for certain fund-raising by nonprofit organizations. See WAC 458-20-169.

(5) **Taxability of soft drinks.** The exemption for "food and food ingredients" provided in RCW 82.08.0293 does not apply to "soft drinks."

(a) **"Soft drinks" defined.** "Soft drinks" are nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include:

(i) Beverages that contain milk or milk products, soy, rice, or similar milk substitutes; or

(ii) Beverages that contain greater than fifty percent vegetable or fruit juice by volume.

(b) **"Soft drink" examples.** The examples in this subsection identify a number of facts and then state a conclusion. These examples should only be used as a general guide. Similar determinations for other situations can be made only after a review of all facts and circumstances.

(i) The sale of bottled water, carbonated water, and flavored water, without natural or artificial sweeteners, is exempt from tax because they are defined as food in RCW 82.08.0293 and do not fall within the definition of "soft drinks." If these products are sold in a cup or glass, however,

the sale is a sale of a "prepared food" and is subject to sales tax. See subsection (4)(a)(i) above. Bottled water, carbonated water, and flavored water that contain natural or artificial sweeteners are subject to sales tax because they are "soft drinks."

(ii) Sports drinks that contain natural or artificial sweeteners are subject to sales tax because they fall within the definition of "soft drinks."

(iii) Fruit or vegetable juice that contains natural or artificial sweeteners and contains fifty percent or less by volume of fruit or vegetable juice is subject to sales tax because it falls within the definition of "soft drinks."

(iv) Bottled coffee or tea drinks with natural or artificial sweeteners, but without milk or milk products, are "soft drinks" and are subject to retail sales tax. Bottled coffee or tea drinks, with or without sweeteners that contain milk or milk products are not subject to sales tax because they do not fall within the definition of "soft drinks."

(6) **Taxability of dietary supplements.** The exemption for "food and food ingredients" provided in RCW 82.08.0293 does not apply to "dietary supplements."

(a) **"Dietary supplements" defined.** "Dietary supplement" means any product, other than tobacco, intended to supplement the diet and that:

(i) Contains one or more of the following dietary ingredients:

(A) A vitamin;

(B) A mineral;

(C) An herb or other botanical;

(D) An amino acid;

(E) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(F) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subsection;

(ii) Is intended for ingestion in tablet, capsule, powder, soft gel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(iii) Is required to be labeled as a dietary supplement, identifiable by the "Supplement Facts" box found on the label and as required under 21 Code of Federal Regulations (CFR) § 101.36, as amended or renumbered as of January 1, 2003.

(b) **"Dietary supplements" examples.** The examples in this subsection identify a number of facts and then state a conclusion. These examples should only be used as a general guide. Similar determinations for other situations can be made only after a review of all facts and circumstances.

(i) Nutrition products in bar or liquid form formulated to provide balanced nutrition as a sole source of nourishment are considered a food and not a dietary supplement and are therefore exempt from taxation.

(ii) A product sold for human consumption may have one or more of the following federal Food and Drug Administration labels, a "Nutrition Facts," a "Dietary Supplements Facts," or a "Drug Facts" label. If a product label contains a "Supplement Facts" and "Nutrition Facts" box, the product is a food and not subject to tax if it does not otherwise qualify as prepared food.

(7) **Is ice sold for human consumption taxed?** Ice sold for human consumption is considered a food or food ingredi-

ent and is therefore exempt from retail sales tax. "Ice sold for human consumption" means ice sold in cube, shaved, or crushed form and in quantities of ten pounds or less in weight per bag or container. Blocks of ice of any weight are not considered a food or food ingredient and are therefore taxable. See WAC 458-20-120 (Sales of ice) for additional guidance on the sale of ice.

(8) **Combination businesses.** The sale of "food and food ingredients" or "prepared food" sold in the same manner should receive the same tax treatment regardless of the establishment in which the item is sold. Persons operating a combination of two kinds of food sales businesses at one location must keep their accounting records and sales receipts segregated between taxable and tax exempt sales. Examples of combination businesses are a grocery store with a lunch counter or salad-deli bar, a bakery that sells tax-exempt baked goods and also sells baked goods with eating utensils or as part of a meal, and a gas station/convenience store.

(a) **Tax collecting responsibility.** Combination businesses must collect and report retail sales tax upon their charges for prepared foods. It is sufficient segregation for accounting purposes if cash registers or electronic checking machines are programmed to identify and separately tax food that is not tax exempt. If the combined food business' sales are commingled in their accounting records, all sales of food and food ingredients are subject to retail sales tax.

(b) **Combination business examples.** The examples in this subsection identify a number of facts and then state a conclusion. These examples should only be used as a general guide. Similar determinations for other situations can be made only after a review of all facts and circumstances.

(i) A consumer purchases his wedding cake, a donut, and a cup of coffee from Bakery. The sale of the wedding cake is not taxable if Bakery maintains adequate records for sale of food items that are generally not sold with eating utensils and do not otherwise qualify as prepared food. The sale of the donut is taxable because it is a food that is generally sold with eating utensils, a napkin. The sale of the coffee is taxable because it is served with an eating utensil, the cup, and because it is sold in a heated state by the seller.

(ii) Grocery Store has a deli section that prepares and sells deli foods and provides a salad bar where the customer can make a salad. A customer purchases a salad that he made from the salad bar and a bottle of apple juice that is one hundred percent fruit juice. The sale of a salad from the salad bar is taxable because it is generally sold with eating utensils (e.g., a plate, fork, knife, spoon, or napkin). The sale of the apple juice is exempt because it is food and not a "soft drink" because it is more than fifty percent fruit juice.

(iii) Gas Station has a convenience store that sells "food and food ingredients," "prepared food," and nonfood products. The sale of "food and food ingredients" is not taxable if Gas Station maintains adequate records for sale of food items that are generally not sold with eating utensils and do not otherwise qualify as prepared food.

(9) **How are packages of food items that contain taxable and nontaxable items taxed?** When a package consists of both food and nonfood products, such as a holiday or picnic basket containing beer and pretzels, cups or glasses containing food items, or soft drinks along with cheese and crackers, the food portion may be tax exempt if its price is

stated separately. If the price is a lump sum, the sales tax applies to the entire price.

Nonfood items given to buyers to promote food or food ingredient sales such as coffee sold in a decorative apothecary container or cheese sold in a serving dish are not taxable and are not deemed combination packages where it is clear that the nonfood item is simply a gift furnished as a sales inducement for the food. In the same way, promotional giveaways of food items as an inducement for sales of nonfood items are not exempt (e.g., the sale of crystal ware containing candy or nuts is fully subject to sales tax).

(10) **Purchases made under the Food Stamp Act of 1977.** RCW 82.08.0297 provides a retail sales tax exemption for the sale of eligible foods that are purchased with coupons issued only under the federal Food Stamp Act of 1977. The term "food coupon" does not include manufacturers' coupons, grocers' coupons, or other coupons issued by private parties. "Eligible foods" has the same meaning as established under federal law for the purposes of the Food Stamp Act of 1977. The term includes any food or food ingredient intended for human consumption except alcoholic beverages, tobacco, and hot foods or hot food ingredients prepared for immediate consumption. 7 U.S.C. § 2012(g), as amended or renumbered as of January 1, 2003. The term "coupon," as used in this subsection, means any coupon, stamp, type of certificate, authorization card, cash or check issued in lieu of a coupon, or access device, including an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food Stamp Act of 1977. 7 CFR § 271.2, as amended or renumbered as of January 1, 2003.

(a) **Purchasing nonfood products with food coupons.** Some nonfood products may be exempt if purchased with food coupons. For example, seeds and growing plants are considered "nonfood products," even though they may be sold at grocery stores and can be ingested by humans. However, seeds and plants to grow foods for the personal consumption of eligible households are "eligible foods" under the Food Stamp Act of 1977. 7 CFR § 271.2, as amended or renumbered as of January 1, 2003. Therefore, in this limited circumstance, the sale of seeds and plants is tax exempt.

When both coupons and cash (or check) are used to make purchases, the coupons must be applied first to "eligible foods" which are not otherwise tax exempt "food or food ingredients." For example, soft drinks and garden seeds are "eligible foods" under the food stamp program but are not tax exempt under RCW 82.08.0293. The intent is always to apply the coupons and cash in such a way as to provide the greatest possible amount of retail sales tax exemption under the law.

(b) **Food coupon examples.** The examples in this subsection identify a number of facts and then state a conclusion. These examples should only be used as a general guide. Similar determinations for other situations can be made only after a review of all facts and circumstances. The following examples demonstrate how the tax exemption applies in cases where a purchase of ten dollars each is made for meat (a food ingredient), soda pop (an eligible food), and soap (a nonfood item) using both coupons and cash.

(i) The customer pays with fifteen dollars in coupons and fifteen dollars in cash. The coupons are applied first to the soda pop (ten dollars worth) and then to the meat (five dollars worth). The cash applies to the rest of the meat and the soap.

Retail sales tax is due on the ten-dollar purchase of soap because soap is not an "eligible food" under the food stamp program.

(ii) A customer pays the thirty-dollar selling price with ten dollars worth of coupons and twenty dollars cash. The coupons are applied to the soda pop, making the soda pop exempt. The cash is applied towards the purchase of the meat and soap. The result is that retail sales tax is due only on the ten-dollar purchase of soap.

(iii) The customer pays with five dollars worth of coupons and twenty-five dollars in cash. Again, the coupons are first applied towards the soda pop, leaving five dollars of the value to be purchased with cash. Retail sales tax is due on fifteen dollars, the ten-dollar purchase of soap and five dollars worth of soda pop.

(11) **How are food vending van sales taxed?** Food and food ingredient sales from vehicular vending vans are taxable or exempt of retail sales tax in the same manner as food sales at grocery stores. Thus, sales of candy bars, gum, or any pre-wrapped food and food ingredients which are prepackaged by a manufacturer or preparer other than the person operating the van are exempt from retail sales tax. Sales of any prepared food items or soft drinks, including, but not limited to, hot-dogs, sandwiches, soups, and hot or cold beverages are subject to retail sales tax. See definition of "prepared food" in subsection (4)(a), above.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). 03-24-031, § 458-20-244, filed 11/25/03, effective 1/1/04. Statutory Authority: RCW 82.32.300. 88-15-066 (Order 88-4), § 458-20-244, filed 7/19/88; 87-19-139 (Order 87-6), § 458-20-244, filed 9/22/87; 86-21-085 (Order ET 86-18), § 458-20-244, filed 10/17/86; 86-02-039 (Order ET 85-8), § 458-20-244, filed 12/31/85; 83-17-099 (Order ET 83-6), § 458-20-244, filed 8/23/83; 82-16-061 (Order ET 82-7), § 458-20-244, filed 7/30/82. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-05-041 (Order ET 78-1), § 458-20-244 (Rule 244), filed 4/21/78, effective 7/1/78.]

**WAC 458-20-245 Telephone business, telephone service.** Under the provisions of various sections of chapter 3, Laws of 1983 2nd Ex. Sess., the retail sales tax is extended to "telephone service." The effective date is July 1, 1983 and the tax applies to all sales of "telephone service" billed on or after that date, whether or not such service was rendered before that date.

Persons engaged in the "telephone business" or rendering "telephone service" are taxable under the retailing of wholesaling classification of the business and occupation tax, whichever is applicable, on total gross revenues, as described herein. Such persons who are taxable under retailing must also collect retail sales tax from consumers, subject to certain exemptions explained more fully herein.

### Definitions

As used herein: The term "telephone service" includes competitive telephone service and network telephone service.

The term "telephone business" means the business of providing network telephone service and includes cooperative or farmers line telephone companies or associations operating an exchange.

The term "competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as installation, repair, or maintenance services, if the

equipment or apparatus is of a type which can be provided by persons that are not subject to regulation as telephone companies under Title 80.

The term "network telephone service" means the providing by any person of access to a local telephone network, switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, over a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" includes interstate service, including toll service, originating from or received on telecommunications equipment or apparatus in this state if the charge for the service is billed to a person in this state. "Network telephone service" does not include the providing of competitive telephone service, the providing of cable television service, nor the providing of broadcast services by radio or television stations.

The term "residential customer" means an individual subscribing to a residential class of telephone service.

The term "toll service" means the charge for services outside the local telephone network except customer access line charges for access to a toll calling network.

The term "telephone company" means a person engaged in the telephone business or rendering telephone service.

### **Business and Occupation Tax**

**Retailing and wholesaling.** Persons making retail sales of telephone service to consumers are taxable upon the gross proceeds of sales under the retailing classification. Persons making sales of telephone services for resale in the regular course of business are taxable upon the gross proceeds of sales under the wholesaling classification. The tax shall apply to the gross income from all sales of competitive telephone service and network telephone service, as described more fully below.

For purposes of applying the business and occupation tax to telephone service, a sale takes place in Washington when a call originates from or is received on any telephone or other telecommunications equipment, instrument, or apparatus in Washington and the cost for the telephone service is charged to that equipment, instrument, or apparatus, regardless of where the actual billing invoice is sent.

The business and occupation tax shall apply to the gross proceeds of sales of competitive telephone service to customers. The tax shall be measured by total gross billings to such customers. The business and occupation tax shall also apply to the gross proceeds of sales of network telephone service, other than interstate and intrastate toll service, measured by total gross billings to customers. The tax as applied to interstate and intrastate service, including toll service, shall be determined under the apportionment guidelines set forth in the following paragraph.

With respect to interstate and intrastate toll service, the business and occupation tax shall apply to the income received from the interstate or intrastate division of revenue pool. The income subject to tax shall include amounts received for expenses incurred in furnishing the interstate or intrastate services plus any amounts received as return. Persons who are not members of the interstate or intrastate division of revenue pool but who receive shared interstate or intr-

astate revenues through a member of the division of revenue pool, are liable for business and occupation tax on the income received.

Persons engaged in the telephone business or rendering telephone service shall report on the combined excise tax return their total gross income received from billings to customers under column 2 of the appropriate classification line on the return (wholesaling or retailing). An adjustment may be made under column 3 of the excise tax return for revenues received from providing interstate and intrastate toll service, as described in the previous paragraph. On the reverse side of the return it should be explained that such adjustment was the result of income received from the interstate or intrastate division of revenue pool. The reported gross income under column 2 shall be the same under the retailing business and occupation tax and retail sales tax classifications, with appropriate adjustments and deductions noted under column 3.

**Service.** Persons engaged in the telephone business or rendering telephone service are taxable under the service and other activities classification on their income from services which are not included within the definition of the terms "sale at retail" in RCW 82.04.050 or "competitive telephone service" and "network telephone service," as defined herein. Included under this classification are, among others, gross income from the sale of advertising in telephone directories, gross income from charges made for processing NSF checks, and any other miscellaneous income.

### **Retail Sales Tax**

The retail sales tax applies to all sales of competitive telephone service provided to both residential and business (nonresidential) customers. The retail sales tax also applies to all sales of network telephone service provided to business (nonresidential) customers.

The retail sales tax applies upon sales to a telephone company of all tangible personal property used as a consumer in providing telephone service. A consumer is liable for retail sales tax on all telephone service, as described herein, in situations where the tax was not paid to a telephone company as a result of a billing or other invoice rendered by that company.

The retail sales tax must be collected and accounted for in every case where retailing business and occupation tax is due as outlined herein, except for the following. The retail sales tax shall not apply to sales of network telephone service, other than toll service, provided to residential customers nor to sales of network telephone service paid for by inserting coins in coin-operated telephones.

The retail sales tax does not apply to sales of network telephone service, other than toll service, provided to residential customers.

The retail sales tax does not apply to sales of network telephone service which is paid for by inserting coins in coin-operated telephones. However, the retail sales tax does apply if the network telephone service is provided through a coin-operated telephone, the service originates from or is received on equipment in this state, and the charge for the service is billed to a telephone or other telecommunications equipment, instrument, or apparatus which is located in Washington.

The sales tax does not apply to network telephone service which is merely billed to a telephone or other telecommunications equipment, instrument, or apparatus whose situs is in Washington if the service neither originated from nor was received on equipment in this state.

### Use Tax

The use tax applies to telephone or other telecommunications equipment, instrument, or apparatus purchased at retail and upon which the sales tax has not been paid. (See WAC 458-20-178.) A telephone company is liable for use tax on all tangible personal property purchased at retail and upon which the sales tax has not been paid. A telephone company is not liable for use tax on its own use as a consumer of its own network telephone service.

### Special Situations

Persons making sales of telephone service for resale in the regular course of business must follow the provisions of WAC 458-20-102 concerning resale certificates.

The local retail sales tax applies to sales of telephone services as described herein. (See WAC 458-20-145.)

Persons engaged in telephone business or rendering telephone service are not taxable under the public utility tax, except with respect to gross income from engaging in telegraph or any other public service business as defined in WAC 458-20-179.

All retail telephone services including sales of equipment are taxable at the same state retail sales tax rate of 6.5 percent, regardless that such sales may be made in a border county. (See WAC 458-20-237.)

[Statutory Authority: RCW 82.32.300, 83-17-099 (Order ET 83-6), § 458-20-245, filed 8/23/83.]

**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 rela-

tionship 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, consumer 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 458-20-247 Trade-ins, selling price, sellers' tax measures.** (1) **Introduction.** The value of "trade-in property of like kind" is excluded from the definitions of "selling price" in RCW 82.08.010 and the definition of "value of the article used" in RCW 82.12.010. This rule explains how and when the retail sales or use tax exclusions apply and the recordkeeping requirements needed to document the transactions. The retail sales and use tax exemptions provided for core deposits and credits by RCW 82.08.036 and 82.12.038 are discussed in WAC 458-20-250.

Unless otherwise stated, "tax," "taxable," and "nontaxable," as used in this rule, refer to retail sales or use tax only. The terms "trade-in," "traded in," and "property traded in" have their ordinary and common meaning. The terms refer to property applied, in whole or in part, toward the selling price of property of like kind. Readers are advised that the fact that sales and purchase transactions might be characterized as a "like kind" under Section 1031 of the Internal Revenue Code does not control for the purpose of the trade-in exclusion in RCW 82.08.010 and 82.12.010.

(2) **General nature of the trade-in exclusion.** RCW 82.08.010 and 82.12.010 define the terms "selling price" and "value of the article used," in pertinent part, to mean the consideration, whether money, credits, rights, or other property except trade-in property of like kind, expressed in terms of money paid or delivered by a buyer to a seller. As a result, the buyer of tangible personal property is entitled to reduce the

measure of retail sales or use tax if (a) the buyer delivers the trade-in property to the seller, (b) the trade-in property is delivered as consideration for the purchase, and (c) the property traded in is "property of a like kind."

(a) The trade-in exclusion applies to all trade-in property of like kind delivered by a buyer to a seller as consideration for a purchase. Thus, if a buyer trades in two motor vehicles when purchasing one motor vehicle, the buyer is entitled to a reduction in the measure of tax based on the value of both trade-in vehicles.

(b) The trade-in exclusion is limited to retail sales and use taxes. There is no comparable exclusion for business and occupation (B&O) tax. (See definition of "gross proceeds of sales" in RCW 82.04.070 and of "value proceeding or accruing" in RCW 82.04.090.) Sales tax need not have been paid on the item being traded in to be eligible for the trade-in exclusion.

(3) **Buyer to deliver trade-in property to seller.** The buyer must deliver trade-in property to the "seller."

(a) RCW 82.08.010 defines "seller" as "every person . . . making sales at retail or retail sales to a buyer or consumer, whether as agent, broker, or principal." There is no requirement that the seller be the owner of the property being sold to the buyer. RCW 82.08.010 anticipates and includes situations where a "seller" is selling property that he or she does not actually own, such as in consignment sales transactions.

For example, Broker enters into a consignment sale contract with Susan Smith to sell her Boat A. John Doe contacts Broker expressing interest in purchasing Boat A, provided his Boat B is accepted as a trade-in on the purchase. John Doe executes a purchase agreement with Broker which specifically identifies both Boat A being purchased and the trade-in. Broker accepts delivery and ownership of Boat B and places Boat B into Broker's own inventory. In turn Broker arranges delivery of the craft purchased to John. The buyer (John) has delivered the trade-in property (Boat B) to the seller (Broker). There is no requirement that Broker purchase Boat A from Susan (thereby becoming the owner) prior to selling Boat A to John and accepting Boat B as trade-in property because, as a broker, Broker is a seller under RCW 82.08.010.

(b) The trade-in exclusion does not apply to transactions where a seller transfers tangible personal property in or out of its own inventory in exchange for other property it also owns.

(4) **Trade-in as consideration.** Property traded in must be consideration delivered by the buyer to the seller. The sales documents must identify the tangible personal property being purchased and the trade-in property being delivered to the seller. This does not require simultaneous transfers of the property being traded in and the property being purchased, but it does require that the delivery of the trade-in and the purchase be components of a single transaction. Sales documents, executed not later than the date the trade-in property is delivered to the seller, must identify the property purchased and the trade-in property as more fully explained in subsection (7) below.

The following examples identify a number of facts and then state conclusions with respect to the trade-in exclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(a) Jane Doe offers to purchase Sailboat A from Dealer, if Dealer accepts her Sailboat B as a trade-in on the purchase. Dealer declines to accept ownership of Jane's Sailboat B, but instead offers to sell Sailboat B on a consignment basis with the net proceeds to be applied toward the purchase if Sailboat B is sold within three months. Jane accepts and Sailboat B is sold within the three-month period, and the net proceeds are applied to Jane's purchase of Sailboat A.

Jane is not entitled to the trade-in exclusion. An agreement to sell property on consignment does not constitute consideration "paid or delivered by a buyer to a seller," even if the subsequent proceeds are applied to the purchase price.

(b) Sally Jones decides to upgrade from her existing motor home to a new, larger motor home. The salesperson at a local RV dealership explains that while the dealership does not currently have on hand a motor home meeting Sally's needs, it can order one for her from the manufacturer. The salesperson also explains that if Sally trades in her motor home at the time she enters into the purchase contract, the dealership will accept the motor home as a down payment toward the purchase of the new motor home. Sally signs the purchase contract, the dealership orders the new motor home, and Sally delivers her motor home to the RV dealers (who accept ownership thereof). Sally's new motor home is delivered to her eight months later.

Sally is entitled to the trade-in exclusion because the motor home was delivered to the RV dealership as consideration paid toward her purchase of the new motor home.

(c) Mr. B and Coastal Brokers enter into a consignment sales agreement. Under the terms of this agreement, Coastal Brokers will sell Mr. B's sailboat on a consignment basis and at the time of sale place the proceeds due Mr. B into a trust account for use toward a possible purchase of a yacht by Mr. B. Mr. B's sailboat is sold and the proceeds due to Mr. B placed in the trust account. Mr. B subsequently purchases a yacht from Coastal Brokers, and the trust account proceeds are applied to the purchase price of the yacht.

