

Title 458 WAC

REVENUE, DEPARTMENT OF

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DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE

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 Repealed by 79-11-029 (Order PT 79-3), filed 10/11/79.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 Repealed by 79-11-029 (Order PT 79-3), filed 10/11/79.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 Repealed by 79-11-029 (Order PT 79-3), filed 10/11/79.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 Repealed by 79-11-029 (Order PT 79-3), filed 10/11/79.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 Repealed by 79-11-029 (Order PT 79-3), filed 10/11/79.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.**
- 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 Repealed by 79-11-029 (Order PT 79-3), filed 10/11/79.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.**
- 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 Repealed by 79-11-029 (Order PT 79-3), filed 10/11/79.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.**
- 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 Repealed by 79-11-029 (Order PT 79-3), filed 10/11/79.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.**
- 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 Repealed by 79-11-029 (Order PT 79-3), filed 10/11/79.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.**
- 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.**
- 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.**
- 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.**
- 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.**
- 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.**
- 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.**

Chapter 458-60

REAL ESTATE EXCISE TAX

- 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.**
- Leases with options to purchase—General policy. [Order PT 68-7, § 458-60-010, filed 5/1/68.] Repealed by 82-15-**

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458-60-020	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.	458-08-170	Depositions and interrogatories in contested cases—Fees of officers and deponents.
458-60-030	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.	458-08-180	Depositions upon interrogatories—Submission of interrogatories.
458-60-040	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.	458-08-190	Depositions upon interrogatories—Interrogation.
458-60-045	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.	458-08-200	Depositions upon interrogatories—Attestation and return.
458-60-046	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.	458-08-210	Depositions upon interrogatories—Provisions of deposition rule.
458-60-048	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.	458-08-220	Interrogatories to parties.
	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.	458-08-230	Requests for admission.
		458-08-240	Subpoenas.
		458-08-250	Settlement.
		458-08-260	Decision procedure.
		458-08-270	Review procedures.

WAC 458-08-010 Application and scope of chapter 458-08 WAC. (1) Rules adopted by the office of administrative hearings, chapter 10-08 WAC, apply to all stages of the conduct of a contested case hearing from issuance of the notice of hearing through issuance of a proposed decision, an initial decision, or the agency's final decision if no proposed or initial decision is required or issued. Such rules supersede or are in lieu of rules that have been or may be adopted by an agency for the conduct of contested cases, provided that an agency may adopt rules which prescribe:

(a) Form and content of pleadings, procedures for settlement or disposition of contested cases without hearing, and procedures for obtaining review by the agency of proposed and initial decisions and reconsideration of final decisions;

(b) Qualifications of persons appearing before the agency in a representative capacity; and

(c) Procedures for discovery.

(2) These rules are adopted by the department of revenue to provide procedures, as permitted by statute and chapter 10-08 WAC, for contested case hearings, and shall apply to hearings which the department of revenue is by statute or Constitution required to conduct.

[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.]

WAC 458-08-020 Definitions. Unless the context shall otherwise provide:

(1) "Department" means the Washington state department of revenue.

(2) "Party" includes the department.

(3) "Presiding officer" means a department official(s), administrative law judge, hearing examiner, hearing officer, or other person authorized by law or appointed to preside over a contested case hearing.

(4) "Proceeding" means a hearing or other occasion for action, decision, or ruling, or where the same are considered by the parties or their representatives, which constitutes a part of the contested case hearing.

[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.]

WAC 458-08-030 Appearance and practice before agency—Who may appear. No person may appear in a representative capacity before the agency or its presiding officer other than the following:

(1) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington.

(2) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by state law.

(3) A bona fide officer, partner, or full time employee of an individual firm, association, partnership, or corporation who appears for such individual firm, association, partnership, or corporation.

[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.]

WAC 458-08-040 Appearance and practice before agency—Standards of ethical conduct. All persons appearing in a proceeding before the department in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of Washington. If any such person does not conform to such standards, the agency involved may decline to permit such person to appear in a representative capacity in any proceeding before the agency.

[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.]

WAC 458-08-050 Appearance and practice before agency—Appearance by former employee of agency or former member of attorney general's staff. No former employee of the department or member of the attorney general's staff may at any time after severing employment with the department or the attorney general appear in a representative capacity on behalf of other parties in a formal proceeding wherein such person previously took an active part as a representative of the department, as provided by RCW 42.18.220.

[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.]

WAC 458-08-060 Appearance and practice before agency—Former employee as expert witness. No former employee of the department shall at any time after severing his employment with the state of Washington appear, except with the written permission of the agency, as an expert witness on behalf of other parties in a formal proceeding wherein such former employee previously took an active part in the investigation as a representative of the department.

[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.]

WAC 458-08-070 Pleadings. (1) Pleadings enumerated. Pleadings before the department shall include notices of hearing, complaints, answers, and motions.

(2) Verification. All pleadings except motions, notices of hearing, or complaints brought upon the department's own motion, shall be verified in the manner prescribed for verification of pleadings in the superior court of Washington.

(3) Time for motion. Any motion directed toward a notice of hearing or complaint must be filed before an answer is due. Otherwise objections must be raised in the answer. Motions directed toward a notice of hearing or

complaint must be filed within ten days after service of the notice of hearing or complaint.

(4) Time for answer. An answer, if made, must be filed within twenty days following service of the notice of hearing or complaint; provided, however, that whenever the department believes the public interest requires expedited procedure it may shorten the time required for an answer.

(5) Liberal construction. All pleadings shall be liberally construed with a view to effect justice between the parties and the department will at any stage of the proceeding disregard errors or defects in the pleadings or proceedings which do not affect the substantial rights of a party.

(6) Amendments. The department may allow amendments to the pleadings or other relevant documents at any time upon such terms as may be lawful and just, provided that such amendments do not adversely affect the interest of persons not parties to the proceeding.

(7) Disposition of motions. The department may direct all motions to be submitted for decision by the department on either written or oral argument and may permit the filing of affidavits in support or contravention thereof.

(8) Consolidation of hearings. Two or more hearings where the facts or principles of law are related may be consolidated and heard together.

(9) Motions. Subject to the provisions of subsection (3) of this section, the practice respecting motions including the grounds therefor and forms thereof shall conform insofar as possible with the practice relative thereto in the superior court of Washington and the practice permitted by the Administrative Procedure Act (chapter 34.04 RCW).

(10) Forms.

(a) Persons responding to notice of hearing or complaint filed by the department in filing any answer or motion thereto shall generally adhere to the following form for such purpose:

At the top of the page shall appear the wording "Before the Washington state department of revenue." On the left side of the page below the foregoing the following caption shall be set out: "In the matter of (the name of the party)." Opposite the foregoing caption shall appear the word "answer" or "motion."

The body of the answer or motion shall be set out in numbered paragraphs which shall include the name and address of the responding or moving party.

(b) The original and one legible copy shall be filed with the department. Answers or motions shall be on white paper, eight and one-half by eleven inches in size.

[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.]

WAC 458-08-080 Discovery in contested cases—Scope. Unless otherwise limited in accordance with these rules parties may obtain discovery as permitted in these rules regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding.

[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.]

WAC 458-08-090 Depositions and interrogatories in contested cases—Right to take. Except as may be otherwise provided, any party may take the testimony of any

person, including a party, by deposition upon oral examination or written interrogatories for use as evidence in the proceeding, except that leave must be obtained if notice of the taking is served by a proponent within twenty days after the filing of a notice of hearing or complaint. The attendance of witnesses may be compelled by the use of a subpoena. Depositions shall be taken only in accordance with this rule and the rule on subpoenas.

[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.]

WAC 458-08-100 Depositions and interrogatories in contested cases—Officer before whom taken. Within the United States or within a territory or insular possession subject to the dominion of the United States depositions shall be taken before an officer authorized to administer oaths by the laws of the state of Washington or of the place where the examination is held; within a foreign country, depositions shall be taken before a secretary of an embassy or legation, consul general, vice consul or consular agent of the United States, or a person designated by the department, or agreed upon by the parties by stipulation in writing filed with the department. Except by stipulation, no deposition shall be taken before a person who is a party or the privy of a party, or a privy of any counsel of a party, or who is financially interested in the proceeding.

[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.]

WAC 458-08-110 Depositions and interrogatories in contested cases—Authorization. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing of not less than five days (exclusive of the day of service, Saturdays, Sundays and legal holidays). The notice shall state the time and place for taking the deposition, the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify the person. On motion of a party upon whom the notice is served, the presiding officer may for cause shown enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions.

[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.]

WAC 458-08-120 Depositions and interrogatories in contested cases—Protection of parties and deponents. After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the department or its presiding officer may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and

their officers or counsel, or that after being sealed, the deposition shall be opened only by order of the department or that business secrets or secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents, or information enclosed in sealed envelopes to be opened as directed by the department which may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression. At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the department, or its presiding officer may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as above provided. If the order made terminates the examination, it shall be resumed thereafter only upon order. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

[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.]

WAC 458-08-130 Deposition and interrogatories in contested cases—Oral examination and cross-examination. Examination and cross-examination shall proceed as at an oral hearing. In lieu of participating in the oral examination, any party served with notice of taking a deposition may transmit written cross interrogatories to the officer who, without first disclosing them to any person, and after the direct testimony is complete, shall propound them seriatim to the deponent and record or cause the answers to be recorded verbatim.

[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.]

WAC 458-08-140 Depositions and interrogatories in contested cases—Recordation. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally or by someone acting under his or her direction and in his or her presence, record the testimony by typewriter directly or by transcription from stenographic notes, wire, or record recorders, which record shall separately and consecutively number each interrogatory. Objections to the notice, qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented or to the conduct of the officer, or of any party, shall be noted by the officer upon the deposition. All objections by any party not so made are waived.

[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.]

WAC 458-08-150 Depositions and interrogatories in contested cases—Signing attestation and return. (1) When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement

of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress, the department holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(2) The officer shall certify on the deposition that the witness was duly sworn and that the deposition is a true record of the testimony given by the witness. The officer shall then securely seal the deposition in an envelope indorsed with the title of proceeding and marked "Deposition of (here insert name of witness)" and shall promptly send it by registered or certified mail to the agency, or its presiding officer, for filing. The party taking the deposition shall give prompt notice of its filing to all other parties. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

[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.]

WAC 458-08-160 Depositions and interrogatories in contested cases—Use and effect. Subject to rulings by the presiding officer upon objections a deposition taken and filed as provided in this rule will not become a part of the record in the proceeding until received in evidence by the presiding officer upon his or her own motion or the motion of any party. Except by agreement of the parties or ruling of the presiding officer, a deposition will be received only in its entirety. A party does not make a party, or the privy of a party, or any hostile witness that party's witness by taking such deposition. Any party may rebut any relevant evidence contained in a deposition whether introduced by that party or any other party.

[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.]

WAC 458-08-170 Depositions and interrogatories in contested cases—Fees of officers and deponents. Deponents whose depositions are taken and the officers taking the same shall be entitled to the same fees as are paid for like services in the superior courts of the state of Washington, which fees shall be paid by the party at whose instance the depositions are taken.

[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.]

WAC 458-08-180 Depositions upon interrogatories—Submission of interrogatories. Where the deposition is taken upon written interrogatories, the party offering the testimony shall separately and consecutively number each interrogatory and file and serve them with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom they are to be taken. Within ten days thereafter a party so served may serve cross-interrogatories upon

the party proposing to take the deposition. Within five days thereafter, the latter may serve redirect interrogatories upon the party who served cross-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.]

WAC 458-08-190 Depositions upon interrogatories—Interrogation. Where the interrogatories are forwarded to an officer authorized to administer oaths the officer taking the same after duly swearing the deponent, shall read to the deponent seriatim, one interrogatory at a time and cause the same and the answer thereto to be recorded before the succeeding interrogatory is asked. No one except the deponent, the officer and the court reporter or stenographer recording and transcribing it shall be present during the 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.]

WAC 458-08-200 Depositions upon interrogatories—Attestation and return. The officer before whom interrogatories are verified or answered shall (1) certify under official signature and seal that the deponent was duly sworn by such officer, that the interrogatories and answers are a true record of the deponent's testimony, that no one except deponent, the officer and the stenographer were present during the taking, and that neither the officer nor the stenographer, to his or her knowledge, is a party, privy to a party, or interested in the event of the proceedings, and (2) promptly send by registered or certified mail the original copy of the deposition and exhibits with his attestation to the department, or its presiding officer, one copy to the counsel who submitted the interrogatories and another copy to the deponent.

[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.]

WAC 458-08-210 Depositions upon interrogatories—Provisions of deposition rule. In all other respects, depositions upon interrogatories shall be governed by the previous 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.]

WAC 458-08-220 Interrogatories to parties. (1) Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Leave to serve interrogatories must be obtained if service by a complainant is sought within twenty days after filing of a complaint.

Interrogatories shall be so arranged that after each separate question there shall appear a blank space reasonably calculated to enable the answering party to have his answer typed in. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person

making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within twenty days after the service of the interrogatories.

(2) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the presiding officer may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

(3) Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts, or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(4) Interrogatories shall be propounded only in accordance with this rule, provided that upon failure of a person to answer interrogatories, the party propounding the interrogatories may, unless otherwise ordered by the presiding officer, seek to compel answers thereto in accordance with WAC 458-08-090 and 458-08-240.

[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.]

WAC 458-08-230 Requests for admission. (1) A party may serve upon any other party a written request for admission, for purposes of the pending action only, of the truth of any matters within the scope of WAC 458-08-080 set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of the presiding officer be served upon the complaining party after a complaint is served, or is filed, whichever shall first occur, and upon any other party with or after service of the complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within twenty days after service of the request, or within such shorter or longer time as the presiding officer may allow the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his or her attorney, but, unless the presiding officer shortens the time, a party shall not be required to serve answers or objections before the expiration of 40 days after service of the com-

plaint upon him or her. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that he or she has made reasonable inquiry and that the information known or readily obtainable is insufficient to enable admission or denial. A party who considers that a matter of which an admission has been requested presents a genuine issue for hearing may not, on that ground alone, object to the request.

(2) Any matter admitted under this rule is conclusively established unless the presiding officer on motion permits withdrawal or amendment of the admission. The presiding officer may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the presiding officer that withdrawal or amendment will prejudice a party in maintaining an action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the admitting party in any other proceeding.

[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.]

WAC 458-08-240 Subpoenas. (1) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.04.105.

(2) Every subpoena shall identify the party causing issuance of the subpoena and shall state the name of the department and the title of the proceeding and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control at the time and place set for the hearing or deposition.

(3) A subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit.

(4) The presiding officer, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (a) quash or modify the subpoena if it is unreasonable and oppressive or (b) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

[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.]

WAC 458-08-250 Settlement. The parties to a proceeding may enter into a voluntary settlement of the subject matter contained in any notice of hearing or complaint prior or subsequent to hearing. In exploration or furtherance of a voluntary settlement, the parties may confer within or outside the presence of the presiding officer. Any such settlement conference shall be informal and without prejudice to the rights of the parties.

[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.]

WAC 458-08-260 Decision procedure. At the conclusion of a hearing the presiding officer shall announce his or her decision or what action will be recommended to the department or may take the decision under advisement. The presiding officer shall prepare a written summary of findings together with a recommendation for action by the department unless such officer is the person authorized to make final decisions on behalf of the department. In such case the presiding officer shall make a written summary of findings, conclusions and a decision with respect to action to be taken by the department.

[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.]

WAC 458-08-270 Review procedures. In all cases not heard by a presiding officer authorized to make final decisions on behalf of the department the file, together with the presiding officer's findings, conclusions, and recommendations shall be forwarded to the director of the department or to such other person to whom the director has assigned responsibility for review and decision. Review and decision by the director or the director's assignee shall be in accordance with RCW 34.04.110, 34.04.115, and 34.04.120.

[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.]

Chapter 458-12 WAC PROPERTY TAX DIVISION—RULES FOR ASSESSORS

WAC

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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.	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.
458-12-146	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, filed 1/16/74.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-110.	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.
458-12-147	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.	458-12-235 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.
458-12-148	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.	458-12-236 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.
458-12-150	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.	458-12-238 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.
458-12-151	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.	458-12-250 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.
458-12-152	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.	458-12-255 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.
458-12-153	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.	458-12-260 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.
458-12-190	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.	458-12-265 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.
458-12-195	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.	458-12-285 Relationship between average inventory provisions of RCW 84.40.020, the "transient trader" provision of RCW 84.56.180 and the "freeport 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.
458-12-200	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.	458-12-290 Identification and reporting requirements for "freeport 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.
458-12-205	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.	458-12-325 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.
458-12-206	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.	458-12-380 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.
458-12-210	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.	458-12-400 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.
458-12-215	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.	458-12-401 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.
458-12-220	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.	458-12-402 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.
458-12-225	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;	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 *intangible* 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 doubtful cases. As there defined, "real property" includes but is not limited to the following:

(1) All land, whether platted or unplatte.

(2) All buildings, structures or permanent improvements built upon or attached to privately-owned land.

(3) Machinery, equipment or fixtures affixed to land or to a building, structure, or improvement on land.

(a) Such items shall be considered as 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.

(b) Such items shall not be considered as affixed when they are owned separately from the real property unless the 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 taxable property status of engines, machinery, equipment and 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).

The foregoing definitions will not answer the question whether an article is a fixture in all cases. In such cases the numerous decisions of the Washington supreme court digested in 6 Wash. Digest Ann., "Fixtures" will have to 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 and leasehold interests 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 often called "mineral rights" 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.

[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 irrigation 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 458-12-015 Definition—Interstate commerce.

Interstate commerce includes, but is not limited to, that commerce, commercial intercourse, traffic or trade which involves the purchase, sale or exchange of property and its transportation, or the transportation of persons, from one state or territory of the United States to another. (Rules relating to the Revenue Act of 1935, Washington state tax commission, p. 128)

The Federal Constitution grants to Congress the exclusive power to regulate interstate commerce. (Art. I, Section VIII, Clause III, United States Constitution) No state may impose an ad valorem tax which burdens, and thus indirectly regulates interstate commerce. (*Independent Warehouses, Inc. v. Scheele*, 331 U.S. 70 (1946)) Not all property which has traveled or will travel interstate is immune from taxation. (TCR 1-29-1948) Merchandise which loses its interstate character, and becomes a part of the general mass of property within a state, acquires situs for taxation purposes. (*Longview Tugboat Co. v. State*, 64 U.S. 323 (1964))

The essential inquiry in determining whether a state has the power to tax property moving in interstate commerce in continuity of transit. (*Carson Petroleum Co. v. Vial*, 279 U.S. 95 (1929), 73 L ed 626) Property is not taxable where the flow of transit within the state is unbroken, or where an interruption is occasioned by necessities of the journey or the need for safety and convenience in the course of movement. (*Minnesota v. Blasius*, 290 U.S. 9 (1933)) Property is taxable where the flow of transit terminates within the state, or where there is a cessation of transit for business or commercial purposes. (*Minnesota v. Blasius*, 290 U.S. 9 (1933))

Where the ultimate destination of property is not determinable, in that the owner may dispose of it within the state or ship it elsewhere, as his interest indicates, an ad valorem tax may properly be imposed, even though the merchandise later resumes its transit in interstate commerce. (*Independent Warehouses, Inc. v. Scheele*, 331 U.S. 70 (1946).)

[Order PT 68-6, § 458-12-015, filed 4/29/68.]

WAC 458-12-020 Definition—Foreign commerce—Imports and exports.

Foreign commerce: Means that commerce, commercial intercourse, traffic or trade which involves the purchase, sale or exchange of property and its transportation, or the transportation of persons, or the transportation of communications or electrical energy, 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. It includes fish seafood or other products originating on the high seas beyond the territorial limits of the state. (Rules relating to the Revenue Act of 1935, Washington tax commission, p.133)

Import: An import is an article which comes from a foreign country (not from a state, territory or possession of the United States) or originates on the high seas and is brought into the taxing jurisdiction of a state. (Rules relating to the Revenue Act of 1935, Washington tax commission, p.133)

Export: An export is an article sent, taken or carried out (*Black's Law Dictionary*, fourth edition, p.690) of a state destined to a foreign country. (Rules relating to the Revenue Act of 1935, Washington tax commission, p.133.)

[Order PT 68-6, § 458-12-020, filed 4/29/68.]

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 458-12-040 Listing of property—Segregation of interests. The county assessor and the county treasurer shall comply with the provision of RCW 84.56.340 whenever any person desires to pay taxes upon any part or parts of real property heretofore or hereafter assessed as one parcel or tract. (RCW 84.56.340)

Land assessed in one tract, or in gross, shall be segregated by the county assessor to permit payment by the separate owners of *current or delinquent taxes* on the segregated portions. (AGO 5-26-1943; TCR 4-24-1945)

Where either the county assessor or the county treasurer grouped lots or parcels and the same appear in groups on the treasurer's tax statement, the treasurer and/or the assessor must segregate any lots or parcels from such groups to permit the taxpayer to pay on the property so segregated; and any other property assessed in gross must be segregated for the same purpose. (TCR 4-17-1944)

Undivided interests in real property are separate estates, and should be listed separately on the assessment record and tax rolls by the county assessor in the same manner and under the same circumstances as he should separately list divided interests, when it appears that the owners thereof desire, or will desire to pay their taxes individually. (AGO 10-29-1947)

If the county treasurer receives a request for segregation of tax payments on real property, he shall show such segregation on the tax roll the same as a divided interest upon receipt of proper certification of the values from the assessor.

Real estate which has been plotted and subdivided into smaller units which are in separate ownership (except for one unit owned by all tenants in common) may be listed and assessed by the county assessor against the unit owners separately both as to their individual units and as to their undivided interest in the unit owned in common. (AGO 61-62, No. 171, 9-27-62)

[Order PT 68-6, § 458-12-040, 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 grantees, such property shall be listed as real property in the name of the grantees 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 grantees. (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 Listing of real property—Omitted property. Whenever any real property is omitted from the assessment rolls, the assessor shall have the right and duty to go back and separately value and list such property as omitted property. When improvements or land are omitted, the assessor shall check back for a period of three years and base his assessment on the value of the improvements as of the year or years omitted regardless of the reason why the improvements or land were omitted from the rolls. If it is found that a bona-fide purchaser (third party) had purchased or acquired any interest in the property prior to the time such improvements are assessed and without knowledge that the property is omitted, then there shall be no assessment made. (RCW 84.40.080) If any question arises as to whether or not the improvement has in fact been omitted, the burden of proof shall be on the assessor to show that it has. (TCR 3-17-1953) Under no circumstances, however, is this section to be used for the purpose of revaluation or reassessment.

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(Wood Lbr. Company v. Whatcom County, 5 Wn.2d 63 (1940))

Once the omitted improvement assessment is made the taxpayer shall have one year from the date the tax for the current year becomes due to pay the back taxes without penalty or interest. (RCW 84.40.080.)

[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 personalty—Burden on

taxpayer to list. Every person, firm or corporation regardless of residency who owns or controls personal property not specifically exempted by law located in this state as of 12 noon on the first day of January shall be required to annually submit a personal property listing and statement. Such listing and statement shall be due regardless of whether or not the assessor has provided notice of such listing to the individual taxpayer. (RCW 84.40.190.)

[Order PT 68-6, § 458-12-060, filed 4/29/68.]

WAC 458-12-065 Listing personal property—Form

and notice. The assessor shall compile and keep current an alphabetical list of all persons at their last known address to his knowledge in his county who are subject to assessment of personal property. On or before January 1st of each year he shall send a notice and personal property listing form to all persons to his knowledge who own taxable personal property at their last known address, such notice and listing form shall be in accordance with the forms prescribed by the department of revenue.

For the years 1968 and 1969 the assessor shall send a second notice on or before March 15th of that year to those taxpayers who have not, as of the date of the notice, sent in their listing. In the years following 1969 the assessor shall provide notice through appropriate news media with county-wide coverage.

A copy of the taxpayer's previous year's list shall be made available to the taxpayer whenever he may request it. (RCW 84.40.040) Further, if the assessor considers it practicable, the notice to be sent to each taxpayer each year shall include the statement and list of personal property of the taxpayer for the preceding year.

If the assessor deems it practicable, he may permit consolidation of items of personal property with a total value of \$1,000 or less in one entry on the listing form under the heading, "Miscellaneous items of personal property." When such consolidation is made, the cost reported by the taxpayer shall be identified as "Miscellaneous tools and equipment," "Miscellaneous machinery" or by similar designation indicating the category of property reported.

The county assessor shall not accept a listing that is not signed; however, he may accept a listing that has been

signed and not subscribed and sworn to before the assessor, his deputy or a notary public. (RCW 84.40.060)

When the assessor shall be of the opinion that a full, fair and complete listing of property may not have been made, he shall require the listing to be subscribed and sworn to before him, his deputy or a notary public.

This swearing under oath is an essential preliminary step to any action for perjury.

A copy of the completed personal property listing form containing the assessor's estimation of true and fair or assessed values shall be returned to the taxpayer.

[Order PT 68-6, § 458-12-065, filed 4/29/68.]

WAC 458-12-070 Listing of personality—When due—Late filing. All lists and statements of personal property are due on March 31 of each year. This due date may be extended by the assessor when he has, prior to the due date, received a written request showing that there is good cause for granting the extension. If it is granted, the extension will be only for a period of time reasonably necessary to allow the listing of the personal property. (RCW 84.40.040.)

[Order PT 68-6, § 458-12-070, filed 4/29/68.]

WAC 458-12-075 Personality—Filing by corporations, partnerships, firms or agents. (1) **Corporations** - The president, vice president, treasurer, assistant treasurer, chief accounting officer or any other duly authorized person shall be permitted to list for a corporation.

(2) **Partnerships, firms or business** - Any partner, member or duly authorized officer who has knowledge of the affairs of the business shall be permitted to list for a partnership firm or business.

(3) **The estate and trust** - The fiduciary shall be permitted to list for any trust or estate. In the above situations it shall not be necessary for the officer, partner, owner or fiduciary who is in charge of preparing and submitting the personal property list, schedule, or statement to file a power of attorney with the county assessor. His act shall be considered that of the corporation, partnership, business, or trust which he represents for the purposes of the penalties found in RCW 84.40.130 without the necessity of filing such power.

Whenever any person who does not fall into the category of an officer, partner, owner or fiduciary as provided above prepares and signs a personal property list, schedule or statement required to be submitted by his principal, he shall submit a power of attorney executed by his principal to the county assessor. If properly executed, the assessor shall accept the power of attorney and shall keep a copy of such power on file in his office. This power shall be effective until it is revoked.

When the assessor shall be of the opinion that a full, fair and complete listing of property may not have been made on behalf of a principal, he may require the agent to give evidence of his authority.

"Power of attorney" shall include any written authorization to prepare and sign such personal property lists executed by an authorized officer or the board of directors of a corporation or by a partner, owner or fiduciary.

"Authorized officer" as used in the preceding sentence, means a person who has been appointed by the board of directors to designate, by name or title, an employee or agent to execute and file lists on behalf of such corporation.

When any list, schedule, or statement is made and signed by any agent, the principal required to make out and deliver the same shall be responsible for the contents and the filing thereof and shall be liable for the penalties imposed pursuant to RCW 84.40.130. (Derived from chapter 149, Laws of 1967.)

[Order PT 68-6, § 458-12-075, filed 4/29/68.]

WAC 458-12-080 Listing of personality—Manufacturers. (1) **Definitions:**

(a) **"Manufacturer"** - Every 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 or rectifying or by the combination of different materials with the view of making gain or profit by so doing, shall be held to be a manufacturer. (RCW 84.40.210)

(b) **"Manufacturer's stock"** - Manufacturer's stock shall include 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 and all engines and machinery of every description used or designed to be used in any process of refining or manufacturing together with all tools and implements of every kind, used or designed to be used for the purpose of adding value to personal property by the manufacturer, excepting fixtures considered as part of any parcel of real property. (RCW 84.40.210)

(2) **Listing requirements:** A manufacturer shall make and deliver to the assessor a statement of personal property subject to tax. The statement shall include the manufacturer's stock, engines and machinery, and other personal property.

All personal property, manufacturer's stock, and engines and machinery, together with its acquisition cost and date of acquisition, shall be listed in said statement.

The personal property pertaining to the business of a manufacturer shall be listed in the town or place where his business is carried on.

On receipt of the manufacturer's statement, the assessor shall delete from the assessment the value of any engines and machinery that have been listed and assessed as part of any parcel of real property. A copy of the corrected assessment shall be returned to the manufacturer.

[Order PT 69-1, § 458-12-080, filed 4/14/69; Order 68-6, § 458-12-080, filed 4/29/68.]

WAC 458-12-085 Listing of personality—Merchants—Personality—Consignments. (1) **Definitions:**

"**Merchant**" - Whoever owns, or has in his possession or subject to his control, any goods, merchandise, grain, or produce of any kind, or other personal property within this state, with authority to sell the same, which has been purchased either in or out of this state, with a view to being sold at an advanced price or profit, or which has been consigned to him from any place out of this state for the

purpose of being sold at any place within the state, is held to be a merchant. (RCW 84.40.220)

(2) **Listing requirements:** The assessor of the county where merchandising is actually carried on and where the property is located can demand the listing thereof. (AGO 35-36, p. 174) The merchant, when submitting his personal property list, shall state the value (laid in cost or trade level cost, whichever is applicable) of such property pertaining to his business as a merchant. (RCW 84.40.220) 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, attaining maximum value normally, at the consumer level. (California Administrative Code, Title 18, Chapter 6, Subchapter 1, Section 10) (See WAC 458-12-310 for trade level definition.)

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.

Every merchant required to list personality shall include in such list the value of goods held on consignment or stored for another firm where the merchant stands to profit on the sale thereof.

Where goods are consigned for storage only or held on consignment and the merchant has no interest therein nor any profit to be derived from the sale, such consigned goods are not taxable to the consignee merchant, but if known to such merchant, the value—laid in cost or trade level cost or both—and the ownership of such consigned goods should be reported to the assessor so that the person subject to taxation of such goods is revealed and a proper listing may be made.

The growing crops of nurserymen shall be considered the same as other growing crops on cultivated land. (RCW 84.40.220) (See RCW 84.40.030 for criteria of value.)

[Order PT 68-6, § 458-12-085, filed 4/29/68.]

WAC 458-12-090 Listing of personality—\$300 exemption and its effect on listing. When all of the personal property owned by a taxpayer consists of household goods and personal effects exempt under the provisions of RCW 84.36.110 or any other statute providing exemptions for personal property, no listing of such property will be required. (RCW 84.36.110)

A taxpayer qualifying for the \$300 head of family exemption owning other personal property not in commercial use or held for sale and not worth more than \$300 will not be required to file a listing of such property with the assessor.

When the taxable personal property of a head of family exceeds \$300 in value a complete listing of such property shall be made by the taxpayer. (RCW 84.36.110) The assessor shall deduct the \$300 exemption from the total value he has determined for the personal property listed on the taxpayer's return. (See WAC 458-12-270.)

[Order PT 68-6, § 458-12-090, filed 4/29/68.]

WAC 458-12-095 Listing of personality—Partial listing. Whenever unreported property (see WAC 458-12-100 for unlisted property) is found, reported or discovered,

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the assessor shall add such property to the assessment rolls, and shall make an assessment of current and back taxes and *any applicable penalties*.

[Order PT 68-6, § 458-12-095, filed 4/29/68.]

WAC 458-12-100 Listing of personality—Omitted property—Omitted value. (1) Omitted personal property shall include all personality which was not entered on the assessment rolls. It shall not include personality which was listed but improperly valued. (*Tradewell Stores, Inc. v. Snohomish County* 69 Wn.2d 356 (1966); *Wood Lbr. Company v. Whatcom County*, 5 Wn.2d 63 (1940))

(2) Omitted value shall include all personality which was assessed at less than market value due to inaccurate reporting by the taxpayer or person reporting said property.

(3) Whenever the assessor shall find or be informed of omitted property or omitted value he shall go back no more than three assessment years from the year of discovery of the omission and assess such personality as omitted property or value. He shall add to the current assessment rolls any omitted property or value at the correct value for the year of said omission and shall notify the property owner or taxpayer of said assessment.

(4) Any person receiving notice of an omitted property or omitted value assessment may appeal said assessment to the county board of equalization as provided for in WAC 458-14-120.

[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.]

WAC 458-12-105 Listing of personality—Willful failure to list or fraudulent listing—Penalty. When a listing is filed which appears to be fraudulent, a complaint shall be filed with the prosecuting attorney by either the assessor or the board of county commissioners for the collection of the additional tax properly due and, in addition, for a penalty of 100% of such tax. Both the penalty and the additional tax found to be due are to be recovered by the prosecuting attorney in an action in the name of the state and paid into the county treasury to the credit of the current expense fund.

A fraudulent listing may arise either because it does not include all of the taxable personality in the ownership, possession, or control of the person submitting the list, or because it contains false information relating to the proper value of the personality which in fact has been listed.

Before a complaint is filed with the prosecutor, the assessor will make a preliminary investigation sufficient to satisfy himself that the probable reason for the erroneous listing was an intent to defraud; *i.e.*, a deliberate intent to escape from the full personal property tax liability, and that the erroneous listing did not arise simply from negligence, inadvertence, accident or simple ignorance.

When a person required to list property subject to taxation does not do so by the date prescribed, and it appears to the assessor that the motive for the failure or refusal to list is an intent to defraud, a complaint shall be filed with the prosecuting attorney by either the assessor or the board of county commissioners for the collection of the total tax determined by the assessor to be properly due and a penalty

of 100% of such tax. Both the tax and the penalty are to be recovered by the prosecuting attorney in an action in the name of the state and to be paid into the county treasury to the credit of the current expense fund.

Before a complaint is filed with the prosecutor, the assessor should make a preliminary investigation sufficient to satisfy himself that the probable reason for the failure to list was an intent to defraud; *i.e.*, a deliberate intent to completely escape from personal property tax liability, and that the failure to list did not arise simply from negligence, inadvertence, accident or simple ignorance.

[Order PT 68-6, § 458-12-105, filed 4/29/68.]

WAC 458-12-110 Listing of personality—Estimate listing penalty. If a personal property statement or list is not submitted within the time allowed either by law or by the assessor where an extension has been granted, the assessor shall ascertain the amount and value of the property which should have been reported. (RCW 84.40.200) When such a listing is made by the assessor, he shall deliver or mail a copy to the person for whom the listing is made. The copy delivered must show the valuation of the property listed, and must be signed by the assessor. On the copy of the listing delivered or mailed, the assessor shall notify the person for whom the listing is made of his possible liability for penalties for his failure to make the list himself.

The listing made by the assessor shall be used by him for all purposes in the same manner as though it was submitted by the person required to list, until such person does submit the required statement.

When a statement of personal property subject to taxation is not submitted by the date prescribed, the taxpayer becomes liable to a penalty of 5% of the total tax determined to be due, for each month or fraction thereof from the date that the listing was due to the date that it is actually received, in acceptable form, by the assessor. The performance by the assessor of his duty to ascertain the amount and value of taxable property in the event of the failure of the person required to do so shall not be taken to be such a report as would terminate the accrual of this penalty.

The penalty provided for by this rule shall actually be assessed at the time that taxes are spread on the rolls, to a maximum of 25% of the tax found to be due, and shall then be added to the tax assessed, and collected in the same manner as such taxes. If the person required to list property can show, to the satisfaction of the assessor, that his failure to report is due to a reasonable cause, no late filing penalty shall be assessed.

[Order PT 68-6, § 458-12-110, filed 4/29/68.]

WAC 458-12-115 Personality—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 reusable 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 personality—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 458-12-125 Situs of personality—Merchants and manufacturers. The second sentence of RCW 84.44.010, which states, "the personal property pertaining to the businesses of a merchant or of a manufacturer shall be listed in the town or place where his business is carried on," should not be construed strictly. It should be considered a secondary rule to be applied only in those cases where the application of the physical situs rule is doubtful.

For instance, these terms could or would apply to (1) motor equipment used in making deliveries from one taxing district into another; (2) merchandise taken for a short period into another taxing unit for display or sale (TCR 10-22-1945; TCR 3-18-1947); (3) merchandise located for a short period in another taxing unit where merchandise is not customarily located or stored; (4) manufacturer's machinery taken out of the home taxing unit for repair; (5) goods in intrastate transit and many other situations of similar nature.

The sentence would not apply to (1) grain owned by a western Washington milling firm stored in a warehouse in eastern Washington even though all the firm's business, except for such storage, is transacted in western Washington, or (2) logs kept customarily in supply, though in variable quantity, owned by a merchant in one county, but stored customarily, or for longer than what would be described as a "transit period," in another county or taxing unit. (TCR 3-18-1947)

The examples given above are not meant to be exhaustive and are only given as a guideline.

[Order PT 68-6, § 458-12-125, filed 4/29/68.]

WAC 458-12-130 Situs of personality—Migratory stock. All cattle, horses, sheep or boats pastured in a different county than where wintered shall be considered migratory stock.

Whenever listing migratory stock, it shall be the duty of the taxpayer to see that the county assessor of each and every county where such stock may be situated for more than sixty days during the year have notice of such fact. The assessor of the county where the stock is located shall as of January 1st assess the stock as a whole. The assessment shall be subject to proration with any other county in which the migratory stock is or will be located for a period of more than sixty days provided first, however, that such county makes a demand upon the home county assessor before the first day of July each year.

The assessor shall assess every herd of migratory livestock which may at any time be in his county for other than transitory reasons. If at any time he shall find a herd which has not been listed in his county, he shall immediately ascertain first, whether or not the herd has been listed anywhere within the state of Washington, and secondly, how long the herd has been in his county and plans on remaining there.

If it is found that the herd has not been listed in this state, the assessor shall list and assess the herd in the same manner as if it had been in his county as of January 1st of that year. The fact that the herd may have been listed and assessed in another state or territory for that same year shall

in no way exempt said stock from the operation of this section.

If it should be found that the stock has been listed in the state but not within the assessor's particular county, he shall ascertain how long such herd has and will be in the county. If it has or will be in the county over sixty days, and the present date is not later than July 1st, a demand should be made upon the assessor of the home county to prorate the assessment. If the present date is later than July 1st, the county where the stock is discovered shall have no right to receive a share of the tax due. (Rule derived from RCW 84.44.070.)

[Order PT 68-6, § 458-12-130, filed 4/29/68.]

WAC 458-12-135 Listing of property—Taxing district designation. (1) Definitions:

(a) "*Taxing district*" - means and includes the state and any county, city, town, school district or municipal corporation having the power to levy taxes upon property within the district in proportion to the value thereof.

"*Consolidated taxing district*" - shall mean a combination of all taxing districts whose combined levy for tax purposes makes up the total levy applicable to an individual property.

(2) The assessor shall designate the name or number of each consolidated taxing district in which each description of real or personal property is located and assessed. The consolidated taxing district designation shall be entered opposite each assessment in a column provided for that purpose in the detail and assessment list. A code number may be used.

When real and personal property of any person is located and assessable in several consolidated taxing districts, a separate listing shall be made on the detail and assessment list and identified by the number or other designation of the consolidated taxing district in which each portion of the property or properties is located.

The county assessor shall designate the consolidated taxing district on all listings of personal property in accordance with the applicable rules controlling "taxable situs" as of the assessment date. (Rule derived from RCW 84.04.120 and 84.40.090)

[Order PT 68-6, § 458-12-135, filed 4/29/68.]

WAC 458-12-140 Listing of property—Boundary changes. The official boundaries of all taxing districts are fixed for purposes of property taxation and levy of property taxes as of the first day of March each year.

The county assessor shall transmit one copy of each instrument filed with the county auditor or any other county official, which sets forth any change in taxing district boundaries, or for the establishment of any new taxing district, together with a copy of a plat showing such change, to the property tax division, department of revenue, on or before the first day of March each year. (Rule derived from RCW 84.04.120; 84.09.030; 84.40.100.)

[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 jurisdic-

tion. 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, filed 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 purchased 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 458-12-185 Listing of property—Public lands—Airports, bridges, consulates owned by foreign municipalities. The general rule is that real or personal property owned by foreign states, foreign national governments, or municipal corporations is taxable unless a specific statutory exemption can be found to the contrary. (AGO 59-60, No. 31, 4-28-59) RCW 84.36.130 exempts foreign municipal corporations owning exclusively properties for the purposes of an airport.

RCW 84.36.230 grants reciprocal exemptions to neighboring foreign municipal corporations, counties, or states who exempt Washington-owned bridges from taxation.

All property belonging exclusively to a foreign national government used exclusively as an office or residence for a consul or other official representative of that government, shall be exempt from taxation. The consul or representative must be a citizen of the foreign nation for the exemption to apply. (Section 31, chapter 149, Laws of 1967.)

[Order PT 68-6, § 458-12-185, filed 4/29/68.]

WAC 458-12-240 Listing of property—Nonprofit organizations—Taxable interests in real property owned or used by nonprofit organizations. Property of organizations qualified for exemption pursuant to WAC 458-12-195 through 458-12-235 is exempt from taxation. With the exception of property used for churches and church grounds, WAC 458-12-195, (see WAC 458-12-195 for criteria to be followed in regard to churches, parsonages, and grounds) and property used for school and colleges, WAC 458-12-230 (see WAC 458-12-230 for criteria to be followed in regard to schools and colleges) the following criteria shall be followed in determining whether there is a taxable property interest in property owned or used by an exempt nonprofit organization:

(1) Where an organization holds ownership of property in fee, that property is exempt from taxation. (AGO 31-32, p.36, 2-24-31)

(2) Where an organization is lessee of property, its interest in the land is exempt, but the property interest of the lessor is taxable. (RCW 84.04.080)

(3) Where an organization is lessor of property, its interest in the property is exempt, but the property interest of the lessee is taxable as personal property. (AGO 1929-30, p.704; RCW 84.04.080)

(4) Where an organization has the right to use or possession of property, but title ownership is retained by a private, taxable person, the interest of the organization is exempt from taxation, but the interest of the title owned is taxable until title passes to the nonprofit organization. (AGO 45-46, p.717, 4-11-46) Thus where a nonprofit group purchases property under a conditional sales contract, with title retained by the vendor, the possessory right of the nonprofit organization is exempt from taxation, but the ownership right of the vendor is taxable as real property. (AGO 5-6-1952)

(5) Where an organization holds title ownership of property, but a private, taxable person has the right to use of possession of the property, the interest of the nonprofit organization is exempt from taxation, but the interest of the person using or possessing the property is taxable as personal property. (AGO 45-46, p.717, 4-11-46.)

[Order PT 68-6, § 458-12-240, filed 4/29/68.]

WAC 458-12-245 Listing of property—Intangibles. The following property shall be exempt from taxation:

(1) **All moneys** - For purposes of this section, "moneys" is defined to mean gold and silver coin, gold and silver certificates, treasury notes, United States notes, and bank notes. (RCW 84.04.060) The exemption is limited to money being used as a measure of value and a medium of exchange. Money, as a commodity having a value of its

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own, is taxable. (AGO 63-64 No. 116) Thus, coins and currency having a value as collectors' items or for some other special purpose are subject to taxation based upon their fair market value. (AGO 63-64 No. 116)

(2) **Credits** - including mortgages, notes, accounts, certificate of deposit, tax certificates, judgments, state, county and municipal bonds and warrants, and bonds and warrants of other taxing districts, bonds of the United States and of foreign countries of political subdivisions thereof, and the bonds, stocks or shares of private corporations, including national and state banks. (AGO 2-7-1934)

Only credits payable in money, and entitling the creditor to no personal or real property interest, are exempt from taxation. Thus the interest of a vendee in property sold under executory contract is taxable as personal property, provided the contract right has value, since the contract entitles the vendee to future ownership of property. (PTB No. 222, 1-19-1953) The interest of a vendor selling property under executory or conditional sale contract is taxable as real property, since the vendor retains title ownership of the property. (AGO 5-6-1952) But a mortgage interest in property is not taxable, since the mortgage merely secures the monetary investment of the mortgagee, and does not entitle him to either present or future ownership of the property. (Rule derived from RCW 84.04.060.)

[Order PT 68-6, § 458-12-245, 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 databases, but does include the computer programs and code which are used to generate databases. Computer software can be canned, custom, or a mixture of both.

(a) A database 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,

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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 pre-written, "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 pre-written 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 pre-written 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 sublicensee 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 sublicensee.

(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), 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 sublicensee 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 458-12-270 Listing of property—Household goods and personal effects. "All household goods and furnishings in actual use by the owner thereof in equipping and outfitting his or her residence or place of abode and not for sale or commercial use" shall be exempt from taxation. (RCW 84.36.110)

Household goods and furnishings shall include movable items of necessity, convenience, or decoration, such as bedding, tables, chairs, refrigerators, stoves, freezers, food, clocks, radios, televisions, pictures, tools and equipment used to maintain the residence. It shall include all personal property normally located in or about a residence and used or held to enhance the value of enjoyment of the residence (including its premises). Those items of personal property constructed primarily for use independent of and separate from a residence do not qualify for the exemption (i.e., boats, pickup campers, (pickup campers attached to the vehicle by the methods authorized in department of licenses bulletin, dated January 26, 1965 shall be considered a part of the vehicle and are not taxable as personal property) etc.).

The term "actual use" means actually being used in the furnishing of the home. It should not be construed to mean being in actual physical use by the owner thereof. Thus, household goods and furnishings which are either temporarily stored or found in summer homes or cabins are exempt from taxation. (AGO 1935-36; AGO 12-7-1938)

The phrase "not for sale or commercial use" has application to those situations where a home is used as an office, classroom, studio, or some other nonfamily commercial activity. For example, the hairdresser who uses her home as a beauty salon cannot claim the household goods exemption as to those articles of household goods and furniture used in his or her business.

The residence or place of abode must be outfitted for the owner's personal use. Consequently, the equipping and outfitting of a motel, hotel, apartment, sorority, fraternity, boarding house, rented home, duplex, or any other premise not used by the owner for his own personal use would not qualify for this exemption. (TCR 4-18-1935)

All personal property utilized for any business or commercial purpose and all other personal property not specifically exempt by statute is subject to ad valorem tax. However, the assessor may deduct \$300 of actual value from the taxable full value of such property of each "head of family" if such deduction has not been used elsewhere (i.e., office furniture owned and used by the head of a family). (AGO 1903-04; TCR 2-8-1930; TCR 3-8-1935; WAC 458-12-275)

Personal property qualifying for this exemption retains this character while temporarily in storage, or while being used temporarily in storage, or while being used temporarily at locations other than the residence. (AGO 1935-36, p. 114; AGO 12-7-1938)

All personal effects held by any person for his or her exclusive use and benefit and not for sale or commercial use are exempt from taxation.

Personal effects shall be construed to mean tangible property which usually ordinarily attends the person. Such articles as wearing apparel, jewelry, toilet articles and articles of similar nature would qualify for this exemption.

Note: The department of revenue deems it impractical to publish a list of all properties included in the definition of "household" goods. Many items exempt in this category because of their location in a residence are fully assessable in other locations. Examples of such items are:

(1) Desks exempt as household goods in a residence are assessable as furniture and fixtures in an office.

(2) Silverware and china exempt in a residence are assessable if used in a restaurant.

(3) Collections exempt in a residence are assessable if located in a public display or used for commercial purposes.

(4) Power lawnmowers used to enhance the value of enjoyment of the residence (including its premises) are exempt, but when used in the maintenance of a golf course are taxable.

[Order PT 68-6, § 458-12-270, filed 4/29/68.]

WAC 458-12-275 Listing of property—\$300—Head of family—In general. Every qualified (see WAC 458-12-280, § 300—Head of family—Definition) head of family is entitled to a three hundred dollar deduction from the actual gross value of all his taxable personal property. (*State ex. rel. Tax Commissioners v. Cameron*, 90 Wash. 407 (1916); TCR 3-8-1935) This deduction accrues as of the assessment date. The taxpayer must qualify for said deduction at that time or else it will be lost for the taxable year. (TCR 3-14-1934)

[Order PT 68-6, § 458-12-275, filed 4/29/68.]

WAC 458-12-280 Listing of property—\$300—Head of family—Definition. For the purposes of RCW 84.36.110, "head of family" shall be construed to include the following residents of the state of Washington:

(1) Any person receiving an old age pension under the laws of this state.

(2) Any citizen of the United States, over the age of sixty-five, who has resided in the state of Washington continuously for ten years. (RCW 84.36.120)

(3) The husband or wife, when the claimant is a married person; or a widow or widower still residing upon the

premises occupied by her or him as a home while married. (AGO 1917-18, p.260)

(4) Any person qualified as "head of family" who has residing on the premises with him or her, and 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 wife or husband;

(b) A minor brother or sister or the minor child of a deceased brother or sister;

(c) A father, mother, grandmother or grandfather;

(d) The father, mother, grandfather or grandmother of deceased husband or wife;

(e) An unmarried sister, or any other of the relatives mentioned in this section who has attained the age of majority, and are unable to take care of or support themselves. (TCR 3-18-1935; RCW 6.12.290.)

[Order PT 68-6, § 458-12-280, filed 4/29/68.]

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 458-12-300 Definition—True and fair value. The basis of all assessments is the true and fair value of property. True and fair value means market value. (*Spokane etc. R. Company v. Spokane County*, 75 Wash. 72 (1913); *Mason County Overtaxed, Inc. v. Mason County*, 62 Wn.2d (1963); AGO 57-58, No. 2, 1-8-57; AGO 65-66, No. 65, 12-31-65)

The true and fair value of a property in money for property tax valuation purposes is its "market value" or amount of money a buyer willing but not obligated to buy would pay for it to a seller willing but not obligated to sell. In arriving at a determination of such value the assessing officer can consider only those factors which can within reason be said to affect the price in negotiations between a willing purchaser and a willing seller, and he must consider all of such factors. (AGO 65-66, No. 65, 12-31-65)

[Order PT 68-6, § 458-12-300, filed 4/29/68.]

WAC 458-12-301 True and fair value—Criteria. The true and fair value of real property for taxation purposes (including property upon which there is a coal or other mine, or stone or other quarry) shall be based upon the following criteria:

(1) True and fair value shall be based upon sales of the property being appraised or sales of comparable property made within the past five years. It may be necessary to adjust sales due to such factors as time of sale, location, physical, or other factors affecting value. Any adjustments shall be made to reflect the value as of the assessment date. In using real estate contracts as comparable sales, consideration must be given to the effect the down payment or financing terms may have had on the stated selling price. Consideration must also be given to the extent to which the

sale of comparable property actually represents the general effective market demand for property of such type, in the geographical area in which such property is located. When the number of sales of comparable property are inadequate to properly estimate value, then sales of comparable properties in other similar areas should be considered. Sales involving deed releases or similar seller-developer financing arrangements shall not be used as similar properties.

(2) In addition to sales as defined in (1), consideration may be given to:

(a) Cost, cost less depreciation, reconstruction costs less depreciation.

(b) Capitalization of income that would be derived from prudent use of the property.

The provisions of (2) shall be the dominant factor in valuation of properties of a complex nature, or being used under terms of a franchise from a public agency or operating 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 provisions of (2) are relied on to establish value, the property owner shall be advised, upon his request, of the factors used in arriving at such value.

The appraisal shall take into consideration political restrictions, such as zoning, as well as physical and environmental influences.

[Order PT 74-6, § 458-12-301, filed 9/11/74; Order 72-3, § 458-12-301, filed 2/23/72.]

WAC 458-12-305 Market value—Estimation—Real property. Market value of real property shall be determined by the application of the market data approach, cost approach, and income approach. Any one of the three approaches to value, or all of them, or a combination of approaches may finally be used in making the final estimate of market value depending upon the circumstances. (*Dexter Horton Bldg. Co. v. King Co.*, 10 Wn.2d 186 (1941)) The market data and income approaches shall be considered where applicable in all appraisals. (*Bellingham Community Hotel Company v. Whatcom*, 190 Wash. 609 (1937); PTB No. 231, 6-7-1955; *Northwest Chemurgy Securities Co. v. Chelan Co.*, 38 Wn.2d 91 (1951))

Appraisal manuals published or approved by the department of revenue shall be used in conjunction with the three approaches to value. The data contained in these manuals shall be analyzed and adjusted as to time, location, and any other applicable factors to properly reflect market value.

[Order PT 68-6, § 458-12-305, filed 4/29/68.]

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 personality 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 458-12-315 Timber and forest products—Valuation. In the case of standing timber held separately from the ownership of the land, the basis of valuation is current true and fair market value. (RCW 84.40.030) The valuation of timber for long term depletions shall consider the factors contained in RCW 84.40.034. (RCW 84.40.034; AGO 55-57 No. 40) Although RCW 84.40.030 restricts the use of auction sales as a criterion of value, a memorandum from an assistant attorney general dated May 15, 1961 states that "bid prices for timber in sales by the United States or the state could be used as one factor of value along with other relevant measures."

Valuation of logs shall be determined by log market data for various marketing centers and shall be based on inventories by species and grade. In areas or cases where marketing data is not available, costs of logs to the manufacturer shall be the criterion of value. Forest by-products, i.e., lumber, shingles, plywood, etc., shall be valued at the trade level at which they are found.

[Order PT 68-6, § 458-12-315, filed 4/29/68.]

WAC 458-12-320 Timber and forest products—Ownership—Roads. Federal timber itself is not taxable until title passes to the taxable party under the terms of the purchase agreement. Contract interest of private parties in such exempt timber is taxable. Such contracts must have value in themselves in order to be taxable. (*Skate Creek Logging Company Case v. Fletcher* 46 Wn.2d 160 (1955); AGO 1923-24, p. 33; AGO 12-2-52; AGO 5-5-53; AGO 53-55 No. 29, 4-30-53) The principles for assessing leasehold interests as contained in WAC 458-12-325 shall be followed. Where a private owner has a right-of-way easement over land where title is in the United States appurtenant to owner's adjoining lands, such easement and land to which it is appurtenant shall be assessed and taxed together. (*Hammond Lumber Company v. Cowlitz County*, 84 Wash. 462 (1915); *Ozette Railway Company v. Grays Harbor County*, 16 Wn.2d 459 (1943); AGO 4-2-1942.)

[Order PT 68-6, § 458-12-320, filed 4/29/68.]

WAC 458-12-326 Revaluation—Definitions. Unless the context clearly indicates otherwise, the following definitions shall apply to WAC 458-12-327 through 458-12-339.

(1) "Appropriate statistical data" shall be the data required to adjust real property values in the intervals between physical inspection and appraisal. It shall include but not be limited to real property market trends and new building costs.

(2) "Physical inspection" shall mean an exterior observation of the property to check against the property improvement record to determine any change in the physical characteristics that would affect value.

[Statutory Authority: RCW 84.41.090 and 84.08.010. 83-22-004 (Order PT 83-6), § 458-12-326, filed 10/20/83.]

WAC 458-12-327 Revaluation—Valuation criteria—Methods. (1) When changes in the physical characteristics of a property are discovered, the assessor's records shall be corrected to reflect the changes. The property shall then be valued according to WAC 458-12-301 and 458-12-305 and placed on the current year's assessment rolls. All real property in the county shall be physically appraised in accordance with WAC 458-12-301, 458-12-305 and 458-12-326 through 458-12-339.

(2) Statistical updating shall be accomplished in the following manner.

- (a) The value shall be adjusted using current sales data;
- (b) The subject property is to be compared to properties that have sold within comparable areas;
- (c) Properties shall be valued or adjusted based upon the following uses.

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- (i) Single family residential
- (ii) Residential 2 - 4 units
- (iii) Residential multiple units (5 or more)
- (iv) Residential hotels, condominiums
- (v) Hotels/motels
- (vi) Vacation homes and cabins
- (vii) Retail
- (viii) Warehouse
- (ix) Office and professional services
- (x) Commercial other than listed
- (xi) Manufacturing
- (xii) Agricultural

(xiii) Further subclasses may be included as needed.

(3) The valuation or adjustment of values shall be accomplished through the use of one or more of the following methods.

- (a) Multiple or linear regression
- (b) Sales ratios
- (c) Physical appraisal, or
- (d) Any other accepted appraisal method.

[Statutory Authority: RCW 84.41.090 and 84.08.010. 83-22-004 (Order PT 83-6), § 458-12-327, filed 10/20/83.]

WAC 458-12-330 Real property valuation—Highest and best use. All property, unless otherwise provided by statute, 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.

Uses which are within the realm of possibility, but not reasonably probable of occurrence, shall not be considered in estimating the highest and best use.

If a property is particularly adapted to some particular use this fact may be taken into consideration in estimating the highest and best use. (*Sammish Gun Club v. Skagit County* 118 Wash. 578 (1922)) The present use of the property may constitute its highest and best use. The appraiser shall, however, consider the uses to which similar property similarly located is being put. (*Finch v. Grays Harbor County* 121 Wash. 486 (1922))

The fact that the owner of the property chooses to use it for less productive purposes than similar land is being used shall be ignored in the highest and best use estimate. (*Sammish Gun Club v. Skagit County* 118 Wash. 578 (1922))

Where land has been classified or zoned as to its use, the county assessor may consider this fact, but he shall not be bound to such zoning in exercising his judgment as to the highest and best use of the property. (AGO 63-64, No. 107, 6-6-64)

[Order PT 68-6, § 458-12-330, filed 4/29/68.]

WAC 458-12-335 Revaluation process by county assessor. Each county assessor shall maintain an active and systematic program of revaluation on a continuous basis and shall establish and maintain a schedule which will result in revaluation of all taxable real property within the county at least once every four years. Those counties on a revaluation plan that provides for a physical inspection on a five or six year cycle shall adjust the valuation of such property annually during the interval years. The adjustments are to

be made based on appropriate statistical data. The valuation, appraisal or adjustment of value shall be placed on the current assessment roll for taxes payable the following year (RCW 84.41.030).

The county assessor shall submit to the department of revenue on or before March 1st of the year beginning a new revaluation cycle a new revaluation plan.

As a part of the annual progress report as provided in WAC 458-12-337, the assessor shall update the original revaluation plan and submit additions or corrections to the plan. Substantive deviations from the original revaluation plan must be approved by the department of revenue.

[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.]

WAC 458-12-336 Assessor's revaluation plan. (1) In order to proceed systematically in accomplishing revaluation, the assessor shall prepare a schedule showing the workload distribution in the county and the manner in which appraisers will be assigned to complete the revaluation cycle.

The revaluation plan must be sufficiently detailed to show that the assessor can successfully complete the revaluation program and contain among other items the following:

- (a) Comprehensive analysis of numbers of properties to be appraised by revaluation area;
- (b) Specific geographical revaluation areas, taxing districts, or parcels;
- (c) Appraisal workload and number of personnel required;
- (d) Available staff;
- (e) Required additional staff;
- (f) Contract work or special assistance;
- (g) Equipment, supplies, space.

When the parcel method is used for establishing revaluation areas, the property records shall be permanently coded as to which year or phase of the revaluation cycle the property will be physically inspected. The revaluation plan shall be reviewed by the department of revenue. If the revaluation plan is not approved by the department, the county assessor shall, with the assistance of the department of revenue, develop a revaluation plan that will comply with the provisions of RCW 84.41.030.

(2) In order to show that all real property will be valued according to law, the plan shall also include:

- (a) The method of valuation; and
- (b) A statement that all property will be valued at one hundred percent of its true and fair value unless specifically provided otherwise by law (RCW 84.40.030).

[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.]

WAC 458-12-337 Revaluation process—Reports. The annual progress report as required in RCW 84.41.130 shall be filed prior to October 15 and shall be for the period related to the January 1 assessment date of that year.

The assessor shall require work reports of his employees, or of contractors, which shall be the basis of the progress reports.

The department of revenue shall supply the forms for the required 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.]

WAC 458-12-338 Revaluation process—Department of revenue—Performance—Standards—Assistance. The department of revenue will make periodic checks in the county to determine if the county is maintaining satisfactory progress in the approved revaluation plan.

If the department determines that the revaluation process is not being carried out in a manner to achieve revaluation as provided in RCW 84.41.030, the department shall advise the assessor and the county legislative authority of such determination. Within thirty days of receipt of such advice, the county legislative authority shall either (1) authorize such expenditures as will enable the assessor to complete the revaluation program as approved, or (2) direct the assessor to request special assistance from the department of revenue for aid in accomplishing the county's revaluation program. After consideration of such request, the department shall advise the assessor that such request is either approved or rejected in whole or in part. Upon approval of such request, the department may assist the assessor in the valuation of such property as time and funds permit in such manner as the department, in its discretion, considers proper and adequate.

The department of revenue shall submit a comprehensive report to the legislature at its regular session showing that extent of progress of the revaluation process in each county.

[Order 73-5, § 458-12-338, filed 8/13/73.]

WAC 458-12-339 Revaluation process—Valuation procedure—Uniformity within cyclical period. All appraisals made as part of the revaluation program shall reflect current market value which shall be determined in accordance with WAC 458-12-301 and 458-12-305.

All real property being valued shall be physically inspected at least once every four years in order to provide adequate data from which to make accurate valuations: *Provided*, That if the county has a department of revenue approved plan that requires annual valuation adjustments of all properties each year, the physical inspections shall be made at least once each revaluation cycle, as approved, in a uniform and cyclical manner.

Any county on less than a five year revaluation cycle may adjust the valuation of real property to current true and fair value using appropriate statistical data during intervals between physical inspections. (RCW 84.41.040)

When records have been developed on every parcel of property, showing sufficient data on which to base accurate valuation, the process of periodic physical inspection will serve to insure (1) that all taxable property is listed, and (2) that data on each parcel is kept reasonably up-to-date, for comparison with data on similar property which have sold, and (3) that the property has been observed as a whole including its environmental elements amenities to the extent necessary to arrive at an estimate of current market value.

Manuals and procedures prescribed or approved by the department of revenue in accordance with WAC 458-12-305 shall be used in all appraisals. (P.T.B. 231, 6-7-55; AGO 57-58, 1-8-57)

In complying with the mandate of RCW 84.41.030 and *Dore vs. Kinnear* 79 Wn.2d 755, a substantially equal amount of taxable property must be revalued and placed upon the assessment roll in each year of the cyclical process in order to comply with the equal protection requirements of the state and federal constitutions and the uniformity of taxation clauses of the state constitution.

Cyclical revaluation on a value or workload basis can be considered where severe administration problems are evident on a strictly parcel count basis.

[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.]

WAC 458-12-340 Assessment and evaluation—

Property assessed as of January 1st. All real and personal property shall be assessed on the basis of its fair market value as of January 1st of each year. (RCW 84.40.030) Market value shall be determined utilizing manuals published or approved by the department of revenue and the approaches to value described in WAC 458-12-305. (*Bellingham Community Hotel Company v. Whatcom*, 190 Wash. 609 (1937))

The market value appraisals made for each property shall be the basis for computation of assessed value. Assessed value shall be computed by multiplying the market value of each property in the county by a uniform ratio.

[Order PT 68-6, § 458-12-340, filed 4/29/68.]

WAC 458-12-341 100% assessment ratio. RCW 84.40.030 reads, "All property shall be valued at one hundred percent of its true and fair value in money and assessed on the same basis unless specifically provided otherwise by law." Therefore, beginning with January 1, 1974 assessments for 1975 taxes, and thereafter, all property shall be assessed at 100% of its true and fair value.

[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.]

WAC 458-12-342 New construction—Assessment.

(1) New construction covered under the provisions of RCW 36.21.040 through 36.21.080 shall be assessed at its true and fair value as of July 31st each year regardless of its percentage of completion.

(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 for in WAC 458-14-120.

[Statutory Authority: RCW 84.41.090 and 84.08.010. 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 458-12-345 Assessment and evaluation—

Reforestation lands. Lands devoted to reforestation are subject to a yield tax instead of an ad valorem tax. (Article VII Section 1, state constitution; RCW 84.28.090) Reforestation lands are lands that are logged off or selectively harvested and all unforested lands particularly valuable for the production and growth of forests and all land growing immature forests and forests of no commercial value. (RCW 84.28.005) To qualify as reforestation lands, lands eligible must be classified as such by the department of natural resources. (RCW 84.28.020)

Eligible lands classified as reforestation lands lying west of the summit of the Cascade Range of mountains shall be assessed for purposes of taxation at \$2.00 per acre. Lands classified as reforestation lands lying east of the summit of the Cascade Range shall be assessed at \$1.00 per acre. (RCW 84.28.090; *State ex rel Mason County Logging Company v. Wiley*, 177 Wash. 65 (1934))

The values listed above shall be the assessed values for reforestation lands without further adjustment. (RCW 84.28.090)

[Order PT 68-6, § 458-12-345, filed 4/29/68.]

WAC 458-12-350 Assessment and evaluation—

Separate valuation of lands and improvements. In assessing any tract or lot of real property the value of the land exclusive of improvements shall be determined. The value of all improvements and structures on the land excluding the value of annual crops growing on cultivated lands shall also be determined. (RCW 84.40.030; *Miethke v. Pierce Co.* 173 Wash. 381)

Although a separate valuation is made of land and improvements for assessment purposes, the appraiser shall consider the total value of the property in all appraisals.

Revaluation of improvements and entry on the roll without revaluation of the land is valid under the uniformity requirement of the 14th Amendment of the state constitution. (AGO 53-55 No. 117, 8-19-53) Land and improvements shall be valued separately to meet the requirements of RCW 84.40.040.

[Order PT 68-6, § 458-12-350, filed 4/29/68.]

WAC 458-12-355 Assessment and evaluation—

Assessment of classes of property to be uniform within

the taxing district. All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only. (Article VII, Section 1, state Constitution; *Carroll Barlow, Snohomish County Assessor v. Washington State Tax Commission* (1967)) The county commissioners are the authority that levies the tax (not individual taxing districts) in the county, (*Carroll Barlow, Snohomish County Assessor v. Washington State Tax Commission* (1967)) and all property that comes within their jurisdiction must be uniformly valued and assessed. This rule firmly prohibits the use of varying assessment ratios within the confines of the county boarders. The assessor must value all real and personal property at its fair market value (see WAC 458-12-305 for definition of fair market value) and then apply the same or a uniform assessment ratio thereto.

[Order PT 68-6, § 458-12-355, filed 4/29/68.]

WAC 458-12-360 Assessment and evaluation—

Notice of value change—Real property. Whenever there is a change in the true and fair value of real property, a notice of such change for the tract or lot of land and any improvements shall be mailed for by the assessor to the taxpayer. A copy shall be sent to the legal owner where such is requested, his address is given or is known, and the legal owner is different from the taxpayer.

The notice shall be mailed on or before June 15th of each year and shall contain a statement of the true and fair value on which the assessment of the property is based, and a brief statement of the procedure for appeal to the board of equalization including the time, date, and place of the meetings of the board.

"Taxpayer" shall mean 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.

"Legal owner" shall mean the person holding legal title to the property against which property tax is charged. (Rule derived from section 10, chapter 146, 1967 ex. sess.)

[Order PT 68-6, § 458-12-360, filed 4/29/68.]

WAC 458-12-365 Levy. All taxes shall be *levied* or *voted* in specific dollar amounts, (RCW 84.52.010) and the assessed value of the taxing district shall be considered as the taxable value upon which such levy shall be made. (RCW 84.52.040)

The levy for any taxing district must be uniform throughout its area, and if its levy is subject to prorate reduction, its maximum uniform levy is the highest levy that may be made for it in the district where its levy is most reduced by such prorate. (PTB No. 180; TCR 5-11-1950; TCR 9-29-1950)

Boundaries of a taxing district must be established by March 1st in a given year before a valid levy may be made for the year in accordance with WAC 458-12-140. (AGO 1953-54, p.105-A)

[Order PT 68-6, § 458-12-365, filed 4/29/68.]

WAC 458-12-370 Levy—Duty of assessor. The board of county commissioners on or before the second Monday in October shall certify the amount of taxes levied for county purposes, and taxes levied by the board for each taxing district, within or coextensive with the county.

Each city or district authorized to levy taxes directly and not through the board of county commissioners, on or before the second Monday in October shall certify the amount of taxes levied upon the property within the city or district for city or district purposes. (RCW 84.52.070)

Although the county assessor cannot question the validity of tax levies certified to him by tax-levering authorities which appear upon their face to be valid and the duty of extending a tax upon the assessment roll is ministerial in character, it is the duty of the assessor to take action or objection to prevent the imposition of a void tax; and where a levy on its face is shown to be invalid, such action or objection should be taken. (AGO 10-18-1928, p.961)

Where a district regularly determines its tax levy and certifies the figure to the county assessor or county commissioners, a subsequent inadvertent omission of a part of the levy does not prevent that part from being extended upon the tax rolls and collected within a reasonable time. (AGO 1953-54 44-D)

[Order PT 68-6, § 458-12-370, filed 4/29/68.]

WAC 458-12-375 Levy—Prorating 40 mill law.

If the county assessor shall find that the aggregate rate of levy on any property shall exceed the limitation fixed by Section 2, Article 7 of the state Constitution, he shall recompute and establish a consolidated levy in the following manner:

(1) He shall include for extension on the tax rolls the *full rates* of levy for:

State
County
Road district
City
School district

in the amounts not exceeding the limitations established by law.

(2) He shall reduce all other taxing districts imposing taxes on such property (other than port districts and public utility districts) in such uniform percentages as will bring the consolidated tax levy on such property within provisions of the constitutional limitations. (RCW 84.52.010)

[Order PT 68-6, § 458-12-375, filed 4/29/68.]

WAC 458-12-385 State levy. The department of revenue shall levy the state taxes as authorized by law not to exceed the lawful limit per thousand dollars of assessed value of the property of the entire state, which assessed value shall be one hundred percent of the true and fair value of such property in money. (RCW 84.48.080)

It is the duty of the county assessor to spread the state levy on the tax rolls. (*State v. Wiley*, 176 Wash. 641)

The county assessor shall add to the amount levied for the current year, the amount due to each state fund and unpaid for the seventh preceding year, as certified by the state auditor. (RCW 84.48.110)

The delinquent state tax for the seventh preceding year as certified by the state auditor is not subject to the 1% limitation. (*Greb v. King County*, 187, Wash. 587)

[Order PT 74-6, § 458-12-385, filed 9/11/74; Order PT 68-6, § 458-12-385, filed 4/29/68.]

WAC 458-12-390 State levy—Fertilizers and insecticides held by farmers—Inventory. When fertilizers or insecticides in any form are moved onto a farm pursuant to a previously planned schedule, to spread or spray them on the farm acreage or growing plants, and this schedule is carried out promptly upon delivery of the fertilizer or insecticides in accordance with good farming practice, such material shall not be considered as inventory of the farmer for ad valorem tax purposes. This policy will apply to fertilizers or insecticides in solid, liquid, or gaseous form, whether applied by the farmer using his own equipment or applied by commercial concerns.

If on January 1st of any year fertilizers or insecticides are held in storage preceding the commencement of application, they shall be included in the farmer's inventory.

When the material has not been held in storage, in order to provide the assessing officer with adequate records, the farmer shall attach the following statement to his personal property listing:

"During the 19. . calendar year \$..... worth of (fertilizers) (insecticides) were delivered on my premises for the purpose of immediate spreading or spraying upon my (crop) (land) in accordance with a previously planned schedule, which schedule was promptly carried out."

The statement attached to the personal property listing shall be separately signed and dated by the taxpayer. When this statement is attached to the listing form, the value of such material shall not be included on the face of the return as an item or taxable property.

[Order PT 69-1, § 458-12-390, filed 4/14/69.]

Chapter 458-14 WAC COUNTY BOARDS OF EQUALIZATION

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

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| 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, 84.08.070 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.	458-14-121	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.
458-14-080	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.	458-14-122	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.
458-14-085	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.	458-14-125	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.
458-14-086	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.	458-14-126	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.
458-14-090	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.	458-14-130	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.
458-14-091	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.	458-14-135	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.
458-14-092	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.	458-14-140	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.
458-14-094	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.	458-14-145	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.
458-14-098	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.	458-14-150	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.
458-14-100	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.	458-14-152	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.
458-14-110	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.	458-14-155	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.
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.		

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

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

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

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

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

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

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

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

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

(11) "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.

(12) "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.

(13) "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.

(14) "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.

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

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

(17) "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.

(18) "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.

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

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

(21) "Taxpayer" means the person or entity whose name and address appears on the assessment rolls, or their duly authorized agent, personal representative, or guardian. 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.

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

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.200. 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 of decisions or disputes pursuant to RCW 84.26.130 (historic property).

(c) Forest land determinations pursuant to RCW 84.33.120, 84.33.130, and 84.33.140.

(d) Current use determinations pursuant to RCW 84.34.108.

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

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

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

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

(i) Destroyed property appeals pursuant to RCW 84.70.010.

(2) Boards have jurisdiction to equalize property values in the assessor's approved revaluation area on their own initiative pursuant to RCW 84.48.010.

(3) Boards have jurisdiction to review manifest error determinations of assessors or county financial authorities pursuant to RCW 84.48.065.

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.200. 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).

(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. 90-23-097, § 458-14-025, filed 11/21/90, effective 12/22/90.]

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. (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 clerk of 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 has been mailed to the taxpayer, whichever date is later (RCW 84.40.038).

(3) 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.

(4) A petition is properly completed when the form provided or approved by the department is completed and filed. The petition must 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 completed. 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.

(5) Nothing in this section shall be construed to prevent the assessor from reviewing the valuation determination made with respect to the taxpayer's property and reaching an agreement with the taxpayer prior to the hearing. If, after filing the petition, the assessor and taxpayer reach an agreement as to the true and fair value of the property, such agreement shall be submitted to the board for approval, together with necessary valuation information. Approval

shall be granted unless the board has evidence that the agreed value was arbitrary, capricious or intentionally discriminatory in nature, or was a result of fraud or collusion between the assessor and the taxpayer. The board shall have the authority to request additional valuation information if it believes that the information submitted is not sufficient for it to make a determination.

(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 shall be 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 assessment 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 assessment.

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

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.200. 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 submitted to the clerk of 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 thirty days of such request but at least ten business days prior to such taxpayer's appearance before the board of equalization.

(3) The valuation information provided by the assessor to the taxpayer shall not be subsequently changed or modified by the assessor in any review or appeal proceedings unless the assessor has found new evidence supporting the assessor's valuation, in which situation the assessor shall provide such additional evidence to the taxpayer at least ten business days prior to the review proceedings or the hearing on appeal.

(4) A taxpayer who provides or intends to provide lists of comparable sales in connection with the filing and/or hearing of the petition, shall provide such information to the assessor and the board a reasonable time prior to the hearing and shall not thereafter change or add other comparable sales without providing the assessor with the additional information at least five business days prior to the board hearing. The board may waive the taxpayer's requirement to provide the information at least five business days prior to the

hearing, and in such event, the board shall allow the assessor a continuance when so requested.

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.200. 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 accordance 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 clerk of the board on or before the effective date.

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.200. 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 or appeals concerning the current assessment year until April 30 of the year immediately following the board's regularly convened session and for prior assessment years in accordance with (c) of this subsection, when:

(a) A taxpayer requests the board reconvene and submits to the clerk of the board a sworn affidavit stating that notice of change of value for the assessment year was not received 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 clerk of 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.

(c) A valuation adjustment for a prior year is ordered by the state board of tax appeals or by a court of law, and no intervening change of value has occurred, and the request to reconvene is made within thirty days after receipt by the taxpayer of the order providing for the adjustment.

(d) A bona fide purchaser or contract buyer of record has acquired an interest in real property subsequent to the first day of July of the assessment year and the sale price was less than ninety percent of the assessed value.

(2) Boards of equalization may reconvene on their own authority to hear requests to correct errors as authorized by RCW 84.48.065.

(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) which 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 84.08.010, 84.08.070 and 84.48.200. 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 documentation 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 involving property:

(a) That they have appraised; or

(b) With which they have been connected with the purchase or sale; or

(c) With which they have in any way exercised discretion; until the next revaluation cycle following departure from their former occupation.

(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 determination to the state board of tax appeals.

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.200. 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.

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

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.200. 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 county auditor a notice of appeal in duplicate within thirty days after the board has served or mailed its decision.

(2) The notice of appeal shall specify the actions of the board which 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).

(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 84.08.010, 84.08.070 and 84.48.200. 90-23-097, § 458-14-170, filed 11/21/90, effective 12/22/90.]

Chapter 458-15 WAC HISTORIC PROPERTY

WAC

458-15-005	Purpose.
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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:

(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.]

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

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

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.
458-16-301	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 458-16-010 Senior citizen and disabled persons exemption—Definitions. (1) The term "residence" means a single family dwelling unit whether such unit be separate or part of a multi-unit dwelling and includes the land on which the dwelling stands not to exceed one acre. The term also includes 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. It includes 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. Also included is 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 connections for sewer, water

or other utilities even though it may be listed and assessed by the county assessor as personal property.

The residence must have been occupied by the person claiming the exemption as the principal or main residence of the claimant. It does not include a residence used merely as a vacation home. For purposes of this exemption, principal or main residence means a residence the claimant resides at or dwells in for more than six months each year. Items to be considered in verifying residency can be ownership of another residence, voter registration and vehicle licensing.

(2) The term "real property" for the purposes of WAC 458-16-010 through 458-16-079 includes subsection (1) of this section and the land on which a mobile home is located if both the land and mobile home are owned by a qualified claimant.

(3) The term "preceding calendar year" means the calendar year preceding the year in which the claim for exemption is filed.

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

(5) "Combined disposable income" means the disposable income of the person claiming the exemption, plus the disposable income of his or her spouse, and the disposable income of each cotenant occupying the residence for the preceding calendar year. Disposable income is defined in WAC 458-16-013.

(6) "Cotenant" means a person who resides with the person claiming the exemption and who has an ownership interest in the residence.

(7) "Owned" includes "contract purchase" as well as "in fee," a "life estate," and any "lease for life."

"Revocable" trusts will be considered as life estates. "Irrevocable" trusts may qualify as a life estate if the trust terminates on the claimant's demise.

A residence owned by a marital community or owned by cotenants is deemed to be owned by each spouse or cotenant.

(8) The term "regular gainful employment" means consistent or habitual labor or service which results in an increase in wealth or earnings.

(9) The term "family" includes a single person, any number of related persons, or a group not exceeding a total of eight related and nonrelated nontransient persons living as a single nonprofit housekeeping unit. The term does not, however, include a boarding or rooming house.

(10) "Replacement residence" means a residence that qualifies for the exemption contained in WAC 458-16-010 through 458-16-079 except for the time requirement contained in WAC 458-16-020(1).

(11) "Physical disability" means the condition of being disabled, resulting in the inability to pursue an occupation because of physical or mental impairment. A doctor's signed statement constitutes proof of such disability and shall be required before the exemption may be granted. This statement shall indicate the expected period or term of the disability.

(12) "Remainderman" means one who is entitled to the remainder of the estate after a particular estate has expired; that is, a person having legal right to the real estate at the death of the life tenant or some other named time.

(13) "Remainder" means an estate in land which does not become possessory until a designated time in the future.

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

(15) "Life estate" means an estate whose duration is limited to the life of the party holding it or of some other person.

(16) "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 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 person has a life estate therein.

(17) "Excess levies" are all voter approved in accordance with RCW 84.52.050, with the exception of port district, public utility district and emergency medical service district levies.

(18) "Claimant" means a person who is entitled to and has been approved for the exemption contained in WAC 458-16-010 through 458-16-079.

(19) "Annuity" means a payment of a fixed sum of money at regular intervals of time. This includes the proceeds of life insurance contracts (other than lump sum payments), unemployment compensation, disability payments, welfare receipts and others that do not constitute payments for the care of dependent children.

[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.]

WAC 458-16-011 Senior citizen and disabled persons exemption—Gross income. "Gross income" is defined as all income from whatever source derived except for the following: (The following does not include those items to be added back pursuant to RCW 84.36.383.).

(1) Death payments:

(a) Proceeds of life insurance contracts which are paid by reason of the death of the insured; or

(b) Amounts paid by an employer which are paid by reason of death of the employee but is limited to an amount of five thousand dollars.

(2) Gifts and inheritances; gross income does not include the value of property acquired by gift, bequest, devise, or inheritance. This value includes either the property or the amount of proceeds from the sale of the property to the extent it does not include capital gain.

(3) Compensations for injuries or sickness which are received from the following that do not constitute a pension or annuity:

(a) Lump sum amounts received under workmen's compensation for personal injuries or sickness;

(b) Lump sum amounts received by tort (suit) or agreement on account of personal injuries or sickness;

(c) Lump sum amounts received through accident or health insurance for personal injuries or sickness.

(4) Amounts received under accident or health plans; reimbursement for expended medical costs.

(5) Contributions by employer to accident and health plans; contributions by the employer to accident or health

plans for compensation (through insurance or otherwise) to his employees for personal injuries or sickness.

(6) Rental value of parsonages; a minister of the gospel does not include in gross income:

(a) The rental value of the home furnished to him as part of his compensation; or

(b) The rental allowance paid to him as part of his compensation to the extent used by him to rent or provide a home.

(7) Income from discharge of indebtedness:

(a) Special rule of exclusion; no amount shall be included in gross income by reason of the discharge, in whole or in part, within the taxable year, of any indebtedness for which the taxpayer is liable, or subject to which the taxpayer holds property, if:

(i) The indebtedness was incurred or assumed:

(A) By a corporation; or

(B) By an individual in connection with property used in his trade or business; and

(ii) Such taxpayer makes and files a consent to the regulations prescribed under section 1017 in the Federal Internal Revenue Code (relating to adjustment of basis) then in effect at such time and in such manner as the secretary of the treasury or his delegate by regulations prescribes. In such case, the amount of any income of such taxpayer attributable to any unamortized premium (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be allowed as a deduction;

(b) Railroad corporation; (not applicable).

(8) Improvements by lessee on lessor's property; gross income does not include income (other than rent) derived by a lessor of real property on the termination of a lease, representing the value of such property attributable to buildings erected or other improvements made by the lessee.

(9) Income tax paid by lessee corporation: (Applicable only to corporations.)

(10) Recovery of bad debts, prior taxes, and delinquent accounts:

(a) General rule: Gross income does not include income attributable to the recovery during the taxable year of a bad debt, prior tax, or delinquency amount, to the extent of the amount of the recovery exclusion with respect to such debt, tax, or amount;

(b) Definitions: For purposes of subsection (a) of this section:

(i) Bad debt: The term "bad debt" means a debt on account of the worthlessness or partial worthlessness of which a deduction was allowed for a prior taxable year;

(ii) Prior tax: The term "prior tax" means a tax on account of which a deduction or credit was allowed for a prior taxable year;

(iii) Delinquency amount: The term "delinquency amount" means an amount paid or accrued on account of which a deduction or credit was allowed for a prior taxable year and which is attributable to failure to file return with respect to a tax, or pay a tax, within the time required by the law under which the tax is imposed, or failure to file return with respect to a tax or pay a tax;

(iv) Recovery exclusion: The term "recovery exclusion," with respect to a bad debt, prior tax, or delinquency amount, means the amount, determined in accordance with

regulations prescribed by the secretary of the treasury or his delegate, of the deductions or credits allowed, on account of such bad debt, prior tax, or delinquency amount, which did not result in a reduction of the taxpayer's tax under this subtitle (not including the accumulated earnings tax imposed by the Federal Internal Revenue Code, section 531 or the tax on personal holding companies imposed by section 541) or corresponding provisions of prior income tax laws (other than subchapter E of chapter 2 of the Internal Revenue Code of 1939, relating to World War II excess profits tax), reduced by the amount excludable in previous taxable years with respect to such debt, tax, or amount under this section;

(c) Special rules for accumulated earnings tax and for personal holding company tax. In applying subsections (a) and (b) for the purpose of determining the accumulated earnings tax under the Federal Internal Revenue Code, section 531 or the tax under section 541 (relating to personal holding companies):

(i) A recovery exclusion allowed for purposes of this subtitle (other than section 531 or section 541) shall be allowed whether or not the bad debt, prior tax, or delinquency amount resulted in a reduction of the tax under section 531 or the tax under section 541 for the prior taxable year; and

(ii) Where a bad debt, prior tax, or delinquency amount was not allowable as a deduction or credit for the prior taxable year for purposes of this subtitle other than of section 531 or section 541 but was allowable for the same taxable year under section 531 or section 541, then a recovery exclusion shall be allowable if such bad debt, prior tax, or delinquency amount did not result in a reduction of the tax under section 531 or the tax under section 541.

(11) Sports programs conducted by the American National Red Cross:

(a) General rule: In the case of a taxpayer which is a corporation primarily engaged in the furnishing of sports programs, gross income does not include amounts received as proceeds from a sports program conducted by the taxpayer if:

(i) The taxpayer agrees in writing with the American National Red Cross to conduct such sports program exclusively for the benefit of the American National Red Cross;

(ii) The taxpayer turns over to the American National Red Cross the proceeds from such sports program, minus the expenses paid or incurred by the taxpayer:

(A) Which would not have been so paid or incurred but for such sports program; and

(B) Which would be allowable as a deduction under the Federal Internal Revenue Code, section 162 (relating to trade or business expenses) but for subsection (b) of this section; and

(iii) The facilities used for such program are not regularly used during the taxable year for the conduct of sports programs to which this subsection applies.

For purposes of this subsection, the term "proceeds from such sports program" includes all amounts paid for admission to the sports program, plus all proceeds received by the taxpayer from such program or activities carried on in connection therewith.

(12) Income of state, municipalities, etc.: This exclusion is only considered if:

(a) The contract was made prior to September 8, 1916, and dealt with the acquisition or operation of a public utility; or

(b) A contract was entered into prior to May 29, 1928, relating to the acquisition of a bridge.

(13) Contributions to the capital of a corporation: Contributions to a corporation by its shareholders, not in consideration of goods or services.

(14) Scholarships and fellowship grants: General rule; in the case of an individual, gross income does not include:

(a) Any amount received:

(i) As a scholarship at an educational institution, (as defined in the Federal Internal Revenue Code, section 151 (e)(4)); or

(ii) As a fellowship grant, including the value of contributed services and accommodations; and

(b) Any amount received to cover expenses for:

(i) Travel;

(ii) Research;

(iii) Clerical help; or

(iv) Equipment;

Which are incident to such a scholarship or to a fellowship grant, but only to the extent that the amount is so expended by recipient.

(15) Meal or lodging furnished for the convenience of the employer:

There shall be excluded from gross income of an employee the value of any meals or lodging furnished to him by his employer for the convenience of the employer but only if:

(a) In the case of meals, the meals are furnished on the business premises of his employer; or

(b) In the case of lodging, the employee is required to accept such lodging on the business premises of his employer as a condition of his employment.

In determining whether meals or lodging are furnished for the convenience of the employer, the provisions of an employment contract or of a state statute fixing terms of employment shall not be determinative of whether the meals or lodging are intended as compensation.

(16) Certain reduced uniform services retirement pay: This exclusion pertains to that portion of Federal Military Retirement pay that is forfeited to provide an annuity for a surviving spouse and/or surviving eligible children.

(17) Amounts received under qualified group legal services plans: Gross income of an employee, his spouse, or his dependents, does not include:

(a) Amounts contributed by an employer on behalf of an employee, his spouse, or his dependents under a qualified group legal services plan; or

(b) The value of legal services provided, or amounts paid for legal services, under a qualified group legal services plan.

(18) Amounts received under insurance contracts for certain living expenses: General rule; in the case of an individual whose 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 threat of occurrence of such a casualty, gross income does not include amounts received by such individual under an insurance contract 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.

(19) Qualified transportation provided by employer: Gross income of an employee does not include the value of qualified transportation provided by the employer between the employee's residence and place of employment.

(20) Cafeteria cost sharing payments: An employer's contribution to a cafeteria plan on behalf of an employee.

(21) Certain cost sharing payments: Are payments received from federal or state funds primarily for the purpose of conserving soil, protecting or restoring the environment, improving forests, or providing a habitat for wildlife.

(22) Educational assistance programs: Educational assistance means the payment, by an employer, of expenses for the education of the employee (including, but not limited to, tuition, fees, books and supplies).

[Statutory Authority: RCW 84.36.389. 81-05-018 (Order PT 81-6), § 458-16-011, filed 2/11/81.]

WAC 458-16-012 Senior citizens and disabled persons exemption—Adjusted gross income. "Adjusted gross income" is gross income as defined in WAC 458-16-011 minus the following deductions:

After arriving at gross income, the following deductions are allowable to the extent they do not include amounts deducted for loss or depreciation.

(1) Trade and business deductions: The expenses which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee.

(2) Trade and business deductions of employees:

(a) Reimbursed expenses. The deductions which consist of expenses paid or incurred by the taxpayer, in connection with the performance by him of services as an employee, under a reimbursement or other expense allowance arrangement with his employer.

(b) Expenses for travel away from home. The deductions allowed by the Federal Internal Revenue Code, part VI (Sec. 161 and following) which consist of expenses of travel, meals, and lodging while away from home, paid or incurred by the taxpayer in connection with the performance by him of services as an employee.

(c) Transportation expenses. The deductions which consist of expenses of transportation paid or incurred by the taxpayer in connection with the performance by him of services as an employee.

(d) Outside salesmen. The expenses which are attributable to a trade or business carried on by the taxpayer, if such trade or business consists of the performance of services by the taxpayer as an employee and if such trade or business is to solicit, away from the employer's place of business, business for the employer.

(3) Deductions attributable to rents and royalties. The expenses which are attributable to property held for the production of rents or royalties.

(4) Pension, profit-sharing, annuity, and bond purchase plans of self-employed individuals. Contributions toward these plans made on behalf of such individual.

(5) Moving expenses. The expense of moving from one permanent duty station to another.

[Statutory Authority: RCW 84.36.389. 81-05-018 (Order PT 81-6), § 458-16-012, filed 2/11/81.]

WAC 458-16-013 Senior citizens and disabled persons exemption—Disposable income. "Disposable income" means the adjusted gross income as defined in WAC 458-16-012 and in the Federal Internal Revenue Code as amended prior to January 1, 1989, less certain income and expenses as defined below and plus other items to the extent they are not included in or have been deducted from adjusted gross income. (RCW 84.36.383)

(1) Disposable income is adjusted gross income plus the following to the extent they were deducted or not included in adjusted gross income:

(a) Capital gains, except gain from the sale of a principal residence to the extent such gain is reinvested in a different principal residence, including reinvestment in a life estate or lease for life in a retirement residence;

(b) Amounts deducted for loss;

(c) Amounts deducted for depreciation;

(d) Pension and annuity receipts;

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

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

(g) Federal Social Security Act and railroad retirement benefits;

(h) Dividend receipts;

(i) Interest received on state and municipal bonds.

(2) Capital gains is the difference between the cost of real property plus the cost of improvements, and the selling price of the property less any sales expense. If payment of the capital gain to the seller is over a period of time, the amount to be added to disposable income will be calculated over the same period.

(3) The exclusions contained in subsections (1)(e) and (f) of this section for attendant-care and medical-aid payments and the amounts received as payment for the care of dependent children must be verified by the applicable branch of the military service or the veterans administration before the deduction is allowed. If the amount for the military and veterans attendant-care and medical-aid payments in subsection (1)(e) and (f) of this section cannot be determined by the applicable branch of the military service or the veterans administration, then the actual amount expended by the military person or veteran for such care and aid, may be deducted from the amount received.

(4) The nonreimbursed amounts paid during the preceding calendar year for the care and treatment of either spouse, or cotenant, in a nursing home shall not be included in disposable income.

(5) The nonreimbursed amounts paid during the preceding calendar year for the treatment or care of either spouse, or cotenant, received in the home shall not be included in disposable income. Amounts paid for in-home treatment or care will be excluded if such treatment or care is the same as or similar to that which would be excluded if provided in the normal course of treatment or care in a nursing home:

(a) The payments must meet at least one of the following criteria:

(i) The payments were for medical treatment or care, or physical therapy received in the home; or

(ii) The payments were made for any of the following materials: Food, oxygen, or other lawful substances taken internally or applied externally, brought in to the home as part of a necessary or appropriate in-home service which is being rendered (such as a meals on wheels type program), necessary medical supplies, special needs furniture or equipment (such as wheel chairs, hospital beds, or therapy equipment); or

(iii) The payments were made for attendant care and/or to assist the claimant, or the claimant's spouse or cotenant, 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 amounts expended for improvements or repair of the home itself.

(b) Payments made for services received in the home must be in a reasonable amount and be paid at a rate comparable to the rate of pay normally paid in the local area for similar services.

(c) The person to whom the payments are made for services rendered need not be specially licensed to provide the services.

(6) Subsection (5) of this section and the amendment to subsection (1)(a) of this section shall be effective for taxes payable in 1992 and thereafter, pursuant to the amendment to RCW 84.36.383 as amended in chapter 213, Laws of 1991.

[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.]

WAC 458-16-020 Senior citizen and disabled persons exemption—Qualifications for exemption. A person shall be exempt from any legal obligation to pay all or a portion of the real property taxes due and payable in the years following the year in which a claim is filed if the following qualifications are met:

(1) The property taxes must have been imposed upon a residence which was occupied by the person claiming the exemption as a principal place of residence as of January 1 of the year in which the claim is filed.

(2) The person claiming the exemption must have owned as defined in WAC 458-16-010, at the time of filing, the residence on which the property taxes have been imposed.

(3) The person claiming the exemption must be at the time of filing:

(a) Sixty-one years of age or older on December 31 of the year in which the exemption claim is filed; or

(b) Retired from regular gainful employment by reason of physical disability; or

(c) A surviving spouse of a person who was receiving the exemption at the time of the person's death, if the surviving spouse was fifty-seven years old, or attains the age of fifty-seven in the year of the claimant's death, and otherwise meets the requirements contained in this section.

(4) The amount that the person shall be exempt from an obligation to pay shall be calculated on the basis of com-

bined disposable income, as defined in RCW 84.36.383 and WAC 458-16-010 through 458-16-013. If the person claiming the exemption was retired for two months or more of the preceding year, the combined disposable income of such person including his or her spouse and any cotenant shall be calculated by multiplying the average monthly combined disposable income of such person during the months such person was retired by twelve.

(5) Confinement of the person to a hospital or nursing home will not jeopardize the exemption if the residence is temporarily unoccupied or if the residence is occupied by a spouse and/or person financially dependent on the claimant for support, or by a person residing there for caretaker or security reasons only and the claimant is not receiving monetary consideration for this occupancy.

[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.]

WAC 458-16-022 Senior citizen and disabled persons exemption—Qualifications for cooperative housing. A share ownership in a cooperative housing association, corporation or partnership will qualify provided

(1) The claimant owns a share therein representing the specific unit or portion of the structure in which the claimant resides and

(2) The authorized agent of such cooperative signs the claim for exemption and

(3) The cooperative housing association, corporation or partnership agrees to reduce any amount owed by the claimant to the cooperative by such exact amount of tax exemption or, if no amount be owed, the cooperative will make payment to the claimant of such exact amount of exemption.

If the claimant qualifies, the tax liability of such cooperative shall be reduced by the amount of tax exemption to which the claimant is entitled.

[Order PT 76-1, § 458-16-022, filed 4/7/76.]

WAC 458-16-030 Senior citizen and disabled persons exemption—Claims. All initial claims for exemption shall be filed with the county assessor at any time during the year in which the property tax is to be levied and solely upon the forms prescribed by the department of revenue. At such time as a claimant's entitlement to the exemption or their income changes to reflect a different exemption level a change of status report must be filed with the county assessor between January 2 and July 1 of the year in which the property tax is to be levied and solely upon forms prescribed by the department of revenue. All claims for exemption shall be made and signed by the person entitled to the exemption, by his or her attorney in fact or in the event the residence of such person is under mortgage or purchase contract requiring accumulation of reserves out of which the holder of the mortgage or contract is required to pay real estate taxes, by such holder or by the owner, either before two witnesses or the county treasurer, assessor or their deputies in the county where the real property is located.

If the taxpayer is unable to submit his own claim, the claim shall be submitted by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

Whenever possible, information concerning qualifications, applications, and availability of information about this exemption shall be included with property tax statements.

The claim for exemption, properly completed, may be accepted by the assessor without question: *Provided*, That if the claim appears erroneous or if the assessor has other information concerning the claimant's qualifications, the assessor may require verification of all information prior to approving the claim.

[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.]

WAC 458-16-040 Senior citizen and disabled persons exemption—Denial—Appeal—Penalty—Perjury. If the assessor finds the applicant does not meet the qualifications as set forth by WAC 458-16-020 the claim shall be denied.

Any denial of a claim for exemption shall be subject to appeal to the county board of equalization as provided for in WAC 458-14-120.

Any applicant who received exemption in prior years based on erroneous information shall be assessed for the proper taxes as well as the penalties provided for in RCW 84.40.130 for a period not to exceed three years.

Any person signing a false claim with the intent to defraud or evade the payment of any tax shall be guilty of the offense of perjury.

[Order PT 74-6, § 458-16-040, filed 9/11/74.]

WAC 458-16-050 Senior citizen and disabled persons exemption—Amount of exemption. The amount that the person shall be exempt from an obligation to pay, shall be calculated on the basis of the combined disposable income of the person claiming the exemption and his or her spouse or cotenant, for the preceding calendar year in accordance with the following schedule:

1985 through 1988 Taxes

Income Range

\$9,000 or less	- Exempt from regular property taxes on \$25,000 or 50% of the valuation, whichever is greater, plus exemption from 100% of excess levies.
\$9,001 to \$12,000	- Exempt from regular property taxes on \$20,000 or 30% of the valuation, whichever is greater, not to exceed \$40,000 plus exemption from 100% of excess levies.
\$12,001 to \$15,000	- Exempt from 100% of excess levies.

1989 Taxes and Thereafter

Income Range

\$12,000 or less	- Exempt from regular property taxes on \$28,000 or 50% of the valuation, whichever is greater, plus exemption from 100% of excess levies.
\$12,001 to \$14,000	- Exempt from regular property taxes on \$24,000 or 30% of the valuation, whichever is greater, not to exceed \$40,000 plus exemption from 100% of excess levies.
\$14,001 to \$18,000	- Exempt from 100% of excess levies.

[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.]

WAC 458-16-060 Senior citizen and disabled persons exemption—Transfer of exemption. Any person who sells, transfers, or is displaced from their residence may transfer their exemption status to a replacement residence, but no claimant shall receive an exemption on more than the equivalent of one residence in any year. The amount of exemption transferred shall be based upon the following:

(1) If the claimant has not paid any of the current year's taxes on their former residence they shall be allowed to claim exemption on all of the current year's unpaid taxes on the replacement residence.

(2) If the claimant has paid the first half of the current year's taxes on their former residence, then the exemption can only be claimed for the unpaid second half taxes of the replacement residence.

(3) If the claimant has paid the entire tax on their former residence, then no exemption will be allowed on the replacement residence.

The qualifications in WAC 458-16-020 (1) and (2) shall be considered as being complied with on the replacement residence, if the claimant would have met those qualifications on his former residence.

[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.]

WAC 458-16-070 Senior citizen and disabled persons exemption—Cancellation. As the exemption contained in WAC 458-16-010 through 458-16-079 is a personal exemption and is considered claimed when the property tax is paid, it shall cease to exist and be cancelled upon transfer of the property or upon the claimant's demise (unless the spouse is also qualified). In such a case, any previous years or portion of that year's taxes due and/or owing in the year of the cancelling event which have not yet been paid shall be levied and collected without consideration of the exemption: *Provided*, That if it can be shown that the taxes, whether current or delinquent, will be paid from the nondeceased claimants' proceeds of the sale, the exemption shall continue through the claimants' period of ownership.

