WSR 10-02-016
WITHDRAWAL OF EXPEDITED RULE MAKING
RECREATION AND CONSERVATION OFFICE
(By the Code Reviser's Office)
[Filed December 29, 2009, 8:14 a.m.]

WAC 420-04-020, proposed by the recreation and conservation office in WSR 09-13-006 appearing in issue 09-13 of the State Register, which was distributed on July 1, 2009, is withdrawn by the code reviser's office under RCW 34.05.-335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 10-02-023
EXPEDITED RULES
DEPARTMENT OF REVENUE
[Filed December 29, 2009, 1:47 p.m.]

Title of Rule and Other Identifying Information: WAC 458-29A-400 Leasehold excise tax—Exemptions, this rule currently explains the exemptions from leasehold excise tax provided by RCW 82.29A.130, 82.29A.132, 82.29A.134, and 82.29A.136.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Marilou Rickert, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, fax (360) 586-0127, e-mail MarilouR@DOR.WA.GOV, AND RECEIVED BY March 8, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend WAC 458-29A-400 to incorporate provisions of:

- SB 5607, chapter 90, Laws of 2007, which adds property owned by the United States government to property that may qualify for exemption as a historic site and updates language contained in RCW 82.29A.130;
- HB 2460, chapter 194, Laws of 2008, which clarifies language relating to the exemption for amphitheaters;
- SSB 6389, chapter 84, Laws of 2008, which provides an exemption for certain military housing; and
- SHB 1481, chapter 459, Laws of 2009, which provides an exemption for electrical vehicle.

Copies of draft rules are available for viewing and printing on our web site at http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx.

Reasons Supporting Proposal: To recognize recent legislation.

Statutory Authority for Adoption: RCW 82.01.060 and 82.29A.140.

Statute Being Implemented: RCW 82.29A.130 and 82.29A.125.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Marilou Rickert, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6115; Implementation and Enforcement: Stuart Thronson, 1025 Union Avenue S.E., Suite #100, Olympia, WA, (360) 570-3230.

December 29, 2009
Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-23-092, filed 11/16/05, effective 12/17/05)

WAC 458-29A-400 Leasehold excise tax—Exemptions. (1) **Introduction.** This rule explains the exemptions from leasehold excise tax provided by RCW 82.29A.130, 82.29A.132, 82.29A.134, and 82.29A.136. To be exempt from the leasehold excise tax, the property subject to the leasehold interest must be used exclusively for the purposes for which the exemption is granted.

(2) **Operating properties of a public utility.** All leasehold interests that are part of the operating properties of a public utility are exempt from leasehold excise tax if the leasehold interest is assessed and taxed as part of the operating property of a public utility under chapter 84.12 RCW.

For example, tracks leased to a railroad company at the Port of Seaside are exempt from leasehold excise tax because the railroad is a public utility assessed and taxed under chapter 84.12 RCW and the tracks are part of the railroad's operating properties.

(3) **Student housing at public and nonprofit schools and colleges.** All leasehold interests in facilities owned or used by a school, college, or university which leasehold provides housing to students are exempt from leasehold excise tax if the student housing is exempt from property tax under RCW 84.36.010 and 84.36.050.

For example, the leasehold interest associated with a building used as a dormitory for Public University students is exempt from the leasehold excise tax.

(4) **Subsidized housing.** All leasehold interests of subsidized housing are exempt from leasehold excise tax if the property is owned in fee simple by the United States, the state of Washington or any of its political subdivisions, and residents of the housing are subject to specific income qualification requirements.

For example, a leasehold interest in an apartment house that is subsidized by the United States Department of Housing and Urban Development is exempt from leasehold excise

tax if the property is owned by the state of Washington and residents are subject to income qualification requirements.

(5) **Nonprofit fair associations.** All leasehold interests used for fair purposes of a nonprofit fair association are exempt from leasehold excise tax if the fair association sponsors or conducts a fair or fairs supported by revenues collected under RCW 67.16.100 and allocated by the director of the department of agriculture. The property must be owned in fee simple by the United States, the state of Washington or any of its political subdivisions. However, if a nonprofit association subleases exempt property to a third party, the sublease is a taxable leasehold interest.

For example, a leasehold interest held by the Local Nonprofit Fair Association is considered exempt from leasehold excise tax. However, if buildings on the fairgrounds are rented to private parties for storage during the winter, these rentals may be subject to the leasehold excise tax.

(6) **Public employee housing.** All leasehold interests in public property used as a residence by an employee of the public owner are exempt from leasehold excise tax if the employee is required to live on the public property as a condition of his or her employment. The "condition of employment" requirement is met only when the employee is required to accept the lodging in order to enable the employee to properly perform the duties of his or her employment. However, the "condition of employment" requirement can be met even if the employer does not compel an employee to reside in a publicly owned residence.

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) A park ranger employed by the National Park Service, an agency of the United States government, resides in a house furnished by the agency at a national park. The ranger is required to be on call twenty-four hours a day to respond to requests for assistance from park visitors staying at an adjacent overnight campground. The use of the house is exempt from leasehold excise tax because the lodging enables the ranger to properly perform her duties.

(b) An employee of the Washington department of fish and wildlife resides in a house furnished by the agency at a fish hatchery although, under the terms of a collective bargaining agreement, the agency may not compel the employee to live in the residence as a condition of employment. In exchange for receiving use of the housing provided by the agency, the employee is required to perform additional duties, including regularly monitoring certain equipment at the hatchery during nights and on weekends and escorting public visitors on tours of the hatchery on weekends. The use of the house is exempt from leasehold excise tax because the lodging enables the employee to properly perform the duties of his employment. The use is exempt even though the employee would continue to be employed by the agency if the additional duties were not performed and even though state employees of an equal job classification are not required to perform the additional duties.