Mr. B is not entitled to the trade-in exclusion. The delivery of Mr. B's sailboat to Coastal Brokers and Mr. B's purchase of the yacht are not components of a single transaction. In addition, Mr. B's delivery of his sailboat for consignment sale by Coastal Brokers does not constitute consideration "paid or delivered by a buyer to a seller," even if proceeds from the sale are applied to the purchase of the yacht.

(d) John Smith agrees to purchase Travel Trailer A from Dealer if Dealer accepts John's Travel Trailer B as a trade-in on the purchase. Dealer accepts ownership of Travel Trailer B at an agreed-upon value, on the condition that John pay Dealer a monthly fee to reimburse Dealer for financing costs associated with Travel Trailer B. This fee is to be paid for a period of four months or until Dealer sells Travel Trailer B, whichever is shorter. John has no further responsibility with respect to Travel Trailer B after this period.

John is entitled to the trade-in exclusion because he delivered Travel Trailer B to Dealer as consideration paid toward Travel Trailer A. The fees John paid to reimburse Dealer for financing costs associated with the trade-in property do not change the nature of the transaction, though for the purposes of the trade-in exclusion they do reduce the originally agreed-upon value of the trade-in property.

(5) **Property of like kind.** The term "property of like kind" means articles of tangible property of the same generic classification. It refers to the class and kind of property, not to its grade or quality. The term includes all property within a general classification rather than within a specific category in the classification. Thus, as examples, it means furniture for furniture, motor vehicles for motor vehicles, licensed recreational land vehicles for licensed recreational land vehicles, appliances for appliances, auto parts for auto parts, and audio/video equipment for audio/video equipment. These general classifications are determined by the nature of the property and its function or use. It may be that some kinds of property fit within more than one general classification. For example, a motor home is both a motor vehicle and a licensed recreational land vehicle. Thus, for purposes of the trade-in exclusion, a motor home may be taken as a trade-in on a travel trailer, truck, camper, or a truck with camper attached, and vice versa. Similarly, a travel trailer may be taken as trade-in on a motor home even though a travel trailer is not a motor vehicle; both are licensed recreational land vehicles. Conversely, a utility trailer may not be taken as trade-in on a travel trailer because a utility trailer is neither a motor vehicle nor a licensed recreational land vehicle. Likewise a car may not be taken as trade-in on a camper and vice versa.

It is not required that a car be traded in exclusively on another car in order to get the trade-in reduction of the tax measure. It could, as well, be traded in as part payment for a truck, motorcycle, motor home, or any other qualifying motor vehicle. Similarly, a sofa for a recliner chair, a pistol for a rifle, a sailboat for a motorboat, or a gold chain for a wrist watch are the kinds of generic trade-in transfers which would qualify. The exclusion of the value of property traded in, however, does not include such things as a motorcycle for a boat, a diamond ring for a television set, a battery for lumber, computer hardware for computer software, or farm machinery (including tractors and self-propelled combines) for a car.

(6) **Value of property traded in.** The seller and buyer establish the value of property traded in. The parties may not overstate the value of the trade-in property in order to artificially lower the amount of retail sales or use tax due. Absent proof of a higher value, the property traded in must be determined by the fair market value of similar property of like quality, quantity, and age, sold or traded under comparable conditions.

(7) **Trade-in value exceeds selling price.** If the trade-in value exceeds the selling price of the item sold, the selling price of the item being purchased should be used as the trade-in value. For example, a Washington resident purchases a car with a value of \$5,000 and trades in a car with a fair market value of \$7,000. The net due to the purchaser is \$2,000. When the seller completes the excise tax return, he or she should report a trade-in value of \$5,000 and not \$7,000 because the trade-in value is capped at selling price of the item being purchased.

(8) **Recordkeeping.** RCW 82.32.070 requires every person liable for any tax to keep and preserve records from which tax liability can be determined. To substantiate a claim for the trade-in exclusion, the sales agreement and/or invoice must identify both the property being purchased and the trade-in property. Such identification includes the model number, serial number, year of manufacture, and other infor-

mation as appropriate. The sales agreement and/or invoice must also specify the selling price and the value of the trade-in property.

A copy of the sales agreement or invoice must be retained as a part of the seller's sales records. The following is an example of an invoice providing the necessary information regarding a sales transaction with trade-in:

Sold: 2000 Mountain Home 8.5 ft. Camper Model MH-20DT, Serial No. 200010	\$9,075
Less "trade-in" - 1983 Meadowlark 8 ft. Camper Model No. ML883, Serial No. 0001	\$2,000

(9) **Encumbered property traded in.** A buyer is entitled to full value for trade-in property, which is otherwise encumbered by a security interest or the subject of a conditional sale, or retail installment sales contract.

(10) **Casual or isolated sales.** The retail sales tax applies to all casual or isolated retail sales made by any person who is required to be registered and reporting tax to the state. The trade-in exclusion applies in the case of a casual or isolated sale, provided the statutory requirements are satisfied. The recordkeeping requirements explained in subsection (7) apply to casual or isolated sales.

Persons who are not engaged in business activity, e.g., private persons, are not required to be registered and are not required to collect sales tax on their casual or isolated sales. RCW 82.08.0251 and WAC 458-20-106 (Casual or isolated sales—Business reorganizations). The use of property acquired through casual sales is subject to use tax. See RCW 82.12.0251 and WAC 458-20-178.

(11) **Trade-ins as sales.** RCW 82.04.040 defines the term "sale" in pertinent part to mean "any transfer of the ownership of, title to, or possession of property for a valuable consideration." When property is traded in, ownership in that property is transferred. As a result, under the law a buyer delivering trade-in property to a seller is making a sale of the trade-in property.

(a) If the buyer is not in the business of selling the type of property being traded in the buyer incurs no B&O tax liability. (See WAC 458-20-106 on casual or isolated sales.)

(b) On occasions where the buyer is in the business of selling the type of property being traded in, the buyer incurs a B&O tax liability.

For example, Leasing purchases a new car from Dealer. This car will be part of Leasing's inventory of cars that it rents to customers. Leasing delivers a used car out of its inventory to Dealer as a part of the consideration paid for the new car. The trade-in of the used car by Leasing is considered a wholesale sale to Dealer. This is not a casual or isolated sale because Leasing is in the business of selling cars in the form of rentals.

(c) In most cases, a buyer delivers trade-in property to a seller who is in the business of reselling trade-in property (e.g., a buyer trading in an automobile to a new car dealer). The buyer in these cases has no responsibility to collect retail sales tax.

(12) **Retail services.** The exclusion of the value of property traded in from the selling price tax measure applies only to sales involving tangible personal property traded in for tangible property sold. It does not apply to any transactions

involving services that have been statutorily included as "sales at retail" (see RCW 82.04.050). For example, a construction contractor may not accept part payment in tangible property to thereby reduce the sales tax measure of the construction contract selling price. Similarly, a seller of tangible personal property may not accept retail services as part payment to thereby reduce the selling price tax measure. Such transfers neither qualify as trade-in transfers of tangible property nor "in-kind" transfers.

(13) **Trade-in for rental property.** Under RCW 82.04.050, rentals or leases of tangible personal property are "retail sales." The "selling price" is also the measure of tax for such rentals and leases. Where tangible property is traded in as part payment for the rental or lease of property of like kind (e.g., a used computer against the rental of a new one), the sales tax will apply to all payments after the value of the property traded in has been depleted or consumed and the lessor of the property actually begins making charges for the lease or rental of tangible property. Refer to WAC 458-20-211 (Leases or rentals of tangible personal property, bailments) for more information regarding the tax-reporting responsibilities with respect to lease or rental transactions.

A lessee must first purchase leased property before trading it in toward the purchase/lease of other property to be entitled to the trade-in exclusion. A buyer cannot satisfy the statutory requirement that the trade-in property be delivered to the seller as a part of the consideration for the purchased property if the buyer does not have ownership of and the right to sell the property being traded in. For example, Jane Doe leases Auto A from Leasing Company. Jane decides to lease a newer Auto B from Leasing Company. Jane exercises her option to purchase Auto A, and then delivers Auto A as a trade-in towards the lease of Auto B. Jane is entitled to the trade-in exclusion. By delivering her ownership of Auto A to Leasing Company, Jane has satisfied the statutory requirement that she as the buyer deliver trade-in property to the seller as a part of the consideration paid for Auto B.

(14) **Real property transfers.** Because the trade-in exclusion is limited to tangible personal property, the trade-in exclusion does not apply to sales of real property or transactions where real property is traded in for tangible personal property.

(15) **Use tax.** RCW 82.12.010 defines the measure of the use tax as the "value of the article used." As explained in subsection (2) of this rule, the statutory definition excludes "trade-in property of like-kind." Therefore, the measure of the use tax for tangible property upon which no retail sales tax has been paid (e.g., if it were purchased in another state) is the same as the measure of the retail sales tax. In such cases the value of the property traded in should be excluded from the use tax measure.

The consumer-user, or any seller who has a duty to collect this state's use tax, must retain the sales records reflecting property "traded in," as explained in subsection (7) of this rule.

[Statutory Authority: RCW 82.32.300. 01-08-003, § 458-20-247, filed 3/21/01, effective 4/21/01; 86-04-024 (Order 86-2), § 458-20-247, filed 1/28/86; 85-02-006 (Order ET 84-6), § 458-20-247, filed 12/21/84.]

**WAC 458-20-248 Sales of precious metal bullion and monetized bullion.** Effective July 1, 1985, amounts derived from sales of precious metal bullion and monetized bullion as defined herein, are not subject to business and occupation tax under either the wholesaling or retailing classification or to retail sales tax. Statutory law expressly excludes such sales from the definitions of the terms, "wholesale sale," "sale at wholesale," "retail sale," and "sale at retail."

The term, "precious metal bullion" is statutorily defined to mean any precious metal which has been put through a process of smelting or refining, including, but not limited to, gold, silver, platinum, rhodium, and palladium, and which is in such state or condition that its value depends upon its contents and not upon its form.

The term, "monetized bullion" means coin or other forms of money manufactured from gold, silver, or other metals and heretofore, now, or hereafter used as a medium of exchange under the laws of this state, the United States, or any foreign nation, but does not include coins or money sold to be manufactured into jewelry or works of art.

Thus, sales of processed or refined precious metal valued solely upon the content thereof, whatever its form, are not subject to tax in this state. This includes processed nuggets, bars, sticks, dust, and other processed forms of precious metal. For example, sales of gold or silver in raw, refined forms to dentists, laboratories, jewelers, and other persons, for their own consumption or for resale are not taxable. However, sales of precious metal which has been manufactured or further processed into any form which determines or adds to the value thereof are fully taxable. For example, sales of jewelry items, medallions, artworks, and other items, the value of which is dependent upon more than the mere content of precious metal therein, are subject to wholesaling or retailing business and occupation tax, whichever is applicable, and retail sales tax as appropriate.

Sales of metal money, in coined or other form, which is recognized as a medium of exchange in the financial marketplace, are not taxable. However, sales of coin or money, whether or not recognized as a medium of exchange, to jewelers or other persons for the purpose of manufacturing jewelry or artworks therefrom are fully taxable. For example, sales of coins for necklaces or to be used as buttons or in paintings or painting frames, etc., are taxable.

It is presumed that all sales of coin and metal money are entitled to tax exemption: Provided, That in order to be exempt of tax persons who knowingly sell such things to buyers who are regularly engaged in the business of manufacturing jewelry or works of art must take a written, signed, and dated statement from such buyers that the coins or metal money are not being purchased for use in manufacturing jewelry or works of art. Artistic or cultural organizations which purchase such things are exempt of retail sales tax as provided in WAC 458-20-249.

The tax exclusions explained herein apply equally to sales of precious metal bullion or monetized bullion transferred through documents of ownership, certificates, confirmation slips, or other indicia of ownership.

#### **Taxable Commissions**

Amounts received as commissions upon sales of precious metals by dealers, brokers, and other selling and/or

buying agents who sell or buy precious metal bullion or monetized bullion for the accounts of customers are subject to the service and other activities classification of business and occupation tax. The amount of any shared commission or fee paid to other dealers or commissioned agents associated in such transactions are deductible from the measure of this tax. However, no deduction is allowed for any of the dealer's or commissioned agent's own costs of doing business, including salaries or commissions paid to their own salespersons or other employees. Similarly, persons who receive any part of shared commissions derived from having been associated in transactions for the purchase or sale of precious metal or monetized bullion for the account of others, are themselves subject to service business tax measured by such amounts received.

#### **Use Tax**

The use tax does not apply upon the use of precious metal bullion or monetized bullion in this state under such circumstances that the sale of such bullion to the user would not be taxable if made in this state as explained earlier herein. In all other cases the use tax applies upon the first use by a consumer of precious metals in this state if retail sales tax has not been paid. See WAC 458-20-178.

[Statutory Authority: RCW 82.32.300, 86-09-016 (Order ET 86-6), § 458-20-248, filed 4/9/86.]

#### **WAC 458-20-249 Artistic or cultural organizations.**

For purposes of business and occupation tax deduction and certain retail sales tax and use tax exemptions, RCW 82.04.-4328 expressly defines the term "artistic or cultural organizations" in pertinent part as follows:

". . . the term "artistic or cultural organization" means an organization which is organized and operated exclusively for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs, . . . for viewing or attendance by the general public. The organization must be a not-for-profit corporation under chapter 24.03 RCW and managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or by a corporation sole under chapter 24.12 RCW. In addition, to qualify for deduction or exemption from taxation . . . the corporation shall satisfy the following conditions:

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

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

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

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

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

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

(g) The director of revenue shall have access to its books in order to determine whether the corporation is exempt from taxes.

(2) The term "artistic or cultural exhibitions, presentations, or performances or cultural or art education programs" includes and is limited to:

(a) An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;

(b) A musical or dramatic performance or series of performances; or

(c) An educational seminar or program, or series of such programs, offered by the organization to the general public on an artistic, cultural, or historical subject."

Effective July 1, 1985, artistic or cultural organizations, as defined herein, are not subject to business and occupation tax upon amounts derived from conducting any business activities whatever. Formerly, a business and occupation tax deduction was available only for amounts received by such organizations from the United States and its instrumentalities or the state and local government entities (RCW 82.04.4322); certain manufacturing activities (RCW 82.04.4324); and tuition fees for artistic or cultural education programs (RCW 82.04.4326). Under current law, however, the deduction is unrestricted and applies to all activities conducted by such qualifying organizations.

### Retail Sales Tax

Artistic or cultural organizations which make any charges for goods or services which are included in the definition of "retail sale" under RCW 82.04.050, must collect and report the retail sales tax thereon. No sales tax exemption is available for sales by such organizations.

Such organizations are exempt of paying retail sales tax upon their purchases of certain "objects" for the purpose of exhibition or presentation to the general public if the objects are:

- (1) Objects of art;
- (2) Objects of cultural value;
- (3) Objects to be used in the creation of a work of art, other than tools; or
- (4) Objects to be used in displaying art objects or presenting artistic or cultural exhibitions or performances. (RCW 82.08.031)

The term "objects" is deemed to mean items of tangible personal property. It does not include professional or commercial services rendered by third parties. Where, however, certain services are performed which are merely incidental to sales of tangible personal property, e.g., designing playbills or altering stage curtains which are then sold to qualifying organizations, the total charge therefore will be exempt.

Charges for materials, equipment, and services related to repair, maintenance, or replacement of buildings or structures are not exempt. Thus, e.g., theater seats, aisle carpeting, air conditioning systems, painting of interior or exterior of buildings, and the like are not tax exempt "objects."

Under Washington law exempt sales include rentals of exempt objects.

Examples of objects which may be purchased by qualifying artistic or cultural organizations without payment of retail sales tax are:

a) Tickets, programs, signs, posters, fliers, and playbills printed for particular displays or performances; scenery, costumes, stage, props, scrims, and materials for their construction;

b) Stage lights, filters, control panels, color medium, stage drapes, sets, set paint, gallery exhibition materials, risers, display platforms, and materials for their construction;

c) Sheet music, recordings, musical instruments and musical supplies for the staging of displays and performances;

d) Movie projectors, films, sound systems, video and sound equipment and supplies and computer hardware and standard, prewritten software directly used exclusively in the staging of performances or actual display of art objects.

Examples of objects which may be purchased by qualifying artistic or cultural organizations, upon which the retail sales tax must be paid are:

a) Supplies and equipment for clerical support, including bulk tickets for general use, stationery, typewriters, copy machines, and general office supplies;

b) Theater seats, lobby furniture, carpeting, vending machines, and general supplies for audience or patrons' convenience and use;

c) Shipping and packing materials, crates, boxes, dunnage, labels, tags, and container-related items for transfer or storage of exempt objects;

d) Sewing machines and other durable equipment used to prepare, repair, and maintain exempt objects (such items are deemed to be "tools," rather than exempt objects);

e) Theater or building lighting and utility fixtures and systems, and computer hardware and software not directly and exclusively used in staging performances or actually displaying art objects.

Qualified artistic and cultural organizations may obtain the tax exemptions by providing their suppliers with a written statement in essentially the following form:

I, (buyer's name), hereby confirm that the items purchased on (date of purchase), without payment of retail sales tax, from (seller's name) are all objects of art or cultural value or to be used in the creation of such objects or in displaying art objects or presenting artistic or cultural exhibitions or performances.

(signature of authorized purchaser)  
for: (name of organization)  
(registration no. of organization)

Vendors who accept such certifications in good faith will be excused from the responsibility of collecting and remitting sales tax on such sales.

### Use Tax

Under RCW 82.12.031, the use tax does not apply to the use of any objects for the purposes explained earlier in this rule, and upon which the retail sales tax would be exempt if the objects were purchased in this state. The use tax applies upon all other items of tangible personal property used by artistic or cultural organizations upon which retail sales tax has not been paid.

[Statutory Authority: RCW 82.32.300, 86-07-006 (Order ET 86-4), § 458-20-249, filed 3/6/86.]

**WAC 458-20-250 Refuse-solid waste collection business—Core deposits and credits, battery core charges, and tires.** [(1)] Introduction. This section administers the taxes on solid waste collection and the special provisions for core deposits and credits, battery core charges, and tires.

(a) Chapter 282, Laws of 1986 established the specific business activity of the "refuse collection business" and imposed a "refuse collection tax" similar in nature to retail sales tax. The burden of this tax is upon the ultimate consumer of the refuse collection service. The tax rate is three and six tenths percent (.036), and the tax measure is the total consideration charged to the consumer-customer for the services. Chapter 431, Laws of 1989 changes the name of this tax from a refuse collection tax to a solid waste collection tax.

(b) Chapter 431, Laws of 1989, imposes, effective July 1, 1989, an additional tax of 1 percent of the consideration charged for the service. Generally, the tax is imposed in addition to and is similar to the refuse collection tax enacted in 1986. However, unlike the refuse collection tax, the measure of the new 1 percent tax is limited to the charges for the actual solid waste collection services that are provided and a maximum tax measure is provided for residential collection service charges.

(c) For ease of administration and accounting, the 3.6 percent tax shall retain its former name and be called for purposes of this section the "refuse collection tax," and, the tax imposed in 1989, the 1 percent tax, shall be called the "solid waste collection tax."

(2) Neither the 1986 law or the 1989 law expressly establishes a specific business tax classification for the gross receipts of persons engaged in the refuse-solid waste collection business. Thus, because of the provisions of RCW 82.04.290, such persons are subject to the service or other activities classification of business and occupation tax.

(3) For purposes of this section the following terms will apply.

(a) "Refuse collection business" - "solid waste collection business" means every person who receives waste for transfer, storage, or disposal including but not limited to all collection services, public or private dumps, transfer stations, and similar operations.

(b) "Person" shall have the meaning given in RCW 82.04.030 or any later, superseding section.

(c) "Waste"- "solid waste" means garbage, trash, rubbish, or other material discarded as worthless or not economically viable for further use. The term does not include hazardous or toxic waste nor does it include material collected primarily for recycling or salvage.

(d) "Taxpayer" means that person upon whom the refuse-solid waste collection tax is imposed, that is, the private or commercial consumer-customer.

(e) "Department" means the department of revenue.

(f) "Consideration charged for the services" means the total amount billed to a taxpayer as compensation for refuse-solid waste collection services, without any deduction for any costs of doing business or any other expense whatsoever, paid or accrued, provided, that the term does not include any amount included in the charges for materials collected primarily for recycling, nor the refuse-solid waste collection tax itself whether separately itemized or not, nor any similar utility taxes or consumer taxes, imposed by the state or any political subdivision thereof or any municipal corporation, directly upon the consumer-taxpayer and separately itemized on the taxpayer's billing. Also, the term does not include late charges or penalties which may be imposed for nontimely payment by taxpayers.

(4) Refuse and solid waste collection tax measure.

(a) The refuse collection tax applies to the consideration paid for refuse-solid waste collection services. The rate of the tax is 3.6 percent of the amount charged for garbage collection and disposal services.

(b) For purposes of the solid waste collection tax, the following terms will apply.

(i) "Standby," "availability," or "base" charges mean those charges to a residential customer who receives no actual garbage pickup service.

(ii) "Residential collection service" has its ordinary meaning and is per can garbage collection service other than commercial or industrial service. For purposes of this section, a residential collection service is that service provided for each housing unit. In the case of multiple housing units in a single structure such as apartments, condominiums, or duplexes, or, an association of housing units such as a mobile home park or retirement village, the service is deemed commercial unless each occupier of a housing unit is individually provided can service and is individually billed for such service.

(iii) "Can" or "can equivalent" has its ordinary meaning and shall include a receptacle for waste collection made of durable, corrosion-resistant material, watertight with a close fitting cover, with two handles, and does not exceed 32 gallons, 4 cubic feet or 65 lbs. (including contents), nor weigh more than 12 lbs. when empty. (This definition comports with the definition of "unit" by the utilities and transportation commission.) For purposes of this section, containers of 60 gallon or more capacity, commonly called "toters," are considered more than 2 cans.

(c) The solid waste collection tax applies to the consideration paid for actual solid waste collection services provided and utilized by the customer and does not apply to amounts charged by a solid waste collection business for "standby," "availability," or "base" charges where no actual garbage collection occurs. Additionally, the tax does not apply to amounts charged for materials primarily collected for recycling.

(d) For a residential customer, the tax measure is the consideration paid, but not more than \$8.00 of the monthly charge for garbage pickup service of less than 2 cans, or, not more than \$12.00 of the monthly charge for 2 cans or more.