If the exemption results in no taxes being due, the exemption shall be considered as claimed, if the qualified claimant still owns the property, as of the tax payable date of February 15.

[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.]

WAC 458-16-079 Senior citizen and disabled persons exemption—Refunds—Late filings. That portion of taxes paid as a result of mistake, inadvertence, or lack of knowledge by any person who would have qualified for this exemption may be refunded for up to three years after the taxes were paid as provided in chapter 84.69 RCW.

The petition for property tax refund must be accompanied by the approved application for exemption for each year the refund is sought. This is to provide proof that they met the requirements of the exemption in effect for the year in which the taxes were levied.

Any late filings for the exemption after the taxes have been levied or after they are delinquent may be accepted by the assessor or treasurer.

RCW 84.56.400 authorizes the June board to consider "the assessment of property exempted by law from taxation." If the claim is instituted by the property owner, the certified mail notice need not be sent as required by RCW 84.56.400.

The assessor or treasurer may accept the applications for exemption, correct the assessment and/or tax rolls and then refer to the June board for approval.

In those cases where the correction is needed for a previous year's assessment, the department, at the assessor's request, will reconvene that June board to approve corrections.

[Statutory Authority: RCW 84.36.389. 81-05-018 (Order PT 81-6), § 458-16-079, filed 2/11/81.]

WAC 458-16-080 Improvements to single family dwellings—Definitions. For the purpose of WAC 458-16-080 and 458-16-081 and RCW 84.36.400:

(1) The term "single family dwelling" shall mean a detached dwelling unit and the lot on which the dwelling stands which is designed for, and not occupied by, more than one family. Said dwelling unit must meet the definition of real property contained in WAC 458-12-010 and RCW 84.04.090.

(2) The term "physical improvement" shall mean any addition, improvement, remodeling, renovation, structural correction or repairs which shall materially add to the value or condition of an existing dwelling. It shall also include the addition of, or repairs to, garages, carports, patios or other improvements attached to and compatible with similar dwellings, but shall not include swimming pools, outbuildings, fences, etc., which would not be common to or normally recognized as components of a dwelling unit.

[Order PT 75-3, § 458-16-080, filed 5/23/75.]

WAC 458-16-081 Improvements to single family dwellings—Exemption—Filing—Amount—Limits. Any physical improvement to an existing single family dwelling upon real property shall be exempt from taxation for three assessment years: *Provided*, That no exemption shall be allowed unless a claim is filed with the county assessor of

the county in which the property is located prior to completing the improvement. The claim shall be on such forms as prescribed by the department of revenue and supplied by the county assessor.

The assessor, upon receipt of the claim, shall determine the value of the single family dwelling prior to the improvement. This valuation may be arrived at by either a new physical appraisal or a statistical update of the current assessed value. Upon written notification of the completion of the improvement by the applicant, the assessor shall revalue the dwelling by means of a physical appraisal. *Provided*, That the valuation prior to commencing the improvement, whether by a new physical appraisal or statistical update, and the physical appraisal upon completion of the improvement shall not obviate the requirement for a physical appraisal set forth in RCW 36.21.070. The difference of the two values shall be the amount of the exemption and shall be deducted from the value of the dwelling after the completion of the improvement or any subsequent value determined according to chapters 84.41 or 84.48 RCW: *Provided*, The amount of the exemption shall not exceed thirty percent of the value of the dwelling prior to the improvement, and, *Provided further*, That in no event will the assessed value of the dwelling unit, after deduction of the exemption, be less than it was prior to the improvement.

The cost of the physical improvement shall not be construed as being the dominant factor in determining the exemption.

The exemption shall be allowed on the property for the three assessment years following completion of the improvement. If at any time the property does not meet the definition contained in WAC 458-16-080(1), the exemption shall be cancelled.

This exemption shall not be allowed on the same dwelling more than once in a five year period, calculated from the date the exemption first affected the assessment roll.

[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.]

WAC 458-16-100 Property tax exemptions, generally, rules of construction. All property having situs in Washington is subject to assessment and taxation, except property expressly exempted from taxation by law (RCW 84.36.005). In interpreting statutes which exempt property from taxation, the following principles shall govern:

(1) Statutory language shall be construed strictly, though fairly, and in keeping with the ordinary meaning of the language employed (*Group Health Co-op of Puget Sound, Inc. v. Wash. State Tax Comm'n*, 72 Wn.2d. 424, (1967)) - in favor of the public and the right to tax. *Thurston County v. Sisters of Charity of House of Providence*, 14 Wash. 264 (1896). Taxation is the rule; exemption is the exception (*Spokane County v. Spokane*, 169 Wash. 355 (1932)).

(2) If a justifiable doubt exists as to the meaning of an exemption statute, that doubt shall be construed in favor of the power to tax. *Spokane County v. Spokane*, 169 Wash. 355 (1932).

(3) If an exemption from taxation is found to exist, that exemption shall not be enlarged by construction, since the state legislature has presumably granted in express terms all

that it intended to grant. *Norwegian Lutheran Church v. Wooster*, 176 Wash. 581 (1934).

(4) Applicants claiming initial and continuing property tax exemption will make this property available for visitation, investigation or examination at all times and upon request provide to the employee of the department of revenue all records, documents or facts required so that the department may determine the exempt or taxable status of the property.

Failure to fully cooperate with the examining employee of the department may result in a taxable determination for that year's taxes.

(5) The burden rests upon the one claiming exemption to show clearly that the property is within the exempting statute (*Pacific Northwest Conference of the Free Methodist Church of North America v. Barlow*, 77 Wn.2d 487). The burden of proof is upon the one alleging the exemption. (*In Re All-State Construction Co., Inc.*, 70 Wn.2d 657.) When implementing the foregoing, the department of revenue shall adhere to and operate within the bounds of the overriding principle that its duty is to effectuate to the fullest extent the legislative intent (*Thurston County v. Sisters of Charity of House of Providence*, 14 Wash. 264 (1896)).

The principles herein enumerated are set forth as guidelines for assisting in statutory construction, and shall not be interpreted as a license for unjustifiably denying any exemption, and thereby forcing the organizations, corporations, or associations to establish their exempt status through court action.

[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, filing requirement, application forms, what covered, filing fee, financial statement, evidence of timely filing. All foreign national governments, cemeteries, nongovernmental nonprofit corporations, organizations, and associations, and soil and water conservation districts seeking exemption from ad valorem property taxation under the provisions of chapter 84.36 RCW shall make application for exemption with the State of Washington Department of Revenue General Administration Building, Olympia, WA 98504.

(1) Initial applications for exemption shall be filed on or before March 31 or within sixty days of the date of acquisition or conversion to an exempt use. Renewal applications and annual recertifications shall be filed on or before March 31.

Initial and renewal applications and recertifications received after the due date are subject to late filing penalties. The department of revenue shall allow a reasonable extension of time for filing upon written request filed on or before the required filing date and for good cause shown.

(a) Initial applications: The original application an organization files or an application by such organization for additional property not currently claimed for exemption.—Fee due.

(b) Renewal application: The claim for continued exemption filed every fourth year after the latest initial application.—Fee due.

(c) Recertifications: A certification on department of revenue forms, that the use and exempt status of the real and personal property claimed by the exempt organization has not changed.—No fee due.

All initial and renewal applications and recertifications for exemption shall be filed on forms prescribed by the department of revenue and shall be signed by an authorized agent. On or before January 1 of each year the department shall mail the forms to each legal owner that was granted an exemption for the previous year. Applications shall be available from the department of revenue or from the county assessor's office. No property shall be granted an exempt status without the owner first filing for exemption, for the specific property for which exemption is sought. The filing shall be due regardless of whether the legal owner has received forms for exemption from the department.

To retain exempt status, applicants except nonprofit cemeteries must file a renewal application on or before March 31 of every fourth year following the date of the initial application. When an applicant previously granted exemption acquires or otherwise converts real property to exempt status, such applicant shall file an initial application within sixty days following the conversion of such real property to exempt status without penalty. Failure to file an initial application within sixty days of conversion of such real property to exempt status shall result in a late filing penalty. See WAC 458-16-111 for computation of penalty.

In the years renewal applications are not due, an applicant previously granted exemption shall annually file a recertification: *Provided*, That when the annual filing has not been made by March 31, the ten dollars per month filing penalty will apply to the date the application is completed. Failure to file an annual claim will result in a taxable determination for current year taxes.

(2) The property covered by each application for property tax exemption shall include all the real and personal property which is contiguous, and which is used as a homogeneous unit.

(a) The term "homogeneous unit" means property under the control of a single applicant, the operation and use of which is integrated with and directly related to the activity of the entity seeking exemption.

(b) The term "contiguous" means all property which is geographically one unit without separation except for separations caused by public streets and roads.

Examples:

A church owns a single piece of property upon which is constructed a church, parsonage, and elementary school. All three buildings are owned by the church and constitute a homogeneous unit in that they are integrated with and directly related to the activities of the church. This requires only one application because the property is geographically contiguous and is a homogeneous unit.

O corporation, the supervising entity of a nonprofit recognized religious denomination, holds title to five separate units in a county. The operation of each church unit is integrated with the activity of and supervised by O. To properly apply for an exemption for these five church units O would be required to file a separate application for each church unit as they are geographically separate.

No application shall be acted upon until complete. To be complete an applicant must have on file with the depart-

ment of revenue copies of their articles of incorporation and all amendments and a copy of their current bylaws. All initial applications must be accompanied by an accurate map identifying by dimension the use or proposed use of all areas including building sites, parking, landscaping, and vacant areas from which an accurate determination for exemption or a segregation for partial exemption can be made. Legal descriptions and county parcel numbers must also be provided. The department of revenue will not act on any application until all fees and penalties have been submitted.

Organizations claiming exemption under RCW 84.36.030 through 84.36.480 are required to provide financial information to the department of revenue upon request.

Property leased may be claimed by the lessor or lessee, provided the lessee has permission of the lessor to claim exemption. Property claimed by the lessee must be specifically identified by owner and location of the property. Claims for leased property must be accompanied by a complete copy of the lease agreement.

The department of revenue shall have access to all books and records necessary to determine if the requirements for exemption have been complied with. The department of revenue shall have the authority to request additional information relevant to the claim for exemption as the department deems necessary.

[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.]

WAC 458-16-111 Filing fees, penalties and refunds.

Filing fee:

The filing fee of \$35.00 shall be collected before the department of revenue considers either an initial or renewal application (as defined in WAC 458-16-110) for property tax exemption.

Late penalties:

A late filing penalty of \$10.00 per month or portion of a month shall be collected before the department of revenue will consider any claim for property tax exemption when the completed claim is not filed by the due date. Late filing penalties are computed from the date the filing should have been made to the date the claim was received. The department will allow a two-week period in writing when notifying applicants of late filing penalties needed. Applicants not completing the application in the period allowed, must be assessed late filing penalties to the date all fees are received. Applications for previous years' taxes may be accepted if the applicant provides proof the property was used for exempt purposes in the assessment year prior to the tax year and the initial filing fees and late filing penalties are submitted for the period the application for exemption should have been filed to the date the application is completed.

Refunds:

Fees and penalties will be refunded if:

(1) A duplicate claim for the same property is filed by the same legal owner for the same year.

(2) A claim is improperly received by the department of revenue and it has no authority to consider it. (Example: Claim filed by government entity.)

(3) A request for withdrawal of the application for exemption is received in writing prior to the department

issuing a determination. The request shall include a signed statement clearly withdrawing the claim for exemption. The person requesting the withdrawal must be the same person who signed the application or another person authorized by the legal owner.

The department of revenue has no authority to refund fees or penalties after a determination is issued.

[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.]

WAC 458-16-115 Personal property exemption—Exceptions.

(1) The personal property exemption in RCW 84.36.110 shall not be applied to:

(a) Houses, cabins, boathouses, boatdocks or other similar improvements which are located on publicly owned lands;

(b) Mobile homes; or

(c) Floating homes.

[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 and notice of determination.

The department of revenue shall review each completed application and make a determination thereon, by August 1 or within thirty days whichever is later.

Any property owner aggrieved by the department's denial of an exemption application may, within 30 days of notification thereof, petition the State Board of Tax Appeals at 1010 Cherry Street, Olympia, WA 98504 for review. Any county assessor who feels the department's determination of exemption is unwarranted may, within 30 days after receiving a copy of the notification, petition the state board of tax appeals for review. To determine whether an appeal taken to the board of tax appeals, is timely the period for giving notice of appeal shall commence on the third day following the day upon which the notice was placed in the mail. (WAC 456-08-003, Board of tax appeals)

Appeal forms shall be available at the board of tax appeals in Olympia and county auditor's offices except in King county where they are available at the office of the clerk of the county council. Appeals shall be filed with the board of tax appeals and, concurrently, a copy shall be filed with the department of revenue. The appellant shall prepare an original and three copies of the notice of appeal. They shall be distributed as follows:

(1) The original shall be filed with the board of tax appeals.

(2) One copy shall be filed with the department of revenue.

(3) If the property owner is the appellant, one copy of the notice must be filed with the assessor of the county in which the property is located. If the assessor is the appellant, one copy of the notice must be provided to the property owner.

(4) One copy of the notice shall be retained in the appellant's files.

The state board of tax appeals shall consider any appeals which are timely filed to determine (1) if the

property is or is not entitled to an exemption, and (2) the amount or portion thereof.

Failure to timely file a claim for exemption is not subject to appeal.

[Statutory Authority: RCW 84.36.865. 81-05-017 (Order PT 81-7), § 458-16-120, filed 2/11/81; 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 Real property sold or acquired by property owner deemed to be exempt. As required by RCW 84.36.855, real property which is transferred or converted by an exempt body to taxable ownership or use or which is no longer exempt for any reason shall be subject to a prorata portion of taxes allocable to that property for the remaining portion of that year, after the date of the execution of the instrument of sale, contract or exchange, or the conversion to a taxable use or the date the property is no longer exempt as provided in RCW 84.40.350 through 84.40.390. Real property exempted pursuant to RCW 84.36.030, 84.36.037, 84.36.040, 84.36.050 and 84.36.060 is also subject to the provisions of RCW 84.36.810.

When any property owner determined to be, or could be, exempt under chapter 84.36 RCW acquires ownership of real property which was in other ownership as of January 1 or converts real property from a taxable to an exempt use must apply for and provide proof that under the specific RCW section and appropriate WAC, the property is entitled to exemption or continued exemption from time of transfer or conversion.

When organizations acquire or convert real property to an exempt use, the property will upon approval of the application for exemption, be entitled to exemption for the following year. Exempt property transferring from one nonprofit organization to another, will enjoy a continuing exemption upon approval, of proper application by the purchasing organization. If the taxes have been paid or if the timing of granting the exemption requires it, the department of revenue will reconvene the June session of the county board of equalization, under the provisions of RCW 84.56.400, in order to cancel the taxes and/or to institute a refund as provided in chapter 84.69 RCW.

[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. Upon cessation of any use exempted under RCW 84.36.030, 84.36.037, 84.36.040, 84.36.050 and 84.36.060, the taxes that would have been paid had the property not been exempt during the three years preceding, or for the life of the exemption, if such be less than three years, shall be collectible.

If the property has been exempt for more than ten years the rollback will not be implemented.

The property owner, county assessor, or any other public official having information or knowledge of any

change in use, including lease or rental of all or a part of such properties, which may constitute cessation of use, shall notify the department of any such changes in use which may be brought to their attention. The department shall notify the current property owner, and the legal owner previously granted exemption, of the reported change in use and if necessary examine the property to determine if the reported change has taken place. The property owner shall have 30 days from the time of notification by the department to submit any information which may be relevant to the question of changing use.

The department shall determine, upon the information supplied by the assessor or the public official, the property owner, or from the inspection of the property, whether such a cessation of use as warrants the rollback has occurred.

The county treasurer, upon notification from the department of revenue, shall compute the taxes payable, together with interest, at the same rate and computed in the same manner as that upon delinquent property taxes. The tax shall be distributed by the county treasurer in the same manner as taxes were distributed for those years that taxes would have been paid if the property had not been exempt. The interest shall be placed in the county current expense fund. If such a cessation of use involves a portion of the total property, the taxes collectible shall attach to only that portion affected. The rollback will be implemented only upon transfer of the property or when 51% or more of the property has ceased to qualify for exemption. The percentage of nonqualifying use will be determined separately for the land and improvements.

If the cessation of use resulted solely from one of the six conditions identified as (3)(a) through (f) in RCW 84.36.810, the provisions of this section shall not apply.

Lease or rental of all or part of such properties may constitute a cessation of use and knowledgeable authorities should report same to the department of revenue.

"Relocation of the activity" means the use of another location or site for the same activity that was carried on at the original site to the extent that it is a new location or site, or it is an existing site whose facilities have expanded to accommodate the relocated activity.

Property exempted for an intended use, but never put to such use will be subject to a rollback for the life of the exemption when sold or put to a disqualifying use, or when it is determined the intended use will not be achieved.

[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 458-16-180 Cemeteries. The following property shall be exempt from taxation, when used without discrimination as to race, color, national origin, or ancestry:

All lands, and buildings required for necessary administration and maintenance of public burying grounds or cemeteries, which are used, or to the extent used exclusively for public burying grounds or cemeteries. Use shall be evidenced in one of the following manners:

(1) Actual entombment of human remains,

(2) A contractual limitation to limit the use of the property to entombment of human remains, i.e., sale of grave plot,

(3) Dedication of property as a cemetery as provided under chapter 68.24 RCW; provided other nonqualifying use is not made of the property.

Lands owned by a nonprofit cemetery association, exempted under the provisions of RCW 68.20.110, but not exceeding 80 acres. Expansion, by additional 20 acre sections, when necessary for continuing the operation of the cemetery, may be included; this limitation does not apply to a corporation sole.

Necessary administration and maintenance of cemeteries shall be construed to mean those functions, the necessity of which would be nonexistent but for the presence of the cemetery, the performance of which is a direct benefit to the cemetery. This may include the groundskeeping or maintenance building and the administration building used in connection with the general conduct of a cemetery business. Residential use of the grounds is not generally within the scope of this construction, but under certain circumstances, listed below, the department may allow such use in a limited manner.

(1) The residence is necessary for the protection of the property.

and

(2) The size is reasonable for the purpose.

and

(3) The caretaker is required to be on the premises 365 days a year without exception unless a substitute is in place. This requirement would apply to all hours that the cemetery would be normally closed or during the time when vandalism or other damage is most likely to take place.

and

(4) No rent is paid to the cemetery by the caretaker but is provided to him as part of his employment.

and

(5) Protection is afforded by the caretakers, not merely by their presence, but that they regularly patrol the grounds, lock gates if necessary, and generally act in the capacity of ensuring the property is secure.

Exempt properties held by families or individuals for the purposes of burial are not subject to the requirement applying for exemption.

Nonprofit cemeteries are only required to file an initial application and additional filings are not required on property approved for exemption by the state department of revenue.

[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. All churches and grounds that are owned by religious organizations and exclusively used for church purposes shall be exempt to the following extent:

(1) The area upon which a church and parsonage is or shall be built, not exceeding five acres of land. The area

exempt includes the ground covered by the church, parsonage, and convent, the buildings and improvements required for the maintenance and security of such property and the structures and ground necessary for street access, parking, light and ventilation. (AGO 5-1-1952; PTB No. 217)

(2) If the requirements of subsection (1) are met the exemption will apply to a parsonage or convent and a church built on noncontiguous lots, or to the construction of separate parsonages for a minister and assistant minister (AGO 4-9-1947), and to caretakers quarters when the following conditions are met.

(a) The residential use is necessary for the protection of property.

and

(b) The size is reasonable for the purpose.

and

(c) The caretaker is required to provide security or provide custodial service indicated in (e)(i) or (e)(ii).

and

(d) No rent is paid to the church by the caretaker. Living quarters are provided in lieu of wages or salary. The service provided by the caretaker is considered of equal or greater value than the provision of living quarters. Reimbursement of utilities expense created by the caretaker will not be considered as rent.

and

(e)(i) Protection is afforded by the caretakers, not merely by their presence, but their duties will include periodic inspection of the property to ensure its security.

or

(e)(ii) Necessary on a daily basis to open and close the premises at irregular hours, activate or shut down environmental systems, and other maintenance activities necessary for the effective operation and utilization of the facilities.

(3) Land unoccupied or not covered by a church, parsonage or convent, and not occupied for church or related purposes, is exempt up to an area the equivalent of 120 feet by 120 feet, except where additional unoccupied land may be required to conform with state or local codes, zoning, or licensing requirements.

(4) Where property is used for nonchurch purposes, the exemption is lost. If a portion of the church building or grounds is used for commercial rather than church purposes, that portion must be segregated and taxed whether or not the profit reserved by the church from the commercial use is applied to church purposes. (*Norwegian Lutheran Church v. Wooster*, 176 Wash. 581 (1934).)

(5) The rental or lease of any portion of the church building or grounds is subject to the following provisions:

(a) Must be to a nonprofit organization, association, corporation or school.

(b) Must be for an eleemosynary use (see definition below).

(c) Rental must be reasonable and solely for operation and maintenance of property.

(6) Definitions:

(a) "Church purposes" shall be construed to mean 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.

(b) "Eleemosynary" shall be construed to mean charitable; not limited to the distribution of alms, but also includes activities when some social objective is served or general welfare is advanced, and where, but for the activity, government might be required to provide the service.

(c) "Convent" means a house or set of buildings occupied by a community of clergymen or nuns devoted to religious life under a superior.

(d) "Parsonage" means a residence, owned in fee or contract purchase by the church, which is occupied by a clergymen who is designated for a particular congregation and who holds regular services therefor. Property, title of which will be transferred to an individual upon completion of a tour of duty or other obligations, will not qualify for property tax exemption.

(e) "Clergyman" means the female as well as the male gender.

(f) "Owned" means owned in fee or by contract purchase.

With regard to property covered by this rule, the department of revenue may request additional information, in the area of finances, relative to the lease rental or license to use the properties claimed for exemption. This shall not be construed as a license to require general information relating to the amount of revenue received as donations, gifts, bequests, or tithes. The department shall have access to financial information, where necessary, to establish nonprofit status, if requested in writing.

[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 Grounds upon which a church or parsonage shall be built. Any church claiming exemption from ad valorem taxation on the property upon which a church, parsonage, or convent is to be built, shall have a specific plan and clear intent to hold such land for this and no other purpose.

It shall be the responsibility of such organizations to sustain the burden of proof that a reasonably specific and active program is being carried out to accomplish the construction of a church, parsonage, or convent within a reasonable period of time. Such proof should include sufficient information from which the department may be able to determine what portion of the property will qualify for exemption when construction is completed.

Proof which may be submitted to evidence the required intent to build may include, but is not limited to:

(1) Affirmative action by the board of directors, trustees, or governing body toward an active program of construction.

(2) Itemized reasons for the proposed construction, such as

- (a) Need for expansion due to growth;
- (b) Replacement of wornout buildings;
- (c) Initial facilities for a newly organized congregation;

(3) Clearly established plans for financing the construction.

(4) Proposed architectural plans which would tend to show what portion of the property will be under actual use.

(5) Building permits.

(6) Such other proof as the department may deem relevant to show an active program aimed at construction. The length of time under which a property may be held for future construction shall be dependent upon the intent evidenced under the circumstances of each individual situation.

[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, nonsectarian organizations. (1) The real and personal property owned by nonsectarian organizations is exempt from taxation, provided that: (a) The organization is nonprofit and is organized and conducted primarily for nonsectarian purposes, (b) the property is, except as provided in RCW 84.36.805 and subsections (2) and (4) of this section, used for character-building, benevolent, protective, rehabilitative social services directed at persons of all ages or used by a student loan agency and (c) if these organizations were not conducting these activities the government would provide this service.

These are the primary uses and the word "fraternal" is not among them, therefore, organizations whose main function is fraternal would not qualify under this section.

This exemption extends to property of nonprofit, nonsectarian organizations which are used for benevolent, protective or rehabilitative social services and those which are actually related to those purposes. If any portion of the property of the organization is used for commercial rather than nonsectarian purposes, that portion must be segregated and taxed. Thrift store operations, restricted to the sale of "donated merchandise" will not jeopardize the exemption if the claimant can verify the proceeds are directed to an exempt purpose.

Organizations claiming exemption on property used to provide short-term emergency shelter to homeless persons will upon request provide complete financial information regarding the claimed property, and will also provide the policy used in screening clients, the maximum term of stay, the fee schedule and the number of persons housed.

(2) The loan or rental of the property does not subject the property to tax if (a) the rents and donations received for the use of the portion 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 (b) the property would be exempt from tax if owned by the organization to which it is loaned or rented. (RCW 84.36.805): *Provided, however,* That the loan or rental of property to other nonprofit organizations, for periods of less than fifteen days shall not be subject to the restrictions of (a) of this subsection so long as all income received therefrom is devoted exclusively to exempt purposes. Maintenance and operating expenses means those items of rental expense as allowed and defined in generally accepted accounting principles. Property rented or leased for the purpose of deriving revenue from it, shall not be exempt and must be segregated and taxed whether or not such revenue is devoted

to exempt purposes. For purposes of this subsection the term "revenue" means income received from the loan, lease or rental of property when such income exceeds the amount of the maintenance and operation expenses attributable to the term and portion of the property loaned or rented.

(3) Programs provided under a personal service contract will not jeopardize the exemption if the following conditions are met:

(a) The contract is written to clearly reflect all receipts and expenses are to be administered by the exempt organization.

(b) The financial records of the exempt organization will identify all receipts and expenses of the programs.

(c) The program is compatible and consistent with the purposes of the exempt organization.

(d) A summary of all receipts and expenses of the program will be provided to the department upon request.

Programs provided under a personal service contract, whereby the contractor will reimburse the organization for expenses pertaining to the program will be viewed as a rental agreement between the exempt organization and an individual or for profit user and will subject that portion of property to tax.

(4) The use of the property for fund-raising activities sponsored by the exempt organization does not subject the property to tax if the fund-raising activities are consistent with the purposes for which exemption is granted. The term "fund raising" means any revenue-raising activity limited to less than five days in length including but not limited to art auctions, use of the property by professional organizations for conferences, seminars, or other activities which enhance the reputation of the organization.

[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 458-16-220 Church camps. The property owned by a nonprofit church or an organization or association comprised solely of churches or their qualified representatives which is, except as provided in RCW 84.36.805 and subsections (1) and (3) of this section, used exclusively or jointly used for organized and supervised recreational or educational activities and church purposes as related to such camp facilities are exempt from ad valorem taxation up to a maximum of 200 acres as selected by the church, including buildings and other improvements thereon.

(1) The loan or rental of the property does not subject the property to tax if (a) the rents and donations received for the use of the portion 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 (b) the property would be exempt from tax if owned by the organization to which it is loaned or rented. (RCW 84.36.805): *Provided, however,* That the loan or rental of property to other nonprofit organizations, for periods of less than fifteen days shall not be subject to the restrictions of (a) of this subsection so long as all income received therefrom

is devoted exclusively to exempt purposes. Maintenance and operating expenses means those items of rental expense as allowed and defined in generally accepted accounting principles. Property rented or leased for the purpose of deriving revenue from it, shall not be exempt and must be segregated and taxed whether or not such revenue is devoted to exempt purposes. For purposes of this subsection the term "revenue" means income received from the loan, lease or rental of property when such income exceeds the amount of the maintenance and operation expenses attributable to the term and portion of the property loaned or rented.

(2) Programs provided under a personal service contract will not jeopardize the exemption if the following conditions are met:

(a) The contract is written to clearly reflect all receipts and expenses are to be administered by the exempt organization.

(b) The financial records of the exempt organization will identify all receipts and expenses of the programs.

(c) The program is compatible and consistent with the purposes of the exempt organization.

(d) A summary of all receipts and expenses of the program will be provided to the department upon request.

Programs provided under a personal service contract, whereby the contractor will reimburse the organization for expenses pertaining to the program will be viewed as a rental agreement between the exempt organization and an individual or for profit user and will subject that portion of property to tax.

(3) The use of the property for fund-raising activities sponsored by the exempt organization does not subject the property to tax if the fund-raising activities are consistent with the purposes for which exemption is granted. The term "fund raising" means any revenue-raising activity limited to less than five days in length including but not limited to art auctions, use of the property by professional organizations for conferences, seminars, or other activities which enhance the reputation of the organization.

It shall be the burden of the organization owning the property to insure that the lessee abides by the terms of the statute under which the exemption is obtained and provide evidence of compliance upon request.

[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) Property, including buildings and improvements required for the maintenance and safeguarding of such property, which is owned by organizations and associations engaged in character building of boys and girls under eighteen years of age, is exempt from taxation to the extent that it is, except as provided in RCW 84.36.805 and subsections (2) and (4) of this section, solely used, or to the extent used, for such purposes and uses: *Provided,* That (a) the group is nonprofit, and (b) the purposes of the group are for the general good and its properties are devoted to the general public benefit. Only that property solely used is exempt, and property used for other purposes, whether commercial or otherwise, must be segregated and taxed.

If the existing charters of such organizations or associations provide for services to boys and girls up to the age of twenty-one years, then such organizations or associations shall be deemed qualified under this rule.

(2) The loan or rental of the property does not subject the property to tax if (a) the rents and donations received for the use of the portion 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 (b) the property would be exempt from tax if owned by the organization to which it is loaned or rented. (RCW 84.36.805): *Provided, however,* That the loan or rental of property to other nonprofit organizations, for periods of less than fifteen days shall not be subject to the restrictions of (a) of this subsection so long as all income received therefrom is devoted exclusively to exempt purposes. Maintenance and operating expenses means those items of rental expense as allowed and defined in generally accepted accounting principles. Property rented or leased for the purpose of deriving revenue from it, shall not be exempt and must be segregated and taxed whether or not such revenue is devoted to exempt purposes. For purposes of this subsection the term "revenue" means income received from the loan, lease or rental of property when such income exceeds the amount of the maintenance and operation expenses attributable to the term and portion of the property loaned or rented.

(3) Programs provided under a personal service contract will not jeopardize the exemption if the following conditions are met:

(a) The contract is written to clearly reflect all receipts and expenses are to be administered by the exempt organization.

(b) The financial records of the exempt organization will identify all receipts and expenses of the programs.

(c) The program is compatible and consistent with the purposes of the exempt organization.

(d) A summary of all receipts and expenses of the program will be provided to the department upon request.

Programs provided under a personal service contract, whereby the contractor will reimburse the organization for expenses pertaining to the program will be viewed as a rental agreement between the exempt organization and an individual or for profit user and will subject that portion of property to tax.

(4) The use of the property for fund-raising activities sponsored by the exempt organization does not subject the property to tax if the fund-raising activities are consistent with the purposes for which exemption is granted. The term "fund raising" means any revenue raising activity limited to less than five days in length including but not limited to art auctions, use of the property by professional organizations for conferences, seminars, or other activities which enhance the reputation of the organization.

[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) Property of veterans organizations, which are recognized by the department of defense and nationally chartered, are exempted from taxation. To qualify, these organizations

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shall have as their general purpose and objectives; (a) the preservation of war memories and associations, and (b) consecration of their efforts toward mutual helpfulness and patriotic or community services. To be exempt the property must be, except as provided in RCW 84.36.805 and subsections (2) and (4) of this section, used for the purposes and objectives of the organization.

(2) The loan or rental of the property does not subject the property to tax if (a) the rents and donations received for the use of the portion 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 (b) the property would be exempt from tax if owned by the organization to which it is loaned or rented. (RCW 84.36.805): *Provided, however,* That the loan or rental of property to other nonprofit organizations, for periods of less than fifteen days shall not be subject to the restrictions of (a) of this subsection so long as all income received therefrom is devoted exclusively to exempt purposes. Maintenance and operating expenses means those items of rental expense as allowed and defined in generally accepted accounting principles. Property rented or leased for the purpose of deriving revenue from it, shall not be exempt and must be segregated and taxed whether or not such revenue is devoted to exempt purposes. For purposes of this subsection the term "revenue" means income received from the loan, lease or rental of property when such income exceeds the amount of the maintenance and operation expenses attributable to the term and portion of the property loaned or rented.

(3) Programs provided under a personal service contract will not jeopardize the exemption if the following conditions are met:

(a) The contract is written to clearly reflect all receipts and expenses are to be administered by the exempt organization.

(b) The financial records of the exempt organization will identify all receipts and expenses of the programs.

(c) The program is compatible and consistent with the purposes of the exempt organization.

(d) A summary of all receipts and expenses of the program will be provided to the department upon request.

Programs provided under a personal service contract, whereby the contractor will reimburse the organization for expenses pertaining to the program will be viewed as a rental agreement between the exempt organization and an individual or for profit user and will subject that portion of property to tax.

(4) The use of the property for fund-raising activities sponsored by the exempt organization does not subject the property to tax if the fund-raising activities are consistent with the purposes for which exemption is granted. The term "fund raising" means any revenue-raising activity limited to less than five days in length including but not limited to art auctions, use of the property by professional organizations for conferences, seminars, or other activities which enhance the reputation of the organization.

[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 458-16-260 Day care centers, libraries, orphanages, homes for the aged, homes for sick or infirm, hospitals. Buildings, grounds, and other real and personal property to the extent used, except as provided for in RCW 84.36.805 and subsections (9) and (11) of this section, by the following institutions are exempt from taxation:

- (1) Day care centers, as defined by RCW 74.15.020;
- (2) Preschools;
- (3) Free public libraries;
- (4) Orphanages and orphan asylums;
- (5) Homes for the aged;
- (6) Homes for the sick or infirm;
- (7) Hospitals for the sick including any portion of the hospital building or other buildings used as a nurse's home or residence for hospital employees, or operated as a portion of the hospital unit;
- (8) Outpatient dialysis facilities.

Any portion of property owned by an organization which is used in a manner not furthering the purposes of the institution, (for example, hospital property used by a physician for private practice) must be segregated and taxed. (AGO 7-3-1935)

Property owned by an organization exempt under this rule which is irrevocably dedicated to the purposes of the organization is included in this exemption: *Provided*, That the organization can evidence irrevocable intent to put the property to a qualifying use. The forms of proof set forth in WAC 458-16-200 may be utilized for this purpose. To be exempted, the property must be in use or under construction which is designed for use.

The superintendent or manager of the organization claiming exemption under this statute shall allow the department of revenue access to the books and records of the organization and shall make, under oath, a report to the department showing that the income and receipts thereof, including donations to it, have been applied to the actual expenses of operating and maintaining it, or for its capital expenses and to no other purposes, also including a statement of the receipts and the disbursements of said organization.

An exemption may be granted to the real or personal property leased or rented by any organization, corporation, or association exempted under the provisions of RCW 84.36.040 and used exclusively by it: *Provided*, That the benefit of the exemption inures to the user. Such property must be specifically identified as leased in filing for exemption.

For the purposes of this rule a "hospital" is an organization primarily engaged in providing medical, surgical, nursing and/or related health care services in the prevention, diagnosis or treatment of human disease, pain, injury, disability, deformity or physical condition, or mental illness or retardation, and the equipment and facilities used by such organization to deliver such services on an inpatient basis. This definition shall include any portion of a hospital building, or other buildings used in connection therewith, and the equipment therein, operated as a portion of the hospital unit, or used as a residence for persons engaged or employed in the operation of a hospital.

(9) The loan or rental of this property does not subject the property to tax if (a) the rents and donations received for

the use of the portion 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 (b) the property would be exempt from tax if owned by the organization to which it is loaned or rented. (RCW 84.36.805) Maintenance and operating expenses means those items of rental expense as allowed and defined in generally accepted accounting principles.

(10) Programs provided under a personal service contract will not jeopardize the exemption if the following conditions are met:

(a) The contract is written to clearly reflect all receipts and expenses are to be administered by the exempt organization.

(b) The financial records of the exempt organization will identify all receipts and expenses of the programs.

(c) The program is compatible and consistent with the purposes of the exempt organization.

(d) A summary of all receipts and expenses of the program will be provided to the department upon request.

Programs provided under a personal service contract, whereby the contractor will reimburse the organization for expenses pertaining to the program will be viewed as a rental agreement between the exempt organization and an individual or for profit user and will subject that portion of property to tax.

(11) The use of the property for fund-raising activities sponsored by the exempt organization does not subject the property to tax if the fund-raising activities are consistent with the purposes for which exemption is granted. The term "fund raising" means any revenue-raising activity limited to less than five days in length including but not limited to art auctions, use of the property by professional organizations for conferences, seminars, or other activities which enhance the reputation of the organization.

[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 458-16-265 Nonprofit homes for the aging.

(1) Definitions:

(a) "Home for the aging" (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-two years of age or who have needs for care generally compatible with persons who are at least sixty-two 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.

(b) "Eligible resident" means a person who:

(i) Is sixty-one years of age or older or disabled on January 1st of the year in which a claim for exemption is filed and is a resident of the home on January 1st of the year in which a claim for exemption is filed; and

(ii) Has annual income, including the income of all cotenants, not exceeding the amounts contained in RCW 84.36.381 for the prior year, Provided; That only one resident per unit must satisfy the age or disability requirement.

A surviving spouse of an eligible resident who is at last fifty seven years of age at the time of their spouse's death shall qualify as an eligible resident so long as the surviving spouse meets all other qualifications.

(c) "Reasonably necessary" means all property which is:

(i) Operated and used by a home, and

(ii) The use of which is restricted to residents, guests or employees of a home.

(d) "Occupied dwelling unit" means a living unit which is occupied on January 1 of the year the claim for exemption is filed.

(2) Generally.

(a) The tax exemption created by RCW 84.36.041 is claimed by and benefits the nonprofit entity, not the residents of the home.

(b) If a claim for exemption is filed on behalf of a home under RCW 84.36.041, no resident of that home may receive a personal exemption under RCW 84.36.381.

(c) Applicants who do not provide varying levels of care and supervision shall not receive an exemption.

(3) Applications.

(a) A listing of the varying levels of care and supervision provided or coordinated by the home shall accompany all initial applications submitted on behalf of the home. Examples of 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.

(b) Homes which have property which is used for purposes other than as a home, for example property used by a facility which is licensed as a nursing home, shall provide the department with a floor plan identifying the square footage devoted to each different exempt and nonexempt use.

(c) The exemption under RCW 84.36.041 shall not be approved unless the applicant provides proof of recognition by the Internal Revenue Service as a 501(c) organization at the time the application is filed.

(4) Segregation.

(a) Property which by its use qualifies for exemption under a statute other than RCW 84.36.041 shall be segregated and exempted pursuant to the applicable statute.

(b) Common areas which are used for more than one exempt purpose shall be exempted under RCW 84.36.041.

(c) Property which is not reasonably necessary for an exempt use shall be segregated and taxed.

(d) Occupied dwelling units which are not occupied by residents who meet the age or disability requirements of RCW 84.36.381 shall be segregated and taxed.

(5) Housing and urban development (HUD) programs.

(a) Homes which are subsidized by a HUD program shall initially and annually thereafter by March 31st provide

the department with a letter of certification from HUD of continued HUD subsidy.

(b) Homes which are subsidized by HUD which do not qualify for a total exemption shall receive exemption on those units occupied on January 1st of the year the claim is filed by persons age sixty-one or older or disabled. The percentage of the entire parcel which is exempt shall be the same percentage as that of exempt units to the total number of units.

(6) Homes which are not subsidized by HUD.

(a) Homes which are not subsidized by HUD must qualify for exemption on a unit by unit basis under the provisions of RCW 84.36.041 and 84.36.385. Form REV 64-0043 shall be used for this purpose and shall be filed by residents with the county assessor between January 1st and July 1st of the year preceding the year in which the tax is due. If two or more residents occupy one unit, only one cotenant is required to file verification of combined disposable income, as defined in WAC 458-16-013, with the assessor.

(b) Residents shall notify the assessor prior to July 1st if the combined disposable income, as defined in WAC 458-16-013, of persons residing in the unit exceeds the maximum allowable amount under RCW 84.36.381.

(c) Form REV 64-0043 shall not be accepted by the assessor if postmarked after July 1st.

(d) Homes which are not subsidized by HUD shall by March 31st of each year file with the department a listing of the total number of dwelling units in their complex, the number of occupied dwelling units in their complex as of January 1st, and the number of previously qualified dwelling units in their complex which are no longer occupied by the same eligible residents.

(e) Residents whose financial status has not changed do not have to annually complete Form REV 64-0043, however assessors or the department may conduct audits to ensure continued eligibility.

(7) Assessors' responsibilities.

(a) Assessors shall determine the age or disability and income eligibility of all residents who have filed and shall forward a copy of Form REV 64-0043 to the department by July 15th each year for residents who have met the eligibility requirements.

(8) Department of revenue.

(a) The department shall make its determination of exempt status by August 31st.

(9) Appeals.

(a) Residents may appeal the assessor's determination of non-eligibility to the board of equalization. Appeals must be filed within thirty days of notice from the assessor.

(b) Denial of exemption under RCW 84.36.041, including denial of a partial exemption, may be appealed to the state board of tax appeals.

(10) Calculating the amount of the exemption.

(a) To calculate the amount of the partial exemption, the number of units occupied on January 1st shall be used as the denominator of the fraction specified in RCW 84.36.041. The numerator of the fraction shall be the number of units approved by the county assessor multiplied by two. The resulting fraction shall not exceed one.

(b) In 1991, two-thirds of the assessed value which would otherwise be subject to tax is exempt. In 1992, one-

third of the assessed value which is otherwise taxable is exempt.

Example

Presume a home with fifty units with an assessed value of \$1,000,000. On January 1st of 1990, forty five units were occupied. On July 15th the assessor certifies to the department that ten units qualify for exemption. Under this hypothetical the following calculations would be made:

Assessed value multiplied by the number of qualifying units multiplied by two divided by the number of occupied units. The result is subtracted from the assessed value to arrive at the amount of taxable value of the property.

For taxes levied for collection in 1991, the amount of taxable value of the property is multiplied by one third, and the result is the amount to be placed on the tax roll.

For taxes levied for collection in 1992, two thirds of the taxable value of the property shall be placed on the tax roll.

For taxes levied for collection in 1993, the entire taxable value of the property will be placed on the tax roll.

Mathematically, the formula is expressed as follows:

$$\$1,000,000 ((10 \times 2) / 45) = \$444,444.$$

$$\$1,000,000 - \$444,444 = \$555,556.$$

$\$555,556 \times 1/3 = \$185,185$ taxable value in 1991.

$\$555,556 \times 2/3 = \$370,370$ taxable value in 1992.

$\$555,556$ taxable value in 1993.

Note: The example presumes that all figures remain static over the three year period. Also, figures have been rounded for the purpose of this example.

[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.]

WAC 458-16-270 Schools and colleges. The property owned or used by any nonprofit school or college within this state shall be exempt to the extent that:

(1) The property is used for educational purposes, or cultural or art educational programs as defined in RCW 82.04.4328. The term "educational purposes" includes systematic instruction in any and all branches of learning from which a substantial public benefit is derived. In addition, the term "educational purposes" includes all purposes which seek to promote education.

(2) The real property so exempt shall not exceed four hundred acres in extent and except as provided in RCW 84.36.805 and subsections (6) and (8) of this section shall be used exclusively for college or campus purposes. College or campus purposes shall be construed to mean that the need for such property would be nonexistent, but for the presence of such school or college and the property is principally designed to further the educational functions of such college or schools. As used in this subsection, the term "educational functions" means any function, action, or activity sponsored by the nonprofit school, which promotes education or advances educational purposes.

(3) Institutions claiming exemption for property which is not a portion of the main campus must provide in detail when requested by the department of revenue:

- (a) The courses taught on site;
- (b) A calendar of uses; and
- (c) The number of students participating on site.

(4) The institution must be open to all persons on equal terms. However, there is no limitation on the types of courses which the institution may offer.

(5) For purposes of this exemption, "schools and colleges" will mean (a) those nonprofit educational institutions which are either accredited by the state or whose students and credentials are accepted without examination by schools and colleges established under Title 28A or 28B RCW and which offer to students an educational program of a general academic nature, or (b) those nonprofit institutions meeting the following criteria:

- (i) It must have a definable curriculum for a specific group with definable and measurable outcomes;
- (ii) It must have a qualified and/or certified faculty;
- (iii) It must have facilities and equipment that are designed for the primary purpose of the educational program;
- (iv) It must have an attendance specification;
- (v) It must have a schedule or course of study supporting the instructional curriculum;
- (vi) It must have accreditation or recognition by a professional association.

(6) The loan or rental of the property does not subject the property to tax if (a) the rents and donations received for the portion of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the term and portion of the property loaned or rented; and (b) the property would be exempt from tax if owned by the organization to which it is loaned or rented. (RCW 84.36.805): *Provided, however,* That the loan or rental of school or college property to other nonprofit organizations, for periods of less than fifteen days shall not be subject to the restrictions of this subsection so long as all income received therefrom is devoted exclusively to the support and maintenance of the school or college. Maintenance and operating expenses means those items of rental expense as allowed and defined in generally accepted accounting principles. Property of nonprofit schools owned, controlled, rented or leased for the purpose of deriving revenue from it, shall not be exempt and must be segregated and taxed whether or not such revenue is devoted to educational purposes. For purposes of this subsection the term "revenue" means income received by the school or college for the loan, lease, or rental of its property when such income exceeds the amount of the maintenance and operation expenses attributable to the term and portion of the property loaned or rented.

(7) Programs provided under a personal service contract will not jeopardize the exemption if the following conditions are met:

- (a) The contract is written to clearly reflect all receipts and expenses are to be administered by the exempt organization.
- (b) The financial records of the exempt organization will identify all receipts and expenses of the programs.
- (c) The program is compatible and consistent with the purposes of the exempt organization.
- (d) A summary of all receipts and expenses of the program will be provided to the department upon request.

Programs provided under a personal service contract, whereby the contractor will reimburse the organization for expenses pertaining to the program will be viewed as a rental agreement between the exempt organization and an

individual or for profit user and will subject that portion of property to tax.

(8) The use of the property for fund-raising activities sponsored by the exempt organization does not subject the property to tax if the fund-raising activities are consistent with the purposes for which exemption is granted. The term "fund raising" means any revenue raising activity limited to less than five days in length including but not limited to art auctions, use of school property by professional organizations for conferences, seminars, or other activities which enhance the reputation of the school or college, or the use of school property for any educational purpose.

(9) Institutions claiming exemption within this rule shall allow the department of revenue access to all books and records of the institution and shall annually make, under oath, a report to the department showing that the income and receipts thereof, including donations to it, have been applied to the actual expenses of operating and maintaining it or for capital expenses for endowments, the income of which shall be used for the operation, maintenance or capital expenditures and to no other purpose, also including a statement of the receipts and disbursements of said organization. In addition, institutions claiming exemption under this rule shall submit a list of all property claimed to be exempt, the purpose for which it is used, the revenue derived from it during the preceding year, the use to which the revenue was applied, the number of students in attendance at the institution, the total revenues of the institution and the source from which they were derived, and the purposes to which such revenues were applied, giving the items of such revenues and expenditures in detail.

[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—Fire companies—Humane societies. (1) All art, scientific, or historical collections, together with all real and personal property used exclusively, except as provided in RCW 84.36.805 and subsections (4) and (6) of this section, for the safekeeping, maintaining or exhibiting of such, which are maintained or exhibited for the general public and not for profit, shall be exempt from taxation under the following conditions:

(a) Such organization must be organized and operated exclusively for artistic, scientific, historical, literary or educational purposes, and

(b) Receive a substantial part of its income (exclusive of income received in the exercise or performance by such organization of its purpose or function) from the United States, any state or political subdivision thereof, or from direct or indirect contributions from the general public.

(2) Fire engines and other implements used to put out fires, and the buildings or fire stations to the extent that they are exclusively used for the safekeeping of such equipment, and to hold fire company meetings, shall be exempt, provided that such properties are owned by either a city, town or nonprofit fire company.

(3) Property within the state which is owned and actually used by humane societies shall be exempt.

(4) The loan or rental of the property does not subject the property to tax if (a) the rents and donations received for the use of the portion 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 (b) the property would be exempt from tax if owned by the organization to which it is loaned or rented. (RCW 84.36.805): *Provided, however,* That the loan or rental of property to other nonprofit organizations, for periods of less than fifteen days shall not be subject to the restrictions of (a) of this subsection so long as all income received therefrom is devoted exclusively to exempt purposes. Maintenance and operating expenses means those items of rental expense as allowed and defined in generally accepted accounting principles. Property rented or leased for the purpose of deriving revenue from it, shall not be exempt and must be segregated and taxed whether or not such revenue is devoted to exempt purposes. For purposes of this subsection the term "revenue" means income received from the loan, lease or rental of property when such income exceeds the amount of the maintenance and operation expenses attributable to the term and portion of the property loaned or rented.

(5) Programs provided under a personal service contract will not jeopardize the exemption if the following conditions are met:

(a) The contract is written to clearly reflect all receipts and expenses are to be administered by the exempt organization.

(b) The financial records of the exempt organization will identify all receipts and expenses of the programs.

(c) The program is compatible and consistent with the purposes of the exempt organization.

(d) A summary of all receipts and expenses of the program will be provided to the department upon request.

Programs provided under a personal service contract, whereby the contractor will reimburse the organization for expenses pertaining to the program will be viewed as a rental agreement between the exempt organization and an individual or for profit user and will subject that portion of property to tax.

(6) The use of the property for fund-raising activities sponsored by the exempt organization does not subject the property to tax if the fund-raising activities are consistent with the purposes for which exemption is granted. The term "fund raising" means any revenue-raising activity limited to less than five days in length including but not limited to art auctions, use of the property by professional organizations for conferences, seminars, or other activities which enhance the reputation of the organization.

[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. The real and personal property owned by or leased to nonprofit organizations whose purpose is to produce and/or perform musical, dance, artistic, dramatic or literary works, for the benefit of the general

public and not for profit. To be exempt the property must be used exclusively, except as provided for in RCW 84.36.805 and subsections (5) and (7) of this section, in accordance with the following rules:

(1) Must be organized and operated exclusively for the purpose of the exemption.

(2) Must receive a substantial portion of its support, exclusive of moneys received from admissions to its performances, from governmental entities or from direct or indirect contributions of money, real or personal property and/or services from the general public. Organizations relying on services donated by the general public to meet the substantial portion of its support, must maintain records identifying the individuals and the number of hours donated. Donated time will be valued under the federal minimum wage standards.

(3) Applications for leased property must include a copy of the lease agreement.

(4) The property meets all the conditions of RCW 84.36.800 through 84.36.865.

(5) The loan or rental of the property does not subject the property to tax if (a) the rents and donations received for the use of the portion 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 (b) the property would be exempt from tax if owned by the organization to which it is loaned or rented. (RCW 84.36.805): *Provided, however,* That the loan or rental of property to other nonprofit organizations, for periods of less than fifteen days shall not be subject to the restrictions of (a) of this subsection so long as all income received therefrom is devoted exclusively to exempt purposes. Maintenance and operating expenses means those items of rental expense as allowed and defined in generally accepted accounting principles. Property rented or leased for the purpose of deriving revenue from it, shall not be exempt and must be segregated and taxed whether or not such revenue is devoted to exempt purposes. For purposes of this subsection the term "revenue" means income received from the loan, lease or rental of property when such income exceeds the amount of the maintenance and operation expenses attributable to the term and portion of the property loaned or rented.

(6) Programs provided under a personal service contract will not jeopardize the exemption if the following conditions are met:

(a) The contract is written to clearly reflect all receipts and expenses are to be administered by the exempt organization.

(b) The financial records of the exempt organization will identify all receipts and expenses of the programs.

(c) The program is compatible and consistent with the purposes of the exempt organization.

(d) A summary of all receipts and expenses of the program will be provided to the department upon request.

Programs provided under a personal service contract, whereby the contractor will reimburse the organization for expenses pertaining to the program will be viewed as a rental agreement between the exempt organization and an individual or for profit user and will subject that portion of property to tax.

(7) The use of the property for fund-raising activities sponsored by the exempt organization does not subject the property to tax if the fund-raising activities are consistent

with the purposes for which exemption is granted. The term "fund raising" means any revenue-raising activity limited to less than five days in length including but not limited to art auctions, use of the property by professional organizations for conferences, seminars, or other activities which enhance the reputation of the organization.

[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 458-16-290 Nature conservancy lands. The real property or leaseholds, exclusively used for the conservation of ecological systems or natural resources owned or held under contract purchase by any nonprofit corporation or association, the primary purpose of which is the conducting or facilitating of scientific research or the conserving of natural resources for the general public, shall be exempt under either of the following conditions:

(1) The property shall be used and effectively dedicated primarily for the purpose of providing scientific research or educational opportunities, or the preservation of native plants or animals or biotic communities, or works of ancient man, or geological or geographical formations of distinct scientific and educational interests, and shall be open to the general public subject to reasonable restrictions designed for its protection and not for the pecuniary benefit of any person or company; or

(2) That such property shall be subject to an option, accepted in writing, for the purchase thereof by the United States, the state, a county or a city at a price to be determined by the criteria set forth in RCW 84.36.260(2).

Property used merely for recreational activities does not qualify for an exemption.

Upon cessation of the use which has given rise to this exemption, the county treasurer shall collect all taxes which would have been paid had the property not been exempt during the ten years preceding, or the life of such exemption if such is less, together with interest at the same rate and computed in the same way as upon delinquent property taxes.

Such properties shall be subject to the provisions of WAC 458-16-150.

[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 facilities. Real and personal property used exclusively for public assembly or meeting places shall be exempt from taxation in accordance with the following rules:

(1) In order to qualify, the following conditions must be met:

(a) It is owned by a nonprofit organization;

(b) The area to be exempted does not exceed one acre;

(c) The owning organization has publicized fee schedules, a policy on the availability, and any restrictions on the use of the facility;

(d) The rental fee charged does not exceed the maintenance and operating expenses created by the users thereof;

(e) It is not used to promote business or pecuniary gain, except fund raising activities conducted by nonprofit organizations; and

(f) The applicant has provided to the department on an annual basis:

(i) A schedule of all users and the purpose of their use for the previous year; and

(ii) A detailed statement of income and expenses for the previous year.

(2) Other community meeting halls whose owners schedule regular meetings of their organizations will also qualify for the exemption if they meet the conditions in subsection (1) of this section, and:

(a) The scheduled uses by the owner do not exceed twenty-five percent of the useable time and such facility is available for public gatherings and for meetings of other organizations or persons at all other times; and

(b) The facility is used for public gatherings an equal or greater number of times as the owning organization.

(3) Public gathering shall mean any gathering that is open to the general public and shall include meetings of organizations which allow attendance by nonmembers.

(4) Facilities used more than fifty percent of the time for meetings of organizations which disallow attendance by nonmembers do not qualify for this exemption.

(5) The loss of the exemption for a year will not subject the property to the provisions of RCW 84.36.810, provided that if the loss of the exemption was due to sale or transfer of the property or due to false information, RCW 84.36.810 shall apply.

[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. Real and personal property used for community celebration events shall be exempt from taxation in accordance with the following rules:

(1) It is owned by a nonprofit organization;

(2) The area to be exempted does not exceed twenty-nine acres;

(3) The property has been primarily used for community celebration events for the last ten years;

(4) The purpose of the property is to provide a facility for the annual gathering;

(5) The owning organization has publicized fee schedules, a policy on the availability and any restrictions on the use of the facility;

(6) The rental fee charged does not exceed the maintenance and operating expenses created by the users thereof;

(7) It is not used to promote business or pecuniary gain, except fund raising activities conducted by nonprofit organizations;

(8) Any enclosed structures other than restroom facilities will not qualify; and

(9) The applicant has provided to the department on an annual basis:

(a) A schedule of all users and the purpose of their use, for the previous year; and

(b) A detailed statement of income and expenses for the previous year.

[Statutory Authority: RCW 84.36.865. 81-21-010 (Order PT 81-14), § 458-16-310, filed 10/8/81.]

Chapter 458-17 WAC

ASSESSMENT AND TAXATION OF MOTOR VEHICLES, TRAVEL TRAILERS, CAMPERS, MOTOR HOMES, AND SHIPS AND VESSELS

WAC

458-17-105	Ships and vessels—Definitions.
458-17-110	Ships and vessels—Subject to property taxation.
458-17-115	Ships and vessels—Listing.
458-17-120	Ships and vessels—Apportionment of value.

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).
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WAC 458-17-105 Ships and vessels—Definitions.

For the purposes of WAC 458-17-105 through 458-17-120:

(1) "Apportionable vessel" means a ship or vessel, other than one operated by a steamboat company as defined in RCW 84.12.200, which is:

(a) Engaged in interstate commerce;

(b) Engaged in foreign commerce; and/or

(c) Engaged exclusively in fishing, tendering, harvesting, and/or processing seafood products on the high seas or waters under the jurisdiction of other states.

(2) "Interstate commerce" means a ship or vessel that is engaged in transporting persons or property from one state or territory of the United States to another.

(3) "Foreign commerce" means a ship or vessel that is engaged in transporting persons or property between a state or territory of the United States and a foreign country.

(4) "Limits of the state" shall mean the normal boundaries of the state of Washington abutting Canada, Oregon, and Idaho and three miles to the west of Washington's coast line.

(5) "State levy" means that portion of the property tax that is levied by the state for state purposes. The levy rate is that rate determined locally.

(6) "Exclusively" means for no other purpose.

(7) "Alteration" means to change, make different or modify.

(8) "Repair" means to mend, remedy, renovate, or restore to a sound or good state after decay, dilapidation, or partial destruction.

[Statutory Authority: RCW 82.01.060(2). 86-21-003 (Order PT 86-5), § 458-17-105, filed 10/2/86.]

WAC 458-17-110 Ships and vessels—Subject to property taxation. Ships and vessels which 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, however, covers only those ships and vessels subject to the property tax and not those subject to the excise tax.

(1) Pursuant to RCW 84.36.080, all ships and vessels which are (a) used exclusively for commercial fishing purposes or (b) primarily engaged in commerce and which also have or are required to have a valid marine document

as a vessel of the United States, are exempt from all property taxes except those levied for any state purpose. Accordingly, such ships and vessels are subject to assessment by the department of revenue.

(2) However, this requirement to pay the state portion of the property tax does not apply to ships and vessels listed in the state or federal register of historical places. Such historic ships and vessels are completely exempt from property taxation.

(3) Also, all ships and vessels which are not within the scope of subsection (1) of this section are completely exempt from property taxation. See RCW 84.36.090.

[Statutory Authority: RCW 82.01.060(2). 86-21-003 (Order PT 86-5), § 458-17-110, filed 10/2/86.]

WAC 458-17-115 Ships and vessels—Listing. Pursuant to section 3, chapter 229, Laws of 1986, every individual, corporation, association, partnership, trust, and estate shall list with the department of revenue all ships and vessels which are subject to their ownership, possession or control and which are subject to property taxation in accordance with WAC 458-17-110, and such listing shall be subject to the same requirements, penalties and liens provided in chapters 84.40 and 84.60 RCW for all other personal property in the same manner as provided therein.

[Statutory Authority: RCW 82.01.060(2). 86-21-003 (Order PT 86-5), § 458-17-115, filed 10/2/86.]

WAC 458-17-120 Ships and vessels—Apportionment of value. (1) Apportioned vessels which are subject to assessment by the department of revenue under WAC 458-17-110 shall have their value apportioned to the state of Washington in accordance with the following:

(a) The value of each apportionable vessel shall be apportioned to this state based on the number of days or fractions of days that the vessel is within the limits of this state during the calendar year preceding the calendar year in which the vessel is to be listed: *Provided*, That if the total number of days the vessel is within the limits of the state does not exceed one hundred twenty days for the preceding calendar year, no value shall be apportioned to this state.

(b) Days during which an apportionable vessel is in the state exclusively for one or more of the following purposes shall not be considered as days within this state, if the length of time is reasonable for the purpose of:

- (i) Undergoing repair or alteration;
- (ii) Taking on or discharging cargo, passengers or supplies; and/or
- (iii) Serving as a tug for a vessel under (i) or (ii) of this subsection.

(c) Any ship or vessel engaging in any other activity or use or merely being moored, will not be considered as being within the state exclusively for (b)(i), (ii), or (iii) of this subsection.

(2) Ships and vessels that do not meet the definition of "apportionable vessel" and is not operated by a steamboat company as defined in RCW 84.12.200, shall have their value apportioned to this state based on the number of days or fractions of days that the vessel is within the limits of this state during the calendar year preceding the calendar year in which the vessel is to be listed.

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(3) Days during which any ship or vessel leaves this state only while navigating the high seas in order to travel between points in this state shall be considered as days within this state.

(4) Ships and vessels shall be subject to property taxation in accordance with these rules even though they are not within the state on January 1 of the year in which the vessel is to be listed.

[Statutory Authority: RCW 82.01.060(2). 86-21-003 (Order PT 86-5), § 458-17-120, filed 10/2/86.]

Chapter 458-18 WAC

PROPERTY TAX—ABATEMENTS, CREDITS, DEFERRALS AND REFUNDS

WAC

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WAC 458-18-010 Deferral of special assessments and/or property taxes—Definitions. (1) "Claimant" means a person who either elects or is required under RCW 84.64.030 or 84.64.050 to defer payment of the special assessments and/or real property taxes on his or her residence. If two individuals of a household seek to defer, they must determine between them as to who the claimant shall be.

(2) "Department" means the Washington state department of revenue.

(3) "Equity value" means the amount by which the true and fair value of a residence as shown on the county property tax rolls for the year the deferral is to be made exceeds the total amount of all liens, obligations and encumbrances against the property excluding the deferral liens.

(4) "Special assessment" means the charge or obligation imposed by a city, town, county or other municipal corpora-

tion upon property specially benefited by a local improvement as provided in chapters:

- (a) 35.44 RCW—Local improvements—Assessments and reassessments (cities and towns)
- (b) 36.88 RCW—County road improvement districts (counties)
- (c) 36.94 RCW—Sewer, water and drainage systems (counties)
- (d) 53.08 RCW—Powers (port districts)
- (e) 54.16 RCW—Powers (public utility districts)
- (f) 56.20 RCW—Utility local improvement districts (sewer districts)
- (g) 57.16 RCW—Comprehensive plan—Local improvement districts (water districts)
- (h) 86.09 RCW—Flood control districts—1937 Act (flood control)
- (i) 87.03 RCW—Irrigation districts generally (irrigation) along with any others that may be relevant.

The term does not include the charge or obligation for services specially benefiting property not involving the construction of permanent improvements to real property, e.g., mosquito control, weed control, etc.

(5) "Real property taxes" means ad valorem property taxes levied on a residence in this state. It includes foreclosure costs, interest and penalties accrued to the date the declaration for deferral is filed.

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

(7) "Lien" means any interest in property given to secure payment of a debt or performance of an obligation, and shall include a deed of trust. It shall include the total amount of assessments and/or property taxes deferred and the interest thereon.

[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.
- (d) A list of all members of the claimants household.
- (e) The claimant's equity in his residence including all liens, obligations and encumbrances against the property.
- (f) Information concerning any special assessments to be deferred.
- (g) The names of other parties with an interest in the residence to which the deferral applies.
- (h) Signatures of other parties in interest designating the claimant.
- (i) Signature of any mortgagee, contract purchase holder and/or beneficiary under a deed of trust.
- (j) 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:

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- (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;

(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 subject 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. Such claim shall be:

(i) Verified by the person who paid the tax, his guardian, executor or administrator; and

(ii) Filed within three years after making of the payment sought to be refunded; and

(iii) Stating 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 shall be as contained in WAC 458-18-220. The rate of interest is based upon the date the taxes were paid or the claim for refund is filed, whichever is later.

(4) Except as provided in subsections (5) and (6) of this section, the interest shall accrue from the time the taxes were paid or the claim for refund was filed, whichever is later, 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:
- Paid more than once; or
 - The amount paid exceeds the amount due on the property as shown on the tax roll.

[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 458-18-220 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 or the claim for refund is filed, whichever is later. The rate thus determined shall be applied to the amount of the judgment or the amount of the refund, until paid:

Year tax paid (chapter 84.68 RCW); Year tax paid or claim filed (whichever is later)

(chapter 84.69 RCW)

	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%	

[Statutory Authority: RCW 84.08.010 and 84.69.100. 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,

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(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.

[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

458-19-550 State levy—Apportionment between counties.

WAC 458-19-550 State levy—Apportionment between counties. (1) The department of revenue is empowered by statute to formulate such rules and processes as will ensure the equalization of taxation and uniformity of administration of the property tax laws of this state. The department is further directed to apportion the amount of the state property tax levy among the counties in proportion to the equalized value of taxable property in each county in order that each county shall pay its due and just proportion of the state tax. The application of the 106 percent limit to the state levy necessitates reasonable measures by the department to achieve the statutory requirement of just apportionment. This rule provides for adjustment in the apportionment of the next following year state levy when changes in property values are effected, in the manner described below, after the certification of the state levy by

the department for the previous year. This rule also provides for adjustment for errors as defined herein which are not otherwise correctable in a timely and orderly manner in the year of levy through the exercise or enforcement of the department's supervisory powers. This rule shall be applied in the manner provided below to preserve an equitable and uniform apportionment of the state levy and to ensure the collection of the proper portion of the state levy from within each county.

(2) 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) that rate which, when applied to the valuation figures specified in (3) below, will produce a total amount equal to one hundred and six percent of the base amount, i.e., of the highest state tax levy of the most recent three annual state levies, plus an amount calculated by multiplying the value of a new construction, improvements to real property, and increases in the value of centrally assessed property as determined by the department of revenue, by the levy rate of the state tax applicable in the year prior to the current year for which the tax levy is being computed.

(3) When determining the amount of the state levy with reference to the calculations under (b) above, the dollar amount apportioned to each county shall be computed based upon those valuation figures made available to the department by each county by October 1 of the levy year. If the use of certification of the counties' assessed values for state levy purposes results in an erroneous apportionment among the counties by reason of changes or errors in valuation within a county, the department of revenue shall adjust the following year's levy apportionment to correct for such changes or errors. Such adjustment shall continue in effect until implemented by the appropriate county officials, and the department shall utilize the powers contained in chapter 84.08 RCW to assure such implementation. For purposes of this rule a change in valuation shall include any adjustment effected 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 and other additions to or deletions from the assessment and tax rolls. Errors for purposes of adjustments under this rule shall include errors corrected by a final reviewing body and such other errors which have come to the attention of the department and which would otherwise be a subject for correction in the exercise of its supervisory powers.

(4) Correction required by reason of changes or errors relating to that valuation used in apportioning the current levy shall be made by adjusting the apportionment of the next following year's levy. The department shall recompute the apportionment of the previous year's levy with reference to taxable values corrected for changes and errors and equalized to true and fair value for such previous year's levy. Each county's apportioned amount for the current year's state levy shall be adjusted 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) Nothing in this rule shall relieve a county from its obligation to correct any error immediately upon discovery, including the calculation of an erroneous rate or the levy of an incorrect amount of tax, when such correction may be

timely made to avoid distortion in the true apportionment of the state levy between counties.

[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.	458-20-153	Funeral directors.
458-20-101	Certificates of registration.	458-20-154	Cemeteries, crematories, columbaria.
458-20-102	Resale certificates.	458-20-155	Information and computer services.
458-20-103	Time and place of sale.	458-20-156	Abstract, title insurance and escrow businesses.
458-20-104	Exemptions—Volume of business.	458-20-157	Producers of poultry and hatching eggs.
458-20-105	Employees distinguished from persons engaging in business.	458-20-158	Florists and nurserymen.
458-20-106	Casual or isolated sales—Business reorganizations.	458-20-159	Consignees, bailees, factors, agents and auctioneers.
458-20-107	Selling price—Advertised prices including sales tax.	458-20-160	Agricultural commission agents.
458-20-108	Returned goods, allowances, cash discounts.	458-20-161	Persons buying or producing wheat, oats, dry peas, corn, barley, dry beans, lentils and triticale and making sales thereof.
458-20-109	Finance charges, carrying charges, interest, penalties.	458-20-162	Stockbrokers and security houses.
458-20-110	Freight and delivery charges.	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.
458-20-111	Advances and reimbursements.	458-20-164	Insurance agents, brokers and solicitors.
458-20-112	Value of products.	458-20-165	Laundries, dry cleaners, laundry agents, self service laundries and dry cleaners.
458-20-113	Ingredients or components, chemicals used in processing new articles for sale.	458-20-166	Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc.
458-20-114	Nonbusiness income—Bona fide initiation fees, dues, contributions, tuition fees and endowment funds.	458-20-167	Educational institutions, school districts, student organizations, private schools.
458-20-115	Sales of packing materials and containers.	458-20-168	Hospitals, medical care facilities, and adult family homes.
458-20-116	Labels, name plates, tags, premiums and advertising matter.	458-20-169	Religious, charitable, benevolent, nonprofit service organizations, and sheltered workshops.
458-20-117	Sales of Dunnage.	458-20-170	Constructing and repairing of new or existing buildings or other structures upon real property.
458-20-118	Sale or rental of real estate, license to use real estate.	458-20-17001	Government contracting—Construction, installations, or improvements to government real property.
458-20-119	Sales of meals.	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.
458-20-120	Sales of ice.	458-20-172	Clearing land, moving earth, cleaning, fumigating, razing or moving existing buildings, and janitorial services.
458-20-121	Sales of heat.	458-20-173	Installing, cleaning, repairing or otherwise altering or improving personal property of consumers.
458-20-122	Sales of feed, seed, fertilizer and spray materials.	458-20-174	Sales to motor carriers operating in interstate or foreign commerce of motor vehicles, trailers, parts, etc.
458-20-124	Restaurants, soda fountains, cocktail bars, beer parlors, etc.	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.
458-20-125	Miscellaneous sales for farm use.	458-20-176	Commercial deep sea fishing—Commercial passenger fishing—Diesel fuel.
458-20-126	Sales of motor vehicle fuel, special fuels, and nonpollutant fuel.	458-20-177	Sales of motor vehicles, campers, and trailers to non-residents.
458-20-127	Magazines and periodicals.	458-20-178	Use tax.
458-20-128	Real estate brokers and salesmen.	458-20-179	Public utility tax.
458-20-129	Gasoline service stations.	458-20-17901	Public utility tax—Energy conservation and cogeneration deductions.
458-20-130	Sales of real property, standing timber, minerals, natural resources.	458-20-17902	Brokered natural gas—Use tax.
458-20-131	Merchandising games, games of chance and concessionaires.	458-20-180	Motor transportation, urban transportation.
458-20-132	Automobile dealers/demonstrator and executive vehicles.	458-20-181	Vessels, including log patrols, tugs and barges, operating upon waters in the state of Washington.
458-20-133	Frozen food lockers.	458-20-182	Warehouse businesses.
458-20-134	Commercial or industrial use.	458-20-183	Amusement and recreation activities and businesses.
458-20-135	Extracting natural products.	458-20-184	Tax on conveyances repealed.
458-20-136	Manufacturing, processing for hire, fabricating.	458-20-185	Tax on tobacco products.
458-20-137	Articles manufactured and installed.	458-20-186	Tax on cigarettes.
458-20-138	Personal services rendered to others.	458-20-18601	Wholesale and retail cigarette vendor licenses.
458-20-139	Trade shops—Printing plate makers, typesetters, and trade binderies.	458-20-187	Coin operated vending machines, amusement devices and service machines.
458-20-140	Photofinishers and photographers.	458-20-18801	Prescription drugs, prosthetic and orthotic devices, ostomic items, and medically prescribed oxygen.
458-20-141	Duplicating industry and mailing bureaus.	458-20-189	Sales to and by the state of Washington, counties, cities, school districts and other municipal subdivisions.
458-20-142	Photographic equipment and supplies.	458-20-190	Sales to and by the United States, its departments, institutions and instrumentalities—Sales to foreign governments.
458-20-143	Publishers of newspapers, magazines, periodicals.	458-20-191	Federal reservations.
458-20-144	Printing industry.		
458-20-145	Local sales and use tax.		
458-20-146	National and state banks, mutual savings banks, savings and loan associations and other financial institutions.		
458-20-148	Barber and beauty shops.		
458-20-149	Jewelry repair shops.		
458-20-150	Optometrists, ophthalmologists, and oculists.		
458-20-151	Dentists, dental laboratories and physicians.		

458-20-192	Indians—Indian reservations.	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.
458-20-193	Inbound and outbound interstate sales of tangible personal property.		Litter tax.
458-20-193C	Imports and exports—Sales of goods from or to persons in foreign countries.		Food products.
458-20-193D	Transportation, communication, public utility activities, or other services in interstate or foreign commerce.	458-20-243	Telephone business, telephone service.
458-20-19301	Multiple activities tax credits.	458-20-244	Sales to or through a direct seller's representative.
458-20-194	Doing business inside and outside the state.	458-20-245	Trade-ins, selling price, sellers' tax measures.
458-20-195	Taxes, deductibility.	458-20-246	Sales of precious metal bullion and monetized bullion.
458-20-196	Credit losses, bad debts, recoveries.	458-20-247	Artistic or cultural organizations.
458-20-197	When tax liability arises.	458-20-248	Refuse-solid waste collection business—Core deposits and credits, battery core charges, and tires.
458-20-198	Conditional and installment sales, method of reporting.	458-20-249	Sewerage collection business.
458-20-199	Accounting methods.	458-20-250	Hazardous substance tax and petroleum product tax.
458-20-200	Leased departments.	458-20-251	Mobile homes and mobile home park fee.
458-20-201	Interdepartmental charges.	458-20-252	Record keeping.
458-20-202	Pool purchases.	458-20-253	Carbonated beverage and syrup tax.
458-20-203	Corporations, Massachusetts trusts.	458-20-254	Trade shows, conventions and seminars.
458-20-204	Outdoor advertising and advertising display services.	458-20-255	Warranties and maintenance agreements.
458-20-205	Sales of utility services by building companies.	458-20-256	Travel agents and tour operators.
458-20-206	Use tax, fuel oil, oil products, other extracted products.	458-20-257	Small timber harvesters—Business and occupation tax exemption.
458-20-207	Attorneys.	458-20-258	Oil spill response and administration tax.
458-20-208	Accommodation sales.	458-20-259	Appendix—The Buck Act.
458-20-209	Farming operations performed for hire.	458-20-260	
458-20-210	Sales of agricultural products by persons producing the same.	458-20-99999	
458-20-211	Leases or rentals of tangible personal property, bailments.		
458-20-212	Insurance adjusters.		
458-20-213	Oil company bulk station agents.		
458-20-214	Cooperative marketing associations and independent dealers acting as agents of others with respect to the sale of fruit and produce.		
458-20-216	Successors, quitting business.	458-20-123	Public and lending libraries. [Statutory Authority: RCW 82.32.300. 83-07-034 (Order ET 83-17), § 458-20-123, filed 3/15/83; Order ET 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.
458-20-217	Lien for taxes.		
458-20-218	Advertising agencies.	458-20-147	Public stenographers. [Order ET 73-1, § 458-20-147, filed 11/2/73; Order ET 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.
458-20-221	Collection of use tax by retailers and selling agents.		
458-20-222	Veterinarians.	458-20-152	Shoe repairmen and shoe shiners. [Order ET 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 12/11/92. Statutory Authority: RCW 82.32.300. Later promulgation, see WAC 458-20-173.
458-20-223	Persons performing contracts on the basis of time and material, or cost-plus-fixed-fee.		
458-20-224	Service and other business activities.	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 ET 70-3, § 458-20-188 (Rule 188), filed 5/29/70, effective 7/1/70.] Repealed by Order ET 73-1, filed 11/2/73. 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.
458-20-225	Pattern makers.		
458-20-226	Landscape gardeners.	458-20-193A	Sales of goods originating in Washington to persons in other states. [Statutory Authority: RCW 82.32.300. 83-07-033 (Order ET 83-16), § 458-20-193A, filed 3/15/83; Order ET 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.
458-20-227	Subscriber television services.	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 ET 83-16), § 458-20-193B, filed 3/15/83; Order ET 74-1, § 458-20-193B, filed 5/7/74; Order ET 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.
458-20-228	Returns, remittances, penalties, extensions, interest, stay of collection.	458-20-215	Auditing out-of-state business. [Statutory Authority: RCW 82.32.300. 83-08-026 (Order ET 83-1), § 458-20-
458-20-22801	Tax reporting frequency—Forms.		
458-20-22802	Electronic funds transfer.		
458-20-229	Refunds.		
458-20-230	Statutory limitations on assessments.		
458-20-231	Tax on internal distribution.		
458-20-232	Sales of intoxicating liquor.		
458-20-233	Tax liability of medical and hospital service bureaus and associations and similar health care organizations.		
458-20-234	Business tax on flour millers, manufacturers of soybean or sunflower oil.		
458-20-235	Effect of rate changes on prior contracts and sales agreements.		
458-20-236	Baseball clubs and other sport organizations.		
458-20-237	Retail sales tax collection schedules.		
458-20-238	Sales to nonresidents of watercraft requiring Coast Guard registration or documentation.		
458-20-239	Sales to nonresidents of farm machinery or implements.		
458-20-240	Manufactures, tax credits.		
458-20-24001	Sales and use tax deferral—Manufacturing and research/development facilities in distressed areas.		
458-20-24002	Sales and use tax deferral—New manufacturing and research/development facilities.		
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.		

	215, filed 3/30/83; Order ET 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.
458-20-219	Patronage dividends of cooperative associations, not deductible. [Statutory Authority: RCW 82.32.300. 83-08-026 (Order ET 83-1), § 458-20-219, filed 3/30/83; Order ET 70-3, § 458-20-219 (Rule 219), 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.
458-20-220	Painting, paper hanging, and sign painting. [Order ET 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.
458-20-242	Pollution control exemption and/or credits. (Rule 242) [Recodified as WAC 458-20-242A and 458-20-242B.]

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 notified 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 458-20-101 Certificates of registration.

Certificates of registration

(1) Persons required to obtain certificates. Every person who is required by law to collect and account for tax, or who shall engage in any business for which a tax is imposed under the Revenue Act, shall, whether taxable or not, apply for and obtain a certificate of registration from the department of revenue upon the payment of \$15.00. A registration certificate is personal and nontransferable and is valid for as long as the taxpayer continues in business.

(2) Leased departments. Operators of leased departments or concessions are permitted under certain conditions to include their tax liability on the returns of the lessor, or grantor of the concession, instead of filing separate returns; nevertheless such operators must apply for and obtain a certificate of registration.

(3) Original and branch certificates. Whenever a taxpayer transacts business at two or more separate places in the state, a separate certificate of registration shall be required for each place at which business is transacted. An original certificate shall be obtained for the main office or principal place of business from which returns are to be filed and a branch certificate shall be obtained for each other place of business in this state. Where the taxpayer's principal place of business is outside the state, the original certificate will be issued for such place and a branch certificate for each place of business within this state. No

additional fee is required for branch certificates. The term "place of business" means:

(a) Any separate establishment, office, stand, cigarette vending machine or other fixed location; or

(b) 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.

(4) Separate certificate for branch. A taxpayer desiring to make a separate return covering a branch location, or for a specific construction contract, may apply for and receive without charge a separate certificate of registration therefor, in addition to the original certificate. Application may be made on Form 2401, or by letter and should show the number of the taxpayer's original certificate, a description of the particular branch or contract for which the separate certificate is to be issued, and the address to which tax return forms shall be forwarded.

(5) Use tax certificate of registration. Out-of-state vendors must register and collect use tax upon all of their sales in this state if any of the following circumstances prevail:

(a) The vendor regularly engages in the delivery of property into this state other than by common carrier or United States mail; or

(b) The vendor regularly engages in any activity in connection with the leasing or servicing of property located within this state; or

(c) The vendor maintains any place of business in this state, even if such place of business is unrelated to sales made here.

Also, all other out-of-state vendors making sales in any manner who elect to collect the use tax from their retail buyers in this state must first apply for and obtain a use tax certificate of registration. See WAC 458-20-193B and 458-20-221. The necessary forms will be furnished on request.

(6) Temporary certificate of registration. A temporary certificate of registration may be issued to any person who operates a business of a temporary nature, such as operators of Christmas tree stands, Christmas card sales, and operators of fireworks stands. These certificates are issued without charge and may be obtained by making application to any office of the department of revenue. These are not issued to carnivals or to any business which should be issued a regular certificate of registration due to the scope or extent of the business activity.

(7) Display of certificate. The taxpayer is required to display the certificate of registration in a conspicuous place at the business location for which it is issued.

(8) Change in ownership. Whenever there is a change in ownership of a business, the certificate of registration previously issued to the withdrawing owner, or owners, must be surrendered to the department for cancellation. The new owner shall apply for and obtain a new certificate of registration upon the payment of the registration fee.

(9) A "change in ownership" for purposes of registration occurs upon the sale of a business by one individual, firm or corporation to another individual, firm or corporation; upon the dissolution and winding up of a partnership; upon incorporation of a business previously operated as a partnership or sole proprietorship; or upon changing from a corporation to a partnership or sole proprietorship.

(10) For the purposes of this rule the withdrawal of one or more partners or the substitution or addition of one or more partners will not be considered as a "change in ownership" where the partnership continues as a business organization. In such cases the partnership, upon notifying the department in writing of its reorganization, may continue operation under the certificate of registration previously issued.

(11) No "change in ownership" occurs upon the transfer of assets to an assignee for the benefit of creditors or upon the appointment of a receiver or trustee in bankruptcy. Furthermore, no "change in ownership" occurs upon the death of a sole proprietor in those cases 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.

(12) Change in location or name. Whenever the place of business is moved to a new location, or the name under which business is conducted is changed, without change in ownership, the taxpayer must notify the department in writing of such change. New certificates will be issued upon request, and without charge.

(13) Lost certificates. If any certificate of registration is lost, destroyed or defaced as a result of accident or of natural wear and tear, a new certificate will be issued to the taxpayer free of charge upon request.

(14) Revoking and reinstating certificates of registration. The department of revenue may, by order, revoke a certificate of registration 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. Actions to revoke registrations are contested cases which must be conducted by the department pursuant to the provisions of the Administrative Procedure Act and the Uniform Procedural Rules of chapter 458-08 WAC.

(15) 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 certificate has been reinstated. A revoked certificate will not be reinstated until:

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

(b) 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. It is unlawful for any taxpayer to engage in business after its certificate of registration has been revoked.

(16) Closure of taxpayer accounts. Whenever a taxpayer has submitted tax returns for two consecutive years reporting no gross income and tax liability, the department of revenue may, at its discretion, notify the taxpayer in writing that it has closed the taxpayer's account and rescinded its certificate of registration. Within thirty days of receiving the notice of closure of the account any taxpayer may request that the department keep the account active. The taxpayer's request must be in writing and must state the reasons why the account should remain active. The following are acceptable reasons for remaining an active taxpayer account:

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

(b) The taxpayer presently engages in any one of the following businesses or activities: Timber, forestry, commercial fishing, construction, banking, real estate, insurance, financial investment, educational services, museum, art gallery, membership organization, public administration, banking, agricultural credit union, credit union, or mortgage brokers.

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

(17) A taxpayer who responds with a request to remain active within thirty days of the department's notification of closure will have that request reviewed by the department and, if found to be warranted, will have its account immediately reopened. In addition, a taxpayer whose account has been closed by the department of revenue shall, upon written request and under the same guidelines as set forth above, have the account reopened any time within two years from the date of notification without liability for payment of a new registration fee. After review no taxpayer shall have its account closed without first receiving written notification from the department of revenue.

(18) Penalties for noncompliance. The law provides that it shall be unlawful for any person to engage in any taxable business without having obtained a certificate of registration. To do so constitutes a gross misdemeanor. To engage in business after a certificate of registration shall have been revoked by the department constitutes a Class C felony. Also, any tax found to have been due but unreported by any person when that person has knowingly engaged in business in this state without a certificate of registration shall automatically incur a tax evasion penalty of fifty percent of the amount found to have been due.

[Statutory Authority: RCW 82.32.300. 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. Except as hereinafter noted, all sales are deemed to be retail sales unless the seller takes from the buyer a resale certificate signed by and bearing the registration number and address of the buyer, to the effect that the property purchased is:

(1) For resale in the regular course of business without intervening use, or

(2) To be used as an ingredient or component part of a new article of tangible personal property to be produced for sale, or

(3) A chemical to be used in processing an article to be produced for sale. (See WAC 458-20-113.)

When a vendor receives and accepts in good faith from a purchaser a resale certificate as described in this rule, the vendor is relieved of liability for retail sales tax with respect to the transaction. When a vendor has not secured such a resale certificate he is personally liable for the tax due unless he can sustain the burden of proving (1) that the property was sold for one of the three purposes set forth above and (2) that the purchaser was eligible to give a bona fide resale certificate under the provisions of this rule.

Any purchaser who fraudulently signs a resale certificate with intent to avoid payment of tax is guilty of a gross misdemeanor. When any resale certificate is found to have been fraudulently tendered to any seller or given under false or knowingly misleading circumstances, any retail sales tax which should have been paid but for the tendering of the certificate, which is assessed against the buyer, will automatically incur an evasion penalty of fifty percent of the tax found to be due.

No prescribed form of resale certificate is required. Any written statement to the effect that the tangible personal property is purchased for one of the three purposes set forth above signed by and bearing the name, address, and registration number of the buyer is sufficient. Such statement may be written or stamped upon the purchase order or may be upon a separate paper. It should be in substantially the following form:

"I hereby certify that this purchase is for resale without intervening use by me in the regular course of business, or is to be used as an ingredient or component part of a new article of tangible personal property to be produced for sale, or is a chemical to be used in processing an article to be produced for sale. This certificate is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion.

Registration No. Name as Registered
Firm Name Address
Type of Business
Authorized Signature
Title Date"

Blanket resale certificates may be given in advance by known wholesalers, jobbers or retailers. These certificates should be substantially in the following form:

"I hereby certify that all the tangible personal property which I will purchase from will be purchased for resale in the regular course of business without intervening use by me, or for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property of which the property purchased will be an ingredient, or a chemical used in processing the same. This certificate shall be considered a part of each order which I may hereafter give to you, unless otherwise specified, and shall be valid until revoked by me in writing. This certificate is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion.

Registration No. Name as Registered
Firm Name Address
Type of Business
Authorized Signature
Title Date"

Blanket resale certificates remain valid only so long as the registration number shown thereon has not been cancelled or revoked. Therefore, blanket resale certificates must be renewed whenever a change occurs in the ownership of a purchaser's business and a new certificate of registration is required. All blanket resale certificates must be renewed at intervals not to exceed four years. Sellers who have valid

blanket resale certificates on file without the additional language required by the March, 1983 amendment to this rule are not required to obtain revised blanket resale certificates except where a purchaser's registration with the department of revenue has been cancelled or revoked, a change occurs in the ownership of a purchaser's business and a new registration is required, or the blanket resale certificate was completed more than four years prior to the effective date of the amendment.

Exception as to nonresident buyers. In case the purchaser is a nonresident who is not engaged in business in this state, but buys articles here for the purpose of resale in his regular course of business outside this state, the seller should take from such a purchaser a resale certificate substantially in the above form, omitting a registration number, but including a statement to the effect that the articles purchased are for resale by him in his regular course of his business.

Exception as to farmers. The word "farmers" as used in this rule means any persons engaged in the business of growing or producing for sale at wholesale upon their own lands, or upon lands in which they have a present right of possession, any agricultural product whatsoever, including milk, eggs, wool, fur, meat, honey, or other substances obtained from animals, birds, or insects. "Farmers" does not mean persons selling such products at retail, persons using such products as ingredients in a manufacturing process, or persons growing or producing such products for their own consumption. It does not mean any person dealing in livestock as an operator of a stockyard, slaughterhouse, or packing house; nor does it mean any person who is an "extractor" within the meaning of WAC 458-20-135.

Farmers as defined in this rule are not required to register. Sales of feed, seed, fertilizer, and spray materials to farmers are sales at wholesale not subject to the retail sales tax. Farmers who purchase livestock for the purpose of fattening and later reselling the same are making purchases at wholesale not subject to the retail sales tax. Upon sales of any such articles to farmers (including farmers operating in other states), the seller should take from the farmer a resale certificate showing the farmer's name and address and a statement to the effect that his purchase of feed, seed, fertilizer, spray materials is made for the purpose of producing for sale at wholesale an agricultural product, or that his purchase of livestock is made for the purpose of resale. (For sales to farmers of feed, seed, fertilizer and spray materials, see WAC 458-20-122.)

Purchases for dual purpose. It may happen that a buyer normally is engaged in both consuming and reselling certain types of articles of tangible personal property and is not able to determine at the time of purchase whether the particular property acquired will be consumed or resold. In such cases, the buyer should purchase according to the general nature of his business; that is, if principally he consumes the articles in question, he should not give a resale certificate for any portion thereof, but if, on the other hand, he principally resells such articles, he may sign a resale certificate for the whole amount of his purchases.

If the buyer gives a resale certificate for all purchases and thereafter consumes some of the articles purchased, he must set up in his books of account the value thereof and remit to the department of revenue the deferred sales tax

payable thereon. Such tax should be reported on Form 2406 under use tax.

On the other hand, if the buyer has not given a resale certificate but has paid tax on all purchases of such articles and subsequently resells at retail a portion thereof, he must, nevertheless, collect the tax from the purchaser and report such sales in making his tax returns. However, in such case, the buyer may take a deduction on his return representing his cost of the property thus resold on which sales tax was paid.

Such deduction shall be designated as "resale purchases on which tax was paid" and listed under sales tax deductions on the back of the tax return form. Claim for deduction will be allowed only if the taxpayer keeps and preserves records in support thereof which 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 tax which was paid. (See WAC 458-20-174, 458-20-175 and 458-20-176 for exemption certificates concerning certain sales made to persons engaged in interstate or foreign commerce or in deep sea fishing operations.)

[Statutory Authority: RCW 82.32.300. 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 merchandising 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 Exemptions—Volume of business.
Business and Occupation Tax

Persons subject to the business and occupation tax are exempt from the payment of this tax for any reporting period in which the taxable amount reported under the combined total of all business and occupation 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	\$1,000 per month
Quarterly reporting basis	\$3,000 per quarter
Annual reporting basis	\$12,000 per annum

When the taxable amount for a reporting period equals or exceeds the minimum taxable amount, tax must be paid on the full taxable amount and no deduction or offset is allowed for the amount of the minimum. The deduction for minimum taxable amounts is applicable to taxable amounts for the entire reporting period, regardless of the fact that the business may not have been operated during the entire period.

Retail Sales Tax

No exemption from tax is allowed under the retail sales tax to any person engaged in the business of making taxable retail sales by reason of the volume of such sales.

Public Utility Tax

Persons subject to the public utility tax are exempt from the payment of this tax for any reporting period in which the taxable amount 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	\$1,500 per quarter
Annual reporting basis	\$6,000 per annum

(See subhead business and occupation tax, above, for limitations which apply equally to public utility tax.)

[Statutory Authority: RCW 82.32.300, 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 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 Freight and delivery charges. (1) **Introduction.** This rule explains that freight and delivery costs charged to the buyer are generally part of the selling price. Chapter 82.04 RCW in defining "gross proceeds of sales" and "gross income of the business" states that delivery costs may not be deducted from the measure of the B&O

tax. Sellers who are making deliveries from an out-of-state location to customers in Washington should refer to WAC 458-20-193 to determine if they have sufficient nexus to require the payment of the B&O tax or collection of retail sales or use tax on the "gross proceeds of sales."

(2) Amounts received by a seller from a purchaser for freight and delivery costs incurred by the seller prior to completion of sale constitute recovery of costs of doing business and must be included in the selling price or gross proceeds of sales reported by the seller regardless of whether charges for such costs are billed separately or whether the seller is also the carrier. The sale is complete when the purchaser or the purchaser's agent has received the goods.

(a) "Purchaser's agent" means a person authorized to receive goods for the purchaser with the power to inspect and accept or reject them.

(b) "Received" or "receipt" means the purchaser or its agent first either taking physical possession of the goods or having dominion and control over them.

(c) It is presumed that the person who is shown as the consignor (or other designation of the person from whom the goods are sent) on the bill of lading has control over the goods while the goods are in the hands of the carrier. It also will be presumed that the sale is not complete at the time of delivery to the carrier if the seller has personal liability to pay or has paid the carrier.

(3) Freight and delivery costs incurred by a lessor, regardless of whether billed separately to a lessee or not, are costs of doing business to the lessor in every case and must be included in the selling price or gross proceeds of sales reported by the lessor.

(4) Delivery costs incurred after the buyer has taken receipt of the goods are not part of the selling price when the seller is not liable to pay or has not paid the carrier. It must be clearly shown that the buyer alone is responsible to pay the carrier for the delivery costs to be excluded from the taxable value of the selling price. See WAC 458-20-112 for the deduction of out-of-state freight and delivery charges from "value of products." Also see WAC 458-20-111 for a further discussion of "advances and reimbursements."

(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 of the facts and circumstances.

(a) XYZ Corporation in Seattle orders a repair part for its machine from ABC Distributors located in Spokane. XYZ Corporation requests that the part be shipped by next day air and agrees to pay the additional shipping costs. The seller bills the buyer the exact amount of shipping costs. ABC Distributors is subject to the business and occupation tax and also is required to collect and report the retail sales tax on the amounts billed as shipping charges. The seller was liable to pay the air carrier and the buyer had not taken receipt at the time the part was given to the carrier.

(b) Jane Doe orders a life vest from Marine Sales in Seattle and she requests that the vest be shipped by United States mail to her home in Bellingham. The seller places the correct postage on the package using a postage meter and charges the buyer the exact amount of postage. The reimbursement of the postage is taxable to the seller. The seller

had liability for payment of the postage to the postal service and was required to effect delivery to the buyer.

(c) L&M Machinery of Spokane ordered a large piece of equipment from ACE Equipment in Renton. L&M specified that the equipment was to be shipped by prepaid freight and free on board (FOB) the seller's dock. L&M requested that the seller use M&T Trucking as the carrier. The transportation charge billed to the buyer is taxable to the seller. The FOB point or other shipping terms are not controlling. The seller was required to deliver the equipment to the buyer. Delivery was not completed until the equipment arrived in Spokane.

(d) ABC Construction in Seattle ordered replacement parts for a saw from XYZ Parts, Inc., an unregistered business located in Chicago. ABC Construction requested that the parts be shipped freight collect from Chicago and that ABC be shown as the shipper/consignor and also as the consignee on the bill of lading. The seller had no liability to pay the carrier. ABC Construction is subject to use tax on the purchase price of the parts. ABC Construction may exclude the cost of the transportation from the value on which use tax is due.

(e) Jones Computer Supply, a distributor located in Seattle, sells computer products primarily by mail order. It is the practice of Jones Computer Supply to make a three-dollar handling charge for each order. No separate charge is made for the transportation. The handling charge is part of the measure of the selling price of the product and fully subject to the wholesaling or retailing and retail sales tax.

[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.

(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 458-20-114 Nonbusiness income—Bona fide initiation fees, dues, contributions, tuition fees and endowment funds. RCW 82.04.4282 provides for a business and occupation tax deduction for amounts derived from activities and charges of essentially a nonbusiness nature. Thus, outright gifts, donations, contributions, endowments, tuition, and initiation fees and dues which do not entitle the payor to receive any significant goods or

services in return for the payment are not subject to business and occupation tax. 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 rule, which consist of mixture of tax deductible amounts (bona fide initiation fees and dues) and taxable amounts (payment for significant goods and services rendered). For purposes of distinguishing between these kinds of income, the law requires that tax exemption provisions must 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 legal requirements is that all persons must keep adequate records sufficient to establish their entitlement to any claimed tax exemption or deduction.

Contributions, Donations, and Endowments.

Only amounts which are received as outright gifts are entitled to deduction. Any amounts, however designated, which are received in return for any goods, services, or business benefits are subject to business and occupation tax under the appropriate classification depending upon the nature of the goods, services, or benefits provided. Thus, for example, so-called "grants" which are received in return for the preparation of studies, white papers, reports, and the like do not constitute deductible contributions, donations, or endowments. RCW 82.04.4297 and WAC 458-20-169 provide for a specific deduction for compensation from public entities for health or social welfare services.

Bona Fide Initiation Fees and Dues.

The law does not contemplate that the deduction 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 tangible 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 . . ." (RCW 82.04.4282). Thus, it is only those initiation fees and dues which are paid for the express privilege of belonging as a member of a club, organization, or society, which are deductible.

Also, the statute does not distinguish 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, joint venture, sole proprietorship, or cooperative group. They may be of a charitable, fraternal, social, political, benevolent, commercial, or other nature. However, none of these characteristics determines the entitlement to tax deduction. The availability of the deduction is determined solely by the nature of the activity or charge which generates the "amounts derived" as defined in this rule.

The deduction is limited to business and occupation tax. There is no provision under the law for any deduction from

retail sales tax or use tax of amounts designated as initiation fees or dues. Consequently, any club or organization that collects dues or initiation fees from members who in turn receive tangible personal property or retail services as defined in RCW 82.04.050, or licenses to use real property as defined in RCW 82.04.050, must collect and report retail sales tax on the value of such goods or services sold. (See WAC 458-20-183, Places of amusement or recreation, and WAC 458-20-166, Hotels, motels, boarding houses, resorts, summer camps, trailer camps, etc., for additional guidance relative to retail sales and retail services.)

Definitions:

The words and terms utilized in RCW 82.04.4282 are not given a statutory definition in the Revenue Act. Under the general rules of statutory construction, those words and terms are to be given their ordinary and common meaning. Hence, for purposes of RCW 82.04.4282 and this rule the following definitions will apply:

"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.

"Bona fide" shall have its common dictionary meaning, i.e., in good faith, authentic, genuine.

"Initiation fees" are those initial amounts which are paid solely to 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.

"Dues" are those amounts paid solely for the privilege or right of retaining membership in a club or similar organization. "Bona fide dues" within the context of this rule shall include only those amounts periodically paid by members which genuinely entitle 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.

"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 important meaning or the quality of being important.

"Goods or services rendered" shall include those amusement and recreation activities as defined in RCW 82.04.050, WAC 458-20-166, and 458-20-183. 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.

"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 "dues" to be deductible. The reasonableness of any additional charge will be based on one

of the following two criteria: (1) It must cover all costs reasonably related to furnishing the goods or services, or (2) it must compare with charges made for similar goods or services by other commercial businesses.

"Value of such goods or services" shall mean the market value of similar goods or services or computed value based on costs of production.

Methods of Reporting:

Persons who receive any "amounts derived" from initiation 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 alternative methods, based upon:

1. A standard deduction of 20 percent of gross income (This method is available for use only by not-for-profit organizations); or,
2. Actual records of facilities usage; or,
3. Cost of production of facilities and benefits.

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 alternative apportionment methods are mutually exclusive. Thus, if a qualifying organization elects to use the standard deduction, neither of the other methods may be used. Organizations which cannot qualify to take the standard deduction, or which elect not to do so, may apportion their income based upon such actual records of facilities usage as are maintained. This method is accomplished by:

- a) The allocation of a reasonable charge for the specific goods or services rendered: *Provided*, That in no case shall any allocation of any separate charge for any goods or services be deemed "reasonable" if the aggregate of such charges is insufficient to cover the costs of providing such goods or services; or,
- b) The average comparable charges for such goods or services made by other commercial businesses.