(c) A professor employed by State University is given the choice of residing in university-owned campus housing free of charge or of residing elsewhere and receiving a cash allowance in addition to her regular salary. If she elects to reside in the campus housing free of charge, the value of the lodging furnished to the professor would be subject to leasehold excise tax because her residence on campus is not required for her to perform properly the duties of her employment.

(7) **Interests held by enrolled Indians.** Leasehold interests held by enrolled Indians are exempt from leasehold excise tax if the lands are owned or held by any Indian or Indian tribe, and the fee ownership of the land is vested in or held in trust by the United States, unless the leasehold interests are subleased to a lessee which would not qualify under chapter 82.29A RCW, RCW 84.36.451 and 84.40.175 and the tax on the lessee is not preempted due to the balancing test (see WAC 458-20-192).

Any leasehold interest held by an enrolled Indian or a tribe, where the leasehold is located within the boundaries of an Indian reservation, on trust land, on Indian country, or is associated with the treaty fishery or some other treaty right, is not subject to leasehold excise tax. For example, if an enrolled member of the Puyallup Tribe leases port land at which the member keeps his or her boat, and the boat is used in a treaty fishery, the leasehold interest is exempt from the leasehold tax. For more information on excise tax issues related to enrolled Indians, see WAC 458-20-192 (Indians—Indian country).

(8) **Leases on Indian lands to non-Indians.** Leasehold interests held by non-Indians (not otherwise exempt from tax due to the application of the balancing test described in WAC 458-20-192) in any real property of any Indian or Indian tribe, band, or community that is held in trust by the United States or subject to a restriction against alienation imposed by the United States are exempt from leasehold excise tax if the amount of contract rent paid is greater than or equal to ninety percent of fair market rental value. In determining whether the contract rent of such lands meets the required level of ninety percent of market value, the department will use the same criteria used to establish taxable rent under RCW 82.29A.020 (2)(b) and WAC 458-29A-200.

For example, Harry leases land held in trust by the United States for the Yakama Nation for the sum of $900 per month. The fair market value for similar lands used for similar purposes is $975 per month. The lease is exempt from the leasehold excise tax because Harry pays at least ninety percent of the fair market value for the qualified lands. For more information on the preemption analysis and other tax issues related to Indians, see WAC 458-20-192.

(9) **Annual taxable rent is less than two hundred fifty dollars.** Leasehold interests for which the taxable rent is less than $250 per year are exempt from leasehold excise tax. For the purposes of this exemption, if the same lessee has a leasehold interest in two or more contiguous parcels of property owned by the same public lessor, the taxable rent for each contiguous parcel will be combined and the combined taxable rent will determine whether the threshold established by this exemption has been met. To be considered contiguous, the parcels must be in closer proximity than merely within the boundaries of one piece of property. When determining the annual leasehold rent, the department will rely upon the actual substantive agreement between the parties. Rent pay-

able pursuant to successive leases between the same parties for the same property within a twelve-month period will be combined to determine annual rent; however, a single lease for a period of less than one year will not be projected on an annual basis.

The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(a) The yacht club rents property from the Port of Bay City for its clubhouse and moorage. It also rents a parking stall for its commodore. The parking stall is separated from the clubhouse only by a common walkway. The parking stall lease is a part of the clubhouse lease because it is contiguous to the clubhouse, separated only by a necessary walkway.

(b) Ace Flying Club rents hangars, tie downs, and ramps from the Port of Desert City. It has separate leases for several parcels. The hangars are separated from the tie down space by a row of other hangars, each of which is leased to a different party. Common ramps and roadways also separate the club's hangars from its tie-downs. The hangars, because they are adjacent to one another, create a single leasehold interest. The tie downs are a separate taxable leasehold interest because they are not contiguous with the hangars used by Ace Flying Club.

(c) Grace leases a lot from the City of Flora, from which she sells crafts at different times throughout the year. She pays $50 per month for the lot, and has a separate lease for each season during which she sells. She has one lease from May through September, and a separate lease for the time between Thanksgiving and Christmas, which might run thirty to forty days, depending on the year. The leases will be combined for the purposes of determining the leasehold excise tax. They relate to the same piece of property, for the same activity by the same lessee, and occur within the same year.

(d) Elizabeth owns a Christmas tree farm. Every year she rents a small lot from the Port of Capital City, adjacent to its airport, to sell Christmas trees. She pays $125 to the port to rent the lot for 6 weeks. It is the only time during the year that she rents the lot. Her lease is exempt from the leasehold excise tax, because it does not exceed $250 per year in taxable rent.

(10) **Leases for a continuous period of less than thirty days.** Leasehold interests that provide use and possession of public property for a continuous period of less than thirty days are exempt from leasehold excise tax. In determining the duration of the lease, the department will rely upon the actual agreement and/or practice between the parties. If a single lessee is given successive leases or lease renewals of the same property, the arrangement is considered a continuous use and possession of the property by the same lessee. A leasehold interest does not give use and possession for a period of less than thirty days based solely on the fact that the public lessor has reserved the right to use the property or to allow third parties to use the property on an occasional, temporary basis.