(i) Example. City X provides residential garbage collection service to a customer and the customer has subscribed to less than two can service. The monthly charge is \$11.00 for the service which includes a charge of \$2.00 for special pickup of recyclables. After adjustment for the recycling charges of \$2.00, the refuse collection tax measure is \$9.00 and the solid waste collection tax measure is \$8.00. The tax measure for solid waste residential pickup is limited to not more than \$8.00 of monthly charge paid. The refuse collection tax is 32 cents ( $\$9.00 \times .036$ ), and, the solid waste collection tax is 8 cents ( $\$8.00 \times .01$ ), for a total refuse-solid waste collection tax of 40 cents.

(e) For computation of the maximum solid waste collection tax due for residential customers, extra solid waste collected effects the tax base only for a residential customer with less than 2 can service. The tax measure for a customer with 2 or more can service will never exceed \$12.00. The tax measure for a customer with less than 2 can service does not exceed \$8.00 unless the extras collected are an additional can equivalent sufficient to change the less than 2 can customer to a 2 can or more customer. A less than 2 can customer becomes a 2 can or more customer when, over a reasonable period of time, i.e., 6 months, charges for less than 2 can service plus extras equals or exceeds the customary charges for 2 can service.

(i) Example. Residential customer Z has less than 2 can service for which Z is charged \$9.00 per month and results in a refuse tax of 32 cents ( $\$9.00 \times .036$ ) and a solid waste tax of 8 cents ( $\$8.00 \times .01$ ) for a total tax of 40 cents. For 7 consecutive months Z has extra trash bags picked up each month. The monthly charge including extras is \$11.00 and the customary 2 can or more charge is \$12.00. The refuse tax for each month is 40 cents ( $\$11.00 \times .036$ ) and the solid waste tax is 8 cents ( $\$8.00 \times .01$ ) for a total tax of 48 cents. Z remains a less than 2 can customer during the period as the monthly charge, including the charge for extras, is less than the customary 2 can or more rate. The solid waste tax measure is limited to the consideration paid up to \$8.00, while the refuse tax is not so limited.

(ii) Example. Residential customer X has 2 or more can service for which X is charged \$9.00 per month resulting in a refuse tax of 32 cents ( $\$9.00 \times .036$ ) and a solid waste tax of 9 cents ( $\$9.00 \times .01$ ) for a total tax of 41 cents. One month X has several trash bags picked up and the charge for this month is \$13.00. The refuse tax is 47 cents ( $\$13.00 \times .036$ ) and the solid waste tax is 12 cents ( $\$12.00 \times .01$ ) for a total tax of 59 cents. The solid waste tax measure for 2 can or more service is limited to the consideration paid up to \$12.00 while the refuse collection tax measure is not so limited.

(iii) Example. A city provides residential garbage collection for which the city charges a \$5.00 base fee and a total charge of \$9.00 for less than 2 can service and \$13.00 for 2 can or more service. A customer chooses to deliver his garbage by his own means to the local disposal site for which the customer is charged \$10.00 per month. The city charges the customer on his monthly utility bill the \$5.00 base fee. The refuse tax collected at the disposal site is 36 cents ( $\$10.00 \times .036$ ) and the solid waste tax collected at the disposal site is 10 cents ( $\$10.00 \times .01$ ) for a total collection at the disposal site of 46 cents. The refuse tax collected by the city is 18 cents ( $\$5.00 \times .036$ ) and no solid waste tax is collected by the

city because no actual garbage collection services were provided the customer. As the per can limitations apply only to residential pick up service, any garbage delivered to disposal site by anyone other than another refuse-solid waste collection business will always incur a combined refuse-solid waste tax of 4.6 per cent of the consideration paid.

(5) The person who collects the charges for refuse-solid waste collection services from the taxpayer is responsible for collecting the refuse-solid waste collection tax and remitting it to the state.

(6) The law provides that if any person charged with collecting the tax fails to bill the taxpayer for it, or to notify the taxpayer in writing that the tax is due, then that person shall be personally liable for the tax. Thus, unlike the retail sales tax, the refuse-solid waste collection tax may be included within the gross refuse fee or charge billed to taxpayers and need not be separately itemized on such billings, but only if such taxpayers are notified in writing that the tax has been imposed and is being collected. Nothing prevents any refuse-solid waste collection business from separately itemizing the tax on customer billings, at its option.

(7) Furthermore, if any person collects that tax from the taxpayer and fails to pay it to the department in the manner provided in this section, for any reason whatever, that person shall be personally liable for the tax.

(8) The refuse-solid waste collection tax is due from the taxpayer within twenty-five days from the date the taxpayer is billed for the refuse-solid waste collection services. The refuse collection tax and the solid waste collection tax shall be separately reported upon lines provided on the combined excise tax return.

(9) The tax is due to be remitted to the department by the person collecting it at the end of the tax reporting period in which the tax is received by that person.

(10) If a taxpayer makes only a partial payment of the amount billed for the services and tax, the amount paid must first be used to remit the refuse-solid waste collection tax to the department. This tax has first priority over all other claims against the amount paid by the taxpayer.

(11) The federal government, its agencies and instrumentalities, and all refuse service contracts with such federal entities are not subject to the refuse-solid waste collection tax. There are no other taxpayers expressly exempted from paying the refuse-solid waste collection tax. Any other taxpayer claiming exemption of this tax for any reason whatsoever must provide the refuse-solid waste collection business with proof of its entitlement to exemption. The department will verify such claims upon request.

(12) To prevent pyramiding or multiple taxation of single transactions, the refuse-solid waste collection tax does not apply to any person other than the taxpayer. It is a tax upon the ultimate consumer-customer of the refuse-solid waste service.

(13) Persons who collect the refuse-solid waste collection tax and who, themselves, utilize the further services of others for the transfer, storage, or disposal of the waste collected are not required to again pay the tax to such other service providers. However, in order to be exempt of such tax payment a refuse-solid waste collection business must provide other refuse-solid waste service providers with a refuse-

solid waste collector's exemption certificate in the following form:

(a) We hereby certify that we are engaged in the refuse-solid waste collection business and are registered with the state department of revenue to collect and report the refuse collection tax imposed under chapter 282, Laws of 1986 and chapter 431, Laws of 1989. We certify further that the refuse-solid waste collection tax due with respect to the refuse-solid waste collection business being performed under this certificate has been or will be collected and paid and that we are exempt [of] [for] further payment of such tax on charges for any refuse-solid waste collection services being procured by us.

Business Name . . . . . Authorized Signature . . . . .  
Business Address . . . . . Date . . . . .  
Revenue Registration No. . . . .  
U.T.C. Certificate of Public Necessity No. . . . .  
If not regulated by U.T.C., please check here . . . . .

(b) Blanket certificates may be provided in advance by refuse-solid waste collectors or other persons who collect the customer charges for refuse-solid waste collection and who are liable for collecting and remitting the refuse-solid waste collection tax.

(c) Refuse-solid waste collection businesses which provide services for the transfer, storage, or disposal of waste, and who accept completed certifications in good faith are not required to collect and remit the refuse-solid waste collection tax and will not be held personally liable for it.

(14) Persons engaged in the refuse-solid waste collection business by operating facilities for the transfer, storage, or disposal of waste, including public and private dumps, and who provide such services directly to taxpayers for a charge, are liable for the collection of the refuse collection tax on such charges.

(15) Examples of taxable and tax exempt transactions are:

(a) A private person or commercial customer hauls its own waste to a dump site for disposal and pays a fee - the fee is subject to the 3.6 percent refuse collection tax and the 1 percent solid waste collection tax.

(b) A refuse-solid waste collection company picks up and hauls residential or commercial waste to a dump for disposal - this company bills the customer for the tax and need not pay the tax upon any further charge made by the dump site operator, by providing a refuse-solid waste collector's certificate.

(c) A city provides refuse-solid waste collection services to its residents through an independent hauler under a negotiated contract, and uses a county operated land fill. The city bills the residents on their utility bills. The 3.6 percent and 1 percent taxes apply to the refuse-solid waste portion of the utility bill adjusted as provided in this section. These taxes do not apply to any charge paid by the city to the hauling company, nor to any charge made by the county to the city for dumping services. The city must provide the hauler and the county with a refuse-solid waste collector's certificate.

(16) The refuse-solid waste collection tax is imposed in much the same manner as retail sales tax; that is, it is payable by the refuse-solid waste consumer to the refuse-solid waste service provider who does the customer billing. Likewise,

other refuse-solid waste service providers up the chain of transactions from the billing provider are treated in the same manner as wholesalers and need not collect the tax if the appropriate certificate is taken.

(17) Business and occupation tax. There is no exemption from business and occupation tax measured by gross income of any person engaged in the refuse-solid waste collection business. Such persons are subject to the service classification of business and occupation tax measured by their gross receipts. (See RCW 82.04.290.) Also, there is no general provision under the law for the nonpyramiding effect of the business and occupation tax. Thus, each refuse-solid waste collection business is separately liable for this tax on its total gross receipts without any deduction for any costs of doing business or any amounts paid over to other refuse-solid waste service providers. Also, all amounts designated as late charges or penalties are included within this business tax measure.

(18) The refuse-solid waste collection business is an "enterprise activity," as defined in WAC 458-20-189, when it is funded over fifty percent by user fees. Thus, the amounts derived from this activity are not exempt of business and occupation tax even though they may be charged by governmental entities. (See RCW 82.04.419.)

(19) The exemption of refuse-solid waste collection tax for the federal government, its agencies and instrumentalities, does not apply for business and occupation tax. Thus, refuse-solid waste collection businesses who charge such federal entities for services, under contract or otherwise, must pay the business and occupation tax upon such gross receipts.

(20) Persons engaged in the refuse-solid waste collection business may be entitled to certain express deductions or exemptions from business and occupation tax for specific reasons unrelated to the nature of their refuse-solid waste business activity. (See RCW 82.04.419 and 82.04.4291.)

(21) Refuse-solid waste collection businesses which provide waste receptacles, containers, dumpsters, and the like to their customers for a charge, separate from any charge for collection of the waste, are engaged in the business of renting tangible personal property taxable separate and apart from the refuse-solid waste collection business. Charges for such rentals, however designated, are subject to retailing business and occupation tax when they are billed separately or are line itemized on customer billings. Such businesses are engaged in more than one taxable kind of business activity and are separately taxable on each. (See RCW 82.04.440.)

(22) Retail sales tax. Persons who separately charge and bill customers for waste receptacles, as explained earlier, must collect and remit the retail sales tax on the itemized rental price, fee, or other consideration, however designated, charged for the receptacles.

(23) Refuse-solid waste collection businesses are themselves the consumers of all tangible personal property purchased for their own use in conducting such business, other than items for resale or renting to customer[s], e.g., rented receptacles. Retail sales tax must be paid to materials suppliers and providers of such tangible consumables. (See RCW 82.04.050.)

(24) Use tax. The use tax is due upon all tangible personal property used as consumers by refuse-solid waste col-

lection businesses, upon which the retail sales tax has not been paid. (See RCW 82.12.020.)

(25) Core deposits and credits - Battery core charges.

(a) For purposes of this section the following terms apply.

(i) "Core deposits or credits" means the amount representing the value of returnable products such as batteries, starters, brakes, and other products with returnable value added for purposes of recycling or remanufacturing.

(ii) "Battery core charge" means that amount of the retail selling price of a vehicle battery, not less than \$5.00, which is retained by the seller when the purchaser has no used battery to exchange or trade-in.

(b) Retail sales tax.

(i) The retail sales tax does not apply to the consideration received as core deposits or credits in a retail or wholesale sale when a purchaser exchanges or trades-in a core to the seller. (RCW 82.08.010, WAC 458-20-247, and chapter 431, Laws of 1989). Therefore, when a purchaser of a vehicle battery, starter, etc., exchanges or trades-in a used battery, starter, etc., to the seller, retail sales tax does not apply to the value of the used property exchanged or traded-in.

(ii) Chapter 431, Laws of 1989, effective July 23, 1989, requires the retail selling price of a vehicle battery to include a core charge of not less than \$5.00. The core charge must be omitted from the sales price when the purchaser offers to the seller a used battery of equivalent size. The retail sales tax does apply to the core charge amount included in the sales price of a vehicle battery when the purchaser does not offer to the seller a used battery for exchange or trade-in. The exemption for "core deposits or credits" applies only when an article of tangible personal property is returned by the purchaser to the seller for the purpose of recycling or remanufacturing. Upon the offer by the purchaser to the seller of a used battery of equivalent size for exchange or trade-in within 30 days after the purchase date of the battery, the seller shall refund to the purchaser the core charge amount and the retail sales tax paid on such core charge.

(c) Use tax. The use tax does not apply to the value of core deposits or credits in a retail or wholesale sale.

(d) Business and occupation tax. The core deposit and credit exemptions apply only to the amount of retail sales tax and use tax to be collected and paid. There is no core deposit or credit exclusion for B&O tax. It is important to note that the base for B&O tax and retail sales tax may be different amounts. Thus, the gross receipts under the appropriate classification of B&O tax, retailing, wholesaling, manufacturing, etc., continues to include the value of core deposits and credits. Battery core charges are included as gross receipts in the retailing classification of the B&O tax.

(e) Examples:

(i) A customer wishes to purchase from an auto parts store a new replacement battery and a reconditioned starter. He brings with him a battery core and a starter core. The purchase price of the new battery is \$60.00 less \$3.00 for the value of the core exchanged; and, the purchase price of the starter is \$50.00 less \$5.00 for the starter core. Retailing B&O tax is due upon the total value of cash plus core value, in this case \$110.00 (\$60.00 + 50.00). However, retail sales tax is due only on \$102 (\$57.00 + 45.00), which is the pur-

chase price less the core deposits. The customer pays \$102.00 plus sales tax for the battery and the starter.

(ii) A customer wishes to purchase a new replacement battery which sells for \$62.00. The customer has no returnable battery core to exchange. Thus, a battery core charge of \$5.00 or more must be added to the sales price for a total of \$67.00 or more. Both retail sales tax and B&O tax apply to the actual price paid by the customer.

(iii) In example (ii) above, the customer returns to the store within 30 days with a proof of purchase and a used battery of equivalent size. The seller must refund the \$5.00 or more battery core charge plus the sales tax paid the \$5.00 or more. B&O tax is due upon the value of the battery, \$62.00.

(26) Tires. Chapter 431, Laws of 1989 amends RCW 70.95.510 and, effective October 1, 1989, levies a \$1 per tire fee on the retail sale of new replacement tires. The \$1 per tire fee levied replaces the .012 percent tax imposed in 1985. The fee imposed shall be paid by the buyer and collected by the seller. The fee collected from the buyer by the seller shall be paid to the department in accordance with RCW 82.32.045 less 10 percent retained by the seller.

(a) Retail sales tax - Use tax - Business and occupation tax. Chapter 431, Laws of 1989 exempts the fee from retail sales tax and use tax. Neither the fee nor the part of the fee retained by the seller is subject to business and occupation tax. The seller is only the state's collecting and reporting agent for the portion paid to the department. The 10 percent retained portion is expressly authorized for use by the seller to defray costs associated with the proper management of waste tires.

[Statutory Authority: RCW 82.32.300, 89-16-090 (Order 89-11), § 458-20-250, filed 8/2/89, effective 9/2/89; 86-15-064 (Order ET 86-14), § 458-20-250, filed 7/22/86.]

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

**WAC 458-20-251 Sewerage collection and other related activities.** (1) **Introduction.** RCW 82.16.020 levies a public utility tax upon persons engaging in the business of sewerage collection. This rule provides guidance on the assessment of the public utility tax upon sewerage collection businesses, including the distinction between sewerage collection and other related business activities. It also describes how to determine the taxable gross receipts of a sewerage collection business that also engages in other related business activities. Additionally, the rule addresses a sewerage collection business's business and occupation (B&O), retail sales, and use tax reporting responsibilities. Municipalities and other governmental entities engaging in sewerage collection business activities should also refer to WAC 458-20-189 for guidance on the taxation of public service businesses and enterprise activities.

(2) **What is a sewerage collection business?** A sewerage collection business is the activity of accepting sewage to be deposited into and carried off by a system of lateral sewers, drains, and pipes to a common point, or points, for transfer to treatment or disposal, but does not include the actual transfer, treatment, or disposal of sewage. A sewerage collection business includes only that portion of a sewer system

where "collection" occurs. Sewerage collection ends when the sewage exits the lateral sewers in a sewer system. Collection does not include the further transfer of sewage through a system of intercepting sewers or the final treatment or disposal of sewage.

(a) **What is the difference between sewage and sewerage?** Sewerage is the waste matter carried off by sewer drains and pipes. Sewerage refers to the physical facilities (e.g., pipes, lift stations, and treatment and disposal facilities) through which sewage flows.

(b) **What is the difference between lateral and intercepting sewers?**

(i) A lateral sewer is a branch sewer running laterally down a street, alley, or easement that collects sewage directly from abutting properties and delivers it into an intercepting sewer.

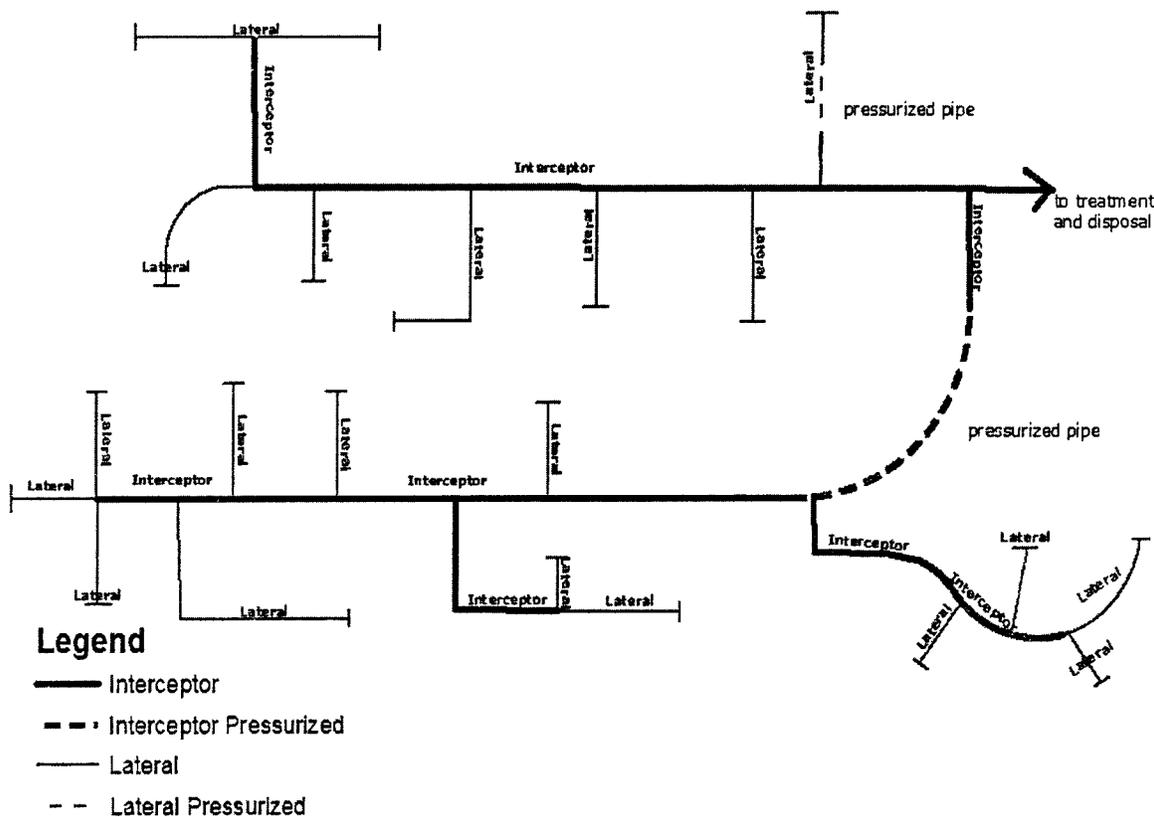
(A) The sewage from abutting properties is collected through sewer pipes running from the abutting properties to

the lateral sewer in the street, alley, or easement. If a sewerage collection business is responsible for maintaining any portion of such a sewer pipe, that portion is considered to be part of the lateral sewer.

(B) A lateral sewer may include force mains or lift stations if such equipment is installed as part of a lateral sewer line.

(ii) An intercepting sewer is a main sewer that receives flow from laterals and delivers the sewage to another main sewer or to a point for treatment or disposal.

The following diagram illustrates how sewer pipes in a sewerage system are categorized as lateral or intercepting sewers. The diagram does not attempt to represent any publicly maintained portions of sewer pipes that run from abutting properties to the lateral sewer in the street, alley, or easement.



(c) **How are drainage utility charges accounted for?** Certain real estate development projects (due to paving and other factors) may adversely affect rainwater runoff within areas served by a stormwater sewer system. Often, the stormwater system is administered by the same entity that operates a sewerage collection business. In this circumstance, some sewerage utilities impose a drainage utility charge on the development to reflect the impact on the utility's stormwater sewer system caused by the increased runoff. Other sewerage utilities charge all sewerage customers an additional drainage utility charge to reflect stormwater runoff. Although the same entity may be providing both stormwater and sanitary sewer

collection services to the customer and many of the same facilities may be used, a drainage utility charge is not related to the collection of sewage for treatment and disposal. Therefore, a sewerage collection business does not include this activity. Utility drainage charges are, however, subject to B&O taxation under the service and other activities classification, as discussed in subsection (4) below.

(3) **How is the public utility tax determined?** Persons engaged in the sewerage collection business are subject to the public utility tax under the sewer collection classification measured by the gross receipts of the collection business. (See RCW 82.16.020.) Gross receipts of the sewerage collec-

tion business include only that portion of income from customer billings that is allocable to the collection of sewage by a sewerage collection business. Gross receipts do not include any charges of any kind attributable to sewerage services other than collection.

There are two methods to determine the gross receipts of the collection business.

(a) **Itemization of customer billings.** If customer billings are itemized to show the actual charge for sewage collection, income realized from those billings is the gross receipts tax measure. If the itemized charges for sewage collection are less than the actual cost of providing the collection service, however, the sewerage collection business must use the cost-of-doing-business formula in subsection (3)(b) below.

(b) **Cost-of-doing-business formula.** If collection services are provided jointly with other related sewer services provided by the sewerage collection business or any other person, and the actual charge for sewerage collection is not itemized separately on customer billings or is less than the actual cost of providing the collection service, a simple cost-of-doing-business formula is used to derive the gross receipts public utility tax measure.