Actual Records of Facilities Usage Method.

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. The following are some examples of this reporting method for several different kinds of facilities.

Facility	Period	Source	Value Base	Usage	Value	Taxable Income
Golf	3 mos	Reservations	Mkt Comparison	5,000 rounds x	\$7.50 per Round	\$37,500
Camping	6 mos	Vacancy Study	Mkt Comparison	4,500 stays x	\$12.50 per Stay	\$56,250
Racquetball	9 mos	Reservations	Charge to Nonmember	1,250 hours x	\$4.00 per Hour	\$5,000
Swimming	12 mos	Member Survey	Actual Charges	3,650 uses x	\$1.00 per Use	\$3,650
Tennis	1 mo	Graduated Fee Structure	Graduated Fee Structure	200 playing members x	\$50.00 per Member	\$10,000

*Figures and dollar amounts shown are hypothetical.

Organizations which provide more than one kind of "goods or services" as defined in this rule, 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.

Cost of production method.

This alternative apportionment method is available only for persons who do not take the standard deduction and when, it is impossible or unfeasible to maintain actual usage records. Under such circumstances apportionment of income may be done 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.

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, e.g., the salary of a swimming pool lifeguard or a golf club's greenskeeper.

Indirect overhead costs include a pro rata share of total operating costs, including executive and employee salaries as well as a pro rata share of administrative expense and the cost of depreciable capital assets.

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.).

The cost of production method is performed by multiplying gross income (all "amounts derived") by a fraction, the numerator of which is the cost of providing any specific goods or service, and the denominator of which is the organization's total operating costs. The formula looks like this:

Direct and Indirect Costs of Specific Goods or Services

x Gross Income

Total Business Costs

The result is the portion of "amounts derived" which is allocable to the taxable facility (goods or services rendered.) The balance of gross amounts derived is deductible as bona fide initiation fees or dues. If more than one kind of facility (goods or services) is made available to members, this formula must be applied for each 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.

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 additional factors shown to be unique to certain kinds of organizations.

Unless income accounting and reporting are accomplished by one or a combination of methods outlined in this rule, 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.

Tax Classifications.

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 golf as well as sauna bath facilities 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 apportioned between taxable and deductible amounts, the parts of taxable income attributable to either retailing activities or service activities must be reported on the 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. (See WAC 458-20-183, 458-20-166, and RCW 82.04.050 for further guidance in distinguishing between retailing and service activities for excise tax purposes.)

Nonprofit Youth Organizations.

Nonprofit youth organizations which, as such, are exempt from property tax under RCW 84.36.030 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.)

Tuition Fees.

The term "tuition fees" refers to fees charged by educational institutions, and, in addition to instruction fees, includes library, laboratory, health and other 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 or faculty of such institutions.

"Educational institutions" which may deduct "tuition fees" are those which have been created or generally accredited as such by the state or defined as a degree granting institution under RCW 28B.05.030(1) *and accredited by an accrediting association recognized by the United States Secretary of Education, and which offer to students an educational program of a general academic nature and those 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, but not including specialty schools, business colleges, other trade schools or similar institutions. **"Degree granting institution" shall mean an educational institution, which offers educational credentials, instruction, or services prerequisite to or indicative of an academic or professional degree or certificate beyond the secondary level.

A business college, dancing school, music school or specialty school is not an "educational institution" within the meaning of that term as defined above. Tuition fees collected by such institutions are taxable under the service and other business activities classification of the business and occupation tax.

The right to deduct bona fide initiation fees, dues, contributions, donations, tuition fees and endowment funds does not exempt any person, association or society from tax liability upon selling tangible personal property or upon providing facilities or services for which a special charge is made to members or others. However, agencies or institutions of the state of Washington, such as the University of Washington and community colleges are exempt from payment of the business and occupation tax.

Revised March 27, 1984.

[Statutory Authority: RCW 82.32.300, 86-02-039 (Order ET 85-8), § 458-20-114, filed 12/31/85; 84-08-012 (Order 84-1), § 458-20-114, filed 3/27/84; Order ET 70-3, § 458-20-114 (Rule 114), filed 5/29/70, effective 7/1/70.]

WAC 458-20-115 Sales of packing materials and containers. (1) 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.

(2) 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.

(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 subject 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.

(c) Title to containers 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 and subject to retailing tax.

(d) 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.

(3) Retail sales tax.

(a) All sales taxable under the retailing classification of the business and occupation tax as indicated in subsection (2) of this section 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 his 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 (3) and (4).

(4) Use tax. The use tax applies to uses of packing materials and containers to which retail sales tax would apply as indicated in subsection (3) of this section but, for some reason, was not paid at the time such materials and containers were acquired.

[Title 458 WAC—p 82]

Effective July 1, 1974.

[Statutory Authority: RCW 82.32.300. 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 Labels, name plates, tags, premiums and advertising matter. Sales of labels and name plates to persons who attach the same to containers enclosing articles sold by them are sales for consumption when such persons retain title to the containers which are to be returned to the seller for re-use, and the retail sales tax applies to such sales.

Sales of labels and name plates, and sales of price tags and shipping tags to persons who attach same to articles or containers sold by them or enclose them with articles therein sold by them, are sales for resale and the retail sales tax does not apply thereto.

Sales of labels, name plates, or price tags to persons who retain them for inventory, statistical, or other business purposes are sales for consumption and the retail sales tax applies to such sales.

The retail sales tax does not apply to sales of so-called premiums to persons who pass title thereto 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 purchases of similar articles.

Sales of so-called 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, such as the soliciting of subscriptions, or are given upon the returning of coupons or other evidence of prior purchases of similar articles, are sales for consumption, and the retail sales tax applies thereto.

The retail sales tax does not apply to sales of advertising matter sold to persons who enclose the same with articles sold by them, when such advertising matter relates primarily to such articles with which they are enclosed. (For use tax liability on the use of advertising materials, see WAC 458-20-178.)

[Statutory Authority: RCW 82.32.300. 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 of dunnage. The word "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 such things as wood blocks, stakes, separating strips, timber, double decks, false floors, door shields, bulkheads, and other bracing.

Sales to persons of any material to be used by them as dunnage are retail sales, and the retail sales tax applies thereto. (See WAC 458-20-175 concerning sales to certain interstate and foreign carriers.)

Issued May 1, 1943.

[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.

Business and Occupation Tax

All persons making sales of meals, upon which the retail sales tax applies under the provisions set forth in this ruling, are required to pay the business and occupation tax under the retailing classification upon the gross proceeds derived from such sales.

Retail Sales Tax

Restaurants and other eating places. Sales of meals by hotels, restaurants, cafeterias, clubs, boarding houses and other eating places are subject to the retail sales tax. Sales to such eating places of food and beverage products for use in preparing meals are sales for resale and are not subject to the tax.

In the case of boarding houses and American plan hotels the price of meals must be segregated from the charges made for rooms on bills rendered guests and on the books of the taxpayer. (See WAC 458-20-124—Restaurants, etc.)

Railroad, pullman car, steamship, airplane, or other transportation company diners. Sales of meals by railroad, Pullman car, steamship, airplane, or other transportation companies served at fixed locations in this state, or served upon the carrier itself while within this state, are subject to the retail sales tax.

Where no specific charge is made for meals separate and apart from the transportation charge, the entire amount so charged is deemed a charge for transportation and the retail sales tax is not applicable to any portion thereof. In such case the transportation company will be liable to its vendors for retail sales tax upon the purchase of the food supplies or meals.

Hospitals and institutions. The serving of meals by hospitals, rest homes, sanitariums and similar institutions to patients as a part of the service rendered in the conduct of such institutions is not subject to the retail sales tax. In cases where compensation of nurses or attendants employed by hospitals includes the furnishing of meals in addition to the stated cash wage, the same rule applies. Sales of food and beverage products to such institutions for use in preparing such meals are sales for consumption and are subject to the tax.

However, many hospitals have cafeterias or restaurants through which meals are sold for cash or credit to doctors, visitors, nurses and other employees, and certain hospitals have agreements whereby nurses employed are paid a fixed cash wage in full payment for services rendered, which does not include the charge made for meals. Under those

circumstances, all sales of meals to such persons are subject to the retail sales tax.

Since it is impracticable for hospitals, at the time of purchasing food products, to determine the portion that will be used in furnishing the services rendered by them, hospitals may, in lieu of accurate accounting, determine sales tax liability, upon sales of meals served to other than patients, in the following manner:

(1) Retail sales tax should be paid to hospitals' vendors upon all purchases of food products, irrespective of the amount thereof to be served to patients.

(2) Retail sales tax should be collected upon all sales of meals made to doctors and visitors and to nurses and all other employees whose compensation does not include the furnishing of meals.

(3) In computing sales tax liability, hospitals may take a deduction of 50% from the gross sales, in lieu of refund of sales tax paid by them to their vendors upon the original purchase of food used in preparing meals for sale to doctors and visitors and to nurses and others whose compensation does not include the furnishing of meals.

Fraternities and sororities. Fraternities, sororities and other groups of individuals who reside in one place and jointly share the expenses of the household including expense of meals are not considered to be making sales when meals are furnished to members. Sales of food and beverage products to such groups to be used in preparing meals are sales for consumption and are subject to the retail sales tax.

However, when such groups do not provide their own meals, but the meals are provided by caterers or concessionaires, the caterers or concessionaires are making retail sales subject to the tax. Sales to such caterers or concessionaires of food and beverage products for use in preparing meals are sales for resale and are not subject to the tax.

Meals furnished to employees. Sales of meals by logging companies, mills, contractors, transportation companies and other business and industrial concerns to employees are sales at retail and subject to the retail sales tax. 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. Where no specific charge is made for each meal, the measure of the tax will be average cost per meal served to each employee, based upon the actual cost of the food. In view of the fact that it is often impracticable to collect the retail sales tax from employees on such sales, persons engaged in the business of furnishing meals to the public may, in lieu of collecting such tax from employees, pay the tax directly to the department of revenue. Where meals furnished are not recorded as sales the tax due on meals shall be presumed to apply according to the following formula for determining meal count: (a) Those employees working shifts up to five hours, one meal; (b) employees working shifts of more than five hours, two meals.

Persons engaged in the business of furnishing meals to the public, generally pay their employees a fixed cash wage and, in addition thereto, furnish one or more meals per day to such employees, as compensation for their services. The furnishing of such meals constitutes a retail sale, irrespective of whether or not a specific charge is made therefor. Where

a specific charge is made, the retail sales tax must be collected and accounted for on the selling price.

School, college, or university dining rooms. Public schools, high schools, colleges, universities or private schools operating lunch rooms, cafeterias or dining rooms for the exclusive purpose of providing students and faculty with meals are not considered to be engaged in the business of making retail sales.

Where any such cafeteria, lunch or dining room caters to the public the school, college or university operating it is considered to be making retail sales and the retail sales tax must be collected from all persons to whom the meals are furnished.

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) and WAC 458-20-107 (Advertised prices including sales tax—Warranties, maintenance agreements, service contracts). Effective on April 15, 1985 the former special provisions of this rule applicable to restaurants, taverns, concessionaires, and sellers of alcoholic beverages, which sell at prices including sales tax were superseded by the provisions of WAC 458-20-107.

Class h license locations. When an operator elects to sell drinks at a price which, after addition of sales tax is rounded off to an even amount, this pricing method for drinks must be used in all areas of the location. This means that the price posting requirements must be met wherever drinks are sold so that the customer can identify readily the items billed inclusive of tax and those billed exclusive of tax. Therefore, drink totals which include tax and food totals which do not include tax must be shown separately so that all dinner checks involving both food and liquor charges shall be presented to the customer with amounts due shown in the following order: Food, sales tax on food, liquor, total. Persons who elect to post prices to show amounts of tax included but who fail to comply with these requirements are subject to business and occupation tax and retail sales tax measured by the gross bar and cocktail lounge receipts.

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 business and occupation tax and the retail sales tax.

Effective May 1, 1982.

[Statutory Authority: RCW 82.32.300. 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. Persons engaging in the business of operating a plant for the production, extraction, or storage of heat for distribution, for hire or sale, whether such heat is produced by a biomass system, cogeneration, geothermal sources, fossil fuels, or otherwise, are subject to the provisions of the business and occupation tax and are taxable under the service and other business activities classification.

[Statutory Authority: RCW 82.32.300. 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 458-20-122 Sales of feed, seed, fertilizer and spray materials. (1) Definitions. As used in this ruling:

(a) The word "feed" means a substance used as food for animals, birds, fish, or insects, and includes 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, cod liver oil, double purpose limestone grit, oyster shell and other similar substances used to sustain or improve livestock or poultry. The word does not include substances which do not contribute directly to a resulting agricultural product, such as peat moss or litter, nor does it include hormones or products which are used as medicines rather than as food.

(b) The word "seed" means propagative portions of plants, commonly used for seeding or planting whether true seeds, bulbs, plants, seedlike fruits, seedlings or tubers.

(c) The word "fertilizer" means a substance which increases the productivity of the soil by adding plant foods or nutrients which improve and stimulate plant growth.

(d) The term "spray materials" means materials in liquid, powder or gaseous form used by agricultural producers as described in RCW 82.04.330 for the purpose of controlling or destroying insects, parasites, vermin, animals, fungi, weeds, pests or plants of a similar nature, deleterious to the growth or conservation of horticultural plants, animals,

or products derived therefrom. It includes pesticides as defined in RCW 15.58.030(1). It does not include mechanical devices for the elimination of pests nor does it include materials used for spraying forest trees by commercial timber producers.

(e) The word "farmers" as used in this rule means any persons engaged in the business of growing or producing for sale at wholesale upon their own lands, or upon lands in which they have a present right of possession, any agricultural product whatsoever, including milk, eggs, wool, fur, meat, honey, or other substances obtained from animals, birds, or insects. "Farmers" does not mean persons selling such products at retail, persons using such products as ingredients in a manufacturing process, or persons growing or producing such products for their own consumption. It does not mean any person dealing in livestock as an operator of a stockyard, slaughter house, or packing house; nor does it mean any person who is an "extractor" within the meaning of WAC 458-20-135.

(2) Business and occupation tax. Persons engaged in the business of selling feed, seed, fertilizer or spray materials are taxable under either the retailing or wholesaling classification on gross proceeds of sales. Sales of feed, seed, fertilizer, and spray materials to farmers as defined herein are taxable under the wholesaling-other classification: *Provided*, That wholesale sales of certain unprocessed grain and legumes may be taxable at a lower rate under the wholesaling wheat, oats, corn, barley, dry peas, dry beans, lentils, triticale classification (see WAC 458-20-161), even though the sale of such unprocessed grains or legumes is to a farmer for use as feed. Sales of feed, seed, fertilizer, and spray materials to consumers other than farmers are taxable under the retailing classification. Sales of feed for use in the cultivating or raising for sale of fish are taxable under the retailing classification.

(3) Persons engaged in the business of spraying crops for hire are taxable under the service and other business activities classification on the gross income therefrom.

(4) Retail sales tax. The retail sales tax applies to sales of feed, seed, fertilizer, and spray materials to consumers other than "farmers" as defined herein, except as explained below.

(5) The tax applies upon sales of spray materials to persons who spray agricultural crops and other real property for hire, unless purchased for resale to others for a charge separate and apart from charges for the actual spreading of the spray materials.

(6) The sales tax also applies to sales of feed to riding clubs, race track operators, or for feeding pets, work animals, or for raising poultry, eggs, or other products for personal consumption. Also, the tax applies to sales of seed, fertilizer, and spray materials to persons for use on lawns, gardens, or any other personal use other than resale or the commercial production of agricultural products.

(7) Exemptions. The sales tax does not apply to sales of feed, seed, fertilizer, and spray materials to farmers, as defined herein (RCW 82.04.050).

(8) The tax does not apply to sales of feed to persons for use in cultivating or raising fish for sale, entirely within confined rearing areas on the persons own land or on land in which the person has a present right of possession (RCW 82.08.0294).

(9) The tax does not apply to sales of feed for feeding livestock at public livestock markets (RCW 82.08.0296).

(10) The burden of proving that a sale of any of said articles was not a sale at retail is upon the seller, and all sales will be deemed retail sales unless the seller shall take from the purchaser, whether a registered dealer or a farmer, a resale certificate in accordance with WAC 458-20-102.

(11) Use tax. The use tax does not apply upon the use of feed, seed, fertilizer, and spray materials in this state under such circumstances that the sale of such things is exempt of sales tax as explained earlier herein. In all other cases the use tax applies upon the first use by a consumer of such things if retail sales tax has not been paid upon their acquisition.

[Statutory Authority: RCW 82.32.300. 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.]

WAC 458-20-124 Restaurants, soda fountains, cocktail bars, beer parlors, etc. As used herein, the term "restaurants, soda fountains, cocktail bars, beer parlors, etc.," means every place where prepared foods and beverages are sold and served to individuals, generally for consumption on the premises where sold.

The retail sales tax applies upon all sales of foods and beverages made to consumers by persons operating restaurants, soda fountains, cocktail bars, beer parlors, etc.

Sales of alcoholic beverages by class H licensees, taverns, and concessionaires. Businesses authorized under license or permit issued by the Washington state liquor control board to sell liquor, beer, and wine by the drink under conditions of business such as to render impracticable the separate collection of the retail sales tax may, upon compliance with the following requirements and conditions, include the retail sales tax in the selling price of the item sold: (1) The establishment must display a chart, in type large enough to be read by customers, posted in a conspicuous place, which separately lists each item by name, the selling price, sales tax, and total charge, and (2) the chart must be posted at a location where the customer can easily read the chart without being required to enter employee work areas or without special request that the chart be furnished to him. This procedure is permissible only for sale of alcoholic beverages and not to sales of meals or other menu items. A list of prices which merely shows number combinations which add up to even nickel or dime amounts does not meet the foregoing requirements. An operator who elects to report sales tax in the manner herein provided but fails to follow the foregoing requirements shall be subject to business and occupation tax and retail sales tax upon gross receipts.

Class H license locations. When an operator elects pursuant to the foregoing, to sell drinks at a price which, after addition of sales tax is rounded off to an even amount, this pricing method must be used in all areas of the location. This means that the price posting requirements must be met wherever drinks are sold so that the customer can identify readily the items billed inclusive of tax and those billed exclusive of tax. Therefore, drink totals and food totals must be shown separately so that all dinner checks involving both food and liquor charges shall be presented to the customer

with amounts due shown in the following order: Food, sales tax on food, liquor, total. Persons who elect to post prices to show amounts of tax included but who fail to comply with these requirements are subject to business and occupation tax and retail sales tax measured by the gross bar and cocktail lounge receipts.

The retail sales tax also applies upon all sales of dishes, kitchen utensils, linens, furniture and fixtures, and the like, made by supply houses to such operators.

The retail sales tax does not apply upon sales of foodstuffs and beverages made by supply houses to persons operating restaurants, soda fountains, cocktail bars, beer parlors, etc. Likewise, that tax does not apply upon sales to said persons 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. (See WAC 458-20-119—Sales of meals.)

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 business and occupation tax and the retail sales tax.

[Statutory Authority: RCW 82.32.300. 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 458-20-125 Miscellaneous sales for farm use. Sales of tangible personal property to persons engaging in farming are wholesale sales and not subject to the retail sales tax when such property is purchased for resale or to become an ingredient of products produced for sale or when such property consists of, or will become parts of a container to be resold with such products. Thus, sales of grain sacks which are resold with grain produced, sack twine used in binding such sacks, wire for binding bales of hay and alfalfa which are sold, box shooks, fruit and vegetable wrappers and the like are wholesale sales. (See WAC 458-20-209 for applicability of retail sales tax to sales of these commodities to persons performing farming services for hire.)

Sales of tangible personal property to persons engaging in farming are retail sales and subject to the retail sales tax when such property is not resold, does not become an ingredient of products produced for sale, and does not consist of containers, or component parts thereof, to be resold with such products, except as provided in WAC 458-20-122. Thus the retail sales tax must be collected upon sales to such persons of machinery, tools, binder twine, pea twine, hop wire, cleaning materials, peat moss, litter of all kinds and the ingredients thereof, even though the litter after use is resold to a person engaged in commercial production for use as fertilizer.

The retail sales tax is not applicable to sales of pollen, sales of purebred livestock for breeding purposes where the animals are registered in a nationally recognized breeding association, to sales of beef and dairy cattle used on a farm, to sales of poultry for use in the production for sale of

poultry or poultry products, nor to sales of semen for use in the artificial insemination of livestock.

As evidence of entitlement to sales tax exemption upon sale of purebred animals sold for breeding purposes, the seller is required to take from the purchaser a written and signed certificate substantially in the following form:

I, , certify that my purchase from of , a purebred , which is registered with the breeding association, is being purchased by me for breeding purposes.

Date	Signature
.....	
Address	
.....	
City, State, Zip Code	

[Statutory Authority: RCW 82.32.300. 83-07-034 (Order ET 83-17), § 458-20-125, filed 3/15/83; Order ET 70-3, § 458-20-125 (Rule 125), filed 5/29/70, effective 7/1/70.]

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 nonpollutant 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.

cals 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.

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 458-20-130 Sales of real property, standing timber, minerals, natural resources. (1) Business and occupation tax-retail sales tax.

(a) Amounts derived from the sale of real estate are not subject to tax under the business and occupation tax or the retail sales tax. However, no exemption is allowed where a mere license to use real estate is granted (see WAC 458-20-118). Further, no exemption is allowed for commissions received in connection with sales of real estate nor for interest received by persons engaged in the business of selling real estate on time or installments contracts. RCW 82.04.390.

(b) Sales of standing timber, minerals in place, and other natural resources in place are sales of real estate, and are not subject to tax under the business and occupation tax or the retail sales tax.

(c) Timber, minerals, and other natural resources, after being severed from the real estate, lose their identity as real property, and sales thereof after severance are subject to the provisions of the business and occupation tax and the retail sales tax.

(d) Any person who cuts timber, or who mines or quarries minerals, or who takes other natural resources is

subject to tax as an extractor under the business and occupation tax. (See WAC 458-20-135.)

(2) Real estate excise tax.

(a) Sales of real property for a valuable consideration are subject to the real estate excise tax. See chapter 82.45 RCW and chapter 458-61 WAC.

(b) Effective May 18, 1987, the conveyance tax was repealed and the real estate excise tax was increased proportionately.

[Statutory Authority: RCW 82.32.300. 87-19-007 (Order ET 87-5), § 458-20-130, filed 9/8/87; 83-07-034 (Order ET 83-17), § 458-20-130, filed 3/15/83; Order ET 70-3, § 458-20-130 (Rule 130), filed 5/29/70, effective 7/1/70.]

WAC 458-20-131 Merchandising games, games of chance and concessionaires.

Business and Occupation Tax-Retail Sales Tax

Merchandising games for stimulating trade. Persons conducting dice games and other games of chance which determine the amount the customer will pay for merchandise that he desires to purchase are taxable as follows: Under the retailing classification with respect to the retail selling price of all merchandise sold to or won by customers, and under the service and other business activities classification upon the "increases" arising from the conduct of such games. As used herein the word "increases" means the winnings, gains or accumulations accruing daily over and above the retail selling price of all merchandise sold or won in any one day through such games. This method of reporting tax liability will be allowed only in those cases where the operator of the games, by proper accounting methods, accurately segregates the receipts accruing from such games. Where no such segregation is made, such persons are taxable under the retailing classification with respect to the entire gross receipts from such games.

Punchboards which offer prizes of merchandise are considered as merchandising games, with the prizes being sold for the gross proceeds from the boards, and the gross income from such boards should therefore be reported under the retailing classification. When such punchboards are consigned to a location under an arrangement for a split of the gross income between the owner of the boards and the person operating the location, the owner of the boards shall be responsible for reporting gross receipts therefrom under the retailing classification. Where the owner of the boards has not paid the tax due, however, the department of revenue may proceed directly against the operator of the location for payment of the tax due.

Games of chance other than merchandising games. Persons conducting dice games, card games, bingo or keno games, "pools," or similar games of chance wherein players participate in such games with the opportunity of winning a certain sum of money, scrip or trade checks or a pool which accumulates, are taxable under the service and other business activities classification upon all "increases" arising from the conduct of such games. The word "increases" as used herein means the winnings, gains, or accumulations accruing from any one game over and above the amount put into the game by the operator; and, where redeemable scrip, trade checks, or hickies are issued to winning players, the word "increases" means the excess of the operator's cash income from the

game over the amount of redeemable scrip, trade checks, or hickies issued.

It is essential to the classification of such revenues as income from service and other business activities that they be segregated properly from income derived from merchandising games. When the income from games of chance and amusement is not segregated properly from income from merchandising games, the income derived from both types of games will be taxable as income derived from sales at retail.

Punchboards which offer cash prizes are games of chance rather than merchandising games, and the "increases" (as defined above) therefrom should be reported under the service and other business activities classification. When such punchboards are consigned to a location under an arrangement for a split of the gross increases between the owner of the boards and the person operating the location, the owner of the boards shall be responsible for reporting gross increases therefrom under the service and other business activities classification. Where the owner of the boards has not paid the tax due, however, the department may proceed directly against the operator of the location for payment of the tax due.

Each type of game is considered as a separate, taxable transaction. Thus, losses on one type of game may not be deducted from winnings on another type of game.

Betting. "Increases" from bets on events of public interest, such as sporting events, election results, etc., are taxable under the service and other business activities classification, and should be reported as income of the taxing period in which the winner is determined.

Concessionaires. Persons conducting games of chance at fairs, carnivals, expositions, bazaars, picnics and other similar places in which merchandise is delivered to players in the form of prizes and awards under certain conditions are taxable under the service and other business activities classification upon the gross income received from the operation of such games. The predominant characteristics of the business in such cases is chance and amusement, and the transfers of merchandise in the form of prizes and awards is relatively small and does not constitute sales of such merchandise.

Raffles. Persons regularly conducting raffles are subject to the business and occupation tax under the classification service and other activities on gross income from the sale of chances.

Redemption of scrip or trade checks. When scrip or trade checks are redeemed in exchange for merchandise or for services which are defined by the law as retail sales, the value of the scrip, etc., so redeemed should be reported as income under the retailing classification. When scrip or trade checks are redeemed in exchange for services which are not defined by law as retail sales, e.g., haircuts, manicures, etc., the value of the scrip, etc., so redeemed should be reported as income under the service and other business activities classification.

Miscellaneous. Revenues of card rooms, etc., from all activities other than those which are reportable under the retailing classification, must be reported under the service and other business activities classification. Such revenues include income from the furnishing of playing facilities to card players, etc.

Retail Sales Tax

Persons making retail sales of tangible personal property through merchandising games are liable for the payment of the retail sales tax upon the full retail selling price of the merchandise sold to or won by the customer and whether the tax was actually collected from the customer or not. The retail sales tax does not apply to income from games of chance or amusement which are not merchandising games if that income is properly segregated upon the taxpayer's books and records from the income from merchandise sales or merchandising games. Where the income is not so segregated, it is subject to the retail sales tax.

Merchandising games for stimulating trade. Persons conducting dice games and other games of chance which determine the amount that the customer will pay for merchandise that he desires to purchase should collect the retail sales tax from the customer, measured by the amount that the customer actually pays for the merchandise as a result of the outcome of the game.

Punchboards which offer prizes of merchandise are considered as merchandising games, with the prizes being sold for the gross proceeds from the boards, and the retail sales tax is therefore payable on those gross proceeds. For practical reasons, the retail sales tax may be absorbed by the operator, at his option, but the latter will be liable nevertheless to the department of revenue for the full tax on the gross income from each punchboard. When such punchboards are consigned to a location under an arrangement for a split of the gross income between the owner of the boards and the person operating the location, the owner of the boards shall be responsible for collecting and reporting to the department the retail sales tax measured by the gross receipts from such boards. Where the owner of the boards has not paid the tax due, however, the department may proceed directly against the operator of the location for the full amount of sales tax measured by the gross receipts from such boards.

When scrip or trade checks are given, the sales tax should be collected when the scrip or trade checks are exchanged for merchandise or for services that are defined by the law as retail sales.

For example:

(a) **Merchandising games.** Dice are rolled for a 15¢ cigar. In the event that the player wins, a cigar is given to the player free of charge; in the event that the house wins, the player receives a cigar but pays 30¢.

When the player wins, no tax is payable. When the player loses and pays 30¢ for a single cigar, the retail sales tax applies to the latter amount.

(b) **Punchboards.** The price of each punch is 25¢. The operator may collect the sales tax on each punch, or at his option, may absorb the tax, but he will be required in either event to remit to the department the retail sales tax measured by the gross income from each board.

Sales to persons who conduct merchandising games of the merchandise delivered to persons, such as confections, tobacco, jewelry, radios, etc., are sales for resale, and, accordingly, the retail sales tax should not be collected thereon by the seller. When merchandise punchboards are sold outright to an operator, together with merchandise that will be offered as prizes, such sales are considered sales for

resale of the boards and of the merchandise by the dealer to the operator. The sale of the board is considered incidental to the sale of the merchandise. When merchandise punchboards are sold outright without the merchandise that will be offered as prizes, such sales are sales at retail and are taxable as such. When money punchboards are sold outright, such sales are sales at retail and are taxable as such.

(c) **Card games.** Persons conducting card games in card rooms, cigar stores, etc., wherein the players participating receive scrip or trade checks which entitle them to the value thereof in merchandise or services shall collect the retail sales tax when such scrip, trade checks, or hickies are exchanged for merchandise or for services defined by the law as retail sales.

Concessionaires at fairs, carnivals, etc. Persons conducting games of chance at fairs, carnivals, expositions, bazaars, picnics, or other similar places and delivering merchandise to players in the form of prizes and awards under certain conditions are not making sales of tangible personal property at retail upon which they are required to collect the retail sales tax. The predominant characteristic of the business in such cases is chance and amusement, and the transfers of merchandise in the form of prizes and awards are relatively small and do not constitute sales of such merchandise. Sales to such persons of the merchandise delivered to the players in the form of prizes and awards are sales at retail upon which the retail sales tax must be collected by the seller. Sales to such persons of devices and other equipment used in the conduct of such games are also retail sales upon which the tax must be collected by the seller.

Raffles. Persons conducting raffles are not deemed to be making retail sales of the merchandise given away. Retail sales tax or use tax must be paid by the operator upon the acquisition of such property. Until the tax has been paid by one party, however, the department may hold both the operator and the winner liable for the tax.

[Statutory Authority: RCW 82.32.300. 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 circumstances, 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 90 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.

The retail sales tax does not apply upon the charges made for the rental of frozen food lockers.

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[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.]

WAC 458-20-135 Extracting natural products. The word "'extractor'" means 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, or fells, cuts or takes timber, Christmas trees or other natural products, or takes fish, or takes, cultivates, or raises shellfish, or other sea or inland water foods or products. 'Extractor' does not include persons performing under contract the necessary labor or mechanical services for others or persons cultivating or raising fish entirely within confined rearing areas on the person's own land or on land in which the person has a present right of possession." (RCW 82.04.100.)

The following examples are illustrative of operations which are included within the extractive activity:

(1) Logging operations, including the bucking, yarding, and loading of timber or logs after felling, as well as the actual cutting or severance of trees. It includes other activities necessary and incidental to logging, such as logging road construction, slash burning, slashing, scarification, stream cleaning, miscellaneous cleaning, and trail work, where such activities are performed pursuant to a timber harvest operation: *Provided*, That persons performing such activities must identify in their business records the timber harvest operation of which their work is a part.

(2) Mining and quarrying operations, including the activities incidental to the preparation of the products for market, such as screening, sorting, washing, crushing, etc.

(3) Fishing operations, including the taking of any fish, or the taking, cultivating, or raising of shellfish, or other sea or inland water foods or products (whether on publicly or privately owned beds, and whether planted and cultivated or not) for sale or commercial use. It includes the removal of the meat from the shell, and the cleaning and icing of fish or sea products by the person catching or taking them. It does not include cultivating or raising fish entirely within confined rearing areas under RCW 82.04.100.

Business and Occupation Tax

Extracting-local sales. Persons who extract products in this state and sell the same at retail in this state are subject to the business and occupation tax under the classification retailing and those who sell such products at wholesale in this state are taxable under the classification wholesaling-all others. Persons taxable under the classification retailing and wholesaling-all others are not taxable under the classification extracting with respect to the extracting of products so sold within this state.

Extracting-interstate or foreign sales. Persons who extract products in this state and sell the same in interstate or foreign commerce are taxable under the classification extracting upon the value of the products so sold, and are not taxable under retailing or wholesaling-all others in respect to such sales. (See also WAC 458-20-193.)

Extracting-for commercial use. Persons who extract products in this state and use the same as raw materials or ingredients of articles which they manufacture for sale are not taxable under extracting. (For tax liability of such persons on the sale of manufactured products see WAC 458-20-136, manufacturing, processing for hire, fabricating.)

Persons who extract products in this state for any other commercial or industrial use are taxable under extracting on the value of products extracted and so used. (See WAC 458-20-134 for definition of commercial or industrial use.)

Extracting for others. Persons performing under contract, either as prime or subcontractors, the necessary labor or mechanical services for others who are engaged in the business as extractors, are taxable under the extracting for hire classification of the business and occupation tax upon their gross income from such service. If the contract includes the hauling of the products extracted over public roads, such persons are also taxable under the motor transportation classification of the public utility tax upon that portion of their gross income properly attributable to such hauling. However, the hauling for hire of logs or other forest products exclusively upon private roads is taxable under the service classification of the business and occupa-

tion tax upon the gross income received from such hauling. (See WAC 458-20-180.)

Forest Excise Tax

In addition to all other taxes, a person engaged in business as a harvester of timber is subject to the forest excise tax levied by chapter 84.33 RCW. The word "harvester" means every person who from the persons 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. It does not include persons performing under contract the necessary labor or mechanical services for a harvester.

See chapter 458-40 WAC for detailed provisions, procedures, and other definitions.

Retail Sales Tax

The retail sales tax applies upon all sales of extracted products made at retail by the extractor thereof, except as provided by WAC 458-20-244, Food products.

Use Tax

Persons constructing logging roads pursuant to timber harvest operations are subject to use tax on all materials used in such construction, except for materials on which sales tax was paid at the time of purchase.

[Statutory Authority: RCW 82.32.300. 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 458-20-136 Manufacturing, processing for hire, fabricating. (1) Definitions. "The term '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 article of tangible personal property is produced for sale or commercial or industrial use, and shall include the production or fabrication of special made or custom made articles." (RCW 82.04.120.) It means the business of producing articles for sale, or for commercial or industrial use from raw materials or prepared materials by giving these matters new forms, qualities, properties, or combinations. It includes such activities as making, fabricating, processing, refining, mixing, slaughtering, packing, curing, aging, canning, etc. It includes also the preparing, packaging and freezing of fresh fruits, vegetables, fish, meats and other food products, the making of custom made suits, dresses, coats, awnings, blinds, boats, curtains, draperies, rugs, and tanks, and other articles constructed or made to order, and the curing of animal hides and food products.

(2) The word "manufacturer" means every person who, from the person's own materials or ingredients manufactures for sale, or for commercial or industrial use any articles, substance or commodity either directly, or by contracting with others for the necessary labor or mechanical services.

(3) However, a nonresident of the state of Washington who owns materials processed for hire in this state is not deemed to be a manufacturer because of such processing.

Further, 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.

(4) The term "to manufacture" does not include conditioning of seed for use in planting or activities which consist of cutting, grading, or ice glazing of seafood which has been cooked, frozen, or canned outside this state; the mere cleaning and freezing of whole fish; or the repairing and reconditioning of tangible personal property for others.

(5) The term "processing for hire" means the performance of labor and mechanical services upon materials 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 that person's own materials.

(6) Persons who both manufacture and sell those products in this state must report their gross receipts under both the manufacturing and retailing or wholesaling classifications. A credit may then be taken against the selling tax in the amount of the manufacturing tax reported. (See also WAC 458-20-19301.)

(7) Manufacturing—interstate or foreign sales. Persons who manufacture products in this state and sell the same in interstate or foreign commerce are taxable under the classification manufacturing upon the value of the products so sold, and are not taxable under retailing or wholesaling—all others in respect to such sales. (See also WAC 458-20-193A.) A credit may be applicable if a gross receipts tax is paid on the selling activity to another state. (See also WAC 458-20-19301.)

(8) Business and occupation tax—hops. The business and occupation tax shall not apply to amounts received by hop growers or dealers for hops which are shipped outside the state of Washington for first use, if those hops have been processed into extract, pellets, or powder in this state. Amounts charged by a processor or warehouse for processing or warehousing, however, are not exempt.

(9) Manufacturing—special classifications. The law provides several special classifications and rates for activities which constitute "manufacturing" as defined in this rule. These include manufacturing wheat into flour, barley into pearl barley, soybeans into soybean oil, or sunflower seeds into sunflower oil (RCW 82.04.260(2)); splitting or processing dried peas (RCW 82.04.260(3)); manufacturing seafood products which remain in a raw, raw frozen, or raw salted state (RCW 82.04.260(4)); manufacturing by canning, preserving, freezing or dehydrating fresh fruits and vegetables (RCW 82.04.260(5)); and manufacturing nuclear fuel assemblies (RCW 82.04.260(9)). In all such cases the principles set forth in subsections (6) and (7) of this section concerning multiple tax classifications and credit provisions are also applicable.

(10) The special classification and rate for slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale (RCW 82.04.260(7)) combines manufacturing and nonmanufacturing activities into a single taxable business activity. For persons who break, slaughter, and/or process meat products for others, the statutory classification and rate are applicable to the value of products

so processed and delivered to customers within this state and to interstate or foreign customers. The mere wholesale selling of perishable meat products not manufactured by the vendor is subject to the statutory classification and rate only upon gross receipts from sales within this state. Interstate or foreign sales are deductible from gross proceeds of sales. (See WAC 458-20-193A.)

(11) Manufacturing for commercial use. Persons who manufacture products in this state for their own commercial or industrial use are taxable under the classification manufacturing on the value of the products so manufactured and used. (See WAC 458-20-134 for definition of commercial or industrial use.)

(12) Processing for hire. Persons processing for hire for consumers or for persons other than consumers are taxable under the processing for hire classification upon the total charge made therefor.

(13) Materials furnished in part by customer. In some instances, the persons furnishing the labor and mechanical services undertakes to produce a new article, substance, or commodity from materials or ingredients furnished in part by them and in part by the customer. In such instances, tax liability is as follows:

(a) The persons furnishing the labor and mechanical services will be presumed to be the manufacturer if the value of the materials or ingredients furnished by them is equal to or exceeds 20% of the total value of all materials or ingredients which become a part of the finished product.

(b) If the person furnishing the labor and mechanical services furnishes materials constituting less than 20% of the value of all of the materials which become a part of the finished product, such person will be presumed to be processing for hire. The person for whom the work is performed is the manufacturer in that situation, and will be taxable as such.

(c) In cases where the person furnishing the labor and mechanical services supplies, sells, or furnishes to the customer, before processing, 20% or more in value of the materials from which the finished product is made, the person furnishing the labor and mechanical services will be deemed to be the owner of the materials and taxable as a manufacturer.

(14) Retail sales tax. Persons taxable as engaging in the business of manufacturing and selling at retail any of the products manufactured and persons manufacturing, fabricating, or processing for hire tangible personal property for consumers shall collect the retail sales tax upon the total charge made to their customers.

(15) Sales to processors for hire and to manufacturers of articles of tangible personal property which do not become an ingredient or component part of a new article produced, or are not chemicals used in processing the same, are retail sales, and the retail sales tax must be collected thereon. (However, see WAC 458-20-113 and 458-20-134 for certain express exemptions.)

(16) Use tax. Manufacturers are taxable under the use tax upon the use of articles manufactured by them for their own use in this state. (See WAC 458-20-113 and 458-20-134 for certain express exemptions.)

(17) See WAC 458-20-244 for sales and use tax on food products.

[Statutory Authority: RCW 82.32.300. 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 458-20-137 Articles manufactured and installed. Persons engaged in the business of manufacturing in this state boilers, cabinets and mill work, cement blocks and pipes, conduits, heating equipment, lighting fixtures, sheet metal articles, venetian blinds, window drapes and shades, or other articles, and who also sell and install such articles after manufacture, are taxable as follows:

Business and Occupation Tax

Taxable under the retailing classification in respect to the total charge for selling and installing when for consumers.

Taxable under the wholesaling classification in respect to the total charge for selling and installing when for persons other than consumers.

Persons who manufacture articles in this state and install the same for customers in other states are taxable under the manufacturing classification on the value (at the place of manufacture) of the article so installed.

Persons who manufacture articles outside this state and install the same for consumers in this state are taxable under the retailing classification upon the total charge made therefor, irrespective of whether or not a segregation is made between the charge for the article manufactured and the charge for installing the same.

Retail Sales Tax

The retail sales tax applies upon both the sale and installation of such articles when made to or for consumers.

It is immaterial whether such articles remain personal property after installation or whether the same become a part of real property. In either event, the retail sales tax applies.

[Statutory Authority: RCW 82.32.300. 83-07-034 (Order ET 83-17), § 458-20-137, filed 3/15/83; Order ET 70-3, § 458-20-137 (Rule 137), filed 5/29/70, effective 7/1/70.]

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.

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. 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 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 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.]

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.

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.

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 roto-tiller. 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 complicated 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 458-20-148 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 458-20-149 Jewelry repair shops.**Business and Occupation**

Jewelry repair shops are subject to the business and occupation tax, as follows:

Retailing. Taxable under the retailing classification upon the gross proceeds of sales from cleaning and repair services for consumers and from the sale of watches, clocks, etc.

Retail Sales Tax

Jewelry repair shops repairing, cleaning, etc., watches, clocks and jewelry are required to collect the retail sales tax from the customers for such services. Sales by supply houses to jewelry repair shops of supplies such as springs, crystals, jewel staffs, gold, silver, solder, etc., which become a part of a repaired article are sales for resale upon which the retail sales tax does not apply. Sales by supply houses to jewelry repair shops of machinery and other equipment for use by them, are retail sales and the retail sales tax must be collected thereon.

Revised January 1, 1960.

[Order ET 70-3, § 458-20-149 (Rule 149), filed 5/29/70, effective 7/1/70.]

WAC 458-20-150 Optometrists, ophthalmologists, and oculists.**Business and Occupation Tax**

Retailing. Taxable under the retailing classification upon gross proceeds of sales of eye glasses, regular or contact lenses, frames, springs, bows, etc., and upon charges made for repair or replacement thereof. In case a lump sum or single charge is made to a customer or patient for an examination or refraction and the furnishing of glasses, the total charge so made must be included within the gross proceeds of sales.

Service and other business activities. Taxable under the service and other business activities classification upon the gross income from charges made for examinations and refractions and upon fees for fitting or adjustment of glasses or contact lenses when such charges are accounted for and billed separate and apart from the selling price of eye glasses or lenses furnished to the patient.

Retail Sales Tax

Eye examinations, refractions, and the fitting or adjustment of prescription lenses are professional services, the charges for which are not subject to the retail sales tax if billed to a customer or patient separately from the selling price of the glasses.

A deduction is allowed from gross retail sales for sales to patients of prescription lenses by a dispensing optician licensed by chapter 18.34 RCW where such sales are separately stated on invoices and separately accounted for. (See WAC 458-20-188.)

Where examinations, refractions, or fitting or adjustment of prescription lenses are sold together with frames, springs, bows, and similar articles, and single lump sum charge is made therefor, the seller will be liable for retail sales tax on the total charge. However, where separate charges are made on invoices rendered patients for examinations, refractions,

or for the fitting or adjustment prescription lenses and each such charge is separately accounted for, the retail sales tax will apply only upon the remaining price charged for the frame, spring, bow, etc.

Sales by optical supply houses to optometrists, ophthalmologists and oculists of eye glasses, lenses, frames, springs, bows and other articles which are resold to customers or patients are sales for resale and not subject to the retail sales tax. On the other hand, sales by supply houses of machinery or equipment, and supplies which are incidental to the rendering of a professional service, are taxable retail sales.

[Statutory Authority: RCW 82.32.300. 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, dental laboratories and physicians. (1) **Business and occupation tax.** Dentists, dental laboratories, and physicians are subject to the business and occupation tax as follows:

(a) **Service and other business activities.** These persons are taxable under the service and other business activities classification on the gross income from charges for performing professional services.

(i) This includes any separate charge to the patient for drugs, medicines, and other substances used by a dentist, or physician, or administered to a patient as part of the dental or medical services to the patient.

(ii) Dental laboratories provide professional services. The product which results from those services is merely evidence of those services. Dental laboratories are taxable under the service and other business activities classification on income from providing their services.

(b) **Retailing.** A physician or a medical clinic may occasionally make sales of drugs as a convenience to a customer with the sale not being part of the medical services to the patient. These sales are taxable under the retailing classification. The retailing classification applies only when the physician or medical staff do not administer the drug or other medicine to the patient. Adequate records must be kept by the business to distinguish drugs which are administered as part of a medical service from those which are sold outright.

(2) **Retail sales tax.** Dentists, dental laboratories, and physicians primarily perform professional services and are not required to collect the retail sales tax from clients and others paying for such services.

(a) Sales by supply houses to such persons of materials, supplies, and equipment which are used incidentally in performing professional services are retail sales and the retail sales tax must be collected. Such sales include, among others, sales of dental chairs, instruments, x-ray machines, office equipment, stationery; and sales of supplies, such as dressings, bandages, nonprescription drugs and similar articles. Certain specific items may be purchased without the payment of retail sales tax as discussed below.

(b) Dentists and dental laboratories are required to pay retail sales tax to their suppliers for purchases of orthotic devices or components of such devices which they use or prescribe to their patients as part of the services provided to the patient. Orthotic devices may be purchased exempt of retail sales tax only when prescribed by physicians, osteo-

paths, or chiropractors for an individual. For example, dentists specializing in the prevention and correction of irregularities in the position of the teeth are required to pay retail sales tax to their suppliers for braces, collars, wires, screws, bands, splints, night guards, etc. See RCW 82.08.0283.

(c) Orthotic devices which are prescribed by physicians, osteopaths, and chiropractors for an individual are not subject to retail sales tax. 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 elastic stockings, arch pads, belts, supports, bandages, and the like, whether prescribed or not.

(d) The sales tax does not apply to sales of ostomic items, insulin, medically prescribed oxygen, and prosthetic devices. Prosthetic devices are artificial substitutes which 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. These materials include plastic, wood, hinges, screws, denture acrylic, porcelain, gold, silver, including any alloys of gold or silver. The following is a list of prosthetic devices or components of prosthetic devices that may be purchased or sold by dentists and/or dental laboratories without retail sales tax applying:

- (i) Alloy and mercury - used together to form an amalgam to fill existing teeth;
- (ii) Casting alloy;
- (iii) Cement - to cement crowns or teeth to bridges or dentures;
- (iv) Cavity liner;
- (v) Composites - filling material used in the place of alloy;
- (vi) Filling material;
- (vii) Temporary crowns;
- (viii) Acrylics - dentures, crown, and bridge replacement of teeth;
- (ix) Reline material - to reline dentures;
- (x) Pins - used for retention;
- (xi) Endo post - used in restoring teeth without any surface on tooth to support restoration;

(e) The retail sales tax does not apply to sales of prescription drugs to dentists, physicians, or other medical practitioners when sold for the diagnosis, cure, mitigation, treatment, or prevention of disease or other ailment in humans. See WAC 458-20-18801.

(3) **Use tax.** Use tax is due when retail sales tax has not been paid on the purchases of supplies and equipment used by a dentist, dental laboratory, or physician in the providing of professional services. This includes orthotic devices used or prescribed by dentists, or dental laboratories when retail sales tax was not paid to the supplier. Refer to subsection (2) of this section (Retail sales tax) for a further discussion of taxable items.

(a) The use tax does not apply to the purchase or use of ostomic items, insulin, medically prescribed oxygen, prosthetic devices or ingredients/components of prostheses.

(b) The use tax also does not apply to purchases of prescription drugs when purchased for the diagnosis, cure, mitigation, treatment, or prevention of disease or other ailment in humans. See WAC 458-20-18801.

[Statutory Authority: RCW 82.32.300. 91-15-023, § 458-20-151, filed 7/11/91, effective 8/11/91; 83-07-032 (Order ET 83-15), § 458-20-151, filed 3/15/83; Order 74-2, § 458-20-151, filed 6/24/74; Order ET 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.

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-designed programs; performs user-designed 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 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 measured 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 458-20-157 Producers of poultry and hatching eggs. (1) Business and occupation tax. Persons engaged in the production and sale of hatching eggs or poultry for use in the production for sale of poultry or poultry products are not subject to the business and occupation tax upon the gross proceeds from such sales (RCW 82.04.410). Persons engaged in the production and sale for resale of hatching eggs or poultry are also exempt from the business and occupation tax in respect to such sales (RCW 82.04.330). The business and occupation tax is applicable to all sales of poultry or poultry products by persons other than the producer thereof.

(2) Retail sales tax. The retail sales tax is not applicable to sales of poultry for use in the production for sale of poultry or poultry products (RCW 82.08.030(16)).

(3) Sales of equipment and feed. Sales of incubators, brooders, and other equipment or supplies to hatcheries or producers of poultry or poultry products are sales for use or consumption upon which the retail sales tax must be collected by the seller. Sales of poultry feed for use by the purchaser in producing poultry and poultry products are not subject to the retail sales tax. (See also WAC 458-20-122.)

(4) Also, the retail sales tax does not apply to sales of feed for feeding poultry at a public livestock market.

(5) Use tax. The use tax applies to all tangible personal property used as consumers by persons engaged in the production and sale of hatching eggs or poultry under conditions where retail sales tax has not been paid thereon, except poultry feed used by such poultry producers or used to feed poultry at public livestock markets.

Effective July 1, 1978.

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

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.

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 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 458-20-161 Persons buying or producing wheat, oats, dry peas, corn, barley, dry beans, lentils and triticale and making sales thereof.

Business and Occupation Tax

Retailing. Taxable under the retailing classification upon the gross proceeds from all retail sales of such products.

Wholesaling. Persons buying manufactured or processed wheat, oats, dry peas, dry beans, lentils, triticale, corn and barley, and selling the same at wholesale, are taxable under the wholesaling classification upon their gross proceeds of sales. The tax imposed under this classification does not apply to persons producing wheat, oats, dry peas, corn, barley, dry beans, lentils and triticale and selling the same at wholesale.

Wheat, oats, dry peas, corn, barley, dry beans, lentils and triticale. Persons buying wheat, oats, dry peas, dry beans, lentils, triticale, corn and barley, and selling the same at wholesale as such and not as a manufactured or processed product thereof, are taxable under the wheat, oats, corn, barley, dry peas, dry beans, lentils, and triticale classification upon their gross proceeds of sales.

[Statutory Authority: RCW 82.32.300. 83-07-033 (Order ET 83-16), § 458-20-161, filed 3/15/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-161, filed 6/27/78; Order ET 70-3, § 458-20-161 (Rule 161), 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 occupation 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 Laundries, dry cleaners, laundry agents, self service laundries and dry cleaners.

Laundries, Dry Cleaners, Laundry Agents, Self Service Laundries and Dry Cleaners

The term "laundry or dry cleaning business" applies to (1) the business of operating a plant or establishment for laundering, cleaning, dyeing, pressing and incidentally repairing such articles as clothing, linens, bedding, towels, curtains, drapes, rugs, etc.; (2) so-called "launderettes," "washettes," "cleanettes" or similar self service businesses wherein laundry or dry cleaning facilities are provided for hire; it includes the operation of both coin and noncoin operated equipment, and (3) one who, under his own name, operates a place of business or pickup and delivery system for the collection and distribution of such articles, holding himself out to the public as performing such services, even though such person owns no plant and contracts with another for a part or all of the services rendered. This does not apply, however, to a person holding himself out as an agent for a particular laundry or dry cleaning plant.

The term "laundry agent" applies to any person who, under his own name, operates a place of business or pickup and delivery system for the collection and distribution of articles to be laundered, cleaned, dyed or pressed, holding himself out as agent for some particular establishment and acting as an independent contractor rather than as an employee.

The term "laundry or linen supply service" means the business of contracting to provide customers with a supply

of clean linen, uniforms, towels, etc., whether ownership of such property is in the person operating the laundry or linen supply service or in the customer. Such services may include the providing of cabinets and other toilet equipment, paper towels, soap and similar consumable supplies.

Business and Occupation Tax

Retailing. Persons operating laundry or dry cleaning businesses, including self service or coin operated laundry or dry cleaning businesses, but not including coin operated laundry facilities when such facilities are situated in an apartment house, hotel, motel, rooming house or trailer camp for the exclusive use of the tenants, are taxable under the retailing classification upon the gross proceeds of sales which are subject to the retail sales tax as hereinafter provided, without any deduction on account of commissions allowed or amounts paid to another for the performance of all or part of the laundry or dry cleaning service rendered.

Persons operating self service or coin operated laundries or dry cleaning businesses are taxable under the retailing classification upon the gross proceeds of sales of starch, soap, blueing or any other article sold to customers.

Laundries in Washington which provide linen supply services are making retail sales in this state even though their customers may be located outside this state. Gross income from such services is subject to tax because the charge is for laundering which takes place in this state, rather than being a true rental of property (uniforms, linen, etc.) to nonresidents.

Wholesaling. Tax is due under the wholesaling classification upon the gross proceeds of sales derived from laundry or dry cleaning services rendered for other laundry and dry cleaning establishments.

Service and other activities. Persons operating coin operated laundry facilities which are situated in an apartment house, hotel, motel, rooming house or trailer camp for the exclusive use of the tenants are taxable under service and other activities on the gross income from such facilities. Laundry agents are taxable under this classification upon the gross commissions received by them. Nonprofit associations composed exclusively of nonprofit hospitals are taxable under the service and other activities classification upon laundry services to such members.

Retail Sales Tax

Laundry and dry cleaning businesses (including so-called "launderettes," "washettes," "cleanettes" and self service or coin operated laundries or dry cleaners), laundry agents and persons operating laundry or linen supply services are required to collect the retail sales tax upon the total charge made to the customer for laundry and dry cleaning service or laundry supply service rendered by them. The tax is not applicable to gross receipts from coin operated laundry facilities when such facilities are situated in an apartment house, hotel, motel, rooming house or trailer camp for the exclusive use of the tenants.

Laundries, dry cleaning businesses and laundry agents who pay agency commissions or maintain commission drivers must account for the retail sales tax upon such operations as follows:

(1) Where agency commissions are allowed hotels, apartments, etc., on laundry or dry cleaning done for their

guests, the retail sales tax must be collected by the laundry or dry cleaner upon the full retail charge to the final consumer.

(2) Commission drivers operating in the name of the laundry or cleaning establishment must collect the retail sales tax on the total charge made to the customer, remitting the same on each settlement to the plant, which in turn is responsible for the payment of the tax to the state.

Sales by supply houses to laundries, dry cleaners and persons operating laundry or linen supply services of soaps, cleaning solvents and other articles or substances which are used in rendering a laundry, laundry supply or cleaning service are retail sales and are subject to the retail sales tax. Sales to such persons of dyes, starches and similar articles or substances, the primary purpose of which is to become ingredients of the articles cleaned, are sales at wholesale and are not subject to the retail sales tax. Similarly, sales to persons operating laundry or linen supply services of linen, uniforms, towels, cabinets, hand soap and similar property rented or supplied to customers as a part of the service rendered are wholesale sales. Sales by supply houses to laundries, dry cleaners and operators of laundry or linen supply services of equipment and supplies such as machinery, hand tools, spotting brushes, stationery, etc., are retail sales and the retail sales tax must be collected thereon.

Generally, sales by supply houses to persons operating self service or coin operated laundries, of soaps or other articles which are furnished by such persons to their customers, the charge for which is included within the charge for use of facilities, are wholesale sales, and supply houses need not collect the retail sales tax thereon upon receipt of a resale certificate from the customer. However, sales of such supplies to persons operating coin operated laundry facilities which are situated in an apartment house, hotel, motel, rooming house or trailer camp for the exclusive use of the tenants are retail sales upon which the retail sales tax must be collected. Sales to all operators of laundry or dry cleaning establishments of equipment such as washing machines, ironers, furniture, etc., are retail sales subject to the sales tax.

[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 the business activity of providing lodging and related services. 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.

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

(a) A hotel, motel, boarding house, rooming house, apartment hotel, resort lodge, bed and breakfast facility, recreational vehicle park, and bunkhouse, as used in this section, includes all establishments which are held out to the public as such where sleeping accommodations may be obtained, whether with or without meals or facilities for preparing meals. It will be presumed that the establishments

defined above are conferring a license to use real estate, as distinguished from a rental of real estate, where the occupant is a transient. Conversely, where the occupant who receives lodging is or has become a nontransient, it will be conclusively presumed that the occupancy is under a rental or lease of real property.

(i) The above terms do not include establishments in the business of renting real estate, such as apartments, nor do these terms include hospitals, sanitariums, nursing homes, rest homes, and similar institutions. The terms generally do not include 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. However, educational institutions who sell overnight lodging to persons other than students may be subject to the provisions of this section and should also refer to WAC 458-20-167.

(ii) The terms do not include 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.

(b) A "boarding house", as used in this section, is an establishment selling meals on the average to five or more persons, exclusive of members of the immediate family. When meals are furnished to less than five persons, exclusive of members of the immediate family, the establishment will not be considered as engaging in the business of operating a boarding house.

(c) A "trailer camp" or "recreational vehicle park" as used in this section is an establishment making a charge for the rental of space to transients for locating or parking house trailers, campers, recreational vehicles, mobile homes, tents, etc. which provide sleeping or living accommodations for the occupants. Additional charges for utility services are a part of the charge made for the rental.

(d) 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 and who does not continuously occupy the premises for a period of one month. Any such occupant who remains in continuous occupancy for more than one month, shall be deemed a transient as to the first month of occupancy, unless such occupant has contracted in advance to remain one month. A person who has contracted in advance and does remain in continuous occupancy for one month, will be deemed a nontransient from the start of the occupancy.

(3) **Business and occupation tax.** The tax liability of hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc., is as follows:

(a) **Retailing.** Amounts derived from the charge made to transients for the furnishing of lodging; charges for such services as the rental of radio and television sets and the rental of rooms, space and facilities not for lodging, such as ballrooms, display rooms, meeting rooms, etc., and including automobile parking or storage; also amounts derived from the sale of tangible personal property at retail are taxable under this classification. See "retail sales tax" below for a more detailed explanation of the charges included in the retailing.

(b) **Service and other business activities.** Included in this classification are commissions received, amounts derived from accommodations not available to the public, certain unsegregated charges, and amounts received from certain coin operated laundries.

(i) Hotels, motels, and similar businesses may receive commissions from various sources. These commissions 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) This classification also applies to gross income from charges for the use of coin operated laundry facilities when such facilities are situated in an apartment house, hotel, motel, rooming house or trailer camp for the exclusive use of the tenants. (See WAC 458-20-165 for information regarding the tax liability of laundry services generally.)

(v) 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.

(c) Charges for lodging and related services described above are subject to tax even though they may be identified or characterized as membership fees or dues. (See WAC 458-20-114.)

(d) Where lodging is furnished to a nontransient, the transaction is a rental of real estate which is exempt of B&O tax (RCW 82.04.390).

(4) **Retail sales tax.** All sales and rentals of tangible personal property by the persons defined in this section are subject to the retail sales tax.

(a) The charge made for the furnishing of lodging and other services to transients is subject to the retail sales tax. Included is the charge made by a trailer camp for the

furnishing of space and other facilities. Charges for automobile parking and storage are also subject to the retail sales tax. 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.

The retail sales tax does not apply to charges for the use of coin-operated laundry facilities when such facilities are situated in an apartment house, hotel, motel, rooming house, or trailer camp for the exclusive use of the tenants.

(b) The retail sales tax applies to all retail sales which includes, but is not limited to, the following sales:

(i) Food and beverages (including room service) and 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;

(ii) Laundry services if provided by the hotel/motel in the hotel's name;

(iii) Banquet room services;

(iv) Equipment rentals;

(v) Mandatory gratuities;

(vi) Employee meals (WAC 458-20-119);

(vii) Telephone charges (except those specified in this rule and WAC 458-20-245);

(viii) Movie rentals;

(ix) Hotel owned vending machines dispensing beverages or other tangible personal property (WAC 458-20-187); and

(x) Dancing cover charges.

(c) A charge for providing extended television reception to guests of a hotel or motel is additional consideration from the sale of lodging and subject to retail sales tax.

(d) Telephone charges to a guest for local telephone calls are taxable under the retailing B&O and retail sales tax classifications. These charges are considered part of the lodging services provided to the guest. See service and other activities business and occupation tax above for transactions involving coin-operated telephones located in hotels/motels and commissions paid by telephone companies to hotels/motels for long distance calls.

(e) 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 commission received by the hotel/motel from the telephone service provider is taxable under the service and other business activities classification. Any additional handling or other charge which the hotel/motel may add to the actual long distance telephone charge is taxable under the retailing and retail sales tax classifications.

(f) If the hotel/motel leases telephone lines and then provides telephone services for a charge to its guests, these charges are taxable under the retailing and retail sales tax classifications. 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.

(g) An occupant does not become entitled to a refund of retail sales tax paid for lodging as a transient by reason of having remained one month and having thereby qualified as a nontransient.

(h) 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.

(i) All purchases of tangible personal property by a lodging provider, except property purchased for resale are subject to the retail sales tax. This includes as subject to retail sales tax all purchases of tangible personal property for use in providing lodging and related services, such as beds and other furnishings. The charge for lodging and related services is for services rendered and not for the resale of any tangible property. Included are items such as soap, towels, linens, laundry, laundry supply services and furnishings. See WAC 458-20-244 for sales to persons operating guest ranches and summer camps of food supplies for use in the preparation of meals served to guests when such persons make an unsegregated charge for meals, lodging, and services and report such charges under the classification service and other activities as explained above.

(j) Sales to the United States government are not subject to retail sales tax. However, it may be difficult for hotels and motels to determine if the sale is actually to the federal government or is only a sale to an employee of the federal government. 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 four methods of billing or payment which are presumed to be sales to the federal government. They are:

(i) 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."

(ii) Charges made through Diner's Club Corporate Charge Card (the card contains the statement "for official use only"). There are two Diner's Club Corporate Charge Cards now available to federal employees. Only one is sales tax exempt. The card providing the exemption is embossed with the name of the employee followed by the statement "for official use only." This card is used by federal agencies to pay for group lodging.

(iii) The lodging is paid by government voucher or government check payable directly to the hotel/motel.

(iv) 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.

(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.** Effective July 1, 1988, there is an exemption from the retail sales tax, convention and trade center tax, and the special hotel/motel tax on 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. 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. 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, private schools. As used herein: An "educational institution" means only those institutions defined as such in WAC 458-20-114; the term "private school" means all schools which are excluded from said definition.

Business and Occupation Tax

Persons operating private schools are taxable under the service and other business activities classification upon gross income derived from tuition fees, rental of rooms and equipment and other service income.

Such persons are also taxable under the retailing classification upon gross retail sales of articles of tangible personal property sold by them, when the charge therefor is specified and is not included within the charge made for tuition.

Educational institutions, school districts and student organizations are not subject to the business and occupation tax with respect to activities directly connected with the educational program, such as operation of a common dining room, sale of lab supplies, etc. Charges made for the operating of privately operated kindergartens are exempt from business tax.

Retail Sales Tax

The retail sales tax applies upon all sales of tangible personal property made by educational institutions, private schools, and student organizations, when the charge therefor is specific and not included within the charge made for tuition. However, the sales tax does not apply to sales of tangible personal property made by agencies or institutions of the state of Washington, such as the University of Washington and the community colleges.

Certificates of Registration

Persons engaged in the business of operating private schools are required to obtain a certificate of registration in accordance with the provisions of WAC 458-20-101.

Educational institutions other than agencies or institutions of the state of Washington making taxable retail sales of tangible personal property are also required to apply for and obtain from the department of revenue a certificate of registration.

[Statutory Authority: RCW 82.32.300. 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) Definitions.

(a) The term "hospital" means only institutions defined as hospitals in chapter 70.41 RCW.

(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.)

(2) **Business and occupation tax.** The gross income derived from personal and professional services of hospitals, 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. The retailing business and occupation tax applies to sales by such persons of tangible personal property sold and billed separately from services rendered.

(3) **Exemption.** 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.

(4) Deductions.

(a) Hospitals operated by the United States or its instrumentalities or the state of Washington or its political subdivisions may deduct amounts derived as compensation for medical services to patients and sales of prescription drugs and medical supplies furnished as an integral part of such services. (See RCW 82.04.4288.)

(b) Other hospitals operated as nonprofit corporations as well as nursing homes and homes for unwed mothers operated as religious or charitable organizations may also deduct the amounts described in subsection (a) above (see RCW 82.04.4289), provided that:

(i) 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; and

(ii) No deduction will be allowed under (a) of this subsection, unless written evidence is submitted to the department of revenue showing that the hospital building is entitled to exemption from taxation under the property tax laws of this state.

(c) In computing tax liability there may be deducted from gross income so much thereof as was derived from bona fide contributions, donations and endowment funds. (See WAC 458-20-114.)

(5) **Retail sales tax.** Retail sales which are subject to retailing business tax, as provided earlier, are also subject to retail sales tax.

(6) **Exemptions.** 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, and such sales are separately accounted for. 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.

(7) Sales of medical supplies, durable equipment, and consumables, but excluding prosthetic devices and ostomic items, to hospitals and nursing homes for their own use in providing personal or professional services are subject to the retail sales tax, irrespective of whether or not such hospitals or nursing homes are subject to the business tax.

(For tax liability of hospitals on sales of meals, see WAC 458-20-119 and 458-20-244.)

[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 Religious, charitable, benevolent, nonprofit service organizations, and sheltered workshops.

(1) Introduction. Religious, charitable, benevolent, and nonprofit service organizations are subject to business and occupation tax, retail sales tax, and use tax, unless otherwise provided by this section.

(2) Definitions.

(a) "Sheltered workshops" is defined by the law to mean the performance of business activities of any kind on or off the premises of such nonprofit organizations which are performed for the primary purpose of:

(i) Providing gainful employment or rehabilitation services to the handicapped as an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market or during such time as employment opportunities for them in the competitive labor market do not exist; or

(ii) Providing evaluation and work adjustment services for handicapped individuals.

(b) "Health or social welfare organization" means an organization which renders health or social welfare services as defined below, which is a not-for-profit corporation under chapter 24.03 RCW and which is managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or which is a corporation solely under chapter 24.12 RCW. In addition, in order to be exempt of business and occupation tax under RCW 82.04.4297, a corporation shall satisfy the following conditions:

(i) 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;

(ii) 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 public service of the state;

(iii) 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;

(iv) The corporation must be duly licensed or certified where licensing or certification is required by law or regulation;

(v) The amounts received qualifying for exemption must be used for the activities for which the exemption is granted;

(vi) Services must be available regardless of race, color, national origin, or ancestry; and

(vii) The director of revenue shall have access to its books in order to determine whether the corporation is entitled to this exemption.

(c) "Health or social welfare services" include and are limited to:

(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, or physically-disabled, developmentally-disabled, or emotionally-disabled individuals;

(v) Activities which are for the purpose of preventing or ameliorating juvenile delinquency or child abuse, including recreational activities for those purposes;

(vi) Care of orphans or foster children;

(vii) Day care of children;

(viii) Employment development, training, and placement; and

(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 which are designed to have a measurable and potentially major impact on the poverty in the communities of the state.

(d) A "public benefit organization" means an organization exempt from federal income tax under section 501 (c)(3) of the Internal Revenue Code of 1986 as in effect on January 1, 1991.

(i) An organization qualifies as a public benefit organization when the organization has received from the Internal Revenue Service a ruling of tax exemption under section 501 (c)(3) of the Internal Revenue Code.

(ii) An organization qualifies as a public benefit organization if the organization is one chapter or unit in a larger organization, like a church or the boy scouts, and the larger organization has been issued a group section 501 (c)(3) exemption ruling by the Internal Revenue Service.

(iii) An organization qualifies as a public benefit organization if, prior to the auction, the organization has made application to the Internal Revenue Service for section 501 (c)(3) exemption and the effective date of the exemption, when granted, is prior to the auction.

(e) An "auction" means the sale of property and/or services to the highest bidder.

(f) The phrase "more than one auction per year" means more than one auction in any calendar year.

(g) The phrase "conduct or participate in" means actively holding a fund-raising auction. The mere attendance, purchase of items, or the donation of articles to be sold at an auction conducted by others, is not active participation in an auction.

(h) The phrase "not extend over a period of more than two days" means that an auction is not conducted on more than two consecutive or nonconsecutive calendar days in any seven calendar day period.

(3) Fund raising. The following applies to the fund-raising activities of religious, charitable, benevolent, and nonprofit service organizations:

(a) Public benefit organization auctions. Chapter 51, Laws of 1991, effective April 26, 1991, provides to public

benefit organizations an exemption from B&O tax and retail sales tax when conducting or participating in an auction.

(i) **B&O tax.** Amounts received from sales by a public benefit organization conducting or participating in an auction are exempt from B&O tax, if:

(A) The organization does not conduct or participate in more than one auction per year; and

(B) The auction does not extend over a period of more than two days.

(ii) **Retail sales tax.** Retail sales tax does not apply to sales by a public benefit organization conducting or participating in an auction, if:

(A) The organization does not conduct or participate in more than one auction per year; and

(B) The auction does not extend over a period of more than two days.

(iii) **Use tax.** An article sold at an auction conducted or participated in by a public benefit organization is subject to use tax. The use tax on the article purchased at the auction is paid by the buyer. The use tax due from the buyer is collected at time of registration or licensing in the case of an auto, boats, etc., purchased at the auction. The use tax due on other items purchased at an auction is remitted by the buyer to the department. Because the use tax is a complementary tax to the retail sales tax and the legislature intended to exempt an auctioning organization from the collection responsibilities of retail sales tax, the auctioning organization also need not collect the use tax. See: WAC 458-20-178.

(iv) **Examples.**

(A) An organization which has been ruled tax exempt under section 501 (c)(3) by the Internal Revenue Service conducts an auction for fund raising. This is the only auction conducted by the organization in the calendar year and it is conducted over a two-day period. The proceeds of the auction are exempt from B&O tax and the sales at the auction are exempt from retail sales tax.

(B) At the auction in example (a)(iv)(A) of this subsection, an automobile has been donated to the organization and is sold. The buyer of the automobile is liable for use tax on the vehicle purchased.

(C) At the auction in example (a)(iv)(A) of this subsection, tickets for a dinner before the auction and a dance after the auction are sold by the organization. The exemption from tax only applies to the auction activities. The dinner-dance activities are taxable when the proceeds, as measured by the lesser of the selling price or the fair market value, exceeds one thousand dollars. See (d) of this subsection.

(D) A public benefit organization has as part of its structure various suborganizations that have no separate identity or purpose, like a hospital guild. Both the larger organization and the suborganizations might conduct various fund-raising activities, including auctions. When the Internal Revenue Service does not consider the suborganizations as separate entities in a single 501 (c)(3) exemption, both the larger organization and the suborganizations are collectively entitled to one exempt auction. If a second auction is conducted within a calendar year by either the larger organization or suborganizations both auctions are taxable as provided in (d) of this subsection. However, if a suborganization is considered a separate 501 (c)(3) entity, as evidenced by a group exemption issued by the Internal Revenue Service, then the larger organization and each

suborganization included as part of a group section 501 (c)(3) exemption are each entitled to conduct one exempt auction per calendar year.

(b) **Meals.** Organizations serving meals for fund-raising purposes are not engaged in the business of making sales at retail and are not required to collect the retail sales tax upon such sales, nor pay the business and occupation tax, if such meals are served no more frequently than once every two weeks and the gross receipts are one thousand dollars or less.

(c) **Bazaars/rummage sales.** Organizations conducting bazaars or rummage sales who are not generally engaged in the business of making sales at retail are not required to collect the retail sales tax nor pay the business and occupation tax if such bazaars or rummage sales are conducted no more than twice per year and do not extend over a period of more than two days each, and if the gross receipts from each such bazaar or rummage sale are one thousand dollars or less.

(d) **Fund-raising drives/concessions.** When organizations make retail sales in the course of annual fund-raising drives, other than a public benefit organization auction as provided above, or make such sales through concessions operated no more than twice a year which do not extend over a period of more than two days each, for the support of various benevolent, athletic, recreational, or cultural programs, the retail sales tax and business and occupation tax need not be accounted for if the gross receipts from each such annual fund-raising drive or concession are one thousand dollars or less.

(i) Persons who serve fund-raising meals, conduct bazaars/rummage sales, or fund-raising drives/concessions more frequently than provided in (a), (b), or (c) of this subsection, or receive more than the amounts allowed therein, are required to report and pay tax upon their gross receipts from all such activities.

(ii) When an organization conducts a taxable fund-raising event, the measure of the tax for all purposes is the lesser of the selling price or the fair market value of the item sold. The excess of the selling price over the fair market value is a nontaxable donation. The department will accept an organization's reasonable allocation of the fair market value and donation portions of the sales proceeds. When a merchant or professional donates an item to be sold, the fair market value is its ordinary retail selling price. Donors of items to be sold are not liable for use tax on the items donated. The fair market value of homemade items, items which are not commercially sold (e.g., art work or pottery) is the value of materials used. Some items may have no fair market value. For example, the right to conduct a school band at a concert, the right to serve as honorary mayor for a day, or the right to be the dinner guest at someone's home each has no fair market value. Receipts from items sold which have no fair market value are considered nontaxable donations to the organization. An organization may advertise that the selling price includes retail sales tax. An organization may "advertise" by posting a sign that applicable retail sales tax is included in the listed price, or, the organization may add a statement in its written advertising that applicable sales tax will be included in the price.

Fund raising - Proceeds from a nonauction sale

Item	Donor	FMV	Sales Price	Donation	Retail	Service B&O
Golf clubs	ABC Golf	\$300	\$250	0	\$250	0
Dinner for 6-Browns'	Mrs. Brown	0	\$60	\$60	0	0
Simple will	Jane Smith	\$75	\$50	0	0	\$50
Principal for the day	School	0	\$100	\$100	0	0
Boat & Motor	Goe Estate	\$750	\$825	\$75	\$750	0
Pottery	Art Student	\$5	\$25	\$20	\$5	0
Weekend use of cabin	Mr. Jones	\$200	\$250	\$50	\$200	0
TOTAL		\$1,330	\$1,560	\$305	\$1,205	\$50

In this example, retail sales tax is due on \$1,205. If the selling price had included sales tax and the sales tax rate is 7.8%, sales tax due of \$87.19 is computed as follows: \$1,205 divided by 1.078 = \$1,117.81, the new tax measure. \$1,117.81 x .078 = \$87.19. Retailing and service B&O receipts in the amounts of \$1,205 and \$50 respectively, must be reported. If the organization's total gross receipts, other than dues and donations, exceeds \$12,000 in the calendar year, B&O tax is due.

(4) Prepared meals for certain persons. Neither the retail sales tax nor the use tax applies to 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.

(5) Sheltered workshops. The gross income received by nonprofit organizations from the business activities of "sheltered workshops" is exempt from the business and occupation tax.

(6) Health or social welfare services. In computing business tax there may be deducted amounts received from the United States or any instrumentality thereof or from the state of Washington or any municipal corporation or political subdivision thereof as compensation for, or to support, health or social welfare services rendered by a health or social welfare organization or by a municipal corporation or political subdivision, except deductions are not allowed for amounts that are received under an employee benefit plan.

(7) Other activities. In every case where such organizations conduct business activities other than as outlined above, the retail sales tax and business and occupation tax are fully applicable to the gross sales made and merchandise may be purchased for resale without paying the retail sales tax by furnishing vendors with resale certificates as prescribed in WAC 458-20-102.

[Statutory Authority: RCW 82.32.300. 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 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 to motor carriers operating in interstate or foreign commerce of motor vehicles, trailers, parts, etc.

Business and Occupation Tax

In computing tax liability under the retailing classification, persons engaged in the business of selling motor vehicles, trailers, parts and accessories, and persons engaged in the business of installing, cleaning, repairing or otherwise altering or improving such vehicles or parts are not permitted any deduction by reason of the fact that such sales or services are made to or for persons for use in conducting interstate or foreign commerce. Insofar as concerns the tax liability of vendors of such property or services it is immaterial that the purchaser may be entitled to a statutory exemption from payment of the retail sales tax.

Retail Sales Tax

(1) Sales of motor vehicles and trailers. Under RCW 82.08.0263 of the law, sales of motor vehicles and trailers to be used for the purpose of transporting therein persons or property for hire in interstate or foreign commerce whether such use is by the owner or whether such motor vehicles and trailers are leased to the user with or without driver, are not subject to the retail sales tax when delivery is made to the purchaser in this state: *Provided*, both of the following requirements are met:

(a) The purchaser or user is the holder of a carrier permit issued by the Interstate Commerce Commission; and

(b) Said vehicle will move upon the highways of this state from the point of delivery in this state to a point outside the state under the authority of a trip permit issued by the director of motor vehicles pursuant to the provisions of RCW 46.16.160.

In order to qualify for this exemption from the retail sales tax such buyers must furnish to their vendors the number of the permit issued to the carrier by the Interstate Commerce Commission and must have affixed to the vehicle before it leaves the premises of the dealer the necessary trip permit. In addition, and as evidence of the exempt nature of such sales, the seller is required to obtain from the buyer an exemption certificate, to which he must append his own certification, all reading substantially to the following effect:

Exemption Certificate

The undersigned hereby certifies that is is the holder of carrier permit No. , issued by the Interstate Commerce Commission; that the vehicle this date purchased from you being a (specify truck or trailer and make), Motor No. , Serial No. , will move on the highways of this state from (point of origin in state) to (out of state destination) under the authority of a trip permit dated , issued by the director of motor vehicles through the agency of the Washington State Patrol Office located at ; and that the sale of this vehicle is entitled to exemption from the Retail Sales Tax under the provisions of RCW 82.08.0263.

Dated

.....
(name of carrier-purchaser)

By
(title)

.....
(address)

Certificate of Dealer

I hereby certify that upon the delivery of the above described vehicle to said purchaser there was affixed thereto trip permit No. , and that the same authorized the transit of this vehicle between the points of origin and destination as hereinabove set forth.

.....
(name of dealer)
.....
(title)

In all other cases where the purchaser takes delivery of the vehicle in this state the retail sales tax is applicable to the sale and must be collected from the purchaser.

(2) Sales of component parts of motor vehicles and trailers and charges for repairs, etc. RCW 82.08.0262 exempts from the application of the retail sales tax sales of tangible personal property which becomes a component part (as that term is hereinafter defined) of motor vehicles and trailers whether owned by or leased with or without drivers and 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, in the course of constructing, repairing, cleaning, altering, or improving the same, also sales of or charges made for labor and services rendered in respect to such constructing, repairing, cleaning, altering, or improving. In applying this statutory exemption it is important that both sellers and buyers notice the distinction between this and the exemption provided for in RCW 82.08.0263 of the law (see 1 above). This exemption is not open to all motor carriers operating under a permit issued by the Interstate Commerce Commission, but only to those whose permits authorize actual transportation across the state boundaries.

The term "component part" is construed to mean all 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 and tires. The term also includes spare parts which are designed

and intended for ultimate attachment to the carrier vehicle. It does not include equipment or tools which may be used in connection with the operation of the truck or trailer as a carrier of persons or goods but which will not become permanently attached to and an integral part of the same, nor does it include consumable supplies, such as lubricants and ice.

Buyers claiming sales tax exemption under this statutory section are required to furnish to their vendors the number of the permit issued to the carrier by the Interstate Commerce Commission authorizing transportation across the boundaries of the state and, as evidence of the exempt nature of such sales, sellers must take from the buyer an exemption certificate reading in substance, as follows:

Exemption Certificate

The undersigned hereby certifies that it is the holder of a carrier permit, No. , issued by the Interstate Commerce Commission authorizing transportation by motor vehicle across the boundaries of this state, and 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 conducting interstate or foreign commerce by transporting persons or property for hire across the boundaries of this state; and that such sale and/or charges are exempt from the Retail Sales Tax under the provisions of RCW 82.08.0262.

Dated

.....
(name of carrier-purchaser)

(address)

By
(title)

The retail sales tax does apply to the sale of all other accessories, supplies and equipment to motor carriers operating under permits authorizing transportation across the boundaries of the state.

Furthermore, the retail sales tax applies to the sale of all tangible personal property, irrespective of whether or not the same may be construed to be a "component part" of a truck or trailer, and the sale of or charge made for labor and services rendered in respect to the constructing, operating, cleaning, altering or improving of motor vehicles and trailers where the Interstate Commerce Commission permit held by the operator of such vehicles does not authorize transportation across the boundaries of this state.

The exemption 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. As to any sales transactions claimed to be exempt from the retail sales tax under the provisions of RCW 82.08.0262 and 82.08.0263, where no exemption certificate has been secured and retained as required herein, or where the exemption certificate does not substantially comply with the essentials set out in the foregoing forms, the seller will bear the burden of proving its tax exempt status.

Use Tax

The use tax applies upon the actual use within this state of all articles of tangible personal property purchased at retail and upon the acquisition of which the retail sales tax has not been paid to this state, unless such use is exempt from use tax under the provisions of chapter 82.12 RCW. Pursuant to RCW 82.12.0254 the use tax does not apply to the following uses:

(a) The use by the holder of a carrier permit issued by the Interstate Commerce Commission of any motor vehicle or trailer whether owned by or leased with or without driver to the permit holder and used in substantial part in the normal and ordinary course of the user's business for transporting persons or property for hire across the boundaries of this state if the first use within this state is actual use in conducting interstate or foreign commerce.

(b) 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 whether such motor vehicle or trailer is owned by or leased with or without driver to the permit holder.

(c) The use of any motor vehicle or trailer while being operated under the authority of a trip permit issued by the director of motor vehicles pursuant to RCW 46.16.160 and moving upon the highways from the point of delivery within this state to a point outside this state.

[Statutory Authority: RCW 82.32.300. 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 458-20-175 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 water craft, 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 (inter-state or foreign) commerce; that all (airplanes, locomotives, railroad cars or water craft) 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 incidental 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 therewith 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 purposes 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 registered 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 458-20-179 Public utility tax. (1) Introduction. Persons engaged in certain public service businesses are taxable under the public utility tax, and are exempt from tax under the business and occupation tax with respect to such businesses. However, many persons taxable under the public utility tax are also engaged in some other business which is taxable under the business and occupation tax. For example, a light and power company engaged in operating a plant or system for distribution of electrical energy for sale, may also be engaged in selling at retail various electrical appliances. Such a company would be taxable under the public utility tax with respect to its last distribution of electric energy, and also taxable under the business and occupation tax with respect to its sale of electrical appliances.

(2) Persons who are taxable under the public utility tax, which is applied to gross income, are those engaged in the following businesses: Railroad, express, railroad car, water distribution, sewerage collection, refuse collection, light and power, telegraph, gas distribution, urban transportation and common carrier vessels under 65 feet in length, motor transportation, tugboat businesses, and all public service businesses other than those heretofore mentioned.

(3) 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.

(4) The term "public service businesses" includes any of the businesses defined in RCW 82.16.010 (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), and (12) or any business subject to control by the state, or having the powers of eminent domain and the duties incident thereto, or any business declared by the legislature to be of a public service nature, irrespective of whether eminent domain powers are had or state control is exercised. It includes, among others, without limiting the scope thereof: Airplane transportation, boom, dock, ferry, log patrol, pipe line, toll bridge, toll logging road, water transportation and wharf businesses.

(5) 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 business of a public service nature as to rates charged or services rendered. However, businesses may be taxed under the public utility tax as public service businesses whether or not they are or have been regulated by the state.

(6) The term "gross income" means "the value proceeding or accruing from the performance of the particular public service or transportation businesses involved, including operations incidental thereto, 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." The term "gross income" of a light and power business means those amounts or value accruing to a taxpayer from the "last distribution" of electrical energy which is a taxable event within this state. RCW 82.16.010(13).

(7) Light and power business - special provisions. RCW 82.16.010(5) defines "light and power business" to mean the business of operating a plant or system for the generation, production, or distribution of electrical energy for hire or sale. It is the intent of the law that, except as provided below, all electrical energy generated, or produced, or distributed within this state shall be subject to the uniform tax rate for light and power business, but only at the time of its "last distribution" within this state.

(8) The term "last distribution" means the final transmission or transfer of electrical energy before it is consumed in this state or before it is transmitted or transferred for sale to any point outside of this state. Thus, the taxable last distribution of electrical energy consumed within this state is the transmission or transfer of such energy to the consumer. The taxable last distribution of electrical energy for sale outside of this state is the transmission or transfer of such energy to the transmission system from which it will be directly further transmitted or transferred to points outside this state whether under any wheeling arrangement or through the distributor's own transmission system or the transmission system of any out-of-state person. When a light and power business within this state delivers electric energy to an entity outside of this state in consideration of such entity's agreement to deliver electric energy to such business for consumption within this state, the taxable last distribution of such electrical energy is the transmission or transfer of energy to such business' consumers in this state.

(9) An "exchange" of electrical energy or the rights thereto is not the last distribution of such energy. An exchange is a transaction involving 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 nontaxable exchange transactions include, but are not limited to, the following:

(a) The residential exchange of electric power entered into between a light and power business and the administrator of the Bonneville Power Administration 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);

(b) The exchange of electric power for electric power between one light and power business and another light and power business;

(c) 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;

(d) The Bonneville Power Administration's acquisition of electric power for resale to its Washington customers in the light and power business.

(10) Any consideration received in addition to or in excess of exchange power constitutes taxable consideration.

(11) The taxpayer liable for the payment of public utility tax under the light and power business classification is the "person" (as defined by RCW 82.04.030) who last distributes electrical energy within this state as explained above. Electrical energy generated or transmitted by the United States Army Corps of Engineers, United States Bureau of Reclamation, or the Bonneville Power Administration is not subject to this tax unless and until it is transferred by such federal entity to another person engaged in the light and power business within this state and then only upon the last distribution of such energy by such light and power business.

(12) For purposes of measuring the public utility tax liability, the "amount or value derived from the last distribution of electrical energy" (RCW 82.16.010(13) definition of "gross income") is the total consideration in terms of money or other value, however designated, received by or accruing to the taxpayer: *Provided*, That the tax measure is the cost of production but not to exceed the fair market value of the electrical energy at the time it is generated in this state for any of the following: (a) For electrical energy generated in this state and transmitted or transferred by the person who generated the same to points outside this state without prior sale; and (b) for electrical energy sold pursuant to an agreement which requires the purchaser to pay certain costs of the generating facility without regard to the amount of electrical energy produced by such facility.

(13) 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.

(14) Volume exemption. Persons subject to the public utility tax are exempt from the payment of this tax 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

(15) Deductions. Amounts derived from the following sources do not constitute taxable income in computing tax under the public utility tax:

(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.

(b) Amounts derived by persons engaged in the water distribution, or gas distribution business, from the sale of

commodities to persons in the same public service business for resale as such within this state.

(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.

(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; and 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 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.

(f) Amounts or value paid or contributed to any county, city, town, political subdivision, or municipal or quasi municipal corporation of the state of Washington representing payments of special assessments or installments thereof and interests and penalties thereon, charges in lieu of assessments, or any other charges, payments or contributions representing a share of the cost of capital facilities constructed or to be constructed or for the retirement of obligations and payment of interest thereon issued for capital purposes. The business and occupation tax is likewise inapplicable to such amounts. Service charges shall not be included in this exemption even though used wholly or in part for capital purposes.

(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 by cities, counties, towns, or municipal corporations as payment of a share of the cost of capital facilities, but excluding charges for utility services which may be used for capital purposes.

(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) Amounts equal to the cost of production at the plant for consumption in this state of:

(i) Electrical energy produced from cogeneration as defined in RCW 82.35.020; and

(ii) Electrical energy or gas produced from renewable energy resources (e.g., solar, wind, hydro, geothermal, wood, wastes, and end-use waste heat. (For details see WAC 458-20-17901.)

(16) Income derived from any of the foregoing sources is to be included within the reported gross income, and the applicable deductions may be taken in computing tax liability.

(17) Contributions in aid of construction not falling within item "6" above are subject to public utility tax, except that amounts received for line extensions, connection fees, and other charges for services rendered prior to the receipt of utility services by the customer against whom the charges are made are subject to business and occupation tax under the service and other activities classification rather than the public utility tax.

(18) In addition to the foregoing deductions there also may be deducted from the reported gross income (if included therein), 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.

(19) For specific rules pertaining to the classifications of "urban transportation" and "motor transportation," see WAC 458-20-180.

(20) Notice—Refuse and sewerage collection businesses. The specific provisions of this section, respecting refuse and sewerage collection businesses have been repealed, retroactively to July 1, 1985. The new express provisions for taxability of such businesses from July 1, 1985, forward are now set forth in WAC 458-20-250 (Refuse collection business) and WAC 458-20-251 (Sewerage collection business).

[Statutory Authority: RCW 82.32.300. 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. 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 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, as follows:

(1) In computing tax under this chapter there shall be deducted from the gross income:

(a) An amount equal to the cost of production at the plant for consumption within the state of Washington of:

(i) Electrical energy produced or generated from cogeneration as defined in RCW 82.35.020; and

(ii) 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; and

(b) 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.

(2) This section applies only to new facilities for the production or generation of energy from cogeneration or renewable energy resources or measures to improve the efficiency of energy end-use on which construction or installation is begun after June 12, 1980, and before January 1, 1990.

(3) Deductions under subsection (1)(a) of this section shall be allowed for a period not to exceed thirty years after the project is placed in operation.

(4) Measures or projects encouraged under 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.

(5) The department of revenue, after consultation with the utilities and transportation commission in the case of investor-owned utilities, and the governing bodies of locally regulated utilities, shall determine the eligibility of individual projects and measures for deductions under this section.

The department of revenue has complied with the consultation requirements of RCW 82.16.055(5). The provisions of subsection (1)(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.

Subsection (1)(b) and (4) of this section are applicable to projects conducted by utilities which are designed and projected to result in a reduction in the amount of electrical energy or gas used by the consumer.

Pursuant to subsection (5) of this section, 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.

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 82.16.055 (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 82.16.055(5) 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.

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.

Eligible costs.

Under the remoteness test, the department has determined the following specific costs to be eligible for tax deduction:

1. 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 and installation.

2. 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.

3. 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.

4. 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:
 - (i) Such equipment and rolling stock are attributable to an energy end-user conservation program; and
 - (ii) Such costs are incurred during the duration of such program.
- g. Direct costs of repair and maintenance of the above items.

5. 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).

6. 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.

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:

- a. Legislative services.
- b. Dues, memberships and subscriptions.
- c. 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.
- d. 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.
- e. Community education and outreach efforts which are not exclusively dedicated to energy conservation projects and measures.
- f. Allocated facility costs which are not directly cost accounted.
- g. Allocated vehicle rolling stock costs which are not directly cost accounted.
- h. Convention, meals, and entertainment expense.
- i. Out-of-state travel expenses, except that the percentage of such expenses allocable to miles traveled within this state will be allowed for 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 82.16.055.

The question of the deductibility of any expenditures not expressly covered in this rule must be submitted to the department in writing for an express ruling before deduction may be taken.

[Statutory Authority: RCW 82.32.300. 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, 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 and recreation activities and businesses. The term "sale at retail" is defined by RCW 82.04.050 to include the sale of or charge made by persons engaging in certain business activities, including "amusement and recreation businesses." The statute indicates the type of activities and business intended to be taxed under this classification; i.e., "including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, and others." Thus, while certain activities are specifically included within the statutory definition (golf, pool, etc.) it is clear that the types of activities and businesses intended to be taxed under the retail sales tax classification are those in which payment is for participation.

The term "sale at retail" includes all activities wherein a person pays for the right to actively participate in an amusement or recreation activity. The term does not include the sale of or charge made for providing facilities where a person is merely a spectator or passive participant in the activity, such as movies, concerts, sports events, and the like. Nor does the term include activities of an instructional nature, even though the person is physically participating in the activity.

Health and fitness activities are distinguishable from amusement and recreation activities. Thus, health and fitness activities such as body building, exercise rooms and classes, weight lifting, nautilus facilities, saunas, massages, and the like are not taxable as retail sales, even though they may involve some active participation.

Coin operated amusement devices are not governed by this section. See WAC 458-20-187.

The term "sale at retail" also includes the sale of or charge made for providing camping and other outdoor living facilities regardless of whether or not additional recreation facilities of the type mentioned above are available for use.

Local governmental agencies which provide recreational, social, educational, health and fitness, and similar public programs are generally not making retail sales. Registration fees, league fees, and similar charges collected by such agencies may be taxable or exempt of business and occupation tax depending upon the nature of the programs and services provided. In any case, the taxability of such agencies and charges is governed by WAC 458-20-189, rather than this section on "amusement and recreation businesses."

Business and Occupation Tax

Gross receipts from the kind of amusement and recreation activities and businesses involving active participation as described above are taxable under the classification retailing.

Such persons are also taxable under the retailing classification upon gross receipts from sales of meals, drinks, tobacco, or other property sold by them.

Gross receipts from instruction and passive participation in amusement and recreation activities and businesses are taxable under the classification service and other activities.

Retail Sales Tax

The retail sales tax must be collected upon charges for admissions and the use of facilities by persons engaged in the amusement and recreation activities and businesses involving active participation as described above. The retail sales tax must also be collected upon sales of cigarettes and other merchandise by persons engaging in such businesses. See WAC 458-20-244 for sales of food products.

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 upon the books of account of the seller.

The retail sales tax applies upon the sale or rental of all equipment and supplies to persons conducting places of amusement and recreation, except merchandise which is resold by them.

The retail sales tax does not apply to the charge made for instruction or passive participation in an amusement or recreation activity. Neither does the sales tax apply to charges or fees for health and fitness activities as described in this section. For the sales tax liability of governmental agencies, see WAC 458-20-189.

Revised March 27, 1984.

Effective July 1, 1984.

[Statutory Authority: RCW 82.32.300. 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 458-20-184 Tax on conveyances repealed. (1) Effective May 18, 1987, the tax on conveyances, (deeds or other written instrument) by which lands, tenements, or other realty sold was conveyed, was repealed. The rate of real estate excise tax upon such transactions was increased proportionately.

(2) See chapter 82.45 RCW and chapter 458-61 WAC for provisions governing real estate excise tax upon sales and transfers of real property.

[Statutory Authority: RCW 82.32.300. 87-19-007 (Order ET 87-5), § 458-20-184, filed 9/8/87; 83-07-033 (Order ET 83-16), § 458-20-184, filed 3/15/83; Order ET 70-3, § 458-20-184 (Rule 184), filed 5/29/70, effective 7/1/70.]

WAC 458-20-185 Tax on tobacco products. (1) Definitions.

(a) "Tobacco products" means all tobacco products except cigarettes (see WAC 458-20-186 for cigarette excise taxes). The term includes cigars, cheroots, stogies, periques; granulated, plug cut, crimp cut, ready rubbed or other smoking tobacco; snuff, snuff flour, cavendish, plug, twist, fine cut, or other chewing tobacco; shorts, refuse scraps, clippings, cuttings, sweepings, or other kinds or forms of tobacco.

(b) "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 state any tobacco products for sale, or

(ii) Any person who makes, manufactures, or fabricates tobacco products in state for sale in this state, or

(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.

(c) "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.

(d) "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever by any person for a consideration. It includes all gifts by persons selling tobacco products.

(e) "Wholesale sales price" means the established manufacturer's price to the distributor, exclusive of any discount or other reduction.

(f) "Business" means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state.

(2) **Nature of tax.** An excise tax is levied at the combined rate of 64.90% of the wholesale sales price on all tobacco products sold, used, consumed, handled, or distributed within the state, pursuant to the following statutes: RCW 82.26.020(1) which levies a general fund tax at the rate of 48.15% and RCW 82.26.025 which levies an additional tax of 16.75% payable into the water quality fund. The tax is to be paid by the distributor at the time the distributor brings or causes to be brought into this state from without the state tobacco products for sale.

(3) **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 and preserved for 5 years for examination by the department of revenue.

(a) 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 (including customers' names and addresses) of tobacco products except retail sales. All other pertinent papers and documents relating to purchase, sale, or disposition of tobacco products must likewise be so retained.

(b) Retailers and subjobbers must secure and retain legible and itemized invoices of all tobacco products purchased, showing name and address of the seller and the date of purchase.

(c) 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.

(4) **Reports and returns.** The tax is reported on the combined excise tax return, Form REV 40 2406, 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.

(a) 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.

(5) **Interstate and sales to U.S.** The tax does not apply to tobacco products sold to federal government agencies, nor

to deliveries to retailers or wholesalers outside the state for resale by such retailers or wholesalers, and a credit may be taken for the amount of tobacco products tax previously paid on such products.

(6) 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, but returns on which such credits are claimed must be accompanied by appropriate affidavits or certificates conforming to those illustrated below:

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 said 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 said 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:

APPROVED:

Authorized Agency of
Department of Revenue of the
State of Washington.

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 said manufacturer has received from (Dealer), (Address) a dealer in tobacco products within the State of Washington, certain tobacco products which were unfit for sale, said tobacco products having a wholesale sales price of \$; that

said tobacco products were destroyed in the following manner:

(State date and manner of destruction)

Credit issued on Memo No.	Signature of Taxpayer or Authorized Representative
credit approved by:	
..... on behalf of the Department of Revenue - State of Washington	Name of Manufacturer Address

[Statutory Authority: RCW 82.32.300, 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) The Washington state cigarette tax is imposed in the total amount of 1.7 cents per cigarette or 34 cents upon each package of 20 cigarettes or 42 and 1/2 cents per package of 25. The cigarette tax provides funds to drug enforcement and education, water quality and the general fund accounts in the amount of 3, 8, and 23 cents respectively upon each package of 20 cigarettes.

(2) This tax is due and payable by the first person who sells, uses, consumes, handles, possesses or distributes the cigarettes in this state. For purposes of this rule, a possessor is anyone who personally or through an agent, employee, or designee has possession of cigarettes in this state. Payment is made through the purchase of stamps from authorized banks.

(3) **Exemptions.** The cigarette tax does not apply upon 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 such a buyer at a point outside this state, or delivers the same to a common carrier with the shipment consigned by the seller to such a buyer at a location outside this state. Any person engaged in making sales to licensed distributors in other states or making export sales (see WAC 458-20-193A and 458-20-193C) or in making sales to the federal government must furnish a surety bond in a sum equal to twice the amount of tax which would be affixed to the cigarettes that are set aside for the conduct of such business without affixing cigarette tax stamps. Such unstamped stock must be kept separate and apart from any stamped stock.

(4) Cigarettes, other than those above mentioned, which are stamped and exempt from the tax by reason of their sale either to an Indian or an Indian tribe for resale must follow the provisions of WAC 458-20-192.

(5) **Collection.** Every person unlawfully in possession of unstamped cigarettes in this state shall be liable for the cigarette tax provided for herein. Ordinarily, the tax obligation is imposed and collected on the first possessor of such unstamped cigarettes. However, failure by the first possessor to pay such tax does not excuse any subsequent possessor of unstamped cigarettes. Stamps indicating the payment of the cigarette tax must be affixed prior to any sale, use, consumption, handling, possession or distribution for all cigarettes other than those mentioned in (3) above.