(11) **Month-to-month leases in residential units to be demolished or removed.** Leasehold interests in properties rented for residential purposes on a month-to-month basis pending destruction or removal for construction of a public highway or public building are exempt from the leasehold excise tax. Thus, if the state or other public entity has acquired private property for purposes of building or expanding a highway, or for the construction of public buildings at an airport, the capitol campus, or some other public facility, and the public entity rents the property for residential purposes on a month-to-month basis pending destruction or removal for construction, these leases do not create taxable leasehold interests. This exemption does not require evidence of imminent removal of the residential units; the term "pending" merely means "while awaiting." The exemption is based upon the purpose for which the public entity holds the units.

For example, State University has obtained capital development funding for the construction of new campus buildings, and has purchased a block of residential property adjacent to campus for the sole purpose of expansion. Jim leases these houses from State University pursuant to a month-to-month rental agreement and rents them to students. Construction of the new buildings is not scheduled to begin for two years. Jim is not subject to the leasehold excise tax, because State University is holding the residential properties for the sole purpose of expanding its facilities, and Jim is leasing them pending their certain, if not imminent, destruction.

(12) **Public works contracts.** Leasehold interests in publicly owned real or personal property held by a contractor solely for the purpose of a public improvements contract or work to be executed under the public works statutes of Washington state or the United States are exempt from leasehold excise tax. To receive this exemption, the contracting parties must be the public owner of the property and the contractor that performs the work under the public works statutes.

For example, during construction of a second deck on the Nisqually Bridge pursuant to a public works contract between the state of Washington and Tinker Construction, any leasehold interest in real or personal property created for Tinker solely for the purpose of performing the work necessary under the terms of the contract is exempt from leasehold excise tax.

(13) **Correctional industries in state adult correctional facilities.** Leasehold interests for the use and possession of state adult correctional facilities for the operation of correctional industries under RCW 72.09.100 are exempt from leasehold excise tax.

For example, a profit or nonprofit organization operating and managing a business within a state prison under an agreement between it and the department of corrections is exempt from leasehold excise tax for its use and possession of state property.

(14) **Camp facilities for ((~~disabled~~)) persons <u>with disabilities</u>.** Leasehold interests in a camp facility are exempt from leasehold excise tax if the property is used to provide organized and supervised recreational activities for ((~~disabled~~)) persons <u>with disabilities</u> of all ages, and for public recreational purposes, by a nonprofit organization, association, or corporation which would be exempt from property tax under RCW 84.36.030(1) if it owned the property.

For example, a county park with camping facilities leased to a nonprofit charitable organization is exempt from leasehold excise tax if the nonprofit allows the property to be

used by the general public for recreational activities throughout the year, and to be used as a camp for disabled persons for two weeks during the summer.

(15) **Public or entertainment areas of certain baseball stadiums.** Leasehold interests in public or entertainment areas of a baseball stadium with natural turf and a retractable roof or canopy, located in a county with a population of over one million people, with a seating capacity of over forty thousand, and constructed on or after January 1, 1995, are exempt from leasehold excise tax.

"Public or entertainment areas" for the purposes of this exemption include ticket sales areas, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality and stadium club areas, kitchens or other work areas primarily servicing other public areas, public rest rooms, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas and suites, the playing field, and any other areas to which the public has access or that are used for the production of the entertainment event or other public usage, and any other personal property used for such purposes. "Public or entertainment areas" does not include locker rooms or private offices used exclusively by the lessee.

(16) **Public or entertainment areas of certain football stadiums and exhibition centers.** Leasehold interests in the public or entertainment areas of an open-air stadium suitable for national football league football and for Olympic and world cup soccer, with adjacent exhibition facilities, parking facilities, and other ancillary facilities constructed on or after January 1, 1998, are exempt from leasehold excise tax. For the purpose of this exemption, the term "public and entertainment areas" has the same meaning as set forth in subsection (15) above.

(17) **Public facilities districts.** All leasehold interests in public facilities districts, as provided in chapter 36.100 or 35.57 RCW are exempt from leasehold excise tax.

(18) **State route 16 corridor transportation systems.** All leasehold interests in the state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW are exempt from leasehold excise tax. RCW 82.29A.132.

(19) **Sales/leasebacks by regional transit authorities.** All leasehold interests in property of a regional transit authority or public corporation created under RCW 81.112.320 under an agreement under RCW 81.112.300 are exempt from leasehold excise tax. This exemption is effective July 28, 2000. RCW 82.29A.134.

(20) **Interests consisting of three thousand or more residential and recreational lots.** All leasehold interests consisting of three thousand or more residential and recreational lots that are or may be subleased for residential and recreational purposes are exempt from leasehold excise tax. Any combination of residential and recreational lots totaling at least three thousand satisfies the requirement of this exemption. This exemption is effective January 1, 2002. RCW 82.29A.136.

(21) **((~~Municipally owned~~)) Historic sites owned by the United States government or municipal corporations.** All leasehold interests in property that is:

(a) Owned by the United States government or a municipal corporation;

(b) Listed on any federal or state register of historical sites; and

(c) Wholly contained within a designated national historic reserve under 16 U.S.C. Sec. 461.