(i) **Formula.** The costs of providing sewerage collection services are divided by all business costs incurred in rendering all sewer services, including sewerage collection. The resulting percentage is multiplied by gross income from customer billings (all sewerage related charges). The result is the gross receipts public utility tax measure from engaging in the sewerage collection business. The standard cost accounting records of the sewerage collection business must be used for this purpose.

The formula is:

$$\frac{\text{Sewerage collection costs (Annualized)}}{\text{Total sewer service costs (Annualized)}} = \text{_____} \% \times \text{gross billing income} = \text{Public Utility Tax Measure}$$

In determining sewage collection costs for a sewerage collection business that also engages in related business activities involving the interception, transfer, storage, treatment, and/or disposal of sewage, only lateral sewers are considered collection sewers. Intercepting sewers are not collection sewers and may not be allocated to collection activities. All costs of operation of the sewer services business must be included in the denominator, including, but not limited to, direct operating costs and direct and indirect overhead costs. When circumstances warrant, the department may allow certain equipment—such as force mains or pump stations—to be converted into an equivalent length of pipe for purposes of allocating costs accurately.

(ii) **Annual year-end adjustment.** For the purpose of annualizing its costs, the sewerage collection business may use the previous calendar year costs or its budget allocations for the current tax year. In either case, however, it must make an end-of-year adjustment to its reporting based upon actual costs incurred during the current year.

(c) **Late charges/penalties excluded.** Revenue from late charges or other penalties for untimely payment by sewerage collection customers must be excluded when calculating gross receipts under subsection (3)(a) and (b) above. Receipts from these sources are subject to B&O taxation

under the service and other activities classification as provided in subsection (4) below. (See WAC 458-20-179, Public utility tax, for further explanation of the taxation of late charge penalties.)

(d) **Preutility service activities excluded.** Services provided to a customer prior to receipt of sewerage collection services are subject to B&O taxation under the service and other activities classification as provided in subsection (4) below. For example, many sewerage collection businesses assess connection charges to a new customer before providing sewerage collection services to that customer. Such a connection charge may be variable (calculated as a charge per linear foot of road frontage for example) or a flat fee. A sewerage collection business may assess other charges for specific services provided to new customers, such as installing or inspecting the installation of service connections. In each case, the revenue from such fees is taxable under the service and other activities classification as long as the service for which the fee is assessed is performed before the sewerage collection business provides collection services to that customer. (See WAC 458-20-179, Public utility tax, for further explanation of the taxation of preutility service activities.)

(e) **Treatment or disposal costs deduction.** RCW 82.16.050(11) provides that in computing the public utility tax, a sewerage collection business may deduct from its reported gross income amounts paid by the business to a person taxable under chapter 82.04 RCW for the treatment or disposal of sewage. The deduction provided by RCW 82.16.050(11) may be taken on the combined excise tax return only when the receipts related to treatment or disposal are included in the gross amounts reported under the sewer collection classification.

(4) **How are related business activities taxed?** Persons engaged in the sewerage collection business may also be engaged in related business activities involving the interception, transfer, storage, treatment, and/or disposal of sewage. These activities are generally subject to the service and other activities B&O tax. The measure of tax is the gross income or gross proceeds derived from those other services. The measure of tax does not include any amount subject to the sewerage collection public utility tax classification. The amount of gross income or gross proceeds subject to the service and other activities B&O tax must be determined consistent with the method used to determine the gross receipts subject to the sewerage collection public utility tax (see subsection (3) above).

(5) **What if a governmental sewerage collection business pays a separate governmental entity for sewage interception, treatment or disposal?** RCW 82.04.432 provides a deduction from the B&O tax measure for amounts paid by municipal sewerage utilities and other public corporations to any other municipal corporation or governmental agency for sewage interception, treatment, or disposal. Thus, in such cases the service and other activities B&O tax on sewer services does not have a pyramiding effect. In addition, RCW 82.04.4291 provides a B&O tax deduction for amounts derived by a political subdivision of the state of Washington from another political subdivision of the state of Washington as compensation for services subject to the service and other activities B&O tax. Income received from the state of Washington or its agencies and departments, however, is not

deductible under RCW 82.04.4291. Thus, the local government entity that receives compensation from another local government entity for providing sewage interception, treatment, or disposal for that other government entity may also deduct the income from its own measure of service and other activities B&O tax, provided this amount has been included in the gross amount reported on the combined excise tax return. In such a case, neither entity pays tax on the amounts represented by the payments made for sewage interception, treatment, or disposal.

For example, Washington Municipality A operates a sewerage collection business. Rather than invest in its own treatment facilities, it contracts with Washington Municipality B to provide sewage transfer, treatment, and disposal services to Municipality A. When determining its tax liability, Municipality A must break down its sewage service charges (as provided in subsection (3) above) into a sewerage collection portion and that portion representing other sewage services (interception, transfer, treatment, and disposal). Municipality A pays public utility tax on its gross receipts from the sewerage collection business. Municipality A also pays service and other activities B&O tax on income derived from that portion of sewage transfer that it undertakes to move the waste to Municipality B for further transfer, treatment, and disposal by Municipality B. However, Municipality A may deduct from its gross income subject to service and other activities B&O tax the amount of any payments made to Municipality B for sewage transfer, treatment, or disposal services provided by Municipality B. In addition, pursuant to RCW 82.04.4291, Municipality B may deduct from its gross income subject to service and other activities B&O tax the amount of the payments received from Municipality A.

(6) **Local improvement district assessments.** Local improvement district (LID) and utility local improvement district (ULID) assessments, including interest and penalties on assessments, are not considered part of taxable income for either public utility tax or B&O tax purposes because they are exercises of the jurisdiction's taxing authority. These assessments may be composed of a share of the costs of capital facilities, installation labor, connection fees, and other expenses. A deduction may be taken for these amounts if they are included in the LID or ULID assessments.

(7) **Property purchased and used by a sewerage collection business.** Persons engaged in the sewerage collection business and/or engaged in providing other related sewer services are themselves the consumers of all tangible personal property purchased for their own use in conducting those activities. Retail sales tax (commonly referred to as "deferred sales tax") or use tax must be remitted directly to the department upon all tangible personal property used by a sewerage collection business or sewer service provider as a consumer, if the retail sales tax has not been collected by the seller. (See RCW 82.12.020.)

(8) **Sale of sludge.** With proper treatment, it is possible for the sludge remaining after the initial treatment of raw sewage to be used as fertilizer. If a sewerage collection business sells sludge, manufacturing B&O tax is due on the value of the products and retailing or wholesaling B&O tax is due on the gross proceeds of the sale. A multiple activities tax credit (MATC) applies as provided in RCW 82.04.440 and WAC 458-20-19301. If the sludge is sold to a consumer,

retail sales tax is due on the proceeds of that sale, unless otherwise exempt by law.

If the necessary requirements are met, the business may claim a manufacturing machinery and equipment (M&E) exemption for machinery and equipment used directly in manufacturing the sludge (rendering it suitable for use as a fertilizer). This exemption is not available for machinery or equipment used merely to treat sewage for disposal.

For more information on the M&E exemption, see RCW 82.08.02565, 82.12.02565, and WAC 458-20-13601.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). 03-19-059, § 458-20-251, filed 9/11/03, effective 10/12/03. Statutory Authority: RCW 82.32.300. 86-18-069 (Order 86-16), § 458-20-251, filed 9/3/86.]

## **WAC 458-20-252 Hazardous substance tax and petroleum product tax.**

### **PART 1 - HAZARDOUS SUBSTANCE TAX**

(1) **Introduction.** Under the provisions of chapter 82.22 RCW a hazardous substance tax was imposed, effective January 1, 1988, upon the wholesale value of certain substances and products, with specific credits and exemptions provided. This law is significantly changed, effective on March 1, 1989, because of Initiative 97 (I-97) which was passed by the voters in the November 8, 1988 general election. The tax, which is reimposed by I-97, is an excise tax upon the privilege of possessing hazardous substances or products in this state. It is imposed in addition to all other taxes of an excise or property tax nature and is not in lieu of any other such taxes.

(a) I-97, which will be referred to as chapter 2, Laws of 1989, defines certain specific substances as being hazardous and includes other substances by reference to federal legislation governing such things. It also provides authority to the director of the state department of ecology to designate any substances or products as hazardous which could present a threat to human health or the environment. The department of ecology, by duly published rule, defines and enumerates hazardous substances and products and otherwise administers the provisions of the law relating to hazardous and toxic or dangerous materials, waste, disposal, cleanup, remedial actions, and monitoring. (See chapter 173-\_\_ of the WAC.)

(b) Sections 8 through 12 of I-97 consist of the tax provisions relating to hazardous substances and products which are administered exclusively under this section. The tax provisions relate exclusively to the possession of hazardous substances and products. The tax provisions do not relate to waste, releases or spills of any materials, cleanup, compensation, or liability for such things, nor does tax liability under the law depend upon such factors. The incidence or privilege which incurs tax liability is simply the possession of the hazardous substance or product, whether or not such possession actually causes any hazardous or dangerous circumstance.

(c) The hazardous substance tax is imposed upon any possession of a hazardous substance or product in this state by any person who is not expressly exempt of the tax. However, it is the intent of the law that the economic burden of the tax should fall upon the first such possession in this state. Therefore, the law provides that if the tax has not been paid upon any hazardous substance or product the department may collect the tax from any person who has had possession. The

amount of tax paid then constitutes a debt owed by the first person having had taxable possession to the person who pays the tax.

(2) Definitions. For purposes of this part the following terms will apply.

(a) "Tax" means the hazardous substance tax imposed under section 10 of I-97.

(b) "Hazardous substance" means anything designated as such by the provisions of chapter 173 WAC, administered by the state department of ecology, as adopted and thereafter amended. In addition, the law defines this term to include:

(i) Any substance that, on March 1, 1989, is a hazardous substance under section 101(14) of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by Public Law 99-499. These substances consist of chemicals and elements in their purest form. A CERCLA substance which contains water is still considered pure. Combinations of CERCLA substances as ingredients together with nonhazardous substances will not be taxable unless the end product is specifically designated as a hazardous substance by the department of ecology.

(ii) Petroleum products (further defined below);

(iii) Pesticide products required to be registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); and

(iv) Anything else enumerated as a hazardous substance in chapter 173-\_\_ WAC by the department of ecology.

(c) "Product(s)" means any item(s) containing a combination of ingredients, some of which are hazardous substances and some of which are not hazardous substances.

(d) "Petroleum product" means any plant condensate, lubricating oil, crankcase motor oil, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual fuel, asphalt base, liquefied or liquefiable gases, such as butane, ethane and propane, and every other product derived from the refining of crude oil, but the term does not include crude oil.

(i) The term "derived from the refining of crude oil" as used herein, means produced because of and during petroleum processing. "Petroleum processing" includes all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to crude oil or any byproduct of crude oil so that as a result thereof a fuel or lubricant is produced for sale or commercial or industrial use. "Fuel" includes all combustible gases and liquids suitable for the generation of energy. The term "derived from the refining of crude oil" does not mean petroleum products which are manufactured from refined oil derivatives, such as petroleum jellies, cleaning solvents, asphalt paving, etc. Such further manufactured products become hazardous substances only when expressly so designated by the director of ecology.

(e) "Possession" means control of a hazardous substance located within this state and includes both actual and constructive possession.

(i) "Control" means the power to sell or use a hazardous substance or to authorize the sale or use by another.

(ii) "Actual possession" occurs when the person with control has physical possession.

(iii) "Constructive possession" occurs when the person with control does not have physical possession.

(f) "Previously taxed hazardous substance" means a hazardous substance upon which the tax has been paid and which has not been remanufactured or reprocessed in any manner.

(i) Remanufacturing or reprocessing does not include the mere repackaging or recycling for beneficial reuse. Rather, these terms embrace activities of a commercial or industrial nature involving the application of skill or labor by hand or machinery so that as a result, a new or different substance or product is produced.

(ii) "Recycling for beneficial reuse" means the recapturing of any used substance or product, for the sole purpose of extending the useful life of the original substance or product in its previously taxed form, without adding any new, different, or additional ingredient or component.

(iii) Example: Used motor oil drained from a crankcase, filtered, and containerized for reuse is not remanufactured or reprocessed. If the tax was paid on possession of the oil before use, the used oil is a previously taxed substance.

(iv) Possessions of used hazardous substances by persons who merely operate recycling centers or collection stations and who do not reprocess or remanufacture the used substances are not taxable possessions.

(g) "Wholesale value" is the tax measure or base. It means the fair market value determined by the wholesale selling price.

In cases where no sale has occurred, wholesale value means the fair market wholesale value, determined as nearly as possible according to the wholesale selling price at the place of use of similar substances of like quality and character. In such cases the wholesale value shall be the "value of the products" as determined under the alternate methods set forth in WAC 458-20-112.

(h) "Selling price" means consideration of any kind expressed in terms of money paid or delivered by a buyer to a seller, without any deductions for any costs whatsoever. Bona fide discounts actually granted to a buyer result in reductions in the selling price rather than deductions.

(i) "State," for purposes of the credit provisions of the hazardous substance tax, means:

(i) The state of Washington,

(ii) States of the United States or any political subdivisions of such other states,

(iii) The District of Columbia,

(iv) Territories and possessions of the United States,

(v) Any foreign country or political subdivision thereof.

(j) "Person" means any natural or artificial person, including a business organization of any kind, and has the further meaning defined in RCW 82.04.030.

(i) The term "natural person," for purposes of the tax exemption provided by section 11(2) of I-97 regarding substances used for personal or domestic purposes, means human beings in a private, as opposed to a business sense.

(k) Except as otherwise expressly defined in this section, the definitions of terms provided in chapters 82.04, 82.08, and 82.12 RCW apply equally for this section. Other terms not expressly defined in these chapters or this section are to be given their common and ordinary meanings.

(3) Tax rate and measure. The tax is imposed upon the privilege of possessing hazardous substances in this state. The tax rate is seven tenths of one percent (.007). The tax

measure or base is the wholesale value of the substance, as defined herein.

(4) Exemptions. The following are expressly exempt from the tax:

(a) Any successive possessions of any previously taxed hazardous substances are tax exempt.

(i) Any person who possesses a hazardous substance which has been acquired from any other person who is registered with the department of revenue and doing business in this state may take a written statement certifying that the tax has been previously paid. Such certifications must be taken in good faith and must be in the form provided in the last part of this section. Blanket certifications may be taken, as appropriate, which must be renewed at intervals not to exceed four years. These certifications may be used for any single hazardous substance or any broad classification of hazardous substances, e.g., "all chemicals."

(ii) In the absence of taking such certifications, the person who possesses any hazardous substance must retain proofs that it purchased or otherwise acquired the substance from a previous possessor in this state. It is not necessary for subsequent possessors to obtain certificates of previously taxed hazardous substances in order to perfect their tax exemption. Documentation which establishes any evidence of previous tax payment by another person will suffice. This includes invoices or billings from in state suppliers which reflect their payment of the tax or simple bills of lading or delivery documents revealing an in state source of the hazardous substances.

(iii) This exemption for taxes previously paid is available for any person in successive possession of a taxed hazardous substance even though the previous payment may have been satisfied by the use of credits or offsets available to the previous person in possession.

(iv) Example. Company A brings a substance into this state upon which it has paid a similar hazardous substance tax in another state. Company A takes a credit against its Washington tax liability in the amount of the other state's tax paid. It then sells the substance to Company B, and provides Company B with a certificate of previously taxed substance. Company B's possession is tax exempt even though Company A has not directly paid Washington's tax but has used a credit against its Washington liability.

(b) Any possession of a hazardous substance by a natural person for use of a personal or domestic nature rather than a business nature is tax exempt.

(i) This exemption extends to relatives, as well as other natural persons who reside with the person possessing the substance, and also to regular employees of that person who use the substance for the benefit of that person.

(ii) This exemption does not extend to possessions by any independent contractors hired by natural persons, which contractors themselves provide the hazardous substance.

(iii) Examples: Possessions of spray materials by an employee-gardener or soaps and cleaning solvents by an employee-domestic servant, when such substances are provided by the natural person for whose domestic benefit such things are used, are tax exempt. Also, possessions of fuel by private persons for use in privately owned vehicles are tax exempt.

(2005 Ed.)

(c) Any possession of any hazardous substance, other than pesticides or petroleum products, possessed by a retailer for making sales to consumers, in an amount which is determined to be "minimal" by the department of ecology. That department has determined that the term "minimal" means less than \$1,000.00 worth of such hazardous substances measured by their wholesale value, possessed during any calendar month.

(d) Possessions of alumina or natural gas are tax exempt.

(e) Persons or activities which the state is prohibited from taxing under the United States Constitution are tax exempt.

(i) This exemption extends to the U.S. government, its agencies and instrumentalities, and to any possession the taxation of which has been expressly reserved or preempted under the laws of the United States.

(ii) The tax will not apply with respect to any possession of any hazardous substance purchased, extracted, produced or manufactured outside this state which is shipped or delivered into this state until the interstate transportation of such substance has finally ended in this state. Thus, out-of-state sellers or producers need not pay the tax on substances shipped directly to customers in this state. The customers must pay the tax upon their first possession unless otherwise expressly exempt.

(iii) Out-of-state sellers or producers will be subject to tax upon substances shipped or delivered to warehouses or other in state facilities owned, leased, or otherwise controlled by them.

(iv) However, the tax will not apply with respect to possessions of substances which are only temporarily stored or possessed in this state in connection with through, interstate movement of the substances from points of origin to points of destination both of which are outside of this state.

(f) The former exemption for petroleum products for export sale or use outside this state as fuel was effectively repealed by I-97. There are no exemptions under the law for any possessions of hazardous substances in this state simply because such substances may later be sold or used outside this state.

(g) Though I-97 contains an exemption for persons possessing any hazardous substance where such possession first occurred before March 1, 1989, this exemption applies only to the tax imposed under I-97. It does not apply retroactively to excuse the hazardous substance tax which was imposed under chapter 82.22 RCW in effect from January 1, 1988 until March 1, 1989. However:

(i) **Transitional rule:** Persons who possess stocks or inventories of petroleum products as of March 1, 1989, which are destined for sale or use outside this state as fuel are not subject to tax upon such possessions of preexisting inventories. For periods before March 1, 1989 the former exemption of RCW 82.22.040(3) for export petroleum products applies. For periods on and after March 1, 1989 the exemption for prepossessed hazardous substances explained in subsection (g) above will apply. Records appropriate to establish that such petroleum products were destined for out-of-state sale or use as fuel must be retained by any possessor claiming exemption under this transitional rule.

(5) Credits. There are three distinct kinds of tax credits against liability which are available under the law.

(a) A credit may be taken by any manufacturer or processor of a hazardous substance produced from ingredients or components which are themselves hazardous substances, and upon which the hazardous substance tax has been paid by the same person or is due for payment by the same person.

(i) Example. A manufacturer possesses hazardous chemicals which it combines to produce an acid which is also designated as a hazardous substance or product. When it reports the tax upon the wholesale value of the acid it may use a credit to offset the tax by the amount of tax it has already paid or reported upon the hazardous chemical ingredients or components. In this manner the intent of the law to tax hazardous substances only once is fulfilled.

(ii) Under circumstances where the hazardous ingredient and the hazardous end product are both possessed by the same person during the same tax reporting period, the tax on the respective substances must be computed and the former must be offset against the latter so that the tax return reflects the tax liability after the credit adjustment.

(iii) This credit may be taken only by manufacturers who have the first possession in this state of both the hazardous ingredients and the hazardous end product.

(b) A credit may be taken in the amount of the hazardous substance tax upon the value of fuel which is carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle.

(i) The credit may be claimed only for the amount of tax reported or actually due to be paid on the fuel, not the amount representing the value of the fuel.

(ii) The purpose of this credit is to exclude from taxation any possessions of fuel which remains in the fuel tanks of any carrier vehicles powered by such fuel when they leave this state, regardless of where or from whom such fuel-in-tanks was acquired.

(iii) The nature of this credit is such that it generally has application only for interstate and foreign private or common carriers who carry fuel into this state and/or purchase fuel in this state. The intent is that the tax will apply only to so much of such fuel as is actually consumed by such carriers within this state.

(iv) In order to equitably and efficiently administer this tax credit, any fuel which is brought into this state in carrier vehicle fuel tanks must be accounted for separately from fuel which is purchased in this state for use in such fuel tanks. Formulas approved by the department for reporting the amount of fuel consumed in this state for purposes of this tax or other excise tax purposes will satisfy the separate accounting required under this subsection.

(v) Fuel-in-tanks brought into this state must be fully reported for tax and then the credit must be taken in the amount of such fuel which is taken back out of this state. This is to be done on the same periodic excise tax return so that the net effect is that the tax is actually paid only upon the portion of fuel consumed here.

(vi) The credit for fuel-in-tanks purchased in this state must be accounted for by using a fuel-in-tanks credit certificate in substantially the following form:

**Certificate of Credit for Fuel Carried from this State in Fuel Tanks**

I hereby certify that the petroleum products specified herein, purchased by or transferred to the undersigned, from (name of seller or transferor), are entitled to the credit for fuel which is carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle operated by a private or common carrier in interstate or foreign commerce. I will become liable for and pay the taxes due upon all or any part of such fuel which is not so carried from this state. This certification is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion.

Registration No. ....  
 (if applicable)

Type of Business .....  
 Firm Name .....  
 Business Address .....  
 Registered Name .....  
 (if different)

Tax Reporting Agent .....  
 (if applicable)

Authorized Signature .....  
 Title .....  
 Identity of Fuel .....  
 (kind and amount by volume)  
 Date: .....

(vii) This certificate may be executed and provided to any possessor of fuel in this state, throughout the chain of distribution, with respect to fuel which ultimately will be sold and delivered into any carrier's fuel tanks in this state. Thus, refiners or manufacturers will take such certificates directly from carriers or from their wholesale purchasers who will sell to such carriers. Similarly, fuel dealers and distributors will take such certificates from carriers to whom they sell such fuel. These certificates must be retained as a permanent part of such seller's business records.

(viii) Persons who execute and provide these credit certificates to their fuel suppliers must retain suitable purchase and sales records as may be necessary to determine the amount of tax for which such persons may be liable.

(ix) Blanket certificates may be used to cover recurrent purchases of fuel by the same purchaser. Such blanket certificates must be renewed every two years.

(c) A credit may be taken against the tax owed in this state in the amount of any other state's hazardous substance tax which has been paid by the same person measured by the wholesale value of the same hazardous substance.