The stamp must be applied to the smallest container or package, unless the department determines that it is impractical to do so.

(6) Every licensed stamping wholesaler shall stamp those cigarettes that require stamping within 72 hours after receipt, but in any event, on or before sale or transfer to another party. Stamps shall be of the type authorized by the department which at present is only the heat applied "fuson" type. The use of meter stamping machines for use in imprinting packages, in lieu of attaching stamps, is not authorized by the department. The use of water "decalcomania" type stamps by such vendors is not authorized.

(7) Persons other than licensed stamping wholesalers must file with the department of revenue, prior to receipt, a notice of intent to possess unstamped cigarettes in the state of Washington. A copy of this notice, validated by an agent of the department of revenue, must be in the possession of any such person who is in possession of unstamped cigarettes in this state.

(8) Persons who have filed the aforementioned notice must bring the cigarettes to a department office for payment of the tax within 72 hours of receipt, but in any event, on or before sale or transfer to another party. Persons who have failed to file the notice of intent, as provided above, must bring the cigarettes to a department office for payment of the tax before the end of business on the day of receipt, if such is a department business day, but if not, then on or before the close of the next department business day following receipt. In any event such persons shall bring the cigarettes in and pay the tax on or before the sale or transfer thereof to another party. Failure so to act will subject the person in possession of such cigarettes to criminal sanctions as set forth in subparagraphs (17) and (18) below.

(9) Any unstamped cigarettes in the possession of persons (other than licensed stamping wholesalers) who have failed to file a notice of intent to possess unstamped cigarettes in the state of Washington or who have failed to affix stamps and/or who have failed to pay the tax as required herein, will be deemed contraband and subject to seizure and forfeiture under the provisions of RCW 82.24.130.

(10) State approved cigarette stamps are available from authorized banks. Payment for stamps may be made either at the time of sale, or deferred until later, although the latter form of payment is available only to vendors who meet the requirements of the department and who have furnished a surety bond equal to the proposed total monthly credit limit. In addition, purchases on a deferred payment plan may be made only by the cigarette seller himself or by an agent authorized by him to do so. This authorization may be in the form of a signature card, filed with the bank, from which stamps are usually obtained, and kept current by the vendor. Payments under a deferred plan are due within 30 days following the purchase, and are to be paid at the outlet from which the stamps were obtained, and may be paid by check payable to the department of revenue. Cigarette wholesalers who purchase stamps under either plan are allowed, as compensation for their services in affixing stamps, an amount equal to \$4.00 per thousand stamps affixed, which is offset against the purchase price.

(11) **Books and records.** An accurate set of records showing all transactions had with reference to the purchase, sale or distribution of cigarettes must be retained. These

records may be combined with those required in connection with the tobacco products tax, by WAC 458-20-185, provided there is a segregation therein of the amount involved. All such records must be preserved for 5 years from the date of the transaction.

(12) In particular, persons shipping or delivering any cigarettes to a point outside of this state shall transmit to the miscellaneous tax and unclaimed property division, not later than the 15th of the following calendar month, a true duplicate invoice showing full and complete details of the interstate sale or delivery.

(13) **Reports and returns.** The department of revenue may require any person dealing with cigarettes, in this state, to complete and return forms, as furnished, setting forth sales, inventory and other data required by the department to maintain control over trade in cigarettes.

(14) Manufacturers and wholesalers selling stamped, unstamped or untaxed cigarettes shall, before the 15th day of each month, transmit to the miscellaneous tax and unclaimed property division a complete record of sales of cigarettes in this state during the preceding month.

(15) **Refunds.** Any person may request a refund of the face value of the stamps. Refunds for stamped untaxed cigarettes sold to Indians or Indian tribes will include the stamping allowance and will be approved by an agent of the department. Refunds for stamped cigarettes will not include the stamping allowance if the stamps are:

(a) Damaged, or unfit for sale, and as a result are destroyed or returned to the manufacturer or distributor.

(b) Improperly or partially affixed through burns, jams, double stamps, stamped on carton flaps, or improper removal from the stamp roll.

(16) The claim for refund must be filed on a form which is provided by the department, Form REV 37-2063. An affidavit or a certificate from the manufacturer claiming refund, or by the agent of the department verifying the voiding of stamps and authorizing the refund, shall accompany the form.

(17) **Criminal provisions.** RCW 82.24.110(1) prohibits certain specified criminal activities with respect to cigarettes and makes such activities gross misdemeanors. Also, RCW 82.24.100 and 82.24.110(2) prohibit alteration or fabrication of stamps and transportation and/or possession of 300 or more cartons of unstamped cigarettes and makes those activities felonies. Persons commercially handling cigarettes in this state must refer to these statutes.

(18) **Search, seizure and forfeiture.** The department of revenue may search for, seize and subsequently dispose of unstamped cigarette packages and containers, vehicles of all kinds utilized for the transportation thereof, and vending machines utilized for the sale thereof. Persons handling unstamped cigarettes in this state must refer to RCW 82.24.130 and subsequent sections for provisions relating to search, seizure and forfeiture of such property, for possible redemption thereof, and for treatment of such property in the absence of redemption.

(19) **Penalties.** RCW 82.24.120 provides a penalty for failure to affix the cigarette stamps or to cause such stamps to be affixed as required, or to pay any tax due under chapter 82.24 RCW. In addition to the tax found to be due, a penalty equal to the greater of ten dollars per package of unstamped cigarettes or two hundred fifty dollars shall be

assessed. Interest shall also be added at the rate of one percent for each thirty days or portions thereof from the date the tax became due. The department may cancel all or part of the penalty for good reason.

[Statutory Authority: RCW 82.32.300, 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 458-20-18601 Wholesale and retail cigarette vendor licenses. (1) Definitions. For purposes of this section, the following terms mean:

(a) "Wholesaler" is any person who purchases, sells, or distributes cigarettes to retailers for the purpose of resale only.

(b) "Retailer" is any person, other than a wholesaler, who purchases, sells, offers for sale or distributes cigarettes at retail and all persons operating under a retailer's registration certificate.

(c) "Place of business" is any location where business is transacted with, or sales are made to, customers. The term also includes any vehicle, truck, vessel, or the like at which sales are made.

(d) "Department" is the department of revenue.

(2) Wholesale license. Prior to the sale or distribution of cigarettes at wholesale, each wholesaler must first be issued a wholesale cigarette license from the department of licensing.

(a) Applications for license or renewal of license shall be made on forms supplied by the department of licensing and shall be accompanied by the annual license fee of \$650. A wholesale cigarette license shall be valid for one year from the date of issuance.

(b) If the wholesaler sells, or intends to sell, cigarettes at more than one place of business, whether temporary or established, a separate license with a license fee of \$115 shall be required for each additional place of business. Each license shall be exhibited in the place of business for which it is issued.

(c) Each licensed wholesaler shall file a bond with the department in an amount determined by the department, which amount shall not be less than \$5,000. The bond shall 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 shall run concurrently with the wholesaler's license.

(3) 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) Applications for license or renewal of license shall be made on forms supplied by the department of licensing and shall be accompanied by the annual license fee of \$10. A retail cigarette license shall be valid for one year from the date of issuance.

(b) Retailers operating cigarette vending machines are required to pay an additional fee of \$1 for each such vending machine.

(4) Persons acting as wholesalers and retailers. Persons may sell cigarettes both as retailers and wholesalers only if appropriate licenses are first secured for sales in both capacities. The sale of cigarettes by any person who does not possess a valid license authorizing such sale shall be considered a violation of this section.

(5) Revocation or suspension of license. The department shall revoke or suspend the license of any wholesale or retail cigarette dealer found to have violated the provisions of chapter 82.24 RCW, WAC 458-20-186, or this section. Upon a finding by the department of a failure to comply with the provisions of chapter 82.24 RCW, WAC 458-20-186, or this section, it shall:

(a) For the first offense, suspend the license or licenses of the offender for a period of not less than thirty consecutive business days;

(b) In the case of a second or multiple offense, suspend the license or licenses of the offender for not less than ninety consecutive business days nor more than twelve months;

(c) In the case of a finding that the offender is guilty of wilful and persistent violations, revoke the offender's license or licenses.

(6) Revocation or suspension hearing.

(a) If the department determines that a license holder has violated the provisions of chapter 82.24 RCW, WAC 458-20-186, or this section, a hearing will be scheduled to consider the license revocation or suspension of such license holder. In the event of such a determination, the department shall so notify the license holder in writing of its intent to revoke or suspend the license. Such notice shall inform the license holder of the date scheduled for hearing and shall also contain the information specified in RCW 34.05.434.

(b) Revocation or suspension hearings shall be held before the assistant director of the miscellaneous tax division or his or her designee in the department's offices in Olympia unless a different location is specified in the notice of hearing. The department shall schedule the hearing no earlier than twenty days from the date of mailing of notice of the hearing.

(c) The hearing will be conducted in accordance with the provisions of chapter 34.05 RCW (Administrative Procedure Act). Following the hearing the department shall issue a written order revoking or suspending the license or finding in favor of the license holder. The order of the department shall represent the final decision of the department and shall be binding unless the license holder files a timely petition for review with the department's interpretation and appeal division. (See WAC 458-20-100 for appeal procedures.)

(d) The license holder may seek review of any order revoking or suspending a license by filing a petition for review with the department's interpretation and appeals division within thirty days from the date of the order of revocation or suspension. The decision of the interpretation and appeals division shall represent the final position of the department and shall be binding unless timely appealed.

(e) Appeals from orders of the department revoking or suspending a license may be appealed to the superior court of Thurston County.

(7) Reinstatement of license.

(a) Any person whose license or licenses have been revoked may apply to the department at the expiration of one

year for a reinstatement of the license or licenses. The license or licenses may be reinstated by the department if it appears to the satisfaction of the department that the license holder will comply with the provisions of chapter 82.24 RCW, WAC 458-20-186, and this section.

(b) Application for reinstatement is to be made to the miscellaneous tax division of the department. Upon receipt of an application for reinstatement of license, the department shall schedule a hearing for consideration of the application and shall notify the applicant of the date and time of the hearing. Such notice shall be sent at least twenty days prior to the date set for the hearing.

(c) Hearings for consideration of reinstatement of a license shall be conducted as provided in subsection (6) of this section. Any applicant whose petition for reinstatement is denied may file a petition for review as provided in subsection (6)(d) of this section or appeal the denial to the superior court of Thurston County.

[Statutory Authority: RCW 82.32.300. 92-06-081, § 458-20-18601, filed 3/4/92, effective 4/4/92.]

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, 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 specific 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, school districts and other municipal subdivisions. (1) Business and occupation tax. No deduction is allowed a seller in computing tax under the provisions of the business and occupation tax with respect to sales to the state of Washington, its departments and institutions or to counties, cities, school districts, or other municipal subdivisions thereof.

(2) The state of Washington, its departments and institutions, as distinct from its corporate agencies or instrumentalities, are not subject to the provisions of the business and occupation tax. Counties, cities, and other municipal subdivisions are not subject to the business and occupation tax upon amounts derived from license and permit fees, inspection fees, fees for copies of public records, reports and studies, processing fees involving fingerprinting and environmental impact statements, and taxes, fines or penalties, and interest thereon.

(3) Counties, cities and other municipal subdivisions are taxable with respect to amounts derived, however designated, from any "utility or enterprise activity" for which a specific charge is made.

(4) Utility activities. "Utility activities," which are taxable under the public utility tax, include water and electrical energy distribution, public transportation services, and sewer collection services. (See WAC 458-20-179.)

(5) Enterprise activity. An "enterprise activity," for the purposes of this rule, is an activity financed and operated in a manner similar to private business enterprises. The term includes activities which are generally in competition with private business enterprises and are over fifty percent funded

by user fees. The term does not include activities which are exclusively governmental.

(6) Amounts derived from enterprise activities consisting of or from admission fees to special events, user fees (lockers, checkrooms), moorage fees (less than thirty days), cemetery and crematory fees, the granting of media broadcasting rights, and the granting of a license to use real property are taxable under the service and other activities classification of the business and occupation tax.

(7) Amounts derived from enterprise activities consisting of or from fees for participation in amusement or recreation (pay for play), user fees for off-street parking and garages, and charges for sale and rental of tangible personal property are taxable under the retailing classification of the business and occupation tax.

(8) Under RCW 82.04.419, amounts derived from an activity which is not a "utility or enterprise activity" are tax exempt. Such tax exempt amounts include admission fees other than to special events, fees for on-street metered parking and parking permits, instruction fees, health program fees, athletic team registration fees, and interagency and intergovernmental charges for services rendered.

(9) All counties, cities and other municipal subdivisions engaging in utility or enterprise activities and all corporate agencies or instrumentalities of the state of Washington engaging in business activities are subject to tax as follows:

(a) Extracting or manufacturing - taxable upon the value of products manufactured or extracted.

(b) Retailing or wholesaling - taxable upon gross proceeds of sales.

(c) Persons taxable under either the retailing or wholesaling classifications are not taxable under either extracting or manufacturing in respect to sales of articles extracted or manufactured by them in this state.

(d) Service and other business activities - taxable under the service and other business activities classification upon the gross income derived from services rendered by them.

(e) Public utility activities - taxable upon the gross income of the business (see WAC 458-20-179 and 458-20-17901).

(10) Counties and cities are not subject to the business and occupation tax on the cost of labor and service in the mining, sorting, crushing, screening, washing, hauling and stockpiling of sand, gravel and rock taken from a pit or quarry owned by or leased to the county or city when these materials are sold at cost to another county or city for use on public roads. (See also WAC 458-20-171.)

(11) For operation of hospitals by the state or its political subdivisions see WAC 458-20-168 and 458-20-188.

(12) The business and occupation tax does not apply to the value of materials printed solely for their own use by school districts, educational service districts, counties, cities, towns, libraries, or library districts.

(13) Retail sales tax. The retail sales tax applies to all retail sales made to the state of Washington, its departments and institutions and to counties, cities, school districts and all other municipal subdivisions of the state. The retail sales tax does not apply to sales to city or county housing authorities which were created under the provisions of the Washington housing authorities law, chapter 35.82 RCW. An exemption is also allowed municipal corporations, the state and all political subdivisions thereof 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. The retail sales tax does not apply to 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 political subdivision thereof for use in conducting any public utility enterprise except a tugboat business (RCW 82.08.0256).

(14) Where tangible personal property or taxable services are purchased by the state of Washington, its departments or 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 must be paid by the state of Washington to its vendors. So-called sales between a department or institution of the state of Washington and any other such department or institution constitute interdepartmental charges (see WAC 458-20-201) and the retail sales tax is not applicable.

(15) The state of Washington, its departments and institutions and all counties, cities, and other municipal subdivisions are required to collect the retail sales tax on all retail sales of tangible personal property or services classified as retail sales, including sales of equipment or other capital assets. The retail sales tax is not applicable to charges for the production, searching, or copying of public records or documents by such public agencies charged with the responsibility to keep and provide such information. However, the tax does apply to charges for the sale of books, rules, regulations, and other materials sold from an inventory of such things, even though the charge is required by law or covers only the costs of production and distribution of such materials. The retail sales tax is not applicable to 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 by or leased to the county or city when these materials are sold at cost to another county or city for use on public roads. (See also WAC 458-20-171.)

(16) The sales tax does not apply to sales to the state or a local governmental unit thereof of ferry vessels, component parts thereof, nor labor and services in respect to construction or improvement of such vessels.

(17) Use tax. The state of Washington, its departments and institutions and all counties, cities, school districts, and other municipal subdivisions are required to report the 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.

(18) 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.

(19) The use tax does not apply to the use of ferry vessels or component parts thereof by the state or local governmental units.

(20) Public utility tax. No deduction in computing tax liability under the provisions of the public utility tax is allowed to any person or firm by reason of the fact that sales are to the state of Washington or any of its municipal subdivisions.

(21) Counties, cities and other municipal subdivisions of the state operating public utilities or public service businesses are subject to the provisions of the public utility tax.

(22) Neither the public utility tax nor the business tax apply to amounts or value paid or contributed to any county, city, town, political subdivision, or municipal or quasi municipal corporation of the state of Washington representing payments of special assessments or installments thereof and interests and penalties thereon, charges in lieu of assessments, or any other charges, payments or contributions representing a share of the cost of capital facilities constructed or to be constructed or for the retirement of obligations and payment of interest thereon issued for capital purposes. Service charges shall not be included in this exemption even though used wholly or in part for capital purposes (see WAC 458-20-179).

(23) Where there is doubt as to the tax consequences applicable to any activity or transaction, the question should be submitted to the department of revenue for determination.

[Statutory Authority: RCW 82.32.300. 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 collected 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.

[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 reservations.

Definitions

The term "Indian reservation," as used herein, means all lands, notwithstanding the issuance of any patent, within the exterior boundaries of areas set aside by the United States for the exclusive use and occupancy of Indian tribes by treaty, law, or executive order and which are areas currently recognized as "Indian reservations" by the United States Department of the Interior.

The following Washington reservations are the only "Indian reservations" currently recognized as such by the United States Department of Interior: Chehalis, Colville, Hoh, Kalispell, Lower Elwha, Lummi, Makah, Muckleshoot, Nisqually, Nooksack, Ozette, Port Gamble, Port Madison, Puyallup, Quileute, Quinault, Shoalwater, Skokomish, Spokane, Squaxin Island, Swinomish, Tulalip, and Yakima.

The term "Indian tribe," as used herein, means any organized Indian nation, tribe, band, or community recognized as an "Indian tribe" by the United States Department of the Interior.

The term "Indian," as used herein, means a person duly registered on the tribal rolls of the Indian tribe occupying an Indian reservation.

Note: For purposes of this rule, with respect to determining tax liability regarding any economic transaction or activity, the term "Indian tribe" includes only an Indian tribe upon and within whose Indian reservation such transaction or activity occurs, and the term "Indian" includes only a person duly registered on the tribal rolls of the Indian tribe upon and within whose Indian reservation such transaction or activity occurs.

Under the revenue laws of the state of Washington, the tax liability of Indians and of persons conducting business with Indians is as follows:

Business and Occupation Tax

Indians and Indian tribes are not taxable with respect to business conducted by them within an Indian reservation.

No deduction is allowed to others by reason of business conducted with Indians or Indian tribes within an Indian reservation.

Retail Sales Tax

Indians and Indian tribes are not subject to the sales tax upon sales to them of tangible personal property made, or otherwise taxable services rendered, within an Indian reservation.

Sales of tangible personal property to Indians or Indian tribes by off-reservation persons are subject to the retail sales tax except where the seller makes actual delivery of the property sold to a point within an Indian reservation.

Sales of taxable services to Indians or Indian tribes are subject to the retail sales tax except where the services are rendered within an Indian reservation.

Sales to persons other than Indians are subject to the retail sales tax irrespective of where delivery or rendition of services takes place. Thus, Indian and Indian tribal retailers are required to collect and remit to the state the retail sales tax upon each taxable sale made by them within an Indian reservation to persons other than Indians.

In order to substantiate the tax-exempt status of a retail sale made within an Indian reservation to an Indian purchaser, unless the purchaser is personally known to the retailer as an enrolled Indian, the retailer shall require presentation of a tribal membership card identifying the purchaser as duly registered on the tribal rolls of an Indian tribe under such lawful criteria as the tribal organization has established. A record shall be retained by the retailer of all tax-exempt sales to support the sales tax deduction on returns filed with the department, identifying the dollar amount of the sale and indicating the name of the purchaser, tribal affiliation of the purchaser, the Indian reservation to which or within which delivery or rendition of services was made, and the date of sale.

Use Tax

Indians and Indian tribes are not subject to the use tax upon the use of tangible personal property within an Indian reservation. However, Indians and Indian tribes will become liable for the use tax when any such property is placed into actual use outside the Indian reservation, irrespective of the fact that the first use of the property may have been within the reservation.

Special application of retail sales tax and use tax with respect to sales of motor vehicles or trailers to Indians and Indian tribes. When motor vehicles or trailers sold to Indians or Indian tribes are licensed by the state of Washington at the time of sale, or at any time thereafter, a presumption is raised that such motor vehicles or trailers are for use on the highways of the state of Washington outside the reservation. When motor vehicles or trailers are licensed prior to delivery, dealers are required to collect the retail sales tax in every instance when valid plates remain on the vehicle or trailer, regardless of delivery point. County auditors must collect the use tax when Indians or Indian tribes apply for a license or transfer of registration unless the

applicant can show that retail sales tax or use tax has previously been paid on the sale or use of the vehicle or trailer by the applicant.

Cigarette Tax

Sales of cigarettes to non-Indians by Indians or Indian tribes are subject to the cigarette tax, since the tax is levied upon the non-Indian purchaser and the vendor is obligated to make precollection of the tax. Therefore, Indian or tribal vendors making, or intending to make, sales to non-Indian customers must purchase a stock of cigarettes with Washington state cigarette tax stamps affixed for the purpose of making such sales. However, Indians and Indian tribes may make purchases of unstamped cigarettes from licensed cigarette distributors for resale to qualified purchasers. For purposes of this rule, "qualified purchaser" means (1) an Indian purchasing for resale within the reservation to other Indians, and (2) an Indian purchasing solely for his or her use other than for resale.

Delivery or sale and delivery by any person of unstamped cigarettes to Indians or tribal vendors for sale to qualified purchasers may be made only in such quantity as is approved in advance by the department of revenue. 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 vendor. 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 vendor's place of business, records indicating the percentage of such trade that has historically been realized by the vendor, 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 unstamped cigarettes to any reservation or to any Indian or tribal vendor 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 by the Tobacco Tax Institute, multiplied by the resident enrolled membership of the affected tribe. Any delivery, or attempted delivery, of unstamped cigarettes to an Indian or tribal vendor without advance approval by the department will result in the treatment of those cigarettes as contraband and subject to seizure and in addition the person making or attempting such delivery will be held liable for payment of the cigarette tax and penalties. Approval for sale or delivery to Indian or tribal vendors of unstamped cigarettes will be denied where the department finds that such Indian or tribal vendors are or have been making sales in violation of this rule.

Delivery of unstamped cigarettes by a licensed distributor to Indians or Indian tribes must be by bonded carrier or the distributor's own vehicle to the Indian reservation. Delivery of unstamped cigarettes at the distributor's dock or place of business or any other off-reservation location is prohibited.

Revised November 14, 1980.

[Statutory Authority: RCW 82.32.300, 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 foreign 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 consolidator, 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), notwithstanding 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 unregistered 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 458-20-193C 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.
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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.
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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 458-20-19301 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 meaning 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 delivered 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 manufacturing, 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 458-20-194 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

(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 458-20-194 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. (A) **Deductibility, generally.** 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 tax, the retail sales tax and the public utility tax. Such taxes may be deducted provided they (1) have been included in the gross amount reported under the classification with respect to which the deduction is sought, and (2) have not been otherwise deducted through inclusion in the amount of an allowable deduction taken under such classification for another reason, i.e., interstate commerce, etc.

The amount of taxes which are not allowable as deductions or exclusions must in every case be included in the gross amount reported.

(B) **Motor vehicle fuel taxes.** So much of the sale price of motor vehicle fuel as constitutes the amount of tax imposed by the state of Washington or the United States government upon the sale thereof may be deducted by every seller thereof from the gross proceeds of sales reported under the business and occupation tax.

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

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

Specific taxes, deductible. The deductions under paragraphs B and C above apply to the following excise taxes among others:

FEDERAL—

Tax on gasoline	26 U.S.C.A. Sec. 4081;
Tax on telegraph, telephone, radio and cable messages	26 U.S.C.A. Sec. 4251;
Tax on transportation of persons	26 U.S.C.A. Sec. 4261;
Tax on transportation of property	26 U.S.C.A. Sec. 4271;

STATE—

Leasehold excise tax collected from lessees, chapter 82.29A RCW;
Motor vehicle fuel tax, chapter 82.36 RCW;
Retail sales tax collected from buyers, chapter 82.08 RCW;
Use tax collected from buyers, chapter 82.12 RCW;

MUNICIPAL—

City admission tax (imposed by city ordinance pursuant to RCW 35.21.280);
County admissions and recreations tax (imposed by county ordinance pursuant to chapter 36.38 RCW).

Specific taxes—Nondeductible. No deduction is allowed with respect to the following licenses and taxes, among others:

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;
Employment taxes	26 U.S.C.A. chapter 21-25;
Estate taxes	26 U.S.C.A. chapter 11;
Gift taxes	26 U.S.C.A. chapter 12;
Income taxes	26 U.S.C.A. Subtitle A;
Liquor taxes	26 U.S.C.A. chapter 51;
Manufacturers' and importers of sugar tax	26 U.S.C.A. Sec. 4501;
Manufacturers' excise and import taxes	26 U.S.C.A. chapter 32;
Automobiles, etc.	26 U.S.C.A. Sec. 4061;
Firearms, shells and cartridges	26 U.S.C.A. Sec. 4181;
Taxes imposed by Revenue Act of 1954	26 U.S.C.A. chapter 32;
Sporting goods	26 U.S.C.A. Sec. 4161;
Lubricating oils	26 U.S.C.A. Sec. 4091;
Tires and inner tubes	26 U.S.C.A. Sec. 4071;
Narcotics tax	26 U.S.C.A. chapter 39;
Occupation taxes:	
Importers, manufacturers and dealers in firearms	26 U.S.C.A. Sec. 5801;
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;
Tobacco excise taxes	26 U.S.C.A. chapter 52;
Wagering taxes	26 U.S.C.A. chapter 35;

STATE AND MUNICIPAL—

Ad valorem property taxes	Title 84 RCW;
Alcoholic beverages licenses and stamp taxes	chapter 66.24 RCW;
(Breweries, distillers, distributors and wineries)	
Boxing and wrestling licenses and tax	chapter 67.08 RCW;
Business and occupation tax	chapter 82.04 RCW;
Cigarette tax	chapter 82.24 RCW;
Conveyance tax	chapter 82.20 RCW;
Gift and inheritance taxes	Title 83 RCW;
Local license fees	
Parimutuel tax	RCW 67.16.100;
Public utility tax	chapter 82.16 RCW;
Real estate excise tax	chapter 28A.45 RCW;
Regulatory fees	
State license fees	
Tobacco products tax	chapter 82.26 RCW
Use tax when not collected as agent for state	chapter 82.12 RCW.

The question of the right to exclude or deduct the amount of any tax other than those authorized herein should be submitted to the department of revenue for determination.

[Statutory Authority: RCW 82.32.300, 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) In computing tax liability under the business and occupation tax and the retail sales tax, one of the following accounting methods should 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 regular books of account are kept on a strictly cash receipts basis. 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

businesses who maintain formal accounting records, the department of revenue will generally look to the revenue accounts of the general ledger of the business to determine when the income is recognized. However, all records of the business will be considered by the department in determining whether the records are being kept on an accrual basis, particularly for those businesses which do not maintain formal records such as a general ledger.

(3) **Method two, accrual basis.** A taxpayer who does not keep books of account on a strictly 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. For example, if a taxpayer reports to the federal government on a cash basis, but maintains accounting records on an accrual basis, the taxpayer is still obligated to report the excise taxes to the state on the 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.

[Statutory Authority: RCW 82.32.300. 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

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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 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 458-20-206 Use tax, fuel oil, oil products, other extracted products. The use tax applies to the use of any oil products (except motor vehicle fuel for highway use) or other extracted products used within the state by the producer or extractor thereof, whether such products have been produced or extracted within or without the state, except when used as a fuel directly in the operation of the particular extractive operation or manufacturing plant which produced the same. (RCW 82.12.0263.)

Distributors who are consumers of fuel oil, are subject to the use tax with respect to the use of such fuel oil, unless the sale of such oil has been subjected to the retail sales tax and the tax paid thereon by such distributor.

[Statutory Authority: RCW 82.32.300. 83-08-026 (Order ET 83-1), § 458-20-206, filed 3/30/83; Order ET 70-3, § 458-20-206 (Rule 206), filed 5/29/70, effective 7/1/70.]

WAC 458-20-207 Attorneys. The word "attorney" as used herein means an individual engaged in the practice of law. The term shall also include a professional service corporation organized under chapter 18.100 RCW for the purpose of engaging in the practice of law.

Business and Occupation Tax

Attorneys are taxable under the service and other activities classification upon the gross income of the business. Gross income of the business means the value proceeding or accruing by reason of the transaction of the business engaged in and includes compensation for the rendition of services, all without any deduction on account of expenses or losses. (See RCW 82.04.070.) Value proceeding or accruing means consideration actually received or accrued. (See RCW 82.04.090.) Thus, under these statutes, the measure of the tax for attorneys includes compensation or consideration for the rendition of legal service.

Attorneys are bound by the rules of professional conduct. RPC 1.8e prohibits an attorney from financing the expenses of contemplated or pending litigation unless the client remains ultimately liable for such expenses. An attorney therefore normally acts solely as agent for the client when financing litigation. Accordingly, amounts received from a client for certain expenses of litigation do not constitute income to the attorney. Thus, such amounts are not part of the business and occupation tax measure.

Sometimes in the regular course of business an attorney may receive amounts from a client for expenses of third party providers incurred in connection with a legal matter other than litigation. Such amounts are also excluded from the business and occupation tax, but only if the attorney has no obligation for payment other than as agent for the client or equivalent commitment for their payment.

Thus, the following kinds of expenses are not subject to the business and occupation tax where the above requirements are satisfied.

- A. Filing fees and court costs.
- B. Process server and messenger fees.
- C. Court reporter fees.
- D. Expert witness fees.
- E. Costs of associate counsel.

F. Costs of third party service providers (for example, accountants, appraisers, architects, artists, draftsmen, economists, engineers, investigators, physicians, surveyors, etc.) who provide services to the client which the attorney does not or cannot render, and to whom the attorney has no obligation for payment other than as agent for the client.

- G. Registration, licensing or maintenance fees.
- H. Title and other insurance premiums.
- I. Escrow fees paid to third party escrow agents.

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 (1) payment is made, or will be made on behalf of a named client, and (2) the attorney assumes no liability for payment, other than as agent for the named client.

General overhead costs are includable in the tax measure even though an attorney may allocate those costs among particular clients. Likewise, any other costs for which the attorney assumes personal liability other than as stated above are includable in the tax measure.

Thus, amounts received to compensate for the following costs are fully subject to tax, even though they may be separately stated on the billings or expressly denominated as costs of the client:

- A. Photocopy or other reproduction charges.
- B. Long distance telephone tolls.
- C. Secretarial expenses.
- D. Travel, meals and lodging.
- E. Third party service providers (for example, accountants, appraisers, architects, artists, draftsmen, economists, engineers, investigators, physicians, etc.) to whom the attorney assumes personal liability for payment.

Retail Sales Tax

Attorneys primarily render professional legal services and are not required to collect the retail sales tax from clients and others paying for such services. This is so even though the legal services rendered by attorneys may include abstract, title insurance, and escrow business activities which are "retail sales" under the law when performed by persons other than attorneys.

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.

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. 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 Accommodation sales. The term "accommodation sales" means only sales for resale by persons regularly engaged in the business of making sales of the type of property so sold to other persons similarly engaged in the business of selling such property where (1) the amount paid by the buyer does not exceed the amount paid by the seller to his vendor in the acquisition of the article and (2) the sale is made as an accommodation to the buyer to enable him to fill a bona fide existing order of a customer or is made within fourteen days to reimburse in

kind a previous accommodation sale by the buyer to the seller.

The "amount paid by the seller to his vendor" may under some circumstances include certain actual costs incurred by the seller and billed as such to the buyer in addition to the invoice cost of the article sold at an accommodation sale. The facts concerning such added costs must be submitted to the department of revenue for specific rulings. The "amount paid by the seller to his vendor" shall not be reduced by the amount of any manufacturer's holdbacks or discounts received after an article has been sold at an accommodation sale even though such holdbacks or discounts may be retained by the seller.

Business and Occupation Tax

In computing tax under the wholesaling—Other classification, there may be deducted from the reported gross amount so much as represents receipts from accommodation sales. Each seller claiming this deduction must retain as a part of his sales records sufficient evidence to prove the nature of the transactions.

Revised June 1, 1970.

[Order ET 70-3, § 458-20-208 (Rule 208), filed 5/29/70, effective 7/1/70.]

WAC 458-20-209 Farming operations performed for hire. Persons engaging in the business of threshing grain, baling hay, cutting or binding hay or grain, tilling the land or performing for hire other services connected with farming activities are taxable under the service and other business activities classification of the business and occupation tax upon the gross income received from the performance of such services.

The extent to which the above functions are performed for others is determinative of whether or not a person is engaged in a taxable business in respect thereto. In other words, a person is not construed as being engaged in a taxable business when his activities are casual and incidental, such as a farmer owning baling equipment or threshing equipment which is used primarily for baling hay or threshing grain produced by himself but who may occasionally accommodate neighboring farmers by baling small quantities of hay or threshing small quantities of grain produced by them. On the other hand, persons owning baling equipment or threshing outfits whose primary business is baling hay or threshing grain for others are engaged in business and taxable with respect thereto, irrespective of the amount or extent of such business and are required to pay the retail sales tax upon the purchase of materials and equipment used in the performance of such services.

In cases where doubt exists in determining whether or not a person is engaging in the business of performing the aforementioned services, all pertinent facts should be submitted to the department of revenue for a specific ruling.

[Statutory Authority: RCW 82.32.300. 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 agricultural products by persons producing the same. (1) The term "agricultural products" as used herein means any agricultural or horticultural produce or crop, including any animal, bird, fish, or

insect, or the milk, eggs, wool, fur, meat, honey, or other substance obtained therefrom: *Provided*, That "fish" as used herein means fish which are cultivated and raised entirely within confined rearing areas on land owned by the person so raising the same or on land in which the person has a present right of possession.

(2) Persons engaging in the business of making retail sales of agricultural products produced by them are required to apply for and obtain a certificate of registration. The certificate shall remain valid as long as the person remains in business.

(3) Business and occupation tax. Persons making wholesale sales of agricultural products produced by them upon land owned by or leased to them are not subject to the business and occupation tax. This exemption does not extend to sales of manufactured or extracted products (see WAC 458-20-135 and 458-20-136).

(4) Retail sales of agricultural products by persons producing the same are subject to tax under the retailing classification of the business and occupation tax. Thus, tax is due by any such person who holds himself out to the public as a seller by:

(a) Conducting a roadside stand or a stand displaying agricultural products for sale at retail;

(b) Posting signs on his premises, or through other forms of advertising soliciting sales at retail;

(c) Operating a regular delivery route from which agricultural products are sold from door to door; or

(d) Maintaining an established place of business for the purpose of making retail sales of agricultural products.

(5) Persons selling agricultural products not produced by them, should obtain information from the department of revenue with respect to their tax liability.

(6) Retail sales tax. Persons selling agricultural products produced by them are required to collect the retail sales tax upon all retail sales made by them, except sales of food products exempt under WAC 458-20-244. The sales tax exemption for food products also applies to sales of livestock sold for personal consumption as food.

(7) The retail sales tax applies to all sales of tangible personal property to persons for use as consumers in producing agricultural products, except for certain expressly tax exempt items (see WAC 458-20-122 and 458-20-157).

(8) Use tax. The use tax applies upon the value of all tangible personal property used as consumers by producers of agricultural products where the retail sales tax has not been paid, except for those items which are expressly exempt of retail sales tax.

[Statutory Authority: RCW 82.32.300. 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) Definitions. 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.

(2) 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.

(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 of the equipment or the owner's employees or agents maintain dominion and control over the personal property and actually operate it, the owner 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." Also, under this statutory definition, the term "retail sale" includes the renting or leasing of tangible personal property to consumers. However, equipment which is operated by the owner or an employee of the owner is considered to be resold, rented, or leased only under the following, precise circumstances:

(a) The property consists of construction equipment;

(b) The agreement between the parties is designated as an outright lease or rental, without reservations; and,

(c) The customer acquires the right of possession, dominion, and control of the equipment, even to the exclusion of the lessor.

(5) The third requirement above 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 servant. 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. 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.

(6) Thus, the terms leasing, rental, or bailment do not include any arrangements pursuant to which the owner of the equipment reserves dominion and control of the equipment and either operates the equipment or property or provides an employee operator, whether or not such employee operator works under the general supervision or control of the customer.

(7) **Business and occupation tax.** Outright rentals of bare (unoperated) equipment or other tangible personal property as well as "true" leases or rentals of operated equipment or property are generally subject to the retailing classification of the business and occupation tax. Under unique circumstances when such things are rented for 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.

(8) 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 subject to the business and occupation tax (or public utility tax) according to the classification of the activities performed by the equipment and operator. Thus, the charge made to a construction contractor for equipment with operator used in the construction of a building would be taxable under wholesaling—other and a similar charge to a contractor for use in the construction of a publicly owned road would be taxable under public road construction.

(9) **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.

(10) 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 or making "true" leases of operated equipment. 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.

(11) The retail sales tax does not apply upon the rental or lease of motor vehicles and trailers to nonresidents of this state for use exclusively in transporting persons or property across the boundaries of this state and in intrastate operations incidental thereto when the motor vehicle or trailer is registered and licensed in a foreign state. For purposes of this exemption, the term "nonresident" shall apply to a renter or lessee 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 renter's or lessee's place of business in another state.

(12) Effective April 3, 1986, (RCW 82.08.0295) the retail sales tax shall not apply to lease payments by a seller/lessee to a purchaser/lessor 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. 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.

(13) **Use 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 use tax on the amount of the rental payments as of the time the payments fall due.

(14) Effective April 3, 1986, (RCW 82.12.0295) the use tax shall not apply to lease payments by a seller/lessee to a

lessor 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 use tax apply to the purchase amount paid by the lessee pursuant to an option to purchase at the end of the lease term. In both situations the availability of this use tax exemption is contingent upon the seller/lessee having paid retail sales tax or use tax at the time of acquisition of such property, equipment, and components.

(15) The value of tangible personal property held or used under bailment is subject to 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 use tax for articles acquired by bailment is the reasonable rental for such articles 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.

(16) 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.)

[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 458-20-213 Oil company bulk station agents. Persons operating oil company bulk stations under a commission agency agreement, billing in the name of the company they represent, hiring and paying employees or assistants, providing and maintaining trucks or other equipment are considered independent agents engaging in the business of distributing gas and oil rather than employees and are taxable under the service and other business activities classification of the business and occupation tax upon gross commissions.

Such persons are required to obtain a separate certificate of registration even though a branch certificate has been obtained for them by the oil company they represent, due to the fact that the oil company reports the wholesale sales made by such persons. Persons operating bulk stations under a commission agency agreement, who bill in their own name rather than in the name of the company they represent, are taxable as sellers either at wholesale or at retail, depending on the nature of the sales made.

Revised May 1, 1943.

[Order ET 70-3, § 458-20-213 (Rule 213), 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 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.

Whenever any taxpayer quits business, sells out, exchanges or otherwise disposes of his business or his stock of goods, any tax payable hereunder shall become immediately due and payable, and such taxpayer shall, within ten days thereafter, make a return and pay the tax due. Any person who becomes a successor to such business shall become liable for the full amount of the tax and withhold from the purchase price a sum sufficient to pay any tax due from the taxpayer until such time as the taxpayer shall produce a receipt from the department of revenue showing payment in full of any tax due or a certificate that no tax is due. If the tax is not paid by the taxpayer within ten days from the date of sale, exchange or disposal, the purchaser or successor shall become liable for the payment of the full amount of tax. The payment thereof by the purchaser or successor shall, to the extent thereof, be deemed a payment upon the purchase price. If such payment is greater in amount than the purchase price, the amount of the difference shall become a debt due the purchaser or successor from the taxpayer.

A successor shall not be liable for any tax due from the person from whom he has acquired a business or stock of goods, if he gives written notice to the department of such

acquisition and no assessment is issued by the department within six months of receipt of such notice against the former operators of the business and a copy thereof mailed to such successors.

The word "successor" means any person who shall, through direct or mesne conveyance, purchase or succeed to the business, or portion thereof, or the whole or any part of the stock of goods, wares, merchandise or fixtures or any interest therein of a taxpayer quitting, selling out, exchanging or otherwise disposing of his business. Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor.

The work "successor" includes all persons who acquire the taxpayer's equipment or merchandise in bulk, whether they operate the business or not, unless the property is acquired through insolvency proceedings or regular legal proceedings to enforce a lien, security interest, judgment, or repossession under a security agreement. The following factual situations illustrate the application of the foregoing:

(1) Taxpayer sells business and stock of goods. Purchaser is the successor.

(2) Taxpayer sells stock of goods in bulk. Purchaser is the successor, even though taxpayer continues in business through purchase of new stock.

(3) Taxpayer sells business, including fixtures, good will, etc., to one party and his stock of goods to another. Both purchasers are successors.

(4) Taxpayer sells one branch of the business and stock of goods, and continues to carry on his business at other locations. Purchaser is successor to the portion of the business purchased and liable for any tax incurred in the operation of that business.

(5) Taxpayer leaves business, including fixtures and stock of goods, which his landlord holds for unpaid rent. The landlord will be a successor unless he proceeds to foreclose his landlord's lien by posting notice and holding a sale by the sheriff.

(a) If the landlord, instead of foreclosing his lien, takes a bill of sale to all of the taxpayer's interest in the business or stock of goods in satisfaction of rent, he is a successor.

(b) If the landlord fails to foreclose his lien and sells the fixtures or stock of goods and the purchaser continues the business or a similar business, the purchaser is a successor.

(c) If the taxpayer does not leave any fixtures or stock of goods and the landlord engages in a like business in the same location or rents to a third person, neither the landlord nor the third person is a successor.

(6) Taxpayer purchases business, equipment, or stock of goods under a security agreement and the property is repossessed by the vendor, the vendor is not a successor.

(a) If the vendor sells to a third person who continues the business, the third person is not a successor.

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

(c) If the property is not repossessed and the vendor buys back the interest of the taxpayer, the vendor is a successor, and any third person who purchases the same from such vendor and continues the business is also a successor.

(7) Taxpayer dies or becomes bankrupt, goes into receivership, or makes an assignment for the benefit of creditors.

(a) 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.

(b) A purchaser from the executor, administrator, trustee, receiver, or assignee is not a successor, unless under the terms of the purchase agreement he assumes and agrees to pay taxes and/or lien claims.

(8) 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.

Bulk transfers. Under chapter 62A.6 RCW persons whose principal business is the sale of merchandise from stock (including manufacturers) who transfer

(1) A major part of the materials, supplies, merchandise or other inventory of the business; or

(2) All or substantially all of the equipment of the business are required to furnish to the transferee a sworn list of all creditors, showing their names, addresses, and amounts owed. The parties (both the transferor and transferee) are then required to prepare a schedule of property being transferred, the schedule to be sworn to by the transferor. The list of creditors and schedule of property must be

(a) Preserved by the transferee for 6 months available for inspection and copying by any creditor,

(b) Filed by the transferee with the county auditor, and

(c) Served by the transferee on the department of revenue.

In addition to the foregoing, the transferee must, at least 10 days prior to taking possession of the goods or making payment for them, give notice of the transfer to

(1) All persons shown on the list of creditors,

(2) Any other persons known to hold or assert claims against the transferor, and

(3) The department of revenue.

The notice to creditors must also be filed with the county auditor and shall state

(1) That a bulk transfer is about to be made,

(2) Names and business addresses of the transferor and transferee,

(3) Whether debts of the transferor will be paid in full as they fall due and if so (a) the location and general description of the property to be transferred, (b) the estimated total of the transferor's debts, and (c) certain other information specified by RCW 62A.6-107.

Revised June 1, 1970.

[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) Any tax due and unpaid, and all increases and penalties thereon, constitute a debt to the state and may be collected by court proceedings in the same manner as any other debt, which remedy is in addition to any and all other remedies.

(2) **Tax warrants.** When a warrant issued under RCW 82.32.210 and 82.32.220 has been filed with the clerk of the superior court and entered in the judgment docket, the warrant becomes a specific lien upon all goods, wares, merchandise, fixtures, equipment or other personal property used in the conduct of the business of the taxpayer, including property owned by third persons who have a beneficial interest, direct or indirect in the operation thereof, and no sale or transfer of such personal property in any way affects the lien. However, the lien is not superior to bona fide interests of third persons which had vested prior to the filing of the warrant when such third persons do not have a beneficial interest, direct or indirect, in the operation of the business, other than securing the payment of a debt or the receiving of a regular rental on equipment; provided that "bona fide interest of third persons" shall not include any 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 who executed such chattel or real property mortgage or the document evidencing such credit transaction.

(a) Thus, where an oil company leases a filling station and other equipment to an operator under conditions whereby the operator is required to sell, or does sell, the products of the lessor, the lien will attach to the personal property leased by the oil company. Likewise, where the owner of a tavern grants to another a concession to operate the lunch counter therein, the lien for unpaid taxes, increases, and penalties with respect to the operation of the lunch counter will attach to any equipment, fixtures, or other personal property owned by the tavern keeper but used by the concessionaire in the conduct of the business. Similarly, the lien attaches to a stock of merchandise supplied to a dealer by a distributor, manufacturer, bank or finance company whether on consignment or under a security agreement where it appears that the distributor, manufacturer, bank or finance company has financed the dealer by means of capital loans or has in any other way aided or assisted in maintaining the dealer in business. The amount of the warrant also becomes a lien upon the title to and interest in all other real and personal property of the taxpayer against whom it is issued and is the same as a judgment in a civil case docketed in the office of the clerk.

(b) Warrants so docketed are sufficient to support the issuance of writs of garnishment in favor of the state, provided the taxpayer has not been denied an opportunity to be heard regarding the assessment.

(3) **Withhold and deliver.** The department of revenue is authorized to issue to any person, or to any political subdivision or department of the state, a notice and order to withhold and deliver property of any kind whatsoever when there is reason to believe that there is in the possession of such person, political subdivision or department, property which is or shall become due, owing or belonging to any taxpayer against whom a warrant has been filed. The notice and order to withhold and deliver shall constitute a continuing levy on such property until the department shall issue its release of such levy.

(a) The notice and order to withhold and deliver may be served by the sheriff of the county wherein service is made, or by his deputy, or by any authorized representative of the

department of revenue. The notice and order to withhold and deliver may also be served by certified mail, return receipt requested, by the sheriff, deputy, or authorized representative of the department. Persons upon whom service has been made are required to answer the notice within twenty days exclusive of the day of service. The answer must be under oath and in writing. If such answer states that it cannot be presently ascertained whether, in fact, any property is or shall become due, owing, or belonging to such taxpayer, the persons served herein are required to further answer when such fact can be ascertained with reasonable certainty.

(b) Property which may be subject to the claim of the department must be delivered forthwith to the department or its duly authorized representative upon demand, to be held in trust by the department for application on the indebtedness involved, or for return, without interest, in accordance with final determination of liability. In the alternative, there must be furnished a good and sufficient bond satisfactory to the department conditioned upon final determination of liability.

(c) Failure of any person to make answer to an order to withhold and deliver within the prescribed time permits the court to render a judgment by default for the full amount claimed by the department in the notice to withhold and deliver, together with costs.

(4) **Probate, insolvency, assignment for the benefit of creditors, or bankruptcy.** In all of these cases 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, and the mere existence of such cases or conditions is sufficient to create the lien without any prior or subsequent action by the state, and in all such cases it is the duty of all administrators, executors, guardians, receivers, trustees in bankruptcy or assignees for the benefit of creditors, to notify the department of the existence thereof within thirty days from the date of their appointment and qualification. In the event such notice is not timely given, such persons become personally liable for the payment of the taxes and all increases and penalties.

The lien attaches as of the date of assignment or of the initiation of court proceedings, but shall not affect the validity or priority of any earlier lien that may have attached previously in favor of the state under any other provision of the Revenue Act.

(5) **Public improvement contracts.** The amount of all taxes, increases and penalties due or to become due under any chapter of the Revenue Act from a contractor or his successors or assignees with respect to a public improvement contract wherein the contract price is \$20,000 or more is a lien prior to all other liens upon the amount of the retained percentage withheld by the disbursing officers, and the amount of all other taxes, increases and penalties due and owing from the contractor is a lien upon the balance of such retained percentage after all other statutory lien claims have been paid.

Any state, county or municipal officer charged with the duty of disbursing or authorizing the payment of public funds, before making final payment of the retained percentage to any person performing any such contract, or to his successors or assignees, must require the person to secure from the department a certificate that all taxes, increases and penalties due from such person, and all taxes to become due

with respect to such contract have been paid in full or that they are, in the department's opinion, readily collectible without recourse to the lien and that said lien is therefore released.

(6) **Trust fund accountability for retail sales tax.**

(a) **Background:** This rule is promulgated pursuant to RCW 82.32.300 which directs that the department of revenue has the authority to implement the provisions of RCW 82.32.237, effective May 1, 1987.

(b) **Generally:** This rule implements legislation which is intended to enforce the timely remittance of retail sales tax to the department of revenue. The statute accomplishes that intent by imposing personal liability for retail sales tax collected by the retail seller upon those persons who (i) control or supervise the collection of retail sales tax and hold the same in trust pursuant to RCW 82.08.050 or (ii) are charged with the responsibility for the filing of returns or the payment to the state of retail sales tax held in trust.

(c) **Definitions:**

(i) **Person:** Person means "person" as defined in RCW 82.04.030. The use of the term person in the singular may mean persons or vice versa where appropriate in the circumstances or where the content requires the same.

(ii) **Collected:** The term "collected" shall mean actually and physically controlled. A corporation shall be deemed to have actual and physical control if possession shall be in an agent of the corporation.

(iii) **Termination:** The term "termination" means revocation of the corporation's certificate of registration, the first act of liquidation or distribution of corporate assets with the intent to cease any further business activity after liquidation or distribution, the filing of a petition in bankruptcy court for complete liquidation or any other act evidencing the intent to quit business or close business activity.

(iv) **Abandonment:** The term "abandonment" means the officers, directors, and shareholders have relinquished all dominion and control of the corporate affairs and there is no one who acknowledges authority to act for or on behalf of the corporation.

(v) **Dissolution:** The term "dissolution" means statutory dissolution pursuant to chapter 23A.28 RCW.

(d) **Requirements for assessment:** Before the department may assess trust fund accountability for retail sales tax held in trust, the statute requires that the underlying retail sales tax liability be that of a corporation. Second, there must also be a termination, dissolution or abandonment of the corporation. Third, the person against whom personal liability is sought willfully failed to pay or to cause to be paid retail sales tax collected and held in trust. Fourth, the person against whom personal liability is sought is a person who has control or supervision over the trust funds or is responsible for reporting or remitting the retail sales tax. Finally, there must be no reasonable means to collect the tax directly from the corporation.

(e) **Persons liable:** Any person who controls or supervises the collection of retail sales tax or is charged with the responsibility for the filing of returns or the payment of retail sales tax collected and held in trust, may be personally liable to the state for the retail sales tax which was collected, held in trust, pursuant to RCW 82.08.050 and not paid over to the state. There may be more than one person liable under this statute if the requirements as to each are present.

(i) "Control or supervision of the collection of retail sales tax" shall mean the person who has the power and responsibility under corporate bylaws, job description or other proper delegation of authority (as established by written documentation or through a course of conduct) to collect, account and deposit the corporate revenue and to make payment of the retail sales tax to the department of revenue. The term means significant rather than exclusive control or supervision. Thus, the term shall not mean the sales clerk who actually collects the funds from the customer or the person whose only responsibility is to take control of the funds and deposit the same into the bank, but it shall include the treasurer of the corporation if it is that person's responsibility to assure that the revenue is collected from the cash registers, tills or similar collection devices and that the amounts are deposited into the corporate account. It may also include the bookkeeper if the bookkeeper has the responsibility to collect, account and deposit the corporate revenue. In both examples, it is the treasurer or bookkeeper who have the significant control or supervision.

(ii) "Responsibility for the filing of returns or the payment of the retail sales tax collected and held in trust" shall mean the person who has the authority and discretion to file state excise tax returns and to determine which corporate debts should be paid. The person who signs the state excise tax returns or signs checks on behalf of or for the corporation may be a responsible party if that person also has the authority and discretion to determine which corporate debts should be paid. If the corporate account requires the signature of more than one person, then all such signatories may be a responsible party for trust fund accountability purposes. A member of the board of directors, a shareholder or an officer may also become a responsible party if the director, shareholder or officer actually approves the payment of corporate debts whereby the result of such approval is to pay the trust funds to someone other than the department of revenue.

(f) **Extent of personal liability:** If a person is found personally liable for the retail sales tax held in trust, such person shall be liable for any retail sales tax held in trust including interest and penalties which have accrued or may be accruing on such taxes. The liability of such person shall be limited to only the retail sales tax held in trust (and the interest and penalties accruing thereon) for the time that the person had control or supervision over the retail sales tax collected or had responsibility for the filing of returns or the payment to the state of the retail sales tax held in trust.

(i) The amount of liability assessable against a person for trust fund accountability shall be the amount of the retail sales tax actually collected and held in trust (during the period for which personal liability is sought) plus any penalties and interest accruing on said amount. For corporations who report state excise taxes on the accrual basis or corporations who report retail sales tax in accordance with "method three" of WAC 458-20-199, the amount of the personal liability shall be reduced by payments of retail sales tax actually remitted to the state but not yet collected from the customer.

(ii) If the department has determined that there is no reasonable means of collection of the tax directly from the corporation and the corporation holds property which has a readily ascertainable value, then the department shall reduce

the amount of assessable personal liability by an amount that represents the fair market value of such corporate property. The fair market value determined by the department shall be rebuttable by a preponderance of the evidence through persons who are competent and otherwise qualified to give testimony as to value. The term "fair market value" shall have its usual and customary meaning less reasonable costs of liquidation, if applicable.

(g) **Willfully fails to pay or to cause to be paid:** The statute defines the term "willfully fails to pay or to cause to be paid" as an intentional, conscious and voluntary course of action. The failure to pay over such tax must be the result of a willful failure to pay or to cause to be paid to the state any retail sales tax **collected** on retail sales by the corporation as opposed to retail sales tax due on the corporation's consumable items.

For example, if the treasurer knows that the retail sales tax must be remitted to the state on the twenty-fifth day of the following month, but rather than holding the funds for payment on the twenty-fifth, uses such funds to pay for any other obligation such as the payroll or additional inventory, such act is an intentional, conscious and voluntary course of action. If there are insufficient funds on the twenty-fifth day of the following month to pay over to the state, the treasurer will have willfully failed to pay or to cause to be paid retail sales tax held in trust.

(h) **Circumstances beyond the control:** Any person, who shall otherwise meet the requirements for personal liability, shall not be personally liable if the failure to pay or to cause to be paid is the result of circumstances beyond the control of such person and that person has exercised good faith in collecting and attempting to hold the funds in trust. The following examples are provided for illustrative purposes only and they do not, in any way, limit the scope of the circumstances which may be beyond the control of the person against whom liability is sought. Each case will be determined in accordance with its particular facts and circumstances.

(i) Immediately prior to timely payment of the retail sales tax, unknown to the person against whom personal liability is sought, the Internal Revenue Service levies and seizes the money. Such occurrence is beyond the control of the person against whom personal liability is sought.

(ii) Immediately prior to timely payment of the retail sales tax, unknown to the person against whom personal liability is sought, the person learns that the business is the victim of an embezzler, the criminal act of which has been reported and duly documented by the local law enforcement authority. Such occurrence is beyond the control of the person against whom personal liability is sought.

(iii) Immediately prior to timely payment of the retail sales tax, unknown to the person against whom personal liability is sought, the bank in which the retail sales tax has been deposited exercises a right of offset and removes the money from the taxpayer's control. Such occurrence is beyond the control of the person against whom personal liability is sought.

(iv) Prior to the date for timely payment of the retail sales tax, the person against whom personal liability is sought agrees to a judgment against the corporation and allows the judgment creditor to garnish the funds held in trust and become a preferred creditor over the state. Such

occurrence lacks good faith and is not beyond the control of the person against whom personal liability is sought.

(i) **No reasonable means of collection:** Before the department is authorized to pursue personal liability for retail sales tax under the trust fund theory, the department must find that there is no reasonable means of collecting the retail sales tax directly from the corporation.

"No reasonable means of collection" shall mean that the burden to pursue the corporation's assets may outweigh the benefits to be achieved. Inconvenience of collection alone is insufficient to establish the absence of a reasonable means of collection. This standard, however, does not require that the department liquidate all assets of the corporation before it can pursue recourse under the theory of trust fund accountability. A lack of a reasonable means of collection is illustrated by the following examples. (These examples are used for illustration only and they shall not be considered the only circumstances under which the meaning of the phrase shall apply.)

(i) Assume that the corporation owned real estate upon which there were first and second mortgages. The value of the property may satisfy the first and second lien holders, but it is doubtful that, after costs of sale, there would be sufficient value remaining to satisfy all or a part of the trust fund liability. A reasonable means of collection is not present, because the cost to pursue the corporation's real property may produce no value with which to satisfy any or all of the liability.

(ii) Assume that the corporation owned miscellaneous office furniture and equipment. The value of the property is negligible. A reasonable means of collecting the tax is not present, because the burden to liquidate all assets in order to recover a negligible value outweighs the benefit of a few dollars to be recovered.

(j) **Notice of personal liability:** The department shall give the person against whom personal liability is sought notice in accordance with RCW 82.32.130. The notice shall include the taxpayer's name as well as registration, tax assessment and tax warrant numbers, if any, of the corporation; the name of the person against whom the personal liability is sought; a statement that there is no reasonable means of collection and the reasons for such conclusion; and the capacity (control/supervision or responsible person) upon which the department seeks to base the personal liability.

(k) **Appeal of trust fund accountability assessment:** Any person who has received an assessment under the authority of RCW 82.32.237, and this section shall have the right to proceed under WAC 458-20-100 and any other remedy found in RCW 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

[Statutory Authority: RCW 82.32.300, 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 advertis-

ing 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 liable 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 state-wide 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 state-wide 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 busi-

ness 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 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. Veterinarians are primarily engaged in the business of rendering professional services, although many veterinarians, in addition to such services, also sell medicines and supplies for use in the care of animals.

Business and Occupation Tax

Taxable under the retailing classification upon gross sales of medicine and supplies when such articles are sold for a specific charge and not used by the veterinarian in the rendition of services.

Taxable under the service and other business activities classification upon gross income derived from the rendition of professional services and from the boarding and training of animals.

Retail Sales Tax

Veterinarians purchase medicines, bandages, splints and other supplies primarily for use by them in rendering professional services. Sales of such articles to veterinarians are retail sales and the retail sales tax applies thereto.

However, veterinarians are required to collect the retail sales tax when such articles are sold by them for a specific charge and not in connection with the rendition of a professional service.

Sales of semen for use in the artificial insemination of livestock are exempt from sales tax.

(See WAC 458-20-102 on resale certificates, particularly that portion under the heading purchases for dual purpose.)

[Statutory Authority: RCW 82.32.300. 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 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 458-20-225 Pattern makers.**Business and Occupation Tax**

Manufacturing. Pattern makers are taxable under the manufacturing classification with respect to making patterns.

Retail Sales Tax

Sales by pattern makers of their products to foundries, machine shops, machinery or equipment manufacturers, inventors or other persons who use or consume the patterns in producing, or in having produced, articles for sale or use are retail sales upon which the retail sales tax must be collected, irrespective of whether, after such use, such patterns are sold or title transferred along with the articles produced.

Sales by supply houses to pattern makers of lumber, nails, glue, steel, shellac or other materials becoming a component part of the patterns are sales for further processing. Accordingly, the retail sales tax is not collected on such sales by the supply houses.

On the other hand, sales by supply houses to pattern makers of machinery, equipment, tools and other articles or materials which are used in the production of the patterns, but do not become a component part thereof, are retail sales upon which the retail sales tax must be collected.

Revised June 1, 1970.

[Order ET 70-3, § 458-20-225 (Rule 225), filed 5/29/70, effective 7/1/70.]

WAC 458-20-226 Landscape gardeners. The business of landscape gardening ordinarily includes one or more of the following activities:

- (a) The performance of contracts for grading, filling, leveling and planting of yards, lawns, and grounds.
- (b) The sale, rental, or planting of ornamental trees, plants, shrubs, etc.
- (c) The performance of contracts for the construction of structures, such as walks, pools, fences or trellises, rockeries and retaining walls.
- (d) The maintenance of lawns, plants, or gardens, including grass cutting, hedge trimming, watering, and the pruning of trees and shrubs.

Business and Occupation Tax

Landscape gardeners are taxable under the classification retailing upon gross proceeds of sales of tangible personal property at retail and upon gross income from performing contracts of types (a), (b), and (c) for consumers. Landscape gardeners are taxable under the classification wholesaling on gross proceeds of sales for resale and upon gross income from performing contracts of types (a), (b), and (c) for other contractors for resale. Such persons are taxable under the classification service and other activities upon gross income from activities of type (d).

Retail Sales Tax and Use Tax

Landscape gardeners must collect and report the retail sales tax upon the full contract price when performing contracts of types (a), (b), and (c) for consumers. Such persons 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. The use tax must be paid upon the value of any such property purchased or acquired without payment of the Washington retail sales tax. Landscape gardeners may give resale certificates to their vendors and are not liable for payment of the retail sales tax upon purchases of plants, shrubs, seed, ornamental trees, fertilizer, peat moss, building materials and any other tangible personal property which is resold either directly or as a component part of the finished work in the course of performing contracts of types (a), (b), and (c) for consumers. Retail sales tax or use tax is due with respect to articles or products used by landscape gardeners in the course of performing contracts of type (d).

[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.** Taxpayers have a responsibility to become informed about applicable tax laws and to correctly and timely report their tax liability. The taxes imposed under chapter 82.24 RCW (Tax on cigarettes) are collected through sales of revenue stamps.

As to taxes imposed under chapter 82.04 RCW (Business and occupation tax), chapter 82.08 RCW (Retail sales

tax), chapter 82.12 RCW (Use tax), chapter 82.14 RCW (Local sales and use taxes) chapter 82.16 RCW (Public utility tax), chapter 82.27 RCW (Tax on enhanced food fish), chapter 82.29A RCW (Leasehold excise tax), chapter 84.33 RCW (Timber and forest lands), and chapter 82.26 RCW (Tobacco products tax), returns and remittances are to be filed with the department of revenue by the taxpayer. 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. The tax reporting frequency is assigned by the department of revenue. See WAC 458-20-22801.

(2) **Method of payment.** Payment of the taxes may be made by cash, check, money order, or in certain cases by electronic fund transfers.

(a) Payment by cash must be made at an office of the department of revenue.

(b) Payment of tax may be made by uncertified bank check, but if any such check is not honored by the bank on which drawn, the taxpayer shall remain liable for the payment of the tax and may be subject to penalties. The department may refuse to accept any check which, in its opinion, would not be honored by the bank on which such check is drawn. The remittance covered by any check which is so refused will be deemed not to have been made and the taxpayer will remain liable for the tax due and for the applicable penalties.

(c) The law requires that certain taxpayers pay their taxes through electronic fund transfers. The department of revenue will inform taxpayers who are required to pay their taxes in this manner. See WAC 458-20-22802.

(3) **Due dates.** For monthly reporting taxpayers, the tax returns are due on the 25th of the following month. For quarterly and annually reporting taxpayers, the tax returns are due on the last day of the next month after the period covered by the return. For example, tax returns covering the first quarter of the year are due on April 30.

(a) If the date for filing the tax return falls upon a Saturday, Sunday, or legal holiday, the filing shall be considered timely if performed on the next business day. See 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 as conclusive evidence by the department in determining if a tax return was timely mailed by the taxpayer. It is the responsibility of the taxpayer to mail the tax return sufficiently in advance of the due date to assure that the postmark date is timely.

(4) **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 late payment, failure to follow specific written instructions, or evasion.

(a) If the tax return is not filed by the due date, a 5% penalty will apply; a 10% penalty will apply if the return is not filed within 30 days of the due date; and a 20% penalty will apply if the return is still delinquent 60 days from the due date. The minimum penalty for late payment is five dollars.

(i) The department may refuse to accept any return which is not accompanied by a remittance of the tax shown to be due thereon, and if not accepted, the taxpayer shall be

deemed to have failed or refused to file a return, and shall be subject to the above penalties. If the tax return is accepted without payment and payment is not made by the due date, the late penalties will apply until the tax is paid.

(ii) The aggregate of penalties for failure to file a return, late payment of any tax, increase or penalty, or issuance of a warrant may not exceed thirty-five percent of the tax due, or twenty dollars, whichever is greater.

(iii) The department will apply the payment of the taxpayer first against interest, next against penalties, and then upon the tax, without regard to any direction of the taxpayer. In applying a partial payment to a tax assessment, the payment will be applied against the oldest tax liability first. For purposes of RCW 82.32.145, 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 the years 1992 and 1993. The tax assessment includes interest and penalties of five hundred dollars, retail sales tax of four hundred dollars for the year 1992, six hundred dollars retail sales tax for the year 1993, two thousand dollars of other taxes for the year 1992, and seven thousand dollars of other taxes for the year 1993. The order of application of any payments will be first against the five hundred dollars interest and penalties, second against the four hundred dollars retail sales tax in 1992, third against the two thousand dollars of other taxes in 1992, fourth against the six hundred dollars retail sales tax of 1993, and finally against the seven thousand dollars of other taxes in 1993.

(b) 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 department by the due date specified in the notice, or any extension thereof. The minimum for this penalty is five dollars.

(c) The department may issue a tax warrant if any fee, tax, increase, or penalty or any portion thereof is not paid within fifteen days after it becomes due. If a warrant is issued, a penalty will be added of five percent of the amount of the tax, but not less than ten dollars.

(d) Negligence penalty. 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, the department will add a penalty of ten percent of the additional tax found due because of the failure to follow the instructions.

(i) The taxpayer will be considered as having disregarded specific written instruction when the department of revenue 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 to whom the specific written instructions were given. However, the taxpayer will not be considered as having 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 penalty. 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.

(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 under paid. For example, if it is found 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.

(ii) At times it may be necessary for the department to issue its assessment to protect the state's interest prior to completion of its investigation or evaluation of all of the facts and circumstances surrounding the tax deficiency. The department at its option may issue the tax assessment without including the evasion penalty or the penalty for failure to follow written instructions and may revise the assessment to assert the penalty at a later date if it is the department's opinion that these penalties are due. In order to give the taxpayer some certainty and finality of its tax liability, these penalties will be assessed within six months of the time that the tax was assessed to which the penalties relate.

(iii) The department may impose either the evasion penalty or the penalty for disregarding specific written instruction, as appropriate in its opinion, but may not impose both penalties on the same tax which is found to be due.

(f) The department will add the late payment penalties described in (a) of this subsection to assessments of those taxpayers which had not voluntarily registered prior to being contacted by the department of revenue. However, a person will be considered to have voluntarily registered with the department of revenue if the person contacted any other agency of the state and was issued a uniform business identifier number prior to being contacted by the department of revenue.

(g) 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. Refer to RCW 82.08.050.

(5) Interest. The department of revenue is generally required by law to add interest to assessments for tax deficiencies and overpayments. Interest also applies to penalties. Refer to WAC 458-20-229 for a discussion of refunds and WAC 458-20-230 for a discussion of the statute of limitations.

(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 date of payment.

(b) For tax liabilities arising after December 31, 1991, until the date of payment, interest will be added with the rate of interest being variable. The rate of interest 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.

(c) The following are examples of how the interest provisions apply.

(i) Assume a tax assessment is paid on December 31, 1994, and the assessment indicated tax deficiencies in each of the years of 1991, 1992, 1993, and 1994. The interest for 1991 will be calculated at a fixed rate of nine percent per year until the assessment is paid in full. The interest for tax deficiencies in 1992 and 1993 will be calculated at the variable rate discussed in (b) of this subsection. The interest rate for each year is calculated separately. For discussion purposes only, assume the compounded interest rate calculates to be eleven percent for the year 1992 and twelve percent for 1993. Since the tax deficiency for 1992 was not paid for a period of two years from the close of 1992, interest will be charged for two years on the 1992 deficiency. The interest amount is computed by multiplying the tax deficiency by twenty-three percent. The deficiency for 1993 will bear interest at twelve percent and will be computed on the tax deficiency since the deficiency remained unpaid for only one year.

(ii) If the assessment is not paid by the original due date, extension interest will be added based on the rate in effect at the time the extension is granted or the assessment is revised with the exception that extension interest will be computed at nine percent for all tax deficiencies which occurred prior to 1992.

(iii) 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.

(6) Waiver or cancellation of penalties. The department will waive or cancel the penalties imposed under RCW 82.32.090 and interest imposed under RCW 82.32.050 upon finding that the failure of a taxpayer to pay any tax by the due date was due to circumstances beyond the control of the taxpayer. The department has no authority to cancel penalties or interest for any other reason. Penalties will not be cancelled merely because of ignorance or a lack of knowledge by the taxpayer of the tax liability.

(a) A request for a waiver or cancellation of penalties must be in letter form and should contain all pertinent facts and be accompanied by such proof as may be available. Petition for cancellation 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). In all such cases the burden of proving the facts is upon the taxpayer.

(b) The following situations will be the only circumstances under which a cancellation of penalties will be considered by the department:

(i) The return was filed on time but inadvertently mailed to another agency.

(ii) The delinquency was due to erroneous written information given the taxpayer by a department officer or employee. 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 instructions or information imparted by the department employee, or that the taxpayer fully understood the information received. Reliance by the taxpayer on incorrect advice received from the taxpayer's legal or accounting representative is not a basis for cancellation of the penalty.

(iii) The delinquency was caused by death or serious illness of the taxpayer or his immediate family, or illness or death of his accountant or in the accountant's immediate family, prior to the filing date.

(iv) The delinquency was caused by unavoidable absence of the taxpayer, prior to the filing date.

(v) The delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.

(vi) The taxpayer, prior to the time for filing the return, made timely application to the Olympia or district office, in writing, for proper forms and these were not furnished in sufficient time to permit the completed return to be paid before its delinquent date.

(vii) The delinquency penalty will be waived or cancelled on a one time only basis if the delinquent tax return was received under the following circumstances:

(A) The return was received by the department with full payment of tax due within 30 days after the due date; i.e., within the five percent penalty period prescribed by RCW 82.32.090, and

(B) The delinquency was the result of an unforeseen and unintentional circumstance, not immediately known to the taxpayer, which circumstances will include the error or misconduct of the taxpayer's employee or accountant, confusion caused by communications with the department, failure to receive return forms timely, natural disasters such as a flood or earthquake, and delays or losses related to the postal service.

(7) **Waiver or cancellation of interest.** The following situations will constitute circumstances under which a waiver or cancellation of interest upon assessments pursuant to RCW 82.32.050 will be considered by the department:

(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.

(b) 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.

(8) **Stay of collection.** RCW 82.32.200 provides, "When any assessment or additional assessment (of taxes) has been made, the taxpayer may obtain a stay of collection, under such circumstances and for such periods as the department may by general regulation provide, of the whole or any part thereof, by filing with the department a bond in an amount, not exceeding twice the amount on which stay is desired, and with sureties as the department deems necessary, conditioned for the payment of the amount of the assessments, collection of which is stayed by the bond, together with the interest thereon at the rate of one percent of the amount of such assessment for each thirty days or portion thereof from the due date until paid."

(Note: RCW 82.32.190 authorizes issuance of an order by the department holding in abeyance tax collection during pendency of litigation. Such tax might be that due on excise tax returns or tax due for unaudited periods for which no

assessment has been issued. If, however, an assessment has been issued and is unpaid, RCW 82.32.200, not RCW 82.32.190, is the operative statute for stay of collection with respect to such an assessment.)

(a) The department will give consideration to a request that it grant a stay of collection if:

(i) Written request for the stay is made prior to the due date for payment of the tax assessment, and

(ii) Payment of any unprotested portion of the assessment and other taxes due is timely made, and

(iii) The requested stay is accompanied by an offer of a cash bond, or the offer of a security bond, the conditions of which are guaranteed by a specified authorized surety insurer; in either case the amount of the bond will ordinarily be set in an amount equal to the assessment or portion thereof for which stay is requested together with interest thereon at the rate of one percent per month, but in appropriate cases the department may require a bond in an increased amount not to exceed twice the amount for which stay is requested.

(b) The department will grant a stay of collection only when it is satisfied and determines that it is in the best interests of the state to do so. Factors which it will consider in making this determination include: The existence of 1. a constitutional issue to be litigated by the taxpayer the resolution of which is uncertain; 2. a matter of first impression for which the department has little precedent in administrative practice; and 3. an issue affecting other similarly situated taxpayers for whom the department would be willing to stay collection of the tax.

(c) Claims of financial hardship or threat of litigation are not grounds which would 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 therefor 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.

(9) **Extensions.** The department, for good cause, may extend the due date for filing any return. Any permanent extension, 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. 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 RCW (Hotel/motel tax), 70.93 RCW (Litter tax), 70.95 RCW (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 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.** Chapter 69, Laws of 1990, requires certain taxpayers to pay the taxes reported on the combined excise tax return with an electronic funds transfer (EFT). This EFT requirement for taxpayers with large monthly payments begins with the monthly tax return due January 25, 1991. EFT merely changes the method of payment and no other tax return procedures or requirements are changed.

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

(a) "Electric 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.

(3) Taxpayers required to pay by EFT.

(a) For the calendar year 1991, taxpayers who have taxes due of \$1,800,000 or more are required to pay by EFT.

(b) For calendar years after 1991, taxpayers who have taxes due of \$240,000 or more are required to pay by EFT.

(c) In the interest of efficient tax administration, the department will notify those taxpayers required to pay by EFT at least three months prior to the start of their EFT payment requirement.

(d) The process of identifying taxpayers meeting the EFT threshold shall be based upon the taxes that were due in the last complete calendar year before the three month

notification date. For example, taxpayers who will start paying by EFT in January, 1993 will be notified by the department by September 30, 1992. The base year for those taxpayers will be the calendar year 1991.

(e) Upon a showing by the taxpayer to the satisfaction of the department that it will not have taxes due in the payment year of more than the threshold amount, the department shall waive the requirement to pay by EFT.

(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), 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, the taxpayer may agree in writing to waive this requirement. If the taxpayer wishes to have the refund made by EFT, the taxpayer shall provide the department with the information necessary to make an appropriate EFT.

(6) **EFT methods.** EFT shall be accomplished through the use of ACH debit or ACH credit. In an emergency, taxpayer shall contact the department for alternative methods of payment. The appropriate person to contact in the department will be included in the notification materials sent to all EFT remitters.

(7) **Due date of EFT payment.**

(a) 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 3:00 p.m., Pacific time, of 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. Each bank generally has its own transaction deadlines and it is the responsibility of the taxpayer to insure timely payment.

(b) The tax return due date shall be the next business day after the original due date if the original 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.

(i) 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 would be Monday, December 28th, and this is the new tax return due date. EFT must be completed by 3:00 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 3:00 p.m., Pacific time, on Monday, December 28th.

(8) **Coordinating return and payment.** The filed return and the payment by EFT shall be coordinated by the department. A return shall be considered timely filed only if it is received by the department on or before the due date,

or with a postmark on or before the due date. In addition, the payment by EFT must have been completed by the next banking day after the 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 secrecy codes 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 shall provide the information necessary for its bank to complete the ACH CCD+ addenda for transmittal to the department's bank.

(10) **Voluntary use of EFT.** The use of EFT by taxpayers other than those required by statute to use EFT shall be by the written permission of the department.

(11) **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 shall 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 and the taxpayer has responsibility for 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 proof that the transaction has been settled will constitute proof of payment.

(12) **Correcting errors.** Errors in 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 mitigate any penalties.

(13) **Penalties.**

(a) 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 both the filing of the tax return and the payment to be timely. Penalties may be waived only when the circumstances causing delinquency are beyond the control of the taxpayer. See: WAC 458-20-228.

(b) 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 shall apply with respect to those funds authorized.

(c) 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 shall apply as to those funds authorized if the transaction is not completed.

[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. If upon written application for a refund or an audit of his records, or upon examination of the returns or records of any taxpayer, it is determined by the department of revenue that within the four calendar years immediately preceding the receipt by the department of such an application, or within the four calendar years immediately preceding the completion by the department of such an examination, a tax has been paid in excess of that properly due, the excess amount paid within said period will be credited to the taxpayer's account or will be refunded to him.

No refund or credit may be made for taxes paid more than four years prior to the beginning of the calendar year in which refund application is made or examination of records by the department is completed.

Notwithstanding the foregoing limitation, there will be refunded or credited to taxpayers engaged in the performance of United States government contracts or subcontracts the amount of any tax paid, measured by that portion of the amounts received from the United States which the taxpayer is required by contract or applicable federal statute to refund or credit to the United States, if claim for such refund or credit is filed with the department within one year of the date that the amount of refund or credit due to the United States is finally determined, and such claim is filed with the department within four years of the date on which the tax was paid. No interest will be allowed on such refunds to said contractors.

All refunds are made by means of vouchers signed by the taxpayer and approved by the department pursuant to which there is issued to taxpayers state warrants drawn upon and payable from such funds as the legislature may provide.

Any judgment entered by a court of competent jurisdiction, not appealed from, for recovery of any tax, penalty and interest which were paid by the taxpayer, and costs, shall be paid in like manner, upon the filing with the department of a certified copy of the judgment.

Interest at the rate of 3% per annum will be allowed by the department and by any court on the amount of any refund allowed to a taxpayer for taxes, penalties or interest paid by him and interest at the same rate is allowed on any judgment recovered by a taxpayer for taxes, penalties or interest paid.

[Statutory Authority: RCW 82.32.300, 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. No assessment or correction of an assessment for additional taxes due may be made by the department of

revenue more than four years after the close of the tax year, except:

(1) Against a taxpayer who has not registered as required by chapter 82.32 RCW.

(2) Upon a showing of fraud or of misrepresentation of a material fact by the taxpayer.

(3) Where the taxpayer has executed a written waiver of such limitation.

(4) Sales tax collected by a seller upon retail sales. Such tax shall be deemed to be held in trust until paid to the department. (RCW 82.08.050.)

Revised June 1, 1965.

[Order ET 70-3, § 458-20-230 (Rule 230), filed 5/29/70, effective 7/1/70.]

WAC 458-20-231 Tax on internal distribution. (1) **Introduction.** The intent of RCW 82.04.270 is to impose a tax equal to the wholesaler's tax upon persons doing functions essentially the same as those of a wholesaler, but not making sales. Persons engaged in the business of distributing articles of tangible personal property owned by them from their own warehouse or other central location in this state to two or more of their own retail stores or outlets in this state are taxable under the internal distribution classification of the business and occupation tax. This tax applies to transfers of merchandise from a central location to retail outlets even if the goods are preordered and there is no inspection or opening of cartons or boxes at or by the central location.

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

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

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

(3) **Two or more retail stores or outlets.** The term "two or more of their own retail stores or outlets" means two or more retail stores operated within this state separate and apart from any "warehouse or other central location." The term does not include a retail store or retail outlet, a part of which is operated as a warehouse from which distribution is made. However, a retail store or outlet will be counted as

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

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

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

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

(5) **Taxable distributions.** In cases where the taxpayer sells at both wholesale and retail, the internal distribution tax will not apply with respect to articles distributed for sale at wholesale and upon the sale of which tax will be due under the classification wholesaling—other.

(a) Articles distributed from independent manufacturers or distributors directly to the taxpayer's retail stores or outlets, or the taxpayer's retail customers are not taxable distributions by the taxpayer. Only the first distribution of seasonal or other goods from a warehouse or central location is taxable, whether or not such goods were originally received in a retail store and later transferred to the warehouse or central location from which taxable distribution is later made.

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

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

(a) **Method 1. Cost of production.** The value of articles distributed may be computed upon the basis of the cost of manufacturing or producing such articles. In such case there shall be included every item of cost attributable to the particular article or articles manufactured or produced, including direct and indirect overhead costs and the cost of transportation to the local distribution point. In such event tax liability accrues during the period in which the articles are distributed.

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

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

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

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

(8) **Election to be made.** A taxpayer may elect to report upon the basis of any one of the five above methods, providing that the method elected shall be applied to all articles distributed, and after such election is made such taxpayer shall not be permitted to change to any other method without securing the written consent of the department of revenue. Taxpayers who manufacture the product may use method 1 for those products and any one of the other methods for products which they do not manufacture. Intricate or unusual problems concerning determination of the value of articles distributed should be submitted to the department for special ruling.

(a) The statute provides that the internal distributions tax may not be assessed twice to the same person for the same article. In the absence of separate accounting for articles upon which the tax has or has not been paid, the taxpayer may use percentage formula computed according to a factual segregation of articles distributed for a test period of at least two representative months. Any such formula is subject to approval by the department.

[Statutory Authority: RCW 82.32.300, 90-23-020, § 458-20-231, filed 11/14/90, effective 12/15/90; 83-08-026 (Order ET 83-1), § 458-20-231,

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filed 3/30/83; Order ET 70-3, § 458-20-231 (Rule 231), filed 5/29/70, effective 7/1/70.]

WAC 458-20-232 Sales of intoxicating liquor.

Sales of Intoxicating Liquor

Intoxicating liquor as covered by this rule means spirits, wine, beer and strong beer as those terms are defined in chapter 66.04 RCW.

Business and Occupation Tax

Persons selling intoxicating liquor to consumers by the drink, opened bottle or unopened bottle are subject to the business and occupation tax under the retailing classification upon the gross proceeds of sales. No deduction is allowable for the special liquor sales taxes levied on these commodities.

Persons selling intoxicating liquor, mixers, ice, etc., for resale are subject to the business and occupation tax under the wholesaling—others classification upon the gross proceeds of sales.

Liquor agencies. Persons operating liquor agencies on a commission basis are employees of the Washington state liquor control board and are not subject to business and occupation tax on income from this activity.

Special Liquor Sales Taxes

These taxes are imposed by RCW 82.08.150 and are collected and administered by the Washington state liquor control board.

General Retail Sales Taxes of Chapter 82.08 RCW (State Sales Tax) and Chapter 82.14 RCW (Local Sales Tax)

Sales of wine and beer to consumers by the drink, opened bottle or unopened bottle, and sales of spirits by the drink, are subject to the retail sales taxes imposed by chapters 82.08 and 82.14 RCW. These taxes are also collectible by the Washington state liquor control board and its agencies on sales of wine and beer. The measure of the tax is the gross selling price without deduction for special liquor sales taxes. Sales of spirits and strong beer in the original package by the Washington state liquor control board and its agencies are not subject to these retail sales taxes. For sales tax collection instructions with respect to sales of alcoholic beverages by Class H licensees. Taverns, and the like, see WAC 458-20-119.

[Statutory Authority: RCW 82.32.300. 83-08-026 (Order ET 83-1), § 458-20-232, filed 3/30/83; Order ET 73-1, § 458-20-232, filed 11/2/73; Order ET 71-1, § 458-20-232, filed 7/22/71; Order ET 70-3, § 458-20-232 (Rule 232), 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 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 458-20-234 Business tax on flour millers, manufacturers of soybean or sunflower oil. RCW 82.04.260(2) imposes business and occupation tax upon the manufacture of wheat into flour, soybean oil, or sunflower oil as follows:

"Upon every person engaging within this state in the business of manufacturing wheat into flour, soybeans into soybean oil, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business shall be equal to the value of the flour or oil manufactured, multiplied by the rate of one-eighth of one percent."

This special classification for flour millers is limited strictly to those manufacturing "wheat into flour" and does not apply to the milling of any other type of grain; nor does it apply to the manufacture of any other product from wheat than flour. The term "flour" shall have its ordinary meaning and includes flours such as wheat, wholewheat, cracked wheat, entire wheat graham, bulgar, and rolled wheat but excluding such by-products as bran and shorts. Insofar as such other products are concerned, the tax under the general manufacturing classification (RCW 82.04.240) will apply.

Accordingly a miller milling wheat into flour will be taxable under manufacturing wheat into flour on the value of the flour manufactured and manufacturing—other on the value of the offal produced as a result of the milling process.

Persons making sales in this state of flour, soybean oil, or sunflower oil which they have manufactured are subject to business tax under either the retailing or wholesaling—all others classification and are not subject to tax under the classification manufacturing wheat into flour. (RCW 82.04.440.)

[Statutory Authority: RCW 82.32.300. 83-08-026 (Order ET 83-1), § 458-20-234, filed 3/30/83; Order ET 70-3, § 458-20-234 (Rule 234), 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 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 458-20-237 Retail sales tax collection schedules.

(1) **State retail sales and use tax.** Under the provisions of section 6, chapter 7, Laws of 1983 the state retail sales tax was increased to 6.5% effective March 1, 1983. For purposes of the state retail sales tax, where a retail sale occurs is to be determined under RCW 82.14.020 and WAC 458-20-145.

(2) **Local sales and use tax.** RCW 82.14.030 (1) and (2) authorizes counties and cities to levy a local sales and use tax of .5% and an additional local option sales and use tax of up to .5%. These local taxes are collected along with the 6.5% state tax.

(a) RCW 82.14.045 authorizes all cities and counties, after voter approval, to levy an additional sales and use tax of .1%, .2%, .3%, .4%, .5%, or .6%, to finance public transportation systems. This tax is collected along with the other state and local tax.

(b) Section 43, chapter 43, Laws of 1990 which took effect March 14, 1990, allows cities that operate transit systems, county transportation authorities, Metro and public transportation benefit areas, after voter approval, to levy a local sales and use tax in addition to those authorized in RCW 82.14.030 not to exceed an additional 1.0%. This tax is also collected along with the other state and local tax.

(3) **Availability of sales tax schedules.** Under the authority of RCW 82.08.060 and 82.14.070, the department of revenue has published schedules to govern the collection of retail sales tax on all retail sales. Copies of the schedules may be obtained by writing to Department of Revenue, Information and Education Section, General Administration Building, Olympia, Washington 98504-0090 or by contacting one of the local department of revenue district offices listed below.

(4) Street and mailing addresses of local district offices.

110 W. Market P.O. Box 1018 Aberdeen 98520 (206) 533-9312	919 SW Grady Way P.O. Box 877 Renton 98057 1-800-647-7706
1904A Humboldt St. P.O. Box 1176 Bellingham 98227 (206) 676-2114	400 Mercer, Room 100 Seattle 98109 1-800-647-7706
4841 Auto Center Way Suite 102 Bremerton 98312 (206) 478-4961	300 Northtown Office Bldg. North 4407 Division P.O. Box 7248 Spokane 99207-0248 (509) 456-3140
2020 35th Street P.O. Box 6 Everett 98206 (206) 339-1880	11707 - 21st Ave. S. P.O. Box 44010 Tacoma 98444-4010 (206) 493-2874
711 Vine Street P.O. Box 240 Kelso 98626 Longview/Kelso Office (206) 577-2015	8008 - 4th Plain Blvd. P.O. Box 1648 Vancouver 98668 (206) 577-2015
1024 Cleveland, Suite B P.O. Box 278 Mount Vernon 98273 (206) 336-9616	630 N. Chelan Ave., Ste. B3 P.O. Box 220 Wenatchee 98801 (509) 663-9714
1107 South Eastside P.O. Box 7 Olympia 98507 1-800-647-7706	1714 South 16th Ave. Yakima 98902-5713 (509) 575-2783
2110 West Henry P.O. Box 2844 Pasco 99302 (509) 545-2442	INQUIRIES FROM OUT- OF-STATE, CALL: 1-800-233-6349
1601 East Front Street Bldg. 2, Suite A P.O. Box 400 Port Angeles 98362 (206) 457-2564	

[Statutory Authority: RCW 82.32.300, 91-05-038, § 458-20-237, filed 2/13/91, effective 3/16/91; 83-09-028 (Order ET 83-2), § 458-20-237, filed 4/15/83; 82-16-061 (Order ET 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 ET 79-1), § 458-20-237, filed 5/17/79, effective 7/1/79; Order ET 76-2, § 458-20-237, filed 5/19/76; Order ET 72-3, § 458-20-237, filed 11/30/72; Order ET 70-3, § 458-20-237 (Rule 237), filed 5/29/70, effective 7/1/70.]

WAC 458-20-238 Sales to nonresidents of watercraft requiring Coast Guard registration or documentation. The term "Coast Guard registration," in addition to its ordinary meaning, will include registration numbering by the state of principal use when this function has been assumed by the state under the Federal Boating Act of 1958.

Business and Occupation Tax

In computing tax under the retailing classification, no exemption or deduction is allowed by reason of the fact that watercraft requiring Coast Guard registration are sold to nonresidents for use outside this state.

Retail Sales Tax

Under RCW 82.08.0266 an exemption from retail sales tax is allowed in respect to sales to nonresidents of this state for use outside of this state of watercraft requiring Coast Guard registration, even though delivery be made within this state, but only when (a) the watercraft will not be used within this state for more than forty-five days and (b) the seller receives from the buyer an exemption certificate as hereafter provided, and examines acceptable proof that the buyer is a resident of a state other than the state of Washington. The exemption certificate should be in substantially the following form, one copy to be filed with the department of revenue with the regular excise tax return and a duplicate to be retained by the dealer as a part of his records.

Exemption Certificate

I, (printed or typed name of purchaser), hereby certify: That I am a bona fide resident of the state of and my address is (street and number or route), (city, town or post office), (state). That on this date I have purchased from (dealer) the following described watercraft:

Make and Model . . . Length . . .

How propelled: Inboard . . . Outboard . . .
Horsepower . . .

I further certify that this water craft will be registered or documented with the (Coast Guard or State of principal use), will not be used in the state of Washington for more than forty-five days and is exempt from Washington State Retail Sales Tax under RCW 82.08.0266.

I hereby declare, under penalty of perjury, that the above statements are true and correct to the best of my knowledge and belief.

Date Signature

Certification of Dealer

I hereby certify that I personally examined the following items of documentary evidence submitted by the above purchaser to establish his residence in the state of

. . . Payroll or W-2 Forms
. . . Driver's License
. . . Fishing or Hunting License
. . . Voter's Registration Card
. . . Copies of Income Tax Returns
. . . Other Explain

(signature of
dealer or
representative)

(Dealer's
registration
number with
Department
of Revenue)

.....
title-officer
or agent

The foregoing exemption is limited to sales of watercraft requiring Coast Guard registration or, where the state in which the boat will be principally used has assumed the registration and numbering function under the Federal Boating Act of 1958, to sales of watercraft which have been registered and numbered by such state of principal use. The exemption is also available in respect to sales of vessels which are documented (registered, enrolled, or licensed) by the United States Coast Guard to and in a port other than in the state of Washington. This exemption is applicable only to the sale of watercraft in condition to be waterborne and not to unattached component parts, repair parts, repair labor, etc. The exemption is not applicable for sales to Canadian or other foreign country residents taking delivery in this state.

Use Tax

The use tax will be applicable to the use by a nonresident of watercraft registered or documented with the Coast Guard or with the state of principal use when the watercraft was purchased from a Washington vendor and is first used within this state for more than forty-five days.

[Statutory Authority: RCW 82.32.300, 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.

Business and Occupation Tax

In computing tax under the retailing classification, no exemption or deduction is allowed by reason of the fact that farm machinery or implements are sold to nonresidents for use outside this state when delivery is made in this state.

Retail Sales Tax

Under RCW 82.08.0268 an exemption from retail sales tax is allowed in respect to sales to nonresidents of this state of machinery and implements for use in conducting a farming activity outside this state, when such machinery and implements are transported outside the state immediately after sale. This exemption is allowed even though the goods sold are delivered to the purchaser in this state, but only where the seller receives from the buyer an exemption certificate as hereinafter provided and examines acceptable proof that the buyer is a resident of a state or country other than the state of Washington. The exemption certificate should be in substantially the following form and is to be retained by the seller as a part of his records. Each sale claimed exempt must be supported by a separately executed certificate. Certificates for other or prior transactions or "blanket" certificates are not acceptable.

Exemption Certificate

I, (printed or typed name of purchaser) hereby certify: That I am a bona fide resident of the state of and my address is (street and number or box and route), (city, town or post office), (state). That on

(1992 Ed.)

(date) I purchased from (seller) the following machinery or implements:

(name or description) (brand) (model) That the machinery or implements named above are purchased for my use in conducting a farming activity at (address), and the date of transporting the same outside the state of Washington is (month, day and year)

.....
(date)

.....
(signature of purchaser)

Certification of Dealer

I hereby certify that I personally examined the following items of documentary evidence submitted by the above purchaser which show his residence to be the state of:

- ... Payroll or W-2 Forms
- ... Driver's License
- ... Fishing or Hunting License
- ... Voter's Registration Card
- ... Copies of Conditional Sales Contracts
- ... Copies of Income Tax Returns

.....
(signature of
dealer or
representative)

.....
(Dealer's
registration
number with
Department
of Revenue)

.....
title-officer
or agent

[Statutory Authority: RCW 82.32.300, 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 Manufacturers, tax credits. (1) Introduction. Chapter 82.62 RCW establishes a business and occupation tax credits program. Its purpose is to stimulate the economy and create employment opportunities in specific distressed areas of this state. In addition to the tax credit benefits of this program, specific financial incentives to employers who locate or expand business facilities in this state are administered by the Washington state employment security department. The provisions of this section, however, apply only for manufacturing or research and development activities conducted at specific business facilities in announced eligible areas of this state.

(2) Effective April 1, 1986, persons engaged in manufacturing or research and development activities, who otherwise qualify, will receive credits against their business and occupation tax due under chapter 82.04 RCW. Those credits amount to one thousand dollars for each qualified employment position directly created in an eligible business project, as those terms are defined in this section.

(3) Definitions. For purposes of the tax credits program the following definitions will apply.

(a) "Applicant" means a person applying for tax credit under this program.

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

(c) "Eligible area" means:

(i) A county in which the average level of unemployment for the three years before the year in which an application is filed exceeds the average state unemployment for those years by twenty percent. The department will publish a list of such eligible areas by May 1 of each year during the life of this program.

(ii) 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 for credit is filed exceeds the average state unemployment for such calendar year by twenty percent. Applications under this subsection shall be filed by April 30, 1989.

(d) "Eligible business project" means manufacturing or research and development activities which are conducted by an applicant in an eligible area at a specific facility: *Provided*, That in order to qualify as an eligible business project, the applicant's average full-time qualified employment positions at the specific facility will be at least fifteen percent greater in the year for which credit is being sought than they were at the same facility in the immediately preceding year.

(e) The term "eligible business project" defined earlier, does not include any of the following:

(i) Any business project undertaken by a light and power business;

(ii) Any portion of a business project creating employment positions outside an eligible area;

(iii) Any business projects of persons who are receiving sales tax deferrals under chapter 82.61 RCW (see WAC 458-20-24002).

(f) "Manufacturing" has the meaning given in RCW 82.04.110 and WAC 458-20-136. For purposes of this section the term also includes computer programming, the production of computer software, and other computer-related services, and the activities of research and development and commercial testing laboratories.

(g) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, services, or process before commercial sales have begun.

(h) "Qualified employment position" means a permanent full-time employee, employed in an eligible business project during the entire tax year: *Provided*, That,

(i) Once a full-time position is established and filled it will continue to qualify for tax credit purposes so long as it is filled by any person or, during any period of vacancy, the employer is training or actively recruiting a replacement employee;

(ii) A position will not be deemed to be filled in order to qualify for tax credit if it is vacant for any period in excess of thirty consecutive days;

(iii) The requirement for employment during the "entire" tax year will be satisfied if the full-time position is filled for a period of twelve consecutive months.

(i) "Permanent full-time employee" means a person who works for the recipient on a paid basis, at least thirty-five hours per week. It does not include independent contractors, independent representatives, persons compensated exclusively on a commissioned basis, or seasonal and similar employ-

ment personnel who work for the recipient for only a part of the year.

(j) "Tax year" means the calendar year in which taxes are due.

(k) "Recipient" means a person receiving tax credits under this program.

(l) "Credit computation year" means the tax year for which credits are being sought. The first credit computation year for which any person can seek and qualify for credit approval under this program is tax year 1987.

(m) "Base year" means the entire calendar year immediately preceding the credit computation year. The first base year under this program is 1986.

(4) Application procedures. Application for tax credits under this program must be made using the prescribed application for B&O tax credit on new employees. These forms are available from the department on request. The completed application must be submitted to the department before the actual hiring of qualified employment positions for which credit is sought.

(5) The department will determine if the information contained on the application qualifies the applicant for tax credits and will either approve or disapprove the application within sixty days. If approved, the department will issue a credit approval notice which will notify the recipient in writing of the dollar amount of tax credits available for use and the credit taking procedures. If disapproved, the department will notify the applicant in writing of the specific reasons for disapproval. The applicant may seek administrative review of any credit disapproval pursuant to the provisions of WAC 458-20-100.

(6) Under the law, tax credits may be received only for the creation of qualified employment positions at specific facilities within "eligible areas" as defined earlier. For purposes of making application for tax credits the state-wide and county unemployment statistics last published by the department will be used to determine eligible areas. The department will publish such statistics and a list of eligible areas by county, on May 1 of each year.

(7) A separate application must be submitted for each credit computation year.

(8) Qualifying for credit. There are three qualifying tests, all of which must be met, in order to receive approval for tax credits under this program.

(a) The applicant must be a "manufacturing" business as defined earlier; and

(b) The specific facility at which the manufacturing activities are being conducted must be within an eligible area as defined earlier; and

(c) The average full-time qualified employment positions at the specific facility during the credit computation year must be at least fifteen percent greater than such employment average for the preceding year.

(9) Because chapter 116, Laws of 1986 includes an emergency effective date of April 1, 1986, and because the stated intent is to stimulate the economy and create employment opportunities, this tax credits program is effective immediately. Full-time employees expected to be hired after any application for credits is submitted but before January 1, 1987, will be deemed to be employed as of January 1, 1987. They will be includable within the qualified employment position computation for that year. Thus, credits may be

available for all positions hired after the effective date of the law if they otherwise qualify and within the dollar limits explained later.

(10) The threshold, fifteen percent employment increase test (qualifying test number three) is met by:

(a) Stating in the application the actual average number of full-time employment positions which existed at the facility during the base year;

(b) Stating the projected number of new positions to be filled during the credit computation year;

(c) Stating the average number of full-time employment positions for the credit computation year including the new projected positions;

(d) Achieving an increase of at least fifteen percent of (c) over (a) above.

(i) Examples. Applicant has no employees at the facility for base year 1986 and intends to hire ten persons, some in 1986 and some in 1987. Because for first year implementation of the program the 1986 hires will be deemed to be hired January 1, 1987, the applicant's base year average remains zero. Thus, its credit computation year average will always meet the fifteen percent increase test, even if only one new position is hired.

(ii) Applicant has an average employment of ten positions in base year 1986 and intends to hire two more persons, one yet in 1986 and one in 1987. This applicant must achieve a 1.5 position increase in 1987 to meet the fifteen percent threshold test. Since its new 1986 hiree will be attributed to January 1, 1987, it must project to hire the other new position by July 1, 1987, in order to meet the fifteen percent increase average of 1.5 for that credit computation year.