(22) **Amphitheaters.** All leasehold interests in the public or entertainment areas of an amphitheater if a private entity is responsible for one hundred percent of the cost of constructing the amphitheater which is not reimbursed by the public owner, both the public owner and the private lessee sponsor events at the facility on a regular basis, the lessee is responsible under the lease or agreement to operate and maintain the facility, and the amphitheater has a seating capacity of over seventeen thousand reserved and general admission seats and is in a county ((~~with~~)) that had a population of over three hundred fifty thousand, but less than four hundred twenty-five thousand when the amphitheater first opened to the public. For the purposes of this subsection, "public or entertainment areas" include box offices or other ticket sales areas, entrance gates, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas including lawn seating areas and suites, stages, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" does not include office areas used predominately by the lessee.

(23) **Military housing.** All leasehold interests in real property used for the placement of housing that consists of military housing units and ancillary supporting facilities, is situated on land owned in fee by the United States, is used for the housing of military personnel and their families, and is a development project awarded under the military housing privatization initiative of 1996, 10 U.S.C. Sec. 2885, as existing on June 12, 2008. For the purposes of this subsection, "ancillary supporting facilities" means facilities related to military housing units, including facilities to provide or support elementary or secondary education, child care centers, day care centers, child development centers, tot lots, community centers, housing offices, dining facilities, unit offices, and other similar facilities for the support of military housing.

WSR 10-02-069

EXPEDITED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed January 4, 2010, 2:40 p.m.]

Title of Rule and Other Identifying Information: WAC 392-500-030 Pupil tests and records—Certain tests, questionnaires, etc.—Limitations.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Robert Harkins, Deputy Superintendent, Office of Superintendent of Public Instruction, P.O. Box 47200, Olympia, WA 98504, AND RECEIVED BY March 8, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule change reiterates and clarifies the existing rights and responsibilities of public school officials who administer student surveys and questionnaires, and of students and their parents/guardians.

Reasons Supporting Proposal: The need for clarifying language is, consistent with federal law, to affirm that student behavioral surveys are voluntary.

Statutory Authority for Adoption: RCW 28A.150.070 and 28A.150.290.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Robert Harkins, 600 Washington Street S.E., Olympia, WA, (360) 725-6000; Implementation and Enforcement: Martin Mueller, 600 Washington Street S.E., Olympia, WA, (360) 725-6000.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: WAC 392-500-030 is to be amended as follows: "All surveys of student behavior require advance notice to the student and his/her parent/guardian and must be administered on a voluntary basis only. Any student or parent has a right to decline to participate in the survey without consequence or retaliation. No written or oral test, questionnaire, survey, or examination shall be used to elicit the personal beliefs or practices of a student or his parents as to religion except with the written consent of parent or guardian."]

This amendment does not require changes in statutory language, implementation, enforcement, or fiscal matters.

January 4, 2010
Randy Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 09-16-144, filed 8/5/09, effective 9/5/09)

WAC 392-500-030 Pupil tests and records—Certain tests, questionnaires, etc.—Limitations. All surveys of student behavior require advance notice to the student and his/her parent/guardian and must be administered on a voluntary basis only. Any student or parent has a right to decline to participate in the survey without consequence or retaliation. No written or oral test, questionnaire, survey, or examination shall be used to elicit the personal beliefs or practices of a student or his parents as to religion except with the written consent of parent or guardian.

WSR 10-02-077

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed January 5, 2010, 11:45 a.m.]

Title of Rule and Other Identifying Information: WAC 458-40-530 Property tax, forest land—Land grades—Operability classes, 458-40-610 Timber excise tax—Definitions, and 458-40-626 Timber excise tax—Tax liability—Private timber, tax due when timber harvested.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Mark Bohe, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, AND RECEIVED BY March 8, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend these rules to correct the following citations:

- WAC 458-40-530 - subsection (1) has a citation to RCW 84.33.120, which no longer exists. This citation is being changed to RCW 84.33.130.
- WAC 458-40-610 - the citations to WAC 458-40-690 in subsection (1) are being changed to WAC 458-40-680.

- WAC 458-40-626 - the citation to RCW 84.33.073 in subsection (2) is being removed. This statute no longer exists.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 84.33.096.

Statute Being Implemented: WAC 458-40-530 - RCW 84.33.130; WAC 458-40-610 - RCW 84.33.010 through 84.33.096; and WAC 458-40-626 - RCW 84.33.041 and 84.33.035.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6133; Implementation and Enforcement: Stuart Thronson, 1025 Union Avenue S.E., Suite #100, Olympia, WA, (360) 570-3230.

January 5, 2010

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-24-068, filed 12/1/00, effective 1/1/01)

WAC 458-40-530 Property tax, forest land—Land grades—Operability classes. (1) **Introduction.** RCW ((~~84.33.120~~)) 84.33.130 requires that the department of revenue annually adjust and certify forest land values to be used by county assessors in preparing assessment rolls. These values are based upon land grades and operability classes. The assessors use maps that provide the land grades and operability classes for forest land in Washington.

This rule explains how the land grades and operability classes provided in the maps used by the assessors were established. The forest land values are annually updated in WAC 458-40-540. For the purposes of this rule and WAC 458-40-540, the term "forest land" is synonymous with timberland and means all land in any contiguous ownership of twenty or more acres which is primarily devoted to and used for growing and harvesting timber and means land only.

(2) **Land grades.** The land grades are established based upon timber species and site index. "Site index (plural site indices)" is the productive quality of forest land, determined by the total height reached by the dominant and codominant trees on a particular site at a given age.