(i) In order for this credit to apply, the other state's tax must be significantly similar to Washington's tax in all its various respects. The taxable incident must be possessing the substance; the tax purpose must be that the substance is hazardous; and the tax measure must be stated in terms of the wholesale value of the substance, without deductions for costs of doing business, such that the other state's tax does not constitute an income tax or added value tax.

(ii) This credit may be taken for the amount of any other state's qualifying tax which has actually been paid before Washington state's tax is incurred because the substance was previously possessed by the same person in another taxing jurisdiction.

(iii) The amount of credit is limited to the amount of tax paid in this state upon possession of the same hazardous sub-

stance in this state. Also, the credit may not be applied against any tax paid or owed in this state other than the hazardous substance tax imposed by section 10 of I-97.

(iv) Exchange agreements under which hazardous substances or products possessed in this state are exchanged through any accounts crediting system with like substances possessed in other states do not qualify for this credit. The substance taxed in another state, and for which this credit is sought, must be actually, physically possessed in this state.

(v) Persons claiming this credit must maintain records necessary to verify that the credit taking qualifications have been met. See WAC 458-20-19301, part (9) for record keeping requirements. The department of revenue will publish an excise tax bulletin listing other states' taxes which qualify for this credit.

(6) Newly defined hazardous substances. The director of ecology may identify and designate things as being hazardous substances after March 1, 1989. Also, things designated as hazardous substances may be deleted from this definition. Such actions are done by the adoption and subsequent periodic amendments to rules of the department of ecology under the Washington Administrative Code.

(a) The law allows the addition or deletion of substances as hazardous by rule amendments, no more often than twice in any calendar year.

(b) When such definitions are changed, they do not take effect for tax purposes until the first day of the following month which is at least thirty days after the effective date of rule action by the department of ecology.

(i) Example. The department of ecology adopts or amends the rule by adding a new substance and the effective date of the amendment is June 15. Possession of the substance does not become taxable until August 1.

(ii) The tax is owed by any person who has possession of the newly designated hazardous substance upon the tax effective date as explained herein. It is immaterial that the person in possession on that date was not the first person in possession of the substance in this state before it was designated as hazardous.

(7) Recurrent tax liability. It is the intent of the law that all hazardous substances possessed in this state should incur this tax liability only once unless they are expressly exempt. This is true of hazardous ingredients of products as well as the manufactured end product itself, if designated as a hazardous substance. The *exemption* for previously taxed hazardous substances does not apply to "products" which have been manufactured or remanufactured simply because an ingredient or ingredients of that product may have already been taxed when possessed by the manufacturer. Instead of an exemption, manufacturers in possession of both the hazardous ingredient(s) and end product(s) should use the *credit* provision explained at part (5)(a) of this section.

(a) However, the term "product" is defined to mean only an item or items which contain a combination of both hazardous substance(s) and nonhazardous substance(s). The term does not include combinations of only hazardous substances. Thus, possessions of substances produced by combining other hazardous substances upon all of which the tax has previously been paid will not again be taxable.

(b) When any hazardous substance(s) is first produced during and because of any physical combination or chemical

reaction which occurs in a manufacturing or processing activity, the intermediate possession of such substance(s) within the manufacturing or processing plant is not considered a taxable possession if the substance(s) becomes a component or ingredient of the product being manufactured or processed or is otherwise consumed during the manufacturing or processing activity.

(i) However, when any intermediate hazardous substance is first produced during a manufacturing or processing activity and is withdrawn for sale or transfer outside of the manufacturing or processing plant, a taxable first possession occurs.

(c) Concentrations or dilutions for shipment or storage. The mere addition or withdrawal of water or other nonhazardous substances to or from hazardous substances designated under CERCLA or FIFRA for the sole purpose of transportation, storage, or the later manufacturing use of such substances does not result in any new hazardous product.

(8) How and when to pay tax. The tax must be reported on a special line of the combined excise tax return designated "hazardous substances." It is due for payment together with the timely filing of the return upon which it is reported, covering the tax reporting period during which the hazardous substance(s) is first possessed within this state. Any person who is not expressly exempt of the tax and who possesses any hazardous substance in this state, without having proof that the tax has previously been paid on that substance, must report and pay the tax.

(a) It may be that the person who purchases a hazardous substance will not have billing information from which to determine the wholesale value of the substance when the tax return for the period of possession is due. In such cases the tax is due for payment no later than the next regular reporting due date following the reporting period in which the substance(s) is first possessed.

(b) The taxable incident or event is the possession of the substance. Tax is due for payment by the purchaser of any hazardous substance whether or not the purchase price has been paid in part or in full.

(c) Special provision for manufacturers, refiners, and processors. Manufacturers, refiners, and processors who possess hazardous substances are required to report the tax and take any available exemptions and credits only at the time that such hazardous substances are withdrawn from storage for purposes of their sale, transfer, remanufacture, or consumption.

(9) How and when to claim credits. Credits should be claimed and offset against tax liability reported on the same excise tax return when possible. The tax return form provides a line for reporting tax on hazardous substances and a line for taking credits as an offset against the tax reported. It is not required that any documents or other evidences of entitlement to credits be submitted with the report. Such proofs must be retained in permanent records for the purpose of verification of credits taken.

(10) Special provision for consumer/first possessors. Under circumstances where the consumer is the first person in possession of any nonexempt hazardous substance (e.g., substances imported by the consumer), or where the consumer is the person who must pay the tax upon substances previously possessed in this state (fuel purchased for export

in fuel tanks) the consumer's tax measure will be eighty percent of its retail purchase price. This provision is intended to achieve a tax measure equivalent to the wholesale value.

(11) Hazardous substances or products on consignment. Consignees who possess hazardous substances or products in this state with the power to sell such things, in their own name or on behalf of a disclosed or undisclosed consignor are liable for payment of the tax. The exemption for previously taxed substances is available for such consignees only if the consignors have paid the tax and the consignee has retained the certification or other proof of previous tax payment referred to in part (4)(i) and (ii) of this section. Possession of consigned hazardous substances by a consignee does not constitute constructive possession by the consignor.

(12) Hazardous substances untraceable to source. Various circumstances may arise whereby a person will possess hazardous substances in this state, some of which have been previously taxed in this or other states and some of which may not. In such cases formulary tax reporting may be used, only upon a special ruling by the department of revenue.

(a) Example. Fungible petroleum products from sources both within and outside this state are commingled in common storage facilities. Formulary reporting is appropriate based upon volume percentages reflecting the ratio of in-state production to out-of-state production or other form of acquisition.

(13) Administrative provisions. The provisions of chapter 82.32 RCW regarding due dates, reporting periods, tax return requirements, interest and penalties, tax audits and limitations, disputes and appeals, and all such general administrative provisions apply equally to the hazardous substance tax. Special requested rulings covering unique circumstances generally will be issued within sixty days from the date upon which complete information is provided to the department of revenue.

(14) Certification of previously taxed hazardous substance. Certification that the hazardous substance tax has already been paid by a person previously in possession of the substance(s) may be taken in substantially the following form:

I hereby certify that this purchase - all purchases of .....  
(omit one)  
..... by .....  
(identify substance(s) purchased) (name of purchaser)  
who possesses registration no. ....  
(buyer's number, if registered)

consists of the purchase of hazardous substance(s) or product(s) upon which the hazardous substance tax has been paid in full by a person previously in possession of the substance(s) or product(s) in this state. This certificate is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion, and with the full knowledge and agreement that the undersigned hereby assumes any liability for hazardous substance tax which has not been previously paid because of possession of the hazardous substance(s) or product(s) identified herein.

..... The registered seller named below personally paid the tax upon possession of the hazardous substances.  
..... A person in possession of the hazardous substances prior to the possession of the registered seller named below paid the tax.

(Check the appropriate line.)

Name of registered seller ..... Registration No. ....  
Firm name ..... Address .....  
Type of business .....  
Authorized signature ..... Title .....  
Date .....

PART II - PETROLEUM PRODUCTS TAX

(1) Under the provisions of chapter 383, Laws of 1989, (hereinafter referred to as the law), a petroleum product tax was imposed, effective July 1, 1989, upon the wholesale value of petroleum products in this state with specific credits and exemptions provided. The tax is an excise tax upon the privilege of first possessing petroleum products in this state. It is imposed in addition to all other taxes of an excise or property tax nature, including the hazardous substance tax explained earlier in this section, and is not in lieu of any other such taxes.

(a) Sections 14-18 of the law consist of the tax provisions relating to possession of petroleum products which are administered exclusively under this section. The application of the petroleum product tax with the exceptions noted below, is the same as the hazardous substance tax applications explained in subsection (1)(c) of part 1 of this section.

(b) The petroleum product tax is imposed upon any possession of petroleum products in this state by any person who is not expressly exempt of the tax. However, it is the intent of the law that the economic burden of the tax should fall only upon the first such possession in this state just like the hazardous substance tax.

(2) Definitions. For purposes of this part the following terms will apply.

(a) "Tax" means the petroleum product tax imposed under section 16 of the law.

(b) "Petroleum product" means any plant condensate, lubricating oil, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual fuel oil, asphalt base, liquefied or liquefiable gases, such as butane, ethane and propane, and every other product derived from the refining of crude oil, but the term does not include crude oil.

(c) "Possession" means control of a petroleum product located within this state and includes both actual and constructive possession.

(i) "Control" means the power to sell or use a petroleum product or to authorize the sale or use by another.

(ii) "Actual possession" occurs when the person with control has physical possession.

(iii) "Constructive possession" occurs when the person with control does not have physical possession.

(d) "Previously taxed petroleum products" means petroleum products upon which the petroleum product tax has been paid and which have not been remanufactured or reprocessed in any manner (other than mere repackaging or recycling for beneficial reuse) since the tax was paid.

(e) "Wholesale value" is the tax measure or base. It means the fair market value determined by the wholesale selling price at the place of use of similar products of like quality and character. "Wholesale value" shall be determined in precisely the manner for the petroleum product tax as it is for the hazardous substance tax in part 1, subsection (2)(g) of this section.

(f) "Selling price." See 2(h) of part 1 of this section.

(g) "State," for purposes of the credit provisions of the petroleum product tax, means:

- (i) A state of the United States other than Washington, or any political subdivision of such other state,
- (ii) The District of Columbia,
- (iii) Any foreign country or political subdivision thereof, and
- (iv) Territories and possessions of the United States.

(3) Tax rate and measure. The tax is imposed upon the privilege of possession of petroleum products in this state. The tax rate is fifty one-hundredths of one percent (.005). The tax measure or base is the wholesale value of the petroleum products, as defined herein. The tax will apply for first possessions of petroleum products in all periods after its effective date unless the department notifies taxpayers in writing of the department's determination that the pollution liability reinsurance program trust account contains a sufficient balance to cause a moratorium on the tax application. The department will again notify taxpayers in writing if and when the account balance requires reapplication of the tax.

(4) Exemptions. The following are expressly exempt from the tax:

(a) Any successive possessions of any previously taxed petroleum products are exempt in precisely the manner as the same exemption for the hazardous substance tax. (See part 1, subsection (4)(a) of this section.) If the tax is paid by any person other than the first person having taxable possession of a petroleum product, the amount of tax paid shall constitute a debt owed by the first person having taxable possession to the person who paid the tax.

(b) Any possession of a petroleum product by a natural person for use of a personal or domestic nature rather than a business nature is exempt in precisely the manner as the same exemption for the hazardous substance tax. (See part 1, subsection (4)(b) of this section.)

(c) Any possessions of the following substances are tax exempt:

- (i) Natural gas, or petroleum coke;
- (ii) Liquid fuel or fuel gas used in processing petroleum;
- (iii) Petroleum products that are exported for use or sale outside this state as fuel.

(iv) The exemption for possessions of petroleum products for export sale or use as fuel may be taken by any person within the chain of distribution of such products in this state. To perfect its entitlement to this exemption the person possessing such product(s) must take from its buyer or transferee of the product(s) a written certification in substantially the following form:

Certificate of Tax Exempt Export Petroleum Products

I hereby certify that the petroleum products specified herein, purchased by or transferred to the undersigned, from (seller or transferor), are for export for use or sale outside Washington state as fuel. I will become liable for and pay any petroleum product tax due upon all or any part of such products which are not so exported outside Washington state. This certificate is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion.

Registration No. ....  
 Type of Business .....  
 (If applicable) Firm Name .....

Registered Name (If different) .....  
 Authorized Signature .....  
 Title .....  
 Identity of Petroleum Product .....  
 (Kind and amount by volume)  
 Date: .....

(v) Each successive possessor of such petroleum products must, in turn, take a certification in this form from any other person to whom such petroleum products are sold or transferred in this state. Failure to take and keep such certifications as part of its permanent records will incur petroleum product tax liability by such sellers or transferrers of petroleum products.

(vi) Persons in possession of such petroleum products who themselves export or cause the exportation of such products to persons outside this state for further sale or use as fuel must keep the proofs of actual exportation required by WAC 458-20-193, parts A or C. Carriers who will purchase fuel in this state to be taken out-of-state in the fuel tanks of any ship, airplane, truck, or other carrier vehicle will provide their fuel suppliers with this certification. Then such carriers will directly report and pay the tax only upon the portion of such fuel actually consumed by them in this state. (With respect to fuel brought into this state in fuel tanks and partially consumed here, see the credit provisions of part 1, subsection (5)(b) of this section.

(vii) Blanket export exemption certificates may never be accepted in connection with petroleum products exchanged under exchange agreements.

(d) Any possession of petroleum products packaged for sale to ultimate consumers. This exemption is limited to petroleum products which are prepared and packaged for sale at usual and ordinary retail outlets. Examples are containerized motor oil, lubricants, and aerosol solvents.

(5) Credits. There are two distinct kinds of tax credits against liability which are available under the law.

(a) A credit may be taken in the amount of the petroleum product tax upon the value of fuel which is carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle. The credit is applied in precisely the same manner as the hazardous substance tax in part 1, subsection (5)(b) of this section.

The same form of certification as used for the fuel-in-tanks hazardous substance tax credit in subsection (5)(b)(vi) of part 1 of this section may be used.

(b) A credit may be taken against the tax owed in this state in the amount of any other state's petroleum product tax which has been paid by the same person measured by the wholesale value of the same petroleum product tax.

(i) In order for this credit to apply, the other state's tax must be significantly similar to Washington's tax in all its various respects. The taxable incident must be on the act or privilege of possessing petroleum products and the tax must be of a kind that is not generally imposed on other activities or privileges; the tax purpose must be to fund pollution liability insurance; and the tax measure must be stated in terms of the wholesale value of the petroleum products, without deductions for costs of doing business, such that the other state's tax does not constitute an income tax or added value tax.

(ii) The credit is applied in precisely the same manner as the state credit for hazardous substance tax in part 1, subsection (5)(c) of this section. The amount of the credit shall not exceed the petroleum product tax liability with respect to that petroleum product.

(6) The general administrative and tax reporting provisions for the hazardous substance tax contained in part 1 (8) through (14) of this section apply as well for the petroleum products tax of this part in precisely the same manner except the references to "hazardous substance(s)" or "substance(s)" should be replaced with the words, "petroleum products."

[Statutory Authority: RCW 82.32.300, 89-16-091 (Order 89-12), § 458-20-252, filed 8/2/89, effective 9/2/89; 89-10-051 (Order 89-1), § 458-20-252, filed 5/2/89; 88-06-028 (Order 88-2), § 458-20-252, filed 2/26/88.]

**WAC 458-20-254 Recordkeeping.** (1) Every person liable for an excise tax imposed by the laws of the state of Washington for which the department of revenue has primary or secondary administrative responsibility, i.e., Title 82 RCW, and, chapters 67.28 (hotel/motel tax), 70.93 (litter tax), 70.95 (tax on tires), and 84.33 RCW (forest excise tax), shall keep complete and adequate records from which the department may determine any tax for which such person may be liable.

**(2) General requirements.**

(a) It is the duty of each taxpayer to prepare and preserve all books of record in a systematic manner conforming to accepted accounting methods and procedures. Records are to be kept, preserved, and presented upon request of the department which will demonstrate:

(i) The amounts of gross receipts and sales from all sources, however derived, including barter or exchange transactions, whether or not such receipts or sales are taxable. These amounts must be supported by original source documents including but not limited to all purchase and sales invoices and contracts or such other documents as may be necessary to substantiate gross receipts and sales;

(ii) The amounts of all deductions, exemptions, or credits claimed through supporting documentation required by statute or administrative rule, or such other supporting documentation necessary to substantiate the deduction, exemption, or credit.

(b) The records kept, preserved and presented must include the normal books of account maintained by an ordinary prudent business person. Such records may include general ledgers, sales journals, cash receipts journals, check registers, and purchase journals, together with all bills, invoices, cash register tapes, or other documents of original entry supporting the books of account entries. The records shall include all federal and state tax returns and reports and all schedules or work papers used in the preparation of tax reports or returns.

(c) All such records shall be open for inspection and examination at any time by the department, upon reasonable notice, and shall be kept and preserved for a period of five years. RCW 82.32.070

**(3) Microfilm and/or microfiche.** Records may be microfilmed or microfiched, such as general books of accounts including cash books, journals, voucher registers, ledgers and like documents provided the microfilmed and/or

microfiched records are authentic, accessible, and readable, and all of the following requirements are fully satisfied:

(a) Appropriate facilities are provided to preserve the films or fiche for the periods such records are required to be open to examination and to provide transcriptions of any information on film or fiche required to verify tax liability.

(b) All microfilmed or microfiched data must be indexed, cross referenced, and labeled to show beginning and ending numbers and beginning and ending alphabetical listings of all documents included.

(c) Taxpayers must make available upon request of the department, a reader/printer in good working order at the examination site for reading, locating, and reproducing any record that is maintained on microfilm or microfiche.

(d) Taxpayers must set forth in writing the procedures governing the establishment of a microfilm or microfiche system and the names of persons who are responsible for maintaining and operating the system with appropriate authorization from the boards of directors, general partner(s), or owner(s), whichever is applicable.

(e) The microfilm or microfiche system must be complete and must be used consistently in the regularly conducted activity of the business.

(f) Taxpayers must establish procedures with the appropriate documentation so that an original document can be traced through the microfilm or microfiche system.

(g) Taxpayers must establish internal procedures for microfilm or microfiche inspection and quality assurance.

(h) Taxpayers must keep a record identifying where, when, by whom, and on what equipment the microfilm or microfiche was produced.

(i) When displayed on a microfilm or microfiche reader (viewer) or reproduced on paper, the material must be legible and readable. For this purpose, legible means the quality of a letter or numeral which enables the reader to identify it positively and quickly to the exclusion of all other letters or numerals. Readable means the quality of a group of letters or numerals recognizable as words or complete numbers.

(j) All production of microfilm or microfiche and the processing duplication, quality control, storage, identification, and inspection thereof must meet industry standards as set forth by the American National Standards Institute, National Micrographics Association, or National Bureau of Standards.

**(4) Automated data process system.** An automated data process (ADP) accounting system may be used to provide the records required to verify tax liability. All ADP systems used for this purpose must include a method for producing legible and readable records to verify tax liability, reporting, and payment. The following requirements apply to any taxpayer who maintains records on an ADP system:

(a) ADP records shall provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are done, the system must have the capability to reconstruct these transactions.

(b) A general ledger, with source references, shall be written out to coincide with financial reports for tax reporting periods. In the cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers shall be written out periodically.

(c) The audit trail shall be so designed that the details underlying the summary accounting data may be identified and made available to the department and that supporting documents, such as sales invoices, purchase invoices, credit memoranda, and like documents are readily available.

(d) A description of the ADP portion of the accounting system shall be made available. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate:

(i) The application being preformed;

(ii) The procedures employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures); and,

(iii) The controls used to insure accurate and reliable processing.

(e) Important changes in an ADP accounting system or any part thereof, together with their effective dates, shall be noted to preserve an accurate chronological record of such changes.

(f) Adequate record retention facilities shall be available for the storage of such information, printouts and all supporting documents.

(5) **Out-of-state businesses.** An out-of-state business which does not keep the necessary records within this state may either produce within this state such records as are required for examination by the department, or, permit the examination of the records by the department at the place where the records are kept. RCW 82.32.070, see also, WAC 458-20-215.

(6) **Failure of taxpayer to maintain and disclose complete and adequate records.** Any person who fails to comply with the requirements of RCW 82.32.070 or this section shall be forever barred from questioning, in any court action or proceedings, the correctness of any assessment of taxes made by the department based upon any period for which such books, records, and invoices have not been so kept and preserved. RCW 82.32.070

[Statutory Authority: RCW 82.32.300, 89-11-040 (Order 89-6), § 458-20-254, filed 5/16/89.]

### **WAC 458-20-255 Carbonated beverage syrup tax.**

(1) **Introduction.** This rule explains the carbonated beverage syrup tax (syrup tax) as imposed by chapter 82.64 RCW. The syrup tax is an excise tax on the number of gallons of carbonated beverage syrup sold in this state, for use in producing carbonated beverages that are sold at wholesale or retail in this state. The syrup tax is in addition to all other taxes.

Except as otherwise provided in this rule, the provisions of chapters 82.04, 82.08, 82.12 and 82.32 RCW regarding definitions, due dates, reporting periods, tax return requirements, interest and penalties, tax audits and limitations, disputes and appeals, and all general administrative provisions apply to the syrup tax.

This rule provides examples that identify a number of facts and then state a conclusion regarding the applicability of the syrup tax. 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.

(2) **What is carbonated beverage syrup?** Carbonated beverage syrup (syrup) is a concentrated liquid that is added

to carbonated water to produce a carbonated beverage. "Syrup" includes concentrated liquid marketed by manufacturers to which purchasers add water, carbon dioxide, or carbonated water to produce a carbonated beverage. "Carbonated beverage" includes any nonalcoholic liquid intended for human consumption that contains any amount of carbon dioxide, such as soft drinks, mineral or carbonated waters, seltzers, fruit juices, or frozen carbonated beverages known as FCBs. "Carbonated beverage" does not include products such as bromides or carbonated liquids commonly sold as pharmaceuticals.

(3) **When is syrup tax imposed and how is it determined?** Syrup tax is imposed on the wholesale or retail sales of syrup within this state. The syrup tax is determined by the number of gallons of syrup sold. Fractional amounts are taxed proportionally.

(a) **When should syrup tax be reported and paid?** The frequency of reporting and paying the syrup tax coincides with the reporting periods of taxpayers for their business and occupation (B&O) tax. For example, a wholesaler who reports B&O tax monthly would also report any syrup tax liability on the monthly excise tax return.