(iii) Applicant has an average employment of fifty positions in base year 1986 and intends to hire five more persons by January 1, 1987. This applicant will not qualify for 1987 tax credits because its 1987 average (fifty-five positions) is not at least fifteen percent greater than its base year 1986. In order to qualify for any credits this applicant would have to project hiring of at least eight new positions (a 1987 average of at least 57.5 employment positions) to meet the needed percentage increase.

(iv) The applicant in the previous example intends to hire ten new positions, five yet in 1986 and the other five sometime in 1987. Since the 1986 hirees will be attributed to January 1, 1987 hiring, this applicant must hire the other five new positions early enough in 1987 to be able to compute a 1987 average of at least 57.5 for that year. Thus, the additional five 1987 hirings would have to be projected to be hired by at least July 1, 1987 in order to qualify for credits.

(11) Note. The department will be able to advise applicants of their minimum number of hiring needs and the latest time within the credit computation year that the positions must be filled to qualify for credits, based upon the information provided in the application.

(12) The carry-over of positions hired in 1986 into 1987 is a first year carry-over only. After 1986, all hiring increases must occur during the computation year for purposes of meeting the fifteen percent threshold test. Thus, applications for the 1988 credits computation year will be tested only by the average increase of 1988 employment positions over the 1987 base year average.

(13) In simplest terms, qualification for tax credits depends upon whether enough new positions are expected to be hired early enough to meet the fifteen percent average increase test.

(14) The fifteen percent threshold test to qualify for tax credits is a "lookahead" test which has no relationship to the dollar amount of credits which may be available. Also, the test for qualifying for approval of tax credits is unrelated to the end-of-year reporting and verification of credits, the "look-back" test explained later in this section. Rather, the fifteen percent test is a credits qualification test only.

(15) Applications for tax credits under this program must include the applicant's expected hirings for the full credit computation year for which credits are sought. After an application is approved and tax credits are granted, no adjustment or amendment of the credits approval will be possible for that credit computation year.

(16) Credits approval and use. Tax credits approved by the department may be used to offset current business and occupation tax liability if the recipient has incurred any such liability during the credit computation year. The credits may be used as soon as actual hiring of the projected qualified employment positions begin. For example, if a recipient has been approved for \$10,000.00 of tax credits based upon projections to hire ten new positions, that recipient may use each \$1,000.00 of tax credit at the time it hires each new employee.

(17) The law provides that the tax credits available under this program must be used to offset business and occupation tax which has been paid during the same tax year. However, rather than paying the tax and then seeking a refund in the amount of credits available, the recipient will take the available credits against current tax liability as it accrues.

(18) The tax credits approved under this program will be taken by the recipients on their regular combined excise tax return for their regular assigned tax reporting period. The amount of credit taken should be filled in on the front of the return form, with a copy of the credit approval notice issued to the recipient attached to that return.

(19) Credits may be used as hiring is done or may accrue until they are most beneficial for the recipient's use. This is true even for first year credits available for hiring new positions in 1986. As soon as credits are approved and hiring begins, credits may be used, even during the remainder of 1986. No tax refunds will be made for any tax credits which exceed actual tax liability during the life of this program. Under no circumstances may tax credits exceed tax liability.

(20) 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, on an on-going basis, until used.

(21) The tax credits approved for a recipient under this program may be used to offset business and occupation tax liability which the recipient owes because of business activity anywhere in this state. The liability for which the credit is used does not have to be incurred or flow from business engaged in at the specific facility in the eligible area.

(22) Tax credits available in any credit computation year may be used to offset business and occupation tax due on the fourth quarterly return or last monthly return of the tax year, even though that return is not actually filed with the department until January 25 of the following year.

(23) Credit and program limitations. Except as noted below, the credit application and approval provisions of this program will expire on July 1, 1994. However, credits which become available under approved applications may be used after July 1, 1994, as actual hiring is done. No applications submitted by metropolitan statistical areas as defined in subsection (3)(c)(ii) of this section will be accepted after April 30, 1989.

(24) No recipient is eligible for tax credits in excess of three hundred thousand dollars during the entire life of this program.

(25) The total of credits approved for all applicants under this program will not exceed fifteen million dollars per biennium. Any application for credits which is otherwise qualified but which is denied in whole or in part for a biennium because of this total program credit limit, will carry over for approval in the next biennium. However, once the total program credit limit has been met for the next biennium as well, no further tax credits will be approved.

(26) 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 qualified 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 locations 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.

(27) Perfecting approved credits. In order to perfect its entitlement to any credits approved and legally use such credits against business and occupation tax due, a recipient must actually hire the required number of qualified employment positions to comply with the application upon which tax credits were approved. Such created positions must be maintained for a continuous period of twelve consecutive months. (See the definition of "qualified employment position" at subsection (3)(h) of this section.) The law establishes a "look-back" test at the end of the credit computation year to determine that the tax recipient has complied.

For purposes of administering this program the department will consider a period of twelve consecutive months of employment to satisfy the definition of "qualified employment position," to perfect the entitlement to tax credits used.

(28) Reporting and monitoring. All recipients of tax credits under this program must file an annual report with the department reporting their employment activities through December 31 of each credit computation year. This report must be submitted by January 31 of the following year. Based upon this report the department will verify that the recipient is perfecting its entitlement to any tax credits approved by actually employing the required number of new

qualified employment positions as represented in the recipient's credit application.

(29) Because this program is being fully implemented in mid-year 1986, the annual report due on December 31, 1986, will be an informational report only. No tax credits approved, whether actually used in 1986 or not, will be withdrawn or denied based upon this 1986 report. The annual report due on December 31, 1987, will be the first report which may result in tax credits being withdrawn.

(30) 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 assessed and payable. An inadequate report is one which fails to provide any information in the possession of a recipient which is necessary to confirm that the requisite number of employment positions have been created and maintained for twelve consecutive months. As credits are approved, the department will advise all recipients of the nature of information to be included on their annual reports.

(31) The department will monitor credit applications and annual reports on an ongoing basis over the life of this credit program. The department will maintain a running tabulation of credits approved for individual recipients as well as program credit totals and will advise applicants and recipients in writing of the program credit limitations which may affect their entitlement.

(32) Noncompliance—Withdrawal of credits. 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 shall be immediately due. No interest or penalty will be assessed in such cases.

(33) However, if the department finds that a recipient has failed to create the specified number of qualified employment positions, the department shall assess interest, but not penalties, on the taxes against which the credit has been used. This interest 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. Such interest will accrue until the taxes for which the credit was used are fully repaid.

(34) The administrative review and appeal provisions of chapter 83.32 RCW are available for any actions of the department, under this program, by which any applicant or recipient is adversely affected.

(35) Disclosure of information. The law provides that information contained in applications, reports, or any other information received by the department in connection with this tax credits program shall not be confidential and shall be subject to disclosure.

[Statutory Authority: RCW 82.32.300. 88-17-047 (Order 88-5), § 458-20-240, 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 facilities in distressed areas. (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 distressed areas of the state. Thus, the legislature established this tax deferral program to be effective solely in those distressed areas and under circumstances where the deferred tax payments are for investments or costs that result in the creation of a specified minimum number of jobs. In general, the deferral applies to sales and use taxes on materials, labor, and services rendered in the construction of qualified buildings, 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. For purposes of this section:

(a) "Applicant" means a person applying for a tax deferral under chapter 82.60 RCW.

(b) "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."

(c) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(d) "Recipient" means a person who has been granted a tax deferral under this program.

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

(f) "Eligible area" means:

(i) 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; or

(ii) 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 this chapter exceeds the average state unemployment for such calendar year by twenty percent. Applications under this subsection shall be filed by April 30, 1989. For the purpose of (f)(i) of this subsection, the average unemployment rate for the county must be twenty percent above the average unemployment rate for the state in the preceding three calendar years. In determining an eligible area under this subsection 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.

(g) "Eligible investment project" means that portion of an investment project which:

(i) 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

(ii) Either initiates a new operation or expands or diversifies a current operation by expanding or renovating an existing building, machinery and equipment, with costs in excess of twenty-five percent of the true and fair value of the plant complex prior to the improvement. (See the definition of "improvement" in (h)(iii) of this subsection.)

(h) For the purposes of the above paragraph the following definitions will apply:

(i) "Qualified employment position" means a permanent, full time employee employed in the eligible investment project during the entire tax year following the operational completion of the project. 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.

(ii) The requirement for employment during the "entire tax year," for purposes of this tax deferment program, will be satisfied if the full time position is filled for a period of twelve consecutive months.

(iii) An "improvement" shall mean 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.

(iv) "True and fair value" means the value listed on the assessment roles as determined by the county assessor for the land, buildings, or equipment for ad valorem property tax purposes at the time of application.

(v) "Plant complex" shall mean land, machinery, and buildings adapted to industrial, computer, warehouse, 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.

(vi) "Eligible investment project" does not include either an investment project undertaken by a light and power business as defined in RCW 82.16.010(5), or investment projects which have already received deferrals under chapter 82.60 RCW.

(i) "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 or remodel 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 person 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.

(j) "Manufacturing" has the meaning given in RCW 82.04.110 and WAC 458-20-136 now and as hereafter amended. Manufacturing, for purposes of this section, shall also include computer programming, the production of computer-related service, and the activities performed by research and development laboratories and commercial testing laboratories.

(k) "Qualified buildings" means new structures used to house manufacturing activities as defined above and includes plant offices, warehouses, or other facilities for the storage of raw material and finished goods if such facilities are essential or an integral part of a manufacturing operation. The term also includes parking lots, landscaping, sewage disposal systems, cafeterias, and the like, which are attendant to the initial construction of an eligible investment project. The term "new structures" means either a newly constructed building or a building newly purchased by the certificate holder. A preowned or existing building is eligible for deferral provided that the certificate holder expands, modernizes, renovates, or remodels the preowned or existing building by physical alteration thereof.

(l) "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, as defined above. "Qualified machinery and equipment" includes, but is not limited to, 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. The tax deferral applies to equipment purchased outright by the recipient (or the transfer of machinery and equipment into the state of Washington) and leased equipment. Acquisition of spare parts for machinery, equipment, etc., in excess of normal operating levels shall not be eligible for deferral.

(m) "New machinery and equipment" means either new to the taxing jurisdiction of the state or new to the certificate holder. Used equipment is eligible for deferral provided that the certificate holder either brings the machinery or equipment into Washington for the first time or purchases it at retail in Washington.

(n) "Initiation of construction," for purposes of applying for the investment tax deferral relating to the construction of new buildings, shall mean the date upon which on-site construction work commences.

(o) "Initiation of construction," for purposes of applying for the investment tax deferral relating to a major improvement of existing buildings, shall mean the date upon which the new construction by renovation, modernization, or expansion, by physical alteration, begins.

(p) "Operationally complete" means the eligible investment project is constructed or improved to the point of being

fully and functionally useable for its intended purpose as described in the application.

(4) Application procedure. An application for sales and use tax deferral under this program must be made prior to the initiation of construction, as defined above. However, any application by a metropolitan statistical area defined as an "eligible area" in subsection (3)(f)(ii) of this section must be filed by April 30, 1989. 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

(5) The department will verify the information contained in the application and either approve or disapprove the application within sixty days. If approved, a tax deferral certificate shall 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.

(6) For purposes of making application for tax deferral and of approving such applications, the state-wide and county unemployment statistics last published by the department will be used to determine eligible areas. The department will publish a list of eligible areas by county, on May 1 of each year.

(7) 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 and qualified 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.

(8) 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 tax deferral sales.

(9) Audit procedure. 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 sales and use 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. At

that time the certificate holder may not utilize the certificate further. If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may apply for a supplemental certificate stating a revised amount upon which the deferral of sales and use taxes is requested. The certificate holder shall amend the original application to account for the additional costs. The department will grant or deny the amended application on the same basis as original applications.

(10) 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.

(11) 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 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 twenty days from the date of the notice of disallowance.

(12) The department shall keep a running total of all deferral certificates granted during each fiscal biennium.

(13) The deferral is allowable only in respect to investment in the construction of a new plant complex or the enlargement or improvement of an existing plant complex directly used in manufacturing activities, as defined above. Where a plant complex is used partly for manufacturing 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.

(14) 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.

(15) After that date the lessee/recipient shall pay the appropriate sales taxes to the lessor for the remaining term of the lease.

(16) No taxes may be deferred under this section prior to July 1, 1985. No applications for deferral of taxes will be accepted after May 1, 1994 nor will sales or use tax deferral

certificates be issued on or after July 1, 1994. See subsection (4) of this section for application deadline for any metropolitan statistical area. In tabulating the total amount of deferrals granted under this law there shall be considered a total of three fiscal biennia within which applications shall be accepted.

(17) Reporting and monitoring procedure. Each recipient of sales and use tax deferral shall submit a report to the department on December 31st of each year during the repayment period until all taxes are repaid. The first report shall be submitted in the third year after the date on which the construction project has been operationally complete to coincide with the first payment of deferred taxes. The report shall contain information from which the department may determine whether the recipient is meeting the requirements of the deferral law.

(18) The report shall be made to the department in a form and manner prescribed by the department. The report shall contain information regarding the recipient's average employment in the state for the prior three years, the actual 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 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.

(19) The department shall notify the department of employment security of the names of all recipients of tax deferrals under this program. On or before December 31st of each year a deferral is in effect, the department shall request information on each recipient's employment in the state for that year, including employment related to the deferral project, and the wages of such employees. The department of employment security shall make, and certify to the department, all determinations of employment and wages required under this subsection.

(20) 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, the department will (a) declare the amount of deferred taxes outstanding to be immediately due or (b) assess interest on the deferred taxes for the project.

(21) If 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 shall assess interest, but not penalties, on the deferred taxes. The interest shall be assessed at the rate of nine percent per annum, shall be assessed retroactively to the date of deferral, and shall accrue until the deferred taxes are paid. A recipient of deferred taxes shall have from the date on which the construction project was certified as operationally complete to December 31st of the first year of repayment in which to create the required number of employment positions under this law.

(22) If the department finds that the investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, the amount of deferred taxes outstanding for the

project shall be immediately due. The reasons for disqualification include, but are not limited to, the following:

- (a) The facility is not used for a manufacturing, warehouse, computer, or research and development operations;
- (b) The recipient has not made an investment in qualified buildings, machinery, and equipment.

(23) Any action taken by the department to assess interest or disqualify a recipient for tax deferral shall be subject to administrative review pursuant to the provisions of WAC 458-20-100.

(24) The law expressly excuses the obligation for repayment of sales or use tax upon the value of labor directly applied in the construction of an investment project for which deferral has been granted, *Provided:*

(a) That deferral has been granted after June 11, 1986; and

(b) That eligibility for the granted tax deferral has been perfected by actually meeting all of the eligibility requirements, based upon the recipient's annual December 31 reports and any other information available to the department.

(25) 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.

(26) The above information must be maintained in the recipient's permanent records for the department's review and verification at the time of the final audit of the investment project.

(27) 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.

(28) 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.

(29) 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%
3	20%
4	25%
5	30%

(30) The department may authorize an accelerated repayment schedule upon request of the recipient. Interest

shall not be charged on any taxes deferred under this rule 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.

(31) 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), § 458-20-24001, 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 458-20-24002 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 person 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%
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 458-20-241 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 network, 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 personable 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 hearing. 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 consists 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 products. (1) **Introduction.** Effective on June 1, 1988, the law is changed regarding the exemption of retail sales tax and use tax on food products. Formerly, sales of food products were sometimes taxable depending upon how and where the products were sold. Under the changes in the law the intent is to tax such product sales or exempt them from tax in a uniform and consistent manner so that the tax either applies or not equally for all sellers and buyers. Generally, it is the intent of the law, as amended, to provide the exemption for groceries and other unprepared food products with some specific exclusions. It is the intent of the law to tax the sales of meals and food prepared by the seller regardless of where it is served or delivered to the buyer. Again, there are some specific exclusions. This section provides the guidelines for determining if food product sales are taxable or exempt of tax under the changed law. It also explains special tax exemption provisions for food purchased with food stamps.

(2) **Definitions.** As used herein and for purposes of the sales tax and use tax exemptions, the following definitions apply:

(a) "Food products" means only substances, products, and byproducts sold for use as food or drink by humans. The term includes, but is not limited to, the following items:

Baby foods, formulas	Baking soda and powder
Bakery products	Bouillon cubes
Candy	Meat, meat products, including livestock sold for human consumption
Cereal products	Milk, milk products
Chewing gum	Mustard
Chocolate	Noncarbonated soft drinks
Cocoa	Nuts
Coffee and coffee substitutes	Oleomargarine
Condiments	Olives, olive oil
Crackers	Peanut butter
Diet food, not including dietary supplements or adjuncts	Popcorn
	Popsicles

Eggs, egg products	Potato chips
Extracts and flavoring for food	Powdered drink mixes
Fish, fish products	Salt and salt substitutes
Flour	Sandwich spreads
Food coloring	Sauces
Frozen foods	Sherbet
Fruit, fruit products	Shortening
Gelatin	Soup
Honey	Spices and herbs
Ice cream, toppings	Sugar, sugar products, sugar substitutes
Jam, jelly, jello	Syrups
Marshmallows	Tea
Mayonnaise	Vegetables, vegetable products
Yeast	

(b) "Nonfood products" means certain substances which may be sold at food and grocery stores and which may be ingested by humans but which are not treated as food for purposes of the tax exemptions. Tax exempt food products do not include any of the following nonfood products:

Alcoholic beverages	Ice, bottled water (mineral or otherwise)
Aspirin	Mouthwashes
Beer or wine making supplies	Nonedible cake decorations
Breeding stock	Nonprescription medicines
Calcium tablets	Patent medicines
Carbonated beverages	Pet food and supplies
Chewing tobacco	Seeds and growing plants including edible plants
Cod liver oil	Tobacco products
Cough medicines (liquid or lozenge)	Tonics, vitamins
Dietary supplements or adjuncts as defined below	Toothpaste
First-aid products	

(c) "Dietary supplements or adjuncts" are medicines or preparations in liquid, powdered, granular, tablet, capsule, lozenge, or pill form taken in addition to natural or processed foods in order to meet special vitamin or mineral needs. Dietary supplements or adjuncts are not food products entitled to tax exemption. However, the term "dietary supplements or adjuncts" does not include products whose primary purpose is to provide the complete nutritional needs of persons who cannot ingest natural or processed foods. Also, this term does not include food in its raw or natural state which has been merely dried, frozen, liquified, fortified, or otherwise merely changed in form rather than content.

Such substances as dried milk, powdered spices and herbs, brewers yeast, desiccated liver, powdered kelp, herbal extracts, and the like are not dietary supplements or adjuncts subject to tax.

(d) "Eligible foods," as used in subsection (10) of this section, means any food which can be purchased with food stamps under the Federal Food Stamp Act of 1977. "Eligible foods" include any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods or hot food products prepared for immediate consumption. The term also includes seeds and plants used to grow foods for personal consumption (7 U.S.C.A. U

2012). Thus some substances are "eligible foods" which are defined above as "nonfood products."

(3) Business and occupation tax. There is no general tax exemption for sales of food or food products for B&O tax purposes. The gross proceeds of sales of food are subject to the wholesaling or retailing classification of B&O tax, as the case may be.

(4) Retail sales tax - Taxable sales. Sales of food products are subject to retail sales tax under any of the following circumstances:

(a) Effective June 1, 1988, sales by any retail vendor of any food handled on the vendor's premises which by law requires the vendor to have a food and beverage service worker's permit under RCW 69.06.010 (handling unwrapped or unpackaged food) are subject to sales tax. Such sales include, but are not limited to, sandwiches prepared or chicken cooked on the premises, deli trays, home delivered pizzas or meals, and salad bars. However, certain sales of foods which require a permit are expressly excluded from taxation. See subsection (5)(a) of this section.

(b) Food products sold for consumption within a place, the entrance to which is subject to an admission charge, except for national or state parks or monuments, are subject to sales tax.

(i) Example. Food of any kind sold at a snack bar, food stand, restaurant, or by individual roving food vendors inside a sports arena, theater, or similar place of amusement or recreation which charges admission is subject to sales tax.

(ii) Even sales of food products within national or state parks where admission is charged are subject to retail sales tax upon any food the preparation of which requires the retail vendor to have a permit specified in (a) of this subsection.

(c) Sales of baked goods as a part of meals or with beverages in unsealed containers are subject to sales tax. (However, see the provision for combination businesses in subsection (6) of this section.)

(d) Vending machine sales. Sales of any food products dispensed by vending machines are subject to sales tax under a formula which requires the tax to be reported and paid by the vending machine owner or operator upon fifty-seven percent of the gross receipts from such machines. However, sales tax must be reported and paid upon one hundred percent of the gross receipts of vending machines which dispense hot prepared food products, e.g., hot coffee, soups, tea, chocolate, etc.

(i) It is not required that food vending machines be posted with prices separately showing the sales tax amount or rate charged.

(ii) The retail sales tax may be factored out of the gross receipts of such vending machines to derive the measure for reporting B&O tax.

(5) Retail sales tax - Exempt sales. RCW 82.08.0293 exempts sales of food products for human consumption from the retail sales tax except for the taxable sales described in subsection (4) of this section.

(a) Sales of the following food products are exempt of sales tax even though sold by a person required to have a food handler's permit (i.e., handling unwrapped or unpackaged foods):

(i) Raw meat prepared by persons who slaughter animals, including fish and fowl, or dress or wrap slaug-

tered raw meat such as fish mongers, butchers, or meat wrappers;

(ii) Meat and cheese sliced and/or wrapped, in any quantity determined by the buyer, sold by vendors such as meat markets, delicatessens, and grocery stores;

(iii) Baked goods sold by bakeries which sell no food products other than baked goods, including bakeries located in grocery stores. (See the provision for combination businesses in subsection (6) of this section);

(iv) Bulk food products sold from bins or barrels, including but not limited to, flour, fruits, vegetables, sugar, salt, candy, chips, and cocoa;

(v) 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);

(vi) 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.

(b) Retailers of food products must keep adequate records to demonstrate that any sales claimed to be tax exempt qualify for exemption as explained above.

(6) Combination businesses. Persons operating a combination of two kinds of food sales businesses at one location are required to keep their accounting records and sales receipts segregated between taxable and tax exempt sales.

(a) Examples of combination businesses are:

(i) A grocery store with a lunch counter or salad-delivery bar.

(ii) A bakery which sells baked goods "to go" and also sells baked goods with meals or beverages in unsealed containers.

(b) Combination businesses must collect and report retail sales tax upon their charges for meals and servings of food which require such businesses to have a food handler's permit.

(c) It is sufficient segregation for accounting purposes if cash registers or electronic checking machines are programmed to identify and separately tax food products which are not tax exempt.

(d) If the combined food businesses are commingled in accounting, all sales of food products will be deemed subject to sales tax.

(7) Combination and specialty packages. 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 carbonated beverages 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.

(8) Promotional items. Nonfood items given to buyers to promote food product 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 container or dish is simply a gift furnished as a sales inducement for the food. In the same way, promotional give-aways 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).

(9) Food vending vans. Food products 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 prewrapped food products which are prepackaged by a manufacturer other than the retail vendor operating the van are exempt of retail sales tax. Sales of any unwrapped or unpackaged food items, including but not limited to, hotdogs, sandwiches, bakery items, soups, and hot or cold beverages as well as sales of hot food cooked or heated by the retail vendor are subject to sales tax.

(10) Food stamps. Sales of "eligible foods," as defined earlier, which are purchased with food stamps are exempt of retail sales tax.

(a) When both food stamps and cash (or check) are used to make purchases, the food stamps must be applied first to "eligible foods" which are not otherwise tax exempt "food products," for example, dietary supplements, carbonated beverages, garden seeds, bottled water, and ice. The cash or check portion of the purchase price must then be applied to items listed above which qualify as tax exempt food products. The intent is to always apply the stamps and cash in such a way as to provide the greatest possible amount of sales tax exemption under the law.

(b) The obligation rests with the seller to determine which items are eligible for purchase with food stamps.

(c) The following examples show how the tax exemptions apply in cases where a purchase of ten dollars each is made for meat (a food product), dietary supplements (an eligible food), and soap (a nonfood item) using both food stamps and cash. A tax rate of 7.8% is used for these examples.

(i) A customer pays the thirty dollar selling price with ten dollars worth of food stamps and twenty dollars cash. The stamps are applied to the dietary supplements, making them tax exempt. The cash is used for the meat and soap. The result is that sales tax is due only on the soap, in the amount of .78 ($7.8\% \times \$10.00$ worth of soap).

(ii) The customer pays with five dollars in stamps and twenty-five dollars in cash. Again, the stamps are applied against the dietary supplements, leaving five dollars of their value to be purchased with cash. The meat is tax exempt and the soap and the rest of the dietary supplements are taxable. Tax is due in the amount of \$1.78 ($7.8\% \times \15.00 worth of soap and supplements).

(iii) The customer pays with fifteen dollars in stamps and fifteen dollars in cash. The stamps are applied first to the supplements (ten dollars worth) and then to the meat (five dollars worth). The cash applies to the rest of the meat and the soap. The tax due is .78 ($7.8\% \times \$10.00$ worth of soap).

(11) Use tax on food. The provisions of the use tax of chapter 82.12 RCW apply for taxation or tax exemption under the same circumstances outlined above regarding retail sales tax. (See RCW 82.12.0293.) The use tax applies under any circumstance where the retail sales tax is due upon food sales in this state but the sales tax has not been paid for any reason.

(12) Other food and meals vendors. Specific provisions govern certain persons who sell food and prepared meals. See the following referenced sections for provisions regarding:

(a) Restaurants and transportation companies (e.g., air, rail, water) and other businesses or groups furnishing meals to employees, guests, patients, students, etc., see WAC 458-20-119.

(b) Hotels, motels, boarding or rooming houses, resorts, and trailer camps, see WAC 458-20-166.

(c) Religious, charitable benevolent, and nonprofit service organizations, see WAC 458-20-169.

[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 or 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.

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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 intrastate 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. Under RCW 82.04.423, the business and occupation tax does not apply to any out-of-state person in respect to the gross income derived from the business of making sales in this state of "consumer products" at wholesale or retail to or through a "direct seller's representative," subject to certain requirements explained more fully below. The effective date of this exemption is August 23, 1983. For an outline of the tax liability of persons making sales of goods which originate in other states to customers in Washington, other than sales to or through a "direct seller's representative," see WAC 458-20-193B.

Definitions

For purposes of the exemption explained herein, the following definitions shall apply:

The term "consumer product" means any article of tangible personal property, or component part thereof, of the type sold for personal use or enjoyment. The term includes only those kinds of items of tangible personal property which are customarily sold at stores, shops, and retail outlets open to the public in general. It includes such things as home furnishings, clothing, personal effects, household goods, food products, and similar items purchased for personal use or consumption. The term does not include commercial equipment, manufacturing items, industrial use products, and the like, including component parts thereof. However, if a product is primarily used for personal use or enjoyment, it remains a "consumer product" within this definition notwithstanding that a portion of the product's distribution is for commercial, industrial, or manufacturing purposes.

A "direct seller's representative" is a person who (a) 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 other than in a permanent retail establishment or (b) sells or solicits the sale of, "consumer products" in the home or other than in a permanent retail establishment. In order to be considered a "direct seller's representative" a person must also show that:

1. Substantially all of the remuneration paid, whether or not paid in cash, for the performance of services is directly related to sales or other output, including the performance of services, rather than the number of hours worked; and

2. The services performed are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for federal tax purposes.

Business and Occupation Tax

Wholesaling and retailing. The business and occupation tax does not apply to an out-of-state seller making wholesale or retail sales to or through a "direct seller's representative." The out-of-state seller must show that it is represented in this state by a "direct seller's representative," as defined above. In addition, the out-of-state seller must also show that it:

1. Does not own or lease real property within this state;
2. Does not regularly maintain a stock of tangible personal property in this state for sale in the ordinary course of business;
3. Is not a corporation incorporated under the laws of this state; and
4. Makes sales in this state exclusively to or through a "direct seller's representative."

Thus, a representative who solicits sales of "consumer products" in this state, other than in a permanent retail establishment, and also meets the other requirements of the law as set forth above, qualifies as a "direct seller's representative." If the out-of-state seller and the instate representative can factually establish compliance with all of the above listed requirements, the out-of-state seller is exempt from business and occupation tax.

The exemption is available only where an out-of-state seller is present in this state and represented exclusively by a "direct seller's representative." If an out-of-state seller makes wholesale or retail sales of "consumer products" in Washington to or through a "direct seller's representative" and also has a branch office, local outlet, or other local place of business, or is represented by any other employee, agent, or other representative, no portion of the sales are exempt from business and occupation tax.

The business and occupation tax likewise applies to the gross income of a "direct seller's representative" who buys "consumer products" for resale and does in fact resell the products. The measure of the business and occupation tax is the gross proceeds of sales.

Service. The law provides no similar business and occupation tax exemption with regard to the compensation paid to the "direct seller's representative." Thus, the representative will remain subject to the business and occupation tax on all commissions or other compensation earned.

Sales and Use Tax

An out-of-state vendor is required to pay or collect and remit the tax imposed by chapter 82.08 or 82.12 RCW if the vendor regularly solicits or makes retail sales of "consumer products" in this state through a "direct seller's representative," as defined above, even though such sales are exempt from business and occupation tax pursuant to RCW 82.04.423.

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.

[Statutory Authority: RCW 82.32.300. 84-24-028 (Order 84-3), § 458-20-246, filed 11/30/84.]

WAC 458-20-247 Trade-ins, selling price, sellers' tax measures. Initiative Measure No. 464, approved November 6, 1984 amended RCW 82.08.010(1), the statutory definition of "selling price," by excluding from that term the value of "trade-in property of like kind." The effective date of this exclusion is December 6, 1984. As a result, the retail sales tax measure on trade-in sales is reduced by the value of the property traded in. Thus, on and after the effective date, the value of "trade-in property" may be excluded from the measure of retail sales tax to be collected and reported by the seller who accepts the trade-in property as payment for new or used property sold. Actual **delivery** of the property to the buyer determines when the sale is made (see WAC 458-20-103). The initiative applies only to sales where the property is delivered to the purchaser on or after December 6, 1984.

Under RCW 82.08.010, as amended by the initiative, "the term 'selling price' means 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, all without any deduction, on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discounts, 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 expense whatsoever paid or accrued and without any deduction on account of losses." (Amendatory language underscored.)

Definitions

Unless otherwise stated, the terms "tax," "taxable," and "nontaxable," as used in this rule, refer to retail sales tax only.

The terms, "trade-in," "traded-in," and "property traded-in" have their ordinary and common meaning. They mean property of like kind to that acquired in a retail sale which is applied, in whole or in part, toward the selling price.

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, audio/video equipment for audio/video equipment, and the like. 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 this rule, 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, for purposes of this rule, because a utility

trailer is neither a motor vehicle nor a licensed recreational land vehicle. Similarly, a car may not be taken as trade-in on a camper and vice versa.

Under these definitions 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. However, the exclusion of the value of property traded-in does not include such things as a motorcycle for a boat, a diamond ring for a television set, a battery for lumber, or farm machinery (including tractors and self propelled combines) for a car.

Value of property traded-in — The seller and buyer establish the value of property traded-in. However, the parties may not overstate the value of the property traded-in in order to artificially lower the amount of sales of 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. It is the substance of the actual sale and trade-in transaction which will control the retail sales tax measure, regardless of any subsequent accounting adjustments to the seller's inventory records or books of account.

Record keeping — RCW 82.32.070 requires every person liable for any tax to keep and preserve records from which true tax liability can be determined. Before any exclusion from the selling price for the value of property traded-in will be allowed, the property traded-in must be specifically identified and clearly indicated as "trade-in," by model, serial number and year of manufacture where applicable, and the full trade-in value must be shown on the sales agreement or invoice given to the purchaser, with a copy retained in the seller's permanent sales records.

For example:

Less "trade-in" - 1983 G.E. Refrigerator/Freezer
Model No. GE-RF0001, Serial No. 0001, \$300.

Encumbered property traded-in — Sellers are allowed to consider as nontaxable the value of property traded-in even though ownership of the property may be encumbered by a conditional sale, retail installment contract, or security interest; provided that, the property traded-in must be actually transferred to the seller of the new or used property for which it is traded-in.

Casual or isolated sales — The retail sales tax applies to all casual or isolated retail sales made by any person who is engaged in business activity, that is, a person required to be registered and reporting tax to the state. Persons who are not engaged in business activity, i.e., private persons, are not required to be registered and are not required to collect sales tax on their casual or isolated sales (see WAC 458-20-106). Registered persons who make casual or isolated sales (e.g., a law firm which sells its law books) may reduce the taxable selling price by the value of the property traded-in. The same record keeping requirements apply as explained earlier in this rule.

Retail services — The exclusion of the value of property traded-in from the selling price tax measure applies only to sales involving tangible property traded-in for tangible property sold. It does not apply to any transactions involving services which have been statutorily included as "sales at retail" (see RCW 82.04.050). Thus, 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.

Trade-in for rental property — Under RCW 82.04.050, rentals or leases of tangible personal property are "retail sales." The term "selling price" as amended by Initiative 464 is also the tax measure for such rentals and leases. Thus, 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.

When tangible personal property is rented or leased, the "selling price" includes all charges to the renter or lessee for the use of the property rented or leased, including charges designated as insurance, interest and other costs recovered stated separately from the regular rental fee. When tangible personal property is rented or leased under circumstances that the consideration paid does not represent a reasonable rental for the use of the articles so rented or leased, the "selling price" must be 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 cases of doubt, all of the pertinent facts should be submitted to the department of revenue for an advisory determination.

Real property transfers — The trade-in exclusion does not apply to sales of real property. It also does not apply where real property is traded-in for tangible personal property.

Business and Occupation Tax

The trade-in exclusion affects only the measure of retail sales tax to be collected and paid. There is no trade-in exclusion for business and occupation tax. Thus, the gross receipts to be reported under the retailing classification of business and occupation tax continues to be the total value proceeding or accruing from the sale, including the value of property traded-in.

RCW 82.04.070 provides, "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."

Also, the terms "selling price" and "gross proceeds of sales" include items of cost which are the direct obligation of the seller but which the seller may invoice separately to the purchaser. Examples of such costs are the cost of the contractor's performance bond, the cost of city or state

business and occupation taxes of public utility taxes, the cost of insurance protecting the seller and the cost of freight in. The selling price can be payable in money or otherwise. If it is payable in whole or in part in property, each party is a seller of the property being transferred.

Use Tax

RCW 82.12.010 defines the measure of the use tax as the "value of the article used." Under certain circumstances that value is determined by the "selling price" of the article or property used. Also, this use tax statute provides that the meaning of words in chapter 82.08 RCW (retail sales tax) shall have full force as well with respect to the use tax chapter. Thus, the Initiative 464 amendment of the definition of "selling price" will apply equally for use tax purposes. 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 with no sales tax) is the same "selling price" as defined for retail sales tax purposes. In such cases the value of the property traded-in will be excluded from the use tax measure.

The consumer-user, or any out-of-state seller who is registered in this state and collects this state's use tax, must retain the sales records reflecting property "traded-in," as explained earlier in this rule.

Preparing Tax Returns

The gross amounts reported under column 2 on the combined excise tax return should be the same amounts under the retailing business and occupation tax (line 18) and the retail sales tax (line 19). The reduction of the "selling price" tax measure for property traded-in should be reflected as a deduction only under the retail sales tax (column 3, line 19). Until return forms are amended, this sales tax deduction should be shown on the back side of the form (line 19) under "other deductions" and explained as "traded-in sales."

[Statutory Authority: RCW 82.32.300. 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.

[Title 458 WAC—p 222]

(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 x .036), and, the solid waste collection tax is 8 cents (\$8.00 x .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 x .036) and a solid waste tax of 8 cents (\$8.00 x .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 x .036) and the solid waste tax is 8 cents (\$8.00 x .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 x .036) and a solid waste tax of 9 cents (\$9.00 x .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 x .036) and the solid waste tax is 12 cents (\$12.00 x .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 x .036) and the solid waste tax collected at the disposal site is 10 cents (\$10.00 x .01) for a total collection at the disposal site of 46 cents. The refuse tax collected by the city is 18 cents (\$5.00 x .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 collection 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 purchase 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. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

WAC 458-20-251 Sewerage collection business.

(1) **Introduction.** Under the provisions of chapter 471, Laws of 1985, the "sewerage collection business" was reclassified for tax purposes from the service classification of business and occupation tax to the public service business - sewer collection classification of public utility tax. To implement this change in law the department of revenue amended and adopted WAC 458-20-179, on November 1, 1985, which subjected gross receipts from all sewerage services to the higher rated public utility tax classification, as of the effective date of chapter 471, Laws of 1985, July 1, 1985.

(2) The department has determined that, within the intent of the law, only the portion of gross receipts from customer billings attributable to the "collection" portion of services rendered should be taxed under the public utility tax classification. Thus, this section now supersedes and effectively repeals the specific provisions of WAC 458-20-179 pertaining to sewerage collection businesses. The provisions of this new section have retroactive effect from July 1, 1985 forward.

(3) **Definitions.** For purposes of this section the following terms will apply.

(a) "Sewerage collection business" means the activity of receiving sewage deposited into and carried off by a system of sewers, drains, and pipes to a common point, or points, for disposal or for transfer to treatment for disposal, but does not include such transfer, treatment, or disposal of sewage.

(i) This term does not include the activity of receiving, collecting, or disposing of toxic or hazardous waste materials regardless of the system employed for collection of such substances.

(b) "Sewage" means the waste matter carried off by sewer drains and pipes.

(c) "Gross receipts" of the sewerage collection business means only that portion of income from customer billings which is allocable to the collection of sewage by a sewerage collection business as defined herein.

(i) "Gross receipts," as defined here, is the public utility tax measure. It does not include any charges of any kind attributable to sewerage services other than collection.

(ii) The term does not include late charges or penalties which may be imposed for nontimely payment by customers.

(d) "Person" has the meaning given in RCW 82.04.030 or any later, superseding section.

(4) 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, or any of these activities. If so, such persons are engaged in both public utility taxable activities (sewerage collection) and business and occupation taxable activities (other sewer services). See RCW 82.16.060 and 82.04.310.

(5) **Public utility tax.** Persons engaged in the sewerage collection business, as defined herein, are subject to the public utility tax under the classification, sewer collection, measured by "gross receipts" of the collection business as explicitly defined herein, at the currently prescribed rate. (See RCW 82.16.020 (1)(a).)

(6) In order to determine the "gross receipts" of the collection business there are two alternative methods.

(a) If customer billings are itemized to show the actual charge for sewage "collection," that amount is the "gross receipts" tax measure: *Provided*, That such amount shall not be less than the actual cost of providing the collection service.

(b) 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 on customer billings, a simple cost-of-doing-business formula must be used to derive the "gross receipts," public utility tax measure.

(i) The totality of all business costs incurred in rendering all sewer services, including collection, is to be divided into the costs of providing sewerage collection services. The resulting percentage is to be 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.

(ii) The formula looks like this:

$$\begin{array}{rcl} \text{Sewage collection costs} & & \text{Public} \\ \text{(Annualized)} & & \text{Utility} \\ \hline & = & \text{Tax} \\ \text{Total sewer service costs} & & \text{Measure} \\ \text{(Annualized)} & & \end{array}$$

(iii) All costs of operation of the sewer services business must be included in the denominator, including but not limited to capitalized equipment, labor, direct and indirect overhead, and administration.

(iv) The standard cost accounting records of the sewerage collection business will be used for this purpose.

(v) 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.

(7) **Business and occupation tax.** Persons engaged in providing other sewer services, in addition to or separate from the "sewerage collection business" as defined herein, are subject to the business and occupation tax under the classification, service and other business activities. The measure of this tax is the gross income derived from such other services. It does not include any amount reported for public utility tax under the sewer collection classification.

(8) The service business and occupation tax on sewer services is not intended to have a pyramiding effect. RCW 82.04.432 thus provides a deduction from the 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. This deduction results in each one of several sewer service providers being taxable only on the amounts actually received and retained by them as their respective share of gross customer billings for the totality of all services.

(9) Under the law, depending upon the arrangement for providing the totality of all sewer services, it may be that a person will report tax under both the public utility tax (on collection services income) and business and occupation tax (on other related services income), as appropriate, upon respective portions of that person's retained share of income from customer billings.

(10) The "sewerage collection business" and many other sewer services are "enterprise activities" as defined in WAC 458-20-189, when funded over fifty percent by user fees. Thus, the amounts derived from these business activities are not exempt of tax even though they may be provided and charged for by governmental entities. (See RCW 82.04.419.)

(11) Persons engaged in providing sewer services other than sewerage collection, such as the transfer, storage, treatment, and/or disposal of sewage, may be entitled to certain express deductions or exemptions from business and occupation tax for specific reasons unrelated to the nature of their sewer service activities. (See RCW 82.04.419 and RCW 82.04.4291.) These deductions and exemptions are not available for "sewerage collection businesses" upon their income subject to public utility tax.

(12) Retail sales tax. 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 such activities, other than items held for resale in the ordinary course of business. Retail sales tax must be paid to materials suppliers and providers of all such tangible consumables. (See RCW 82.04.050.)

(13) Use tax. The use tax is due upon all tangible personal property used as consumers by "sewerage collection businesses" and sewer service providers, upon which the retail sales tax has not been paid. (See RCW 82.12.020.)

(14) Retroactivity - procedures for refund. Because of the provisions of WAC 458-20-179 relating to sewer services, which were effective from July 1, 1985 and have been retroactively repealed, some persons providing sewer services after that date may have overreported their tax liability. Any such persons who reported and paid public utility tax measured by gross customer billings income or measured by income allocable to the transfer, treatment, and/or disposal of sewage are entitled to a refund or credit. Such refunds or credits will be in the amount of the difference between the public utility tax rate (.03852) and the service business tax rate (.015) on the income reported. The refund or credit may be obtained by timely providing amended copies of past reporting documents to the Taxpayer Accounts Administration Section of the Department of Revenue, Olympia, Washington. (See RCW 82.32.170.) Similarly, persons who have discontinued reporting tax liability on income from any sewer services, on or after July 1, 1985, will have additional tax liability to report.

[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.

(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 substance 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

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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 458-20-253 Mobile homes and mobile home park fee. (1) Definitions.

(a) "Landlord" means the owner of a mobile home park and includes the agents of the owner.

(b) "Lot" means a portion of a mobile home park designated as the location for one mobile home and its accessory buildings, and intended for the exclusive use by the occupants of that mobile home as a primary residence.

(c) "Mobile home" means a structure, designed and constructed to be transportable in one or more sections and is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities that include plumbing, heating, and electrical systems contained therein. The structure must comply with the National Mobile Home Construction and Safety Standards Act of 1974 as adopted by chapter 43.22 RCW if applicable.

(d) "Mobile home park" means any real property which is rented or held out for rent for the placement of two or more mobile homes for the primary purpose of production of income, except where such real property is rented or held out for rent for seasonal, recreational purposes only and is not intended for continuous occupancy.

(e) "Used mobile home as defined in RCW 82.45.032" means a mobile home which has been previously sold at retail and has been subjected to sales tax, or which has been previously used and has been subjected to use tax, and which has substantially lost its identity as a mobile unit by virtue of its being fixed in location upon land owned or leased by the owner of the mobile home and placed on a foundation (posts or blocks) with fixed pipe connections with sewer, water, and other utilities.

(2) **Sales by dealers or selling agents.** Dealers or selling agents applying for new certificates of ownership for mobile homes they have sold must remit the sales tax on such sales to the county auditor or the department of licensing at the time of application.

(a) County auditors and the department of licensing must collect sales tax on these transactions unless the mobile home dealer or selling agent presents a written statement signed by the department of revenue or its duly authorized agent showing that no sales tax or use tax is due.

(b) The application for a new certificate of ownership must state the selling price paid for the mobile home. The selling price does not include the value of trade-in property of like kind. See WAC 458-20-247.

(c) Dealers and selling agents remitting sales tax to county auditors or the department of licensing should report the income from such sales on their combined excise tax returns and take a sales tax deduction in the amount of sales tax so remitted.

(d) Where sales tax on the purchase of a mobile home has been remitted to a county auditor or the department of licensing and the purchaser believes that sales tax was not legally due, such purchaser may apply for a refund directly from the department of revenue. The application for refund must be received by the department of revenue within four years from payment of the tax. If the application for refund is denied the purchaser may seek a refund in accordance with the procedures described in WAC 458-20-100.

(3) Used mobile homes.

(a) Sales tax. Sales tax does not apply to the sale of used mobile homes as defined in RCW 82.45.032.

(b) Use tax. Use tax does not apply to the use of used mobile homes as defined in RCW 82.45.032.

(4) **Rental or lease of mobile homes.** Sales tax does not apply to the rental or lease of mobile homes if the rental agreement or lease exceeds thirty days in duration and if the rental or lease is not in conjunction with the provision of short term lodging for transients.

(5) Mobile home park fee.

(a) Landlords, as defined in subdivision (1)(a) of this section, must register with the department of revenue for purposes of the mobile home park fee imposed in RCW 59.22.060.

(b) Landlords must pay a fee of one dollar per year for each lot within the mobile home park which is occupied on January 1 of each year.

(c) Landlords must remit the fee to the department of revenue by January 31 of each year.

(6) **Registration for mobile home parks.** Landlords who are registered with the department of revenue for excise tax purposes need not submit a separate registration. Landlords who are not otherwise registered with the department of revenue must register by means of the master business application. There is no cost for registering solely for purposes of reporting the mobile home park fee. A registration remains valid for as long as the landlord owns the mobile home park. The department of revenue will provide registered landlords with returns for reporting the 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.]

WAC 458-20-254 Record keeping. (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 RCW (hotel/motel tax), 70.93 RCW (litter tax), 70.95 RCW (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 performed;

(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 and syrup tax. (1) **Introduction.** Under the provisions of chapter 80, Laws of 1991, a tax is imposed, effective June 1, 1991, upon the volume of carbonated beverages and syrups sold at wholesale and retail in this state with specific credits and

exemptions provided. This tax is an excise tax upon the business activity of selling carbonated beverages or syrups 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.

(2) **Definitions.** For purposes of this section the following terms will apply.

(a) "Tax" means the carbonated beverage or syrup tax imposed by chapter 80, Laws of 1991.

(b) "Carbonated beverage" has its ordinary meaning and includes any nonalcoholic liquid intended for human consumption which contains carbon dioxide.

(i) Thus, "carbonated beverage" includes but is not limited to soft drinks, "soda pop," mineral waters, seltzers, fruit juices, or any other nonalcoholic beverages, including carbonated waters, which are produced for human consumption and which contain any amount of carbon dioxide.

(ii) However, "carbonated beverage" does not include bromides or other carbonated liquids commonly sold as pharmaceuticals.

(c) "Previously taxed carbonated beverage or syrup" means a carbonated beverage or syrup in respect to which a tax has been paid under this chapter. A "previously taxed carbonated beverage" includes carbonated beverages in respect to which the tax has been paid on either the carbonated beverage or on the syrup in the carbonated beverage.

(i) Example. A retailer who produces a carbonated beverage by adding water and carbonation to a syrup, upon which the tax has been paid to and collected by a wholesaler incurs no additional tax liability because the tax has been paid upon the syrup and collected by the wholesaler.

(d) "Syrup" means a concentrated liquid which is added to carbonated water to produce a carbonated beverage.

(i) Thus, "syrup" includes the concentrated liquid marketed by manufacturers to which the purchaser adds water and/or carbon dioxide, or, carbonated water to produce a carbonated beverage.

(e) "State" means for the credit provisions of this section:

(i) A state of the United States other than Washington, or any political subdivision of such other state,

(ii) The District of Columbia, and

(iii) Any foreign country or political subdivision thereof.

(f) 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 imposition, rate and measure.

(a) The tax is imposed upon the wholesale or retail business activity of selling carbonated beverages or syrups within this state. The tax shall be paid by the buyer to the wholesaler and each wholesaler shall collect the tax from the buyer unless the wholesaler is prohibited from collecting the tax from the buyer under the Constitution of this state or the Constitution or laws of the United States in which case the wholesaler is liable for the amount of the tax. The amount of the 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. A wholesaler who fails or refuses to collect the tax with intent to violate the provisions of this chapter or to gain some advantage directly or indi-

rectly, is guilty of a misdemeanor. When a retailer sells carbonated beverages or uses syrup which the retailer has purchased from an out-of-state wholesaler who has not collected the tax, the retailer must report and pay the tax.

(i) When a bottler produces a carbonated beverage end product, the measure of the tax shall be the volume of the carbonated beverage end product sold at wholesale or retail.

(ii) Manufacturers of syrup are taxable on the business activity of selling syrup only when such syrup is removed from the production process and sold without further processing by them or another manufacturer or bottler.

(iii) Example. An ingredient used in the manufacturing process by a bottler of carbonated beverages is never taxed even if the ingredient is a syrup. Therefore, a manufacturer of syrup who sells an ingredient to another manufacturer of syrup or a bottler, is not taxed on the ingredient sold even if the ingredient is a syrup. The product sold is not a taxable syrup but an ingredient in the manufacturing process. The purchasing manufacturer or bottler is taxed upon the end product produced by such manufacturer of syrup or bottler, or by a contract bottler hired by him.

Similarly, a manufacturer of syrup or bottler who receives a product from an out-of-state source for use as an ingredient in the manufacturing or bottling process is taxed when the end product produced is sold.

(b) The tax rate and measure for carbonated beverages is eighty-four one thousandths of a cent per ounce. The tax rate and measure for syrup is seventy five cents per gallon. Fractional amounts shall be taxed proportionally.

(4) **Exemptions.** The following are exempt from the tax:

(a) Any successive possession of a previously taxed carbonated beverage or syrup.

(i) In order to verify the payment of the tax, all persons selling or otherwise transferring possession of taxed beverages or syrup, except retailers, shall separately itemize the amount of the tax on the invoice, bill of lading, or other instrument of sale. Beer and wine wholesalers selling carbonated beverages or syrup upon which the tax has been paid and who are prohibited under RCW 68.28.010 from having a direct or indirect financial interest in any retail business may, in lieu of a separate itemization of the amount of the tax, provide a statement on the instrument of sale that the carbonated beverage and syrup tax has been paid. For purposes of the payment and the itemization of the tax, the tax computed on standard units of a product, cases, liters, gallons, etc., may be stated in an amount rounded to the nearest cent. In competitive bid documents, the tax will be considered to not be included in the bid price unless the bid documents separately itemizes the tax. In either case, the 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 tax on an invoice, bill of lading, or other document of delivery shall retain the documentation necessary for verification of the payment of the tax.

(iii) A subsequent sale of carbonated beverages or syrups sold or delivered upon an invoice, bill of lading, or other document of sale which contains a separate itemization of the tax shall be exempt from the tax.

(iv) However, a subsequent sale of carbonated beverages or syrups sold or delivered to the subsequent seller upon an invoice, bill of lading or other document of sale which does not contain a separate itemization of the tax is conclusively presumed to be previously untaxed carbonated beverage or syrup and the wholesaler must report and pay the tax. The retailer must report and pay the tax when the retailer purchases from an out-of-state wholesaler who has not collected the tax.

(v) This exemption for taxes previously paid is available for any person selling previously taxed carbonated beverage or syrup even though the previous payment may have been satisfied by the use of credits or offsets available to the prior seller.

(vi) Example. Company A sells to Company B a carbonated beverage or syrup upon which it has paid a similar carbonated beverage or 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. It provides Company B with an invoice containing a separate itemization of the 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) Any carbonated beverage or syrup that is transferred to a point outside the state for use outside the state.

(i) The exemption for the sale of exported carbonated beverages or syrups may be taken by any seller within the chain of distribution of such products in this state. To perfect its entitlement to this exemption the seller of such carbonated beverage or syrup must take from its buyer or transferee of the carbonated beverage or syrup a written certification in substantially the following form:

**Certificate of Tax Exempt Export Carbonated Beverages
or Syrup**

I hereby certify that the carbonated beverages or syrups specified herein, purchased by the undersigned, from (seller), are for export for use or sale outside Washington state. I will become liable for and pay any carbonated beverage or syrup tax due upon all or any part of such products which is 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 Carbonated Beverages or Syrups.
(Kind and amount by volume)

Date

This certificate may be used so long as some portion of the product is exported. Sellers are under no obligation to verify the amount of the product to be exported by their buyers providing such certificates. Buyers providing such certificates are, however, subject to penalties and interest, for any late payment of tax due on products not exported.

(ii) Each successive sale of such carbonated beverages or syrups must, in turn, take a certification in substantially this form from any other person to whom such carbonated beverages or syrups are sold. Failure to take and keep such certifications as part of its permanent records will incur carbonated beverage or syrup tax liability by such sellers if the tax has not been previously paid.

(iii) Persons who themselves export or cause the exportation of such products to persons outside this state for further sale or use outside this state must keep the proofs of actual exportation required by WAC 458-20-193.

(c) Persons or activities which the state is prohibited from taxing under the United States Constitution are tax exempt.

This exemption extends to the U.S. government, its agencies and instrumentalities, and to any sale the taxation of which has been expressly reserved or preempted under the laws of the United States. This exemption applies only to purchases by the United States, its agencies and instrumentalities. The exemption does not apply to persons who sell carbonated beverages or syrups to agencies and instrumentalities of the United States located in this state. When the United States or its agencies or instrumentalities purchases carbonated beverages or syrup from a wholesaler who is required to collect this tax from its buyer, the wholesaler itself is liable for, and must report and pay, the tax on the volume of product sold to the United States or its agencies or instrumentalities.

(d) The sale of any carbonated beverages or syrups prior to June 1, 1991, is tax exempt. Sales of carbonated beverages and syrups after June 1, 1991, are exempt if carbonated beverage and syrup possession tax has been paid on the product.

It is the intent, under the law, that this exemption will apply to the carbonated beverages or syrups throughout their succeeding chain of distribution for the life of those carbonated beverages or syrups. That is, carbonated beverages or syrups already possessed as of May 31, 1991, and upon which the possession carbonated beverage and syrup tax has been paid will not incur another tax liability upon the sale of the product after May 31, 1991.

(e) Any sale at wholesale of a trademarked carbonated beverage or 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 such trademarked carbonated beverage within a specific geographic territory.

(5) Credit. Credit shall be allowed against the taxes imposed in this section for any carbonated beverage or syrup tax paid to another state with respect to the same carbonated beverage or syrup. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to that carbonated beverage or syrup.

(a) "Carbonated beverage or syrup tax" means a tax:

(i) That is imposed on the sale at wholesale of carbonated beverages or syrup and is not generally imposed on other activities or privileges; and

(ii) That is measured by the value or volume of the carbonated beverage or syrup.

(b) 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 the wholesale

sale of carbonated beverages or syrups without deductions for costs of doing business, such that the other state's tax does not constitute an income tax or added value tax.

(c) This credit may be taken for the amount of any other state's qualifying tax which has actually been paid as a result of the same carbonated beverage or syrup being previously sold by the same person in another taxing jurisdiction before Washington state's tax is incurred.

(d) The amount of credit is limited to the amount of tax paid in this state upon the wholesale sale of the same carbonated beverage or syrup in this state. Also, the credit may not be applied against any tax paid or owed in this state other than the carbonated beverage tax imposed by chapter 80, Laws of 1991.

(6) How and when to pay tax.

(a) The tax must be reported on a special line of the combined excise tax return designated "carbonated beverage or syrup." The volume reported shall be the net volume subject to tax, i.e., the gross volume sold less volume exempt.

(b) The tax 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 carbonated beverage or syrup is sold.

(i) A wholesaler making a wholesale sale of carbonated beverage or syrup in this state must collect the tax from the buyer and report and pay it to the department. The buyer is not obligated to report or pay the tax.

(ii) A retailer making a retail sale in this state of carbonated beverage or syrup purchased from an out-of-state wholesaler who has not collected the tax must collect the tax from the buyer and report and pay it to the department. The buyer is not obligated to report or pay the tax.

(c) The taxable incident or event is the sale of the carbonated beverage or syrup. Tax is due for payment by the first seller, whether wholesaler or retailer, of carbonated beverage or syrup upon which the tax has not been paid. It is the intent of the law that all carbonated beverages or syrups sold in this state should incur this tax liability only once unless they are expressly exempt.

(d) Various circumstances may arise whereby a person will sell carbonated beverages or syrups 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 after receipt of a special ruling issued by the department of revenue authorizing such formulary reporting.

(7) **How and when to claim credit.** Any tax credit available to the taxpayer 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 carbonated beverages and syrups and the credit shall be taken on the line for taking "other credits" as an offset against the tax reported. A statement showing the computation of the credit must be provided. It is not required that any other 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.

(8) **Notice to consumers by retailers that purchase price includes Washington drug fund tax.** Chapter 80, Laws of 1991 authorizes the voluntary posting or print

advertising by certain retailers that the price of the product includes the Washington drug fund tax. The intent of this voluntary program is to increase public and consumer awareness of the state's drug problem and its enforcement measures.

(9) **Administrative provisions.** The provisions of chapters 82.32 and 82.04 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 carbonated beverage or syrup tax.

[Statutory Authority: RCW 82.32.300. 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 service 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 Superbowl costing \$800 per person. The tour operator purchases noncancelable 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 458-20-259 Small timber harvesters—Business and occupation tax exemption. (1) **Exemption.** Harvesters of timber are generally subject to business and occupation (B&O) tax in the extracting classification. After June 6, 1990, chapter 141, Laws of 1990 provides a limited exemption from B&O tax for small harvesters of timber (as defined in RCW 84.33.073) whose value of product harvested, gross proceeds of log sales, or gross income of the timber harvesting business is less than \$100,000 per year.

(2) Registration - return.

(a) 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 \$100,000, is not required to register with the department for B&O tax purposes.

(b) A 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 exceeds the exempt amount.

(c) When the gross proceeds received during a calendar year from timber harvested by a small harvester exceeds the exempt amount, a return shall be filed and shall include all proceeds received during the calendar year to the time when the filing of a return is required. See: WAC 458-20-228 and WAC 458-20-22801 for penalties, interest and return filing periods.

(d) A harvester of timber must register with the forest tax division of the department for payment of timber excise tax.

(3) **Definition - small harvester - RCW 84.33.073(1).** "Small harvester" means every person who from his 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 in an amount not exceeding five hundred thousand board feet in a calendar quarter and not exceeding one million board feet in a calendar year: *Provided*, that whenever 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, 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. "Small harvester" does not include persons performing under contract the necessary labor or mechanical service for a harvester, and it does not include harvesters of Christmas trees.

(4) Examples:

(a) A person not otherwise registered with the department for B&O tax purposes and who is a small harvester under RCW 84.33.073, harvests timber during the calendar year and receives \$60,000.

(i) No B&O tax is due and the person need not register with the department for B&O tax purposes.

(ii) However, the person must register with the department's forest tax division for payment of the timber excise tax.

(b) A person not otherwise registered with the department for B&O tax purposes and who is a small harvester under RCW 84.33.073, harvests timber during the calendar year. The small harvester has contracted with a logging company to provide the labor and mechanical services of the harvesting. The small harvester is to receive 60% and the logging company 40% of the log sale proceeds. The log purchaser pays \$150,000 for the logs paying \$90,000 to the person and \$60,000 to the logging company.

(i) For the small harvester, B&O tax is due on the entire \$150,000 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. See: RCW 82.04.070 and WAC 458-20-135. 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 exceeds \$100,000.

(ii) The logging company is taxed on the \$60,000 it received under the appropriate business tax classification(s). The logging company is not a small harvester as defined in RCW 84.33.073 and the exemption of this section is not applicable to the logging company.

(iii) The small harvester must register with the department's forest tax division for payment of the timber excise tax.

(c) A person is primarily engaged in another business which is currently registered with the department for B&O tax purposes and has monthly receipts of \$250,000. The person is a small harvester under RCW 84.33.073 and receives \$10,000 from the sale of the timber harvested.

(i) B&O tax remains due on \$250,000 from the other business activities. The \$10,000 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.

(ii) The person must register with the department's forest tax division for the payment of timber excise tax.

(d) A person is primarily engaged in another business which is currently registered with the department for B&O tax purposes and has monthly receipts of \$40,000. The person is a small timber harvester under RCW 84.33.073 and receives \$50,000 from the sale of the timber harvested.

(i) B&O tax remains due on \$40,000 from the other business activities. The \$50,000 received from the sale of logs is exempt and is not reported on the persons combined excise tax return. The exemption applies to the activity of harvesting timber only and receipts from the sale of logs are not combined with the receipts of other business activities to make the other activity exempt.

(ii) The person must register with the department's forest tax division for the payment of timber excise tax.

(e) A person not currently registered with the department for B&O tax purposes and who is a small harvester under RCW 84.33.073, harvests timber in June and again in August receiving \$50,000 in June and \$75,000 in August from the sale of the logs harvested.

(i) B&O tax is due on the entire \$125,000 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 \$100,000 exemption amount. A tax return is to be filed in the appropriate period as provided in WAC 458-20-22801.

(ii) The person must register with the department's forest tax division for the payment of timber excise tax.

[Statutory Authority: RCW 82.32.300. 90-17-007, § 458-20-259, filed 8/3/90, effective 9/3/90.]

WAC 458-20-260 Oil spill response and administration tax. (1) **Introduction.** This section explains and implements the provisions of chapter 82.23B RCW which imposes an oil spill response tax and an oil spill administration tax, effective October 1, 1991, and as amended by chapter 73, Laws of 1992, effective October 1, 1992. 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 through or upon the

navigable waters of this state. This section provides applicable definitions, the rate and measure of the tax, the tax payment and reporting procedure, and describes an exemption and a credit against tax.

(2) **Definitions.** For purposes of this section, 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.

(l) "Offloading" means the physical act of moving crude oil or petroleum product from a waterborne vessel or barge to a marine terminal.

(3) **Tax rate and measure.** 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 through or across 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.

(a) The oil spill response tax is imposed at the rate of two cents per barrel of crude oil or petroleum product received.

(b) The oil spill administration tax is imposed at the rate of three cents per barrel of crude oil or petroleum product received.

(c) The number of barrels received shall be computed as the net barrels received by the marine terminal operator. Net barrels shall be computed by using an industry standard adjustment to gross barrels offloaded 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 section, 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. 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. 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, which separately states the dates of receipt, rate of tax, number of barrels received into storage tanks, and the amount of the tax required to be collected. Marine terminal operators shall 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 shall 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 shall be held in trust by the terminal operator until paid to the department.

(c) The tax collected shall be 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.

(d) A terminal operator who relies in good faith upon a direct payment certificate issued to a taxpayer shall be relieved from any liability for the collection of the tax from the taxpayer. A marine terminal operator shall likewise be 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 shall 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 shall 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 shall be 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 shall maintain a current roster of all taxpayers who have a direct payment certificate. Copies of the roster shall be 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 Miscellaneous Tax Division, Department of Revenue, P.O. Box 47470, Olympia, WA 98504-7470.

(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 Miscellaneous Tax Division, Department of Revenue, P.O. Box 47470, Olympia, WA 98504-7470.

(6) **Exemption - previously taxed oil or petroleum products.** The tax applies only to the first receipt of crude oil or petroleum products into the storage tanks of a marine terminal in this state. An exemption is available for the subsequent receipt into storage tanks at a marine terminal in

this state of previously taxed product. This exemption applies even though the previously taxed product is refined or processed prior to subsequent transportation and receipt into storage tanks.

(a) Crude oil or petroleum products received and placed into storage tanks for the first time at a marine terminal in this state which have been commingled with previously taxed product present a special problem in determining the amount of tax properly due. In such cases the amount of tax due is equal to the difference between the total number of barrels received and placed into storage tanks and the number of barrels of previously taxed product multiplied by the total tax rates. Due to the difficulty of determining the amount of tax due under such circumstances the following rebuttable presumptions shall apply:

(i) All crude oil or petroleum products loaded on a vessel and shipped from a point within this state will be presumed, subject to rebuttal, to be previously taxed product. The subsequent receipt at a point within this state of such product will be treated as exempt from the tax.

(ii) All crude oil or petroleum products loaded on a vessel and shipped from a point outside this state will be presumed to be crude oil or petroleum products received for the first time in this state. The subsequent receipt at a point within this state of such crude oil or petroleum products will be treated as subject to the tax.

(b) The presumptions in this subsection may be rebutted upon proof of the number of barrels of previously taxed product received into storage tanks in this state.

(c) **Example.** The presumptions in this subsection (6) can be illustrated by the following example:

A previously taxed petroleum product is loaded on an ocean-going barge at a marine terminal located on Puget Sound in Washington. The barge is towed to Portland, Oregon where the petroleum product is offloaded and commingled with a similar product which has not been subjected to the tax. Later, commingled product is loaded onto a barge which is towed up the Columbia River to a marine terminal located in Pasco, Washington and , where it is offloaded and placed into storage tanks. The petroleum products loaded onto the barge in Portland would be presumed, subject to rebuttal, to be subject to the tax when received in Pasco.

(7) **Export credit.** A credit is allowed against the tax imposed for any crude oil or petroleum products previously received in a manner subjected to the tax and subsequently exported or sold for export from the state.

(a) An export credit may be taken by any person exporting or selling for export any previously taxed product who has paid the tax on such product to a marine terminal operator or the department. An export credit may also be taken by any person who has purchased previously taxed product and who subsequently exports the product or sells the product for export, provided that such person has been invoiced for and has paid the tax to its seller. Any such invoice must state the amount of the tax passed on to the purchaser and identify the product to which the tax amount relates by type and quantity.

(b) A person exports previously taxed product when they actually transport the product beyond the borders of this state for purposes of sale, or deliver the product to a

common carrier for delivery and subsequent sale or use at a point outside this state.

(c) A person sells previously taxed 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 claiming credit for sales for export under this subsection (7) must document the fact the product was placed into the export process. This fact 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 this subsection (7) have been met.

Example. An oil company enters into a location exchange agreement with a competitor which provides for the delivery of one thousand barrels of petroleum products to a local storage facility owned by the competitor. In exchange for the petroleum products delivered in Washington the competitor delivers one thousand barrels of like petroleum products to the oil company's storage facilities in California. The delivery of petroleum products in California would not constitute an export or sale for export of the products delivered in Washington even though the products are of like quality and quantity. If the competitor delivers products which have been previously subject to the tax and no credit has been taken, the delivery of products in California may qualify for the credit. The subsequent export of the petroleum products received by the competitor in Washington would qualify for the credit if the competitor has been invoiced for and has paid the tax to the exchanging oil company.

(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.

(8) **Amount of credit.** The amount of the credit will be equal to the tax previously paid by the person claiming the

credit on the crude oil or petroleum 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 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. In no event will a credit be allowed in excess of the tax paid on the product exported or sold for export.

(b) Due to the fungible nature of crude oil and petroleum products it will sometimes be impossible for a person claiming a credit to determine exactly the rate of tax invoiced for a specific quantity of oil being exported or sold for export. The physical handling of oil or petroleum products requires that products of like kind be stored in bulk. This commingling results in product bearing tax passed on at different rates making it difficult to determine the amount of credit applicable to an export sale. Under such circumstances a person claiming the export credit may compute the tax 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 (8) to account for tax paid on commingled crude oil or petroleum products shall constitute an election to continue using the method selected. Once selected, no change in accounting method will be 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 (42×200). 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) A petroleum products distributor purchases 100 barrels of unleaded gasoline which it will use to blend with 30 barrels of ethanol to produce gasohol. The invoice for the unleaded separately states that the total price includes \$4.00 of tax. The distributor pays the invoiced amount and sells 2,940 gallons of gasohol to a retailer for sale outside Washington. The tax paid on the unleaded is equal to .095 cents per gallon ($\$4.00 \div 4200$). Since the exported product has been blended with a component that has not been taxed, only 76.9% of the exported product is eligible for credit ($100 \div 130$). The credit would be \$2.15 ($2,940 \times .095 \times .769$ × \$0.00095).

(iii) 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 ($\$0.00119 \times 4,200$).

(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 ($\$0.00107 \times 2,100$). After the addition of the 100 barrels from distributor C, the tank contains 10,500 gallons ($8,400 - 2,100 + 4,200$). In order to recompute the tax, the total tax paid on the remaining gasoline after the first sale must be computed. After withdrawal of the 2,100 gallons of unleaded for the first sale, the total tax paid on the remainder would be \$6.74 ($(8,400 - 2,100) \times \0.00107). The addition of the 100 barrels from distributor C causes the total tax for the stored amount to rise to \$9.74 ($\$6.74 + \3.00). The average rate of tax is now .093 cents per gallon ($\$9.74 \div 10,500$). The credit for the second export sale would be \$1.95 ($\$0.00093 \times 2,100$).

(9) 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.

(10) How and when to pay tax. The tax must be reported on special return forms prescribed by the department. The tax is due for payment together with the timely filing of the return upon which it is reported, on the twenty-fifth day of the month following the month in which the taxable receipt into storage tanks occurs. In case any offloading commences on the last day of any month and extends past midnight, the receipt will be deemed to have occurred during the following month.

(11) How and when to claim credits. Persons who pay tax under a direct payment certificate and persons who are both taxpayers and marine terminal operators should claim credits as an offset against tax liability reported on the same return when possible. The tax return form provides a line for reporting the tax and a line and supporting schedule for taking credits as an offset against the tax reported. Persons claiming credit who are not required to file returns reporting liability for the tax may claim credits on forms provided by the department for this purpose. 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.

(12) Sales to United States government. The tax does not apply to the receipt into storage tanks of crude oil or petroleum products owned by the United States government. The United States government is also not required to collect the tax as a marine terminal operator when the United States government owns the facilities where crude oil or petroleum products are received. However, owners of crude oil or petroleum products received and placed into the storage tanks of marine terminals owned by the United States government remain liable for the tax. In such instances the taxpayer is required to report the tax on forms supplied by the department. The tax is due for payment along with a completed return on the twenty-fifth day of the month following the month in which receipt into storage tanks occurred.

[Statutory Authority: RCW 82.23B.050 and 82.32.300. 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 458-20-99999 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 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.

Chapter 458-24 WAC UNFAIR CIGARETTE SALES BELOW COST ACT RULES AND REGULATIONS

WAC

458-24-010	General.
458-24-020	Unlawful practices.
458-24-030	Licenses, bond.
458-24-040	Legal action, remedies.
458-24-050	Administrative remedies.
458-24-060	Form and contents of complaint.
458-24-070	Penalties.
458-24-080	Cigarette wholesalers and retailers—Determination of cost.
458-24-090	Basic cost of cigarettes—How calculated.

WAC 458-24-010 General. Chapter 19.91 RCW (chapter 286, Laws of 1957, as amended) defines certain unlawful practices by wholesalers and retailers of cigarettes, prescribes penalties for violations, provides remedies for persons injured by competitors violating provisions of the

chapter, and requires payment of special annual license fees by wholesalers and retailers of cigarettes.

These rules are intended to summarize certain of the provisions of chapter 19.91 RCW and to promulgate rules and regulations authorized by RCW 19.91.130 and 19.91.180.

[Order ET 72-2, § 458-24-010, filed 9/29/72.]

WAC 458-24-020 Unlawful practices. (1) It is unlawful for any retailer or wholesaler of cigarettes with intent to injure competitors, destroy or substantially lessen competition to:

- (a) Advertise, offer, or sell at less than cost;
- (b) Offer or give a rebate in price, the effect of which would be a sale at less than cost; or
- (c) Offer or give a concession of any kind, the effect of which would be a sale at less than cost.

(2) It is unlawful for a cigarette retailer with intent to injure competitors, destroy or substantially lessen competition to:

- (a) Purchase or attempt to purchase cigarettes at less than cost to wholesalers; or
- (b) Get or attempt to get a rebate or concession, the effect of which would be a purchase at less than cost to wholesalers.

(3) It is unlawful to engage in the business of purchasing, selling, consigning or distributing cigarettes without holding a current and valid cigarette wholesalers or retailers license issued by the department of licensing.

(4) Commission of any of the unlawful practices proscribed by RCW 19.91.020 is a misdemeanor and, in addition, the law provides for a fine up to \$500 for each offense.

[Statutory Authority: RCW 82.32.300. 82-19-028 (Order ET 82-9), § 458-24-020, filed 9/10/82; Order ET 72-2, § 458-24-020, filed 9/29/72.]

WAC 458-24-030 Licenses, bond. (1) "Wholesaler" means any person who:

- (a) Purchases cigarettes directly from the manufacturer; or
- (b) Purchases cigarettes from others for sale to persons who will resell such cigarettes in the regular course of business; or
- (c) Services retail outlets through an established place of business for the purchase, warehousing, and distribution of cigarettes.

Each wholesaler shall renew or make application for a wholesale cigarette dealer's license on forms supplied by the department of licensing and remit therewith the annual license fee of \$650 to the department of licensing. If the wholesaler sells, or intends to sell, cigarettes at more than one place of business, whether temporary or established, a separate license with a license fee of \$115 shall be required for each additional place of business. Each license shall be exhibited in the place of business for which it is issued. "Place of business" means any location where business is transacted with, or sales are made to, customers. It includes any vehicle, truck, vessel, or the like at which sales are made.

Each licensed wholesaler shall file a bond with the department of revenue in an amount determined by the

department of revenue, which amount shall not be less than \$5,000. The bond shall be executed by the wholesaler as principal, and by a corporation approved by the department of revenue and authorized to engage in business as a surety company in this state, as surety. The bond shall run concurrently with the wholesaler's license.

(2) "Retailer" means any person who makes sales of cigarettes at retail whether by operation of a store, stand, booth, concession, vending machine or other manner whatsoever.

Each retailer shall renew or make application for a retail cigarette dealer's license on forms supplied by the department of licensing and remit therewith the annual license fee of \$10 to the department of licensing. Retailers operating cigarette vending machines are required to pay an additional annual license fee of \$1 for each such vending machine.

(3) Persons may sell cigarettes both at retail and wholesale only if appropriate licenses are first secured for both such capacities.

[Statutory Authority: RCW 82.32.300. 82-19-028 (Order ET 82-9), § 458-24-030, filed 9/10/82; Order ET 72-2, § 458-24-030, filed 9/29/72.]

WAC 458-24-040 Legal action, remedies. (1) A criminal action may be filed for commission of any of the unlawful practices listed in RCW 19.91.020.

(2) A civil action may be maintained under RCW 19.91.110 in any court of equitable jurisdiction by any person injured because of any violation of chapter 19.91 RCW in order to prevent, restrain, or enjoin such violation and for recovery of costs, attorney's fees, and damages. Under RCW 19.91.060(2) an injured party may elect not to seek injunctive relief but upon proof of actual damages, may recover the same plus costs and attorney's fees. If injunctive relief is sought the same may be awarded upon establishment of violation, whether or not damages are alleged or proved.

[Order ET 72-2, § 458-24-040, filed 9/29/72.]

WAC 458-24-050 Administrative remedies. (1) Any licensed cigarette retailer or wholesaler, believing that a competitor is violating any provision of chapter 19.91 RCW or chapter 458-24 WAC, may file with the Department of Revenue, Excise Tax Division, Olympia, Washington 98504, a complaint in writing setting forth the basis upon which it believes the competitor is violating the provisions of chapter 19.91 RCW. The complaint shall conform to the requirements of WAC 458-24-060 as to form and contents.

(2) Upon receipt of a complaint the department will determine if it is frivolous or unsubstantiated, and if so found, shall promptly notify the complaining party that there is no basis upon which the department will act.

(3) If the department determines that the complaint is not frivolous or unsubstantiated, the department shall notify the complaining party of its intent to investigate the matter. The complaining party will not receive any other notification of departmental action in the case unless requested. The department shall notify the party complained against that a complaint has been filed and that an investigation will commence in order to determine whether violations of chapter 19.91 RCW or chapter 458-24 WAC have occurred.

(4) The party complained against shall make available to the department of revenue, upon request, all business

records pertaining to its operations and sales of cigarettes. All such business records will be subject to review and verification by the department as it may by law conduct.

(5) The department of revenue shall notify the party complained against of the result of its investigation in a written report. If the department determines that a violation of any provision of chapter 19.91 RCW has occurred, a hearing will be scheduled to consider the pending license revocation or suspension of the party complained against (hereinafter known as petitioner).

(6) All such hearings will be held before the director of the interpretation and appeals division in the department's Olympia offices unless otherwise specified in the notice of hearing. The department of revenue will schedule the hearing within thirty days of the issuance of its written report, or any extension requested by the petitioner and granted by the department.

(7) The hearing will be conducted in accordance with the provisions of chapter 34.04 RCW. The petitioner will be given an opportunity to present evidence and argument in opposition to the written report and pending license revocation or suspension. The right to appear in a representative capacity in such hearings shall be limited to:

- (a) Individuals, officers, or employees of the business;
- (b) Attorneys duly qualified and entitled to practice in the courts of the state of Washington; or

- (c) Attorneys entitled to practice before the highest court of record of any other state, if attorneys licensed in Washington state are permitted to appear before the courts of such other state in a representative capacity.

(8) Following the hearing, the director of interpretation and appeals will issue an order in accordance with the provisions of chapter 19.91 RCW, chapter 458-24 WAC, and RCW 34.04.120. The order shall state the penalties (see WAC 458-24-070), if any, to be imposed against the petitioner. The department shall mail a copy of its order to the petitioner. The order shall represent the official position of the department of revenue and shall be binding unless timely appealed.

(9) Appeals from orders of the department of revenue may be taken to the superior court of Thurston county.

[Statutory Authority: RCW 82.32.300. 82-19-028 (Order ET 82-9), § 458-24-050, filed 9/10/82; Order ET 72-2, § 458-24-050, filed 9/29/72.]

WAC 458-24-060 Form and contents of complaint.

- (1) The complaint shall set forth the following:
 - (a) The name and address of the complaining party;
 - (b) The name and address of the person against whom the complaint is made;
 - (c) The nature of the complaint in clear and concise language with sufficient detail to notify the department of the specific violation or violations which constitute the subject matter of the complaint; and
 - (d) Those facts which complainant alleges as of his own knowledge and those facts that are alleged on information and belief.
- (2) The complaint shall be signed by the party making the complaint and the facts alleged in the complaint, except those facts alleged to be on information and belief, shall be sworn to by the complaining party.

[Statutory Authority: RCW 82.32.300. 82-19-028 (Order ET 82-9), § 458-24-060, filed 9/10/82; Order ET 72-2, § 458-24-060, filed 9/29/72.]

WAC 458-24-070 Penalties. The department shall revoke or suspend the license or permit of any wholesale or retail cigarette dealer found to have violated the provisions of chapter 19.91 RCW or chapter 458-24 WAC. Upon a finding by the department of a failure to comply with the provisions of chapter 19.91 RCW or chapter 458-24 WAC, it shall:

(1) For the first offense, suspend the license or licenses of the offender for a period of not less than thirty consecutive business days;

(2) In the case of a second or plural offender, suspend the license or licenses of the offender for not less than ninety consecutive business days nor more than twelve months;

(3) In the event of finding the offender guilty of wilful and persistent violations, revoke the offender's license or licenses.

[Statutory Authority: RCW 82.32.300. 82-19-028 (Order ET 82-9), § 458-24-070, filed 9/10/82.]

WAC 458-24-080 Cigarette wholesalers and retailers—Determination of cost. (1) RCW 19.91.020(1) forbids sales of cigarettes by wholesalers at less than cost. The law specifies that the "cost to the wholesaler" is to be computed by adding the "basic cost of cigarettes" (RCW 19.91.010(8) and WAC 458-24-090) to the "cost of doing business by the wholesaler" (RCW 19.91.010(9)). It shall be presumed that the "cost of doing business by the wholesaler" is at least four percent of the "basic cost of cigarettes" to the wholesaler. If the wholesaler performs or pays for the cartage to the retail outlet, it shall be presumed that the cartage costs are at least one-half of one percent of the "basic cost of cigarettes" to the wholesaler and shall be added to the "cost of doing business."

(2) If the wholesaler of cigarettes believes that its cost of doing business is less than four percent of the "basic cost of cigarettes" to the wholesaler or that its cost of cartage to the retail outlet is less than one-half of one percent of the "basic cost of cigarettes" to the wholesaler, the wholesaler must file a letter with the department of revenue stating its intention to sell cigarettes at a cost less than that presumed under RCW 19.91.010(9) and setting forth proof of a lesser cost of doing business.

(3) RCW 19.91.020 (1) and (2) forbid sales of cigarettes by retailers at less than cost. The law specifies that the "cost to the retailer" is to be computed by adding the "basic cost of cigarettes" (RCW 19.91.010(8) and WAC 458-24-090) to the "cost of doing business by the retailer" (RCW 19.91.010(10)). Any retailer who, in connection with its purchase, receives cash discounts ordinarily allowed upon purchases by a wholesaler shall, in determining "cost to the retailer," add the "cost of doing business by the wholesaler" to the "basic [cost of cigarettes" to said retailer, as well as the "]cost of doing business by the retailer." It shall be presumed that the "cost of doing business by the retailer" is at least twelve and one-half percent of the "basic cost of cigarettes" to the retailer. In the case of a retailer who receives the cash discounts ordinarily allowed upon purchases by a wholesaler, the "cost of doing business by the

"retailer" shall be presumed to be twelve and one-half percent of the sum of the "basic cost of cigarettes" and the "cost of doing business by the wholesaler."

(4) If the retailer of cigarettes believes that its cost of doing business is less than twelve and one-half percent of the "basic cost of cigarettes" to the retailer or that its cost of doing business is less than twelve and one-half percent of the sum of the "basic cost of cigarettes" and the "cost of doing business by the wholesaler" (where the retailer [receives] [received] the cash discounts ordinarily allowed upon purchases by a wholesaler), the retailer must file a letter with the department of revenue stating its intention to sell cigarettes at a cost less than that presumed under RCW 19.91.010(10) and setting forth proof of a lesser cost of doing business.

(5) The department of revenue shall examine the wholesaler's or retailer's proof and verify its accuracy. The verification may include review of the wholesaler's or retailer's accounting records to determine the "cost of doing business by the wholesaler" as defined by RCW 19.91.010(9) or "cost of doing business by the retailer" as defined by RCW 19.91.010(10).

(6) If the department finds that the wholesaler or retailer has presented satisfactory proof of a lesser cost of doing business, it shall issue a letter of approval stating that prices may be lowered in accordance with the letter.

(7) If the department finds that the wholesaler or retailer has not presented satisfactory proof of a lesser cost of doing business, it shall issue a letter denying the wholesaler's or retailer's request for lower costs and stating the reasons therefore.

(8) The wholesaler or retailer may petition the department of revenue in writing for a review of the denial of the use of a lesser cost. Petitions should be addressed: State of Washington, Department of Revenue, Interpretation and Appeals Division, Olympia, Washington 98504.

(9) The petition must be received by the department of revenue within twenty days after the issuance of the denial letter. An extension of thirty days will be granted if additional time is required for preparation of the petition and such extension is requested prior to expiration of the twenty-day period. If no petition is filed within these time periods, the department's denial letter shall become final.

(10) The department shall grant a conference for review of all denial letters if the wholesaler or retailer has filed a timely petition. Such conferences will be conducted by the director of the interpretation and appeals division. All conferences will be conducted informally and will be held at the departmental offices in Olympia.

(11) The wholesaler or retailer shall receive written notice of the assistant director's determination. The determination shall represent the official position of the department of revenue and shall be binding upon the wholesaler or retailer.

[Statutory Authority: RCW 19.91.180(1). 85-01-061 (Order ET 84-5), § 458-24-080, filed 12/17/84. Statutory Authority: RCW 82.32.300. 82-24-028 (Order ET 82-11), § 458-24-080, filed 11/23/82.]

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 458-24-090 Basic cost of cigarettes—How calculated. The term "basic cost of cigarettes," as used in RCW 19.91.010 and amended by chapter 173, Laws of 1984, means the invoice price of cigarettes to the retailer or wholesaler, as the case may be, or the replacement cost of cigarettes to the retailer or wholesaler, as the case may be, in the quantity last purchased, whichever is lower, to which must be added the full face value of any stamps which may be required by any cigarette tax act of this state and by ordinance of any municipality thereof, presently in effect or hereafter enacted, if not already included by the manufacturer in its price list.

The law further provides that in computing the "basic cost of cigarettes" a wholesaler who actually receives a manufacturer's cash discount may, at the discretion of the wholesaler, pass along all or any portion of the discount to the retailer.

The term "cash discount" under the Unfair Cigarette Sales Below Cost Act (chapter 19.91 RCW) and these regulations shall be given the same definition as that provided in RCW 82.04.160, which is defined to mean a deduction from the invoice price of goods or charge for services allowed if the bill is paid on or before a specific date. For purposes of these rules, cash discount includes any anticipatory discount, anticipation allowance, anticipation discount, or any similar discount or allowance.

[Statutory Authority: RCW 19.91.180(1). 85-01-061 (Order ET 84-5), § 458-24-090, filed 12/17/84.]

Chapter 458-28 WAC TAXATION OF FINANCIAL BUSINESSES BY CITIES OR TOWNS

WAC

458-28-010	Scope of rule.
458-28-020	Gross income defined.
458-28-030	Deductions.
458-28-040	Branch locations, division of income.

WAC 458-28-010 Scope of rule. Chapter 134, Laws of 1972 ex. sess., authorizes cities and towns to impose a license fee or tax on financial institutions. Financial institutions having business locations in cities and towns which levy a tax upon gross income or gross receipts for the privilege of engaging in business shall divide their gross income for purposes of computing income earned in the cities, towns or unincorporated areas in which such places of business are located in accordance with these rules.

[Order ET 72-1, § 458-28-010, filed 9/29/72.]

WAC 458-28-020 Gross income defined. "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.

Other examples of gross income are receipts from carrying charges, service charges, credit cards, safety deposit box rentals, bookkeeping or data processing, overdraft fees, flooring fees, and penalty fees.

[Order ET 72-1, § 458-28-020, filed 9/29/72.]

WAC 458-28-030 Deductions. In arriving at income taxable to a city or town from activities of a place of business located therein, financial institutions may deduct from gross income:

(1) Dividends received by a parent from a subsidiary corporation.

(2) Interest received on investments or loans primarily secured by first mortgages or trust deeds on nontransient residential properties.

(3) Interest received on obligations of the State of Washington, its political subdivisions, and municipal corporations. 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 the sale or rental of real estate.

[Order ET 72-1, § 458-28-030, filed 9/29/72.]

WAC 458-28-040 Branch locations, division of income. Financial institutions having more than one place of business shall divide total taxable gross income so as to attribute taxable income to each location in the ratio of total interest earned (whether taxable or not) on loans originated at each location during the period covered by the tax return. The location at which a loan is originated is the place of business of the financial institution at which the customer deals with the financial institution to obtain the loan. Financial institutions having time or demand deposits may compute the ratio of total deposits at each location as a basis for approximating gross income of each location, provided the financial institution can demonstrate that the taxable income so computed will not differ by more than \$10,000 in any one calendar year as to any one business location from the amount computed using the ratio of interest earned on loans originated at each location.

[Order ET 72-1, § 458-28-040, filed 9/29/72.]

Chapter 458-30 WAC OPEN SPACE TAXATION ACT RULES

WAC

458-30-200	Definitions.
458-30-205	Department of revenue—Duties.
458-30-210	Classified lands.
458-30-215	Application process.
458-30-220	Application fee.
458-30-225	Assessor to respond to farm and agricultural classification applications.
458-30-230	Legislative authority to act on open space and timber land applications.
458-30-235	Granting authority response.
458-30-240	Agreement execution.

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458-30-245	Recording of documents.
458-30-250	Denial and appeal.
458-30-255	Determination of value.
458-30-260	Valuation procedures and standards.
458-30-262	Agricultural land valuation—Interest rate—Property tax component.
458-30-265	Valuation cycle.
458-30-270	Income and expense data.
458-30-275	Continuing classification—Sale or transfer of ownership of classified land.
458-30-280	Notice to withdraw from classification.
458-30-285	Withdrawal from classification.
458-30-290	Additional tax—Withdrawal.
458-30-295	Removal of classification.
458-30-300	Additional tax—Removal.
458-30-305	Additional tax—Date due.
458-30-310	County recording authority—Duties.
458-30-315	County financial authority—Duties.
458-30-320	Assessment and tax rolls.
458-30-325	Transfers between classifications.
458-30-330	Rating system.
458-30-335	Rating system—Establishment.
458-30-340	Rating system—Loss of qualification.
458-30-345	Advisory committee.
458-30-350	Reclassification.
458-30-355	Agreement may be abrogated by legislature.
458-30-500	Definitions.
458-30-510	Creation of district—Protest—Final assessment roll.
458-30-520	Notification of district—Certification by assessor—Estimate by district.
458-30-530	Notification of owner.
458-30-540	Waiver.
458-30-550	Exemption—Removal.
458-30-560	Partial assessment—Computation.
458-30-570	Connection subsequent to final assessment roll—Interest—Connection charge.
458-30-580	Rate of inflation—When published—Calculation.
458-30-590	Rates of inflation.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

Reviser's note: The former codification of Order 71-2, filed 3/26/71 and amended by Order 71-3, filed 4/29/71, showing related histories, was published in the Washington Administrative Code in Supp. #8 (4/1/71) and Supp. #9 (9/1/71). The sections showing captions and histories thereto are as follows:

Sections

458-30-005	Definitions. [Order 71-3, § 458-30-005, filed 4/29/71; Order 71-2, § 458-30-005, filed 3/26/71.]
458-30-010	Classified lands. [Order 71-2, § 458-30-010, filed 3/26/71.]
458-30-015	Agreement. [Order 71-2, § 458-30-015, filed 3/26/71.]
458-30-020	Application. [Order 71-2, § 458-30-020, filed 3/26/71.]
458-30-025	Application fee. [Order 71-2, § 458-30-025, filed 3/26/71.]
458-30-030	Withdrawal—Breach. [Order 71-2, § 458-30-030, filed 3/26/71.]
458-30-035	Assessor. [Order 71-2, § 458-30-035, filed 3/26/71.]
458-30-040	Granting authority. [Order 71-2, § 458-30-040, filed 3/26/71.]
458-30-045	Owner applicant. [Order 71-2, § 458-30-045, filed 3/26/71.]
458-30-050	Treasurer. [Order 71-2, § 458-30-050, filed 3/26/71.]
458-30-055	Basis for assessment. [Order 71-3, § 458-30-055, filed 4/29/71; Order 71-2, § 458-30-055, filed 3/26/71.]
458-30-060	Valuation procedures. [Order 71-3, § 458-30-060, filed 4/29/71.]
458-30-065	Training. [Order 71-3, § 458-30-065, filed 4/29/71.]

Order PT 73-9, filed 10/30/73 adopts amended sections which are, in some respects, unrelated to former codification and adopts as new sections formerly codified rules which have been published in the Washington Administrative Code under another section number. Prior histories have been codified as part of a history where a similar subject has been amended. Please consult the above list, as filed by Order PT 73-9, for clarification.

458-30-005	Definitions. [Order PT 73-9, § 458-30-005, filed 10/30/73; Order 71-3, § 458-30-005, filed 4/29/71; Order 71-2, § 458-30-005, filed 3/26/71.] [See reviser's note following chapter digest.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.	458-30-065	Conditions where additional tax not imposed. [Order PT 73-9, § 458-30-065, filed 10/30/73.] Repealed by 78-07-027 (Order PT 78-3), filed 6/16/78. Statutory Authority: RCW 84.34.141.
458-30-010	Classified lands. [Order PT 73-9, § 458-30-010, filed 10/30/73; Order 71-2, § 458-30-010, filed 3/26/71.] [See reviser's note following chapter digest.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.	458-30-070	Agreement may be abrogated by legislature. [Order PT 73-9, § 458-30-070, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.
458-30-015	Agreement. [Order PT 73-9, § 458-30-015, filed 10/30/73; Order 71-2, § 458-30-015, filed 3/26/71.] [See reviser's note following chapter digest.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.	458-30-075	Assessor. [Order PT 73-9, § 458-30-075, filed 10/30/73; Order 71-2, § 458-30-075, filed 3/26/71.] [See reviser's note following chapter digest.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.
458-30-020	Application. [Order PT 73-9, § 458-30-020, filed 10/30/73; Order 71-2, § 458-30-020, filed 3/26/71.] [See reviser's note following chapter digest.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.	458-30-080	Assessor to act on agricultural classification. [Order PT 73-9, § 458-30-080, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.
458-30-025	Application fee. [Order PT 73-9, § 458-30-025, filed 10/30/73; Order 71-2, § 458-30-025, filed 3/26/71.] [See reviser's note following chapter digest.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.	458-30-085	Assessor to determine value. [Order PT 73-9, § 458-30-085, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.
458-30-030	Withdrawal—Change of use. [Order PT 73-9, § 458-30-030, filed 10/30/73; Order 71-2, § 458-30-030, filed 3/26/71.] [See reviser's note following chapter digest.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.	458-30-090	Assessor may require reports—Failure to comply. [Order PT 73-9, § 458-30-090, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.
458-30-035	Additional tax. [Order PT 73-9, § 458-30-035, filed 10/30/73.] Repealed by 78-07-027 (Order PT 78-3), filed 6/16/78. Statutory Authority: RCW 84.34.141.	458-30-095	Assessor to note classification on assessment and tax roll. [Order PT 73-9, § 458-30-095, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.
458-30-040	Breach—Change of use. [Order PT 73-9, § 458-30-040, filed 10/30/73.] Repealed by 78-07-027 (Order PT 78-3), filed 6/16/78. Statutory Authority: RCW 84.34.141.	458-30-100	Assessor to record agreement and other notices. [Order PT 73-9, § 458-30-100, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.
458-30-045	Removal of a portion. [Order PT 73-9, § 458-30-045, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 chapter 84.34 RCW.	458-30-105	Notice of withdrawal to be filed with assessor—Assessor to withdraw. [Order PT 73-9, § 458-30-105, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.
458-30-050	Removal of classification. [Order PT 73-9, § 458-30-050, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.	458-30-110	Assessor to notify owner of value change. [Order PT 73-9, § 458-30-110, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.
458-30-055	Notification upon removal. [Order PT 73-9, § 458-30-055, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.	458-30-115	Granting authority. [Order PT 73-9, § 458-30-040, filed 3/26/71.] [See reviser's note following chapter digest.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.
458-30-056	Additional tax. [Statutory Authority: RCW 84.34.141. 78-07-027 (Order PT 78-3), § 458-30-056, filed 6/16/78.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.	458-30-120	Granting authority's action on application. [Statutory Authority: RCW 84.34.141. 78-07-027 (Order PT 78-3), § 458-30-120, filed 6/16/78; Order PT 73-9, § 458-30-120, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.
458-30-057	Penalty. [Statutory Authority: RCW 84.34.141. 78-07-027 (Order PT 78-3), § 458-30-057, filed 6/16/78.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.	458-30-125	Owner applicant. [Order PT 73-9, § 458-30-125, filed 10/30/73; Order 71-2, § 458-30-045, filed 3/26/71.] [See reviser's note following chapter digest.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.
458-30-060	Additional tax—Date due. [Order PT 73-9, § 458-30-060, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.	458-30-130	Treasurer. [Order PT 73-9, § 458-30-130, filed 10/30/73; Order 71-2, § 458-30-050, filed 3/26/71.] [See reviser's note following chapter digest.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.
		458-30-135	Advisory committee. [Order PT 73-9, § 458-30-135, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.
		458-30-140	Basis for assessment. [Order PT 73-9, § 458-30-140, filed 10/30/73; Order 71-3, § 458-30-055, filed 4/29/71; Order

458-30-145	71-2, § 458-30-055, filed 3/26/71.] [See reviser's note following chapter digest.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.
458-30-146	Valuation procedures. [Statutory Authority: RCW 84.34.141, 86-09-088 (Order PT 86-1), § 458-30-145, filed 4/23/86; 78-07-027 (Order PT 78-3), § 458-30-145, filed 6/16/78; Order PT 73-9, § 458-30-145, filed 10/30/73. Prior: Order 71-3, § 458-30-060, filed 4/29/71.] [See reviser's note following chapter digest.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.
458-30-147	Valuation cycle. [Statutory Authority: RCW 84.34.141, 78-07-027 (Order PT 78-3), § 458-30-146, filed 6/16/78.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.
458-30-150	Change of timber land classification to chapter 84.33 RCW. [Order PT 73-9, § 458-30-150, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.
458-30-155	Reclassification of farm and agricultural land under 1973 amendatory act. [Order PT 73-9, § 458-30-155, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.
458-30-160	Training. [Order PT 73-9, § 458-30-160, filed 10/30/73; Order 71-3, § 458-30-065, filed 4/29/71.] [See reviser's note following chapter digest.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.
458-30-261	Five year average grain prices. [Statutory Authority: Chapter 84.34 RCW and RCW 84.08.010(2). 89-05-008 (Order PT 89-1), § 458-30-261, filed 2/8/89.] Repealed by 90-02-080 (Order PT 90-1), filed 1/2/90, effective 2/2/90. Statutory Authority: RCW 84.08.010(2) and 84.34.141.

WAC 458-30-200 Definitions. The terms listed in this section are intended to act in concert with each other as appropriate, and with other definitions as they appear in the several sections of this chapter. When a term appears in a section, reference is to be made to the definition listed within this section, or the section that defines the term.

(1) "Act" means the Open Space Taxation Act, chapter 84.34 RCW.

(2) "Additional tax" means such tax and interest that will be collected when classification is withdrawn or removed from land that is classified according to the provisions of the act.

(3) "Affidavit" means the real estate excise tax affidavit required by chapter 82.45 RCW and chapter 458-61 WAC.

(4) "Agreement" means an open space taxation agreement, executed between an owner and the granting authority approving the classification of land according to the act. The term also includes an approved application for the farm and agricultural land classification.

(5) "Applicant" means the owner who submits an application for classification of land according to the act.

(6) "Application" means an application for classification of land according to the act.

(7) "Approval" means a determination by the granting authority or assessor that the land qualifies for classification under the act.

(8) "Aquaculture" means the growing and harvesting, for commercial agricultural purposes, of marine or fresh water flora or fauna in a soil or water medium.

(9) "Assessor" means the county assessor or such agency or person who is authorized to act on behalf of the assessor.

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

(11) "Change in use" means direct action taken by the owner that actually changes the use of, or has started changing the use of, classified land to a use that is not in compliance with the conditions of the agreement executed between the owner and the granting authority, the provisions of the act, and this chapter.

(12) "Classified land" means a parcel(s) of land that has been approved by the appropriate granting authority for taxation under the act.

(13) "Commercial agricultural purposes" means use on a continuous and regular basis, prior to and subsequent to application for classification, which use demonstrates an intent of an owner or lessee to obtain through lawful means, a monetary profit from cash income received by:

(a) Raising, harvesting, and selling lawful crops;

(b) Feeding, breeding, managing, and selling of livestock, poultry, fur-bearing animals, or honey bees, or products thereof;

(c) Dairying or selling of dairy products;

(d) Animal husbandry;

(e) Aquaculture;

(f) Horticulture; or

(g) Participation in a government-funded crop reduction or acreage set-aside program.

(14) "Contiguous" means land that adjoins other land when such lands are held by the same ownership. If such a parcel of land is divided by a public road, railroad, public right of way, or waterway, but is otherwise an integral part of a farming operation, it shall be considered contiguous.

(15) "County financial authority" and "financial authority" mean the county treasurer or any other agency or person charged with the responsibility for billing and collecting property taxes.