WASHINGTON STATE PRIVATE FOREST LAND GRADES

SPECIES	SITE INDEX	LAND GRADE	
WESTSIDE			
Douglas Fir	136 ft. and over	1	
	118-135 ft.	2	
	99-117 ft.	3	
	84-98 ft.	4	
	under 84 ft.	5	
Western Hemlock	136 ft. and over	1	
	116-135 ft.	2	
	98-115 ft.	3	
	83-97 ft.	4	
	68-82 ft.	5	
	under 68 ft.	6	
Red Alder	117 ft. and over	6	
	under 117 ft.	7	
	Marginal forest productivity	7 or 8	*2
	Noncommercial	8	
EASTSIDE			
Douglas Fir & Ponderosa Pine	140 ft. and over	3	*1
	120-139 ft.	4	*1
	96-119 ft.	5	*1
	70-95 ft.	6	*1
	under 70 ft.	7	*1
	Marginal forest productivity	7 or 8	*2
	Noncommercial	8	

*1 These are the site indices for one hundred percent stocked stands. Stands with lower stocking levels would require higher site indices to occur in the same land grade.

*2 Marginal forest productivity is land grade 7 operability class 3, in the following townships. All marginal forest productivity in other townships is land grade 8.

WESTERN WASHINGTON

Whatcom County - all townships east of Range 6 East, inclusive.

Skagit County - all townships east of Range 7 East, inclusive.

Snohomish County - all townships east of Range 8 East, inclusive.

King County - all townships east of Range 9 East, inclusive.

Pierce County - T15N, R7E; T16N, R7E; T17N, R7E; T18N, R7E; T19N, R9E; T19N, R10E; T19N, R11E.

EASTERN WASHINGTON

Chelan County - all townships west of Range 17 East, inclusive.

Kittitas County - all townships west of Range 15 East, inclusive.

Yakima County - all townships west of Range 14 East, inclusive.

(3) **Operability classes.** Operability classes are established according to intrinsic characteristics of soils and geomorphic features. The criteria for each class apply statewide.

(a) **Class 1-Favorable.** Stable soils that slope less than thirty percent. Forest operations do not significantly impact soil productivity and soil erosion. Forest operations, such as roading and logging, are carried out with minimal limitations.

(b) **Class 2-Average.** Stable soils that slope less than thirty percent, but on which significant soil erosion, compac-

tion, and displacement may occur as a result of forest operations.

(c) **Class 3-Difficult.** Soils with one or both of the following characteristics:

(i) Stable soils that slope between thirty and sixty-five percent; and

(ii) Soils that slope between zero and sixty-five percent, but display evidence that rapid mass movement may occur as a direct result of forest operations.

(d) **Class 4-Extreme.** All soils that slope more than sixty-five percent.

(e) **Variations.** Unique conditions found in any one geographic area may impact forest operations to a greater degree than the above classes permit. With documented evidence, the department of revenue may place the soil in a more severe class.

AMENDATORY SECTION (Amending WSR 09-14-108, filed 6/30/09, effective 7/31/09)

WAC 458-40-610 Timber excise tax—Definitions. (1) **Introduction.** The purpose of WAC 458-40-610 through ((~~458-40-690~~)) 458-40-680 is to prescribe the policies and procedures for the taxation of timber harvested from public and private forest lands as required by RCW 84.33.010 through 84.33.096.

Unless the context clearly requires otherwise, the definitions in this rule apply to WAC 458-40-610 through ((~~458-40-690~~)) 458-40-680. In addition to the definitions found in this rule, definitions of technical forestry terms may be found in *The Dictionary of Forestry*, 1998, edited by John A. Helms, and published by the Society of American Foresters.

(2) **Codominant trees.** Trees whose crowns form the general level of the main canopy and receive full light from above, but comparatively little light from the sides.

(3) **Competitive sales.** The offering for sale of timber which is advertised to the general public for sale at public auction under terms wherein all qualified potential buyers have an equal opportunity to bid on the sale, and the sale is awarded to the highest qualified bidder. The term "competitive sales" includes making available to the general public permits for the removal of forest products.

(4) **Cord measurement.** A measure of wood with dimensions of 4 feet by 4 feet by 8 feet (128 cubic feet).

(5) **Damaged timber.** Timber where the stumpage values have been materially reduced from the values shown in the applicable stumpage value tables due to damage resulting from fire, blow down, ice storm, flood, or other sudden unforeseen causes.

(6) **Dominant trees.** Trees whose crowns are higher than the general level of the main canopy and which receive full light from the sides as well as from above.

(7) **Firewood.** Commercially traded firewood is considered scaled utility log grade as defined in subsection (14) of this section.

(8) **Forest-derived biomass.** Forest-derived biomass consists of tree limbs, tops, needles, leaves, and other woody debris that are residues from such activities as timber harvesting, forest thinning, fire suppression, or forest health. Forest-derived biomass does not include scalable timber products or firewood (defined in WAC 458-40-650).

(9) **Harvest unit.** An area of timber harvest, defined and mapped by the harvester before harvest, having the same stumpage value area, hauling distance zone, harvest adjustments, harvester, and harvest identification. The harvest identification may be a department of natural resources forest practice application number, public agency harvesting permit number, public sale contract number, or other unique identifier assigned to the timber harvest area prior to harvest operations. A harvest unit may include more than one section, but harvest unit may not overlap a county boundary.

(10) **Harvester.** 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, or takes timber for sale or for commercial or industrial use. The term "harvester" does not include persons performing under contract the necessary labor or mechanical services for a harvester. In cases where the identity of the harvester is in doubt, the department of revenue will consider the owner of the land from which the timber was harvested to be the harvester and the one liable for paying the tax.