(b) **What if I sell both previously taxed and nontaxed syrups?** Persons selling syrups in this state, some of which have been previously taxed in this or other states and some of which have not, may contact the department of revenue (department) for authorization to use formulary tax reporting. Prior to reporting in this manner, the person must receive a special ruling from the department that allows formulary reporting. Persons selling previously taxed syrups should refer to subsections (5)(a) and (6) of this rule for information about an exemption or credit that may be applicable to such sales.

(4) **Who is responsible for paying the syrup tax?** This subsection explains who is responsible for payment of the syrup tax for both wholesale and retail sales of syrup in this state. (a) **Wholesale sales.** A wholesaler making a wholesale sale of syrup in this state must collect the tax from the buyer and report and pay the tax to the department. If, however, the wholesaler is prohibited from collecting the tax under the Constitution of this state or the Constitution or laws of the United States, the wholesaler is liable for the tax. A wholesaler who fails or refuses to collect the syrup tax with intent to violate the provisions of chapter 82.64 RCW, or to gain some advantage directly or indirectly is guilty of a misdemeanor. The buyer is responsible for paying the syrup tax to the wholesaler. The syrup tax required to be collected by the wholesaler is a debt from the buyer to the wholesaler, until the tax is paid by the buyer to the wholesaler. Except as provided in subsection (5)(b)(ii) of this rule, the buyer is not obligated to pay or report the syrup tax to the department.

(b) **Retail sales.** A retailer making a retail sale in this state of syrup purchased from a wholesaler who has not collected the tax must report and pay the tax to the department. Except as provided in subsection (5)(b)(ii) of this rule, the buyer is not obligated to pay or report the syrup tax to the department.

(5) **Exemptions:** This subsection provides information on exemptions from the syrup tax.

(a) **Previously taxed syrup.** Any successive sale of previously taxed syrup is exempt. "Previously taxed syrup" is syrup on which tax has been paid under chapter 82.64 RCW.

(i) All persons selling or otherwise transferring possession of taxed syrup, except retailers, must separately itemize the amount of the syrup tax on the invoice, bill of lading, or other instrument of sale. Beer and wine wholesalers selling syrup on which the syrup tax has been paid and who are prohibited under RCW 66.28.010 from having a direct or indirect financial interest in any retail business may, instead of a separate itemization of the amount of the syrup tax, provide a statement on the instrument of sale that the syrup tax has been paid. For purposes of the payment and the itemization of the syrup tax, the tax computed on standard units of a product (e.g., cases, liters, gallons) may be stated in an amount rounded to the nearest cent. In competitive bid documents, unless the syrup tax is separately itemized in the bid documents, the syrup tax will not be considered as included in the bid price. In either case, the syrup tax must be separately itemized on the instrument of sale except when the separate itemization is prohibited by law.

(ii) Any person prohibited by federal or state law, ruling, or requirement from itemizing the syrup tax on an invoice, bill of lading, or other document of delivery must retain the documentation necessary for verification of the payment of the syrup tax.

(iii) A subsequent sale of syrup sold or delivered upon an invoice, bill of lading, or other document of sale that contains a separate itemization of the syrup tax is exempt from the tax. However, a subsequent sale of syrup sold or delivered to the subsequent seller upon an invoice, bill of lading, or other document of sale that does not contain a separate itemization of the syrup tax is conclusively presumed to be previously untaxed syrup, and the seller must report and pay the syrup tax unless the sale is otherwise exempt.

(iv) The exemption for syrup tax previously paid is available for any person selling previously taxed syrup even though the previous payment may have been satisfied by the use of credits or offsets available to the prior seller.

(v) Example. Company A sells to Company B a syrup on which Company A paid a similar syrup tax in another state. Company A takes a credit against its Washington tax liability in the amount of the other state's tax paid (see subsection (6) of this rule). It provides Company B with an invoice containing a separate itemization of the syrup tax. Company B's subsequent sale is tax exempt even though Company A has not directly paid Washington's tax but has used a credit against its Washington liability.

(b) **Syrup transferred out-of-state.** Any syrup that is transferred to a point outside the state for use outside the state is exempt. The exemption for the sale of exported syrup may be taken by any seller within the chain of distribution.

(i) **Required documentation.** The prior approval of the department is not required to claim an exemption from the syrup tax for exported syrup. The seller, at the time of sale, must retain in its records an exemption certificate completed by the buyer to document the exempt nature of the sale. This requirement may be satisfied by using the department's "Certificate of Tax Exempt Export Carbonated Beverage Syrup," or another certificate with substantially the same information.

A blank exemption certificate can be obtained through the following means:

(A) From the department's internet website at <http://dor.wa.gov>;

(B) By facsimile by calling Fast Fax at (360) 705-6705 or (800) 647-7706 (using menu options); or

(C) By writing to: Taxpayer Services, Washington State Department of Revenue, P.O. Box 47478, Olympia, Washington 98504-7478.

(ii) The exemption certificate may be used so long as some portion of the syrup is exported. Sellers are under no obligation to verify the amount of syrup to be exported by their buyers providing such certificates. Buyers providing exemption certificates for exported syrup agree to become liable for tax and any associated penalties and interest on syrup that is not exported.

(iii) Example. Company A sells a previously untaxed syrup to Company C. Company C provides the seller with a completed exemption certificate as explained in subsection (5)(b)(i) of this rule. Company C sells the syrup to Company D, who provides Company C with an exemption certificate. Company D decides to not export a portion of the purchased syrup. Companies A and C can both accept exemption certificates. Company D is responsible for paying syrup tax on the syrup not exported.

(iv) Persons who make sales of syrup to persons outside this state must keep the proofs required by WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property) to substantiate the out-of-state sales.

(c) **Taxation prohibited under the United States Constitution.** Persons or activities that the state is prohibited from taxing under the United States Constitution are exempt.

(d) **Wholesale sales of trademarked syrup to bottlers.** Any wholesale sale of a trademarked syrup by any person to a person commonly known as a bottler who is appointed by the owner of the trademark to manufacture, distribute, and sell the trademarked carbonated beverage within a specific geographic territory is exempt.

(6) **Credit for syrup tax paid to another state.** Credit is allowed against the taxes imposed by chapter 82.64 RCW for any syrup tax paid to another state with respect to the same syrup. The amount of the credit cannot exceed the tax liability arising under chapter 82.64 RCW. The amount of credit is limited to the amount of tax paid in this state upon the wholesale sale of the same syrup in this state. In addition, the credit may not be applied against any tax paid or owed in this state other than the syrup tax imposed by chapter 82.64 RCW.

(a) **What is a state?** For purposes of the syrup tax credit, "state" is any state of the United States other than Washington, or any political subdivision of another state; the District of Columbia; and any foreign country or political subdivision of a foreign country.

(b) **What is a syrup tax?** For purposes of the syrup tax credit, "syrup tax" means a tax that is:

(i) Imposed on the sale at wholesale of syrup and is not generally imposed on other activities or privileges; and

(ii) Measured by the volume of the syrup.

(c) **How and when to claim the credit.** Any tax credit available to the taxpayer should be claimed and offset against tax liability reported on the same excise tax return when pos-

sible. The excise tax return provides a line for reporting syrup tax, and the credit must be taken in the credit section under the credit classification "other credits." A statement showing the computation of the credit must be provided. It is not required that any other documents or other evidence of entitlement to credits be submitted with the return. Such proofs must be retained in permanent records for the purpose of verification of credits taken.

[Statutory Authority: RCW 82.32.300, 82.01.060(2) and chapter 82.64 RCW. 05-02-009, § 458-20-255, filed 12/27/04, effective 1/27/05. Statutory Authority: RCW 82.32.300. 98-20-085, § 458-20-255, filed 10/6/98, effective 11/6/98; 91-20-058, § 458-20-255, filed 9/24/91, effective 10/25/91; 89-17-001 (Order 89-13), § 458-20-255, filed 8/3/89, effective 9/3/89.]

**WAC 458-20-256 Trade shows, conventions and seminars.** (1) When a trade show, convention or educational seminar is sponsored and held by a nonprofit trade or nonprofit professional organization for a group other than the general public, the sponsoring organization may deduct from its business and occupation tax measure all "attendance" or "space" charges it collects for such an event, per RCW 82.04.4282. Nonqualifying organizations, and qualifying organizations sponsoring nonqualifying events, must include "attendance" and "space" charges in their tax measure for purposes of computing service and other activity business and occupation tax thereon.

(2) Nonprofit organizations are taxed in the same fashion as profit-making individuals or groups, with but few tax exemptions. This section implements one of those exemptions. See also WAC 458-20-114 and 458-20-169.

(3) For purposes of this section, the following definitions shall apply:

(a) The term "nonprofit" means exempt from tax under Section 501 of the Internal Revenue Code. The tax exempt status must be in effect when the trade show, convention, or seminar is conducted.

(b) A "trade organization" is an entity whose members are engaged "in trade", i.e., in one or more lawful commercial trades, businesses, crafts, industries, or distinct productive enterprises.

(c) A "professional organization" is an entity whose members are engaged in a particular lawful vocation, occupation or field of activity of a specialized nature.

(d) A "trade show" is a gathering of persons in trade for the purpose of exhibiting, demonstrating, and explaining services, products and/or equipment.

(e) A "convention" is a gathering of persons in trade or a profession for the purposes of providing, publishing and exchanging information, ideas and attitudes and conducting the business of the organization.

(f) A "seminar" is a gathering of persons in trade or a profession for the purpose of research, study, and/or exchange of specialized information, ideas and attitudes in regard to that trade or profession.

(g) "Not open to the general public" means that attendance is limited to members of the sponsoring organization and to specific invited guests of the sponsoring organization.

(4) As of July 23, 1989, for purposes of computing taxable receipts subject to business and occupation tax, a qualifying "nonprofit" organization may deduct all amounts the organization collects as charges for

(a) Admissions, and

(b) Licenses to occupy space in order to display exhibits, equipment and/or goods, at an organization-sponsored trade show, convention or seminar not open to the general public.

(5) No statutory deduction is available for the following:

(a) Outright sales of tangible personal property or services for which a specific charge separate from the charge for attending or occupying space is made. It is only those charges which are paid for the express privilege of attending or exhibiting at such an event which are deductible; and

(b) Admission or space charges for purely social, recreational, entertainment or other nontrade or nonprofessional gatherings regardless of the nonprofit tax status of the sponsoring organization.

(6) Examples:

(a) The local building trade council (council) organizes and sponsors a trade show held for specialty and general housing contractors. Council has on file a letter of tax exemption under Section 501 of the Internal Revenue Code. Council collects \$100.00, prepaid, from each exhibitor for licenses to display and exhibit construction equipment, tools and related wares at preassigned booths, and \$5.00, paid at the door, from each contractor who attends the event. Because the sponsoring organization qualifies as a nonprofit trade organization, the event qualifies as a trade show sponsored by the organization, and it is not open to the general public, all of the amounts collected constitute deductible receipts of admission and/or space charges.

(b) The metropolitan business group (metro), a recognized tax-exempt organization under IRC Section 501, organizes and sponsors a convention for all of its businesses members. Following completion of regular metro business matters (election of officers, etc.), there are speeches by accountants, attorneys, bankers, financial consultants, city planners, and other persons able to give legal and business advice and information to those attending. Metro charges a \$25.00 per person entry fee. Included with the program is a hosted luncheon at which the mayor gives an explanation of local governmental regulations. The entry charges are fully deductible by Metro from its business and occupation tax measure. The sponsoring organization is "nonprofit" and a "trade organization" because its members are generically "in trade" even though not all are members of just one trade. The event constitutes a convention for persons "in trade" (generic, not specific) and the event is not open to the public. Finally, the moneys collected all constitute admission charges, no special charge for the meal having been made.

(c) The eastside whiffle ball association (association), a corporation recognized in writing to be tax exempt under Section 501 of the Internal Revenue Code, holds a "skills" clinic for all interested persons. The association charges \$3.00 to all attending, which is just sufficient to cover the cost of materials and the use of a facility. Following the event, a special barbecue is held for \$4.00 extra per participant. Souvenirs imprinted with the association name are also available for extra charge. The \$3.00 admission charges, the \$4.00 dinner charges, and the souvenir charges must all be included in the association's B&O tax measure for the following reasons, each one of which disallows the deduction:

(i) The association is not a trade or professional organization,

(ii) The event is not a trade show, convention or seminar, and

(iii) The event is open to the public. Separate dinner and souvenir charges are nondeductible in any event because they constitute itemized charges for goods and services.

(d) A local concerned citizen group (group), which has never applied for federal tax exempt status, organizes and sponsors a health care seminar held in the local school auditorium for district health care professionals, nurses, sport trainers, parents, and concerned students. To cover the cost of hiring competent medical experts to speak at the seminar, the group charges \$5.00 per person. The event is sponsored by the group for a worthwhile public purpose and the entry fees are in fact admission charges. For the following reasons, each one of which disallows the deduction, the group will have to include all door charges in its tax measure: (i) The sponsoring organization is not properly recognized to be nonprofit (no federal tax recognition) or to be a trade or professional organization, and (ii) the event is open to the public at large.

[Statutory Authority: RCW 82.32.300. 90-04-058, § 458-20-256, filed 2/2/90, effective 3/5/90.]

**WAC 458-20-257 Warranties and maintenance agreements.** (1) **Definitions.** For the purposes of this section, the following terms will apply:

(a) **Warranties.** Warranties, sometimes referred to as guarantees, are agreements which call for the replacement or repair of tangible personal property with no additional charge for parts or labor, or both, based upon the happening of some unforeseen occurrence, e.g., the property needs repair within the warranty period.

(b) **Warrantor.** The warrantor is the person obligated, as specified in the warranty agreement, to perform labor and/or provide materials to the owner of the personal property to which the warranty agreement relates.

(c) **Maintenance agreements.** Maintenance agreements sometimes referred to as service contracts, are agreements which require the specific performance of repairing, cleaning, altering, or improving of tangible personal property on a regular or irregular basis to ensure its continued satisfactory operation.

**(2) B&O tax.**

(a) **Manufacturer's warranties included in the retail selling price of the article being sold.**

(i) When a manufacturer's warranty is included in the retail selling price of the property sold and no additional charge is made, the value of the warranty is a part of the selling price. The value of the warranty is included in the "gross proceeds of sale" of the article sold and reported under the appropriate classification, e.g. retailing, wholesaling, etc.

(ii) When a repair is made by the manufacturer-warrantor under the warranty, the value of the labor and or parts provided are not subject to B&O tax.

(iii) When a person other than the manufacturer-warrantor makes a repair for the manufacturer-warrantor, the person making the repair is making a wholesale sale of the repair service to the manufacturer-warrantor. The person doing the repair is B&O taxable under the wholesaling classification on the value of the parts and labor provided.

(b) **Nonmanufacturer's warranties and manufacturer's warranties not included in the retail selling price of the article being sold.**

(i) When a warranty is sold for a charge separate from the charge of the product, e.g., a warranty extending the manufacturer's warranty, the charge is reported in the service and other activities classification of the B&O tax.

(ii) When a repair is made by the warrantor under a separately stated warranty, the value of the labor and or parts provided are not subject to B&O tax.

(iii) When a person other than the warrantor makes a repair for the warrantor, the person making the repair is making a retail sale of the repair service to the warrantor. The person making the repair is B&O taxable under the retailing classification.

**(c) Maintenance agreements.**

(i) **Maintenance agreements (service contracts)** require the periodic specific performance of inspecting, cleaning, physical servicing, altering, and/or improving of tangible personal property. Charges for maintenance agreements are retail sales, subject to retailing B&O tax and retail sales tax under all circumstances.

(d) Amounts received as a commission or other consideration for selling a warranty or maintenance agreement of a third-party warrantor or provider are generally subject to B&O tax under the service and other activities classification. However, if the seller of the warranty is licensed under chapter 48.17 RCW with respect to this selling activity, the commission is subject to B&O tax under the insurance agent classification.

(e) In the event a warrantor purchases an insurance policy to cover the warranty, amounts received by the warrantor under the insurance policy are insurance claim reimbursements not subject to B&O tax.

**(3) Retail sales tax.**

(a) **Manufacturer's warranties included in the retail selling price of the article being sold.**

(i) When a manufacturer's warranty is included in the retail selling price of the property sold and no additional or separate charge is made, the value of the warranty is a part of the selling price and retail sales tax applies to the entire selling price of the article being sold.

(ii) When a repair is made by the manufacturer-warrantor under the warranty, the repair performed is not a retail sale and no retail sales tax is collected.

(iii) When a person other than the manufacturer-warrantor makes a repair for the manufacturer-warrantor, the person making the repair is making a wholesale sale of the repair service to the manufacturer-warrantor. No retail sales tax is collected from the manufacturer-warrantor.

(b) **Nonmanufacturer's warranties and manufacturer's warranties not included in the retail selling price of the article being sold.**

(i) When a warranty is sold for a charge separate from the charge of the product, e.g., a warranty extending the manufacturer's warranty, the sale is not a retail sale and no retail sales tax is collected on the amount charged.

(ii) When a repair is made by the warrantor under its own separately stated warranty, the value of the labor and/or parts provided is not a retail sale and no retail sales tax is collected.

(iii) When a person other than the warrantor makes a repair for the warrantor, the person making the repair is making a retail sale of the repair service to the warrantor. Retail sales tax is collected from the warrantor measured by the labor and materials provided.

(c) Maintenance agreements are sales at retail and subject to retail sales tax under all circumstances.

(i) Parties subcontracting to the party selling the maintenance agreement are making sales at wholesale, and are required to take from their customer (maintenance seller) a resale certificate as provided in WAC 458-20-102.

(4) USE TAX.

(a) Manufacturer's warranties included in the retail selling price of the article being sold.

(i) When a manufacturer-warrantor makes repairs required under its warranty, the value of the parts used in making the repairs is not subject to use tax.

(ii) Where a third party makes repairs for a manufacturer-warrantor, the transaction is a wholesale sale and the parts used in the repair are not subject to use tax.

(b) Nonmanufacturer's warranties and manufacturer's warranties not included in the retail selling price of the article being sold.

(i) When a repair is made by the warrantor under a separately stated warranty, the warrantor is the consumer of the parts and the parts are subject to use tax measured by the warrantor's cost.

(ii) When a person other than the warrantor makes a repair for the warrantor, the person making the repair is making a retail sale to the warrantor. Retail sales tax, not use tax, is collected.

(c) Maintenance agreements.

(i) Persons performing services under the requirements of maintenance agreements sold by them, are not subject to use tax or retail sales tax on materials which become a part of the required repairs or services.

(5) **Additional service - deductible.** In the event services are provided in addition to any warranty or maintenance agreement, such services are separately taxable as retail sales, subject to retail sales tax and retailing B&O tax. This includes so-called "deductible" amounts not covered by a warranty or maintenance agreement.

(6) **Mixed agreements.** If an agreement contains warranty provisions but also requires the actual specific performance of inspection, cleaning, servicing, altering, or improving the property on a regular or irregular basis, without regard to the operating condition of the property, such agreements are fully taxable as maintenance agreements, not warranties.

(7) **Examples:**

(a) An automobile dealer sells a vehicle to a customer for selling price of \$15,000 cash and the selling price includes a manufacturer's limited warranty for 5 years or 50,000 miles. The owner of the vehicle has \$600 (\$200 parts and \$400 labor) warranty work, paying no deductible, performed by the dealer who is not the manufacturer-warrantor. The tax liability of the dealer is as follows:

(i) Retail sales tax is collected on the \$15,000 selling price.

(ii) The \$15,000 selling price is reported under the retailing B&O tax classification. The \$600 repair is reported under the wholesaling B&O tax classification.

(iii) The \$200 of parts used in the repair are not subject to use tax.

(b) The automobile dealer in example (a) also sells its own extended warranty to the customer for \$200. The dealer insures itself with an insurance carrier and under the policy, claims are paid on the retail value of the repairs. In addition to the repairs in example (a), the customer has the dealer complete \$500 of repairs under the dealer's extended warranty. The customer paid the \$100 deductible and the dealer received \$400 from his insurance carrier. In completing the repair, the dealer installed parts from its inventory which had a cost to the dealer of \$150 and subcontracted part of the repair to an electrical shop which charged the dealer \$200. The tax liability to the dealer and the subcontractor are as follows:

(i) The dealer reports the \$200 sale of the warranty under the service and other activities classification of B&O tax. No retail sales tax is collected on the sale.

(ii) The \$100 deductible received by the dealer is a retail sale subject to retail sales tax and retailing B&O tax.

(iii) The \$400 received by the dealer from the insurance company is a nontaxable insurance claim reimbursement.

(iv) The dealer is the consumer of the parts removed from its inventory and used in the repair. The \$150 dealer cost of the parts taken from inventory is subject to use tax.

(v) The subcontractor is making a retail sale to the dealer subject to retail sales tax and retailing B&O.

[Statutory Authority: RCW 82.32.300. 90-10-081, § 458-20-257, filed 5/2/90, effective 6/2/90.]

#### **WAC 458-20-258 Travel agents and tour operators.**

(1) **Introduction.** This section describes the business and occupation (B&O) taxation of travel agents and tour operators. Travel agents are taxed at the special travel agent rate under RCW 82.04.260(10). Tour operators are generally taxed under the service or other business classification under RCW 82.04.290. However, the business activities of tour operators may sometimes include activities like those of a travel agent. This section recognizes the overlap of activities and taxes them consistently.

(2) **Definitions:**

(a) "Commission" means the fee or percentage of the charge or their equivalent, received in the ordinary course of business as compensation for arranging the service. The customer or receiver of the service, not the person receiving the commission, is always responsible for payment of the charge.

(b) "Pass-through expense" means a charge to a tour operator business where the tour operator is acting as an agent of the customer and the customer, not the tour operator, is liable for the charge. The tour operator cannot be primarily or secondarily liable for the charge other than as agent for the customer. See: WAC 458-20-111 Advances and reimbursements.

(c) "Tour operator business" means a business activity of providing directly or through third party providers, transportation, lodging, meals, and other associated services where the tour operator purchases or itself provides any or all of the services offered, and is itself liable for the services purchased.

(d) "Travel agent business" means the business activity of arranging transportation, lodging, meals, or other similar

services which are purchased by the customer and where the travel agent or agency merely receives a commission for arranging the service.

**(3) Travel agents.**

(a) The gross income of a travel agent or a travel agent business is the gross commissions received without any deduction for the cost of materials used, labor costs, interest, discount, delivery cost, taxes, losses, or any other expense. It is taxed at the special travel agent rate.

(b) Gross receipts, other than commissions, from other business activities of a travel agent, including activities as a tour operator, are taxed in the appropriate B&O classification, service, retailing, etc., as the case may be.

**(4) Tour operators.**

(a) The gross income of a tour operator or a tour operator business is the gross commissions received when the activity is that of a travel agent business.