(16) "County legislative authority" means the county commission, council, or other county legislative body.

(17) "County recording authority" means the county auditor or any agency or person charged with the recording of documents.

(18) "Current" and "currently" mean the date on which property is to be listed and valued by the assessor.

(19) "Current use value" means the taxable value of a parcel of land placed on the assessment rolls following classification.

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

(21) "Farm woodlot" means a land area that is more than five acres but less than twenty acres and upon which trees are grown and cut for the use of the owner. Such land area is included within a parcel(s) of classified farm and agricultural land, is valued as such, and is compatible with lawful commercial agricultural purposes. The total area of such lands shall not exceed twenty acres of the parcel(s) of land described in the application for classification.

(22) "Granting authority" means the appropriate agency or official who acts on an application for classification according to the act.

(23) "Gross income" means cash income derived from commercial agricultural purposes, including payments received from the United States Department of Agriculture for participation in any crop reduction or acreage set-aside program when payments are based on the productive capacity of the land. The term shall not include the following:

- (a) The value of the owner's or lessee's own consumption of any of the products that are produced;
- (b) Cash income from leases, or use of the land for other than commercial agricultural purposes; or
- (c) Payments for soil conservation programs.

(24) "Net cash rental" means the earning or productive capacity less those production costs customarily or typically paid by the owner.

(25) "Owner" means the person(s) having a fee interest in a parcel of land, except when the land is subject to a real estate contract; the vendee when the land is subject to a real estate contract; or both spouses when a marital community is the owner.

(26) "Parcel of land" means a property identified as such on the assessment roll. However, for purposes of the act and this chapter, a parcel shall not include any land area not owned by the applicant or owner, including but not limited to public roads and rights of way, railroads, and waterways.

(27) "Penalty" means an amount equal to twenty percent of the additional tax that is added to said tax when classification is removed from the land by the assessor according to the act.

(28) "Planning authority" means the local government agency empowered by the appropriate legislative authority to develop policies and proposals relating to land use.

(29) "Primary use" means the existing use of a parcel or parcels of land such that in considering the characteristic use of that land, a conflicting or nonrelated use is limited or excluded.

(30) "Qualification of land" means the approval of classification of land by the granting authority.

(31) "Rating system" means a public benefit rating system adopted for the open space classification according to RCW 84.34.055.

(32) "Sale of ownership" means the conveyance of the ownership of a parcel of land in exchange for a valuable consideration.

(33) "Tax year" means the year when a property tax is due and payable.

(34) "Transfer" means the conveyance of the ownership of a parcel of land without an exchange of valuable consideration.

(35) "True and fair value" is the value of a parcel of land placed on the assessment rolls at its highest and best use without regard to its current use value.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-200, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-200, filed 11/15/88.]

WAC 458-30-205 Department of revenue—Duties. The department shall maintain general administrative authority to assure that the act and this chapter are effectively and equitably applied throughout the state. The depart-

ment, upon request, shall provide all reasonable assistance to the granting authorities relating to administration of the act and this chapter.

The department shall design all application and other administrative forms necessary under the act and this chapter for the granting authorities to prepare and provide to applicants for classification, except those forms necessary for the rating system. The department shall provide the guidelines and necessary training to assessors and county boards of equalization for administration of the act and this chapter. Members of the advisory committee and members of any granting authority may attend the training sessions provided by this section.

The department shall annually issue by December 31, by whatever means it deems suitable, a five-year average of wheat and barley prices for use by the assessor in the following assessment year.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-205, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-205, filed 11/15/88.]

WAC 458-30-210 Classified lands. Land classified under the act shall be placed under one of three classifications defined as:

(1) "Open space land" means:

(a) Any parcel(s) of land so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly; or

(b) Any parcel(s) of land, whereby preservation in its present use would:

(i) Conserve and enhance natural or scenic resources; or

(ii) Protect streams or water supply; or

(iii) Promote conservation of soils, wetlands, beaches, or tidal marshes; or

(iv) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, natural reservations or sanctuaries, or other open spaces; or

(v) Enhance public recreation opportunities; or

(vi) Preserve historic sites; or

(vii) Retain in its natural state, tracts of land of not less than five acres in size situated in an urban area and open to public use on such conditions as may be reasonably required by the granting authority.

(2) "Farm and agricultural land" means either:

(a) A parcel of land twenty acres or more in size or contiguous parcels of land which, when taken together are twenty or more acres in size, the primary use of which is for commercial agricultural purposes; or

(b) Any parcel of land or contiguous parcels of land which, when taken together are five acres or more in size, but less than twenty acres in size, the primary use of which is for commercial agricultural purposes, and which produced a gross income each year that averaged one hundred dollars or more in cash per acre for three of the five calendar years preceding the date of application for classification; or

(c) Any parcel of land or contiguous parcels of land which, when taken together are less than five acres in size, the primary use of which is for commercial agricultural purposes, and which produced a gross income of one thousand dollars or more in cash each year for three of the

five calendar years preceding the date of application for classification.

(d) Farm and agricultural land also includes:

(i) Farm woodlots that are more than five acres in size but less than twenty acres in size;

(ii) Land on which appurtenances necessary for commercial agricultural purposes exist in conjunction with the lands producing agricultural products, including such appurtenances as a machinery maintenance shed or a shipping facility;

(iii) Any noncontiguous parcel of land from one to five acres in size, otherwise constituting an integral part of the commercial agricultural purpose of the parcel classified under the act; and

(iv) The land area used as a homesite in connection with commercial agricultural purposes shall be included within the total acreage of the parcel(s) granted classification. However, such homesite shall be valued pursuant to the provisions of WAC 458-30-260(5).

(3) "Timber land" means:

A parcel of land five acres or more in size or contiguous parcels of land which, when taken together are five or more acres in size, devoted primarily to the commercial growth and harvest of forest crops, but does not include land listed on the assessment roll as classified or designated forest land according to chapter 84.33 RCW, and does not include the land on which nonforest crops or any improvements to the land are sited.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-210, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-210, filed 11/15/88.]

WAC 458-30-215 Application process. The assessor and the county legislative authority shall make available application forms for classification and shall supply them upon request. The assessor and the county legislative authority shall provide the appropriate forms, prepare informational materials and provide reasonable assistance to an owner who submits an application for classification of land according to the act. Should the county legislative authority adopt a rating system for the open space classification, it shall prepare the appropriate forms and provide informational materials and assistance to prospective applicants.

The applicant shall be the owner of the land described on the application.

In the event a parcel is conveyed while approval of a timely filed application is pending, the purchaser or transferee shall, upon written request to the granting authority, be given the same consideration as if that party was the original applicant. However, except for the application fee, the granting authority shall require the purchaser or transferee to satisfy all requirements that otherwise would have been required in accordance with the original application.

Application for classification as farm and agricultural land shall be made to the assessor, who shall be the granting authority.

Application for classification as open space or timber land shall be made to the county legislative authority. If the parcel(s) of land is in an unincorporated area, the county legislative authority shall be the granting authority. If the

parcel(s) of land is in an incorporated area, the application shall be forwarded to the city or town legislative authority. In such situations, a joint county/city legislative authority consisting of three members from each legislative authority, acting as the granting authority, shall act on the application. Application for classification of land according to the act shall be made from January 1 through December 31 for classification and assessment to begin on January 1 in the year following application.

An owner who submits an application for classification of land as open space and timber land need file only one application. However, the applicant shall provide a legal description of the parcel of land that is acceptable to the assessor and the granting authority, who shall determine the appropriate classification according to the provisions of the act and this chapter. The assessor may segregate the parcels as necessary.

If the land described in the application for classification is in more than one county, the owner shall file a separate application with each granting authority.

If application for classification is denied, a reapplication covering the same parcel of land, or a portion thereof, may not be submitted to the granting authority until three hundred sixty-five days have elapsed from the date the initial application was received.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-215, filed 11/15/88.]

WAC 458-30-220 Application fee. The city or county legislative authority may, at their discretion, require a processing fee to accompany each application. Such fee shall be in an amount that reasonably covers the processing costs of the application. If any agreement is to be recorded, the cost of such recording shall come from the fee. The fee shall be made payable to the county financial authority, who shall forward a portion of the fee to any city in which the parcel of land is located in proportion to the land area included in such city to the total land area of the parcel.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-220, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-220, filed 11/15/88.]

WAC 458-30-225 Assessor to respond to farm and agricultural classification applications. The assessor shall act on each application for classification as farm and agricultural land with due regard to all relevant evidence, and may approve the application in whole or in part.

Except as provided by the act and this chapter, the assessor cannot impose conditions or restrictions regarding approval of an application for classification as farm and agricultural land. The assessor shall consider the relevant zoning and, if the zoning ordinance prohibits the farm and agricultural activity for which classification is being sought, deny the application. Prospective use of the land shall not be relevant evidence in acting upon an application.

Upon application for classification, the assessor may require applicants to provide data regarding the use of such land, including the productivity of typical crops, sales receipts, federal income tax returns including schedules documenting farm income, other related income and expense

data and any other information relevant to the application. Failure to provide the information requested pursuant to this section shall be cause to deny an application.

If no written determination is provided to the applicant prior to May 1 of the year following receipt of the application, the application shall be considered approved. However, the assessor may review the classification at any time after the classification has been granted.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-225, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-225, filed 11/15/88.]

WAC 458-30-230 Legislative authority to act on open space and timber land applications. An application for classification of a parcel(s) of land as open space or timber land shall be filed with the granting authority and processed as follows:

(1) If a comprehensive plan has been enacted, it shall be treated in the same manner as a proposed amendment to that plan; and

(2) If a comprehensive plan has not been enacted, a public hearing on the application shall be conducted. Notice of such hearing shall be announced once by publication in a newspaper of general circulation in the city or county no less than ten days before the hearing. The owner shall be notified in writing of the hearing.

The granting authority shall either approve or disapprove the application within six months after it has been received. If approved, valuation of the land at its current use value shall begin on January 1 of the year following the year the application was filed. However, any application approved on or after July 1 of any year shall cause the land to be listed on the assessment roll at its current use value on January 1 of the following assessment year.

Any conditions imposed in the agreement shall be in consideration of the benefits to the general public and shall not exceed the duration of the agreement.

The granting authority shall keep a record of each application, agreement, and records relating to each agreement.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-230, filed 11/15/88.]

WAC 458-30-235 Granting authority response. (1) The granting authority may approve an application in whole, or in part. An applicant may withdraw the application if part of it is rejected. The granting authority may not require the owner of classified timber land to grant an easement.

(2) In determining whether an application for classification as open space or timber land should be approved, the granting authority shall take cognizance of the benefits to the general welfare of preserving the current use of the parcel(s) of land described in the application, and shall consider the following:

(a) The revenue impact that will result from granting the application; and

(b) Whether preservation of the land in its current use will:

(i) Conserve or enhance natural or scenic resources; or

(ii) Protect streams, stream corridors, wetlands, natural shorelines, and aquifers; or

(iii) Protect soil resources and critical wildlife and native plant habitat; or

(iv) Promote conservation principles by example or by offering educational opportunities; or

(v) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries, or other open spaces; or

(vi) Enhance recreation opportunities; or

(vii) Preserve historic and archaeological sites; or

(viii) Affect any other factors relevant in weighing benefits to the general welfare of preserving the current use of such land.

(3) In addition to the foregoing, the granting authority shall consider:

(a) The existence of any mining claim or mining lease on the land, and if so, whether it will seriously interfere with the considerations stated in subsection (2) of this section. If the granting authority determines serious interference will occur, it may deny the application in whole, or in part. If a mining claim or mining lease is obtained after the land is classified, the same determination must be made in deciding whether serious interference will occur; and

(b) The zoning of the parcel(s) of land at the time when the application for classification is filed.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-235, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-235, filed 11/15/88.]

WAC 458-30-240 Agreement execution. Once an application for classification as open space or timber land has been approved by the granting authority, said authority shall prepare an agreement. The agreement shall state all conditions attached to the approval.

Within five calendar days following approval, in whole or in part, the granting authority shall deliver by certified mail, return receipt requested, the approved agreement to the owner for signature.

The owner may accept or reject the agreement. If accepted, the agreement shall be signed and returned to the granting authority within twenty-five calendar days following delivery.

Unless the owner is prevented from returning the agreement by events beyond their control, the granting authority shall conclusively presume the agreement has been rejected if it is not signed and returned to them within thirty calendar days after mailing.

To be properly executed, the agreement shall be signed by the owner and shall become effective commencing upon the date the granting authority receives the signed agreement from the property owner.

The granting authority shall, within ten days after receiving the signed agreement, send one copy to the assessor.

The agreement shall apply to the parcel(s) of land described in the agreement and the conditions and requirements shall be binding upon the heirs, successors, and assignees of the parties thereto.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-240, filed 11/15/88.]

WAC 458-30-245 Recording of documents. The assessor shall, within ten working days after receiving an agreement from the granting authority, or approving an application for the farm and agricultural land classification, submit such documents to the county recording authority for recording. The county recording authority shall return the documents to the assessor following recording.

The county recording authority shall also record all notices of withdrawal or of breach that are received from the assessor. The owner shall pay all recording fees for such notices.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-245, filed 11/15/88.]

WAC 458-30-250 Denial and appeal. (1) All denials of an application for classification shall be in writing and shall include the reasons for denial.

(2) The owner shall have the right to appeal any denial of an application for classification.

(3) In the event the assessor denies an application for classification as farm and agricultural land, in whole or in part, the applicant may appeal to the county legislative authority within thirty calendar days following mailing of the denial.

(4) In the event the granting authority denies an application for classification as either open space or timber land, appeal can be made only to the superior court of the county where the application was made.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-250, filed 11/15/88.]

WAC 458-30-255 Determination of value. The assessor shall determine the current use value of land classified under the act according to the procedures and standards set forth in this chapter. In determining the value, the assessor shall consider only the current use of such land and shall not consider any potential use and income.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-255, filed 11/15/88.]

WAC 458-30-260 Valuation procedures and standards. The assessor shall use all available information to determine the productive capacity of classified farm and agricultural land. Consideration shall be given to actual production within an area, averaged over not less than the immediate past five years. Farm production information and other related data shall be available to the assessor as provided by the act and this chapter. Reliable statistical sources may also be used. A soil capability analysis may be considered in determining the productive or earning capacity of the land.

In determining the current use value of farm and agricultural land, the assessor shall use the capitalization of income method described in the following subsections of this section.

(1) The net cash rental to be capitalized shall be determined as follows:

(a) The assessor shall use leases of farm land paid on an annual basis, in cash or its equivalent. The land must have been available for lease for a period of at least three years to any reliable person without unreasonable restrictions on its

use for production of agricultural crops. If leases do not meet these requirements, they will not be used. The lease payments shall be averaged as follows:

(i) Each annual lease payment, or rent, shall be averaged for the typical crops within that area; and

(ii) The typical cash rental for each year shall be averaged for not less than the last five crop years. A deduction shall be allowed for the customary costs that are paid by the land owner. All costs and expenses shall be averaged over the immediate past five years. If the land is irrigated by a sprinkler system, an amount for the irrigation equipment shall be deducted from the gross cash rent to determine the net rent for the land only. However, such irrigation equipment shall be placed on the assessment roll at its true and fair value.

(b) Should there be an insufficient number of leases available to adequately determine net cash rental, it shall be established by determining:

(i) The landlord's share of the cash value of typical or usual crops grown on land of similar quality. The cash value shall include government subsidies if they are based on the productive capacity of the land. The acreage kept out of production because of these subsidies shall be included in the total acreage valued by capitalization of the income;

(ii) The landlord's share of the standard cost of production will be determined and deducted from his or her share of the cash value established pursuant to this subsection.

The resulting amount shall be averaged for not less than five crop years.

(c) When the land being valued is not in use for commercial agricultural purposes, or where the available information is insufficient to determine an agricultural income, the assessor shall compute a reasonable amount to be capitalized as income, based on the land's estimated productive capacity.

(2) The capitalization rate to be used in valuing land shall be the sum of the following:

(a) An interest component to be determined by the department and certified to the assessor on or before January 1st of each year, and shall be comparable to interest rates charged on long-term loans secured by mortgages on farms or agricultural lands averaged over the last five years; plus

(b) A component for property taxes that shall be determined by dividing the total taxes levied within the county for the year preceding the assessment by the total assessed value of the county.

(3) The value of the agricultural land shall be the net cash rental of the land divided by the capitalization rate determined in subsection (2) of this section.

(4) The department's determination of the interest rate established in subsection (2)(a) of this section may be appealed to the state board of tax appeals not later than thirty days after the notice has been issued by:

(a) An owner of a parcel(s) of land classified as farm and agricultural; or

(b) The assessor of any county containing parcels of land that are classified as farm and agricultural.

(5) Land presently used as a residential building site shall be valued at its true and fair value as a homesite in accordance with WAC 458-12-301. However, land that migratory farm labor accommodations, bunkhouses, storeyards, barns, machine sheds, and similar type structures

are located upon shall not be considered as a residential building site.

(6) Except for a parcel(s) of land classified under a rating system, a parcel of land classified as open space shall have an assessed value not less than what it would have if classified as farm and agricultural land.

(7) Timber land shall be valued according to chapter 84.33 RCW.

[Statutory Authority: RCW 84.08.010(2) and 84.34.141. 90-02-080 (Order PT 90-1), § 458-30-260, filed 1/2/90, effective 2/2/90. Statutory Authority: RCW 84.08.010(2) and 84.34.065. 89-05-009 (Order PT 89-2), § 458-30-260, filed 2/8/89. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-260, filed 11/15/88.]

WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component. For assessment year 1992, the interest rate and the property tax component that are to be used to value classified farm and agricultural lands are as follows:

- (1) The interest rate is 10.55 percent; and
- (2) The property tax component for each county is:

COUNTY	PERCENT	COUNTY	PERCENT
Adams	1.52	Lewis	1.29
Asotin	1.46	Lincoln	1.49
Benton	1.56	Mason	1.36
Chelan	1.50	Okanogan	1.45
Clallam	1.29	Pacific	1.45
Clark	1.42	Pend Oreille	1.06
Columbia	1.45	Pierce	1.66
Cowlitz	1.24	San Juan	1.03
Douglas	1.46	Skagit	1.29
Ferry	0.98	Skamania	1.03
Franklin	1.59	Snohomish	1.36
Garfield	1.76	Spokane	1.64
Grant	1.44	Stevens	1.22
Grays Harbor	1.47	Thurston	1.60
Island	0.97	Wahkiakum	1.19
Jefferson	1.18	Walla Walla	1.40
King	1.17	Whatcom	1.41
Kitsap	1.34	Whitman	1.53
Kittitas	1.29	Yakima	1.43
Klickitat	1.31		

[Statutory Authority: RCW 84.08.010 and 84.08.070. 92-03-068, § 458-30-262, filed 1/14/92, effective 2/14/92; 91-04-001, § 458-30-262, filed 1/24/91, effective 2/24/91; 90-24-087, § 458-30-262, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2) and 84.34.141. 90-02-080 (Order PT 90-1), § 458-30-262, filed 1/2/90, effective 2/2/90.]

WAC 458-30-265 Valuation cycle. In determining the true and fair value and the current use value of classified lands, the assessor shall follow a revaluation cycle that adheres to the requirements contained in WAC 458-12-335 through 458-12-339, as now or hereafter amended. The cycle used shall be the same as that used for other real property in the county and shall be in an orderly manner, pursuant to a regular plan, and in a manner that is not arbitrary, capricious, or intentionally discriminatory.

The assessor shall notify the owner of classified lands of any change in the true and fair value and/or current use value in the same manner as prescribed in RCW 84.40.045.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-265, filed 11/15/88.]

WAC 458-30-270 Income and expense data. The assessor is authorized to require an owner to report data relevant to continuing the eligibility of any parcel of land for classification. Such information includes, but is not limited to: Receipts from sales of agricultural products produced on that land, federal income tax returns including schedules documenting farm income, production and other operating expenses, rent and lease receipts, government payments and subsidies, crop and livestock production data and other related income and expense information.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-270, filed 11/15/88.]

WAC 458-30-275 Continuing classification—Sale or transfer of ownership of classified land. When the ownership of classified land is sold or transferred to a new owner who intends to continue classification, such notation shall be made by the new owner on the affidavit.

(1) When a parcel(s) of land classified as open space is sold or transferred, the signature of the new owner must be on the notice of continuance in order to continue the classification. The assessor will request information from the new owner, and consult with the granting authority to determine if the parcel of land qualifies for continued classification.

(2) When a parcel(s) of land classified as timber land is sold or transferred, the signature of the new owner must be on the notice of continuance in order to continue the classification. The assessor will request information from the new owner, and consult with the granting authority to determine if the parcel of land qualifies for continued classification.

(3) When a parcel(s) of land classified as farm and agricultural is sold or transferred to a new owner:

(a) In a sale or transfer involving twenty acres or more, the new owner will be required to:

(i) Sign the notice of continuance on the affidavit; and

(ii) Provide the assessor with a statement explaining how he or she will use the parcel(s) of land in such manner as to continue its eligibility for classification under the act.

The assessor will then determine if the land qualifies for continued classification.

(b) In a sale or transfer involving less than twenty acres, the new owner will be required to:

(i) Sign the notice of continuance on the affidavit; and

(ii) Provide the assessor with a statement explaining how he or she will use the parcel(s) of land in such manner as to continue its eligibility for classification under the act; and

(iii) Provide gross income data for three of the past five years. Said data shall be consistent with the income and acreage requirements stated in the act and this chapter.

The assessor will then determine if the land qualifies for continued classification.

(c) In a sale or transfer involving a land segregation, the owner of the newly created parcel(s), and the owner of the parcel(s) of land from which the segregated land was taken shall comply with the requirements of (a) or (b) of this subsection before the assessor determines if the land qualifies for continued classification.

(4) The assessor may, upon being informed that classified land is being sold or transferred to a new owner, obtain relevant information pursuant to WAC 458-30-270. Within fifteen calendar days after receiving such data, the assessor will determine if the land qualifies for continued classification as of the date of conveyance. The new owner, upon signing the notice of continuance, warrants the information in the original application continues to be correct and that future use of the land will conform to the provisions of the act and this chapter.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-275, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-275, filed 11/15/88.]

WAC 458-30-280 Notice to withdraw from classification. Except as otherwise provided, land classified under the provisions of the act shall remain under such classification and shall not be applied to any other use, for at least ten assessment years from the effective date of classification.

During the ninth or later assessment year of classification, the owner may file with the assessor an irrevocable notice of request for withdrawal. The request for withdrawal may involve all or part of the land.

Upon receiving the request for withdrawal the assessor shall, within seven working days, transmit one copy of the request to the granting authority that approved the original application.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-280, filed 11/15/88.]

WAC 458-30-285 Withdrawal from classification. Classification may be withdrawn from a parcel of land in whole or in part. If part of the parcel is involved, the assessor shall:

(1) If the parcel is classified as farm and agricultural land, verify that the remaining portion meets the requirements of the act and this chapter; and

(2) If the parcel is in the open space or timber land classification, consult with the granting authority before determining whether the remaining portion meets the requirements of the act and this chapter.

The assessor may segregate the portion from which classification is being withdrawn for valuation and taxation purposes.

After twenty-four months have elapsed following the date of receipt of the request to withdraw classification from the land, the assessor shall withdraw the classification and place the true and fair value on said land. The assessor shall, not later than thirty days after making the withdrawal, notify the owner in writing that classification has been withdrawn from the parcel(s).

[Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-285, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-285, filed 11/15/88.]

WAC 458-30-290 Additional tax—Withdrawal. When classification is withdrawn from the land, an additional tax shall be collected from the owner that is equal to the sum of:

(1) The difference between the property tax that was levied on the current use value, and the tax that would have been levied on its true and fair value for the seven tax years preceding withdrawal, in addition to the portion of the tax year when the withdrawal takes place; plus

(2) Interest on the amount determined under subsection (1) of this section at the statutory rate specified in RCW 84.56.020 charged on delinquent property taxes; starting from May 1 of the year the tax could have been paid without interest to the date of withdrawal.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-290, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-290, filed 11/15/88.]

WAC 458-30-295 Removal of classification. The assessor shall remove classification from all or a portion of the parcel upon occurrence of any of the following:

(1) Receipt of written notice from the owner directing removal.

(2) Sale or transfer to an owner exempt from paying property taxes.

(3) Any change in use which occurs after a request to withdraw classification is made in accordance with the provisions of WAC 458-30-285, and before actual withdrawal of the classification.

(4) Sale or transfer of all or a portion of such land to a new owner who is not exempt from paying property taxes. However, the new owner may sign the notice of continuance on the affidavit to continue the classified use of the sold or transferred land.

(5) Failure of an owner to respond to a request for data pursuant to WAC 458-30-270. The request for such information shall be sent by first class mail. Any response shall be made in writing no later than sixty calendar days following the date the request was mailed by the assessor. If the owner does not respond within that time period, the assessor shall send the owner a second request for information which shall be sent by certified mail, return receipt requested. This second request shall inform the owner that failure to respond in writing within thirty calendar days of the date of mailing may result in removal of classification. If the owner fails to respond, the assessor may remove the classification and impose the additional tax and penalty.

(6) A determination by the assessor based on field inspections, analysis of income and expense data, or any other reasonable evidence that all, or a portion of the parcel(s) of land is no longer devoted to the primary use that qualified it for classification. The assessor shall notify the owner in writing regarding this determination, but shall not remove classification until the owner has had an opportunity to respond. Such response shall be made in writing no later than thirty calendar days following the date the request was mailed by the assessor.

Within thirty days after removal of classification, the assessor shall notify the owner in writing, setting forth the reasons for such removal. The seller, transferor, or owner may appeal the removal to the county board of equalization. The appeal must be filed within thirty calendar days following the date the notice of removal was mailed by the assessor.

Upon removal of classification from a portion of a parcel of open space, farm and agricultural, or timber land,

the assessor may, for valuation and tax purposes, segregate the affected portion.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-295, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-295, filed 11/15/88.]

WAC 458-30-300 Additional tax—Removal. (1) In the event classification is removed from a parcel(s) of land, an additional tax shall be collected. Such additional tax shall be equal to the sum of:

(a) The difference between the property tax that was levied on the current use value, and the tax that would have been levied on its true and fair value for the seven tax years preceding removal in addition to the portion of the tax year when the removal takes place; plus

(b) Interest on the amount determined under (a) of this subsection at the statutory rate specified in RCW 84.56.020 charged on delinquent property taxes; starting from May 1 of the year the tax could have been paid without interest to the date the additional tax is paid; plus

(c) A penalty of twenty percent added to the total amount computed in (a) and (b) of this subsection whenever there is a change in use that would disqualify the land from continued classification.

(2) If the notice of continuance on the affidavit is not signed, an additional tax and penalty shall be calculated according to subsection (1) of this section.

(3) There shall be no additional tax imposed upon removal of classification from a parcel(s) of land if such removal resulted solely from one or more of the following:

(a) Transfer to a governmental entity in exchange for other land located within the state of Washington; or

(b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power; or

(c) Sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in such land, whether the sale or transfer be made by the personal representative, heirs, or devisees of the deceased owner. If the owner of a fifty percent interest inherits the other fifty percent, the land will remain classified and said classification cannot be removed without paying the additional tax unless it is sold within two years. If the owner purchases the decedent's fifty percent interest within two years, classification may be removed without payment of the additional tax and penalty and without signing the notice of continuance. If the notice of continuance is signed, classification will continue as if no transfer occurred; or

(d) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the landowner changing the use of such property; or

(e) Official action by an agency of the state of Washington or by the county or city where the land is located disallowing the current use of such land; or

(f) Transfer to a church when such land would qualify for property tax exemption pursuant to RCW 84.36.020. The conditions set forth in RCW 84.36.020 shall apply to the affected parcel of land only and shall not relieve any portion not so affected from the potential tax liability; or

(g) Acquisition of property interests by public agencies or private organizations qualified under RCW 84.34.210 and 64.04.130 for the purposes specified therein. However, when these property interests are not used as specified, the additional tax shall be imposed.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-300, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-300, filed 11/15/88.]

WAC 458-30-305 Additional tax—Date due. (1) The additional tax and the penalty, if applicable, required upon removal of classification from a parcel(s) of land, pursuant to WAC 458-30-300 shall become due and payable immediately at the time of sale or transfer.

(2) In all other situations, the assessor shall compute the amount of additional tax and the county financial authority shall notify, in writing, the party liable for such tax of the amount and the date when the payment is to be made, which date shall be not more than thirty days following the date of mailing by the financial authority.

Any additional tax and applicable penalty that is unpaid on its due date shall thereon become delinquent. Such additional tax and applicable penalty shall attach at the time classification is removed from a parcel of land, and shall, as of said date, become a lien on such land and shall have priority to and shall be fully paid and satisfied before any recognition, mortgage, judgment, debt, obligation, or responsibility to or with which such land may become charged or liable. Such lien may be foreclosed upon expiration of the same period after delinquency and in same manner provided by law, for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050 now or as amended. Starting with the date of delinquency until paid, interest shall be charged at the same rate applied by law to delinquent ad valorem property taxes.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-305, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-305, filed 11/15/88.]

WAC 458-30-310 County recording authority—Duties. The county recording authority shall not accept for recording any instrument of conveyance involving a parcel of land classified according to the act unless:

(1) Any required additional tax and applicable penalty has been paid; or

(2) The notice of continuance is signed by the new owner or transferee.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-310, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-310, filed 11/15/88.]

WAC 458-30-315 County financial authority—Duties. (1) The county financial authority shall, upon receipt of the notice of the current use value and the true and fair value from the assessor, list each in the place and manner provided for listing delinquent taxes.

(2) Upon receipt of a notice of withdrawal from the assessor, the financial authority shall bill and collect all additional taxes due pursuant to WAC 458-30-290.

(3) Upon receipt of a removal of classification notice, the financial authority shall bill and collect all additional taxes and penalties due pursuant to WAC 458-30-300.

(4) Upon collection of the additional tax, interest and penalty by the financial authority, said funds shall be distributed in the same manner that current taxes applicable to the subject land are distributed. The financial authority shall treat all additional taxes and penalties which are not timely paid in the same manner as delinquent taxes.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-315, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-315, filed 11/15/88.]

WAC 458-30-320 Assessment and tax rolls. Following classification of a parcel of land, the assessor shall, each year, enter on the assessment and tax rolls, the current use value and the true and fair value of that parcel. The assessor shall provide notice of these values to the county financial authority who shall list such notice in the place or manner provided for recording delinquent taxes.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-320, filed 11/15/88.]

WAC 458-30-325 Transfers between classifications. There shall be no additional tax imposed when:

(1) Land classified as farm and agricultural is transferred to timber land pursuant to chapter 84.34 RCW;

(2) Land classified as timber land, pursuant to chapter 84.34 RCW, is transferred to the farm and agricultural land classification;

(3) Land classified or designated as forest land pursuant to chapter 84.33 RCW, is transferred to the farm and agricultural or timber land classifications pursuant to chapter 84.34 RCW; or

(4) Timber land classified pursuant to chapter 84.34 RCW, is transferred to designated forest land pursuant to chapter 84.33 RCW.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-325, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-325, filed 11/15/88.]

WAC 458-30-330 Rating system. The county legislative authority may direct the county planning authority to set open space priorities and adopt, following a public hearing, an open space plan and rating system for the county. The plan shall include but not be limited to the following:

(1) Criteria to determine land eligibility;

(2) A process for establishing a rating system; and

(3) An assessor-developed valuation schedule that shall be a percentage of market value based on the rating system.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-330, filed 11/15/88.]

WAC 458-30-335 Rating system—Establishment. The rating system shall provide for the rating of parcel(s) of land classified as open space, according to the provisions of the act. The granting authority shall include within the rating system the criteria contained in the act and shall

consider such criteria when acting on an application to preserve the current use of the parcel(s).

In developing the open space plan, the county planning authority shall take all reasonable steps to determine open space priorities, or use recognized sources for the same purpose, or both. Recognized sources include, but are not limited to: The natural heritage data base, state office of historic preservation, interagency committee for outdoor recreation inventory of dry accretion beach and shoreline features, governmental historic place registers, shoreline master programs, or studies by the parks and recreation commission, and the departments of fisheries, natural resources, and wildlife.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-335, filed 11/15/88.]

WAC 458-30-340 Rating system—Loss of qualification. Upon adoption of the open space plan and rating system, an owner of land classified as open space will be notified of the parcel's new assessed value. A parcel of land that no longer qualifies for classification will not be removed from classification, but will be rated according to the rating system. Such a parcel may be removed from classification upon request of the owner without application of the additional tax or penalty within thirty days after receiving notification of the new value. There shall be no partial removal of a parcel of land included in the rating system.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-340, filed 11/15/88.]

WAC 458-30-345 Advisory committee. The county legislative authority shall appoint a five-member advisory committee representing the active farming community to advise the assessor in implementing assessment guidelines as established by the department for farm and agricultural land unless the county legislative authority finds insufficient interest by the farming community in the formation of the committee. The committee shall elect officers and adopt operating procedures. All meetings and records shall be open to the public according to chapters 42.30 and 42.17 RCW.

Upon appointment, each member of the advisory committee shall serve a one-year term. Members may be removed from the advisory committee by majority vote of the county legislative authority.

The advisory committee shall not give advice regarding the valuation or assessment of specific parcels of land. However, it may supply the assessor with advice on typical crops, land quality, and net cash rental assessments to assist in determining appropriate values.

Failure of the county legislative authority to appoint an advisory committee shall not invalidate the listing of property on the assessment or the tax rolls.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-345, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-345, filed 11/15/88.]

WAC 458-30-350 Reclassification. Land classified under the provisions of chapter 84.34 RCW prior to July 16, 1973, meeting the definition of farm and agricultural land

pursuant to RCW 84.34.020(2) as amended by chapter 212, Laws of 1973 1st ex. sess., shall be reclassified as such upon request for such change by the owner to the assessor. Such change shall be made without additional tax, penalty, or other requirements. After such reclassification, the land shall be subject to the provisions of the act.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-350, filed 11/15/88.]

WAC 458-30-355 Agreement may be abrogated by legislature. The agreement is not a contract between the owner and any other party and can be abrogated at any time by the legislature, in which event no additional tax or penalty shall be imposed.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-355, filed 11/15/88.]

WAC 458-30-500 Definitions. For the purposes of WAC 458-30-500 through 458-30-590, unless otherwise required by the context:

(1) "Farm and agricultural land" means that land classified by the assessor, prior to creation of the district, as farm and agricultural under chapter 84.34 RCW.

(2) "Local government" means any city, town, county, sewer district, water 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 benefit assessments for sanitary and/or storm sewerage systems, domestic water supply and/or distribution systems, or road construction or improvement purposes.

(3) "District" means any local improvement district, utility local improvement district, local utility district, road improvement district or any similar unit created by a local government for the purpose of levying special benefit assessments against property specially benefited by improvements relating to such districts.

(4) "Owner" means the party or parties having the fee interest in land, except that where land is subject to real estate contract, "owner" means the contract vendee.

(5) The term "average rate of inflation" means the annual rate of inflation as adopted each year by the department of revenue according to WAC 458-30-580 averaged over the period of time as provided in WAC 458-30-550 and 458-30-570.

(6) "Special benefits assessments" means special assessments levied or capable of being levied in any local improvement district or otherwise levied or capable of being levied by a local government to pay for all or part of the costs of a local improvement and which may be levied only for the special benefits to be realized by property by reason of that local improvement.

(7) "Connection charge" or "charge for connection" is the charge required to be paid to the district for connection to the service as opposed to the assessment based upon the benefits derived.

[Statutory Authority: RCW 84.34.360. 87-07-009 (Order PT 87-3), § 458-30-500, filed 3/10/87.]

WAC 458-30-510 Creation of district—Protest—Final assessment roll. RCW 84.34.320 requires local

government officials to take certain steps upon "creation" of a district. This section defines when a district shall be deemed to have been "created."

(1) For districts outside of cities, a district shall be considered created upon its actual adoption at the required hearing.

(2) For districts within cities, creation shall occur thirty days after passage of the ordinance ordering the improvement, thereby allowing the protest period set forth in RCW 35.43.180.

(3) For districts within cities, a protest may be filed with the city or town council within thirty days from the date of passage of the ordinance ordering the improvement. Creation of said district can be prevented by the property owners within whose combined payments for said improvement(s) are equal to, or in excess of sixty percent of the cost of the improvement. For all other districts their creation can be prevented by opposition of the property owners within whose combined property ownership is equal to or greater than forty percent of the area included in the district.

(4) For those districts that have an annual assessment roll hearing on capital assessments, the final assessment roll will be considered as "adopted" upon confirmation of the roll at the hearing in the first year.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-510, filed 11/15/88. Statutory Authority: RCW 84.34.360. 87-07-009 (Order PT 87-3), § 458-30-510, filed 3/10/87.]

WAC 458-30-520 Notification of district—Certification by assessor—Estimate by district. (1) Upon creation of a district, the local government shall immediately notify the assessor and legislative authority of the county where the district is located of said creation.

(2) Upon receipt of notification that a district has been created, the assessor shall certify in writing to the district whether or not classified farm and agricultural land is within its boundaries.

(a) If there is any such land, the assessor shall certify what land is within by providing parcel numbers and legal descriptions of such property.

(b) If any owner of land within the created district has timely filed, as of January 1st, an application for current use assessment as farm and agricultural land and no action has been taken, the assessor will report the status of pending applications to the district and take immediate action to render a decision for its approval or denial. The assessor shall also inform the district that any decision is appealable under RCW 84.34.035, and that the classification as farm and agricultural land would become effective as of the initial filing date, January 1.

(c) If the legislature extends the filing date for applying for classification as farm and agricultural land beyond December 31, those applications approved will receive their status as of January 1 of the filing year.

(3) The district, upon receipt of the assessor's certification required by subsection (2) of this section, shall notify the assessor and the legislative authority of:

(a) The extent to which classified lands may be subject to a partial assessment for connection to the service provided by the improvement(s). Said estimate will be based upon WAC 458-30-560.

(b) Confirmation and approval of the special benefit assessment roll. Said confirmation shall include the lands exempted from assessment and the amounts that would have been levied had the land not been exempt.

(4) The assessor shall notify the district when any exempt farm and agricultural land is removed from classification.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-520, filed 11/15/88. Statutory Authority: RCW 84.34.360. 87-07-009 (Order PT 87-3), § 458-30-520, filed 3/10/87.]

WAC 458-30-530 Notification of owner. The assessor, upon receiving notice of the creation of such a district, shall notify the owner of the farm and agricultural lands as shown on the current assessment rolls. Such notification shall be made on forms approved by the department of revenue and shall contain the following:

(1) Notice of the creation of the district.

(2) Notice of the exemption of that land from special benefit assessments.

(3) Notice that the farm and agricultural land will become subject to the special benefit assessments if the owner waives the exemption by filing a notarized document with the governing body of the local government creating the district before confirmation of the final special benefit assessment roll.

(4) Notice of potential liability if the exemption is not waived and the land is subsequently withdrawn or removed from the farm and agricultural land classification.

(5) The portion of the land measured as the benefited "residence" as provided in WAC 458-30-560 will be assessed for benefits received.

(6) That connection to the system, shall result in a connection charge.

(7) That connection to the system subsequent to creating the district and initial assessment will result in being liable for the amounts as calculated in WAC 458-30-570.

(8) The property owner shall have the right of appeal as is guaranteed any other property owner within the district.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-530, filed 11/15/88. Statutory Authority: RCW 84.34.360. 87-07-009 (Order PT 87-3), § 458-30-530, filed 3/10/87.]

WAC 458-30-540 Waiver. (1) The owner of land exempted from special benefit assessments may waive that exemption by filing a notarized statement to that effect with the local government creating the district. Said statement must be filed prior to confirmation of the final special benefit assessment roll.

(2) A copy of said waiver shall be filed by the local government with the assessor and the county legislative authority, but the failure of such filing shall not affect the waiver.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-540, filed 11/15/88. Statutory Authority: RCW 84.34.360. 87-07-009 (Order PT 87-3), § 458-30-540, filed 3/10/87.]

WAC 458-30-550 Exemption—Removal. (1) No further action will be required of the owner of classified

farm and agricultural land who chooses to remain exempt and not connect to the improvement(s) made by the district. The status of the property will not change and it will not be included on the assessment roll.

(2) If the owner initially chose to remain exempt, but subsequently is removed or withdrawn from the farm and agricultural land classification, immediate payment shall be required of the total special benefit assessment amount listed in the notice provided for in RCW 84.34.320 in the following manner:

(a) If the bonds used to fund the improvement have not been completely retired when the land is withdrawn or removed from classification, the liability will be:

(i) The amount of the special benefit assessment, plus;

(ii) Interest on that amount, compounded annually at a rate equal to the average rate of inflation from the time the initial notice is filed by the governmental entity creating the district to the time the land is withdrawn or removed from exempt status.

(b) If the bonds used to fund the improvement in the district have been completely retired when the land is withdrawn or removed from classification, immediate payment shall be due for:

(i) The amount of the special benefit assessment, plus;

(ii) Interest on that amount compounded annually at a rate equal to the average rate of inflation from the time the initial notice is filed to the time the bonds used to fund the improvement have been retired, plus;

(iii) Interest on the total amount of (i) and (ii) at a simple per annum rate equal to the average rate of inflation from the time the bonds used to fund the improvement have been retired to the time the land is withdrawn or removed from exempt status.

(3) If property is withdrawn or removed from the farm and agricultural land classification, but has been partially assessed for connection to a sewer and/or water system, credit shall be given for the amount paid when computing the total liability.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-550, filed 11/15/88. Statutory Authority: RCW 84.34.360. 87-07-009 (Order PT 87-3), § 458-30-550, filed 3/10/87.]

WAC 458-30-560 Partial assessment—Computation. A portion of the exempt classified farm and agricultural land shall be subject to special benefit assessment if it is actually connected to the domestic water system or sewerage facilities, or for access to a road improvement. The amount of special benefit assessment shall be calculated by the method used in the district to assess nonexempt property. If a district uses more than one method to calculate the assessment, it shall use the one that results in the least cost to the property owner, regardless of the owner's property holdings and/or exempt status. The district shall provide the owner of such property with a written estimate of the partial assessment as determined from the following methods:

(1) Sanitary and/or storm sewerage service or domestic water service.

(a) Square foot method: If the special benefit assessment is determined on a square footage basis, the assessable portion of the exempt land shall be determined as follows:

Calculate the square footage of the residential area, i.e., the "main dwelling." This area shall include all those facilities normally found on a residential lot such as a garage or carport, driveway, front and back yards, etc. Also included in the area shall be any buildings or facilities directly benefited by an actual connection to the improvement. (For example: A dairy barn connected to a sewer or water system.)

(b) Front foot method: If the special benefit assessment is determined on a front footage basis, the assessable portion of the exempt land shall be determined by one of the following:

(i) Calculate the square footage for the residential area in the same manner as the square foot method. The square foot measurement of the entire "residence," shall then be converted into the area of a square. The calculated square will be used as the unit to be charged for the special benefit assessment. One side of the square will be used as front footage; or

(ii) Determine the mean (average) front footage of all nonexempt properties within the district, and use it to assess the portion of otherwise exempt property for the special benefit assessment, i.e., add all of the nonexempt front footage relevant to the improvement and divide by the number of nonexempt properties within the district.

(c) Zone-termini method: If the special benefit assessment is determined on a zone-termini basis, the assessable portion of the exempt land shall be determined by one of the following:

(i) Convert the square foot area of the residence to a square as in the front foot method. Use this square as the zone for assessing the portion of otherwise exempt property for the special benefit assessment; or

(ii) Calculate the mean (average) width and depth (length) of all nonexempt properties within the district, using these averages to create a rectangular unit as the zone for assessing the portion of otherwise exempt property for the special benefit assessment. To perform this calculation:

(A) Add all nonexempt front footage relevant to the improvement and divide by the number of nonexempt properties within the district to determine the mean width of the zone; and

(B) Add the depths (lengths) of all nonexempt properties within the district and divide by the number of nonexempt properties within the district to determine the mean depth of the zone.

(d) Equivalent residential unit method (ERU): The ERU method shall be used in the same manner as it is used on all other properties within the district. The value to be determined is based on the amount of benefit derived or, when appropriate, the degree of contribution to the service, such as drainage or sewer. This amount shall be measured for all uses of property. (For example, if a dairy barn uses a greater amount of water or contributes a greater amount of sewerage than the normal residential unit, it shall be classified as more than one ERU and shall be charged a proportionately greater amount.)

(e) Combined methods: In districts making assessments using a combination of two or more methods (e.g., an assessment based on a front footage charge plus a square foot charge), the procedures for determining the assessable

portion of previously exempt property shall be the same as those described above.

(2) Road construction and/or improvements. If the property is provided access to the constructed or improved road, the assessment will be based upon the percentage of current use value to true and fair value as evidenced by the last property tax assessment roll as equalized by the county board of equalization to what the assessment would have been if the owner had waived the exemption. (For example, if the current use value is forty-five percent of its true and fair value, then the assessable portion would be forty-five percent of the amount it would have been had the owner waived the exemption.)

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-560, filed 11/15/88. Statutory Authority: RCW 84.34.360. 87-07-009 (Order PT 87-3), § 458-30-560, filed 3/10/87.]

WAC 458-30-570 Connection subsequent to final assessment roll—Interest—Connection charge. (1) The owner of property exempted from special benefit assessments under the current use farm and agricultural land classification who connects to the water and/or sewer systems and/or road improvements provided by the district after the assessment roll has been approved will be liable for the foregone assessments as determined by WAC 458-30-560 including interest, but not penalties. In addition, the annual payment required for each year following the connection shall be made.

(2) In addition to the assessments imposed in subsection (1) of this section, the owner will also be liable for the cost of connection.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-570, filed 11/15/88. Statutory Authority: RCW 84.34.360. 87-07-009 (Order PT 87-3), § 458-30-570, filed 3/10/87.]

WAC 458-30-580 Rate of inflation—When published—Calculation. In computing the interest as required by WAC 458-30-550, upon withdrawal or removal from classification as farm and agricultural land, the department of revenue will, each year, publish an annual inflation rate. The rate will be based upon the implicit price deflator for personal consumption expenditures calculated by the United States Department of Commerce. The rate will be published by December 31st of each year and will apply to all withdrawals or removals that occur in the following year. An owner will become liable for the interest from the time the district was created to the time of withdrawal or removal. If more than one year is involved, an annual average inflation rate shall be used to calculate the interest. This rate will be determined by summing the inflation rates for all years in question and then dividing by the number of years. The interest shall take effect on the date the action warranting the charge as provided for in WAC 458-30-550 is taken. Interest for withdrawal or removal will be calculated only for the time (years and months) the property was in exempt status. (For example, if a property was withdrawn July 1, 1987, and the district was created in January 1980, the interest would be calculated using the inflation rates given for 1980 through 1987; in the year when the withdrawal or removal occurred, the interest would be calculated for six

months, January through June, as the property was still in exempt status.)

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-580, filed 11/15/88. Statutory Authority: RCW 84.34.360. 87-07-009 (Order PT 87-3), § 458-30-580, filed 3/10/87.]

WAC 458-30-590 Rates of inflation. The rates of inflation to be used for calculating the interest as required by WAC 458-30-550 are as follows:

YEAR	PERCENT	YEAR	PERCENT	YEAR	PERCENT
1976	5.6	1981	10.3	1986	1.9
1977	6.5	1982	6.2	1987	3.7
1978	7.6	1983	3.2	1988	4.1
1979	11.3	1984	4.3	1989	4.8
1980	13.5	1985	3.5	1990	5.4
				1991	4.2

[Statutory Authority: RCW 84.34.360. 92-22-061, § 458-30-590, filed 10/29/92, effective 11/29/92. Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-590, filed 12/5/90, effective 1/5/91. Statutory Authority: Chapter 84.34 RCW and RCW 84.34.360. 89-05-010 (Order PT 89-3), § 458-30-590, filed 2/8/89. Statutory Authority: RCW 84.34.360. 88-07-004 (Order PT 88-4), § 458-30-590, filed 3/3/88; 87-07-009 (Order PT 87-3), § 458-30-590, filed 3/10/87.]

Chapter 458-40 WAC TAXATION OF FOREST LAND AND TIMBER

WAC

- 458-40-500 Property tax, forest land—Statement of purpose.
- 458-40-510 Property tax, forest land—Definitions.
- 458-40-520 Property tax, forest land—Classification, designation, removal by assessor, compensating taxes.
- 458-40-530 Property tax, forest land—Land grades.
- 458-40-535 Property tax, forest land—Operability classes.
- 458-40-540 Property tax, forest land—Forest land values—1993.
- 458-40-600 Timber excise tax—Statement of purpose.
- 458-40-610 Timber excise tax—Definitions.
- 458-40-615 Timber excise tax—Stumpage values—Reporting of private stumpage and log purchase sales and applicable logging costs to the department.
- 458-40-620 Timber excise tax—Tax liability—Harvester as taxpayer, harvester defined.
- 458-40-622 Timber excise tax—Tax liability—Government entity as harvester.
- 458-40-624 Timber excise tax—Tax liability—Reclassified reforestation lands.
- 458-40-626 Timber excise tax—Tax liability—Private timber, tax due when timber harvested.
- 458-40-628 Timber excise tax—Tax liability—Public timber lump sum vs. scale sales.
- 458-40-630 Timber excise tax—Stumpage value—General definition.
- 458-40-632 Timber excise tax—Taxable stumpage value—Private timber.
- 458-40-634 Timber excise tax—Taxable stumpage value—Small harvester option.
- 458-40-636 Timber excise tax—Taxable stumpage value—Public timber.
- 458-40-640 Timber excise tax—Stumpage value area (map).
- 458-40-650 Timber excise tax—Timber quality codes defined.
- 458-40-660 Timber excise tax—Stumpage value tables.
- 458-40-670 Timber excise tax—Stumpage value adjustments.
- 458-40-680 Timber excise tax—Volume harvested—Approved scaling and grading methods.
- 458-40-682 Timber excise tax—Volume harvested—Sample scaling.

- 458-40-684 Timber excise tax—Volume harvested—Conversions to Scribner Decimal C Scale for Western Washington.
- 458-40-686 Timber excise tax—Volume harvested—Conversions to Scribner Decimal C Scale for Eastern Washington.
- 458-40-690 Timber excise tax—Credit for property tax.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 458-40-010 Definitions. [Order 71-4, § 458-40-010, filed 10/8/71.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.
- 458-40-020 Forest land grading rules. [Order 71-4, § 458-40-020, filed 10/8/71.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.
- 458-40-025 Forest land values. [Order 72-6, § 458-40-025, filed 6/28/72; Order PT 72-2, § 458-40-025, filed 2/18/72.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.
- 458-40-026 Forest land values—1973. [Order PT 72-14, § 458-40-026, filed 11/29/72.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.
- 458-40-027 Forest land values—1974. [Order PT 73-1, § 458-40-027, filed 11/30/73.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.
- 458-40-028 Forest land values—1975. [Order FT 74-1, § 458-40-028, filed 11/22/74.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.
- 458-40-029 Forest land values—1976. [Order FT 75-6, § 458-40-029, filed 12/1/75.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.
- 458-40-030 Forest land designation. [Order FT 75-3, § 458-40-030, filed 6/5/75; Order 71-4, § 458-40-030, filed 12/17/71.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.
- 458-40-040 Definitions. [Order FT 75-3, § 458-40-040, filed 6/5/75; Order 71-4, § 458-40-040, filed 12/17/71.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.
- 458-40-050 Forest land application. [Order FT 75-3, § 458-40-050, filed 6/5/75; Order 71-4, § 458-40-050, filed 12/17/71.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.
- 458-40-060 Forest management plan. [Order FT 75-3, § 458-40-060, filed 6/5/75; Order 71-4, § 458-40-060, filed 12/17/71.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.
- 458-40-070 Notification by assessor of denial of application, appeals. [Order FT 75-3, § 458-40-070, filed 6/5/75; Order 71-4, § 458-40-070, filed 12/17/71.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.
- 458-40-080 Notification by assessor of removal of designated forest land, appeals. [Order FT 75-3, § 458-40-100 (codified as WAC 458-40-080), filed 6/5/75; Order 71-4, § 458-40-080, filed 12/17/71.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.
- 458-40-090 Notation on assessment and tax rolls of designated forest land. [Order FT 75-3, § 458-40-080 (codified as WAC 458-40-090), filed 6/5/75; Order 71-4, § 458-40-090, filed 12/17/71.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.
- 458-40-100 Removal from designation. [Order FT 75-3, § 458-40-090 (codified as WAC 458-40-100), filed 6/5/75; Order 71-4, § 458-40-100, filed 12/17/71.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.
- 458-40-10001 Compensating tax liability and rate. [Order FT 75-3, § 458-40-110 (codified as WAC 458-40-10001), filed 6/5/75.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.
- 458-40-110 Definitions. [Order 71-4, § 458-40-110, filed 12/17/71.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-120	Timber roll—Preparation and use. [Order 71-4, § 458-40-120, filed 12/17/71 and 1/13/72.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	458-40-181	Quality classes. [Order PT 74-3, § 458-40-181, filed 3/21/74; Order PT 73-8, § 458-40-181, filed 11/7/73 and 11/1/73.] Decodified.
458-40-121	Timber roll—Correction affecting timber factor. [Order 73-5, § 458-40-121, filed 8/13/73.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	458-40-182	Quality classes. [Order FT 74-2, § 458-40-182, filed 11/27/74.] Decodified.
458-40-130	Reconstruction of 1970 timber value. [Order 71-4, § 458-40-130, filed 12/17/71.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	458-40-183	Quality classes. [Order FT 76-2, § 458-40-183, filed 7/1/76; Order FT 75-7, § 458-40-183, filed 12/1/75.] Decodified.
458-40-140	Timber—Assessed valuation. [Order 71-4, § 458-40-140, filed 12/17/71.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	458-40-184	Quality classes. [Order FT 76-2, § 458-40-184, filed 7/1/76.] Decodified.
458-40-150	Determining millage. [Order 71-4, § 458-40-150, filed 12/17/71.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	458-40-185	Stumpage index definition. [Order FT 75-1, § 458-40-185, filed 2/21/75.] Repealed by Order FT 76-2, filed 7/1/76.
458-40-160	Stumpage value areas. [Order 72-13, § 458-40-160, stumpage value area map, filed 11/28/72.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	458-40-18600	General. [Statutory Authority: Chapter 84.33 RCW. 85-02-026 (Order FT-84-7), § 458-40-18600, filed 12/28/84. Statutory Authority: RCW 82.01.060 and 1984 c 204. 84-14-049 (Order FT-84-4), § 458-40-18600, filed 6/29/84. Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 84-02-041 (Order FT-83-7), § 458-40-18600, filed 12/30/83. Statutory Authority: RCW 84.33.071, 83-14-039 and 83-14-040 (Emergency Order FT-83-4 and Permanent Order FT-83-3), § 458-40-18600, filed 6/30/83, effective 6/30/83. Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 83-02-033 (Order FT-82-7), § 458-40-18600, filed 12/30/82. Statutory Authority: RCW 82.01.060 and 84.33.071. 82-14-037 (Order FT-82-3), § 458-40-18600, filed 6/30/82; 82-02-035 (Order FT-81-4), § 458-40-18600, filed 12/31/81; 81-14-047 (Order FT 81-2), § 458-40-18600, filed 6/30/81; 81-02-007 (Order FT 80-6), § 458-40-18600, filed 12/30/80; 80-08-042 and 80-08-041 (Emergency Order FT 80-1 and Permanent Order FT 80-2), § 458-40-18600, filed 6/30/80, effective 6/30/80; 80-01-091 (Order FT 79-40), § 458-40-18600, filed 12/31/79; Order 76-5, § 458-40-18600, filed 12/31/76.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.
458-40-161	Stumpage value areas. [Order PT 73-8, § 458-40-161, filed 11/1/73.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	458-40-18601	Definitions. [Order 76-5, § 458-40-18601, filed 12/31/76.] Decodified.
458-40-162	Stumpage value areas. [Order FT 74-2, § 458-40-162, filed 11/27/74.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	458-40-18602	Stumpage value areas—Map for 1/1/77 through 6/30/77. [Order 76-5, § 458-40-18602, filed 12/31/76.] Decodified.
458-40-163	Stumpage value areas. [Order FT 76-2, § 458-40-163, filed 7/1/76; Order FT 75-7, § 458-40-163, filed 12/1/75.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	458-40-18603	Hauling distance zones—Maps for 1/1/77 through 6/30/77. [Order 76-5, § 458-40-18603, filed 12/31/76.] Decodified.
458-40-164	Stumpage value areas. [Order FT 76-2, § 458-40-164, filed 7/1/76.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	458-40-18604	Timber quality code numbers—Tables for 1/1/77 through 6/30/77. [Order 76-5, § 458-40-18604, filed 12/31/76.] Decodified.
458-40-165	Hauling distance zones. [Order 72-13, § 458-40-165, filed 11/28/72.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	458-40-18605	Stumpage values—Tables for 1/1/77 through 6/30/77. [Order 76-5, § 458-40-18605, filed 12/31/76.] Decodified.
458-40-166	Hauling distance zones. [Order PT 73-8, § 458-40-166, filed 11/1/73.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	458-40-18606	Harvest adjustments—Tables for 1/1/77 through 6/30/77. [Order 76-5, § 458-40-18606, filed 12/31/76.] Decodified.
458-40-167	Hauling distance zones. [Order FT 74-2, § 458-40-167, filed 11/27/74.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	458-40-18607	Definitions for 7/1/77 through 12/31/77. [Order 77-2, § 458-40-18607, filed 6/29/77.] Decodified.
458-40-168	Hauling distance zones. [Order FT 76-2, § 458-40-168, filed 7/1/76; Order FT 75-7, § 458-40-168, filed 12/1/75.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	458-40-18608	Stumpage value areas—Map for 7/1/77 through 12/31/77. [Order 77-2, § 458-40-18608, filed 6/29/77.] Decodified.
458-40-169	Hauling distance zones. [Order FT 76-2, § 458-40-169, filed 7/1/76.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	458-40-18609	Hauling distance zones—Maps for 7/1/77 through 12/31/77. [Order 77-2, § 458-40-18609, filed 6/29/77.] Decodified.
458-40-170	Stumpage values. [Order 72-13, § 458-40-170 and Stumpage Tables, filed 11/28/72.] Decodified.	458-40-18610	Timber quality code numbers—Tables for 7/1/77 through 12/31/77. [Order 77-2, § 458-40-18610, filed 6/29/77.] Decodified.
458-40-171	Stumpage values. [Order PT 74-3, § 458-40-171, filed 3/21/74; Order PT 73-8, § 458-40-171, filed 11/1/73.] Decodified.	458-40-18611	Stumpage values—Tables for 7/1/77 through 12/31/77. [Order 77-2, § 458-40-18611, filed 6/29/77.] Decodified.
458-40-172	Stumpage values. [Order 75-5, § 458-40-172, filed 8/8/75; Emergency Order FT 75-4, § 458-40-172, filed 7/1/75; Order FT 74-2, § 458-40-172, filed 11/27/74.] Decodified.	458-40-18612	Harvest adjustments—Tables for 7/1/77 through 12/31/77. [Order 77-2, § 458-40-18612, filed 6/29/77.] Decodified.
458-40-173	Stumpage values. [Order FT 76-2, § 458-40-173, filed 7/1/76; Order FT 75-7, § 458-40-173, filed 12/1/75.] Decodified.	458-40-18613	Definitions for 1/1/78 through 6/30/78. [Order FT 77-5, § 458-40-18613, filed 12/30/77.] Decodified.
458-40-174	Stumpage values. [Order FT 76-2, § 458-40-174, filed 7/1/76.] Decodified.	458-40-18614	Stumpage value areas—Map for 1/1/78 through 6/30/78. [Order FT 77-5, § 458-40-18614, filed 12/30/77.] Decodified.
458-40-175	Adjustments. [Order 72-13, § 458-40-175 and Adjustment Tables, filed 11/28/72.] Decodified.	458-40-18615	Hauling distance zones—Maps for 1/1/78 through 6/30/78. [Order FT 77-5, § 458-40-18615, filed 12/30/77.] Decodified.
458-40-176	Adjustments. [Order PT 73-8, § 458-40-176, filed 11/1/73.] Decodified.	458-40-18616	Timber quality code numbers—Tables for 1/1/78 through 6/30/78. [Order FT 77-5, § 458-40-18616, filed 12/30/77.] Decodified.
458-40-177	Adjustments. [Order 75-2, § 458-40-177, filed 5/12/75; Order FT 74-2, § 458-40-177, filed 11/27/74.] Decodified.		
458-40-178	Adjustments. [Order FT 76-2, § 458-40-178, filed 7/1/76; Order FT 75-7, § 458-40-178, filed 12/1/75.] Decodified.		
458-40-179	Adjustments. [Order FT 76-2, § 458-40-179, filed 7/1/76.] Decodified.		
458-40-180	Quality classes. [Order 72-13, § 458-40-180 and Quality Class Tables, filed 11/28/72.] Decodified.		

Chapter 458-40

Title 458 WAC: Revenue, Department of

458-40-18617	Stumpage values—Tables for 1/1/78 through 6/30/78. [Order FT 77-5, § 458-40-18617, filed 12/30/77.] Decodified.	Order FT 79-34 and Permanent Order FT 79-35), § 458-40-18636, filed 6/29/79, effective 6/29/79.] Decodified.
458-40-18618	Harvester adjustments—Tables for 1/1/78 through 6/30/78. [Order FT 77-5, § 458-40-18618, filed 12/30/77.] Decodified.	Definitions for 1/1/80 through 6/30/80. [Statutory Authority: RCW 82.01.060 and 84.33.071. 80-01-091 (Order FT 79-40), § 458-40-18637, filed 12/31/79.] Decodified.
458-40-18619	Definitions for 7/1/78 through 12/31/78. [Statutory Authority: RCW 82.04.291. 78-07-065 (Order FT 78-2), § 458-40-18619, filed 6/30/78.] Decodified.	Stumpage value areas—Map for 1/1/80 through 6/30/80. [Statutory Authority: RCW 82.01.060 and 84.33.071. 80-01-091 (Order FT 79-40), § 458-40-18638, filed 12/31/79.] Decodified.
458-40-18620	Stumpage value areas—Map for 7/1/78 through 12/31/78. [Statutory Authority: RCW 82.04.291. 78-07-065 (Order FT 78-2), § 458-40-18620, filed 6/30/78.] Decodified.	Hauling distance zones—Maps for 1/1/80 through 6/30/80. [Statutory Authority: RCW 82.01.060 and 84.33.071. 80-01-091 (Order FT 79-40), § 458-40-18639, filed 12/31/79.] Decodified.
458-40-18621	Hauling distance zones—Maps for 7/1/78 through 12/31/78. [Statutory Authority: RCW 82.04.291. 78-07-065 (Order FT 78-2), § 458-40-18621, filed 6/30/78.] Decodified.	Timber quality code numbers—Tables for 1/1/80 through 6/30/80. [Statutory Authority: RCW 82.01.060 and 84.33.071. 80-01-091 (Order FT 79-40), § 458-40-18640, filed 12/31/79.] Decodified.
458-40-18622	Timber quality code numbers—Tables for 7/1/78 through 12/31/78. [Statutory Authority: RCW 82.04.291. 78-07-065 (Order FT 78-2), § 458-40-18622, filed 6/30/78.] Decodified.	Stumpage values—Tables for 1/1/80 through 6/30/80. [Statutory Authority: RCW 82.01.060 and 84.33.071. 80-01-091 (Order FT 79-40), § 458-40-18641, filed 12/31/79.] Decodified.
458-40-18623	Stumpage values—Tables for 7/1/78 through 12/31/78. [Statutory Authority: 1979 c 6 § 1. 79-08-014 (Order FT 79-37), § 458-40-18623, filed 7/10/79. Statutory Authority: RCW 82.04.291. 78-07-065 (Order FT 78-2), § 458-40-18623, filed 6/30/78.] Decodified.	Harvestable adjustments—Tables for 1/1/80 through 6/30/80. [Statutory Authority: RCW 82.01.060 and 84.33.071. 80-01-091 (Order FT 79-40), § 458-40-18642, filed 12/31/79.] Decodified.
458-40-18624	Harvestable adjustments—Tables for 7/1/78 through 12/31/78. [Statutory Authority: RCW 82.04.291. 78-07-065 (Order FT 78-2), § 458-40-18624, filed 6/30/78.] Decodified.	Definitions for 7/1/80 through 12/31/80. [Statutory Authority: RCW 82.01.060 and 84.33.071. 80-08-042 and 80-08-041 (Emergency Order FT 80-1 and Permanent Order FT 80-2), § 458-40-18643, filed 6/30/80, effective 6/30/80.] Decodified.
458-40-18625	Definitions for 1/1/79 through 6/30/79. [Statutory Authority: RCW 82.04.291. 79-01-065 (Order FT 78-7), § 458-40-18625, filed 12/29/78.] Decodified.	Stumpage value areas—Map for 7/1/80 through 12/31/80. [Statutory Authority: RCW 82.01.060 and 84.33.071. 80-08-042 and 80-08-041 (Emergency Order FT 80-1 and Permanent Order FT 80-2), § 458-40-18644, filed 6/30/80, effective 6/30/80.] Decodified.
458-40-18626	Stumpage value areas—Map for 1/1/79 through 6/30/79. [Statutory Authority: RCW 82.04.291. 79-01-065 (Order FT 78-7), § 458-40-18626, filed 12/29/78.] Decodified.	Hauling distance zones—Maps for 7/1/80 through 12/31/80. [Statutory Authority: RCW 82.01.060 and 84.33.071. 80-08-042 and 80-08-041 (Emergency Order FT 80-1 and Permanent Order FT 80-2), § 458-40-18645, filed 6/30/80, effective 6/30/80.] Decodified.
458-40-18627	Hauling distance zones—Maps for 1/1/79 through 6/30/79. [Statutory Authority: RCW 82.04.291. 79-01-065 (Order FT 78-7), § 458-40-18627, filed 12/29/78.] Decodified.	Timber quality code numbers—Tables for 7/1/80 through 12/31/80. [Statutory Authority: RCW 82.01.060 and 84.33.071. 80-08-042 and 80-08-041 (Emergency Order FT 80-1 and Permanent Order FT 80-2), § 458-40-18646, filed 6/30/80, effective 6/30/80.] Decodified.
458-40-18628	Timber quality code numbers—Tables for 1/1/79 through 6/30/79. [Statutory Authority: RCW 82.04.291. 79-01-065 (Order FT 78-7), § 458-40-18628, filed 12/29/78.] Decodified.	Stumpage values—Tables for 7/1/80 through 12/31/80. [Statutory Authority: RCW 82.01.060 and 84.33.071. 80-08-042 and 80-08-041 (Emergency Order FT 80-1 and Permanent Order FT 80-2), § 458-40-18647, filed 6/30/80, effective 6/30/80.] Decodified.
458-40-18629	Stumpage values—Tables for 1/1/79 through 6/30/79. [Statutory Authority: RCW 82.04.291. 79-01-065 (Order FT 78-7), § 458-40-18629, filed 12/29/78.] Decodified.	Harvester adjustments—Tables for 7/1/80 through 12/31/80. [Statutory Authority: RCW 82.01.060 and 84.33.071. 80-08-042 and 80-08-041 (Emergency Order FT 80-1 and Permanent Order FT 80-2), § 458-40-18648, filed 6/30/80, effective 6/30/80.] Decodified.
458-40-18630	Harvester adjustments—Tables for 1/1/79 through 6/30/79. [Statutory Authority: RCW 82.04.291. 79-01-065 (Order FT 78-7), § 458-40-18630, filed 12/29/78.] Decodified.	Definitions for 1/1/81 through 6/30/81. [Statutory Authority: RCW 82.01.060 and 84.33.071. 81-02-007 (Order FT 80-6), § 458-40-18649, filed 12/30/80.] Decodified.
458-40-18631	Definitions for 7/1/79 through 12/31/79. [Statutory Authority: RCW 82.01.060 and 1979 c 6 § 1. 79-07-083 and 79-07-084 (Emergency Order FT 79-34 and Permanent Order FT 79-35), § 458-40-18631, filed 6/29/79, effective 6/29/79.] Decodified.	Stumpage value areas—Map for 1/1/81 through 6/30/81. [Statutory Authority: RCW 82.01.060 and 84.33.071. 81-02-007 (Order FT 80-6), § 458-40-18650, filed 12/30/80.] Decodified.
458-40-18632	Stumpage value areas—Map for 7/1/79 through 12/31/79. [Statutory Authority: RCW 82.01.060 and 1979 c 6 § 1. 79-07-083 and 79-07-084 (Emergency Order FT 79-34 and Permanent Order FT 79-35), § 458-40-18632, filed 6/29/79, effective 6/29/79.] Decodified.	Hauling distance zones—Maps for 1/1/81 through 6/30/81. [Statutory Authority: RCW 82.01.060 and 84.33.071. 81-02-007 (Order FT 80-6), § 458-40-18651, filed 12/30/80.] Decodified.
458-40-18633	Hauling distance zones—Maps for 7/1/79 through 12/31/79. [Statutory Authority: RCW 82.01.060 and 1979 c 6 § 1. 79-07-083 and 79-07-084 (Emergency Order FT 79-34 and Permanent Order FT 79-35), § 458-40-18633, filed 6/29/79, effective 6/29/79.] Decodified.	Timber quality code numbers—Tables for 1/1/81 through 6/30/81. [Statutory Authority: RCW 82.01.060 and 84.33.071. 81-02-007 (Order FT 80-6), § 458-40-18652, filed 12/30/80.] Decodified.
458-40-18634	Timber quality code numbers—Tables for 7/1/79 through 12/31/79. [Statutory Authority: RCW 82.01.060 and 1979 c 6 § 1. 79-07-083 and 79-07-084 (Emergency Order FT 79-34 and Permanent Order FT 79-35), § 458-40-18634, filed 6/29/79, effective 6/29/79.] Decodified.	Stumpage values—Tables for 1/1/81 through 6/30/81. [Statutory Authority: RCW 82.01.060 and 84.33.071. 81-02-007 (Order FT 80-6), § 458-40-18653, filed 12/30/80.] Decodified.
458-40-18635	Stumpage values—Tables for 7/1/79 through 12/31/79. [Statutory Authority: RCW 82.01.060 and 1979 c 6 § 1. 79-07-083 and 79-07-084 (Emergency Order FT 79-34 and Permanent Order FT 79-35), § 458-40-18635, filed 6/29/79, effective 6/29/79.] Decodified.	Harvester adjustments—Tables for 1/1/81 through 6/30/81. [Statutory Authority: RCW 82.01.060 and 84.33.071. 81-02-007 (Order FT 80-6), § 458-40-18654, filed 12/30/80.] Decodified.
458-40-18636	Harvester adjustments—Tables for 7/1/79 through 12/31/79. [Statutory Authority: RCW 82.01.060 and 1979 c 6 § 1. 79-07-083 and 79-07-084 (Emergency	[Title 458 WAC—p 268]

458-40-18655	02-007 (Order FT 80-6), § 458-40-18654, filed 12/30/80.] Decodified. Definitions for 7/1/81 through 12/31/81. [Statutory Authority: RCW 82.01.060 and 84.33.071. 81-14-047 (Order FT 81-2), § 458-40-18655, filed 6/30/81.] Decodified.	458-40-18673	Timber quality code numbers—Tables for 7/1/82 through 12/31/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-14-037 (Order FT-82-3), § 458-40-18673, filed 6/30/82.] Decodified.
458-40-18656	Stumpage value areas—Map for 7/1/81 through 12/31/81. [Statutory Authority: RCW 82.01.060 and 84.33.071. 81-14-047 (Order FT 81-2), § 458-40-18656, filed 6/30/81.] Decodified.	458-40-18674	Stumpage values—Tables for 7/1/82 through 12/31/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-14-037 (Order FT-82-3), § 458-40-18674, filed 6/30/82.] Decodified.
458-40-18657	Hauling distance zones—Maps for 7/1/81 through 12/31/81. [Statutory Authority: RCW 82.01.060 and 84.33.071. 81-14-047 (Order FT 81-2), § 458-40-18657, filed 6/30/81.] Decodified.	458-40-18675	Harvester adjustments—Tables for 7/1/82 through 12/31/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-14-037 (Order FT-82-3), § 458-40-18675, filed 6/30/82.] Decodified.
458-40-18658	Timber quality code numbers—Tables for 7/1/81 through 12/31/81. [Statutory Authority: RCW 82.01.060 and 84.33.071. 81-14-047 (Order FT 81-2), § 458-40-18658, filed 6/30/81.] Decodified.	458-40-18676	Small harvester option for 7/1/82 through 12/31/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-14-037 (Order FT-82-3), § 458-40-18676, filed 6/30/82.] Decodified.
458-40-18659	Stumpage values—Tables for 7/1/81 through 12/31/81. [Statutory Authority: RCW 82.01.060 and 84.33.071. 81-14-047 (Order FT 81-2), § 458-40-18659, filed 6/30/81.] Decodified.	458-40-18677	Definitions for small harvester option for 7/1/82 through 12/31/82. [Statutory Authority: RCW 82.01.060, 84.33.030 and 84.33.071 as amended by 1982 2nd ex.s. c 4. 82-19-011 (Order FT-82-5), § 458-40-18677, filed 9/7/82. Statutory Authority: RCW 82.01.060 and 84.33.071. 82-14-037 (Order FT-82-3), § 458-40-18677, filed 6/30/82.] Decodified.
458-40-18660	Harvester adjustments—Tables for 7/1/81 through 12/31/81. [Statutory Authority: RCW 82.01.060 and 84.33.071. 81-14-047 (Order FT 81-2), § 458-40-18660, filed 6/30/81.] Decodified.	458-40-18678	Taxable stumpage value for 7/1/82 through 12/31/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-14-037 (Order FT-82-3), § 458-40-18678, filed 6/30/82.] Decodified.
458-40-18661	Definitions for 1/1/82 through 6/30/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-02-035 (Order FT-81-4), § 458-40-18661, filed 12/31/81.] Decodified.	458-40-18679	Definitions for January 1 through June 30, 1983. [Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 83-02-033 (Order FT-82-7), § 458-40-18679, filed 12/30/82.] Decodified.
458-40-18662	Stumpage value areas—Map for 1/1/82 through 6/30/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-02-035 (Order FT-81-4), § 458-40-18662, filed 12/31/81.] Decodified.	458-40-18680	Stumpage value areas—Map for January 1 through June 30, 1983. [Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 83-02-033 (Order FT-82-7), § 458-40-18680, filed 12/30/82.] Decodified.
458-40-18663	Hauling distance zones—Maps for 1/1/82 through 6/30/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-02-035 (Order FT-81-4), § 458-40-18663, filed 12/31/81.] Decodified.	458-40-18681	Hauling distance zones—Maps for January 1 through June 30, 1983. [Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 83-02-033 (Order FT-82-7), § 458-40-18681, filed 12/30/82.] Decodified.
458-40-18664	Timber quality code numbers—Tables for 1/1/82 through 6/30/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-02-035 (Order FT-81-4), § 458-40-18664, filed 12/31/81.] Decodified.	458-40-18682	Timber quality code numbers—Tables for January 1 through June 30, 1983. [Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 83-02-033 (Order FT-82-7), § 458-40-18682, filed 12/30/82.] Decodified.
458-40-18665	Stumpage values—Tables for 1/1/82 through 6/30/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-02-035 (Order FT-81-4), § 458-40-18665, filed 12/31/81.] Decodified.	458-40-18683	Stumpage values—Tables for January 1 through June 30, 1983. [Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 83-02-033 (Order FT-82-7), § 458-40-18683, filed 12/30/82.] Decodified.
458-40-18666	Harvester adjustments—Tables for 1/1/82 through 6/30/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-02-035 (Order FT-81-4), § 458-40-18666, filed 12/31/81.] Decodified.	458-40-18684	Harvestable adjustments—Tables for January 1 through June 30, 1983. [Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 83-02-033 (Order FT-82-7), § 458-40-18684, filed 12/30/82.] Decodified.
458-40-18667	Small harvester option for 1/1/82 through 6/30/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-02-035 (Order FT-81-4), § 458-40-18667, filed 12/31/81.] Decodified.	458-40-18685	Small harvester option for January 1 through June 30, 1983. [Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 83-02-033 (Order FT-82-7), § 458-40-18685, filed 12/30/82.] Decodified.
458-40-18668	Definitions for small harvester option for 1/1/82 through 6/30/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-02-035 (Order FT-81-4), § 458-40-18668, filed 12/31/81.] Decodified.	458-40-18686	Definitions for small harvester option for January 1 through June 30, 1983. [Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 83-02-033 (Order FT-82-7), § 458-40-18686, filed 12/30/82.] Decodified.
458-40-18669	Taxable stumpage value for 1/1/82 through 6/30/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-02-035 (Order FT-81-4), § 458-40-18669, filed 12/31/81.] Decodified.	458-40-18687	Taxable stumpage value for January 1 through June 30, 1983. [Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 83-02-033 (Order FT-82-7), § 458-40-18687, filed 12/30/82.] Decodified.
458-40-18670	Definitions for 7/1/82 through 12/31/82. [Statutory Authority: RCW 82.01.060, 84.33.030 and 84.33.071 as amended by 1982 2nd ex.s. c 4. 82-19-011 (Order FT-82-5), § 458-40-18670, filed 9/7/82. Statutory Authority: RCW 82.01.060 and 84.33.071. 82-14-037 (Order FT-82-3), § 458-40-18670, filed 6/30/82.] Decodified.	458-40-18688	Definitions for July 1 through December 31, 1983. [Statutory Authority: RCW 84.33.071. 83-14-039 and 83-14-040 (Emergency Order FT-83-4 and Permanent Order FT-83-3), § 458-40-18688, filed 6/30/83, effective 6/30/83.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.
458-40-18671	Stumpage value areas—Map for 7/1/82 through 12/31/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-14-037 (Order FT-82-3), § 458-40-18671, filed 6/30/82.] Decodified.	458-40-18689	Stumpage value areas—Map for July 1 through December 31, 1983. [Statutory Authority: RCW 84.33.071. 83-14-039 and 83-14-040 (Emergency Order FT-83-4 and Permanent Order FT-83-3), § 458-40-18689, filed 6/30/83,
458-40-18672	Hauling distance zones—Maps for 7/1/82 through 12/31/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-14-037 (Order FT-82-3), § 458-40-18672, filed 6/30/82.] Decodified.		

Chapter 458-40

Title 458 WAC: Revenue, Department of

Taxation of Forest Land and Timber

Chapter 458-40

Chapter 458-40**Title 458 WAC: Revenue, Department of**

458-40-19005	Timber excise tax credit for personal property tax. [Statutory Authority: RCW 84.33.077. 84-08-021 (Order FT-84-2), § 458-40-19005, filed 3/28/84.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.
458-40-19100	Forest land values for year 1977. [Statutory Authority: RCW 84.33.120. 79-01-005 (Order FT 78-5), § 458-40-19100, filed 12/8/78; Order 76-3, § 458-40-19100, filed 12/1/76.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	Removal of forest land classification. [Order FT 75-3, § 458-40-340, filed 6/5/75.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.
458-40-19101	Forest land values amended for western Washington for year 1978. [Statutory Authority: RCW 84.33.120. 83-05-013 (Order FT-83-2), § 458-40-19101, filed 2/8/83; 79-08-015 (Order FT 79-36), § 458-40-19101, filed 7/10/79; Order 77-3, § 458-40-19101, filed 11/30/77.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	Removal from classification—Compensating tax not imposed. [Order FT 75-3, § 458-40-350, filed 6/5/75.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.
458-40-19102	Forest land values—1979. [Statutory Authority: RCW 84.33.120. 78-12-036 (Order FT 78-3), § 458-40-19102, filed 11/22/78.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	Notification to owner of removal. [Order FT 75-3, § 458-40-360, filed 6/5/75.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.
458-40-19103	Forest land values—1980. [Statutory Authority: RCW 84.33.120. 79-12-061 (Order FT 79-38), § 458-40-19103, filed 11/29/79.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	Compensating tax liability and rate. [Order FT 75-3, § 458-40-370, filed 6/5/75.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.
458-40-19104	Forest land values—1981. [Statutory Authority: RCW 84.33.120. 80-18-029 (Order FT 80-3), § 458-40-19104, filed 12/1/80.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	Appeals procedure for classification of forest lands. [Order FT 75-3, § 458-40-380, filed 6/5/75.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.
458-40-19105	Forest land values—1981. [Statutory Authority: RCW 84.33.120. 80-18-030 (Order FT 80-4), § 458-40-19105, filed 12/1/80.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	
458-40-19106	Forest land values—1982. [Statutory Authority: RCW 84.33.120 as amended by chapter 148, Laws of 1981. 81-24-039 (Order FT 81-2), § 458-40-19106, filed 11/30/81.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	
458-40-19107	Forest land values—1983. [Statutory Authority: RCW 84.33.120 as amended by chapter 148, Laws of 1981. 82-24-030 (Order FT 82-6), § 458-40-19107, filed 11/23/82.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	
458-40-19108	Forest land values—1984. [Statutory Authority: RCW 84.33.120 as amended by 1981 c 148. 83-23-027 (Order FT 83-5), § 458-40-19108, filed 11/8/83.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	
458-40-19109	Forest land values—1985. [Statutory Authority: RCW 84.33.120 as amended by 1984 c 204. 84-24-011 (Order FT 84-5), § 458-40-19109, filed 11/27/84.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	
458-40-19110	Forest land values—1986. [Statutory Authority: RCW 84.33.120. 85-24-036 (Order FT-85-3), § 458-40-19110, filed 1/17/85.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	
458-40-19300	Private forest land grades according to species and site index. [Statutory Authority: RCW 84.33.120. 82-07-086 (Order FT 82-1), § 458-40-19300, filed 3/24/82; 80-18-030 (Order FT 80-4), § 458-40-19300, filed 12/1/80.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	
458-40-300	Forest land classification. [Order FT 75-3, § 458-40-300, filed 6/5/75.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	
458-40-310	Definitions. [Order FT 75-3, § 458-40-310, filed 6/5/75.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	
458-40-320	Application for forest land classification. [Order FT 75-3, § 458-40-320, filed 6/5/75.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.	
458-40-330	Notation on assessment and tax rolls of classified forest land. [Order FT 75-3, § 458-40-330, filed 6/5/75.]	

WAC 458-40-530 Property tax, forest land—Land grades. The following shall constitute the conversion of species and site indices to forest land grades:

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
	MFP	7 or 8
	NC	8
		*2
		*3
EASTSIDE		
Douglas Fir &	140 ft. and over	3
Ponderosa Pine	120-139 ft.	4
	96-119 ft.	5
	70-95 ft.	6
	under 70 ft.	7
	MFP	7 or 8
	NC	8
		*1
		*1
		*1
		*2
		*3

*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 (MFP) Marginal forest productivity will be land grade 7 operability class 3, in the following townships. All MFP in other townships will be 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 (NC) Noncommercial

[Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-530, filed 12/31/86.]

WAC 458-40-535 Property tax, forest land—Operability classes. Operability classes are established

according to intrinsic characteristics of soils and geomorphic features. The criteria for each class apply state-wide.

(1) 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.

(2) Class 2—Average. Stable soils that slope less than thirty percent, but on which significant soil erosion, compaction, and displacement may occur as a result of forest operations.

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

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

(b) 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.

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

(5) 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 may place the soil in a more severe class.

[Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-535, filed 12/31/86.]

WAC 458-40-540 Property tax, forest land—Forest land values—1993. The true and fair values, per acre, for each grade of forest land for the 1993 assessment year are determined to be as follows:

1993 WASHINGTON FOREST LAND VALUES		
LAND GRADE	OPERABILITY CLASS	VALUE PER ACRE
1	1	\$169
	2	164
	3	156
	4	113
2	1	142
	2	136
	3	131
	4	95
3	1	111
	2	108
	3	106
	4	81
4	1	84
	2	82
	3	81
	4	62
5	1	61
	2	57
	3	56
	4	37

	1	31
6	2	29
	3	29
	4	27
7	1	15
	2	15
	3	14
	4	14
8		1

[Statutory Authority: RCW 84.33.120, 93-02-024, § 458-40-540, filed 12/31/92, effective 1/1/93; 91-24-026, § 458-40-540, filed 11/26/91, effective 1/1/92. Statutory Authority: RCW 84.33.120 and 84.08.010, 90-24-012, § 458-40-540, filed 11/27/90, effective 12/28/90; 89-23-095, § 458-40-540, filed 11/21/89, effective 12/22/89. Statutory Authority: RCW 84.33.120 and 84.33.130, 88-23-055 (Order FT-88-3), § 458-40-540, filed 11/15/88; 87-22-068 (Order FT-87-3), § 458-40-540, filed 11/4/87. Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-540, filed 12/31/86.]

WAC 458-40-600 Timber excise tax—Statement of purpose. The purpose of the rules contained in WAC 458-40-600 through 458-40-690 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. WAC 458-40-600 through 458-40-690 replace those portions of WAC 458-40-010 through 458-40-380 which pertain to the taxation of timber.

[Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-600, filed 12/31/86.]

WAC 458-40-610 Timber excise tax—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply to WAC 458-40-600 through 458-40-690.

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

(2) **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.

(3) **Department.** The department of revenue of the state of Washington.

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

(5) **Harvest unit.** An area of timber harvest having the same forest excise tax permit number, stumpage value area, hauling distance zone, harvest adjustments, and harvester. It may include more than one section: *Provided*, A harvest unit may not overlap a county boundary.

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

(7) **Lump sum sale.** Also known as a cash sale or an installment sale, it is a sale of timber wherein the total sale price is dependent upon an estimate of the total volume of timber in the sale rather than the actual volume harvested.

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

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

(10) **Other consideration.** Value given in lieu of cash as payment for stumpage, such as improvements to the land that are of a permanent nature. It may include, but is not limited to, the construction of permanent roads and the installation of permanent bridges.

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

(12) **Private timber.** All timber harvested from privately owned lands, including timber on reclassified reforestation land under chapters 84.28 and 84.33 RCW.

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

(14) **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.

(15) **Sale price.** The amount paid for timber in cash or other consideration.

(16) **Scale sale.** A sale of timber in which the sale price is the product of the actual volume harvested and the unit price at the time of harvest.

(17) **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 shall be 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.

(c) **Conifer utility.** All conifer logs graded as utility.

(d) **Hardwood utility.** All hardwood logs graded as utility or number four sawmill as defined by the current edition of the "Official Log Scaling and Grading Rules" as developed and authored by the Northwest Log Rules Advisory Group.

(e) **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.

(18) **Stumpage.** Standing or fallen trees, live or dead, having commercial value which have not been severed from the stump.

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

(20) **Thinning.** Timber removed from a harvest unit meeting all the following conditions:

(a) Located in Western Washington;

(b) The total volume removed is less than forty percent of the total merchantable volume of the harvest unit prior to harvest;

(c) Not more than forty percent of the total volume removed is from the dominant and codominant trees;

(d) The trees removed in the harvest operation shall be distributed over the entire harvest unit.

(21) **Timber.** Forest trees, standing or down, on privately or publicly owned land, and except as provided in RCW 84.33.170, includes Christmas trees.

[Statutory Authority: RCW 84.33.096 and 82.32.300. 90-14-033, § 458-40-610, filed 6/29/90, effective 7/30/90. Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-610, filed 12/31/86.]

WAC 458-40-615 Timber excise tax—Stumpage values—Reporting of private stumpage and log purchase sales and applicable logging costs to the department. (1) **Introduction.** The department is required to semi-annually publish stumpage tables. The department has designated areas containing similar growing, harvesting and marketing conditions to be used as units for the preparation and application of stumpage values. Stumpage tables for each species or subclassification within a stumpage value area are prepared on or before each December 31 for use the following January through June and on or before June 30 for use July through December. The stumpage value is the amount that each species or subclassification would sell for at a voluntary sale (public or private) made in the ordinary course of business for purposes of immediate harvest. The stumpage values are determined in a manner which makes reasonable allowances for age, size, quantity, costs of removal, accessibility to point of conversion, market conditions and all other relevant factors from:

(a) Gross proceeds from sales (public and/or private) on the stump of similar timber of like quality and character at similar locations and in similar quantities;

(b) Gross proceeds from sales (public and/or private) of logs adjusted to reflect only the portion of such proceeds attributable to value on the stump immediately prior to harvest; or

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

(2) **Reporting requirement-in general.** To enable the department to determine stumpage values, the department must have information on public and private sales of stumpage, both lump sum sales and scale sales. Informational reporting requirements on private sales of logs and applicable logging costs are deferred until such time, if any, when the department determines that private log sale information is necessary. An informational reporting requirement for private log sales will be instituted by the department only through the rule-making process. All public sales of stumpage and logs and applicable logging costs are available to the department through information sharing agreements. All private sales of stumpage are to be reported to the department as provided in this section.

(3) **Reporting of stumpage purchases-buyers.** All private stumpage purchases in excess of 100,000 board feet shall be reported to the department on the informational return provided by the department. The buyer of stumpage must report each stumpage purchase. For purposes of this section, all stumpage purchases are either;

(a) Lump sum sales as defined in WAC 458-40-610(7), which states: "Lump sum sale. Also known as a cash sale or installment sale, it is a sale of timber wherein the total sale price is dependent upon an estimate of the total volume of timber in the sale rather than the actual timber harvested."; or

(b) Scale sales as defined in WAC 458-40-610(16), which states: "Scale sale. A sale of timber in which the sale price is the product of the actual volume harvested and the unit price at the time of harvest."

(4) **Reporting of stumpage purchases-sellers.** The seller of stumpage shall report to the department the name and address of the buyer.

(5) **Time of reporting.** The informational returns for purchases of stumpage, and the name and address report by the seller are each due to the department no later than the last working day of the month following the month in which the purchase of stumpage occurred.

(6) **Reporting-confidentiality of information.** All data submitted to the department in compliance with this section is confidential tax information protected from disclosure under RCW 82.32.330. To the extent allowable by law, the department will not use or publish the informational return information in a manner such that the data from a particular return can be identified.

(7) **Informational return.** The return shall consist of an information page which contains the identification of the seller and buyer, the date of the sale, and such other information as the department may require for the identification of the transaction. In addition to the information page, the informational return shall contain a copy of the contract(s) or other instrument(s) of sale, a map of the location of the sale and a copy of the timber cruise or other volume estimate of the subject timber, all supplied by the person filing the return.

(a) A supply of informational returns will be provided to those persons involved in transactions on a regular basis.

(b) Persons who do not receive a supply of informational returns from the department will be provided a supply of informational returns upon a request to the department.

[Statutory Authority: RCW 82.32.300 and 84.33.096. 92-18-030, § 458-615, filed 8/26/92, effective 9/26/92.]

WAC 458-40-620 Timber excise tax—Tax liability—Harvester as taxpayer, harvester defined. For purposes of determining which person is the timber harvester and, therefore, the person liable for payment of the tax imposed under RCW 84.33.041, and except as provided under WAC 458-40-622 and 458-40-624, the harvester of timber shall be that person or persons who own the timber at the time the quantity by species is first definitely determined (at the time the logs are scaled). In cases where the ownership of the timber at the time of scaling is in doubt, the department shall consider the owner of the land from which the timber was harvested to be the harvester and the one liable for paying the tax.

[Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-620, filed 12/31/86.]

WAC 458-40-622 Timber excise tax—Tax liability—Government entity as harvester. Whenever a govern-

ment entity as defined in RCW 84.33.035 harvests timber and retains title to the timber until it is scaled, the harvester shall be the first person or persons who obtain title to the timber or exclusive possessory interest in such timber, and such person or persons shall be liable for paying the taxes due under RCW 84.33.041.

[Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-622, filed 12/31/86.]

WAC 458-40-624 Timber excise tax—Tax liability—Reclassified reforestation lands. As provided in RCW 84.33.055, when timber is harvested from reclassified reforestation lands, as defined in RCW 84.28.205, the tax imposed under RCW 84.33.041 and 84.33.055 shall be paid by the owner of such lands.

[Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-624, filed 12/31/86.]

WAC 458-40-626 Timber excise tax—Tax liability—Private timber, tax due when timber harvested. For purposes of determining the proper calendar quarter in which to pay tax on timber harvested from private land—including reclassified reforestation lands—the tax shall be due and payable on the last day of the month following the end of the calendar quarter in which the timber was harvested.

[Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-626, filed 12/31/86.]

WAC 458-40-628 Timber excise tax—Tax liability—Public timber lump sum vs. scale sales. For purposes of determining the proper quarter in which to pay taxes on timber harvested from public land, the taxes due under RCW 84.33.041 shall be due and payable as follows:

(1) **LUMP SUM SALE:** The tax shall be due and payable on the last day of the month following the quarter in which the purchaser is billed by the seller for the timber: *Provided*, That if payments are made to the seller before any harvest, road construction or other work has begun on the timber sale contract, taxes may be deferred until the quarter in which harvest or other contract work begins. In the quarter that harvest commences, taxes shall become due and payable on all billings accrued by the buyer in all prior quarters as well as the current quarter.

(2) **SCALE SALE:** The tax shall be due and payable on the last day of the month following the end of the calendar quarter in which the timber was harvested. For tax purposes the timber is to be considered harvested in the quarter for which the volumes and values appear on the monthly billing statements. Indexing or escalation amounts shall be included in the quarter in which they apply.

(3) **OTHER CONSIDERATIONS:** Tax due on considerations other than cash shall be due and payable not later than the last quarter of harvest: *Provided*, That if road credits (United States Forest Service Sales) are used as payment for stumpage, the tax is due in the quarter in which the road credits are applied as payment.

[Statutory Authority: RCW 84.33.096 and 82.32.300. 90-02-049, § 458-40-628, filed 12/29/89, effective 1/29/90. Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-628, filed 12/31/86.]

WAC 458-40-630 Timber excise tax—Stumpage value—General definition. The term stumpage value shall mean the true and fair market value of timber for purposes of immediate harvest. Taxable stumpage value shall be the value of timber as defined in RCW 84.33.035(5), and this chapter.

[Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-630, filed 12/31/86.]

WAC 458-40-632 Timber excise tax—Taxable stumpage value—Private timber. Except as provided under WAC 458-40-634 for small harvesters, the taxable stumpage value shall be the appropriate value for the species of timber harvested as set forth in the stumpage value tables adopted under this chapter.

[Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-632, filed 12/31/86.]

WAC 458-40-634 Timber excise tax—Taxable stumpage value—Small harvester option. A small harvester is any harvester who harvests timber from privately owned land in an amount of less than five hundred thousand board feet in a calendar quarter and not more than one million board feet in a calendar year. 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 shall be determined by one of the following methods as appropriate:

(1) **Sale of logs.** Timber which has been severed from the stump, bucked into various lengths and sold in the form of logs shall have a taxable stumpage value equal to the actual gross receipts for the logs, less any costs associated with harvesting and marketing the timber. Harvesting and marketing costs shall include only those costs directly and exclusively associated with harvesting the timber from the land and delivering it to the buyer, and may include the costs of slash disposal. Harvesting and marketing costs shall not include the costs of reforestation, permanent road construction, or any other costs not directly and exclusively associated with the harvesting and marketing of the 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, the deduction for harvesting and marketing costs shall be fifty percent of the gross receipts from the sale of the logs.

(2) **Sale of stumpage.** Timber which is sold as stumpage and harvested within twelve months of the date of sale shall have a taxable stumpage value equal to the actual gross receipts for the stumpage for the most recent sale prior to harvest. If a harvester purchases stumpage from another, harvests the timber and sells the logs more than twelve months after purchase of the stumpage, the taxable value shall be computed as in subsection (1) of this section for sale of logs.

[Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-634, filed 12/31/86.]

WAC 458-40-636 Timber excise tax—Taxable stumpage value—Public timber. The taxable stumpage value for public timber sales shall be determined as follows:

(1) Competitive sales. The taxable value shall be the actual purchase price in cash or other consideration. The taxable value of other consideration shall be the fair market value of the other consideration; provided that if the other consideration is permanent roads, the taxable value shall be the appraised value as appraised by the seller. If the seller does not provide an appraised value for roads, the taxable value shall be the actual costs incurred by the purchaser for constructing or improving the roads.

(2) Noncompetitive sales. The taxable value shall be determined using the department's stumpage value tables as set forth in this chapter.

(3) Sale of logs. The taxable value for public timber sold in the form of logs shall be the actual purchase price for the logs in cash or other consideration less appropriate deductions for costs of felling, bucking, and yarding the logs to the point of sale. Cost deductions shall be the actual costs when documented proof is available. In the absence of verifiable actual cost data, cost deductions shall be based on the costs as appraised by the seller, if available; or an estimate of such costs based on the best available information from the sale of similar timber under similar harvesting conditions.

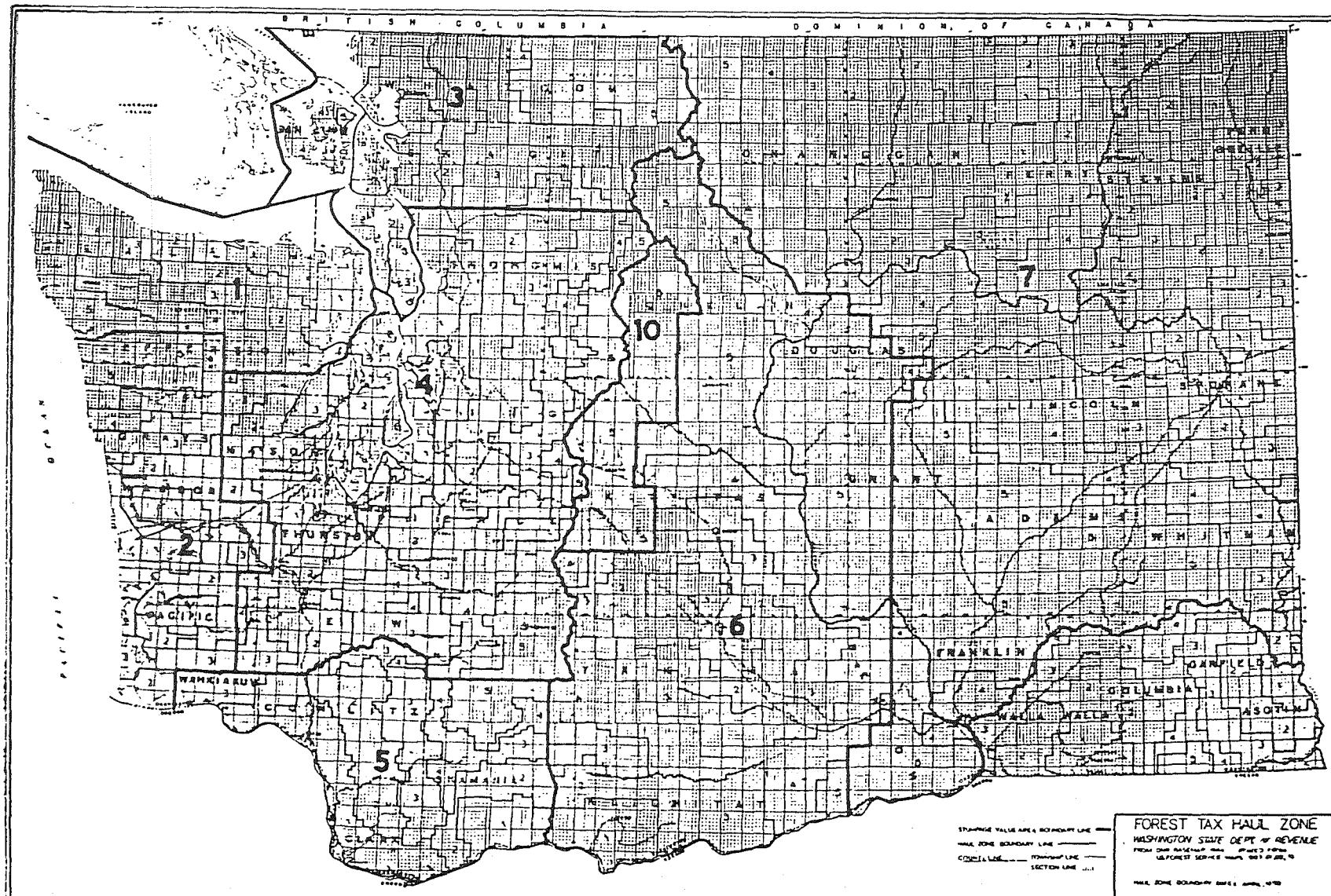
(4) Transitional sales. Sales in which the harvest began before July 1, 1984, and continued after that date. On such sales, the volume harvested prior to July 1, 1984, shall be taxed using the department's stumpage value tables as set forth in this chapter. For volume harvested on or after July 1, 1984, the taxable stumpage value shall be determined by actual payments for stumpage in cash or other consideration.