The definition above applies except when the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein so fells, cuts, or takes timber for sale or for commercial or industrial use. When a governmental entity described above fells, cuts, or takes timber, the harvester is the first person, other than another governmental entity as described above, acquiring title to or a possessory interest in such timber.

(11) **Harvesting and marketing costs.** Only those costs directly and exclusively associated with harvesting merchantable timber from the land and delivering it to the buyer. The term includes the costs of piling logging residue on site, and costs to abate extreme fire hazard when required by the department of natural resources. Harvesting and marketing costs do not include the costs of other consideration (for example, reforestation, permanent road construction), treatment to timber or land that is not a necessary part of a commercial harvest (for example, precommercial thinning, brush clearing, land grading, stump removal), costs associated with maintaining the option of land conversion (for example, county fees, attorney fees, specialized site assessment or evaluation fees), or any other costs not directly and exclusively associated with the harvesting and marketing of merchantable timber. The actual harvesting and marketing costs must be used in all instances where documented records are available. When the taxpayer is unable to provide documented proof of such costs, or when harvesting and marketing costs can not be separated from other costs, the deduction for harvesting and marketing costs is thirty-five percent of the gross receipts from the sale of the logs.

(12) **Hauling distance zone.** An area with specified boundaries as shown on the statewide stumpage value area and hauling distance zone maps contained in WAC 458-40-640, having similar accessibility to timber markets.

(13) **Legal description.** A description of an area of land using government lots and standard general land office subdi-

vision procedures. If the boundary of the area is irregular, the physical boundary must be described by metes and bounds or by other means that will clearly identify the property.

(14) **Log grade.** Those grades listed in the "*Official Log Scaling and Grading Rules*" developed and authored by the Northwest Log Rules Advisory Group (Advisory Group). "Utility grade" means logs that do not meet the minimum requirements of peeler or sawmill grades as defined in the "*Official Log Scaling and Grading Rules*" published by the Advisory Group but are suitable for the production of firm useable chips to an amount of not less than fifty percent of the gross scale; and meeting the following minimum requirements:

(a) Minimum gross diameter—two inches.

(b) Minimum gross length—twelve feet.

(c) Minimum volume—ten board feet net scale.

(d) Minimum recovery requirements—one hundred percent of adjusted gross scale in firm useable chips.

(15) **Lump sum sale.** Also known as a cash sale or an installment sale, it is a sale of timber where all the volume offered is sold to the highest bidder.

(16) **MBF.** One thousand board feet measured in Scribner Decimal C Log Scale Rule.

(17) **Noncompetitive sales.** Sales of timber in which the purchaser has a preferential right to purchase the timber or a right of first refusal.

(18) **Other consideration.** Value given in lieu of cash as payment for stumpage, such as improvements to the land that are of a permanent nature. Some examples of permanent improvements are as follows: Construction of permanent roads; installation of permanent bridges; stockpiling of rock intended to be used for construction or reconstruction of permanent roads; installation of gates, cattle guards, or fencing; and clearing and reforestation of property.

(19) **Permanent road.** A road built as part of the harvesting operation which is to have a useful life subsequent to the completion of the harvest.

(20) **Private timber.** All timber harvested from privately owned lands.

(21) **Public timber.** Timber harvested from federal, state, county, municipal, or other government owned lands.

(22) **Remote island.** An area of land which is totally surrounded by water at normal high tide and which has no bridge or causeway connecting it to the mainland.

(23) **Scale sale.** A sale of timber in which the amount paid for timber in cash and/or other consideration is the arithmetic product of the actual volume harvested and the unit price at the time of harvest.

(24) **Small harvester.** A harvester who harvests timber from privately or publicly owned forest land in an amount not exceeding two million board feet in a calendar year.

(25) **Species.** A grouping of timber based on biological or physical characteristics. In addition to the designations of species or subclassifications defined in Agriculture Handbook No. 451 Checklist of United States Trees (native and naturalized) found in the state of Washington, the following are considered separate species for the purpose of harvest classification used in the stumpage value tables:

(a) **Other conifer.** All conifers not separately designated in the stumpage value tables. See WAC 458-40-660.

(b) **Other hardwood.** All hardwoods not separately designated in the stumpage value tables. See WAC 458-40-660.

(c) **Special forest products.** The following are considered to be separate species of special forest products: Christmas trees (various species), posts (various species), western redcedar flatsawn and shingle blocks, western redcedar shake blocks and boards.

(d) **Chipwood.** All timber processed to produce chips or chip products delivered to an approved chipwood destination that has been approved in accordance with the provisions of WAC 458-40-670 or otherwise reportable in accordance with the provisions of WAC 458-40-670.

(e) **Small logs.** All conifer logs harvested in stumpage value areas 6 or 7 generally measuring seven inches or less in scaling diameter, purchased by weight measure at designated small log destinations that have been approved in accordance with the provisions of WAC 458-40-670. Log diameter and length is measured in accordance with the Eastside Log Scaling Rules developed and authored by the Northwest Log Rules Advisory Group, with length not to exceed twenty feet.

(f) **Sawlog.** For purposes of timber harvest in stumpage value areas 6 and 7, a sawlog is a log having a net scale of not less than 33 1/3% of gross scale, nor less than ten board feet and meeting the following minimum characteristics: Gross scaling diameter of five inches and a gross scaling length of eight feet.