(i) When a tour operator receives commissions from a third party service provider for all or a part of the tour or tour package, the gross income of the business for that travel agent activity is the commissions received.

(b) However, if the activity is that of a tour operator business, receipts are B&O taxable in the service classification without any deduction for the cost of materials used, labor costs, interest, discount, delivery cost, taxes, losses, or any other expense; **except**, receipts attributable to pass-through expenses are not included as part of the gross income of the business.

**(5) Examples:**

(a) A travel agent issues an airplane ticket to a customer. The cost of the ticket is \$250 which is paid by the customer. The travel agent receives \$25 from the airline for providing the service.

(i) The gross income of the business for the travel agent is the \$25 commission received.

(ii) The gross income of the business is taxed at the special travel agent rate.

(b) A tour operator offers a tour costing \$1,500 per person. The tour cost consists of \$800 airfare, \$500 lodging and meals, and \$200 bus transportation. The tour operator has an arrangement with each of the service providers to receive a 10% commission for each service of the tour, which in this case is \$150 (\$80 + \$50 + \$20). The tour operator issues tickets, etc, only when paid by the customer and is not liable for any services reserved but not provided.

(i) The tour operator is engaged in a travel agent activity and the gross income of the business is commissions received, \$150.

(ii) The gross income of the business, \$150, is taxed at the special travel agent rate.

(c) The same facts as in example (b) except that the tour operator has a policy of requiring 10% or \$150 as a down payment with the remaining \$1,350 payable 20 days prior to departure with 95% refundable up to 10 days prior to departure and nothing refunded after 10 days prior to departure. The customer cancels 15 days prior to departure and is refunded \$1,425 with the tour operator retaining \$75.

(i) The gross income of the tour operator business is the \$75 retained. No amount is attributable to pass-through expense since the tour operator was not obligated to the ser-

vice provider in the event of cancellation and the tour operator was not acting as the agent of the customer.

(ii) The gross income of the business, \$75, is taxed in the service B&O tax classification.

(d) A tour operator offers a package tour for the Super-bowl costing \$800 per person. The tour operator purchases noncancellable rooms in a hotel for \$300 per room for 2 nights, and game tickets which cost \$100 each. The package includes airfare which costs \$200 per person for which the tour operator receives the normal commission of \$20. As an extra feature, the tour operator offers to provide, for an extra cost, special event tickets, if available, at his cost of \$50 each. The tour operator is B&O taxable as follows:

(i) The gross income of the tour operator business is \$600 (\$800 less \$200 airfare). Because the tour operator purchased the rooms and the game tickets in its own name and is liable for the rooms or tickets if not resold, the tour operator is not operating as a travel agent business and is B&O taxable in the service classification. If the tour operator receives a commission on the rooms sold to itself, the activity remains taxable as a tour operator business under the service classification and the commission received is treated as a cost discount, not included in the gross income of the business.

(ii) The \$50 received for the special event ticket is attributable to a pass-through expense and is not included in the gross income of the tour operator business. The special event ticket receipt is attributable to a pass-through expense because the tour operator is acting as an agent for the customer.

(iii) The \$20 received as commission from the sale of the airfare is a travel agent business activity and is included as gross income of a travel agent and taxed at the special travel agent rate.

[Statutory Authority: RCW 82.32.300, 90-17-003, § 458-20-258, filed 8/2/90, effective 9/2/90.]

**WAC 458-20-260 Oil spill response and administration tax. (1) Introduction.** This rule explains the provisions of chapter 82.23B RCW which imposes an oil spill response tax and an oil spill administration tax. The taxes are imposed upon the privilege of receiving crude oil or petroleum products at a marine terminal in this state from a waterborne vessel or barge operating on the navigable waters of this state.

**(2) Definitions.** For purposes of this rule, the following terms will apply.

(a) "Tax" means the oil spill response and oil spill administration taxes imposed by chapter 82.23B RCW.

(b) "Barrel" means a unit of measurement of volume equal to forty-two United States gallons of crude oil or petroleum product.

(c) "Crude oil" means any naturally occurring liquid hydrocarbon at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline.

(d) "Department" means the department of revenue.

(e) "Marine terminal" means a facility of any kind, other than a waterborne vessel, that is used for transferring crude oil or petroleum products to or from a waterborne vessel or barge.

(f) "Navigable waters" means those waters of the state and their adjoining shorelines, that are subject to the ebb and flow of the tide, including the Columbia and Snake rivers.

(g) "Person" has the meaning provided in RCW 82.04.030.

(h) "Petroleum product" means any liquid hydrocarbons at atmospheric temperature and pressure that are the product of the fractionation, distillation, or other refining or processing of crude oil, and that are used as, useable as, or may be refined as fuel or fuel blendstock, including but not limited to, gasoline, diesel fuel, aviation fuel, bunker fuel, and fuels containing a blend of alcohol and petroleum.

(i) "Taxpayer" means the person owning crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine terminal in this state from a waterborne vessel or barge and who is liable for the tax.

(j) "Waterborne vessel or barge" means any ship, barge, or other watercraft capable of travelling on the navigable waters of this state and capable of transporting any crude oil or petroleum product in quantities of ten thousand gallons or more for purposes other than providing fuel for its motor or engine.

(k) "Previously taxed product" means any crude oil or petroleum product which has been received in this state in a manner subject to the tax and upon which the tax has been paid.

**(3) Imposition, base, and reporting of tax.** The tax is imposed on the privilege of receiving crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state. The tax is levied upon the owner of the crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine terminal from a waterborne vessel or barge.

(a) The tax is due for payment together with the timely filing of the return upon which it is reported, on or before the twenty-fifth day of the month following the month in which the taxable receipt occurs. In case any receipt commences on the last day of any month and extends past midnight, the receipt at the election of the marine terminal may be deemed to have occurred during the following month or may be deemed to have been completed at midnight and commenced at the instant after midnight.

(b) The number of barrels received must be computed as the net barrels received by the marine terminal operator. Net barrels must be computed by using an industry standard adjustment to gross barrels received to account for variations in temperature and content of water or other nonpetroleum substances.

**(4) Tax collection by the marine terminal operator.** Unless the taxpayer has been issued a direct payment certificate as provided in subsection (5) of this rule, the operator of any marine terminal located in this state where crude oil or petroleum products are received and placed into storage tanks is responsible for the collection of the tax from the taxpayer.

(a) Failure to collect the tax from the taxpayer and remit it to the department will cause the marine terminal operator to become personally liable for the tax, unless the marine terminal operator has billed the taxpayer for the tax or notified the taxpayer in writing of the imposition of the tax.

(i) The tax has been billed to a taxpayer when an invoice, statement of account, or notice of imposition of the tax is mailed or delivered to the taxpayer by the terminal operator within the operator's normal billing cycle and separately

states the dates of receipt, rate of tax, number of barrels received and placed into storage tanks, and the amount of the tax required to be collected.

(ii) A taxpayer has been notified of the imposition of the tax when, within twenty days from the date of receipt, a notice is mailed or delivered to the taxpayer, or to an agent of the taxpayer authorized to accept notices of this type other than the marine terminal operator. This notice must separately state the dates of receipt, rate of tax, number of barrels received into storage tanks, and the amount of the tax required to be collected.

(iii) Marine terminal operators must maintain a record of the names and addresses of taxpayers billed for the tax, or in cases where taxpayers are sent written notification of the imposition of the tax, the names and addresses of the persons to whom notice is sent. Such records must indicate those persons billed or notified from whom the tax has been collected. Upon request, the records shall be made available for inspection by the department.

(b) The tax collected must be held in trust by the terminal operator until paid to the department. The tax is due from the marine terminal operator, along with reports and returns on forms prescribed by the department, within twenty-five days after the end of the month in which the tax is collected.

(c) A terminal operator who relies in good faith upon a direct payment certificate (see subsection (5) of this rule) issued to a taxpayer is relieved from any liability for the collection of the tax from the taxpayer. A marine terminal operator is likewise relieved from liability for collection of the tax from a taxpayer if the marine terminal operator relies in good faith upon a current roster of certificate holders published by the department which bears the name of a taxpayer.

**(5) Direct payment to the department.** Any taxpayer may apply to the department in writing for permission to pay the tax directly to the department. Upon approval of the department, any taxpayer making application for direct payment will be issued a direct payment certificate entitling the taxpayer to pay the tax directly to the department.

(a) In order to qualify for direct payment, the taxpayer must meet the following requirements:

(i) The taxpayer must be registered with the department.

(ii) The taxpayer must file a bond with the department in an amount equal to two months estimated liability for the tax, but in no event less than ten thousand dollars. The bond must be executed by the taxpayer as principal, and by a corporation approved by the department and authorized to engage in business as a surety company in this state, as surety. Two months estimated tax liability shall be the total number of barrels received and placed into the storage tanks of a marine terminal in this state by the taxpayer during the two months in the immediately preceding twelve-month period with the highest number of barrels received multiplied by the total tax rate. If the department determines that the result of the foregoing calculation does not represent a fair estimate of the actual tax liability which the taxpayer is expected to incur, it may set the bond requirement at such higher amount as the department determines in its judgment will secure the payment of the tax. The bond requirement may be waived upon proof satisfactory to the department that the taxpayer has sufficient assets located in this state to insure payment of the tax.

(iii) The taxpayer must be current in all of its tax obligations to the state having filed all returns as required by Title 82 RCW.

(b) The department may, from time to time, review the amount of any bond filed by a taxpayer possessing a direct payment certificate and may, upon twenty days written notice to the taxpayer, require such higher bond as the department determines to be necessary to secure the payment of the tax. The filing of a substitute bond in such higher amount is a condition to the continuation of the right to make direct payment under this section.

(c) A direct payment certificate issued under this section may be revoked by the department if the taxpayer fails to maintain a current registration, fails to file a substitute bond within twenty days from a written request, or becomes delinquent in the payment of the tax.

(d) The department maintains a current roster of all taxpayers who have a direct payment certificate. Copies of the roster are made available on a monthly basis to any interested person requesting to be placed on the roster subscription list. Requests to be placed on the subscription list should be mailed to the Department of Revenue, Taxpayer Services, attn: Public Records, P.O. Box 47478, Olympia, WA 98504-7478.

(e) Applications for a direct payment certificate shall be in writing and shall include the name and address of the applicant, the applicant's registration number if currently registered, and the name and phone number of a contact person. The application shall also contain a statement that if the application is approved, the taxpayer consents to the public

disclosure that the taxpayer has been granted a direct payment certificate, or if the certificate is later revoked, the taxpayer consents to the public disclosure of the fact of revocation. Applications should be mailed to the Department of Revenue, Taxpayer Account Administration, P.O. Box 47476, Olympia, WA 98504-7476.

(6) **Exemption - previously taxed crude oil or petroleum products.** The tax applies only to the first receipt of crude oil or petroleum products at a marine terminal in this state. RCW 82.23B.030 provides an exemption for the subsequent receipt at a marine terminal in this state of previously taxed crude oil or petroleum products. This exemption applies even though the previously taxed crude oil or petroleum products are refined or processed prior to subsequent transportation and receipt.

(7) **Presumption.** Any receipt of crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state is presumed to be subject to the tax.

(a) A person may rebut this presumption by documenting that the crude oil or petroleum products received were previously subject to the tax. The proof may be in the form of information on the invoice or a written certification from the seller at the time of shipment or exchange. The written certification must be in substantially the form below stating that all or a specific, stated portion of the crude oil or petroleum products were previously subject to the tax or, in the alternative, stating the amount of tax remitted or to be remitted to the state respective to the crude oil or petroleum products being sold.

Certification of Previous Payment of the Oil Spill Tax

I hereby certify that all or a portion of the crude oil or petroleum products specified herein were previously subject to the oil spill tax and that such tax was paid by the undersigned.

Identify product:

\_\_\_\_\_
Amount of product in this shipment:

\_\_\_\_\_

Percentage of product on which the tax has been paid:

\_\_\_\_\_

OR

Amount of tax remitted or to be remitted to the state on product:

\_\_\_\_\_
Name of recipient: \_\_\_\_\_

\_\_\_\_\_
Authorized Signature of Seller Firm Name

\_\_\_\_\_
Date

\_\_\_\_\_
UBI Number

(b) Example. Crude oil is received at a marine terminal in this state and the tax is remitted. The crude oil is then commingled with crude oil from a source not involving a receipt at a marine terminal such as a receipt from a pipeline or a tank car. The commingled crude oil is refined into two petroleum products such as jet kerosene and unleaded gasoline. The petroleum products are then placed on separate waterborne vessels or barges and are shipped to a second marine terminal in this state. The receipt of petroleum products at the second marine terminal is presumed to be subject to the tax. The presumption may be rebutted by proof of what portion of each

product of the shipment was previously subject to tax. Proof may be made by means of information on the invoice or a written certification that substantially conforms with the requirements set forth in subsection (7)(a) of this rule.

(c) Example. Petroleum product is received at a marine terminal in this state and the tax is remitted. Substances that were not previously subject to the tax are added to the petroleum product resulting in an increase of the volume of the petroleum product. The petroleum product is then placed on a waterborne vessel or barge and received at a second marine terminal in this state. Upon receipt at the second marine ter-

minimal the tax is due on the incremental increase in volume of the petroleum product caused by the addition of the substances.

(8) **Export credit.** A credit is allowed against the tax for any crude oil or petroleum products exported from or sold for export from the state.

(a) An export credit may be taken by any person who exports or sells for export any previously taxed product. When the person taking the export credit is not the person who remitted the tax, the proof of payment of tax may be made by information on an invoice or written certification that substantially conforms to the requirements set forth in subsection (7)(a) of this rule.

(b) A person exports product when he or she actually transports the product beyond the borders of this state for purposes of sale, or delivers the product to a common carrier for delivery and subsequent sale or use at a point outside this state. Documentation of export is described in (d) of this subsection.

(c) A person sells product for export when as a necessary incident to a contract of sale the seller agrees to, and does deliver previously taxed product:

- (i) To the buyer at a destination outside this state;
- (ii) To a carrier consigned to and for transportation to a destination outside this state;
- (iii) To the buyer alongside or aboard a vessel or other vehicle of transportation under circumstances where it is clear that the process of exportation of the product has begun; or
- (iv) Into a pipeline for transportation to a destination outside this state.

In all circumstances there must be a certainty of export evidenced by some overt step taken in the export process. A sale for export will not necessarily be deemed to have occurred if the product is merely in storage awaiting shipment, even though there is reasonable certainty that the product will be exported. The intention to export, as evidenced for example, by financial and contractual relationships does not indicate certainty of export if the product has not commenced its journey outside this state. The product must actually enter the export stream. Sales of petroleum products by delivery into the fuel tank of a vessel or other vehicle in quantities greater than one hundred gallons will be considered placed into the export stream, provided the vessel or vehicle is immediately destined for a point outside this state and the seller obtains and keeps the documentary evidence provided in (d) of this subsection.

(d) A person who takes the credit for export must show that the previously taxed product was exported or sold for export. An export or a sale for export may be shown by obtaining and keeping any of the following documentary evidence:

- (i) A bona fide bill of lading in which the seller is the shipper/consignor and by which the carrier agrees to transport the product to the buyer at a destination outside this state; or
- (ii) A written certification in substantially the following form:

#### Certificate of Export

I hereby certify that the crude oil or petroleum products specified herein, purchased by or transferred to the undersigned from (seller or transferor), have been received into the export stream and are for export for sale or use outside Washington state. I will become liable for any tax credit granted (seller or transferor) pertaining to any crude oil or petroleum products which are not so exported outside Washington state. This certificate is given with full knowledge of, and subject to the legally prescribed penalties for fraud.

Registration No. . . . . Type of Business . . . . .

(If applicable)

Firm Name . . . . . Registered Name . . . . .  
(If different)

Authorized Signature . . . . .

Title . . . . .

Identity of Product . . . . .  
(Kind and amount by volume)

Date . . . . . ; or

(iii) Documents consisting of:

(A) Purchase orders or contracts of sale which show that the seller is required to place the product into the export stream, e.g., "f.a.s. vessel"; and

(B) Local delivery receipts, tripsheets, waybills, warehouse releases, etc., reflecting how and when the product was delivered into the export stream; and

(C) When available, records showing that the products were packaged, numbered or otherwise handled in a way which is exclusively attributable to products sold for export.

(e) Only the export or sale for export of crude oil or petroleum products will qualify for the export credit. Crude oil or petroleum products will not be eligible for the export credit if, prior to export, they are subject to further processing or used as ingredients in other compounds unless the resulting products are themselves crude oil or petroleum products.

(f) Crude oil or petroleum products delivered to purchasers in other states pursuant to location exchange agreements will not qualify for the export credit unless the crude oil or petroleum products were previously subject to the tax and credit has not yet been taken. A location exchange agreement is any arrangement where crude oil or petroleum products located in this state are exchanged through an accounts crediting system, or any other method, for like substances located in other states. Any person acquiring previously taxed product in this state for which no credit has been taken may claim a credit on any such product subsequently exported or sold for export, provided all of the requirements set forth in subsections (8) and (9) of this rule have been met.

(g) Persons claiming this credit must maintain records necessary to verify that the credit taking qualifications have been met. For this purpose any person claiming a credit who maintains those records required by WAC 458-20-19301 (Multiple activities tax credit), subsection (9), will be considered to have satisfied the requirements of this subsection.

(9) **Amount of credit.** The amount of the credit will be equal to the tax previously paid on the crude oil or petroleum product exported or sold for export and for which credit has not already been taken. In no event will a credit be allowed in excess of the tax paid on the product exported or sold for export.

(a) In the case of a person claiming credit who is not the taxpayer, the credit will be equal to that portion of the tax billed on an invoice or shown on a written certification that substantially conforms with the requirements set forth in subsection (7)(a) of this rule which relates to the particular product exported or sold for export.

In order to determine the amount of tax reflected on an invoice which relates to a particular product exported or sold for export, it may be necessary to convert the tax paid from a rate per barrel to a rate per gallon or some other unit of measurement. This conversion is computed by taking the total amount of tax paid on an invoice for a particular product and dividing that figure by the total quantity of the product expressed in terms of the unit of measurement used for export. The credit is then computed by multiplying the converted rate times the quantity of product exported or sold for export.

(b) When the product exported is previously taxed product commingled with untaxed product a person claiming the export credit may compute the amount of previously taxed product using one of the following methods:

(i) First-in, first-out method. Under this method the export credit is computed by treating existing inventory as sold before later acquired inventory.

(ii) Average of tax paid method. Under this method the export credit is determined by calculating the average rate of tax paid on all inventory. This method requires computing the tax by making adjustments in the rate of tax paid on all product on hand as it is removed from or added to storage.

(iii) Any other method approved by the department.

(c) The use of one of the methods set forth in this subsection (9) to account for tax paid on commingled crude oil or petroleum products constitutes an election to continue using the method selected. Once selected, no change in accounting method is permitted without the prior consent of the department.

(d) Examples. The following are examples of the way in which the credit is to be computed:

(i) A petroleum products distributor purchases 100 barrels each of premium unleaded gasoline and regular unleaded gasoline. The invoice from the refiner separately states that the invoice includes \$5.00 of tax for each of the two types of products. The distributor pays the invoiced amount and later sells 2,000 gallons of the premium unleaded and 4,000 gallons of the regular unleaded to a retailer located outside Washington. In order to compute the amount of credit on the export sales the distributor must convert the tax paid from barrels to gallons. Since there are 42 US gallons in a barrel and 200 barrels purchased, the number of gallons equals 8400 ( $42 \times 200$ ). The per gallon tax paid on both products is equal to .119 cents per gallon ( $\$10.00 \div 8400$ ). The distributor would be eligible for credit equal to \$2.38 for the premium unleaded ( $2,000 \times \$0.00119$ ) and \$4.76 for the regular unleaded ( $4,000 \times \$0.00119$ ).

(ii) Example. A petroleum products distributor purchases 100 barrels of unleaded gasoline on which the tax has been remitted for a portion. The invoice for the unleaded separately states that the total price includes \$4.00 of tax. This previously taxed product is commingled with 30 barrels of gasoline received through a pipeline, that is, product that is

not subject to tax. The distributor sells 2,940 gallons of commingled product to a retailer for sale outside Washington. The tax paid on the previously taxed product is equal to .095 cents per gallon ( $\$4.00 \div 4200$ ). Since the exported product has been blended with product that has not been taxed, only 76.9% of the exported product is eligible for credit ( $100 \div 130$ ). The credit is \$2.15 ( $2,940 \times .769 \times \$0.00095$ ).

(iii) Example. A petroleum distributor purchases 100 barrels of gasoline and receives from the seller an invoice that states that the tax has been paid on 90% of the shipped product. The distributor exports the 100 barrels. The petroleum distributor may claim an export credit of \$4.50. (90% of 100 barrels equals 90 barrels times the tax rate of \$.05 equals \$4.50.)

(iv) Example. A petroleum distributor purchases 100 barrels of unleaded gasoline from refinery A and later purchases 100 barrels from refinery B. The distributor stores all of its unleaded gasoline in a single storage tank. The invoice from refinery A separately states the amount of tax on the gasoline as \$5.00 and the refinery B invoice states the tax as \$4.00. The distributor pays the two invoiced amounts and sells 2,100 gallons of the commingled unleaded to a retailer located outside Washington. The distributor then purchases 100 more barrels of unleaded gasoline from distributor C. Distributor C's invoice separately states the tax as \$3.00. Following payment of the invoice, the distributor exports an additional 2,100 gallons of unleaded. The distributor could choose to calculate the tax using one of the methods of accounting described in (b) of this subsection.

(A) Under the first-in, first-out method the distributor would treat all 4,200 gallons sold as if it was the unleaded gasoline purchased from refinery A. Under this method, the credit would be equal to .119 cents per gallon ( $\$5.00 \div 4,200$ ) or \$5.00 total ( $\$.00119 \times 4,200$ ).

(B) Under the average of tax paid method the distributor would recompute the tax paid on average for the entire commingled amount making adjustments as gasoline is sold or gasoline is added. Prior to the addition of the purchases from refinery B or distributor C, the rate would be .119 cents per gallon ( $\$5.00 \div 4,200$ ). Following the addition of the 100 barrels from refinery B the tank contains 8,400 gallons. The rate of tax would now be .107 cents per gallon ( $(\$5.00 + \$4.00) \div 8,400$ ). Out of this amount 2,100 gallons is exported in the first sale. The credit for this sale would be equal to \$2.25 ( $\$.00107 \times 2,100$ ).