(5) 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 timber, no tax shall be due. If part of the sale is logged and the purchaser fails to complete the harvesting, taxes shall be due on the amount the purchaser has been billed by the selling agency for the volume removed to date.

[Statutory Authority: RCW 84.33.096 and 82.32.300. 90-14-033, § 458-40-636, filed 6/29/90, effective 7/30/90. Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-636, filed 12/31/86.]

WAC 458-40-640 Timber excise tax—Stumpage value area (map). The stumpage value area and hauling distance zone map contained in this section shall be used to determine the proper stumpage value table and haul zone to be used in calculating the taxable stumpage value of timber harvested from private land.

458-40-640. STUMPPAGE VALUE AREA AND HAULING DISTANCE ZONE --MAP. Harvesters may obtain a larger scale map by writing to the Washington State Department of Revenue, Forest Tax Division, Mail Stop AX-02, Olympia WA 98504 or calling (206) 753-7086.



[Statutory Authority: RCW 84.33.096 and 82.32.300. 90-14-033, § 458-40-640, filed 6/29/90, effective 7/30/90. Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-640, filed 12/31/86.]

WAC 458-40-650 Timber excise tax—Timber quality codes defined. The timber quality code numbers for each species of timber shown in the stumpage value tables contained in this chapter are defined as follows:

**TABLE 1—Timber Quality Code Table
Stumpage Value Areas 1, 2, 3, 4, 5, and 10**

Species	Quality Code Number	Log grade specifications ¹
Douglas-fir	1	Over 50% No. 2 Sawmill and better log grade, and 15% and over Special Mill, No. 1 Sawmill, and better log grade.
Douglas-fir	2	Over 50% No. 2 Sawmill and better log grade, and less than 15% Special Mill, No. 1 Sawmill, and better log grade.
Douglas-fir	3	25-50% inclusive No. 2 Sawmill and better log grade.
Douglas-fir	4	Less than 25% No. 2 Sawmill and better log grade.
Western Redcedar and Alaska-Cedar	1	Over 30% No. 2 Sawmill and better log grade, and 15% and over Special Mill, No. 1 Sawmill, Peeler and better log grade.
Western Redcedar and Alaska-Cedar	2	Over 30% No. 2 Sawmill and better log grade, and less than 15% Special Mill, No. 1 Sawmill, Peeler and better log grade.
Western Redcedar and Alaska-Cedar	3	5-30% inclusive No. 2 Sawmill and better log grade.
Western Redcedar and Alaska-Cedar	4	Less than 5% No. 2 Sawmill and better log grade.
Western Hemlock, True Firs, Other Conifer, and Spruce	1	Over 50% No. 2 Sawmill and better log grade, and 5% and over Special Mill, No. 1 Sawmill and better log grade.
Western Hemlock, True Firs, Other Conifer, and Spruce	2	Over 50% No. 2 Sawmill and better log grade, and less than 5% Special Mill, No. 1 Sawmill and better log grade.
Western Hemlock, True Firs, Other Conifer, and Spruce	3	25-50% inclusive No. 2 Sawmill and better log grade.
Western Hemlock, True Firs, Other Conifer, and Spruce	4	Less than 25% No. 2 Sawmill and better log grade.
Ponderosa Pine	1	Less than 10 logs 16 feet long per thousand board feet Scribner scale.
Ponderosa Pine	2	10 or more logs 16 feet long per thousand board feet Scribner scale.
Lodgepole Pine	1	All log grades.
Hardwoods	1	All No. 3 Sawmill logs and better log grades.
Hardwood Utility	1	All No. 4 Sawmill log grade and all hardwood logs graded as utility.
Conifer Utility	1	All conifer logs graded as utility log grade.

¹ For detailed descriptions and definitions of approved log scaling, grading rules, and procedures see WAC 458-40-680.

**TABLE 2—Timber Quality Code Table
Stumpage Value Areas 6 and 7**

Species	Quality Code Number	Log grade specifications
Ponderosa Pine	1	Less than 10 logs 16 feet long per thousand board feet Scribner scale.
Ponderosa Pine	2	10 or more logs 16 feet long per thousand board feet Scribner scale.
All conifers other than Ponderosa Pine	1	All log sizes.
Hardwoods	1	Sawlogs only.
Utility	1	All logs graded as utility.

[Statutory Authority: RCW 84.33.091, 84.32.300 [82.32.300] and 84.33.096. 92-14-083, § 458-40-650, filed 6/29/92, effective 7/1/92; 92-02-067, § 458-40-650, filed 12/31/91, effective 1/1/92. Statutory Authority: RCW 84.33.091 and chapter 84.33 RCW. 88-14-032 (Order FT-88-2), § 458-40-650, filed 6/30/88. Statutory Authority: Chapter 84.33 RCW. 87-14-042 (Order 87-2), § 458-40-650, filed 6/30/87; 87-02-023 (Order 86-4), § 458-40-650, filed 12/31/86.]

WAC 458-40-660 Timber excise tax—Stumpage value tables. The following stumpage value tables are hereby adopted for use in reporting the taxable value of stumpage harvested during the period January 1 through June 30, 1993:

**TABLE 1—Stumpage Value Table
Stumpage Value Area 1
January 1 through June 30, 1993**

Stumpage Values per Thousand Board Feet Net Scribner Log Scale¹

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$555	\$548	\$541	\$534	\$527
		2	530	523	516	509	502
		3	460	453	446	439	432
		4	255	248	241	234	227
Western Redcedar ²	RC	1	738	731	724	717	710
		2	693	686	679	672	665
		3	670	663	656	649	642
		4	611	604	597	590	583
Western Hemlock ³	WH	1	321	314	307	300	293
		2	292	285	278	271	264
		3	268	261	254	247	240
		4	222	215	208	201	194
Other Conifer	OC	1	321	314	307	300	293
		2	292	285	278	271	264
		3	268	261	254	247	240
		4	222	215	208	201	194
Red Alder	RA	1	104	97	90	83	76
Black Cottonwood	BC	1	80	73	66	59	52
Other Hardwood	OH	1	112	105	98	91	84
Hardwood Utility	HU	1	63	56	49	42	35
Conifer Utility	CU	1	54	47	40	33	26
RC Shake Blocks	RCS	1	474	467	460	453	446

RC Shingle Blocks	RCF	1	109	102	95	88	81
RC & Other Posts ⁴	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁵	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁵	TFX	1	0.50	0.50	0.50	0.50	0.50

¹ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.

² Includes Alaska-Cedar.

³ Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

⁴ Stumpage value per 8 lineal feet or portion thereof.

⁵ Stumpage value per lineal foot.

**TABLE 2—Stumpage Value Table
Stumpage Value Area 2
January 1 through June 30, 1993**

Stumpage Values per Thousand Board Feet Net Scribner Log Scale ¹							
Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$536	\$529	\$522	\$515	\$508
		2	517	510	503	496	489
		3	388	381	374	367	360
		4	255	248	241	234	227
Western Redcedar ²	RC	1	824	817	810	803	796
		2	824	817	810	803	796
		3	792	785	778	771	764
		4	565	558	551	544	537
Western Hemlock ³	WH	1	336	329	322	315	308
		2	333	326	319	312	305
		3	303	296	289	282	275
		4	222	215	208	201	194
Other Conifer	OC	1	336	329	322	315	308
		2	333	326	319	312	305
		3	303	296	289	282	275
		4	222	215	208	201	194
Red Alder	RA	1	104	97	90	83	76
Black Cottonwood	BC	1	80	73	66	59	52
Other Hardwood	OH	1	112	105	98	91	84
Hardwood Utility	HU	1	63	56	49	42	35
Conifer Utility	CU	1	54	47	40	33	26
RC Shake Blocks	RCS	1	474	467	460	453	446
RC Shingle Blocks	RCF	1	109	102	95	88	81
RC & Other Posts ⁵	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁶	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁶	TFX	1	0.50	0.50	0.50	0.50	0.50

¹ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.

² Includes Alaska-Cedar.

³ Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

⁴ Stumpage value per 8 lineal feet or portion thereof.

⁵ Stumpage value per lineal foot.

TABLE 3—Stumpage Value Table

Stumpage Value Area 3

January 1 through June 30, 1993

Stumpage Values per Thousand Board Feet Net Scribner Log Scale¹

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ²	DF	1	\$556	\$549	\$542	\$535	\$528
		2	556	549	542	535	528
		3	493	486	479	472	465
		4	255	248	241	234	227
Western Redcedar ³	RC	1	873	866	859	852	845
		2	873	866	859	852	845
		3	670	663	656	649	642
		4	610	603	596	589	582
Western Hemlock ⁴	WH	1	425	418	411	404	397
		2	425	418	411	404	397
		3	298	291	284	277	270
		4	222	215	208	201	194
Other Conifer	OC	1	425	418	411	404	397
		2	425	418	411	404	397
		3	298	291	284	277	270
		4	222	215	208	201	194
Red Alder	RA	1	104	97	90	83	76
Black Cottonwood	BC	1	80	73	66	59	52
Other Hardwood	OH	1	112	105	98	91	84
Hardwood Utility	HU	1	63	56	49	42	35
Conifer Utility	CU	1	54	47	40	33	26
RC Shake Blocks	RCS	1	474	467	460	453	446
RC Shingle Blocks	RCF	1	109	102	95	88	81
RC & Other Posts ⁵	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁶	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁶	TFX	1	0.50	0.50	0.50	0.50	0.50

¹ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.

² Includes Western Larch.

³ Includes Alaska-Cedar.

⁴ Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

⁵ Stumpage value per 8 lineal feet or portion thereof.

⁶ Stumpage value per lineal foot.

TABLE 4—Stumpage Value Table
Stumpage Value Area 4
January 1 through June 30, 1993

Stumpage Values per Thousand Board Feet Net Scribner Log Scale¹

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ²	DF	1	\$500	\$493	\$486	\$479	\$472
		2	463	456	449	442	435
		3	418	411	404	397	390
		4	233	226	219	212	205
Lodgepole Pine	LP	1	199	192	185	178	171
Ponderosa Pine	PP	1	421	414	407	400	393
		2	322	315	308	301	294
Western Redcedar ³	RC	1	773	766	759	752	745
		2	773	766	759	752	745
		3	670	663	656	649	642
		4	532	525	518	511	504
Western Hemlock ⁴	WH	1	320	313	306	299	292
		2	319	312	305	298	291
		3	299	292	285	278	271
		4	245	238	231	224	217
Other Conifer	OC	1	320	313	306	299	292
		2	319	312	305	298	291
		3	299	292	285	278	271
		4	245	238	231	224	217
Red Alder	RA	1	104	97	90	83	76
Black Cottonwood	BC	1	80	73	66	59	52
Other Hardwood	OH	1	112	105	98	91	84
Hardwood Utility	HU	1	63	56	49	42	35
Conifer Utility	CU	1	54	47	40	33	26
RC Shake Blocks	RCS	1	474	467	460	453	446
RC Shingle Blocks	RCF	1	109	102	95	88	81
RC & Other Posts ⁵	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁶	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁶	TFX	1	0.50	0.50	0.50	0.50	0.50

¹ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.² Includes Western Larch.³ Includes Alaska-Cedar.⁴ Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."⁵ Stumpage value per 8 lineal feet or portion thereof.⁶ Stumpage value per lineal foot.

TABLE 5—Stumpage Value Table
Stumpage Value Area 5
January 1 through June 30, 1993

Stumpage Values per Thousand Board Feet Net Scribner Log Scale¹

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ²	DF	1	\$514	\$507	\$500	\$493	\$486
		2	514	507	500	493	486
		3	433	426	419	412	405
		4	272	265	258	251	244
Lodgepole Pine	LP	1	199	192	185	178	171
Ponderosa Pine	PP	1	421	414	407	400	393
		2	322	315	308	301	294
Western Redcedar ³	RC	1	828	821	814	807	800
		2	828	821	814	807	800
		3	741	734	727	720	713
		4	644	637	630	623	616
Western Hemlock ⁴	WH	1	376	369	362	355	348
		2	261	254	247	240	233
		3	250	243	236	229	222
		4	222	215	208	201	194
Other Conifer	OC	1	376	369	362	355	348
		2	261	254	247	240	233
		3	250	243	236	229	222
		4	222	215	208	201	194
Red Alder	RA	1	104	97	90	83	76
Black Cottonwood	BC	1	80	73	66	59	52
Other Hardwood	OH	1	112	105	98	91	84
Hardwood Utility	HU	1	63	56	49	42	35
Conifer Utility	CU	1	54	47	40	33	26
RC Shake Blocks	RCS	1	474	467	460	453	446
RC Shingle Blocks	RCF	1	109	102	95	88	81
RC & Other Posts ⁵	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁶	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁶	TFX	1	0.50	0.50	0.50	0.50	0.50

¹ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.² Includes Western Larch.³ Includes Alaska-Cedar.⁴ Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."⁵ Stumpage value per 8 lineal feet or portion thereof.⁶ Stumpage value per lineal foot.

TABLE 6—Stumpage Value Table
Stumpage Value Area 6
January 1 through June 30, 1993

Stumpage Values per Thousand Board Feet Net Scribner Log Scale¹

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ²	DF	1	\$464	\$457	\$450	\$443	\$436
Engelmann Spruce	ES	1	201	194	187	180	173
Lodgepole Pine	LP	1	199	192	185	178	171
Ponderosa Pine	PP	1	421	414	407	400	393
		2	322	315	308	301	294
Western Redcedar ³	RC	1	462	455	448	441	434
True Firs ⁴	WH	1	233	226	219	212	205
Western White Pine	WP	1	329	322	315	308	301
Hardwoods	OH	1	25	18	11	4	1
Utility	CU	1	54	47	40	33	26
RC Shake & Shingle Blocks	RCF	1	152	145	138	131	124
LP & Other Posts ⁵	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁶	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁷	DFX	1	0.25	0.25	0.25	0.25	0.25

¹ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.² Includes Western Larch.³ Includes Alaska-Cedar.⁴ Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."⁵ Stumpage value per 8 lineal feet or portion thereof.⁶ Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.⁷ Stumpage value per lineal foot.

TABLE 7—Stumpage Value Table
Stumpage Value Area 7
January 1 through June 30, 1993

Stumpage Values per Thousand Board Feet Net Scribner Log Scale¹

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ²	DF	1	\$306	\$299	\$292	\$285	\$278
Engelmann Spruce	ES	1	189	182	175	168	161
Lodgepole Pine	LP	1	185	178	171	164	157
Ponderosa Pine	PP	1	405	398	391	384	377
		2	324	317	310	303	296
Western Redcedar ³	RC	1	462	455	448	441	434
True Firs ⁴	WH	1	208	201	194	187	180

Western White Pine	WP	1	329	322	315	308	301
Hardwoods	OH	1	25	18	11	4	1
Utility	CU	1	54	47	40	33	26
RC Shake & Shingle Blocks	RCF	1	152	145	138	131	124
LP & Other Posts ⁵	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁶	PX	1	0.25	0.25	0.25	0.25	0.25
Christmas Trees ⁷	DFX	1	0.25	0.25	0.25	0.25	0.25

¹ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.² Includes Western Larch.³ Includes Alaska-Cedar.⁴ Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."⁵ Stumpage value per 8 lineal feet or portion thereof.⁶ Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.⁷ Stumpage value per lineal foot.

TABLE 8—Stumpage Value Table
Stumpage Value Area 10
January 1 through June 30, 1993

Stumpage Values per Thousand Board Feet Net Scribner Log Scale¹

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ²	DF	1	\$449	\$442	\$435	\$428	\$421
		2	415	408	401	394	387
		3	374	367	360	353	346
		4	206	199	192	185	178
Lodgepole Pine	LP	1	199	192	185	178	171
Ponderosa Pine	PP	1	421	414	407	400	393
		2	322	315	308	301	294
Western Redcedar ³	RC	1	766	759	752	745	738
		2	766	759	752	745	738
		3	673	666	659	652	645
		4	525	518	511	504	497
Western Hemlock ⁴	WH	1	285	278	271	264	257
		2	284	277	270	263	256
		3	266	259	252	245	238
		4	218	211	204	191	184
Other Conifer	OC	1	285	278	271	264	257
		2	284	277	270	263	256
		3	266	259	252	245	238
		4	218	211	204	191	184
Red Alder	RA	1	104	97	90	83	76
Black Cottonwood	BC	1	80	73	66	59	52
Other Hardwood	OH	1	112	105	98	91	84
Hardwood Utility	HU	1	63	56	49	42	35
Conifer Utility	CU	1	54	47	40	33	26
RC Shake Blocks	RCS	1	474	467	460	453	446
RC Shingle Blocks	RCF	1	109	102	95	88	81

RC & Other Posts ⁵	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁶	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁶	TFX	1	0.50	0.50	0.50	0.50	0.50

¹ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.

² Includes Western Larch.

³ Includes Alaska-Cedar.

⁴ Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

⁵ Stumpage value per 8 lineal feet or portion thereof.

⁶ Stumpage value per lineal foot.

[Statutory Authority: RCW 84.33.091, 84.32.300 [82.32.300] and 84.33.096, 93-02-025, § 458-40-660 , filed 12/31/92, effective 1/1/93; 92-14-083, § 458-40-660, filed 6/29/92, effective 7/1/92; 92-02-067, § 458-40-660, filed 12/31/91, effective 1/1/92. Statutory Authority: RCW 84.33.096 and 82.32.300, 91-14-077, § 458-40-660, filed 6/28/91, effective 7/1/91; 91-09-030, § 458-40-660, filed 4/12/91, effective 5/13/91; 91-02-088, § 458-40-660, filed 12/31/90, effective 1/31/91; 90-14-033, § 458-40-660, filed 6/29/90, effective 7/30/90; 90-02-049, § 458-40-660, filed 12/29/89, effective 1/29/90. Statutory Authority: Chapter 84.33 RCW and RCW 84.33.091, 89-14-051 (Order FT-89-2), § 458-40-660, filed 6/30/89; 89-02-027 (Order FT-88-5), § 458-40-660, filed 12/30/88; 88-14-032 (Order FT-88-2), § 458-40-660, filed 6/30/88; 88-02-026 (Order FT-87-5), § 458-40-660, filed 12/31/87. Statutory Authority: Chapter 84.33 RCW, 87-14-042 (Order 87-2), § 458-40-660, filed 6/30/87; 87-02-023 (Order 86-4), § 458-40-660, filed 12/31/86.]

WAC 458-40-670 Timber excise tax—Stumpage value adjustments. Harvest value adjustments relating to the various logging and harvest conditions shall be allowed against the stumpage values as set forth in WAC 458-40-660 for the designated stumpage value areas with the following limitations:

(1) No harvest adjustment shall be allowed against special forest products.

(2) Stumpage value rates for conifer and hardwoods shall be adjusted to a value no lower than one dollar per MBF.

(3) Timber harvesters planning to remove timber from areas having damaged timber or other unforeseen materially increased harvesting costs may apply to the department for adjustment in stumpage values. Such applications should contain a map with the legal descriptions of the area, a description of the damage sustained by the timber or cause of additional costs, and a list of estimated costs to be incurred. Such applications shall be sent to the department before the harvest commences. Upon receipt of such application, the department will determine the amount of adjustment allowed, and notify the harvester. Such amount may be taken as a credit against tax liabilities or, if harvest is terminated, a refund may be authorized. In the event the extent of such timber damage or additional costs are not known at the time the application is filed, the harvester may supplement the application not later than ninety days following completion of the harvest unit.

The following harvest adjustment tables are hereby adopted for use during the period of January 1 through June 30, 1993:

TABLE 1—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, 5, and 10
January 1 through June 30, 1993

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 40 thousand board feet per acre.	\$0.00
Class 2	Harvest of 20 thousand board feet to 40 thousand board feet per acre.	- \$4.00
Class 3	Harvest of 10 thousand board feet to but not including 20 thousand board feet per acre.	- \$7.00
Class 4	Harvest of 5 thousand board feet to but not including 10 thousand board feet per acre.	- \$9.00
Class 5	Harvest of less than 5 thousand board feet per acre.	- \$10.00
II. Logging conditions		
Class 1	Generally slopes less than 40%. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	Generally slopes between 40% and 60%. Some rock outcrops or swamp barriers.	- \$17.00
Class 3	Generally rough, broken ground with slopes in excess of 60%. Numerous rock outcrops and bluffs.	- \$25.00
Class 4	For logs which are yarded from stump to landing by helicopter. This does not include special forest products.	- \$69.00
III. Remote island adjustment:		
	For timber harvested from a remote island	- \$50.00
IV. Thinning (see WAC 458-40-610(20))		
Class 1	Average log volume of 50 board feet or more.	- \$25.00
Class 2	Average log volume of less than 50 board feet.	- \$35.00

TABLE 2—Harvest Adjustment Table
Stumpage Value Areas 6 and 7
January 1 through June 30, 1993

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 3 thousand board feet to 8 thousand board feet per acre.	- \$7.00
Class 3	Harvest of less than 3 thousand board feet per acre.	- \$10.00
II. Logging conditions		
Class 1	Generally slopes less than 40%. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	Generally slopes between 40% and 60%. Some rock outcrops or swamp barriers.	- \$18.00

Class 3	Generally rough, broken ground with slopes in excess of 60%. Numerous rock outcrops and bluffs.	- \$25.00
Class 4	For logs which are yarded from stump to landing by helicopter. This does not include special forest products.	- \$69.00
III. Remote island adjustment:		
	For timber harvested from a remote island	- \$50.00

Table 3—Domestic Market Adjustment**Public Timber**

Harvest of timber not sold by a competitive bidding process which is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber which must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska Yellow Cedar.
(Stat. Ref. - 36 CFR 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Red Cedar only. (Stat. Ref. - 50 USC appendix 2406.1)

Private timber

Harvest of private timber which is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i); a Cooperative Sustained Yield Unit Agreement made pursuant to the Act of March 29, 1944, (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The adjustment amounts shall be as follows:

Class 1:	SVA's 1 through 6, and 10	+ \$0.00 per MBF
Class 2:	SVA 7	- \$0.00 per MBF

Note: The adjustment will not be allowed on special forest products.

[Statutory Authority: RCW 84.33.091, 84.32.300 [82.32.300] and 84.33.096. 93-02-025, § 458-40-670, filed 12/31/92, effective 1/1/93; 92-14-083, § 458-40-670, filed 6/29/92, effective 7/1/92; 92-02-067, § 458-40-670, filed 12/31/91, effective 1/1/92. Statutory Authority: RCW 84.33.096 and 82.32.300. 91-14-077, § 458-40-670, filed 6/28/91, effective 7/1/91; 91-02-088, § 458-40-670, filed 12/31/90, effective 1/31/91; 90-14-033, § 458-40-670, filed 6/29/90, effective 7/30/90; 90-02-049, § 458-40-670, filed 12/29/89, effective 1/29/90. Statutory Authority: Chapter 84.33 RCW and RCW 84.33.091. 89-14-051 (Order FT-89-2), § 458-40-670, filed 6/30/89; 89-02-027 (Order FT-88-5), § 458-40-670, filed 12/30/88; 88-14-032 (Order FT-88-2), § 458-40-670, filed 6/30/88; 88-02-026 (Order FT-87-5), § 458-40-670, filed 12/31/87. Statutory Authority: Chapter 84.33 RCW. 87-14-042 (Order 87-2), § 458-40-670, filed 6/30/87; 87-02-023 (Order 86-4), § 458-40-670, filed 12/31/86.]

WAC 458-40-680 Timber excise tax—Volume harvested—Approved scaling and grading methods. (1) Acceptable log scaling and grading rules—Western Washington: The acceptable log scaling and grading rule shall be the Scribner Decimal C log rule as described in the most current edition of the "Official Log Scaling and Grading Rules" handbook developed and authored by the Northwest Log Rules Advisory Group. These are the official rules for the following log scaling and grading bureaus: Columbia River, Grays Harbor, Northern California, Puget Sound, Southern Oregon, and Yamhill.

(2) Acceptable log scaling rule—Eastern Washington: For Eastern Washington, the acceptable log scaling rule shall be the Scribner Decimal C log rule described in the most current edition of the "National Forest Log Scaling Handbook" (FSH 2409.11) as published by the United States Forest Service. Provided, the maximum scaling length is

twenty feet and maximum trim allowance shall be six inches for logs eight to twenty feet in length.

(3) Utility grade defined: For both Western and Eastern Washington, utility grade is defined as logs that do not meet the minimum requirements of peeler or sawmill grades as defined in the handbook published by the Northwest Log Rules Advisory Group, but are suitable for the production of firm usable pulp chips to an amount of not less than fifty percent of the gross scale; and meeting the following minimum requirements:

Minimum gross diameter—six inches.

Minimum gross length—twelve feet.

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

(4) Special services scaling: Special services scaling as described in the Northwest Log Rules Advisory Group handbook shall not be used for tax reporting purposes without prior written approval of the department; and all measurements and grades must be converted to standard Scribner Decimal C log rules as they are described in the handbook.

[Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-680, filed 12/31/86.]

WAC 458-40-682 Timber excise tax—Volume harvested—Sample scaling. Sample scaling shall not be used for tax reporting purposes without prior written approval of the department. To be approved, sample scaling must be in accordance with the following guidelines:

(1) Sample selection, scaling, and grading must be conducted on a continuous basis as the unit is harvested.

(2) The sample must be taken in such a manner to assure random, unbiased measurements in accordance with accepted statistical tests of sampling.

(3) The sample used to determine total volume, species, and quality of timber harvested for a given reporting period must have been taken during that period.

(4) Sample frequency shall be large enough to meet board foot variation accuracy limits of plus or minus two and five-tenths percent standard error at the ninety-five percent confidence level.

(5) Harvesters must maintain sufficient supporting documentation to allow the department to verify source data, and test statistical reliability of sample scale systems.

(6) Exceptions: Sampling designs and accuracy standards other than those described herein may only be used with the prior written approval of the department of revenue.

[Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-682, filed 12/31/86.]

WAC 458-40-684 Timber excise tax—Volume harvested—Conversions to Scribner Decimal C Scale for Western Washington. The following definitions, tables, and conversion factors shall be used in determining taxable volume for timber harvested that was not originally scaled by the Scribner Decimal C Log Rule. Conversion methods, other than those listed are not to be used for tax reporting purposes without prior written approval of the department.

(1) **Weight measurement.** If the original unit of measure was by weight, and the harvester has not applied for approval of sample scaling (WAC 458-40-682); the following table shall be used for converting to Scribner Decimal C. Harvesters must keep records to substantiate the species and quality codes reported. For tax reporting purposes, a ton equals 2,000 pounds.

(Stumpage Value Areas 1, 2, 3, 4, 5, & 10)

BOARD FOOT WEIGHT SCALE FACTORS
(TONS/MBF)

Quality Code	Species code					
	DF*	WH**	RC	RA	HU	CU
1	5.0	6.0	4.5	7.0	8.5	***
2	6.0	6.5	5.0	—	—	—
3	6.5	7.5	6.5	—	—	—
4	7.5	8.25	7.0	—	—	—

*Includes Douglas-fir, and Sitka Spruce.

**Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and other conifers not separately designated. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

***Contact the department for converting the weight of utility logs to Scribner volume.

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

(a) Logs with an average scaling diameter of 8 inches and larger shall be converted to Scribner volume using 400 board feet per cord. Logs having an average scaling diameter of less than 8 inches shall be converted to Scribner volume using 330 board feet per cord.

(b) A cord of Western Redcedar shake or shingle blocks shall be converted to Scribner volume using 600 board feet per cord.

(3) **Cants or lumber from portable mills.** To convert from lumber tally to Scribner volume, multiply the lumber tally for the individual species by 75% and round to the nearest one thousand board feet (MBF).

(4) **Eastern, western log scale conversion.** Timber harvested in stumpage value areas 1, 2, 3, 4, and 5 and which has been scaled by methods and procedures published in the "National Forest Log Scaling Handbook" (FSH 2409.11) shall have the volumes reported reduced by eighteen percent to reflect the difference between eastern and western scaling practices.

(5) **Timber pole volume table.** Harvesters of poles in stumpage value areas 1, 2, 3, 4, and 5 shall use the following table to determine the Scribner board foot volume for each pole length and class:

Pole Length	Pole Class ¹	Total Scribner Board Foot Volume	
		by Pole Length	by Pole Class ²
20'	1	50	
	2	50	
	3	40	
	4	40	
	5	30	
	6	30	
	7	20	
	9	20	

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	H6	430(430)		H6	700(700)
	H5	370(370)		H5	600(600)
	H4	370(370)		H4	600(600)
	H3	300(300)		H3	520(520)
	H2	260(260)	75'	H2	520(520)
50'	H1	260(150)		H1	520(330)
	1	210(120)		1	440(270)
	2	160		2	290(180)
	3	140		3	250
	4	140			
	5	100		H6	820(820)
	H6	470(470)		H4	700(700)
	H5	410(410)		H3	600(600)
	H4	410(410)	80'	H2	600(600)
	H3	330(330)		H1	540(360)
	H2	280(160)		1	440(290)
55'	H1	280(160)		2	360(240)
	1	230(130)		3	290(200)
	2	180		H6	910(910)
	3	150		H5	800(800)
	4	150		H4	800(800)
	H6	540(540)		H3	660(660)
	H5	470(470)	85'	H2	660(660)
	H4	470(470)		H1	660(520)
	H3	410(410)		1	570(450)
60'	H2	340(210)		2	490(340)
	H1	340(210)		3	360(200)
	1	290(180)		H6	1080(1080)
	2	220(150)		H5	930(930)
	3	190		H4	930(930)
	4	190		H3	820(820)
	H6	610(610)	90'	H2	820(820)
	H5	520(520)		H1	690(560)
	H4	520(520)		1	590(480)
	H3	420(420)		2	490(420)
65'	H2	380(230)		3	400(210)
	H1	380(230)		H6	1170(1170)
	1	320(190)		H5	1000(1000)
	2	260(160)		H4	1000(1000)
	3	210	95'	H3	870(870)
	4	210		H2	870(870)
	H6	650(650)		H1	750(600)
	H5	560(560)		1	640(510)
	H4	560(560)		2	540(440)
	H3	480(480)		H6	1190(1190)
70'	H2	400(240)		H5	1030(1030)
	H1	400(240)		H4	1030(1030)
	1	350(210)	100'	H3	900(900)
	2	270(170)		H2	900(900)
	3	230		H1	760(610)
	4	230		1	660(530)
				2	550(450)

(6) Timber piling volume table. Harvesters of pilin
in stumpage value areas 1, 2, 3, 4, and 5 shall use the
following table to determine the Scribner board foot volume
for each piling length and class:

		Piling Length	Piling Class ¹	Total Scribner Board Foot Volume by Pole Length by Pole Class ²
105'	H6	1310(1310)	20'	
	H5	1160(1160)		A 80
	H4	1160(1160)		B 70
	H3	1000(1000)		
	H2	1000(1000)		
	H1	860(700)		
	1	740(600)		
	2	610(510)		
	H6	1370(1370)		
	H5	1220(1220)		
110'	H4	1220(1220)	25'	
	H3	1050(1050)		A 100
	H2	1050(1050)		B 90
	H1	910(740)		
	1	780(640)		
	2	650(540)		
	H6	1440(1440)		
	H5	1280(1280)		
	H4	1280(1280)		
	H3	1100(1100)		
115'	H2	1100(1100)	40'	
	H1	960(780)		A 150
	1	860(670)		B 120
	2	680(570)		
	H6	1660(1660)		
	H5	1460(1460)		
	H4	1460(1460)		
	H3	1300(1300)		
	H2	1300(1300)		
	H1	1140(960)		
120'	1	970(820)	50'	A 150
	2	820(700)		B 120
	H6	1840(1840)		
	H5	1600(1600)		
	H4	1600(1600)		
	H3	1410(1410)		
	H2	1410(1410)		
	H1	1250(1100)		
	1	1080(940)		
	2	930(830)		
125'	H6	1920(1920)	60'	
	H5	1680(1680)		A 230
	H4	1680(1680)		B 190
	H3	1410(1410)		
	H2	1410(1410)		
	H1	1250(1100)		
	1	1080(940)		
	2	930(830)		
	H6	1920(1920)		
	H5	1680(1680)		
130'	H4	1680(1680)	70'	
	H3	1490(1490)		A 200
	H2	1490(1490)		B 230
	H1	1310(1160)		
	1	1120(990)		
	2	970(870)		
	H6	1920(1920)		
	H5	1680(1680)		
	H4	1680(1680)		
	H3	1490(1490)		

¹ Pole class definitions taken from American National Standard specifications and dimensions for wood poles as approved August 7, 1976 under American National Standard Institute, Inc. codified ANSI 05.1-1972.

² The number, enclosed in parenthesis after the total Scribner pole volume for each pole length and class, is the volume per pole for Number 2 Sawmill and better log grade, where applicable.

105'	A	330(170)
	B	270
110'	A	380(220)
	B	300(180)
115'	A	400(230)
	B	310(190)
120'	A	500(290)
	B	400(240)

¹ Piling class definitions as per American Society for Testing and Materials for "round timber piles." As the designation: D 25-58 (reapproved 1964).

² The number, enclosed in parenthesis after the total Scribner board foot volume for each piling length and class, is the volume per piling for Number 2 Sawmill and better log grade, where applicable.

(7) Harvesters who wish to use a method of conversion other than those listed above must obtain written approval from the department before harvesting.

[Statutory Authority: RCW 84.33.091, 84.32.300 [82.32.300] and 84.33.096. 92-14-083, § 458-40-684, filed 6/29/92, effective 7/1/92. Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-684, filed 12/31/86.]

WAC 458-40-686 Timber excise tax—Volume harvested—Conversions to Scribner Decimal C Scale for Eastern Washington. The following definitions, tables, and conversion factors shall be used in determining taxable volume for timber harvested that was not originally scaled by the Scribner Decimal C Log Rule. Conversion methods, other than those listed are not to be used for tax reporting purposes without prior written approval of the department.

(1) **Weight measurement.** If the original unit of measure was by weight, and the harvester has not applied for approval of sample scaling (WAC 458-40-682); the following table shall be used for converting to Scribner Decimal C. Harvesters must keep records to substantiate the species and quality codes reported. For tax reporting purposes, a ton equals 2,000 pounds.

(Stumpage Value Areas 6, 7, & 10)
BOARD FOOT WEIGHT SCALE FACTORS

Species	Tons/MBF
Ponderosa Pine (quality code 1)	5.0
Ponderosa Pine (quality code 2)	6.5
Douglas-fir*	5.5
Lodgepole Pine	6.0
Western Hemlock**	5.5
Englemann Spruce	4.5
Western Redcedar***	4.5

* Includes Western Larch.

** Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

*** Includes Alaska-cedar.

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

(a) Logs with an average scaling diameter of 8 inches and larger shall be converted to Scribner volume using 470 board feet per cord. Logs having an average scaling diameter of less than 8 inches shall be converted to Scribner volume using 390 board feet per cord.

(b) A cord of Western Redcedar shake or shingle blocks shall be converted to Scribner volume using 600 board feet per cord.

(3) **Cants or lumber from portable mills.** To convert from lumber tally to Scribner volume, multiply the lumber tally for the individual species by 88% and round to the nearest one thousand board feet (MBF).

(4) **Eastern, western log scale conversion.** Timber harvested in stumpage value areas 6, 7, and 10 and which has been scaled by methods and procedures published in the "Official Log Scaling and Grading Rules" handbook, developed and authored by the Northwest log rules advisory group, shall have the volumes reported increased by eighteen percent to reflect the difference between eastern and western scaling practices.

(5) **Timber pole volume table.** Harvesters of poles in stumpage value areas 6, 7, and 10 shall use the following table to determine the Scribner board foot volume for each pole length and class. The timber quality code number shall be determined in accordance with the log grade specifications outlined in WAC 458-40-650.

Total Scribner Board Foot Volume by Pole Length and Pole Class ²		
Length	Class ¹	
20'	1	70
	2	60
	3	50
	4	50
	5	30
	6	30
	7	20
	9	20
	10	20
	1	80
25'	2	70
	3	50
	4	50
	5	40
	6	40
	7	30
	9	30
	10	20
	1	110
	2	90
30'	3	60
	4	60
	5	50
	6	50
	7	50
	9	40

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	H2	190		H6	610
	H1	160		H5	530
	1	140		H4	530
	2	100		H3	440
35'	3	100		H2	440
	4	70	60'	H1	380
	5	60		1	310
	6	60		2	240
	7	50		3	200
	H3	240		4	200
	H2	240		H6	650
	H1	200		H5	570
	1	170		H4	570
40'	2	120		H3	490
	3	110		H2	480
	4	100	65'	H1	410
	5	70		1	350
	6	70		2	280
	H6	390		3	220
	H5	330		4	220
	H4	330		H6	750
	H3	270		H5	650
	H2	270		H4	650
	H1	220		H3	550
	1	180		H2	470
45'	2	150	70'	H1	470
	3	110		1	410
	4	110		2	320
	5	80		3	260
	6	70		4	260
	H6	460		H6	810
	H5	390		H5	700
	H4	390		H4	700
50'	H3	340		H3	600
	H2	340		H2	600
	H1	280	75'	H1	500
	1	240		1	440
	2	190		2	340
	3	150		3	270
	4	150		H6	960
	5	120		H5	830
	H6	510		H4	830
	H5	430		H3	710
	H4	430	80'	H2	710
	H3	370		H1	610
55'	H2	360		1	510
	H1	300		2	420
	1	250		3	340
	2	190		H6	1020
	3	150		H5	870
	4	150		H4	870
				H3	760
			85'	H2	760
				H1	640
				1	550
				2	450
				3	360

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	H6	1110		H6	1910
	H5	970		H5	1690
	H4	970		H4	1690
	H3	840		H3	1490
90'	H2	840	125'	H2	1490
	H1	720		H1	1140
	1	620		1	970
	2	500		2	810
	3	420		H6	2170
	H6	1160		H5	1920
	H5	1010		H4	1920
	H4	1010		H3	1710
	H3	870	130'	H2	1710
95'	H2	870		H1	1510
	H1	740		1	1320
	1	640		2	1140
	2	510			
	H6	1380			
	H5	1210			
	H4	1210			
	H3	1060			
100'	H2	1060			
	H1	910			
	1	780			
	2	650			
	H6	1430			
	H5	1250			
	H4	1250			
	H3	1100			
105'	H2	1100			
	H1	940			
	1	820			
	2	690			
	H6	1580			
	H5	1390	20'	A	90
	H4	1390		B	70
	H3	1220			
110'	H2	1220	25'	A	100
	H1	1070		B	80
	1	920			
	2	770	30'	A	130
				B	110
	H6	1660	35'	A	140
	H5	1470		B	100
	H4	1470			
	H3	1280	40'	A	140
115'	H2	1280		B	100
	H1	970	45'	A	150
	1	810		B	110
	2	680			
	H6	1880	50'	A	190
	H5	1680		B	150
	H4	1680	55'	A	190
120'	H3	1480		B	150
	H2	1480	60'	A	240
	H1	1290		B	200
	1	1130			
	2	950	65'	A	240
				B	200

¹ Pole class definitions as per American National Standard specifications and dimensions for wood poles as approved August 7, 1976 under American National Standard Institute, Inc. codified ANSI 05.1-1972.

² Volumes are based on the Scribner Decimal C Log Rule using methods and procedures outlined in the current edition of the "National Forest Log Scaling Handbook."

(6) **Timber piling volume table.** Harvesters of piling in stumpage value areas 6, 7, and 10 shall use the following table to determine the Scribner board foot volume for each piling length and class. The timber quality code number shall be determined by procedures outlined in WAC 458-40-650.

		Total Scribner Board Foot Volume by Pole Length and Pole Class ²		
		Length	Class ¹	
		20'	A	90
			B	70
		25'	A	100
			B	80
		30'	A	130
			B	110
		35'	A	140
			B	100
		40'	A	140
			B	100
		45'	A	150
			B	110
		50'	A	190
			B	150
		55'	A	190
			B	150
		60'	A	240
			B	200
		65'	A	240
			B	200

70'	A	260
	B	210
75'	A	270
	B	220
80'	A	220
	B	220
85'	A	300
	B	240
90'	A	280
	B	280
95'	A	360
	B	280
100'	A	360
	B	280
105'	A	400
	B	300
110'	A	460
	B	340
115'	A	470
	B	360
120'	A	560
	B	450

¹ Piling class definitions taken from American Society for Testing and Materials for "round timber piles." As the designation: D 25-56 (reapproved 1964).

² Volumes are based on the Scribner Decimal C Log Rule using methods and procedures outlined in the current edition of the "National Forest Log Scaling Handbook."

(7) Harvesters who wish to use a method of conversion other than those listed above must obtain written approval from the department before harvesting.

[Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-686, filed 12/31/86.]

WAC 458-40-690 Timber excise tax—Credit for property tax. In accordance with RCW 84.33.077 and 84.36.473, persons engaged in business as harvesters of timber from public land shall be allowed a tax credit against the timber excise tax imposed under chapter 84.33 RCW for any personal property taxes paid to a county on such public timber sales. The credit shall be allowed only for property taxes paid on public timber purchased on or after August 1, 1982. The credit shall be taken only on excise taxes due on timber harvested from public land. No excise tax credits shall be allowed against excise taxes due on timber harvested from private land.

(1) Amount of credit. The total dollar amount of all excise tax credits claimed on one or more sales shall not exceed the total amount of all personal property taxes levied and paid on such timber. No excise tax credit shall be allowed for property tax penalties or interest charges imposed on delinquent property taxes. No excise tax credits shall be allowed prior to payment of personal property taxes, and the amount of credit allowed shall not exceed the

amount of property tax actually paid as certified by the county treasurer.

(2) Excess credits and refunds. If the amount of the credit exceeds the amount of timber excise tax due for the calendar quarter in which the credit is claimed, the excess credit shall be carried forward to the new quarterly reporting period and applied against the amount of timber excise tax due, if any, on public timber. Excise tax refunds for unused credit shall be made only if the taxpayer has no public timber sales pending against which to apply the unused credit.

(3) Credit application procedures. Taxpayers who wish to claim such timber excise tax credits must apply on forms prepared by the department. The application must be certified by the county assessor and treasurer of the county in which the property taxes were paid. Application forms shall be made available in the offices of county assessors, county treasurers, and the department. The applications must be submitted with timber excise tax returns for taxes due on public timber.

[Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-690, filed 12/31/86.]

Chapter 458-50 WAC INTERCOUNTY UTILITIES AND TRANSPORTATION COMPANIES—ASSESSMENT AND TAXATION

WAC

458-50-010	Assessment of public utilities—Purpose—Definitions.
458-50-020	Annual reports—Duty to file.
458-50-030	Annual reports—Contents.
458-50-040	Annual reports—Time of filing—Extension of time.
458-50-050	Access to books, records, and property.
458-50-060	Failure to make report—Default valuation—Penalty—Estoppel.
458-50-070	Annual assessment—Procedure.
458-50-080	True cash value—Criteria.
458-50-085	Computer software—Definitions—Valuation—Centrally assessed utilities.
458-50-090	Methods of valuation.
458-50-100	Apportionment of operating property to the various counties and taxing districts.
458-50-110	Apportionment reports.
458-50-120	Notification of real estate transfers.
458-50-130	Taxing district boundary changes—Estoppel.

WAC 458-50-010 Assessment of public utilities—Purpose—Definitions. (1) **Introduction.** The department of revenue has the statutory responsibility valuing and apportioning the operating property of inter-county and interstate public utilities. This responsibility is a task of considerable magnitude, and requires the combined efforts and cooperation of the department of revenue, the county assessors, and the public utilities in order to ensure accurate and fair assessment and apportionment of utility operating property at minimal overall expense to all parties concerned.

(2) **Purpose.** These rules are promulgated by the department of revenue, pursuant to the authority granted by RCW 82.01.060 and 82.12.360, for the purpose of performing the valuation and apportionment of public utility operating property in an expeditious, orderly, and uniform manner consistent with the department's duties as set forth in chapter 84.12 RCW.

(3) Definitions.

(A) For purposes of chapter 458-50 WAC, and unless otherwise required by the context, the meaning given to the terms set forth in RCW 84.12.200 shall be applicable to such terms as used herein.

(B) The term "department" shall mean the department of revenue of the state of Washington.

[Order PT 75-2, § 458-50-010, filed 3/19/75.]

WAC 458-50-020 Annual reports—Duty to file.

Each company doing an inter-county or interstate business in this state shall make and file an annual report with the department. At the time of making such report, each company shall if directed by the department also file with the department:

(1) Annual reports of the board of directors or other officers to the stockholders of the company.

(2) Duplicate copies of the annual reports made to the federal regulatory agency or agencies exercising jurisdiction over the company.

(3) Duplicate copies of the annual reports made to the Washington state utilities and transportation commission or other Washington state regulatory agency exercising jurisdiction over the company.

(4) Duplicate copies of such other annual or special reports as the department may, from time to time, direct each company to make.

[Order PT 75-2, § 458-50-020, filed 3/19/75.]

WAC 458-50-030 Annual reports—Contents.

Annual reports shall be made on forms furnished by the department, and shall contain such information as is required to enable the department to determine the true and fair value of a company's operating property in the state, and the apportionment thereof to the several counties and taxing districts. The report shall be signed by the president, treasurer or other responsible official of the company.

(1) In determining what types of information shall be required to be included in the annual report, the department may take into account, among other factors, the necessity and worth of such information in valuing, allocating or apportioning operating property; whether such information is of the type customarily maintained by the industry for internal accounting or regulatory agency purposes; and the cost and difficulty of obtaining or maintaining such information. The department's determination shall be final, and no company shall be excused from providing such information except upon a clear showing that undue hardship would result.

(2) On or before December 1st of the year preceding the calendar year to be covered by the annual report, the department shall notify the companies of the types of information required to be included in the annual report for such forthcoming year: *Provided*, That the foregoing requirement shall not be applicable for calendar year 1975.

[Order PT 75-2, § 458-50-030, filed 3/19/75.]

WAC 458-50-040 Annual reports—Time of filing—Extension of time. Annual reports shall be filed with the department on or before the fifteenth day of March. The

department may grant a reasonable extension of time, not to exceed thirty days, upon written application of the company filed with the department on or before the fifteenth day of March, and showing good cause why such an extension is required. In the event any other report required to be filed with the department, e.g., annual stockholders report or regulatory agency report, is not available at the time the annual report is filed, the company shall so notify the department and thereafter file such report as soon as it becomes available.

[Order PT 75-2, § 458-50-040, filed 3/19/75.]

WAC 458-50-050 Access to books, records, and property. The department shall have access to all books, papers, documents, statements and accounts on file or of record in any of the departments of the state. The records, books, accounts, and papers of each company shall be subject to visitation, investigation, or examination by the department, or any employee or agent thereof officially designated by the department. All real and/or personal property of any company shall be subject to visitation, investigation, examination and/or listing at any and all times by the department, or any person officially designated by the director.

[Order PT 75-2, § 458-50-050, filed 3/19/75.]

WAC 458-50-060 Failure to make report—Default valuation—Penalty—Estoppel. (1) If any company, or any of its officers or agents shall refuse or neglect to make any report required by law or by the department, or shall refuse to permit an inspection and examination of its records, books, accounts, papers or property requested by the department, or shall refuse or neglect to appear before the department in obedience to a subpoena, the department shall proceed, in such manner as it may deem best, to obtain facts and information upon which to base its valuation, assessment, and apportionment of such company.

(2) Willful failure to file with the department any report required by the department within the time fixed by law, including any extension granted by the department, shall constitute refusal or neglect to make a report, and the department may proceed in accordance with subsection (1) to value, assess, and apportion the property of such company as if no report had been made.

(3) **Penalty.** When the department has ascertained the value of the property of such company in accordance with subsections (1) or (2), it shall add to the value so ascertained twenty-five percent as a penalty.

(4) Where the department has proceeded in accordance with subsections (1) or (2), such company shall be estopped to question or impeach the valuation, assessment, or apportionment made by the department in any administrative or judicial proceeding thereafter.

[Order PT 75-2, § 458-50-060, filed 3/19/75.]

WAC 458-50-070 Annual assessment—Procedure.

(1) **In general.** Annually between the fifteenth day of March and the first day of July the department shall proceed to list and value the operating property of each company subject to assessment by the department. The department

shall prepare a report summarizing the information, factors and methods used in determining the tentative value of each such company (hereafter called "report of tentative value"). The department shall prepare an assessment roll upon which shall be placed after the name of each company a general description of the operating property of the company described in accordance with RCW 84.12.200 (16) and WAC 458-50-010, following which shall be entered the actual cash value as tentatively determined by the department.

(2) **Notice of tentative value.** On or before the thirtieth day of June, (for purposes of the 1988 assessment year only, such notice shall be given on or before the thirty-first day of July) the department shall notify each company by mail of the tentative valuation entered upon such assessment roll. At the time of making such notification, the department shall also transmit to the company the report of tentative value prepared by the department. Upon written request of a county assessor the department shall also transmit the report of tentative value to such assessor.

(3) **Hearings.**

(a) *In general.* Each company may petition the department for a hearing relating to the value of its operating property as tentatively determined by the department and to the value of other taxable properties in the counties in which its operating property is situated. Such petition shall be made in writing and filed with the department on or before the ninth day of July. (For purposes of the 1988 assessment year only, such petition must be filed on or before the ninth day of August.) The department shall appoint a time between the tenth and twenty-fifth days of July, (for purposes of the 1988 assessment year only, the time frame specified shall be between the tenth and twenty-fifth days of August) for the conduct of such hearing, which may be held in such places throughout the state as the department may deem proper or necessary. Notice of the time and place of any or all hearings shall be given to any person upon request.

(b) The hearing shall be conducted by the director or by any employee or agent of the department designated by the director. A record of the proceedings shall be kept and shall be considered a public record. The hearing shall be recorded with a recording device and the recordings shall become a part of the record of the proceedings and considered a part of the public record. All records and documents presented at the hearing shall become a part of the record of the proceeding and shall be considered a part of the public record, except as provided in (c) of this subsection.

(c) The hearing shall be open to the public, except (i) when the company proposes to offer in evidence information relating to its assessment if disclosure of such information to other persons would violate the company's right to privacy or would result in an unfair competitive disadvantage to such company; or (ii) when the department proposes to offer in evidence information which has been obtained pursuant to RCW 84.12.240 if the disclosure of such information to other persons would violate the company's right to privacy or would result in an unfair competitive disadvantage to such company. The hearing at this point shall be closed to the public unless the company consents to the proceeding remaining open to the public.

(d) Testimony recorded, and all records and documents of a confidential nature introduced, during the period when

the hearing is closed to the public shall become a part of the record, but shall not be disclosed except upon order of a court of competent jurisdiction or upon consent of the company.

(e) Records of the proceedings shall be maintained for a period of seven years following the close of the hearing.

(4) **Determination of final value.** On or before the twentieth day of August, the department shall make a final determination of the true and correct actual cash value of each company's operating property appearing on the assessment roll. The department may raise or lower the value from that amount tentatively set pursuant to this section: *Provided*, That failure of a company to request a hearing shall not preclude the department from setting a final value higher or lower than that amount tentatively set pursuant to this section: *Provided further*, That where a company has not requested a hearing, the department shall not adopt a final value higher than that tentatively set except after giving five days written notice to the company. The department shall notify each company by mail of the final true and correct actual cash value as determined by the department.

[Statutory Authority: RCW 84.12.340 and 84.12.390. 88-15-016 (Order PT 88-10), § 458-50-070, filed 7/11/88; Order PT 75-2, § 458-50-070, filed 3/19/75.]

WAC 458-50-080 True cash value—Criteria.

(1) The true cash value of the operating property of public utilities is its "market value," i.e., the amount of money a buyer willing but not obligated to buy would pay for such operating property from a seller willing but not obligated to sell. In arriving at a determination of such value the department may consider only those factors which can within reason be said to affect the price in negotiations between a willing purchaser and a willing seller, and the department shall consider all such factors to the extent that reliable information is available to support a judgment as to the probable effect of such factors on price.

(2) In determining the true cash value of such operating property the department shall proceed in accordance with generally accepted principles applicable to the valuation of public utilities. The department may consider the cost approach, the income approach and the stock and debt approach to value. Any one of the three approaches to value, or all of them, or a combination of approaches may finally be used in making the final determination of true cash value, depending upon the circumstances.

(A) **The cost approach.** The cost approach determines the value of individual items of property. The types of cost include:

- (i) Historical - cost when first put in service
- (ii) Original - cost to present owner
- (iii) Reproduction - cost today to produce in kind
- (iv) Replacement - cost today to replace present property with a functional equivalent.

The department shall make adequate and reasonable allowances for depreciation, including functional and economic obsolescence where such factors are indicated, but in no event shall property be depreciated below salvage or scrap value.

(B) **Income approach.** The income approach determines the ability of operating property to earn a probable

money income over some span of future years, discounted to a present value by means of an appropriate capitalization rate.

(i) **Future income stream.** The income to capitalize is the probable future average annual operating income to be derived from operating properties that exist on the assessment date. In making this estimate of probable future average annual operating income, the department may take into account past earnings, present earnings, the growth or shrinking of the property complex, demand for services provided by the company, and all other factors which can within reason be said to indicate the probable future income stream.

(ii) **Capitalization rate.** The capitalization rate may be derived by the comparative method, summation method, band of investment method, or other generally accepted method. Any one of these methods, or any combination thereof, may be used by the department in deriving the appropriate capitalization rate to be applied to probable future average annual operating income.

(C) **Stock and debt approach.** The stock and debt approach determines the value of a company's assets by appraising the value of the liabilities of the company, such as current liabilities, long term debt, reserves, deferred credits, and stockholder's equity. This approach is applicably [applicable] only where a "unitary" or "enterprise" value is sought. Appropriate deductions shall be made for nonoperating property of the enterprise where necessary.

[Order PT 75-2, § 458-50-080, filed 3/19/75.]

WAC 458-50-085 Computer software—Definitions—Valuation—Centrally assessed utilities.

(1) This rule implements the provisions of chapter 29, Laws of 1991, ex. sess, regarding the property taxation of computer software for centrally assessed utilities.

(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 databases, but does include the computer programs and code which are used to generate databases. Computer software can be canned, custom, or a mixture of both.

(a) A database 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 pre-written, "shrink-wrapped" or standard 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 sublicensee 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 sublicensee.

(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), 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) **Situs.** Canned and custom software with situs in Washington means software physically located in Washington or installed in or on machinery, equipment, or computer systems physically located in Washington on the assessment date.

(16) **Reporting.** Each utility/taxpayer defined in chapter 84.12 and 84.16 RCW shall report to the department, using the Annual Report tax form provided by the department, the following information regarding its software with situs in Washington in use on the assessment date:

(a) The acquisition cost of expensed canned computer software which was purchased:

- (i) In the year preceding the assessment date; and
- (ii) In the second year prior to the assessment date; and
- (iii) In the years prior to the second year preceding the assessment date.

(b) The historic cost less depreciation of capitalized canned computer software which was purchased:

- (i) In the year preceding the assessment date;
- (ii) In the second year prior to the assessment date;
- (iii) In the years prior to the second year preceding the assessment date;

(c) The acquisition cost of expensed custom computer software which was purchased:

- (i) In the year preceding the assessment date;
- (ii) In the second year prior to the assessment date;
- (iii) In the years prior to the second year preceding the assessment date;

(d) The historic cost less depreciation of capitalized custom computer software.

(17) **Calculation of computer software value.** The following formulas shall be used for determining the percent taxable calculation of computer software used by centrally assessed utilities.

(a) For the purpose of determining the numerator of the percent taxable calculation, the historic cost less depreciation of all taxable Washington property shall be computed by adjusting the historic cost less depreciation of property capitalized in the company's records as follows:

(i) Add the acquisition cost of expensed canned software acquired in the year preceding the assessment date; and

(ii) Add 50% of the acquisition cost of expensed canned software acquired in the second year preceding the assessment date; and

(iii) Subtract 50% of the historic cost less depreciation of capitalized canned software acquired in the second year preceding the assessment date; and

(iv) Subtract the historic cost less depreciation of capitalized canned software acquired in years prior to the second year preceding the assessment date; and

(v) Subtract the historic cost less depreciation of capitalized custom software.

(b) For the purpose of determining the denominator of the percent taxable calculation, the historic cost less depreciation of all Washington property shall be computed by adding the acquisition cost of expensed canned and custom software in use on the assessment date to the historic cost

less depreciation of Washington property capitalized in the company's records.

(c) The historic cost less depreciation of all taxable Washington property (calculated as set forth in subsection (a) above) shall be divided by the historic cost less depreciation of all Washington property (calculated as set forth in subsection (b) above) to arrive at the percent taxable calculation.

(d) The portion of the unit value allocated to Washington state shall be multiplied by the percent taxable calculated as set forth in subsection (c) above to determine the Washington taxable property value.

(18) 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 sublicensee 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, § 458-50-085, filed 12/19/91, effective 1/19/92.]

WAC 458-50-090 Methods of valuation. The department shall use either the summation method or "unitary" or "enterprise" method in valuing the operating property of companies. As a general rule, the unitary or enterprise method is preferred where valuing a thoroughly integrated group of properties such that removal or destruction of any one property would jeopardize and/or immobilize the entire operation of the company. The summation method is preferred where adequate information is not available to derive reliable indicators of unitary or enterprise value, and the nature of the operating property is such that it may be segregated into component parts and the value of the parts readily determined. Notwithstanding the provisions of WAC 458-50-080, the department may, in using the summation method, employ the comparable sales or "market" approach to value to the exclusion of any other approach.

[Order PT 75-2, § 458-50-090, filed 3/19/75.]

WAC 458-50-100 Apportionment of operating property to the various counties and taxing districts. In general. The department shall apportion the value of all public utility companies to the various counties in such a manner as will reasonably reflect the true cash value of the operating property located within each county and taxing district. Since it is impossible to determine with mathematical precision the precise value of each item of property located within each county and taxing district, the department shall apportion the value of operating property on the following basis:

[Title 458 WAC—p 296]

(1) Railroad companies - The ratio that mileage of track, as classified by the department, situated within each county and taxing district bears to the total mileage of track within the state as of January 1 of the assessment year. In the event there exists operating property of railroad companies in counties or taxing districts not having track mileage, the department shall situs such property and apportion value directly on the basis of cost as determined in accordance with the cost approach set forth in WAC 458-50-080(A).

(2) Pipeline companies - The ratio that inch-equivalent of miles of pipeline situated within each county or taxing district bears to the total inch-equivalent of miles of pipeline within the state as of January 1 of the assessment year. In the event there exists operating property of pipeline companies in counties or taxing districts not having pipeline mileage, the department shall situs such property and apportion value to such county or taxing district directly on the basis of cost as determined in accordance with the cost approach set forth in WAC 458-50-080(A).

(3) Telegraph companies - The ratio that the cost (historical or original) of operating property situated within each county and taxing district bears to the cost (historical or original) of all operating property within the state as of January 1 of the assessment year.

(4) Telephone companies - The ratio that the cost (historical or original) of operating property situated within each county or taxing district bears to the total cost (historical or original) of all operating property within the state as of January 1 of the assessment year.

(5) Electric light and power companies - The ratio that cost (historical or original) of operating property situated within each county and taxing district bears to the total cost (historical or original) of all operating property within the state as of January 1 of the assessment year.

(6) Gas companies - The ratio that cost (historical or original) of operating property situated within each county and taxing district bears to the total cost (historical or original) of all operating property within the state as of January 1 of the assessment year: *Provided*, The value of pipeline shall be allocated on the basis of the ratio that inch-equivalent of miles of pipeline situated within each county or taxing district bears to the total inch-equivalent of miles of pipeline within the state as of January 1 of the assessment year.

(7) Airplane companies - The ratio that cost (historical or original) of operating property situated within each county and taxing district bears to the total cost (historical or original) of operating property within the state as of January 1 of the assessment year: *Provided*, That the value of aircraft shall be apportioned on the basis of the ratio that landings and take-offs of such aircraft within each county and taxing district bears to the total landings and take-offs within the state during the previous calendar year.

(8) Steamboat companies - The ratio that cost (historical or original) of operating property situated within each county and taxing district bears to the total cost (historical or original) of operating property within the state as of January 1 of the assessment year: *Provided*, That the value of watercraft shall be apportioned on the basis of the ratio that calls of such watercraft at ports within each county and taxing district bears to the total calls at all ports of call within the state during the previous calendar year.

[Statutory Authority: RCW 84.12.390. 88-02-009 (Order PT 87-9), § 458-50-100, filed 12/28/87; Order PT 75-2, § 458-50-100, filed 3/19/75.]

WAC 458-50-110 Apportionment reports. (1) On or before April 15 of each year the department shall furnish taxing district maps and report forms (hereinafter referred to as "apportionment reports") to each railroad, pipeline, telegraph, telephone, electric light and power, and gas company.

(2) Each company furnished an apportionment report shall complete and submit such report to the department on or before June 1 of the assessment year. Since all apportionment reports must be in the department's hands by June 1 in order to permit adequate opportunity to properly apportion operating property in accordance with WAC 458-50-100, an extension of time for filing such reports will be granted only upon a showing of undue hardship.

[Order PT 75-2, § 458-50-110, filed 3/19/75.]

WAC 458-50-120 Notification of real estate transfers. Each company shall notify the department of any transfer of title, use or occupancy of operating property consisting of real property, whether such transfer is to or from such company. Such notification shall contain the legal description of the property, date of transfer, and name and address of transferor and transferee. For purposes of this rule, it shall be sufficient to transmit a copy of the deed, real estate contract, or lease (as the case may be) to the department. Such notification shall be made within ninety days of the effective date of such transfer.

[Order PT 75-2, § 458-50-120, filed 3/19/75.]

WAC 458-50-130 Taxing district boundary changes—Estoppel. (1) In accordance with RCW 84.09.030 and WAC 458-12-140, the county assessor is required on or before March 1 to transmit certain documents and maps setting forth taxing district boundary changes to the department of revenue, property tax division.

(2) The department shall prepare taxing district maps based upon information submitted to it on or before March 1. Such maps shall be used to fix taxing district boundaries for purposes of apportioning the operating property of each company among the various counties and taxing districts. Any county or taxing district not having submitted the documents and maps as required by WAC 458-12-140 shall be estopped from questioning the validity of any apportionment of value to it as determined by the department to the extent that such challenge is based upon taxing district boundaries different than as shown on the department's maps.

[Order PT 75-2, § 458-50-130, filed 3/19/75.]

Chapter 458-53 WAC PROPERTY TAX ANNUAL RATIO STUDY

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

458-53-060	Stratification—Personal property. [Statutory Authority: RCW 84.48.075. 79-11-029 (Order PT 79-3), § 458-53-060, filed 10/11/79. Formerly WAC 458-52-050.] Repealed by 84-14-039 (Order PT 84-2), filed 6/29/84. Statutory Authority: RCW 84.48.075.
458-53-170	Final indicated ratio—Computation. [Statutory Authority: RCW 84.48.075. 79-11-029 (Order PT 79-3), § 458-53-170, filed 10/11/79. Formerly WAC 458-52-110.] Repealed by 84-14-039 (Order PT 84-2), filed 6/29/84. Statutory Authority: RCW 84.48.075.
458-53-190	County assessor's review. [Statutory Authority: RCW 84.48.075. 79-11-029 (Order PT 79-3), § 458-53-190, filed 10/11/79. Formerly WAC 458-52-130.] Repealed by 84-14-039 (Order PT 84-2), filed 6/29/84. Statutory Authority: RCW 84.48.075.

WAC 458-53-010 Declaration of purpose. This chapter is promulgated by the department of revenue in compliance with RCW 84.48.075 to describe procedures for determination of indicated ratios of property for each county, so as to accomplish the equalization of property values required by RCW 84.12.350, 84.16.110, 84.48.080 and 84.52.065. The procedures described in this chapter for the department's annual ratio study are designed to ensure uniformity and equity in taxation throughout the state to the maximum extent possible.

[Statutory Authority: RCW 84.48.075. 79-11-029 (Order PT 79-3), § 458-53-010, filed 10/11/79. Formerly WAC 458-52-010.]

WAC 458-53-020 Definitions. (1) "Advisory values" means the true and fair value determinations by department appraisers or auditors made at the request of the county assessor.

(2) "Appraisal" means the determination of the true and fair value of real property by department appraisers or county appraisers certified under RCW 36.21.015.

(3) "Audit" means the determination of true and fair value of taxable personal property through examination of the records of the property owner by department auditors or county auditors of the assessor's staff who are qualified by training and experience in making such examinations.

(4) "Average assessed value" is the total county assessed value of a sample grouping or classification of real or personal property divided by the number of properties in the sample.

(5) "Average true and fair personal property value" is the total value of a sample grouping or classification as determined from personal property audits divided by the number of audits in the sample group.

(6) "Average market value" is the total sales price, less one percent, of a sample grouping or classification of real property divided by the number of properties in the sample, or the total appraised value of a sample grouping or classification of real property divided by the number of appraisals in the same group.

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

(8) "Director" means the director of revenue.

(9) "Land Use Code" as designated by the department means the identification of each real property parcel by numerical digits as representations of the actual major use of the property. This Land Use Code is derived from the Standard Land Use Coding Manual as prepared by the Federal Bureau of Public Roads.

(10) "Personal property" for the purpose of the ratio rules means the items of personal property as identified on the county assessment roll, and it shall include all personal property required to be reported by the taxpayer under RCW 84.40.185, but excluding property owned by and assessed to another taxpayer.

(11) "Ratio" is the percentage relationship of real property assessed value to the true and fair value of real property as determined by real property sales, by department appraisals, or by department approved county appraisals; or the percentage relationship of personal property assessed value to the true and fair value of personal property as determined from department audits or from department approved county audits.

(12) "Ratio study" is the department's annual comparison of the relationship between the county assessed values of real and personal property with the true and fair value of that property as determined by the department's analysis of sales, appraisals, and/or audits.

(13) "Sales study" is the comparison of the assessed value of real property with the selling price of the same property.

(14) "Stratification" means the grouping of the real or personal property assessment records into specific assessed value classes and/or use code classes for measurement purposes.

(15) "Stratum" refers to a single class of property with a given range of assessed value or having the same use code.

(16) "Strata" refer to classes of property grouped by assessed value and/or use codes.

(17) "Taxable real property parcels" means all real property parcels shown as subject to taxation on the county assessment record.

(18) "Trending" consists of adjusting the sales price of a property or the appraisal value from the time of sale or appraisal to a specific point in time which is the January 1 assessment date of the study. Trending will be for time only and developed from market data only.

(19) "True and fair value" means market value and has the same meaning as defined by WAC 458-12-300.

[Statutory Authority: RCW 84.48.075 and 84.08.010(2). 89-09-021 (Order PT 89-5), § 458-53-020, filed 4/12/89. Statutory Authority: RCW 84.48.075. 79-11-029 (Order PT 79-3), § 458-53-020, filed 10/11/79. Formerly WAC 458-52-020.]

WAC 458-53-030 Stratification of assessment rolls—Real property. (1) The stratification process is the grouping of data into meaningful classifications for informational or analytical purposes. Stratification is used in determining the number of appraisals or audits needed for ratio study purposes and also is used in actual ratio computation. The latest available official county assessment roll values are used in ratio study stratification procedures.

Assessed valuation presently forms the basis for stratification of assessment rolls and is used because the nature of most assessors' records provides a state-wide uniformity for this characteristic. Also, the values in this classification generally are indicative of property types. By not later than the 1982 assessment year a land use classification system will replace the value stratification as assessors' records uniformly reflect properties according to their use.

(2) The stratification of the real property assessment rolls will include a parcel count of the taxable real property parcels less forest lands, current use properties in those counties where a separate study is conducted pursuant to WAC 458-53-110(4), and state assessed properties. For the real property ratio study, the assessment roll will be stratified for individual counties according to the following assessed value strata, including an upper limit stratum containing a representative number of parcels.

\$	0	-	\$	19,999
20,000	-		39,999	
40,000	-		59,999	
60,000	-		99,999	
100,000	-		199,999	
200,000	-		and over	

Upper value strata:

\$ 40,000-and over	—	Columbia, Ferry, Garfield, Pend Oreille, Wahkiakum.
\$ 60,000-and over	—	Asotin, Klickitat, Lincoln, Pacific, Skamania.
\$ 100,000-and over	—	Adams, Douglas, Kittitas, Mason, Okanogan, Stevens, Whitman.
\$ 200,000-and over	—	Benton, Chelan, Clallam, Cowlitz, Franklin, Grant, Grays Harbor, Island, Jefferson, Lewis, San Juan, Skagit, Thurston, Walla Walla.

The strata listed below will apply to those counties indicated.

\$	0	-	\$	19,999
20,000	-		39,999	
40,000	-		59,999	
60,000	-		99,999	
100,000	-		299,999	
300,000	-		and over	

Clark, Kitsap, Whatcom, Yakima

\$	0	-	\$	19,999
20,000	-		39,999	
40,000	-		59,999	
60,000	-		99,999	
100,000	-		199,999	
200,000	-		999,999	
1,000,000	-		and over	

King, Pierce, Snohomish, Spokane

(3) In counties with the ability to stratify by land use classification under standards set by the department, the assessed value strata will be \$0 and over for each type of property summarized in WAC 458-53-050, excluding forest lands, current use properties and state assessed properties.

(4) The stratification process will be performed by the department or by the county with data processing capability

adequate to meet the standards as provided by the department.

(5) A count of taxable real property parcels, less forest lands, current use properties in those counties where a separate study is conducted pursuant to WAC 458-53-110(4), and state assessed properties, in each value stratification is necessary for computation of the county ratio. Multiplying an average sample sales value, an average sample appraisal value, or an average assessed value by the number of taxable parcels in the county produces an estimated total market value or total estimated assessed value used in ratio computation.

(6) In the stratification of county taxable real property parcels to be used in the ratio study, the count of these parcels shall exclude designated and classified timber or forest lands, open space (current use) lands and improvements in those counties where a separate study is conducted pursuant to WAC 458-53-110(4). These are deleted from use in the sales study and will be considered separately and included in ratio determinations after computations of sales data have been completed.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 91-01-008, § 458-53-030, filed 12/6/90, effective 1/6/91. Statutory Authority: RCW 84.48.075 and 84.08.010(2). 89-09-021 (Order PT 89-5), § 458-53-030, filed 4/12/89. Statutory Authority: RCW 84.48.075. 86-21-004 (Order PT 86-6), § 458-53-030, filed 10/2/86; 84-14-039 (Order PT 84-2), § 458-53-030, filed 6/29/84; 79-11-029 (Order PT 79-3), § 458-53-030, filed 10/11/79. Formerly WAC 458-52-030.]

WAC 458-53-040 Land Use Code—Ratio study. (1) By not later than the 1982 assessment year, each county will institute a Land Use Code system which will identify each parcel according to its use. Upon establishment of such Land Use Code system the abstract of the assessment roll will be reported on the basis of the Land Use Code. As prescribed by this section, stratification of the assessment roll and computation of the indicated real property ratio will be based upon the Land Use Code abstract report as provided in these rules. Land use classifications may further be defined by assessed value stratification within Use Code designations.

(2) A two digit Land Use Code will be used in the ratio study as a standard by the department to identify the actual use of the land. The categories as selected are those published in the "Standard Land Use Coding Manual" by the Federal Bureau of Public Roads, January 1965, plus those use classifications as specified by Washington law. Counties may elect to institute a more detailed level of land use coding (i.e., the three digit or four digit level), but the two digit level provided herein is the minimum detail level necessary.

Residential

- 11 Household, single family units
- 12 Household, 2-4 units
- 13 Household, multi-units (5 or more)
- 14 Residential hotels - condominiums
- 15 Mobile home parks or courts
- 16 Hotels/motels
- 17 Institutional lodging
- 18 All other residential not elsewhere coded
- 19 Vacation and cabin

Manufacturing

- 21 Food and kindred products
- 22 Textile mill products
- 23 Apparel and other finished products made from fabrics, leather, and similar materials
- 24 Lumber and wood products (except furniture)
- 25 Furniture and fixtures
- 26 Paper and allied products
- 27 Printing and publishing
- 28 Chemicals
- 29 Petroleum refining and related industries
- 30 Rubber and miscellaneous plastic products
- 31 Leather and leather products
- 32 Stone, clay and glass products
- 33 Primary metal industries
- 34 Fabricated metal products
- 35 Professional scientific, and controlling instruments; photographic and optical goods; watches and clocks-manufacturing
- 36 Not presently assigned
- 37 Not presently assigned
- 38 Not presently assigned
- 39 Miscellaneous manufacturing

Transportation, communication, and utilities

- 41 Railroad/transit transportation
- 42 Motor vehicle transportation
- 43 Aircraft transportation
- 44 Marine craft transportation
- 45 Highway and street right of way
- 46 Automobile parking
- 47 Communication
- 48 Utilities
- 49 Other transportation, communication, and utilities not classified elsewhere

Trade

- 51 Wholesale trade
- 52 Retail trade - building materials, hardware, and farm equipment
- 53 Retail trade - general merchandise
- 54 Retail trade - food
- 55 Retail trade - automotive, marine craft, aircraft, and accessories
- 56 Retail trade - apparel and accessories
- 57 Retail trade - furniture, home furnishings and equipment
- 58 Retail trade - eating and drinking
- 59 Other retail trade

Services

- 61 Finance, insurance, and real estate services
- 62 Personal services
- 63 Business services
- 64 Repair services
- 65 Professional services
- 66 Contract construction services
- 67 Governmental services
- 68 Educational services
- 69 Miscellaneous services

Cultural, entertainment and recreational

- 71 Cultural activities and nature exhibitions
- 72 Public assembly
- 73 Amusements
- 74 Recreational activities
- 75 Resorts and group camps
- 76 Parks
- 77 Not presently assigned
- 78 Not presently assigned
- 79 Other cultural, entertainment, and recreational

Resource production and extraction

- 81 Agriculture (not classified under current use law)
- 82 Agriculture related activities
- 83 Agriculture classified under current use chapter 84.34 RCW
- 84 Fishing activities and related services
- 85 Mining activities and related services
- 86 Reforestation chapter 84.28 RCW
- 87 Classified forest land chapter 84.33 RCW
- 88 Designated forest land chapter 84.33 RCW
- 89 Other resource production

Undeveloped land and water areas

- 91 Undeveloped land
- 92 Noncommercial forest
- 93 Water areas
- 94 Open space land classified under chapter 84.34 RCW
- 95 Timberland classified under chapter 84.34 RCW
- 96 Not presently assigned
- 97 Not presently assigned
- 98 Not presently assigned
- 99 Other undeveloped land

[Statutory Authority: RCW 84.48.075. 79-11-029 (Order PT 79-3), § 458-53-040, filed 10/11/79.]

WAC 458-53-050 Land Use Code—Abstract report. Stratification of the assessment rolls and the annual abstract report for real property will be made on the following abstract categories:

Abstract Category	Land Use Code
1. Single family residence	11, 18, 19
2. Multiple family residence	12, 13, 14
3. Manufacturing	21 through 39
4. Commercial	15, 16, 17, 41-49, 51-59, 61-69, 71-79
5. Agricultural	81
6. Agricultural (current use law)	83
7. Forest lands (chapter 84.33 RCW)	87, 88
8. Reforestation (chapter 84.28 RCW)	86
9. Open space (current use law)	94
10. Timberland (current use law)	95
11. Other	82, 84, 85, 89, 91, 92, 93, 96-99

[Statutory Authority: RCW 84.48.075.79-11-029 (Order PT 79-3), § 458-53-050, filed 10/11/79. Formerly WAC 458-52-040.]

WAC 458-53-051 Ratio determination by land use class. For those counties with the ability to perform the stratification process by land use classification, subject to department approval, land use classes of property will be

used for the purpose of determining the indicated real property ratio. The classes of property shall follow the guidelines outlined in WAC 458-53-040. Each land use class as outlined in WAC 458-53-050 will use a value strata of \$0 and over.

Those counties who do not have the ability to prepare a ratio study by land use classification shall use value stratas as shown in WAC 458-53-030.

[Statutory Authority: RCW 84.48.075. 86-21-004 (Order PT 86-6), § 458-53-051, filed 10/2/86; 83-16-050 (Order PT 83-2), § 458-53-051, filed 8/1/83.]

WAC 458-53-070 Sales studies. (1) Real property sales data obtained from the real estate excise tax sales affidavits will form the basis of the sales study in each county. Validation of these sales as arms-length transactions will follow department criteria as provided in WAC 458-53-080.

(2) The department's sales study will be used as the basis for the real property ratios. In addition, the department will supplement the sales study results with appraisals in any assessed value stratum or Land Use Code classification where sales are judged to be insufficient to represent all properties in that stratum or land use class according to criteria set out in these rules.

(3) One percent will be deducted from the sales price shown on the affidavit on all valid real property sales as an adjustment for values transferred that are not assessable as real property.

(4) Sales not deemed representative for use in the study, as defined by the deletion list in WAC 458-53-080 will be eliminated from consideration in ratio computation. Sales used in the study will include only those which occurred over an eight month period between August 1 preceding January 1 of the assessment year and March 31 of the assessment year.

(5) Individual valid sales having a resultant assessment sales ratio under twenty-five percent or over one hundred seventy-five percent shall be excluded from consideration in the study: *Provided*, That this subsection shall not apply if the number of sales meeting this criteria exceeds ten percent of the total number of sales that would be used in the study subject to the provisions of this subsection: *Provided further*, That this subsection shall not apply to any type of property not properly valued and subject to the provisions of WAC 458-53-165.

[Statutory Authority: RCW 84.48.075 and 84.08.010(2). 89-09-021 (Order PT 89-5), § 458-53-070, filed 4/12/89. Statutory Authority: RCW 84.48.075. 83-16-050 (Order PT 83-2), § 458-53-070, filed 8/1/83; 82-08-061 (Order PT 82-3), § 458-53-070, filed 4/6/82; 79-11-029 (Order PT 79-3), § 458-53-070, filed 10/11/79. Formerly WAC 458-52-060.]

WAC 458-53-080 Sales samples. (1) The starting point for the sales studies will be a sampling of the real estate excise tax sales affidavits each month. Samples used in a current study will be sales during the last five months of the calendar year immediately preceding the current study assessment year and the first three months of the study assessment year.

A sampling plan will be developed by the department of revenue each year based on each county's previous year sales volume. The sampling will be conducted considering

sales transferring via warranty deed or contract instruments as initially subject for inclusion in the study. All sales represented by other instruments such as tax deeds, quitclaim deeds, etc., will be excluded from consideration. Sales of timber and current use lands classified under chapters 84.28, 84.33 and 84.34 RCW will also be excluded from consideration. There are numerous reasons why a warranty deed or contract sale may also be excluded from the study. Conditions such as a sale between relatives, a forced sale or a sale to a nonprofit organization, for example, are sufficient to mark these transactions as being other than "arms-length" and therefore, not a valid indicator of full "true and fair" value. A listing of such reasons and other conditions that will cause a sale to be excluded are shown on the deletion list contained in subsection (2) of this section.

(2) The following sales transactions are examples of sales to be excluded from the sales studies. Deviations from the numerical coding designations set forth in this example may be used as agreed to by individual counties and the department.

NUMERICAL

CODE	TYPE OF TRANSACTION
1	Family - a sale between relatives.
2	Transfers within a corporation by its affiliates or subsidiaries.
3	Administrator, guardian or executor of an estate.
4	Receiver or trustee in bankruptcy or equity.
5	Sheriff or bailee.
6	Tax deed.
7	Properties exempt from taxation (nonprofit, government, etc.).
8	Individual sales with assessment-to-sales ratios of less than twenty-five percent or greater than one hundred seventy-five percent except as provided in WAC 458-53-100(4), 458-53-070(5) and 458-53-165.
9	Quitclaim deed.
10	Gift deed, love and affection deed.
11	Seller's or purchaser's assignment of contract or deed - transfer of interest.
12	Correction deed.
13	Trade - exchange of property between same parties.
14	Deeds involving partial interest in property, such as one-third or one-half interest. (If transfer involves total interest i.e., one hundred percent of the property, sale is valid.)
15	Forced sales - transfers in lieu of imminent foreclosure, condemnation or liquidation.
16	Easement or right of way.
17	Deed in fulfillment of contract (on a current transaction, a contract with a fulfillment deed is a valid sale).
18	Property physically improved after sale.
19	Timber or forest land.
20	Platted within last year, bare lots only - with less than twenty percent sold.

- 21 Plottage - where an adjoining property is sold at a price significantly different than for property of a similar type when a larger unit is being assembled.
- 22 \$1,000 sale or under.
- 23 Lease - assignment, option, leasehold.
- 24 Designated open space (as of date of sale).
- 25 Change of use where rezoning takes place.
- 26 Current year segregations that have not been appraised.
- 27 Other - necessary to identify reason, i.e., inclusion of personal property not separately identified, liquor license, etc.

[Statutory Authority: RCW 84.48.075. 84-14-039 (Order PT 84-2), § 458-53-080, filed 6/29/84; 83-16-050 (Order PT 83-2), § 458-53-080, filed 8/1/83; 79-11-029 (Order PT 79-3), § 458-53-080, filed 10/11/79.]

WAC 458-53-090 Sales samples—Assessed valuation. (1) After the sampling of sales has been completed in Olympia, the assessed valuations of the properties remaining in the sample will be obtained by the department's sales analysts from official records retained by county officials. The assessed valuation total recorded will be the official figure as of January 1, the current ratio year assessment date. At this point, attention also will be given to factors which would indicate that a particular transaction is not suitable for inclusion in the study and any other factors which can be ascertained at this time are used to analyze whether sales may be deleted from the study as not being an indicator of full "true and fair" value.

The relationship of the assessed value for a real property parcel to a corresponding valid sale of this property within the time period established for the annual ratio sales study indicates the individual ratio for the property. The stratum averages for all such valid sales values and related assessed values in a county, when multiplied by the number of listings in the strata, determine the established real property totals on which the indicated real property ratio is based.

(2) In counties for which the department conducts the sales analysis and ratio studies a sales prelist will be provided to each assessor. These prelists will identify valid sale properties to be used in computation of each county's real property ratio. Department personnel will review these prelists with assessors or their staffs to verify the validity of the sale properties identified and the values indicated.

Properties designated in the department-approved county revaluation plan relative to the current ratio study year, and properties on which new construction may be completed during a ratio study year, will be included in that year's ratio study. For these properties the available current county assessed valuation will be used. Assessors have until August 31st of each assessment year to place new construction values on such properties and these values in a corresponding ratio study are included after the close of the assessors' rolls on May 31st.

(3) Certain properties have limited exemptions in assessed value granted by law to persons owning those properties (senior citizens exemptions). In computing a ratio relative to the sale of such property, the full assessed value for the property, before exemption, must be used to determine a proper assessment-to-sales relationship.

(4) Average sample real property assessed values and true and fair values for each value or land use stratum in a county will be derived from sales and appraisal study results. These average values, as provided in WAC 458-53-150, will aid in determining the county real property indicated ratio.

[Statutory Authority: RCW 84.48.075, 84-14-039 (Order PT 84-2), § 458-53-090, filed 6/29/84; 83-16-050 (Order PT 83-2), § 458-53-090, filed 8/1/83; 79-11-029 (Order PT 79-3), § 458-53-090, filed 10/11/79.]

WAC 458-53-100 Use of county sales studies. (1) If agreed upon by the department and the assessor, the department will use a county sales study, providing it is made according to the standards specified in these rules. Any such agreement shall provide that counties generating their own sales studies will use all or an agreed upon percentage of sales validated by department standards, and that the county shall furnish the department with data from sales deemed invalid as well as those deemed valid and give the reason for deeming invalid any particular sale. All such county studies shall be subject to department audit.

(2) The county-generated sales study will include the following:

(a) All agreed to real property transactions occurring in a county shall be used in the study and shall be for a period of eight consecutive months. Sales transactions used will include only those which occur between August 1 preceding January 1 of the assessment year and March 31 of the assessment year.

(b) Sales of properties identified on the published department of revenue deletion list (WAC 458-53-080) will be removed from the sales analysis study and separately will be produced on a data processing machine listing. This listing will display for each deleted sale an appropriate parcel identification, the sales price, the assessed value, and a numerical code or narrative designation of the reason for deletion of the property from the study. The numerical code used shall coincide with the department of revenue published deletion list (WAC 458-53-080) unless an agreement has been made with the department to use another code. Any numerical code 27 (miscellaneous) shall be accompanied by a narrative reason for deletion.

(c) Sales remaining in the sales analysis study will be stratified and printed by assessed value strata. Necessary data for each sale property remaining in the study will be:

(i) Excise tax sales affidavit number, parcel number, or other file identification number.

(ii) The sales price of the transaction, lowered one percent to ninety-nine percent of its original value.

(iii) The current assessed value on the assessors' rolls for the property described on the sales affidavit.

(iv) A computed ratio based on the percent that the assessed valuation is to the adjusted sales price figure.

(3) As soon as practicable following the close of the assessors' rolls on May 31st, and prior to July 1st, the county sales-assessment ratio study shall be submitted to the department of revenue. Adjustments for new construction will be made following the August 31st deadline for adding new construction values to the assessment rolls. This will allow time for departmental analysis, field review, and insertion of appraisal data, where appropriate, for preliminary ratio determination by the first Monday in August.

(4) Individual valid sales having a resultant assessment sales ratio under twenty-five percent or over one hundred seventy-five percent shall be excluded from consideration in the study: *Provided*, That this subsection shall not apply if the number of sales meeting this criteria exceeds ten percent of the total number of sales that would be used in the study subject to the provisions of this subsection: *Provided further*, That this subsection shall not apply to any type of property not properly valued and subject to the provisions of WAC 458-53-165.

[Statutory Authority: RCW 84.48.075 and 84.08.010(2), 89-09-021 (Order PT 89-5), § 458-53-100, filed 4/12/89. Statutory Authority: RCW 84.48.075, 84-14-039 (Order PT 84-2), § 458-53-100, filed 6/29/84; 83-16-050 (Order PT 83-2), § 458-53-100, filed 8/1/83; 82-08-061 (Order PT 82-3), § 458-53-100, filed 4/6/82; 79-11-029 (Order PT 79-3), § 458-53-100, filed 10/11/79.]

WAC 458-53-110 Property values used in the ratio study. The following property values will be included in the ratio study as provided in these rules:

(1) Values established by law or required to be determined by the department by law, but excluding property valued under chapters 84.08, 84.12, and 84.16 RCW.

(2) Values determined by county assessors according to the provisions of chapter 84.41 RCW.

(3) Values of land classified under chapter 84.33 RCW.

(4) Values of land and improvements classified under chapter 84.34 RCW will be included in determination of the indicated real property ratios as a separate element for counties whose current use land values are fifteen percent or greater in proportion to the total county locally assessed real property value.

(5) Advisory values supplied to the assessor by the department shall not be included in the ratio study unless the property falls within the sales study provided for in WAC 458-53-070 or 458-53-100 or is selected in the appraisal or audit study in accordance with WAC 458-53-130 and 458-53-140.

(6) Values of individual real properties which equal or exceed twenty percent of the total of all locally assessed real property.

(7) Values of individual assessments of personal property which equal or exceed twenty percent of the total of all locally assessed personal property.

(8) Before values in subsections (6) and (7) of this section can be included, a request in writing identifying the properties, must be submitted to the department prior to October 1st of each ratio study period.

[Statutory Authority: RCW 84.48.075 and 84.08.010(2), 89-09-021 (Order PT 89-5), § 458-53-110, filed 4/12/89. Statutory Authority: RCW 84.48.075, 87-12-029 (Order PT 87-5), § 458-53-110, filed 5/29/87; 86-21-004 (Order PT 86-6), § 458-53-110, filed 10/2/86; 84-14-039 (Order PT 84-2), § 458-53-110, filed 6/29/84; 81-22-036 (Order PT 81-15), § 458-53-110, filed 10/30/81; 79-11-029 (Order PT 79-3), § 458-53-110, filed 10/11/79.]

WAC 458-53-120 Review procedures for county studies. (1) Counties using data processing facilities to produce their own sales-assessment ratio study will be subject to a department of revenue review of ratio study elements and processes.

Department of revenue review procedures generally will monitor county adherence to WAC rules relating to the annual sales-assessment ratio study.

(2) Elements of the ratio study which may be checked and verified will include:

- (a) Property identification
- (b) Verification of properties reported on sales affidavits
- (c) Sales month identification and incidence in study
- (d) Deletion practices and identification
- (e) Computation procedures
- (f) Sales and assessment values
- (g) Verification of revaluation assessment practices

(3) Ratio study review findings will be discussed with individual county assessors upon completion of reviews pertaining to the ratio studies generated by their individual data processing facilities and staffs.

[Statutory Authority: RCW 84.48.075. 79-11-029 (Order PT 79-3), § 458-53-120, filed 10/11/79.]

WAC 458-53-130 Real property appraisal studies.

(1) The department will review a county's prior year's sales studies to determine which assessed value stratum or land use class may not have sufficient sales to produce a valid measurement of the level of assessment of the properties in that stratum or use class. Department appraisers then will appraise selected properties in those strata. The selection of properties to be appraised will be on a random basis. Random selection will use accepted statistical methods such as stated numerical sequence or random number tables to provide each parcel of real property in a universe of real property parcels an equal opportunity to be selected as a representative sample of that universe. The appraisal date will coincide with the assessment date of the ratio study.

(2) The appraisal study is started with a stratified sample of real property parcels. The stratification process will be done using either the assessed value of the real property roll broken into assessed value strata or land use codes as of the current January 1 assessment date. Land use stratification will be used exclusively in those counties possessing the necessary data processing capabilities. For counties not possessing data processing capabilities manual stratification by department of revenue staff involves the following: (a) Examination of each property listing and tallying it (by placing a mark in the appropriate value class or stratum) according to the magnitude of its assessed valuation, (b) random selection of properties from each class to be placed in a pool from which the ultimate selection of properties for appraisal will be made, and (c) recording on a take-off sheet, the assessed value and identification (account number, page, and line number, etc.) for the selected samples. The completed stratification provides a count of the listings on the roll by valuation class.

(3) The number of appraisals deemed necessary for each county value or land use stratum will be determined by application of statistical determination to the previous year county ratio study results.

Once the number of appraisals to be conducted in each value classification has been determined, the identification of each of the randomly selected appraisal samples to be used in the study will be obtained from county records. When the names, addresses, legal descriptions and other information

necessary to conduct the appraisals are known, letters will be forwarded to the taxpayers involved. These letters will notify them of the impending visit by an appraiser from the department of revenue property tax division.

(4) The actual physical appraisals conducted by department personnel use the same tools that are available to the county assessors (state manuals, private publications, etc.). The department's appraisers do not, however, use the so-called "mass appraisal" technique which is, of necessity, practiced by the various counties; but perform complete appraisals regardless of the amount of time required in order to assure that the most valid estimate of market value is reached.

Three approaches to value are considered; namely, cost, market and income. The cost approach utilizes an approved cost manual. When properly used, this manual gives an estimation of reproduction cost of the improvements to the property. The reproduction cost then is depreciated, taking into consideration all physical depreciation, functional and economic obsolescence. The end result is the depreciated value of the improvements. To this value is added the value of the land, resulting in the market value of the real property. The market approach uses sales of comparable properties for an indication of value. The income approach uses a capitalization rate developed from a comparison of typical income and the sale price of comparable properties.

This capitalization rate then is divided into the net income of the subject properties for a value indication of that property.

(5) When the appraisals in a county have been completed and reviewed by the supervisory staff of the department, they are reviewed individually with the assessor and his staff. At this time, changes may be made stemming from such factors as errors in the mathematical calculations, changes in use from the date of assessment to the date of the appraisal, the inclusion of items in the appraisal that are not included in the assessment (mainly personal property), etc. When the review process is completed and changes, if any are made, the appraisal data are considered as completely valid and ready for inclusion in the computation of the total real property ratio.

(6) When the department's sample appraisals fall within a county's current revaluation area and the assessor's appraisals, upon audit, are found to be a supportable estimate of market value, the department will accept the county's appraised values on those properties randomly selected for appraisal in the county.

(7) Department appraisals, required for assessment ratio determination, will be performed as indicated by department statistical determinations. Appraisals will complement sales to provide an adequate number of samples on which to base a ratio computation.

(8) When properties, classified by the department as industrial properties, are selected for inclusion in real or personal property ratio studies, the department's property audits and appraisals will be made on the total property, using department valuation procedures. Allocation of total industrial value for ratio purposes will be determined using each assessor's method of classifying real and personal property. Audit determinations for personal property will not include properties classified as real property by the assessor.

Appraisal determinations for real property will not include properties classified as personal property by the assessor.

[Statutory Authority: RCW 84.48.075. 86-21-004 (Order PT 86-6), § 458-53-130, filed 10/2/86; 84-14-039 (Order PT 84-2), § 458-53-130, filed 6/29/84; 79-11-029 (Order PT 79-3), § 458-53-130, filed 10/11/79. Formerly WAC 458-52-070.]

WAC 458-53-140 Personal property audit studies.

(1) Personal property audits will be performed on those accounts selected at random within each use class or assessed value stratum used in the ratio study for each county. These audits will be the basis of the county's personal property ratio as provided in WAC 458-53-160.

The department may use county audit results as ratio study audits when department accepted audit procedures are used on accounts selected as sample audits and audited by the county audit staff as of the assessment date used in the department's ratio study.

(2) The general procedures for audits are similar to those followed in the appraisal-assessment study in that sample audits of personal property accounts will be used as the basis for determining total assessed value and estimated total true and fair value of personal property. The relationship of the total estimated assessed value to the total estimated true and fair value of personal property will indicate the personal property ratio.

(a) Stratification of rolls - the program is initiated by stratification of the personal property roll in the counties being audited. From this process is obtained: A count of the number of listings in each use class or assessed valuation class, an estimation of the total assessed value in each class, and a pool of samples in each class from which the ultimate listings to be audited are selected. The strata or assessed valuation classes have different limits than those used in the appraisal-assessment study. A listing of assessed value strata normally used is as follows:

\$	0 -	\$	9,999
10,000 -		39,999	
40,000 -		79,999	
80,000 -		199,999	
200,000 -		499,999	
500,000 -		999,999	
1,000,000 -		1,999,999	
2,000,000 -		and over	

The largest valuation stratum designated for each county will depend on the number of large value accounts in the county.

In counties for which personal property high value strata, as listed above, do not number at least two hundred, an appropriate upper limit (\$40,000 and over, \$80,000 and over) which will accommodate at least two hundred personal property accounts, will be determined.

The stratification process will be performed by the department or by the county according to the standards as provided in this section.

(b) Personal property sample audit selection - the number of audits to be performed is derived in the same general manner as in the appraisal-assessment procedure in that statistical determination is applied to county previous year's ratio study results to obtain a representative number of samples on which to base a county ratio.

Stratification procedures which determine the number of personal property audits needed for the current ratio study begin in the summer months of the calendar year immediately preceding the currently designated ratio study year.

The audits are conducted through July of the designated ratio study year.

(3) The sample accounts to be audited in each use or valuation classification are randomly chosen using accepted statistical methods such as stated numerical sequence or random number tables to provide each personal property account in a universe of personal property accounts an equal opportunity to be selected as a representative sample of that universe. Names and addresses of taxpayers for these accounts and copies of assessment detail sheets are obtained from county records.

Letters of intent to audit are mailed to each taxpayer selected.

(4) The personal property audits which are conducted to derive the true and fair value figures are made from an examination of the taxpayer's books and records. In valuation procedures, the department's auditors utilize the manuals and schedules which the department prepares and distributes to all assessors. The technique is generally one of trending forward historical cost data and the application of depreciation percentages to arrive at current worth or value.

(5) When the audits have been completed in a county, they are reviewed with the assessor and his staff. The primary emphasis at this meeting is to make sure that the property covered by the audit is comparable to the property covered by the assessment. The completion of the review and adjustments, if any, mark the audit data as valid for use in the computation of the personal property portion of the total indicated ratio.

(6) In a manner similar to that used for real property, sample personal property assessed values and true and fair values for each stratum are derived from audit results, the weighted sums of which are the basis for determining the personal property indicated ratio.

(7) If omitted property is discovered in a county, the results of the department's audit shall be placed in the strata indicated by the audit.

[Statutory Authority: RCW 84.48.075. 84-14-039 (Order PT 84-2), § 458-53-140, filed 6/29/84; 79-11-029 (Order PT 79-3), § 458-53-140, filed 10/11/79. Formerly WAC 458-52-080.]

WAC 458-53-141 Personal property audit selection.

(1) Beginning with 1982 assessments and thereafter, each county shall classify and code every personal property account based upon the following classification codes:

- (a) Agriculture, fishing, and forestry (not logging)
- (b) Mining, quarrying, and contract construction
- (c) Manufacturing
- (d) Retail - wholesale
- (e) Finance, insurance, real estate and services
- (f) Transportation, communication, utilities, improvements on exempt land, and all other not classified

(2) Those accounts which contain property of more than one classification shall be coded based upon which class has the greatest value.

(3) For those counties with the ability to perform the stratification process by use classification, subject to department approval, use classes of property will be used for the purpose of determining the indicated personal property ratio. The classes of property shall follow the guidelines outlined in subsection (1) of this section and will be separated into value strata for the individual classification codes. The value strata may be subject to different parameters than normally used.

(4) Those counties who do not have the ability to prepare a ratio study by use classification shall use value stratas as shown in WAC 458-53-140.

[Statutory Authority: RCW 84.48.075. 87-12-029 (Order PT 87-5), § 458-53-141, filed 5/29/87; 84-14-039 (Order PT 84-2), § 458-53-141, filed 6/29/84; 81-22-036 (Order PT 81-15), § 458-53-141, filed 10/30/81.]