(g) **Piles.** All logs sold for use or processing as piles that meet the specifications described in the most recently published edition of the *Standard Specification for Round Timber Piles* (*Designation*: *D 25*) of the American Society for Testing and Materials.

(h) **Poles.** All logs sold for use or processing as poles that meet the specifications described in the most recently published edition of the *National Standard for Wood Poles—Specifications and Dimensions* (*ANSI 05.1*) of the American National Standards Institute.

(26) **Stumpage.** Timber, having commercial value, as it exists before logging.

(27) **Stumpage value.** The true and fair market value of stumpage for purposes of immediate harvest.

(28) **Stumpage value area (SVA).** An area with specified boundaries which contains timber having similar growing, harvesting and marketing conditions.

(29) **Taxable stumpage value.** The value of timber as defined in RCW 84.33.035(7), and this chapter. Except as provided below for small harvesters and public timber, the taxable stumpage value is the appropriate value for the species of timber harvested as set forth in the stumpage value tables adopted under this chapter.

(a) **Small harvester option.** Small harvesters may elect to calculate the excise tax in the manner provided by RCW 84.33.073 and 84.33.074. The taxable stumpage value must be determined by one of the following methods as appropriate:

(i) **Sale of logs.** Timber which has been severed from the stump, bucked into various lengths and sold in the form of logs has a taxable stumpage value equal to the actual gross receipts for the logs, less any costs associated with harvesting and marketing the timber.

(ii) **Sale of stumpage.** When standing timber is sold and harvested within twenty-four months of the date of sale, its taxable stumpage value is the actual purchase price in cash and/or other consideration for the stumpage for the most recent sale prior to harvest. If a person purchases stumpage, harvests the timber more than twenty-four months after purchase of the stumpage, and chooses to report under the small harvester option, the taxable stumpage value is the actual gross receipts for the logs, less any costs associated with harvesting and marketing the timber. See WAC 458-40-626 for timing of tax liability.

(b) **Public timber.** The taxable stumpage value for public timber sales is determined as follows:

(i) **Competitive sales.** The taxable stumpage value is the actual purchase price in cash and/or other consideration. The value of other consideration is the fair market value of the other consideration; provided that if the other consideration is permanent roads, the value is the appraised value as appraised by the seller. If the seller does not provide an appraised value for roads, the value is the actual costs incurred by the purchaser for constructing or improving the roads. Other consideration includes additional services required from the stumpage purchaser for the benefit of the seller when these services are not necessary for the harvesting or marketing of the timber. For example, under a single stumpage sale's contract, when the seller requires road abandonment (as defined in WAC 222-24-052(3)) of constructed or reconstructed roads which are necessary for harvesting and marketing the timber, the construction and abandonment costs are not taxable. Abandonment activity on roads that exist prior to a stumpage sale is not necessary for harvesting and marketing the purchased timber and those costs are taxable.

(ii) **Noncompetitive sales.** The taxable stumpage value is determined using the department of revenue's stumpage value tables as set forth in this chapter. Qualified harvesters may use the small harvester option.

(iii) **Sale of logs.** The taxable stumpage value for public timber sold in the form of logs is the actual purchase price for the logs in cash and/or other consideration less appropriate deductions for harvesting and marketing costs. Refer above for a definition of "harvesting and marketing costs."

(iv) **Defaulted sales and uncompleted contracts.** In the event of default on a public timber sale contract, wherein the taxpayer has made partial payment for the timber but has not removed any timber, no tax is due. If part of the sale is logged and the purchaser fails to complete the harvesting, taxes are due on the amount the purchaser has been billed by the seller for the volume removed to date. See WAC 458-40-628 for timing of tax liability.

(30) **Thinning.** Timber removed from a harvest unit located in stumpage value area 1, 2, 3, 4, 5, or 10:

(a) When the total volume removed is less than forty percent of the total merchantable volume of the harvest unit prior to harvest; and

(b) The harvester leaves a minimum of one hundred undamaged, evenly spaced, dominant or codominant trees per acre of a commercial species or combination thereof.

AMENDATORY SECTION (Amending WSR 00-24-068, filed 12/1/00, effective 1/1/01)

WAC 458-40-626 Timber excise tax—Tax liability—Private timber, tax due when timber harvested. (1) **Introduction.** For purposes of determining the proper calendar quarter in which the harvester is to pay tax on timber harvested from private land the tax is due and payable on the last day of the month following the end of the calendar quarter in which the timber was harvested.

(2) **Personal use of harvested timber by landowner.** A landowner harvesting timber for commercial or industrial use is subject to the timber excise tax upon the value of harvested timber. See RCW 84.33.041((,)) and 84.33.035 ((~~and 84.33.073~~)). A landowner cutting timber for that landowner's own personal use is not subject to the timber excise tax.

A landowner selling, bartering, or trading timber is making commercial use of that timber. A landowner providing that individual's own business with timber is making commercial or industrial use of that timber. For example, a logging contractor using timber by-products for hog fuel has made industrial use of that timber. An individual engaged in the construction industry using lumber from that landowner's timber to build a structure meant for sale by that individual or that individual's business has also made industrial use of the timber. On the other hand, a landowner makes personal use of timber when that individual uses the timber, a portion of the cut timber, or a by-product from the timber as:

(a) Firewood in that individual's stove or fireplace;

(b) Lumber for that individual's personal residence, garage or storage structure;

(c) Lumber for a fence around that individual's personal residence or private property not used for commercial purposes; or

(d) Sawdust or shavings for that individual's garden or yard.