(10) **Credit for use of petroleum products.** Effective March 26, 1992, any person having paid the tax imposed by this chapter may claim a refund or credit for the following:

(a) The use of petroleum products as a consumer for a purpose other than as a fuel. For this purpose, the term consumer shall be defined as provided in RCW 82.04.190; or

(b) The use of petroleum products as a component or ingredient in the manufacture of an item which is not a fuel.

(c) The amount of refund or credit claimed may not exceed the amount of tax paid by the person making such claim on the petroleum products so consumed or used.

[Statutory Authority: RCW 82.23B.050 and 82.32.300. 02-16-016, § 458-20-260, filed 7/26/02, effective 8/26/02; 92-24-049, § 458-20-260, filed 11/30/92, effective 12/31/92. Statutory Authority: RCW 82.23B.050. 92-10-006, § 458-20-260, filed 4/24/92, effective 5/25/92.]

**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.** The credit program described in this subsection expires December 31, 2000. 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. Property managers who manage worksites 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 persons employed at those worksites 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. Property managers became eligible for these credits on July 25, 1999. Chapter 402, Laws of 1999.

(a) In general, the amount of the credit for employers 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. For property managers, the amount of the credit, in most cases, is equal to the amount paid to or on behalf of each person employed at the worksite, but may not exceed sixty dollars per employee per year. However, for ride sharing in vehicles carrying two persons, the credit for both employers and property managers 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) A person 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) A person may not take a credit for amounts claimed for credit by other persons.

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

(f) The total credit granted to all persons under both the business and occupation tax and the public utility tax may not exceed two million two hundred fifty thousand dollars for a calendar year. The total credit granted may be limited to less than two million two hundred fifty thousand dollars for any particular calendar year, depending on the availability of funding.

(g) No credit or portion of a credit denied because of exceeding the limitations in (e) or (f) 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 persons on a quarterly basis. If the annual allowable amount of 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 person who has claimed a credit in the quarter. These persons 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 non-motorized 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.

(d) An employer pays the property manager for a yearly bus pass for one employee who works at the worksite managed by the property manager. The property manager in turn pays the amount received from the employer to a public transportation agency to purchase the bus pass. Either the employer or the property manager, but not both, may take the credit for this expenditure.

[Statutory Authority: RCW 82.32.300, 82.04.4453 and 82.16.048. 00-11-097, § 458-20-261, filed 5/17/00, effective 6/17/00; 99-08-035, § 458-20-261, filed 3/31/99, effective 5/1/99.]

**WAC 458-20-262 Retail sales and use tax exemptions for agricultural employee housing.** (1) **Introduction.**

RCW 82.08.02745 and 82.12.02685 provide a retail sales and use tax exemption for agricultural employee housing as of March 20, 1996. Chapter 438, Laws of 1997, effective May 20, 1997, amended both RCW 82.08.02745 and 82.12.02685 by limiting the exemptions and allowing additional agricultural employee housing providers to receive the exemption. This rule also explains the exemptions, who is entitled to the exemption and the required information to be contained in an exemption certificate.

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

(a) "Agricultural employee" means any person who renders personal services to, or under the direction of, an agricultural employer in connection with the employer's agricultural activity (RCW 19.30.010).

(b) "Agricultural employer" means any person engaged in agricultural activity, including the growing, producing, or harvesting of farm or nursery products, or engaged in the forestation or reforestation of lands, which includes but is not limited to the planting, transplanting, tubing, precommercial thinning, and thinning of trees and seedlings, the clearing, piling and disposal of brush and slash, the harvest of Christmas trees, and other related activities (RCW 19.30.010).

(c) "Agricultural employee housing" means all facilities provided by an agricultural employer, housing authority, local government, state or federal agency, nonprofit community or neighborhood-based organization that is exempt from income tax under section 501(c) of the Internal Revenue Code of 1986 (26 U.S.C. sec. 501(c)), or for-profit provider of housing for housing agricultural employees on a year-round or seasonal basis, including bathing, food handling, hand washing, laundry, and toilet facilities, single-family and multifamily dwelling units and dormitories, and includes labor camps under RCW 70.54.110. The term also includes but is not limited to mobile homes, travel trailers, mobile bunkhouses, modular homes, fabricated components of a house, and tents. Agricultural employee housing does not include housing regularly provided on a commercial basis to the general public (chapter 438, Laws of 1997). Agricultural employee housing does not include housing provided by a housing authority unless at least eighty percent of the occupants are agricultural employees whose adjusted income is less than fifty percent of median family income, adjusted for household size, for the county where the housing is provided.

(d) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof (RCW 82.04.030).

(e) "Agricultural land" has the same meaning as "agricultural and farm land" in RCW 84.34.020(2).

(3) **Retail sales and use tax exemptions for agricultural employee housing.** RCW 82.08.02745 and 82.12.-02685, respectively, provide retail sales tax and use tax exemptions for the purchase, construction, and use of agricultural employee housing. Both exemptions require that agricultural employee housing provided to year-round employees of the agricultural employer must be built to the current building code for single-family or multifamily dwellings according to the state building code, chapter 19.27 RCW. Neither of these exemptions apply to housing built for the occupancy of an employer, family members of an employer, or persons owning stock or shares in a farm partnership or corporation business.

(a) The retail sales tax does not apply to charges for labor and services rendered by any person in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures used as agricultural employee housing. Also exempt are sales of tangible personal property that becomes an ingredient or component of the buildings or other structures, including but not limited to septic tanks, pump houses, cisterns, and driveways. Examples of ingredients or components include but are not limited to cement, lumber, nails, paint and wallpaper.

(i) Appliances and furniture, including but not limited to stoves, refrigerators, bed frames, lamps and television sets, bolted or strapped directly to the building or structure are considered components of the building or structure. Additionally, appliances and furniture bolted or strapped to another item that is bolted or strapped directly to the building or structure (e.g., a television set bolted to a refrigerator that is strapped to the structure) are considered components of the building or structure.

(ii) Items that are not bolted or strapped directly to the building or structure, or to another item similarly bolted or strapped, do not qualify for this exemption. These items include but are not limited to kitchen utensils, mattresses, bedding, portable heating units, and throw rugs. Stoves, refrigerators, bed frames, lamps and television sets that are not bolted or strapped as discussed in (a)(i) of this subsection, also do not qualify as components of the building or structure.

(iii) Purchases of labor and transportation charges necessary to move and set up mobile homes, mobile bunkhouses, and other property and component parts as agricultural employee housing are exempt of retail sales tax.

(iv) As a condition for exemption, the seller must take from the buyer an exemption certificate which substantially contains the information included in the sample form provided in subsection (5) of this section. The seller may accept a legible fax or duplicate copy of an original exemption certificate. In all cases, the exemption certificate must be accepted in good faith by the seller, and must be retained by the seller for a period of at least five years. An exemption certificate may be provided for a single purpose, or for multiple purchases over a period not to exceed four years. Failure to comply with the provisions in this section may result in a denial of the exemption and the agricultural employer may be subject to use tax plus penalties and interest. Copies of the sample form provided in subsection (5) of this section are available through the department of revenue's taxpayer services division (360) 753-7634.

(b) The use tax exemption is available for the use of tangible personal property that becomes an ingredient or component of buildings or other structures used as agricultural employee housing during the course of constructing, repairing, decorating, or improving the buildings or other structures by any person. Again, appliances and furniture that are bolted or strapped to the actual building or structure are considered components of the building or structure.

(i) The exemption for materials incorporated into buildings or other structures used as agricultural employee housing also applies to persons/consumers constructing these buildings or structures for the federal government or county housing authorities. (See also WAC 458-20-17001 on government contracting.)

(ii) An agricultural employer claiming the exemption who retitles a used mobile home or titles a new mobile home acquired from an out-of-state seller must provide a completed exemption certificate to the department of licensing or its agent to substantiate the exempt nature of the home.

(4) **Requirement to remit payment of tax if agricultural housing fails to continue to satisfy the conditions of exemption.** The agricultural employee housing must be used for at least five consecutive years from the date the housing is approved for occupancy to retain the retail sales and use tax exemption. If this condition is not satisfied, the full amount of tax otherwise due shall be immediately due and payable together with interest, but not penalties, from the date the housing is approved for occupancy until the date of payment.

If at any time agricultural employee housing that is not located on agricultural land ceases to be used as agricultural employee housing, the full amount of tax otherwise due shall be immediately due and payable with interest, but not penalties, from the date the housing ceased to be used as agricultural employee housing.

(5) **Retail sales tax exemption certificate.** The agricultural employer (buyer) must provide an exemption certificate to a seller to show entitlement to the exemption provided by the statute. This exemption certificate must be substantially in the form shown below.

**AGRICULTURAL EMPLOYEE HOUSING EXEMPTION CERTIFICATE**

**This exemption certificate is to be solely for allowable purchases by an agricultural employee housing provider.**

1. Name of Seller:

2. Name of Agricultural Employee Housing Provider:

3. Address of Agricultural Employee Housing Provider:

<i>Street,</i>	<i>City,</i>	<i>State</i>	<i>Zip Code</i>
4. Agricultural Employee Housing Providers UBI/Registration No.:			

**For the purpose of the exemption, the agricultural employer certifies the following:**

- The buildings or other structures built on agricultural land will be used as agricultural employee housing for at least five years from the date the housing is approved for occupation otherwise the entire tax becomes due plus interest from the time the housing ceases to be used for agricultural housing until date of payment.
- It is understood that buildings or other structures built on nonagricultural land must conform to the state building code and be provided to year-round agricultural employees otherwise the total tax exempted is due plus interest from the date the housing ceases to be used as agricultural employee housing as defined in WAC 458-20-262(3) until date of payment.
- The buildings or other structures used to house year-round agricultural employees will be constructed to meet the state building code (chapter 19.27 RCW) for single-family or multifamily dwelling.
- The buildings or other structures will not be used as housing for an employer, family members of an employer, or persons owning stock or shares in a farm partnership or corporation business.
- The buildings or other structures will not be used to regularly provide housing on a commercial basis to the general public.
- If purchases are being made to construct agricultural employee housing for a housing authority, at least eighty percent of the occupants will be agricultural employees whose adjusted gross income is less than fifty percent of median family income adjusted for household size, for the county where the housing is provided.

Is the agricultural employee housing being built on agricultural land: Yes No

If yes, please provide parcel number: \_\_\_\_\_

Print Name of Buyer: \_\_\_\_\_

Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

*(Effective 4 years)*

To inquire about the availability of this document in an alternate format for the visually impaired or a language other than English, please call (360) 753-3217. Teletype (TTY) users may call (800) 451-7985. You may also access tax information on our internet home page at <http://www.wa.gov/dor/wador.htm>

[Statutory Authority: RCW 82.32.300 and 82.08.02745. 98-24-069, § 458-20-262, filed 11/30/98, effective 12/31/98.]

**WAC 458-20-263 Fuel cell, 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 fuel cells, wind, landfill gas, or solar energy as the principal source of power. These exemptions expire June 30, 2009.

(2) **Retail sales and use tax exemptions.** The following exemptions apply for retail sales and use taxes.

(a) For periods before July 1, 2001, the retail sales tax does not apply to the purchase or lease of machinery and equipment used directly in generating electricity using wind, landfill 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 at least two hundred kilowatts of electricity.

For this period, RCW 82.12.02567 provided a corresponding use tax exemption for the use of machinery and equipment for these purposes.

(b) Effective July 1, 2001, the retail sales tax does not apply to the purchase or lease of machinery and equipment used directly in generating electricity using fuel cells, wind, landfill 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 at least two hundred watts of electricity. See RCW 82.08.02567.

For this period, RCW 82.12.02567 provides a corresponding use tax exemption for the use of machinery and equipment for these purposes, except that no use tax exemption existed with regard to fuel cells until June 10, 2004. Between July 1, 2001, and June 10, 2004, although the purchase of machinery and equipment used directly in generating electricity using fuel cells is exempt from sales tax, the purchaser owes use tax upon the first use in this state of the machinery and equipment.

(3) **What is "machinery and equipment"?** "Machinery and equipment" means industrial fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using fuel cells, wind, landfill gas, or solar energy as the principal source of power.

A "support facility" is a part of a building, or a structure or improvement, used to contain or steady an industrial fixture or device. A support facility must be specially designed and necessary for the proper functioning of the industrial fixture or device and must perform a function beyond being a building or a structure or an improvement. It must have a function relative to an industrial fixture or a device. To determine if some portion of a building is a support facility, the parts of the building are examined. For example, a highly specialized structure, like a vibration reduction slab under generators in a landfill gas generating facility, is a support facility. Without the slab, the generators would not function properly. The ceiling and walls of the building housing the generator are not support facilities if they only serve to define the space and do not have a function relative to an industrial fixture or a device.

"Machinery and equipment" does not include:

- (a) The utility grid system;
- (b) Hand-powered tools;
- (c) Property with a useful life of less than one year;

(d) Repair parts required to restore machinery and equipment to normal working order;

(e) Replacement parts that do not increase productivity, improve efficiency, or extend the useful life of the machinery and equipment;

(f) Buildings; or

(g) Building fixtures that:

(i) Are permanently affixed to and become a physical part of a building; but

(ii) Are not integral and necessary to the generation of electricity.

(4) **When is machinery and equipment "used directly" in generating electricity?** Machinery and equipment is used directly to generate electricity when it is used to:

(a) Capture the energy of fuel cells, the wind, landfill gas, or solar energy;

(b) Convert that energy to electricity; or

(c) Store, transform, or transmit that electricity for entry into or operation in parallel with electric transmission and distribution systems.

(5) **Examples of qualifying machinery and equipment.** This subsection provides examples of machinery and equipment that is used directly in generating electricity and qualifies for the retail sales tax exemption provided by RCW 82.08.02567 and the use tax exemption provided by RCW 82.12.02567. This list is illustrative only and is not intended to provide an exhaustive list of possible qualifying machinery and equipment.

(a) Where solar energy is the principal source of power: Solar modules; power conditioning equipment; batteries; transformers; power poles; power lines; and connectors to the utility grid system or point of use.

(b) Where wind is the principal source of power: Turbines; blades; generators; towers and tower pads; substations; guy wires and ground stays; power conditioning equipment; anemometers; recording meters; transmitters; power poles; power lines; and connectors to the utility grid system or point of use.

(c) Where landfill gas is the principal source of power: Turbines; blades; blowers; burners; heat exchangers; generators; towers and tower pads; substations; guy wires and ground stays; pipe; valves; power conditioning equipment; pressure control equipment; recording meters; transmitters; power poles; power lines; and connectors to the utility grid system or point of use.

(d) Where fuel cells are the principal source of power: Fuel cell assemblies; fuel storage and delivery systems; power inverters; transmitters; transformers; power poles; power lines; and connectors to the utility grid system or point of use.

(6) **Installation charges.** Retail sales and use taxes do not apply to installation charges for qualifying machinery and equipment. This includes charges for labor and services rendered to install the machinery and equipment. However, there is no exemption for charges for labor and services rendered in respect to constructing buildings or access roads that may be necessary to install or use qualifying machinery and equipment. Nor is there an exemption for tangible personal property, such as a crane or forklift, used by the buyer to install qualifying machinery and equipment.

(7) **Required documentation.** The prior approval of the department of revenue is not required to claim the retail sales tax exemption. The seller, at the time of sale, must retain in its records an exemption certificate completed by the buyer to document the exempt nature of the sale. This requirement may be satisfied by using the department's "buyer's retail sales tax exemption certificate," or another certificate with substantially the same information as it relates to the exemption provided by RCW 82.08.02567.

A blank exemption certificate can be obtained through the following means:

(a) From the department's internet website at <http://dor.wa.gov>;

(b) By facsimile by calling Fast Fax at 360-705-6705 or 800-647-7706 (using menu options); or

(c) By writing to: Taxpayer Services, Washington State Department of Revenue, P.O. Box 47478, Olympia, Washington 98504-7478.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). 05-02-036, § 458-20-263, filed 12/30/04, effective 1/30/05. 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.]

**WAC 458-20-264 National Uniform Tobacco Settlement.** (1) **Introduction.** In 1998 the state of Washington entered into an agreement with cigarette manufacturers called the Master Settlement Agreement. Subsequent to entering into that agreement, the Legislature enacted chapter 393, Laws of 1999, codified as chapter 70.157 RCW. The statute requires the department of revenue (department) to promulgate regulations to ascertain the amount of excise tax paid by certain tobacco product manufacturers on "cigarettes" as that term is defined in RCW 70.157.010 and as set forth below. The department will do that by determining the number of cigarettes sold in Washington that were manufactured by nonparticipating tobacco product manufacturers. This rule explains the information to be reported to the department by retailers of tobacco products purchased from a person who is not required to file in Washington the report required by this rule, tobacco products distributors, and cigarette wholesalers. These reporting requirements are in addition to any other tax-reporting requirements.

(2) **Definitions.** For the purposes of WAC 458-20-264 the following definitions apply unless the context requires otherwise.

(a) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(b) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(i) Any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

(ii) Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

(iii) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (i) of this definition.

The term "cigarette" includes "roll-your-own" tobacco (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

(c) "Cigarette wholesaler" means any person who is licensed pursuant to chapter 82.24 RCW.

(d) "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers.

(e) "Nonparticipating manufacturer" means any manufacturer of cigarettes or "roll-your-own" tobacco who is not a signatory to the Master Settlement Agreement. A manufacturer ceases to be a nonparticipating manufacturer upon entering into the Master Settlement Agreement.

(f) "Tobacco products distributor" means any person who meets the definitions found in RCW 82.26.010(3).

(g) "Tobacco product manufacturer" means an entity that after May 18, 1999, directly (and not exclusively through any affiliate):

(i) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsections II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(ii) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(iii) Becomes a successor of an entity described in paragraph (i) or (ii) of this definition.

The term "tobacco product manufacturer" does not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of (i) through (iii) above.

(h) "Units sold" means the number of individual cigarettes sold and each 0.09 ounces of "roll-your-own" tobacco sold in the state by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the state

on packs bearing the excise tax stamp of the state or "roll-your-own" tobacco containers.

(3) **Report required.** Every person who sells at retail tobacco products purchased from a person who is not required to file in Washington the report required by this subsection, every tobacco products distributor, and every cigarette wholesaler must file a report in a form and manner requested by the department. The report must be filed within the twenty-five days after the end of the month in which the sales were made. Mail the report to Department of Revenue, Special Programs Division, P.O. Box 47477, Olympia, WA 98504-7477.

The report must include the information listed below with respect to units sold that were manufactured by a non-participating tobacco product manufacturer.

- (a) The number of units sold;
- (b) The brand of the unit;
- (c) The name and address of the person from whom each unit was purchased;
- (d) The name and address of the manufacturer of the unit, if known; and
- (e) The name and address of the importer of the unit, if known, and whether that importer is the exclusive importer of the unit, if known.

Example: A retailer may need to file the report required in subsection (3) when purchasing roll-your-own tobacco over the internet or through a catalog from a vendor located outside of Washington, from an enrolled member of an Indian tribe located on a reservation in Washington, or in person from a vendor located in another state.

(4) **Recordkeeping requirement.** Every person who sells at retail tobacco products purchased from a person who is not required to file in Washington the report required by the rule, every tobacco products distributor, and every cigarette wholesaler, must maintain complete and accurate records to support the data supplied pursuant to paragraph (3) of this section.

(5) **Confidentiality.** The data filed pursuant to this rule is confidential taxpayer information and subject to the protection provided in RCW 82.32.330.

[Statutory Authority: RCW 70.157.010 and 82.32.300. 00-23-117, § 458-20-264, filed 11/22/00, effective 12/23/00.]

**WAC 458-20-99999 Appendix—The Buck Act.  
Appendix—Buck Act**

**An act of Congress commonly known as the Buck Act  
H.R. 6687**

AN ACT TO PERMIT THE STATES TO EXTEND THEIR SALES, USE, AND INCOME TAXES TO PERSONS RESIDING OR CARRYING ON BUSINESS, OR TO TRANSACTIONS OCCURRING, IN FEDERAL AREAS, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

Section 1.

a. That no person shall be relieved from liability for payment of, collection of, or accounting for any sales or use tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, on the

(2005 Ed.)

ground that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a Federal area; and such State or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

b. The provisions of subsection "a" shall be applicable only with respect to sales or purchases made, receipts from sale received, or storage or use occurring, after December 31, 1940.

Section 2.

a. No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

b. The provisions of subsection "a" shall be applicable only with respect to income or receipts received after December 31, 1940.

Section 3.

a. The provisions of sections 1 and 2 of this Act shall not be deemed to authorize the levy or collection of any tax on or from the United States or any instrumentality thereof, or the levy or collection of any tax with respect to sale, purchase, storage, or use of tangible personal property sold by the United States or any instrumentality thereof to any authorized purchaser.

b. A person shall be deemed to be an authorized purchaser under this section only with respect to purchases which he is permitted to make from commissaries, ship's stores, or voluntary unincorporated organizations of Army or Navy personnel, under regulations promulgated by the Secretary of War or the Secretary of the Navy.

Section 4.

The provisions of the Act shall not for the purposes of any other provision of law be deemed to deprive the United States of exclusive jurisdiction over any Federal area over which it would otherwise have exclusive jurisdiction or to limit the jurisdiction of the United States over any Federal area.

Section 5.

Nothing in sections 1 and 2 of this Act shall be deemed to authorize the levy or collection of any tax on or from any Indian not otherwise taxed.

Section 6.

As used in this Act:

a. The term "person" shall have the meaning assigned to it in section 3797 of the Internal Revenue Code.

b. The term "sales or use tax" means any tax levied on, with respect to, or measured by, sales, receipts from sales, purchases, storage, or use of tangible personal property,

except a tax with respect to which the provisions of section 10 of the Federal Highway Act, approved June 16, 1936, are applicable.

c. The term "income tax" means any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts.

d. The term "State" includes any Territory or possession of the United States.

e. The term "Federal area" means any lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency of the United States, and any Federal area, or any part thereof, which is located within the exterior boundaries of any State shall be deemed to be a Federal area located within such State.

#### Section 7.

a. Subsection "a" of section 10 of the Federal Highway Act, approved June 16, 1936, is amended (1) by striking out the words "upon sales of gasoline and other motor vehicle fuels" and inserting in lieu thereof the words "upon, with respect to, or measured by, sales, purchases, storage, or use of gasoline or other motor vehicle fuels;" and (2) by striking out the words "upon such fuels" and inserting in lieu thereof the words "with respect to such fuels."

b. Subsection "b" of such section 10 is amended by striking out the words "not sold for the exclusive use of the United States during" and inserting in lieu thereof the words "with respect to which taxes are payable under subsection "a" for."

Passed by the 76th Congress and  
signed by the President on October 9, 1940.