WSR 10-02-105
EXPEDITED RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed January 6, 2010, 10:38 a.m.]

Title of Rule and Other Identifying Information: Chapter 296-24 WAC, Acetylene, the federal Occupational Safety and Health Administration (OSHA) revised its acetylene standard for general industry by updating references to standards published by standards developing organizations (SDO).

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU

MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Joshua Swanson, Department of Labor and Industries, P.O. Box 44001, Olympia, WA 98504-4001, AND RECEIVED BY March 8, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The division of occupational safety and health (DOSH) believes that the revisions made to the acetylene standard by this proposal does not compromise the safety of employees, and instead enhances employee protection. For example, the updated acetylene standard includes mandatory requirements for acetylene piping systems, has special requirements for high-pressure piping systems, and prohibits storage of acetylene cylinders in confined spaces—requirements that are not included in the current SDO standards. The updated SDO standards also provide employers with new and more extensive information than the current standards, which should facilitate compliance.

The revisions will make the requirements of DOSH's acetylene standard consistent with current industry practices, thereby eliminating confusion and clarifying employer obligations. Eliminating confusion and clarifying employer obligations should increase employee safety while reducing compliance costs.

The Compressed Gas Association (CGA) published several editions of these SDO standards after we adopted them in 1973, and one of these standards (i.e., Compressed Gas Association Pamphlet G-1.4-1966), is no longer available for purchase from CGA. Therefore, to ensure that employers have access to the latest safety requirements for managing acetylene, this rule making is adopting the requirements specified in the most recent versions of the SDO standards.

WAC 296-24-31001 Cylinders.

- Update the Compressed Gas Association Pamphlet reference.

WAC 296-24-31003 Piped systems.

- Update references relating to the National Fire Protection Association (NFPA) and CGA.
- Add language to allow compliance with earlier additions if applicable.

WAC 296-24-31005 Generators and filling cylinders.

- Update references relating to NFPA.
- Add language to allow compliance with earlier additions if applicable.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Statute Being Implemented: Chapter 49.17 RCW.

Rule is necessary because of federal law, 29 C.F.R. 1910.102 (74[:] Federal Register 74:40441-40447 (2009)); 29 C.F.R. 1910.102 (74: Federal Register 74:40449-40455 (2009)); and 29 C.F.R. 1910.102 (74: Federal Register 74:57883-57884 (2009)).

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Tracy Spencer, Tumwater, (360) 902-5530; Implementation and Enforcement: Michael Silverstein, Tumwater, (360) 902-4805.

January 6, 2010
Judy Schurke
Director

AMENDATORY SECTION (Amending Order 73-5, filed 5/9/73)

WAC 296-24-31001 Cylinders. Employers must ensure that the in-plant transfer, handling, storage, and ((~~utilization~~)) use of acetylene in cylinders ((~~shall be in accordance with Compressed Gas Association Pamphlet G-1-1966~~)) comply with the provisions of CGA Pamphlet G-1-2003 (Acetylene) (Compressed Gas Association, Inc., 11th ed., 2003).

AMENDATORY SECTION (Amending Order 73-5, filed 5/9/73)

WAC 296-24-31003 Piped systems. ((~~The piped systems for the in-plant transfer and distribution of acetylene shall be designed, installed, maintained, and operated in accordance with Compressed Gas Association Pamphlet G-1.3-1959.~~)) (1) Employers must comply with Chapter 9 (Acetylene Piping) of NFPA 51A-2006 (Standard for Acetylene Charging Plants) (National Fire Protection Association, 2006 ed., 2006).

(2) When employers can demonstrate that the facilities, equipment, structures, or installations used to generate acetylene or to charge (fill) acetylene cylinders were installed prior to February 16, 2006, these employers may comply with the provisions of Chapter 7 (Acetylene Piping) of NFPA 51A-2001 (Standard for Acetylene Charging Plants) (National Fire Protection Association, 2001 ed., 2001).

(3) The provisions of subsection (2) of this section also apply when the facilities, equipment, structures, or installations used to generate acetylene or to charge (fill) acetylene cylinders were approved for construction or installation prior to February 16, 2006, but constructed and installed on or after that date.

Note: For additional information on acetylene piping systems, see CGA G-1.2-2006, Part 3 (Acetylene Piping) (Compressed Gas Association, Inc., 3rd ed., 2006).

AMENDATORY SECTION (Amending Order 73-5, filed 5/9/73)

WAC 296-24-31005 Generators and filling cylinders. ((~~Plants for the generation of acetylene and the charging (filling) of acetylene cylinders shall be designed, constructed, and tested in accordance with the standards prescribed in Compressed Gas Association Pamphlet G-1.4-1966~~)) (1) Employers must ensure that facilities, equipment, structures, or installations used to generate acetylene or to charge (fill) acetylene cylinders comply with the provisions of NFPA 51A-2006 (Standard for Acetylene Charging Plants) (National Fire Protection Association, 2006 ed., 2006).

(2) When employers can demonstrate that the facilities, equipment, structures, or installations used to generate acetylene or to charge (fill) acetylene cylinders were constructed

or installed prior to February 16, 2006, these employers may comply with the provisions of NFPA 51A-2001 (Standard for Acetylene Charging Plants) (National Fire Protection Association, 2001 ed., 2001).

(3) The provisions of subsection (2) of this section also apply when the facilities, equipment, structures, or installations were approved for construction or installation prior to February 16, 2006, but constructed and installed on or after that date.