WAC 458-53-142 Personal property audit studies—Date of valuation. Commencing in 1991 and thereafter, the indicated personal property ratio shall be based upon the assessment level of the preceding year e.g., the 1991 indicated ratio shall be based upon 1990 values.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 91-01-008, § 458-53-142, filed 12/6/90, effective 1/6/91. Statutory Authority: RCW 84.48.075. 82-24-031 (Order PT 82-9), § 458-53-142, filed 11/23/82.]

WAC 458-53-150 Indicated real property ratio—Computation. (1) For each real property value or land use stratum within a county average sample assessed value and average sample true and fair value will be determined from the results of selected sales and appraisal studies. Average sample assessed value and average sample true and fair value for each stratum will be multiplied by the total number of real property parcels in each corresponding stratum to derive an estimated total assessed value and a total estimated true and fair value for each stratum. Stratum estimated totals will be added to derive county estimated total assessed value and county estimated total true and fair value. When the ratio relationship between these two estimated values is applied to the actual county assessed value, as provided by the assessor in his current assessors' certificate of assessment rolls to the county board of equalization, and forest land and current use values in those counties where a separate study

is conducted pursuant to WAC 458-53-110(4) are added to the actual assessed value and ratio-related market value, the totals will represent the county real property indicated ratio.

(2) Valid arms-length sales occurring in each county will be the basis for determining individual stratum ratios unless a lack of samples for any stratum requires the addition of department appraisals. In all strata where both sales and appraisal samples are present, assessment and market values for all valid appraisal samples will be combined with assessment and market values for all valid sales samples to derive a stratum ratio.

(3) Department current use appraisals will be the basis for the assessment-to-appraisal values from which current use ratios are determined. The current use ratio shall be the mean of the individual ratios.

(4) Values from each county's assessor's certificate of assessment rolls to county board of equalization will be used in the computation of each county's indicated real property ratio except as provided in subsection (6) of this section.

(a) The county preliminary real property ratio, calculated from estimated totals of county sales and appraisal study results, will be applied to each county's certificate listing of total real property assessed value (excluding those properties identified in WAC 458-53-110 (1), (3), (4), and (6) and 458-53-165) to determine an estimated true and fair value which relates to the actual assessed real property value of a county.

(b) To the actual real property assessed value and ratio-related true and fair value totals for a county (a) of this subsection) are added certificate assessed values of those properties identified in WAC 458-53-110 (1), (3), (4), and (6) and 458-53-165, and related true and fair values calculated by the ratio relationships determined for those same properties.

(c) The sum of the total real property assessed and true and fair forest land assessed and true and fair values, as determined by (a) and (b) of this subsection shall be the basis for a county's indicated real property ratio. The sum total of assessed values will be divided by the sum total of true and fair values to derive the ratio.

(5) The following illustration, using simulated values and ratios, indicates simplified ratio study computation procedures for real property.

Step 1 - Determination of Average Sample Values

Stratum	(1)	(2)	(3)	(4)	(5)
	Number of Samples	Total Assessed Value of Samples	Average Assessed Value of Samples (Col. 2 ÷ Col. 1)	Total Market Value of Samples	Average Market Value of Samples (Col. 4 ÷ Col. 1)
\$ 0 - 19,999	10	\$120,000	\$12,000	\$160,000	\$ 16,000
20,000 - 39,999	20	520,000	26,000	600,000	30,000
Over 39,999	5	400,000	80,000	500,000	100,000

Average values for real property sales samples, average real property appraisal samples, and average personal property audit samples all are determined in the same manner.

Step 2 - Weighting of Average Sample Values

Stratum	(1) Total Property Listings	(2) Average Sample Assessed Value	(3) Total Estimated Assessed Value (Col. 2 × Col. 1)	(4) Average Sample Market Value	(5) Total Estimated Market Value (Col. 4 × Col. 1)	(6) Ratio (Col. 3 ÷ Col. 5)
\$ 0 - 19,999	105	\$12,000	\$ 1,260,000	\$ 16,000	\$ 1,680,000	.7500
20,000 - 39,999	211	26,000	5,486,000	30,000	6,330,000	.8667
Over 39,999	51	80,000	4,080,000	100,000	5,100,000	.8000
Outriders	2		2,000,000		2,403,600	.8321
			12,826,000		15,513,600	.8268
						82.68%

Sample study weighted ratio

Average values for real property sales samples, average real property appraisal samples, and average personal property audit samples all are weighted in the same manner.

Step 3
**Application of Sample Weighted Relationship to Actual Real
 Property Assessed Value and Additional Values as Indicated.**

(1)	(2)	(3)
Actual County Real Property Assessed Value (From Assessor's Certificate)	Determined Assessment to Market Ratio	County Real Property Market Value Related to Actual Assessed Value (Col. 1 ÷ Col. 2)
\$ 14,108,600	.8268 (from Step 2)	\$ 17,064,103
Add:		
Timber and Forest Land	1,520,000	1,520,000
Open Space	400,000	444,444
Open Space Improvements	100,000	105,263
Mobile Homes	50,000	50,505
Other (WAC 458-53-110(6) or WAC 458-53-165 Properties)	100,000	100,000
Totals	\$16,278,600	\$19,284,315 = .844
County Indicated Real Property Ratio		84.4%

(6) If a copy of the certification of current values is not received from an assessor in a timely manner for inclusion in ratio computation, the assessors abstract of assessed values from the previous year will be used as the information source for ratio computation.

(7) A copy of each county's certification of values to the county board of equalization (FORM REV 64-0051) will be filed with the department on or before the second Monday in July. The certification form will be properly completed with all required information.

(8) Valid ratio study individual assessed or true and fair values which either exceed or fall below the mean assessed or true and fair value by more than three times the average deviation of other values in a stratum, will be classified as "outriders" and shall be considered separately in average sample computation. Outriders are so treated to prevent the application of excess weight by nontypical values in determining average sample values and resulting total estimated assessed and total estimated true and fair values.

(9) The department may consider the relationship between the market value trends of real property and the assessed value increases or decreases made by the assessor

during the year in each county as validity checks of the result of the sales and appraisal studies. The director may authorize modification of the results of the sales and appraisal study in any county where there is a demonstrable showing to the director that the sales and appraisal study is inconclusive or does not result in a reasonable and factual determination of the relationship of assessed values to true and fair value such that a significant variation results from the rates of the previous year not deemed by the director comparable with general trends in property values. Such modification shall be made only after notice to all assessors that information other than the sales and appraisal studies are being considered, and opportunity for a meeting has been made available for the director (or the director of property tax) and a representative committee authorized and appointed by the assessors to review the results of the sales and appraisal study and the proposal to modify the study results.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 91-01-008, § 458-53-150, filed 12/6/90, effective 1/6/91. Statutory Authority: RCW 84.48.075 and 84.08.010(2). 89-09-021 (Order PT 89-5), § 458-53-150, filed 4/12/89. Statutory Authority: RCW 84.48.075. 86-21-004 (Order PT 86-6), § 458-53-150, filed 10/2/86; 84-14-039 (Order PT 84-2), § 458-53-150, filed

6/29/84; 82-08-061 (Order PT 82-3), § 458-53-150, filed 4/6/82; 81-04-056 (Order PT 81-5), § 458-53-150, filed 2/4/81; 79-11-029 (Order PT 79-3), § 458-53-150, filed 10/11/79. Formerly WAC 458-52-090.]

WAC 458-53-160 Indicated personal property ratio—Computation. (1) For each personal property assessed value stratum, excluding properties identified in WAC 458-53-110(7) and 458-53-165 and average sample assessed value and an average sample true and fair value will be determined from the results of selected audit studies. These average stratum sample values will be multiplied by the corresponding number of personal property accounts in each stratum to derive a stratum estimated total assessed value and a stratum estimated total true and fair value. These estimated stratum total estimated assessed and true and fair values will be added to provide a county total estimated assessed value and a county total estimated true and fair value.

(2) To the actual personal property assessed value and ratio-related true and fair value totals for a county (subsection (1) of this section) are added assessed values of those properties identified in WAC 458-53-110(7) and 458-53-165 and related true and fair values calculated by the ratio relationships determined for those same properties.

(3) The sum of the total personal property assessed and true and fair values as determined by subsections (1) and (2) of this section shall be the basis for the county's indicated personal property ratio. The sum total of assessed values will be divided by the sum total of true and fair values to derive the ratio. Values from each county's *Assessor's Certificate of Assessment Rolls to County Board of Equalization* will be used in the computation of each county's indicated personal property ratio except as provided in WAC 458-53-150(6).

(4) The following illustration, using simulated values and ratios, indicates simplified ratio study computation procedures for personal property.

Step 1 - Determination of Average Sample Values

Stratum	(1) Number of Samples	(2) Total Assessed Value of Samples	(3) Average Assessed of Samples (Col. 2 ÷ Col. 1)	(4) Total Market Value of Samples	(5) Average Market Value of Samples (Col. 4 ÷ Col. 1)
\$ 0 - 9,999	15	\$ 75,000	\$ 5,000	\$100,000	\$ 6,667
10,000 - 39,999	20	400,000	20,000	500,000	25,000
Over 39,999	10	500,000	50,000	750,000	75,000

Step 2 - Weighting of Average Sample Values

Stratum	(1) Total Property Listings	(2) Average Sample Assessed Value	(3) Total Estimated Assessed Value (Col. 2 × Col. 1)	(4) Average Sample Market Value	(5) Total Estimated Market Value (Col. 4 × Col. 1)	(6) Ratio (Col. 3 ÷ Col. 5)
\$ 0 - 9,999	125	\$ 5,000	\$ 625,000	\$ 6,667	\$ 833,375	.7500
10,000 - 39,999	216	20,000	4,320,000	25,000	5,400,000	.8000
Over 39,999	79	50,000	3,950,000	75,000	5,925,000	.6667
Outriders	2		1,000,000		1,366,775	.7316
			\$9,895,000		13,525,150	73.16
						73.16%

Sample study weighted ratio

Step 3

Application of Sample Weighted Relationship to Actual Real Property Assessed Value and Additional Values as Indicated.

(1)	(2)	(3)
Actual County Assessed Value Personal Property (From Assessor's Certificate)	Determined Assessment to Market Ratio	County Market Value Related to Actual Assessed Value (Col. 1 ÷ Col. 2)
\$ 9,100,000	.7316 (from Step 2)	\$ 12,438,491
Add:		
Other (WAC 458-53-110(7) or 458-53-165 properties) 100,000	1.000	100,000
Totals \$ 9,200,000	÷	\$12,538,491 = .7337
County Indicated Personal Property Ratio		73.37%

(5) Individual assessed or true and fair personal property values, classified as "outriders" according to WAC 458-53-150(8), will be used in personal property ratio computation in a manner similar to that used for real property outriders in real property ratio computation.

[Statutory Authority: RCW 84.48.075. 87-12-029 (Order PT 87-5), § 458-53-160, filed 5/29/87; 86-21-004 (Order PT 86-6), § 458-53-160, filed 10/2/86; 84-14-039 (Order PT 84-2), § 458-53-160, filed 6/29/84; 79-11-029 (Order PT 79-3), § 458-53-160, filed 10/11/79. Formerly WAC 458-52-100.]

WAC 458-53-163 Mobile homes—Use in study. (1) Sales and appraisals of mobile homes, meeting the definition of real property contained in RCW 84.04.090, shall be included in the real property ratio study in the same manner as other real property in WAC 458-53-070.

(2) Sales of mobile homes which meet the criteria of the sales exclusion list contained in WAC 458-53-080(2) shall be excluded from the mobile home study.

[Statutory Authority: RCW 84.48.075 and 84.08.010(2). 89-09-021 (Order PT 89-5), § 458-53-163, filed 4/12/89. Statutory Authority: RCW 84.48.075. 87-12-029 (Order PT 87-5), § 458-53-163, filed 5/29/87; 84-14-039 (Order PT 84-2), § 458-53-163, filed 6/29/84.]

WAC 458-53-165 Property not properly valued—Use in study. The department shall examine the procedures used by the assessor to assess real and personal property. If any examination by the department discloses other than market value is being listed on the assessment rolls of the county for a particular type of property and, after due notification by the department, is not corrected, the department shall adjust the ratio of that type of property, which adjustment shall be used in determining the counties indicated personal or real property ratios.

When a particular type of property is found to be at other than market value, that type property shall be separated from the other properties in the computation of the ratio. The department shall develop the total assessed value and total market value for that type of property, and it shall be included in the ratio as provided in WAC 458-53-150 (4)(b) and 458-53-160(2).

[Statutory Authority: RCW 84.48.075. 84-14-039 (Order PT 84-2), § 458-53-165, filed 6/29/84; 83-16-050 (Order PT 83-2), § 458-53-165, filed 8/1/83.]

WAC 458-53-180 Use of indicated ratios. The indicated ratios will be used by the department as follows:

The value of properties assessed by the state under chapters 84.08, 84.12, and 84.16 RCW, will be certified to the county assessor using:

- (1) The indicated personal property ratio for personal property; and
- (2) The indicated real property ratio for real property.

[Statutory Authority: RCW 84.48.075. 84-14-039 (Order PT 84-2), § 458-53-180, filed 6/29/84; 79-11-029 (Order PT 79-3), § 458-53-180, filed 10/11/79. Formerly WAC 458-52-120.]

WAC 458-53-200 Certification of county preliminary and indicated ratios—Review. (1) The department will annually determine the real property and personal property preliminary ratios for each county and will certify these ratios to the county assessor on or before the first Monday in August.

(2) The department shall review the county's preliminary ratio with the assessor, a landowner, or an intercounty public utility or private car company, if requested to do so by said county, person, or company, between the first and third Mondays of August, and may make any changes indicated by such review: *Provided*, That if the department does not certify the preliminary ratios as required by subsection (1) of this section, the review period shall extend for two weeks from the date of certification.

(3) Prior to equalization of assessments pursuant to RCW 84.48.080 and after the third Monday of August, the department shall certify to each county assessor the indicated real and personal property ratios for that county.

[Statutory Authority: RCW 84.48.075. 84-14-039 (Order PT 84-2), § 458-53-200, filed 6/29/84; 79-11-029 (Order PT 79-3), § 458-53-200, filed 10/11/79. Formerly WAC 458-52-140.]

WAC 458-53-210 Appeals. If an assessor, landowner, or owner of an intercounty utility or private car company

has reviewed the ratio study as provided in WAC 458-53-200, that person or company may appeal the department's indicated ratio determination, as certified for that county, to the state board of tax appeals pursuant to RCW 82.03.130 (5)(a). The appeal to the state board of tax appeals must be filed not later than fifteen days after the date of certification.

[Statutory Authority: RCW 84.48.075. 84-14-039 (Order PT 84-2), § 458-53-210, filed 6/29/84; 79-11-029 (Order PT 79-3), § 458-53-210, filed 10/11/79. Formerly WAC 458-52-150.]

Chapter 458-56 WAC RULES RELATING TO GIFT TAXES

WAC

458-56-010	Scope of rules.
458-56-020	Imposition of tax.
458-56-030	Requirement of return.
458-56-040	Joint accounts and trusts.
458-56-050	Annual exclusion.
458-56-060	Time and place for filing return.
458-56-070	Gifts made during prior calendar years.
458-56-080	Gross gifts made during calendar year.
458-56-090	Description of property.
458-56-100	Valuation of property.
458-56-110	Exempt gifts.
458-56-120	Specific exemptions.
458-56-130	Community property and separate property.
458-56-140	(Reserved.)
458-56-150	Penalties.
458-56-160	Payment of tax.
458-56-170	Gifts taxable as inheritance.
458-56-180	Gift tax returns.
458-56-190	Liens.
458-56-200	Valuation of securities and accounts.
458-56-210	Federal audits.
458-56-220	Receipts.
458-56-230	Appeals and appellate procedure.

WAC 458-56-010 Scope of rules. RCW 83.56.100 and 83.56.310 authorizes the department of revenue to prescribe and publish all needful rules and regulations for the enforcement of chapter 83.56 RCW - Gift taxes, as applied to those gifts made subsequent to March 20, 1941.

[Order IT-75-1, § 458-56-010, filed 11/21/75.]

WAC 458-56-020 Imposition of tax. The statute imposes no tax upon property, but subjects to tax transfers of property by gift. The tax is not limited in its imposition to transfers of property without consideration, which in common law are termed gifts, but extends to sales and exchanges for less than an adequate and full consideration in money or money's worth. The statute taxes all transfers of property made during each calendar year to the extent that they are donative in character and exceed the exemptions, exclusions and deductions authorized. The tax applies to all individuals, whether resident or nonresident. In the case of residents of Washington, the tax applies to transfers of any property, excepting real or personal property permanently located outside the state, and in the case of nonresidents, to transfers of property situated within this state.

[Order IT-75-1, § 458-56-020, filed 11/21/75.]

WAC 458-56-030 Requirement of return. Any resident of the state of Washington who makes any transfer

by gift of any property whatsoever, except real and tangible personal property permanently located outside this state, and any nonresident of the state who makes a transfer by gift of any real or tangible personal property situated in this state within any calendar year must file a gift tax return with the department of revenue if such gift to any one donee exceeds \$3,000 in value. All persons are required to file returns if they make any gift of a future interest in property regardless of its value, and no annual exclusion is allowed.

Where the donor dies before filing his return, the executor or administrator of his estate must file the return and pay the tax thereon to the state treasurer. The return is required even though a gift tax may not be due.

Where there is a gift of separate property to which the spouse of the donor has consented, two separate gift tax returns are required.

[Order IT-75-1, § 458-56-030, filed 11/21/75.]

WAC 458-56-040 Joint accounts and trusts. Gifts involving life insurance, joint tenancies, tenancies in common, joint bank accounts, trusts, and contracts are to be valued in the manner prescribed in these rules. When a gift is made to a trust or in trust, a copy of the trust instrument or the contract must be furnished when the return is filed.

[Order IT-75-1, § 458-56-040, filed 11/21/75.]

WAC 458-56-050 Annual exclusion. The first \$3,000 gift to any one donee during the calendar year is excluded from the gross gifts for the year. Gifts made during the calendar year to any one person of \$3,000 or less should not be returned unless the gifts consisted of future interests in property. Gifts of future interests in property are required to be included in the total gifts, regardless of their value, and no part of the value is excluded from the gross gifts regardless of the number or relationship of the donees. Any estate or interests limited to commence in possession or enjoyment at a future date is a future interest. For instance, when a donor transfers the title to real estate and retains a life estate therein, the gift is a future interest gift.

[Order IT-75-1, § 458-56-050, filed 11/21/75.]

WAC 458-56-060 Time and place for filing return. The gift tax return must be filed with the department of revenue on or before the fifteenth day of April following the close of the calendar year in which gifts are made. The return should not be filed prior to the close of the calendar year.

[Order IT-75-1, § 458-56-060, filed 11/21/75.]

WAC 458-56-070 Gifts made during prior calendar years. The aggregate net gifts for all years prior to the present net gift must be entered on the gift tax return and added to the present net gift. The gift tax is an accumulative tax and the aggregate total of all net gifts must be considered on each gift tax return. "Net gift" is the sum remaining after the deduction of the allowable annual exclusion from the gross gift.

[Order IT-75-1, § 458-56-070, filed 11/21/75.]

WAC 458-56-080 Gross gifts made during calendar year. Every gross gift made during the calendar year in excess of \$3,000 should be entered on the return. A gift of a future interest should be included regardless of its value. The gift should be entered, whether in trust or otherwise, whether direct or indirect, and whether the property is real or personal, tangible or intangible. A taxable gift may be effected by the declaration of a trust, by the foregoing of a debt, by the assignment of a judgment, by the assignment of the benefits of a contract of insurance, or the naming of the beneficiary thereof, or the transfer of cash, certificates of deposit, or federal, state, or municipal bonds. Inasmuch as the tax is imposed upon gifts indirectly made, all transactions whereby property or property rights or interests are donatively passed or conferred upon another, regardless of the means or device employed, constitute gifts subject to tax. Examples of transactions resulting in taxable gifts if entered into without an adequate and full consideration in money or money's worth are as follows:

(a) The transfer of property by a corporation without an adequate and full consideration in money or money's worth to B is a gift from the stockholders of the corporation to B.

(b) The transfer of property to B where there is imposed upon B the obligation of paying a commensurate annuity to C would constitute a gift to C.

(c) The payment of money or the transfer of property by A to B in consideration whereof B is to render a service to C would constitute a gift to C or both to B and C, depending on whether the services to be rendered by B to C was or was not an adequate and full consideration in money or money's worth for that which was received by B.

(d) Where A creates a joint bank account for himself and B, there is a gift to B when he draws upon the account for his own benefit to the extent of the amount drawn.

(e) The irrevocable assignment of a life insurance policy, or the naming of a beneficiary without retaining the unlimited right to change the beneficiary or the unconditional right to the cash or surrender value, or the relinquishment or assignment of the right to the cash or surrender value to a beneficiary already named, or to any other person constitutes a gift in the amount of the net cash or surrender value, if any, plus the prepaid insurance premium adjusted to the date of the gift.

(f) Where premiums on a life insurance policy are paid by the insured who has none of the legal incidents of ownership in the policy, and the beneficiary is other than the insured's estate, each premium paid is a gift in the amount thereof to the beneficiary.

(g) When separate property of one spouse is in any way converted into community property of both spouses, there is a gift of one-half the value of the property from the spouse owning the separate property, to the other spouse.

(h) Where property is transferred in trust without an adequate and full consideration in money or money's worth and without reserving the power of revocation, the transfer is a gift, but where the transferor or donor has the power to revest in himself title to the property transferred in trust, the transfer does not constitute a gift within the meaning of the statute. The relinquishment or termination of the power to revest in the donor the title to property transferred in trust, is a gift of such property at the time of the relinquishment or termination of the power without an adequate and full

consideration of money or money's worth, except where the power is terminated by the donor's death. The payment of income to the beneficiary of a trust other than the donor is a gift by the trustor of such income where the trustor has the power to revest in himself title to the trust property. These provisions are applicable to both where a donor has the power alone to revest in himself title to the property transferred in trust and where he has such power in conjunction with any person not having a substantial adverse interest in the disposition of the trust property or the income therefrom. Where the power to revest in the donor property transferred in trust reposes in the donor in conjunction with any other person having a substantial adverse interest in the property or income therefrom or where the power is in such other person alone, the transfer is subject to tax as though no such power existed.

(i) Where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration constitutes a gift within the meaning of the statute. If the consideration is not reducible to a money value as in the case of love and affection, promise of marriage, etc., it is to be wholly disregarded and the entire value of the property transferred constitutes the amount of the gift.

(j) If the income from a trust is required to be paid regularly to the beneficiary for a specified period of time, after which the corpus shall be distributed to him, the present value of the income during the specified period computed at the rate of three and one-half percent per annum is a gift of a present interest, and the value of the remainder is a future interest gift. If the trustee is empowered to accumulate and distribute the income at its discretion, the entire gift is that of a future interest. The annual exclusion of \$3,000 is not available when the gift is that of a future interest.

[Order IT-75-1, § 458-56-080, filed 11/21/75.]

WAC 458-56-090 Description of property. The property comprising the gifts made during the calendar year must be so described on the return, or by appropriate schedules attached thereto, that the subject matter of the gift may be readily identified. Thus, a legal description must be given of each parcel of real estate and, if located in a city, the name of street and number, its area, and, if improved, a short statement of the character of the improvements. The assessed valuation for the parcel must also be given. Description of bonds should include the number transferred, principal amount, name of obligor, date of maturity, rate of interest, date or dates on which interest is payable, series number where there is more than one issue, the exchange upon which listed or the principal business office of the corporation, if unlisted. Description of stocks should include number of shares, whether common or preferred, and, if preferred, what issue thereof, par value, quotation at which returned, exact name of corporation, and, if stock is unlisted, the location of the principal business office and state in which incorporated and the date of incorporation. If a listed security, state principal exchange upon which sold. Description of notes should include name of maker, date on which given, date of maturity, amount of principal, amount of

principal unpaid, rate of interest and whether simple or compound, date to which interest has been paid, and amount of unpaid interest. Description of land contracts transferred should include name of vendee, date of contract, description of property, sale price, initial payment, amounts of installment payments, unpaid balance of principal and accrued interest, interest rate, and date prior to gift to which interest has been paid. Description of life insurance should give the name of the insurer, the amount of the premium, number of policy, face value, and amount paid or payable thereunder. In describing an annuity the name and address of the grantor of the annuity should be given, or if payable out of a trust or other funds such a description as will identify it. If the annuity is payable for a term of years the duration of the term and the date on which it began should be given, and if payable for the life of any person, the date of birth of such person should be stated. Judgments should be described by giving the title of the cause and the name of the court in which rendered, date of judgment, name and address of judgment debtor, amount of judgment, rate of interest to which subject and whether any payments have been made thereon, and, if so, when and in what amounts.

[Order IT-75-1, § 458-56-090, filed 11/21/75.]

WAC 458-56-100 Valuation of property. If the gift is made in property other than money, it shall be valued at its true and fair value in money as of the date of the gift. Where the gift is in the form of an annuity, life, or term estate, it is to be valued in accordance with rules, methods, and standards of mortality set forth in tables furnished by the insurance commissioner, computed at four percent for those gifts made prior to June 11, 1953, and three and one-half percent for those gifts made after June 10, 1953. If the gift is in the form of a remainder or reversionary interest, it is to be valued by subtracting from the total value of the property the value of the limited or term estate.

[Order IT-75-1, § 458-56-100, filed 11/21/75.]

WAC 458-56-110 Exempt gifts. Gifts to benevolent, charitable, educational, or religious institutions or organizations organized for such purposes are not subject to taxation. The fair market value of such gifts and a description thereof must be entered on the gift tax return.

A gift to a corporate entity or organization not solely engaged in exempt activities may be exempt only if the gift is specifically directed to be used only for a charitable or benevolent purpose. A gift for the benefit of the members of an organization, in any degree, will have the effect of a disallowance of the charitable exemption.

[Order IT-75-1, § 458-56-110, filed 11/21/75.]

WAC 458-56-120 Specific exemptions. There may be allowed from the total amount of gifts made by any donor a specific exemption of \$10,000 for gifts to Class A donees and of \$1,000 for gifts to Class B donees. The provisions permitting the allowance of a \$10,000 Class A exemption and a \$1,000 Class B exemption are so limited that such exemptions are allowed a donor but once, regardless of the number of calendar years in which a donor makes gifts, and regardless of the number of donees in the class. The

exemption is allowed for gifts to the class as a whole and not as to gifts to individual donees.

[Order IT-75-1, § 458-56-120, filed 11/21/75.]

WAC 458-56-130 Community property and separate property. Where there is a transfer of community property, real or personal, tangible or intangible, to a person other than a member of the community, two separate gift tax returns shall be made, one by each spouse and each for one-half of the whole value of the property transferred.

Whenever a gift of separate property is made by a member of a community to third persons and the spouse of the donor has consented to such gift on the donor's return, a gift tax return must be made by the consenting spouse as to one-half of the fair market value of the gift. The other half will be reported on the tax return of the donor. Joint returns by husband and wife are not allowed.

[Order IT-75-1, § 458-56-130, filed 11/21/75.]

WAC 458-56-140 (Reserved.)

WAC 458-56-150 Penalties. (1) In the case of failure to make and file a return required by the Gift Tax Act of 1941 within the time prescribed, 25 percent of the amount of the tax is added to the tax unless the return is later filed and failure to file the return within the time prescribed is shown to the satisfaction of the department of revenue to be due to reasonable cause and not to wilful neglect.

(2) Every person, whether as principal, agent or accessory, who misrepresents or conceals facts relating to the ascertainment, determination or collection of gift taxes shall be guilty of a gross misdemeanor and subject to the penalties therefor.

(3) The following are acceptable reasonable causes for failure to file, provided that affidavits in support thereof are furnished:

(a) When the delay was caused by the death or serious illness of the donor or any member of his immediate family,

(b) When the delay was caused by unavoidable and unforeseen absence of the donor from the state,

(c) When the donor, in good faith, relied upon the advice of a reputable attorney or accountant, who was skilled in tax matters, and who advised the taxpayer that the transfer was not a taxable gift.

The following are not acceptable reasons to avoid the penalty:

(d) When the donor furnished his attorney or accountant with the necessary information to prepare a return and relied upon him to do so,

(e) When the donor was ill but was able to and did file an income tax return which was due at the same time,

(f) When the donor was ignorant of the law and was not aware that a return was due.

[Order IT-75-1, § 458-56-150, filed 11/21/75.]

WAC 458-56-160 Payment of tax. The tax must be paid to the department of revenue by the donor on or before the 15th day of April following the close of the calendar year in which the gifts were made. The tax may be paid at any time prior to the 15th day of April following the close

of the calendar year in which the gifts were made. The department may, at the request in writing by the donor, extend the time of the payment of the tax for a period not to exceed 6 months from the due date, subject, however to the payment of interest on the tax due at the statutory rate. Any application for an extension of time for the payment of tax must set forth the specific reason for desiring the extension. Interest during the period as extended cannot be waived.

[Order IT-75-1, § 458-56-160, filed 11/21/75.]

WAC 458-56-170 Gifts taxable as inheritance. If a gift tax has been paid on any gift and thereafter, upon the death of the donor, a Washington inheritance tax is imposed on the same gift, there shall be credited against the inheritance tax as so imposed an amount equal to the gift tax paid on such gift. The amount of the gift tax paid shall be included as an asset of the estate of the donor.

[Order IT-75-1, § 458-56-170, filed 11/21/75.]

WAC 458-56-180 Gift tax returns. (1) All gift tax returns must be made on the forms provided by the department. Upon request, an adequate supply thereof will be furnished to taxpayers and preparers. Photocopies and/or copies of the return are not acceptable and any such copies will be returned to the sender for completion of the approved return.

(2) Any person preparing the gift tax return for a taxpayer must endorse the return by signing his name thereon identifying his relationship to the donor (i.e., attorney, CPA, LPA, etc.), and supplying his address and phone number.

[Order IT-75-1, § 458-56-180, filed 11/21/75.]

WAC 458-56-190 Liens. (1) A certificate of lien may be foreclosed following the procedures allowed by law for the foreclosing of a real estate mortgage.

(2) When the tax and interest have been fully paid upon which a certificate of lien has been filed, the department of revenue, upon request, will issue a certificate of release of lien. A partial release may be issued upon partial payment of tax and interest.

[Order IT-75-1, § 458-56-190, filed 11/21/75.]

WAC 458-56-200 Valuation of securities and accounts. (1) The value of shares of closely owned stock and other interests in business shall be determined by all relevant factors such as value of the assets, earning capacity, and the outlook of the particular business and of its industry in general. Relevant factors that may be considered in the valuation of closely held stock could include the period of time that the issuing corporation has been in existence and its position in the trade, the nature of the corporation, the operating history of the corporation and particularly its earnings over a period of time, the balance sheet of the corporation, the standard of earnings maintained by concerns engaged in similar lines of endeavor, dividend-paying capacity, the prices paid on private sales of the shares to persons who were in a position to know their value, future earning prospects, and the management and personnel. The market price of corporations engaged in a similar business

whose shares are traded over the counter or on a stock exchange may also be considered.

When such securities are the subject matter of the gift, there must be furnished with the return the following:

(a) A balance sheet closest to the date of the gift, together with notations as to fair market value and assessed values,

(b) A complete financial statement, including a balance sheet and income statement,

(c) A listing of the net earnings for the past 5 years, and

(d) A statement of the total number of shares authorized, issued, and outstanding.

(2) In evaluating notes, accounts receivable, claims, debts, et cetera, the value of notes and contracts is the amount of unpaid principal plus accrued interest to the date of death, unless the donor can establish by satisfactory evidence that the item is worth less than the balance of principal and interest due.

[Order IT-75-1, § 458-56-200, filed 11/21/75.]

WAC 458-56-210 Federal audits. If after the values of a gift have been determined under chapter 83.56 RCW the same gift is valued under the Federal Gift Tax Statutes, and the value of the gift or any portion thereof is increased above or decreased below the values fixed by chapter 83.56 RCW, and the federal valuation is accepted by the donor either by agreement or federal court determination, the value as fixed by chapter 83.56 RCW on such property or portion thereof shall be increased or decreased to that federal value.

[Order IT-75-1, § 458-56-210, filed 11/21/75.]

WAC 458-56-220 Receipts. No receipt will be issued evidencing the gift tax paid. Canceled checks will serve as acknowledgment of the payment of the tax assessed.

[Order IT-75-1, § 458-56-220, filed 11/21/75.]

WAC 458-56-230 Appeals and appellate procedure. Any person feeling aggrieved may appeal any determination of values or tax liability in relation to a gift or gift tax return by filing a notice of appeal with the assistant director, inheritance tax division. Upon receipt of such notice, the assistant director shall set a time for hearing on the appeal not less than 15 days after the receipt of the notice and not more than 30 days thereafter. Such hearing date may be continued at the request of the taxpayer.

The inheritance and gift tax hearing board shall be composed of three members, one of whom shall be the chairman selected by the members. The members shall be selected from:

The director of revenue or his designate

The assistant director, inheritance tax

The assistant attorney general, revenue

The counsel, inheritance tax

The chief deputy, inheritance tax

The taxpayer or his agent shall be notified of the composition of the board at the same time he is furnished with the notice of hearing. Any objection to a member of the board must be filed five days prior to the hearing.

Upon conclusion of the hearing and within ten days thereafter, the board shall render its decision in writing and

signed by the chairman. The decision of the board may be appealed to superior court, provided that such appeal must be taken within thirty days after the rendition of the decision. A conference prior to a hearing may be allowed at the request of the taxpayer.

Nothing contained in this rule shall preclude the taxpayer from appealing directly to superior court without exhausting the administrative remedy provided for herein.

[Order IT-75-1, § 458-56-230, filed 11/21/75.]

Chapter 458-57 WAC

STATE OF WASHINGTON ESTATE AND TRANSFER TAX REFORM ACT RULES

WAC

458-57-510	Scope of rules.
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458-57-530	Property subject to estate tax.
458-57-540	Residents—Tax imposed.
458-57-550	Valuation.
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458-57-630	Administration—Rules.
458-57-640	Escheat estates—Heirs—How located and proof.
458-57-650	Interest and penalties.
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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

458-57-010	Scope of rules. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-010, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100. Later promulgation, see WAC 458-57-510.
458-57-020	Nature of inheritance tax. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-020, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100. Later promulgation, see WAC 458-57-520.
458-57-030	Property subject to inheritance tax. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-030, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100. Later promulgation, see WAC 458-57-530.
458-57-040	Jurisdiction—Domicile of decedent. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-040, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.
458-57-050	Status and character of assets. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-050, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.
458-57-060	Valuation. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-060, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.
458-57-070	Valuation—Real estate. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-070, filed

458-57-080	2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100. Valuation—Gold and silver bullion. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-080, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100. Valuation—Securities. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-090, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100. Closely held securities—Partnerships—Sole proprietorships. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-100, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100. Valuation of certain life insurance and annuity contracts—Valuation of shares in an open-end investment company. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-110, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100. Notes—Other intangibles. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-120, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100. Real estate contracts. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-130, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100. Cash on hand or on deposit. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-140, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100. Tangible personal property, household and personal effects. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-150, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100. Valuation of annuities, life estates, terms for years, remainders, and reversions. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-160, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100. Tables for valuation of annuities, life estates, terms for years, remainders, and reversions for estates of decedents dying on and after May 30, 1979. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-170, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100. Transfers prior to death—Computation of time—Valuation—Contemplation. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-180, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100. Deductions. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-190, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100. Nondeductible items. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-200, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.
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Chapter 458-57**Title 458 WAC: Revenue, Department of**

458-57-210	Exempt entities. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-210, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.	filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.
458-57-220	Classes of beneficiaries—Heirs. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-220, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.	Payment of tax. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-350, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.
458-57-230	Exemptions—Class A. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-230, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.	Payment of tax from residue—Tax on tax. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-360, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.
458-57-240	Exemptions—Classes B and C. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-240, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.	Deferral of tax—Power of appointment—Minimum and maximum tax—Secured tax. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-370, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.
458-57-250	Exemptions—Aliens. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-250, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.	Interest—Penalties. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-380, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.
458-57-260	Insurance—Exemptions. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-260, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.	Interest on unpaid tax. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-390, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.
458-57-270	Prorating of exemptions. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-270, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.	Refunds. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-400, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.
458-57-280	Prorating costs and fees. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-280, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.	Escheat estates—Heirs—How located and proof. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-410, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100. Later promulgation, see WAC 458-57-640.
458-57-290	Credit for property previously taxed. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-290, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.	Preliminary statement. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-420, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.
458-57-300	Computation formula—Property previously taxed—Class A. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-300, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.	Inventory and appraisement—Inventory of assets. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-430, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.
458-57-310	Computation formula—Property previously taxed—Portion of net second estate to class other than A. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-310, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.	Inheritance tax returns—Duty to keep records and render statements—Filing of returns—Contents of returns. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-440, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.
458-57-320	Computation formula—Property previously taxed—Specific bequest second estate to class other than A. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-320, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.	Payment of inheritance tax—Extension of time—Basis for—Reasonable cause—Undue hardship. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-450, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.
458-57-330	Computation formula—Property previously taxed—Specific bequest and portion of net second estate to class other than A. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-330, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.	Inheritance tax—Extension of time for payment—Failure to pay on time. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-460, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.
458-57-340	Federal credit for death taxes. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-340,	Inheritance tax—Extension of time for payment—Security. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-470, filed 2/21/80.] Repealed by 83-17-

	033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.
458-57-480	Closely held businesses—What constitutes. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-480, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.
458-57-490	Qualified or special use—Application of statutory and regulatory provisions. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-490, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.
458-57-500	Miscellaneous provisions. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-500, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

WAC 458-57-510 Scope of rules. These rules are promulgated under the authority of RCW 83.100.100 and are intended to implement chapter 83.100 RCW.

[Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-510, filed 8/11/83. Formerly WAC 458-57-010.]

WAC 458-57-520 Nature of estate tax. (1) The estate tax is neither a property tax nor an inheritance tax. It is a tax imposed on the transfer of the entire taxable estate and not upon any particular legacy, devise, or distributive share.

(2) The estate tax does not purport to reach completed absolute lifetime transfers. Section 2035(d) of the Internal Revenue Code generally exempts such transfers. To the extent permitted by this provision, lifetime transfers escape the state estate tax. There is no state gift tax.

[Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-520, filed 8/11/83. Formerly WAC 458-57-020.]

WAC 458-57-530 Property subject to estate tax. The estate tax is imposed on transfers of the taxable estate, as defined in section 2051 of the Internal Revenue Code. The following paragraphs contain a general description of the method to be used in determining the taxable estate of decedent:

(1) Gross estate. The first step in determining the tax is to ascertain the total value of the decedent's gross estate. The value of the gross estate includes the value of all property to the extent of the interest therein of the decedent at the time of his death. In addition, the gross estate may include property in which the decedent did not have an interest at the time of his death. A decedent's gross estate for federal estate tax purposes may therefore be very different from the same decedent's estate for local probate purposes. Examples of items which may be included in a decedent's gross estate and not in his probate estate are the following: Certain property transferred by the decedent during his lifetime without adequate consideration; property held jointly by the decedent and others; property over which the decedent had a general power of appointment; proceeds of certain policies of insurance on the decedent's life annuities; and dower and curtesy of a surviving spouse or a statutory estate in lieu thereof. For a detailed explanation of the method of ascertaining the value of the gross estate, see

sections 2031 through 2044 of the Internal Revenue Code, and the regulations thereunder.

(2) Taxable estate. The second step in determining the tax is to ascertain the value of the decedent's taxable estate. The value of the taxable estate is determined by subtracting from the value of the gross estate the authorized exemption and deductions. Under various conditions and limitations, deductions are allowable for expenses, indebtedness, taxes, losses, charitable transfers, and transfers to surviving spouse. For a detailed explanation of the method of ascertaining the value of the taxable estate, see sections 2051 through 2056 of the Internal Revenue Code and the regulations thereunder.

[Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-530, filed 8/11/83. Formerly WAC 458-57-030.]

WAC 458-57-540 Residents—Tax imposed. A tax is imposed on the transfer of the taxable estate of every decedent who was domiciled in the state of Washington at the time of such decedent's death. The tax imposed is an amount equal to the federal credit as defined in RCW 83.100.020(3) and WAC 458-57-560(4).

[Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-540, filed 8/11/83.]

WAC 458-57-550 Valuation. The value of every item of property in a decedent's gross estate is its fair market value, except that if the personal representative elects the alternate valuation method under section 2032 of the Internal Revenue Code, it is the fair market value thereof at that date, with the adjustments prescribed in that section. Notwithstanding the preceding sentences, valuation of certain farm property and closely-held business property, properly made for federal estate tax purposes pursuant to an election authorized by section 2032A of the Internal Revenue Code, shall be binding for state estate tax purposes.

[Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-550, filed 8/11/83.]

WAC 458-57-560 Imposition of tax. (1) A tax in an amount equal to the federal credit is imposed by RCW 83.100.030 upon the net estate of every decedent. "Net estate" for state tax purposes means the same thing as "taxable estate" for federal tax purposes. When the amount of deductions allowable exceeds the value of the gross estate, there is no "taxable (or net) estate," and no state tax is due.

(2) The Internal Revenue Code of 1954 means the Internal Revenue Code of 1954, as amended or renumbered prior to January 1, 1982. See *St. of Wash. v. Readers Digest*, 81 Wn.2d 259, 501 P.2d 290 (1972).

(3) The "maximum amount of the credit for state death taxes allowed under section 2011" means allowed without regard to section 2011(a) of the Internal Revenue Code. The Washington estate tax is due in every case in which the credit is available whether or not it is claimed for federal tax purposes.

(4) The term "federal credit" means the credit amount prescribed in section 2011(b) of the Internal Revenue Code, as limited by the amount which the federal estate tax exceeds the unified credit prescribed in section 2010 of the Internal Revenue Code. It is computed on a special base denominated "adjusted taxable estate," which is determined

by simply reducing the amount of federal taxable estate by \$60,000.

(5) The amount of tax payable to the state of Washington shall not exceed an amount equal to the amount of tax computed in accordance with section 2001 of the Internal Revenue Code reduced by the amount of unified credit provided by section 2010 of the Internal Revenue Code.

(6) The amount of the tax shall not be reduced by the amount of any credit allowed for federal purposes other than the amount of credit prescribed under section 2010 of the Internal Revenue Code. Specifically, the amount of the state estate tax shall not be reduced by the amount of any credit for tax on prior transfers, foreign death taxes, or death taxes on remainders provided in sections 2013, 2014, and 2015 of the Internal Revenue Code.

Amount of credit:

(A)	(B)	(C)	(D)
Adjusted taxable estate or more than	Adjusted taxable estate less than	Credit on amount in column (A)	Rates of credit on excess over amount in column (A)
Percent			
\$ 40,000	\$ 90,000	\$ -0-	0.8
90,000	140,000	400	1.6
140,000	240,000	1,200	2.4
240,000	440,000	3,600	3.2
440,000	640,000	10,000	4.0
640,000	840,000	18,000	4.8
840,000	1,040,000	27,600	5.6
1,040,000	1,540,000	38,800	6.4
1,540,000	2,040,000	70,800	7.2
2,040,000	2,540,000	106,800	8.0
2,540,000	3,040,000	146,800	8.8
3,040,000	3,540,000	190,800	9.6
3,540,000	4,040,000	238,800	10.4
4,040,000	5,040,000	290,800	11.2
5,040,000	6,040,000	402,800	12.0
6,040,000	7,040,000	522,800	12.8
7,040,000	8,040,000	650,800	13.6
8,040,000	9,040,000	786,800	14.4
9,040,000	10,040,000	930,800	15.2
10,040,000		1,082,800	16.0

Example (1). A died in 1986, leaving her husband and children surviving. Her taxable estate, computed after allowance of the marital deduction, was \$700,000. The adjusted taxable estate was \$640,000. The Washington state estate tax due is \$18,000.

Example (2). C died in 1983. All of his property passed to his wife D, outright under a community property agreement. His marital deduction under section 2056 of the Internal Revenue Code reduced his federal taxable estate to zero. Because his taxable estate is zero, no Washington tax is due.

Example (3). E, a single man, died in 1984. His federal taxable estate was \$100,000; thus, the adjusted taxable estate was \$40,000 (\$100,000 - \$60,000). No Washington tax is due. Section 2011 of the Internal Revenue Code provides for no credit unless the adjusted taxable estate exceeds \$40,000.

Example (4). F, a widower, died in 1985. One year before his death he made an absolute transfer of almost all of his property to his son, G. His federal tax liability was computed on the basis of "adjusted taxable gifts" of

\$750,000 and a taxable estate of \$3,000. No Washington estate tax is due, and there is no Washington gift tax.

Example (5). B, a widow, died in 1982 leaving a taxable estate of \$290,000. The amount of tax payable to the state of Washington, equivalent to the federal death tax credit, is computed as follows:

Taxable estate	\$290,000
Less	<u>60,000</u>
Adjusted taxable estate	\$230,000
Section 2011 credit on first	\$140,000
Plus 2.4% of	90,000
Washington tax liability	\$3,360

Example (6). Decedent died in 1983, leaving a taxable estate of \$280,000. The amount payable to the state of Washington is computed as follows:

Taxable estate	\$280,000
Less	<u>60,000</u>
Adjusted taxable estate	\$220,000
Section 2011 credit on first	\$140,000
Plus 2.4% of	80,000
State Death Tax Credit equals	\$3,120

BUT (Federal Estate Tax Computation)

Taxable estate	\$280,000
Tax on	\$250,000
Plus 34% of	30,000
Gross federal tax	\$81,000
Less unified credit	<u>79,300</u>
Net estate tax	\$ 1,700

Since the federal estate tax payable is \$1,700, which amount is less than the computed state death tax credit, the amount payable to the state is \$1,700 and zero is due the Internal Revenue Service.

[Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-560, filed 8/11/83.]

WAC 458-57-570 Tax returns to be filed. (1) For purposes of these rules, the word "return" shall mean the "report" called for under provisions of RCW 83.100.050. The Washington Estate Tax Return shall be filed on or before the date the Federal Estate Tax Return is required to be filed.

(2) Section 6075 of the Internal Revenue Code requires that federal estate tax returns be filed within nine months after the date of the decedent's death.

(3) Section 6081 of the Internal Revenue Code permits the granting of reasonable extensions of time for filing estate tax returns for periods generally not to exceed six months.

(4) In the case of any estate for which a federal return must be filed, a Washington state Estate Tax Return shall be filed with the department on or before the date on which the federal return is required to be filed. If a federal extension of the time to file is granted, the date for filing the Washington return is extended thereby. However, if the personal representative shall fail to file with the department a true copy of the extension within thirty days of the issuance of such extension, the department may require the personal representative to file the state return on the date that the federal return would have been due had the extension not been granted. Too, the penalty provided (RCW 83.100.070(2)) for late filing of the tax return shall be applicable if the tax return is filed after the due date, an

extension of time to file has been requested, and the extension is denied.

(5)(a) A release shall be issued, when requested, in every case in which the department determines that an estate is not liable for the payment of the state estate tax in any amount. In instances in which the department is unable to make the determination, it may require proof by the personal representative that no tax is in fact due.

(b) If the department determines that no tax is due, it shall issue a release to the personal representative. The release shall state that the estate tax liability to the state of Washington has been fulfilled, and that the release shall give the personal representative authority to effectuate the transfer of all property comprising the decedent's estate.

(c) The release may be conditional. If, for example, the estate has avoided federal and state tax liability by reason of electing special use valuation under section 2032A of the Internal Revenue Code (entitled "Valuation of Certain Farm, etc. Real Property"), and if state tax will be due in the event the specially valued property is disposed of or taken out of qualified use within the period provided for in section 2032A(c), the request for the release must be joined in by those persons required to sign the agreement mentioned in section 2032A (d)(2), and when issued the release shall specify that it is issued in reliance upon representation that no such disposition or removal from qualified use is contemplated, and the qualified heir will notify the department if removal from qualified use thereafter occurs within ten years following the date of the decedent's death. Should removal from qualified use result in a tax being due the state of Washington, the qualified heir shall notify the department, pay the tax, together with interest at the rate of twelve percent per annum if the tax is not paid within six months of removal of the property from qualified use.

(d) "Qualified heir" shall mean those persons specified in section 2032A (e)(1).

[Statutory Authority: RCW 83.100.100. 86-12-024 (Order 86-1), § 458-570, filed 5/28/86; 83-17-033 (Order IT 83-2), § 458-57-570, filed 8/11/83.]

WAC 458-57-580 Formula. The amount of tax payable to Washington for nonresident decedents equals the amount of federal credit multiplied by a fraction, the numerator of which is the value of the property located in Washington, and the denominator of which is the value of the decedent's gross estate:

$$\text{Federal Credit} \times \frac{\text{Gross Value of Property in Washington}}{\text{Decedent's Gross Estate}} = \text{Amount to be Paid Washington State}$$

This formula contemplates the gross value as finally determined for federal estate tax purposes of any property "located in" Washington as provided in RCW 83.100.040(2). No reduction shall be allowed for any mortgages, liens or other encumbrances or debts associated with such property except to the extent allowable in computing the gross estate for federal estate tax purposes.

[Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-580, filed 8/11/83.]

WAC 458-57-590 Property "located in" Washington. (1) Real property. All real property physically situated in this state, with the exception of federal trust lands, and all

interests in such property, are deemed "located in" Washington. Such interests include but are not limited to:

(a) Leasehold interests.

(b) Mineral interests.

(c) The vendee's (but not the vendor's) interest in an executory contract for the purchase of real property.

(d) Trusts (beneficial interest in trusts of realty).

(2) Tangible personal property. Tangible personal property of a nonresident decedent shall be deemed "located in" Washington only if:

(a) At the time of his death the property is situated in Washington;

(b) It is present for a purpose other than transiting the state.

Example: A nonresident decedent, a construction contractor working as an individual or sole proprietor, was on the date of death engaged in constructing a large building within the state. All equipment, such as earthmovers, bulldozers, trucks, etc., used on that contract and located in Washington at the time of death, would be deemed located in Washington for death tax purposes.

[Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-590, filed 8/11/83.]

WAC 458-57-600 Reciprocity exemption. If the state in which the nonresident decedent is domiciled exempts from estate, inheritance or other death taxes the property of residents of Washington, the estate of such decedent shall be exempt from Washington estate taxes. This exemption will apply if, as of the date of the decedent's death he was a citizen of the United States, resident of the United States but not of Washington, and such laws of the domicile state: (1) Made specific reference to this state; or (2) contained a reciprocal provision under which nonresidents were exempted from applicable death taxes with respect to property or transfers otherwise subject to the jurisdiction of such state. In those instances where application of this provision results in loss of available federal credit which would otherwise be allowed by the federal government, Washington will absorb that proportional share which is applicable to property within the jurisdiction of this state. Application of this provision will not act to increase the total tax obligation of the estate and will not apply if federal regulations prevent allowance of such credit.

[Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-600, filed 8/11/83.]

WAC 458-57-610 Releases. (1) In cases in which taxes are due under the act, the department shall issue a release to the personal representative upon request and after such taxes have been paid. The request shall be accompanied by a completed Washington Estate Tax Return and by a completed copy of the Federal Estate Tax Return (Form #706). The final determination of the amount of taxes due from the estate is contingent on receipt of a copy of the final closing letter issued by the Internal Revenue Service.

(2) The department may require additional information to substantiate information provided by the estate.

(3) The release issued by the department will not bind or estop the department in the event of a misrepresentation of facts.

[Statutory Authority: RCW 83.100.100. 86-12-024 (Order 86-1), § 458-57-610, filed 5/28/86; 83-17-033 (Order IT 83-2), § 458-57-610, filed 8/11/83.]

WAC 458-57-620 Amended returns—Final determination. (1) If an amended federal return is filed, an amended Washington return together with a copy of the amended federal return shall be filed with the department within five days after the date the amended federal return is filed with the Internal Revenue Service.

(2) The written notice to be given the department of the final determination of federal tax pursuant to RCW 83.100.090(2) shall include copies of any final examination report, any compromise agreement, the estate tax closing letter, and any other available evidence of the final determination.

(3) Failure to file an amended return shall toll all applicable statutes of limitations against the tax.

[Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-620, filed 8/11/83.]

WAC 458-57-630 Administration—Rules. For the purposes of these rules, the term "court of record" shall mean a superior court or any division of the court of appeals. A rule determined to be invalid by a court other than an appellate court shall nevertheless continue to have persuasive effect in the application and interpretation of these rules.

[Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-630, filed 8/11/83.]

WAC 458-57-640 Escheat estates—Heirs—How located and proof. (1) In those cases where it is apparent that the estate will escheat to the state of Washington and heirs are subsequently located, the personal representative shall provide the department with all evidence of which he has knowledge or of which he has possession showing that the purported heirs are actually heirs. All documents in support of heirship must be in the English language when submitted to the department. The translation into English from any foreign document shall be authenticated as reasonably required by the department.

(2) In all cases where there is a court hearing or the taking of a deposition on the question of heirship, the personal representative shall give the department twenty days' written notice of such hearing or matter.

(3) The personal representative must give the department at least twenty days' written notice of the hearing on the final account and petition for distribution.

[Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-640, filed 8/11/83. Formerly WAC 458-57-410.]

WAC 458-57-650 Interest and penalties. (1) Estate taxes due the state are delinquent if not paid within nine months of the date of death. Interest accrues on delinquent taxes at the rate of twelve percent per annum and will be prorated in accordance with Table A.

(2) If the estate tax return required is not filed within the time specified in WAC 458-57-570, then the personal representative shall pay, in addition to the interest provided in subsection (1) of this section, a penalty equal to five percent of the tax due for each month the report has not

been filed, but the total penalty shall not exceed twenty-five percent of the tax. The penalty is added to the total amount of tax and interest due. It shall be prorated for those periods less than a month in accordance with Table B.

(3) When interest and penalties have been imposed for late filing or payment, and partial payments of the total amount due are received, the payments shall be applied first to pay the penalty, then the accrued interest, and then the principal.

(4) The penalty for failure to file will not be assessed in those instances where prior to the due date a payment of the tax due has been made and the circumstances which render the timely filing of the return impossible have been brought to the attention of the department.

INTEREST AND PENALTY DAILY FACTORS

For Deaths on or After 1/1/82

	<u>TABLE A</u> 12% Per Annum Interest (1% per mo.)	<u>TABLE B</u> 5% Penalty Failure to File
Day	Day	Day
1	.000333	1 .001667
2	.000666	2 .003334
3	.000999	3 .005001
4	.001332	4 .006668
5	.001665	5 .008335
6	.001998	6 .010002
7	.002331	7 .011669
8	.002664	8 .013336
9	.002997	9 .015003
10	.003330	10 .016670
11	.003663	11 .018337
12	.003996	12 .020004
13	.004329	13 .021671
14	.004662	14 .023338
15	.004995	15 .025005
16	.005328	16 .026672
17	.005661	17 .028339
18	.005994	18 .030006
19	.006327	19 .031673
20	.006660	20 .033340
21	.006993	21 .035007
22	.007326	22 .036674
23	.007659	23 .038341
24	.007992	24 .040008
25	.008325	25 .041675
26	.008658	26 .043342
27	.008991	27 .045009
28	.009324	28 .046676
29	.009657	29 .048343
30 & 31	.010000	30 & 31 .050000

Example

Interest Factor

Penalty Factor

Payment delinquent 4 mos.	13 days	Late filing 2 mos.	21 days
4 x .01	= .04	2 x .05	= .10
Plus 13 days	= .004329	Plus 21 days	= .035007
Factor to use	.044329	Factor to use	.135007

Amount of death tax credit	\$1,700.00
Plus interest (.044329 x 1,700)	75.36
Plus penalty (.135007 x 1,700)	229.51
Total Due	\$2,004.87

[Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-650, filed 8/11/83.]

WAC 458-57-660 Refunds. Claims for refund of taxes overpaid must be initiated within one year of the time the taxes are first paid to the state of Washington. Such

claim may be made only by the personal representative or his retained counsel. Any refund issued by the department will include interest at the existing statutory rate computed from the date the overpayment was received by the department until the date it is returned to the estate's representative.

[Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-660, filed 8/11/83.]

Chapter 458-61 WAC REAL ESTATE EXCISE TAX

WAC

458-61-010	Authority.
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458-61-030	Definitions.

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458-61-050	Payment of tax—County treasurer as agent for the state.
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458-61-070	Affidavit batch transmittal.
458-61-080	Affidavit requirements.
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TAXABILITY OF TRANSFERS

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

458-61-350	Earnest money receipts. [Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-350, filed 7/21/82.] Repealed by 83-02-022 (Order PT 82-10), filed 12/28/82. Statutory Authority: RCW 82.45.120 and 82.45.150.
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WAC 458-61-010 Authority. RCW 82.45.150 provides that the Washington state department of revenue shall establish rules for the effective administration of the real estate excise tax. Chapter 458-61 WAC supersedes all county ordinances and operating manuals under chapter 28A.45 RCW. (RCW 82.45.150)

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-010, filed 7/21/82.]

WAC 458-61-020 General provisions pursuant to chapter 82.32 RCW. The general provisions for the administration of the state's excise taxes contained in chapter 82.32 RCW apply to the real estate excise tax, chapter 82.45 RCW, except for the following: RCW 82.32.030, 82.32.040, 82.32.050, 82.32.140 and 82.32.270, and except for the penalties and the limitations imposed by RCW 82.32.090. (RCW 82.45.150)

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-020, filed 7/21/82.]

WAC 458-61-030 Definitions. For the purposes of chapter 458-61 WAC, unless otherwise required by the context:

(1) "Affidavit" shall mean the real estate excise tax affidavit which the department shall prescribe and furnish to the county treasurers. Such affidavit shall require the following information:

(a) Identification of the seller and purchaser, including their current mailing addresses;

(b) Legal description of the property transferring, including the tax parcel or account numbers;

(c) Date of sale;

(d) Type of instrument of sale;

(e) Nature of transfer;

(f) Gross sales price;

(g) Value of personal property involved in the transfer;

(h) Taxable sales price;

(i) Whether or not the land is classified or designated as forest land under chapter 84.33 RCW;

(j) Whether or not the land is classified as open space land, farm and agricultural land, or timber land under chapter 84.33 RCW;

(k) Whether or not the property is exempt from property tax under chapter 84.36 RCW, at the time of sale;

(l) Whether or not the property is:

(i) Land only;

(ii) Land with new building; or

(iii) Land with a previously used building;

(m) A notice of continuance, signed by all new owners, for classified forest land (RCW 84.33.120), designated forest land (RCW 84.33.180) (RCW 84.33.130) or classified open space land, farm and agricultural land or timber land (RCW 84.34.108) shall be signed for those affidavits conveying land subject to the provisions of chapters 84.33 and 84.34 RCW, if the new owner desires to continue said classification or designation. The county assessor shall determine from information provided by the grantor or grantee if the land qualifies for continued classification or designation and shall so note this determination on the affidavit prior to the acceptance of the affidavit by the county treasurer;

(n) The affidavit shall list the following questions, the responses to which are not required:

(i) Is this property at the time of sale subject to an elderly, disability, or physical improvement exemption?

(ii) Does any building have a heat pump or solar heating or cooling system?

(iii) Does this transaction divide a current parcel of land?

(iv) Does this transaction include current crops or merchantable timber?

(v) Does this transaction involve a trade, or partial interest, corporate affiliates, related parties, a trust, a receivership, or an estate?

(vi) Is the grantee acting as a nominee for a third party?

(vii) Is the principal use of the land agricultural, apartments (four or more units), commercial, condominium, industrial, mobile home site, recreational, residential, or growing timber?

(o) The affidavit form shall contain a statement of the potential compensating and additional tax liability under chapter 84.34 RCW, a statement of the collection of taxes under RCW 84.36.262 and 84.36.810, and a statement of the applicable penalties for perjury under chapter 9A.72 RCW.

Each county shall use the affidavit form prescribed and furnished by the department of revenue.

The affidavit shall be signed by either the seller or the buyer, or the agent of either, under oath attesting to all required information.

(2) "Consideration" shall mean money or anything of value, either tangible or intangible, paid or delivered or contracted to be paid or delivered or services performed or contracted to be performed in return for real property or estate or interest in real property. The term shall further include the market value of real property transferred to a corporation by its shareholders, officers, or corporate affiliates so as to increase the assets of the grantee corporation.

(3) "Court decree" and "court order" shall have the same meaning and may be used interchangeably for the purposes of these rules. This shall be the judgment of a court of competent jurisdiction.

(4) "Date of taxability" shall mean the date of transfer as defined in subsection (15) of this section.

(5) "Department" shall mean the Washington state department of revenue.

(6) "Mining property" shall mean property containing or believed to contain metallic minerals and sold or leased under terms which require the purchaser or lessee to conduct exploration or mining work thereon and for no other use. (RCW 82.45.035)

(7) "Mobile home" shall mean a mobile home as defined by RCW 46.04.302, as now or hereafter amended. (RCW 82.45.032)

(8) "Mortgage" shall have its ordinary meaning and shall include "deed of trust" for the purposes of these rules, unless the context clearly indicates otherwise.

(9) "Nominal sales prices" shall mean sales prices stated on the real estate excise tax affidavit that are so low in comparison to the actual value of the real estate as to cause disbelief by a reasonable person.

(10) "Nonsale" as defined by RCW 82.45.010 includes those real property transfers which, by their nature, are exempt from the real estate excise tax (see WAC 458-61-080: Affidavit requirements):

(a) Gift, device or inheritance (see WAC 458-61-410 and 458-61-460);

(b) Leasehold interest, other than option to purchase real property, including timber (see WAC 458-61-500);

(c) Cancellation or forfeiture of a vendee's interest in a real estate contract, whether or not such contract contains a forfeiture clause (Note: Tax exemption applies only to transfer back to original vendor or contract holder and is not the basis for refund of tax paid on original transfer — See WAC 458-61-210(1); see also WAC 458-61-330);

(d) Deed in lieu of foreclosure of a mortgage (where no consideration passes otherwise. See WAC 458-61-210(1));

(e) Assumption of mortgage, deed of trust, or real estate contract where no consideration passes otherwise (see WAC 458-61-210(1));

(f) Deed in lieu of forfeiture of a real estate contract, where no consideration passes otherwise (see WAC 458-61-210(1));

(g) Partition of property by tenants in common, whether by agreement or court decree (see WAC 458-61-650);

(h) Divorce decree or property settlement incident thereto (see WAC 458-61-340);

(i) Seller's assignment (see WAC 458-61-220);

(j) Condemnation by governmental body (see WAC 458-61-280);

(k) Security documents (mortgage, real estate contract, or other security interests apart from actual title) (see WAC 458-61-630);

(l) Court ordered sale or execution of judgment (see WAC 458-61-330);

(m) Transfer prior to imposition of this tax under chapter 82.45 RCW or previous chapter 28A.45 RCW;

(n) The transfer of any grave or lot in an established cemetery (see WAC 458-61-250); and

(o) A transfer to or from the United States, the state of Washington or any political subdivision thereof, or a municipal corporation of this state. (See WAC 458-61-420)

(11) "Real estate" shall mean real property, including improvements the title to which is held separately from the title to the land to which the improvements are affixed, the

term also includes used mobile homes and used floating homes. (RCW 82.45.032)

(12) "Sale" shall have its ordinary meaning and shall include any conveyance, grant, assignment, quitclaim, exchange, or transfer of the ownership of or title to real property, including standing timber, or any estate or interest therein for a valuable consideration, and any contract for such conveyance, grant, assignment, quitclaim, exchange, or transfer, and any lease with an option to purchase real property, including standing timber, or any estate or interest therein or other contract under which possession of the property is given to the purchaser, or any other person by his/her direction, which title is retained by the vendor as security for the payment of the purchase price. (RCW 82.45.010)

(13) "Seller" shall mean any individual, receiver, assignee, trustee for a deed of trust, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, quasi municipal corporation, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise; but it shall not include the United States or the state of Washington or any political subdivision thereof, or a municipal corporation of this state. (RCW 82.45.020)

(14) "Selling price" shall mean consideration, including money or anything of value, paid or delivered or contracted to be paid or delivered in return for the transfer of the real property or estate or interest in real property, and shall include the amount of any lien, mortgage, contract indebtedness, or other incumbrance, either given to secure the purchase price, or any part thereof, or remaining unpaid on such property at the time of sale: *Provided*, That when the sale is that of a fractional interest in real property, the principal balance of any such debt remaining unpaid at the time of sale shall be multiplied by that same fraction and the result added as a component of the total sales price. The term shall not include the amount of any outstanding lien or encumbrance in favor of the United States, the state of Washington or a municipal corporation for the taxes, special benefits, or improvements. The value maintained on the county assessment rolls at the time of the transaction will be used for the sales price if such cannot otherwise be ascertained. In the event that the property is under current use assessment, the market value assessment maintained by the county assessor shall be used for the sales price. (RCW 82.45.030)

(15) "Date of transfer," "date of sale," "conveyance date" and "transaction date" shall have the same meaning and may be used interchangeably for the purposes of these rules. This shall be the date shown on the instrument of conveyance or sale.

(16) "Used mobile home" shall mean a mobile home which has been previously sold at retail and a previous sale has already been subject to the retail sales tax under chapter 82.08 RCW, or which has been previously used and a previous use has already been subject to the use tax under chapter 82.12 RCW, and which has substantially lost its identity as a mobile unit by virtue of its being fixed in location upon land owned or leased by the owner of the mobile home and placed on a foundation (posts or blocks)

with fixed pipe connections with sewer, water, and other utilities. (RCW 82.45.032)

(17) "Wilful fraud" shall mean knowingly making false statements or taking actions so as to intentionally underpay or not pay the proper real estate excise tax due on the transfer of real estate.

(18) "Used floating home" shall mean a building on a float used in whole or in part for human habitation as a single-family dwelling, which is not designed for self propulsion by mechanical means or for propulsion by means of wind, and which is on the property tax rolls of the county in which it is located and in respect to which tax has been paid under chapter 82.08 or 82.12 RCW.

(19) "Rescinded transfer" shall mean a real property transfer wherein both grantor and grantee have been restored to their original positions. In such case, title to the real property has been reconveyed to the grantor and all valuable consideration paid toward the sales price principal has been returned to the grantee.

(20) "Air rights" shall mean the exclusive undisturbed use and control of a designated air space within the perimeter of a stated land area and within stated elevations.

(21) "Development rights" shall mean those rights that are subject to conveyancing and are the unused development which is the difference between the density allowed by zoning and that which exists on a parcel of land.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 87-12-016 (Order PT 87-4), § 458-61-030, filed 5/27/87; 87-03-036 (Order PT 87-1), § 458-61-030, filed 1/16/87; 86-16-080 (Order PT 86-3), § 458-61-030, filed 8/6/86; 84-17-002 (Order PT 84-3), § 458-61-030, filed 8/2/84; 83-02-022 (Order PT 82-10), § 458-61-030, filed 12/28/82; 82-15-070 (Order PT 82-5), § 458-61-030, filed 7/21/82. Formerly chapter 458-60 WAC.]

GENERAL PROVISIONS

WAC 458-61-040 Tax imposed. There is imposed an excise tax upon each sale of real property at the rate established by RCW 82.45.060.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-040, filed 7/21/82.]

WAC 458-61-050 Payment of tax—County treasurer as agent for the state. (1) The tax imposed by RCW 82.45.060 and herein shall be paid to and collected by the treasurer of the county within which is located the real property which was sold.

(2) The county treasurer shall act as agent for the department in carrying out the provisions of chapter 82.45 RCW and these rules.

(3) The county treasurer shall cause a stamp evidencing satisfaction of the tax lien to be affixed to the instrument of sale or conveyance prior to its recording or to the real estate excise tax affidavit in the case of used mobile home sales. Such stamp shall bear reference to the affidavit number, date and amount of the payment and shall be initialed by the person affixing said stamp. The county treasurer shall not affix such stamp to the instrument of sale or conveyance unless one of the following criteria is met:

(a) Continuance of use has been approved by the county assessor under chapter 84.33 or 84.34 RCW;

(b) Compensating or additional taxes have been collected as required by RCW 84.33.120 (5)(b) and (e), 84.33.140 (1)(c), 84.34.108 (1)(c), 84.36.812, or 84.26.080; or

(c) Property is not so classified, designated, exempted or specially valued.

Delay in either securing the approval of continuance of use or payment of the compensating tax does not forestall the real estate excise tax delinquent penalty imposed by WAC 458-61-090. However, the taxpayer may pay the real estate excise tax and thus preclude any furtherance of the real estate excise tax delinquent penalty. (See WAC 458-61-030 (1)(m).)

(4) A receipt issued by the county treasurer for the payment of the tax shall be evidence of the satisfaction of the lien imposed under RCW 82.45.070 and these rules and may be recorded in the manner prescribed for recording satisfaction of mortgages.

(5) No lease, assignment of lease nor memorandum of either lease or assignment of lease, nor instrument of sale or conveyance evidencing a sale subject to the tax shall be accepted by the county auditor for filing or recording until the tax shall have been paid and the stamp affixed thereto. In the case the tax is not due on the transfer, the instrument shall not be so accepted until suitable notation of such fact has been made on the instrument by the county treasurer. In addition, no instrument of conveyance shall be filed or recorded by the county auditor or recorder if such property is classified or designated as forest land under chapter 84.33 RCW, classified as open space land, farm and agricultural land, or timber land under chapter 84.34 RCW or receiving a special valuation as historic property under chapter 84.26 RCW unless the compensating or additional tax has been paid, or the new owner shall have signed a notice of continuance which shall either be on the excise tax affidavit or attached thereto.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 87-03-036 (Order PT 87-1), § 458-61-050, filed 1/16/87; 86-16-080 (Order PT 86-3), § 458-61-050, filed 8/6/86; 82-15-070 (Order PT 82-5), § 458-61-050, filed 7/21/82.]

WAC 458-61-060 Disposition of proceeds. The county treasurer shall place one percent of the proceeds of the tax imposed by chapter 82.45 RCW exclusive of any delinquent interest and/or penalties in the county current expense fund to defray costs of collection and shall pay over to the state treasurer and account to the department for the remainder of the proceeds at the same time the county treasurer remits funds to the state under RCW 84.56.280. (RCW 82.45.180)

Any requests from county treasurers for adjustments to the funds which have been distributed to the state treasurer must be sent to the department for approval or denial. The department will forward all such requests which it approves to the state treasurer and return the requests it denies to the county treasurers along with an explanation for such denial.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 84-17-002 (Order PT 84-3), § 458-61-060, filed 8/2/84; 82-15-070 (Order PT 82-5), § 458-61-060, filed 7/21/82.]

WAC 458-61-070 Affidavit batch transmittal. (1) By the fifth day following the close of the month in which the tax was received, the county treasurers shall send to the

department the department's copies of the real estate excise tax affidavits for the entire month. This affidavit batch shall include all affidavits received during the month, plus copies of any voided affidavits which represent refunds made by the county treasurers.

(2) County treasurers will complete the affidavit batch transmittal form, supplied by the department, and send one copy with the affidavit batch to the department. The county treasurer will send a second copy of the affidavit batch transmittal with the monthly cash receipts journal summary to the state treasurer's office as documentation for the remittance of the real estate excise tax deposit.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-070, filed 7/21/82.]

WAC 458-61-080 Affidavit requirements. (1) Except for the transfers listed under subsection (2) of this section, the real estate excise tax affidavit shall be required for all transfers of real property including, but not limited to, the following:

(a) Conveyance from one spouse to the other as a result of a decree of divorce or dissolution of a marriage or in fulfillment of a property settlement agreement incident thereto;

(b) Conveyance made pursuant to an order of sale by the court in any mortgage or lien foreclosure proceeding;

(c) Conveyance made pursuant to the provisions of a deed of trust;

(d) Conveyance of an easement in which consideration passes;

(e) A deed in lieu of foreclosure of mortgage;

(f) A deed in lieu of forfeiture of a real estate contract;

(g) Conveyance to the heirs in the settlement of an estate;

(h) Conveyance to or from the United States, the state of Washington, or any political subdivision or municipal corporation of this state;

(i) A declaration of forfeiture of a real estate contract;

(j) Conveyance of development rights or air rights.

(2) The real estate excise tax affidavit shall not be required for the following:

(a) Conveyance of cemetery lots or graves;

(b) Conveyance for security purposes only and the instrument states on the face of it:

(i) For security only;

(ii) To secure a debt;

(iii) Assignment of a debt;

(iv) For collateral purposes only;

(v) Release of collateral;

(vi) To release security;

(c) A lease of real property that does not contain an option to purchase, or does not transfer lessee-owned improvements;

(d) A mortgage or deed of trust or satisfaction thereof;

(e) Conveyance of an easement in which no consideration passes or an easement to the United States, the state of Washington, or any political subdivision or municipal corporation of this state;

(f) A recording of a contract that changes only the contract terms and not the legal description, purchaser, or

sales price, if the affidavit number of the previous transaction is reported;

- (g) A seller's assignment of deed and contract;
- (h) A fulfillment deed.

(3) County treasurers shall not accept incomplete affidavits. It is the taxpayers' responsibility to furnish complete documentation for claimed tax exemptions. It is the county treasurers' responsibility and authority to require that such documentation, as required by this chapter, shall be furnished by the taxpayers or their agents.

(a) Among other requirements set forth in WAC 458-61-030(1), all affidavits which state claims for tax exemption must show:

(i) Current assessed values of parcels involved as of transaction date; and

(ii) Complete reasons for exemptions, including reference to the specific tax exemption in this chapter, (in all cases where the exemption is based upon a prior payment of the tax, the prior payment date, amount and affidavit number must be provided on the current affidavit. A quitclaim deed is a conveyance instrument. It is not, in itself, a reason for tax exemption. A valid reason for the exemption must be shown on the affidavit. Likewise statements such as "to clear title only" and "no consideration" are not complete reasons for tax exemption.

(b) When the transfer of property is to two or more grantees, the affidavit must clearly state the relationship between them such as joint tenants, tenants in common, partners, etc., and the form and proportion of interest that they are each acquiring.

(c) In the case of a used mobile home that is sold with the land upon which it is located, the county treasurer may require the completion of either two affidavits, both real and mobile home, or a single real property affidavit. At the county treasurer's option, a separate mobile home affidavit may not be required if the real property affidavit lists the make, model, year, size and serial number of the unit. Such information should be contained as a separate item within the legal description portion of the affidavit.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 87-03-036 (Order PT 87-1), § 458-61-080, filed 1/16/87; 86-16-080 (Order PT 86-3), § 458-61-080, filed 8/6/86; 84-17-002 (Order PT 84-3), § 458-61-080, filed 8/2/84; 82-15-070 (Order PT 82-5), § 458-61-080, filed 7/21/82.]

WAC 458-61-090 Timing of payment—Late payment penalty. (1) The tax imposed under RCW 82.45.070 is due and payable to the county treasurer as of the transaction date.

(2) If the tax is paid within thirty days of the transaction date, the late payment penalty is not applied. If the tax is paid more than thirty days after the transaction date, a one percent penalty is applied to the amount of unpaid tax for each thirty-day period, or part thereof, beginning with the transaction date to date of final and complete payment.

(3) The tax is due as of the transaction date whether or not the contract or conveyance documents are recorded at that time. If the tax is not paid within thirty days of the transaction date, the late payment penalty in subsection (2) of this section, is applicable for the period which the tax remains unpaid.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-090, filed 7/21/82.]

WAC 458-61-100 Refunds of tax paid. (1) Taxpayers seeking to contest the application of the real estate excise tax upon a particular transfer of real property must pay the tax prior to petition for refund.

(2) Taxpayers shall obtain copies of the "Petition for real estate excise tax refund" form from the county treasurers' offices, as provided by the department. After completing the form, the taxpayer shall submit the form and all documentation supporting the claim for refund to the county treasurer's office in the county where the tax was originally paid.

(3) If the taxpayer submits the petition for refund before the county treasurer has sent to the department the copy of the affidavit which received the tax payment now in question, the county treasurer is authorized to void the received affidavit copies, based upon the criteria listed in subsection (5) of this section, and issue the refund. If the county treasurer authorizes and issues such refund, the voided copy of the affidavit, with a copy of the refund petition attached, must be included in the monthly affidavit batch sent to the department. If the county treasurer does not authorize such refund, the treasurer shall send the petition for refund, along with a copy of the affidavit and all supporting records, to the department. The procedure for petitions sent to the department shall follow subsection (4) of this section.

(4) If the taxpayer submits the petition for refund after the county treasurer has sent to the department the copy of the affidavit which received the payment now in question, the county treasurer shall verify the information on the petition and forward it to the department with a copy of the affidavit and any other supporting records furnished by the taxpayer. The department shall approve or deny the refund. If denied, the petition for refund shall be returned to the petitioner with the reason for denial. The taxpayer may then appeal the imposition of the tax under the appeal procedures. See WAC 458-61-110: Tax appeals. If such petition is denied, the department will return to the petitioner all supporting documents which are submitted with the petition for refund.

The authority of the department to issue tax refunds under this chapter is limited to the following:

(a) Transactions that are completely rescinded as defined in WAC 458-61-030(19);

(b) Sales rescinded by court order. In such case a copy of the court decision must be attached to the department's affidavit copy by the county treasurer (see also WAC 458-61-330 - Court order—Transfer pursuant to);

(c) Double payment of the tax;

(d) Overpayment of the tax through error of computation;

(e) Failure of a taxpayer to claim tax exemption for a transfer which was properly exempt;

(f) Nonpayment of valuable consideration by grantee.

(5) The authority of the county treasurers to issue tax refunds under subsection (2) of this section is limited to the following reasons:

(a) Double payment of the tax;

(b) Overpayment of tax through error of computation;

(c) Failure of a taxpayer to claim tax exemption for a transfer which was properly exempt;

(d) Rescission of sale prior to closing; or

(e) Nonpayment of valuable consideration by grantee.
 (6) Only the taxpayer or authorized agent may petition for a refund of tax.

(7) Refunds approved by the county treasurer or by the department shall be paid to the petitioner:

(a) After the real estate excise tax receipt stamp has been voided on the conveyance instrument provided that this conveyance instrument has not been recorded; or

(b) In the case where the conveyance instrument was recorded, after a second conveyance instrument has been recorded to reverse the effect of the original conveyance instrument.

In either of the above procedures (a) or (b), the county treasurer or department shall advise the petitioner of the approval of the refund and the necessity to provide the unrecorded conveyance instrument or a reversing conveyance instrument. The county treasurer shall note the issuance of the refund on the affidavit copy maintained in county files and shall notify the county assessors office of the refund.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-100, filed 8/6/86; 84-17-002 (Order PT 84-3), § 458-61-100, filed 8/2/84; 83-02-022 (Order PT 82-10), § 458-61-100, filed 12/28/82; 82-15-070 (Order PT 82-5), § 458-61-100, filed 7/21/82.]

WAC 458-61-110 Tax appeals. (1) Any person having been issued a notice of taxes, interest, or penalties due, may petition the department of revenue in writing for a correction of the amount of the assessment and a conference for review of the assessment. Petitions for correction of assessment are authorized by RCW 82.32.160.

(2) Any person having paid any tax, interest, or penalties, may apply to the department within the time limitation for refund provided in RCW 82.45.100, by petition in writing for a refund of the amount paid and a conference for review of the amount paid. Petitions for refund are authorized by RCW 82.32.170.

(3) The appeal procedures set forth in WAC 458-20-100 (2) through (17), shall apply to all petitions for correction of assessment and petitions for refund under the real estate excise tax.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-110, filed 7/21/82.]

WAC 458-61-120 Fraud penalty. (1) A penalty of fifty percent of the proper tax due, or remaining due after insufficient payment, is to be applied by the department to taxable real estate transfers involving wilful fraud with intent to evade the tax.

(2) Wilful fraud with intent to evade the tax is illustrated by, but not limited to, the following examples:

- (a) Knowingly stating a false sales price;
- (b) Knowingly stating a sale as a gift;
- (c) Knowingly claiming a false reason for tax exemption.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-120, filed 7/21/82.]

WAC 458-61-130 Department audit responsibility. (RCW 82.45.150) (1) The department shall conduct audits of transactions and real estate excise tax affidavits and shall determine tax payment deficiency where such exists. The

department shall notify taxpayers and appropriate county treasurers of tax payment deficiencies. Such notices shall inform taxpayers as to the tax payment required from them and set forth reasons why such deficient tax amount has been assessed against them by the department.

(2) If the taxpayer receiving such notice of tax payment deficiency has not answered the same within thirty days after its being mailed by the department, the department shall enforce the collection of such deficient tax through administrative provisions set forth in chapter 82.32 RCW.

(3) In its audits of the taxability of real estate transactions, the department will generally rely upon, but not be limited to, information:

- (a) The real estate excise tax affidavits, including the entire affidavit file at the county treasurer's office;
- (b) Documents recorded by the county auditor;
- (c) The assessment rolls and in the field books in the county assessor's office; and
- (d) Records supplied by the taxpayer.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-130, filed 7/21/82.]

WAC 458-61-140 Compliance. The department's compliance procedure shall follow the provisions of chapter 82.32 RCW.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-140, filed 7/21/82.]

WAC 458-61-150 Supplemental statements. The department shall provide the county treasurer offices with a uniform multi-use supplemental statement as required by the following sections of this chapter:

- (1) WAC 458-61-210, Assignments—Purchasers
- (2) WAC 458-61-230, Bankruptcy
- (3) WAC 458-61-320, Corporation—Nonfamily
- (4) WAC 458-61-410, Gifts
- (5) WAC 458-61-550, Nominee

The supplemental statements shall be completed as required by the instructions therein and by each of the sections listed in subsections (1) through (5) of this section. The county treasurer shall distribute the supplemental statement as follows: Original attached to original of affidavit; first copy attached to the department's copy of the affidavit; second copy attached to the assessor's copy of the affidavit; and third copy attached to the taxpayer's copy of the affidavit. Except for the notary requirements of WAC 458-61-320(4) and 458-61-550, such statements shall be unsworn written statements which meet the requirements set forth in RCW 9A.72.085.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 87-03-036 (Order PT 87-1), § 458-61-150, filed 1/16/87; 86-16-080 (Order PT 86-3), § 458-61-150, filed 8/6/86.]

TAXABILITY OF TRANSFERS

WAC 458-61-200 Apartments. The sale of an individual apartment by the owner of an apartment building which entitles the purchaser to a warranty deed upon completion of payments is a "sale" within the meaning of RCW 82.45.010; therefore, the sale is subject to the real estate excise tax.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-200, filed 7/21/82.]

WAC 458-61-210 Assignments—Purchasers. (1) The real estate excise tax does not apply to the following types of purchaser's assignments, provided that no consideration passes to the grantor:

(a) Cancellation or forfeiture of the vendee's interest in a contract of sale, deed in lieu of foreclosure of mortgage or deed in lieu of forfeiture of a real estate contract all of which are being conveyed to the lien holder as the result of default of the obligation;

(b) Assumption by a grantee of the balance owing on an existing obligation which is secured by a mortgage, deed of trust or real estate contract where the grantee has become personally and principally liable for payment of that obligation.

The real estate excise tax affidavit is required for each of the above. If the transfer is an assumption under (b) of this subsection, the grantor must furnish the supplemental statement, as provided by WAC 458-61-150, signed by both the grantor and grantee that no additional consideration of any kind is being paid by the grantee to the grantor. (See WAC 458-61-150)

The tax exemption provided in (b) of this subsection does not apply to the following transfers:

(i) Between a corporation and its stockholders, officers, or affiliated corporations (except that tax exemption contained in WAC 458-61-320(3));

(ii) Between a partnership and its members or another partnership or corporation owned by the same members;

(iii) Between joint venturers;

(iv) Between joint tenants;

(v) Between tenants in common; or

(vi) During the conversion of a joint or common tenancy, a joint venture, partnership, or corporation from one form of ownership to another form of ownership.

(2) The real estate excise tax applies to transfers where the purchaser of real property assigns his/her interest in such property and receives valuable consideration for that interest. The measure of the real estate excise tax is the sum of the consideration paid or contracted to be paid to the grantor of such assignment plus the unpaid principal balance due on the assigned mortgage or real estate contract. (Note: The consideration passing to the assignor of such interest in real property nullifies the exemptions granted in subsection (1) of this section, because each of these exemptions is granted upon the condition that no consideration passes to the transferrer of the interest of real property.)

[Statutory Authority: RCW 82.45.120 and 82.45.150. 87-03-036 (Order PT 87-1), § 458-61-210, filed 1/16/87; 86-16-080 (Order PT 86-3), § 458-61-210, filed 8/6/86; 84-17-002 (Order PT 84-3), § 458-61-210, filed 8/2/84; 83-02-022 (Order PT 82-10), § 458-61-210, filed 12/28/82; 82-15-070 (Order PT 82-5), § 458-61-210, filed 7/21/82.]

WAC 458-61-220 Assignments—Sellers. The real estate excise tax does not apply where the vendor of real property assigns his/her interest to a third party. The real estate excise tax affidavit is not required. The instrument must be stamped by the county treasurer as required by RCW 82.45.090. Such stamp shall show the affidavit

number on the prior sale for which the current assignment is made.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 84-17-002 (Order PT 84-3), § 458-61-220, filed 8/2/84; 82-15-070 (Order PT 82-5), § 458-61-220, filed 7/21/82.]

WAC 458-61-230 Bankruptcy. A conveyance of real property by a trustee in bankruptcy is subject to the real estate excise tax whether made by a trustee conducting the business of the bankrupt or by a trustee liquidating the bankrupt's estate. However, such a conveyance is not taxable when made under a post petition chapter 11 plan or chapter 12 plan per 11 USC 1146 or 11 USC 1231 respectively.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 90-01-003, § 458-61-230, filed 12/7/89, effective 1/7/90; 86-16-080 (Order PT 86-3), § 458-61-230, filed 8/6/86; 84-17-002 (Order PT 84-3), § 458-61-230, filed 8/2/84; 82-15-070 (Order PT 82-5), § 458-61-230, filed 7/21/82.]

WAC 458-61-240 Care, comfort and support. The real estate excise tax applies to the transfer of real property where the consideration received is the care, comfort and support of the grantor. When the value and length of the care are unknown, the county assessor's valuation shall be used as the gross sales price.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-240, filed 7/21/82.]

WAC 458-61-250 Cemetery lots or graves. The sale of lots or graves in an established cemetery is not subject to the real estate excise tax. An established cemetery is one which meets the requirements for ad valorem property tax exemption under RCW 84.36.020. (RCW 82.32.010)

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-250, filed 7/21/82.]

WAC 458-61-270 Community property—To establish or separate. Where no consideration, other than love and affection, passes from one spouse to another in exchange for either establishing or separating community property, the transfer is not subject to the real estate excise tax. The affidavit must state that the purpose of the transfer is to establish or separate community property. (See WAC 458-61-340: Dissolution of marriage.)

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-270, filed 7/21/82.]

WAC 458-61-280 Condemnation. The term "sale" shall not include transfers by appropriation or decree in condemnation proceedings brought by the United States, the state of Washington or any political subdivision thereof, or a municipal corporation. (RCW 82.45.010)

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-280, filed 7/21/82.]

WAC 458-61-290 Contract. An owner of real property is subject to payment of the real estate excise tax upon the entry of each successive contract for the sale of the same piece of real property, each such contract constituting

a "sale" of real property subject to the tax. (See also WAC 458-61-100: Refunds of tax paid.)

[Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-290, filed 8/6/86; 82-15-070 (Order PT 82-5), § 458-61-290, filed 7/21/82.]

WAC 458-61-300 Contractor. (1) If land is deeded to a contractor with an agreement to reconvey the property after construction of an improvement, the real estate excise tax does not apply to either the first conveyance or to the reconveyance. In this case, the deed to the contractor, although absolute on its face, has simply created a security interest because of the requirement to reconvey the property after construction of the improvement. The sales price of the improvement is subject to retail sales tax under chapter 82.08 RCW and business and occupation tax under chapter 82.04 RCW (see excise tax bulletin 275.08.170). Real estate excise tax affidavits are nevertheless required for both the original conveyance and the reconveyance but must contain wording to the effect that the purpose of the transfers is for construction and security purposes only. The affidavit for reconveyance must refer to the date and number of the original affidavit.

(2) Where the owner of a lot contracts to have an improvement built upon the lot and retains title to the land, the real estate excise tax does not apply to the purchase of the improvement.

(3) Where a contractor owns a lot and builds an improvement upon it, the subsequent sale of land and improvement is subject to the real estate excise tax.

(4) The real estate excise tax applies to both conveyances where an owner desiring a new home conveys his existing home to a contractor who first uses that home as collateral to secure a loan under FHA to finance the construction of the new home and then conveys the old home to a third person.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-300, filed 7/21/82.]

WAC 458-61-310 Corporation—Family. The real estate excise tax shall not apply to a transfer to a corporation which is wholly owned by the transferor and/or the transferor's spouse or children: *Provided*, That if thereafter such transferee corporation voluntarily transfers such real property, or such transferor, spouse, or children voluntarily transfer stock in the transferee corporation to other than (1) the transferor and/or the transferor's spouse or children, (2) a trust having the transferor and/or the transferor's spouse or children as the only beneficiaries at the time of the transfer to the trust, or (3) a corporation or partnership wholly owned by the original transferor and/or the transferor's spouse or children, within five years of the original transfer to which this exemption applies, excise taxes shall become due and payable on the original transfer as otherwise provided by law. This rule applies only to natural persons. (RCW 82.45.010)

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-310, filed 7/21/82.]

WAC 458-61-320 Corporation—Nonfamily. The real estate excise tax applies to all real property transfers

between a corporation and its stockholders, officers, corporate affiliates, or other parties, including those between corporations and partnerships except the following transfers which are not taxable:

(1) Corporate mergers and consolidations which are accomplished by stock transfers.

(2) Corporate dissolution, except in a case where the stockholders assumed or agreed by contract to assume the liabilities of the dissolving corporation. In such event, the real estate excise tax applies to the extent of the liabilities assumed by the stockholder.

(3) Transfers between a parent corporation and its wholly-owned subsidiary corporation or between two or more subsidiary corporations, each of which is wholly-owned by the same parent corporation where no consideration passes. Consideration includes the issuance of stock or other negotiable instruments and is further defined in WAC 458-61-030(2).

(4) Transfer of real property to a newly-formed, beneficiary corporation from an incorporator as defined in RCW 23A.12.010 to the newly-formed corporation: *Provided*, That (a) the proper real estate excise tax was paid on the original transfer to the incorporator; and (b) that it was documented on or before the original transfer that the incorporator was receiving title to the property on behalf of that corporation during its formation process. A notarized statement, as provided in WAC 458-61-150, is attached to the affidavit for the second transaction. This tax exemption does not apply where a real property owner had acquired title in his/her own name and later transferred title to the corporation upon formation.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-320, filed 8/6/86; 84-17-002 (Order PT 84-3), § 458-61-320, filed 8/2/84; 82-15-070 (Order PT 82-5), § 458-61-320, filed 7/21/82.]

WAC 458-61-330 Court order—Transfer pursuant to. The real estate excise tax does not apply to any transfer or conveyance made pursuant to an order of sale by the court in any mortgage or lien foreclosure proceeding or upon execution of a judgment. This exemption includes the court ordered sale of a deed of trust by the trustee acting on behalf of the beneficiary to the deed of trust. (Note: Real estate excise tax affidavits which state claims for this tax exemption must cite the court decision number on the affidavit and the conveyance document. A copy of the court decision must be attached to the department's affidavit copy by the county treasurer. See also: WAC 458-61-280, Condemnation and WAC 458-61-650, Tenants in common, partition by.)

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-330, filed 7/21/82.]

WAC 458-61-335 Development rights and air rights. The real estate excise tax applies to the sale of both development rights and air rights. The real estate excise tax affidavit must be completed for the transfer of development rights and air rights whether or not a taxable sale has occurred.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 87-03-036 (Order PT 87-1), § 458-61-335, filed 1/16/87.]

WAC 458-61-340 Dissolution of marriage/divorce. The real estate excise tax does not apply to any transfer, conveyance, or assignment of property or interest in property from one spouse to the other in accordance with the terms of a decree of divorce or in fulfillment of a property settlement agreement incident thereto. (RCW 82.45.010)

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-340, filed 7/21/82.]

WAC 458-61-360 Easement, sale of. The real estate excise tax applies to the conveyance of an easement for the use of real property in return for valuable consideration. (RCW 82.45.010) A taxable sale has not occurred if valuable consideration does not pass. An affidavit is required only if consideration passes.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-360, filed 7/21/82.]

WAC 458-61-370 Exchanges—Trades. The real estate excise tax applies when real property is exchanged for other real property or any other valuable property, either tangible or intangible. In the case where real property is exchanged for other real property, the transfer of each property is individually subject to the tax. The gross taxable value of each property is the fair market value of each property - not the equity that each owner has vested in the properties. (RCW 82.45.010 and 82.45.030)

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-370, filed 7/21/82.]

WAC 458-61-380 Federal housing agencies. Transfer involving any housing agency of the United States as either grantor or grantee are not subject to the real estate excise tax. (RCW 82.45.010)

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-380, filed 7/21/82.]

WAC 458-61-390 Foreclosure of mortgage, deed in lieu of. (1) The real estate excise tax does not apply to a transfer of real estate by deed from a mortgagor to the mortgagee in lieu of foreclosure.

(2) The real estate excise tax does apply to the resale of the property by the mortgagor to the mortgagee under a contract of sale.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 83-02-022 (Order PT 82-10), § 458-61-390, filed 12/28/82; 82-15-070 (Order PT 82-5), § 458-61-390, filed 7/21/82.]

WAC 458-61-400 Fulfillment deed. A deed given the vendee in fulfillment of the terms of mortgage or contract is not subject to the real estate excise tax, provided that the proper tax was paid on the original transaction. The real estate excise tax affidavit is not required. The fulfillment deed must be stamped by the county treasurer as required by RCW 82.45.090. Such stamp shall show the affidavit number on the sale which this deed is fulfilling.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 84-17-002 (Order PT 84-3), § 458-61-400, filed 8/2/84; 82-15-070 (Order PT 82-5), § 458-61-400, filed 7/21/82.]

WAC 458-61-410 Gifts. Transfers of real property as gifts are not subject to the real estate excise tax provided that the transfer is without consideration or that love and affection is the consideration. Completion of the real estate excise tax affidavit is required and the supplemental statement as provided by WAC 458-61-150 shall be furnished with both grantor and grantee signatures unless the parties are family related or the grantee is a tax exempt organization under chapter 84.36 RCW. In such case no separate statement is required to be attached to the affidavit but the nature of the family relationship or the fact that the grantee is a tax exempt organization under chapter 84.36 RCW must be stated on the affidavit and the grantor or grantee must sign the affidavit.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-410, filed 8/6/86; 83-02-022 (Order PT 82-10), § 458-61-410, filed 12/28/82; 82-15-070 (Order PT 82-5), § 458-61-410, filed 7/21/82.]

WAC 458-61-420 Government, transfers to or from. The real estate excise tax does not apply to transfers to or from the United States, any agency thereof, the state of Washington, any political subdivision thereof, or municipal corporation of this state. Furthermore, the tax does not apply to transfer to or from any federally chartered credit union. (RCW 82.45.010)

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-420, filed 7/21/82.]

WAC 458-61-425 Growing crops. The real estate excise tax applies to the value of growing crops when sold with the land upon which they are growing. Thus, the value of the growing crops is not a deduction from the sales price of the real property.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-425, filed 8/6/86.]

WAC 458-61-430 Improvements sold on leased land. (1) The real estate excise tax applies to the sale of improvements on leased land held in private ownership if the terms of the sales contract do not require that the improvements be removed from the land.

(2) The real estate excise tax does not apply to the sale of improvements on leased land held in private ownership if the terms of the sales contract require that the improvements be removed from the land. In this case the improvements are considered personal property and their sale is subject to the use tax under chapter 82.12 RCW.

(3) The real estate excise tax applies to the sale of improvements on leased land held in public ownership. However, if the sale price includes a valuable leasehold estate, the value of the leasehold estate must be deducted from the sales price before application of the tax.

(Note: Completion of the affidavit is required for all of the above transfers. Affidavits for sales under subsection (2) of this section should show the improvement's sales price as "gross sales price" and deduct this same amount under "deduct personal property." The result will be net taxable sales price of zero.)

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-430, filed 7/21/82.]

WAC 458-61-440 Improvements sold to be removed from the land. The real estate excise tax does not apply to the sale of improvements separate from the land, whether leased or not, where the removal of the improvements from the land is a condition of the terms of the sale. In this case the improvements are considered personal property and their sale is subject to use tax under chapter 82.12 RCW.

(Note: Completion of the affidavit is required for the sale of improvements separate from the land. The improvement's sales price should be shown as "gross sales price" and the same amount should be deducted as personal property. The result will be a net taxable sales price of zero.)

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-440, filed 7/21/82.]

WAC 458-61-450 Indian (American), transfers to or from. (1) The real estate excise tax does not apply to transfers to or from individual Indians or Indian tribes when the United States government acts as trustee on behalf of that individual Indian or tribe. Because the United States government is acting as grantor or grantee (as trustee) no affidavit is required for such transaction.

(2) The tax exemption in subsection (1) of this section does not apply to transfers where enrolled Indians, whether as individuals, groups, or tribes, grant or receive real property without the United States government acting as trustee on their behalf and the property is on the reservation.

(3) The real estate excise tax does not apply to sales of timber made by Indians holding trust allotments where, after the execution of the contracts, the Indians have received fee patents to their lands.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-450, filed 7/21/82.]

WAC 458-61-460 Inheritance. Transfers of real property by inheritance are not subject to the real estate excise tax. Completion of the real estate excise tax affidavit is required. (RCW 82.45.010)

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-460, filed 7/21/82.]

WAC 458-61-470 Irrigation equipment. (1) Any part of an irrigation system that is underground is considered real property and is subject to the real estate excise tax.

(2) Any irrigation equipment that is above ground is considered personal property and its sale is not subject to the real estate excise tax, but is subject to the use tax.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-470, filed 7/21/82.]

WAC 458-61-480 IRS "tax deferred" exchange. The real estate excise tax applies to the transfer or exchange of real property whether or not federal income tax or capital gains tax is "deferred" or "exempted" under the Internal Revenue Service codes.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 83-02-022 (Order PT 82-10), § 458-61-480, filed 12/28/82; 82-15-070 (Order PT 82-5), § 458-61-480, filed 7/21/82.]

WAC 458-61-490 Joint tenancy. The real estate excise tax does not apply to the transfer of real property for

the creation or dissolution of a joint tenancy where no consideration passes. The tax applies to the sale of interest in real property for the creation or dissolution of a joint tenancy. The taxable amount of the sale is the total of the following:

- (1) Any consideration given;
- (2) Any consideration promised to be given; plus
- (3) The amount of any debt remaining unpaid on the property at the time of sale multiplied by that fraction of interest in the real property being sold.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 87-03-036 (Order PT 87-1), § 458-61-490, filed 1/16/87; 82-15-070 (Order PT 82-5), § 458-61-490, filed 7/21/82.]

WAC 458-61-500 Leasehold interest. The transfer of any leasehold interest, other than an option to purchase real property including standing timber, is not subject to the real estate excise tax. However, completion of the affidavit is required for the transfer or assignment of any leasehold interest which contains an option to purchase or transfers lessee-owned improvements. (RCW 82.45.010)

[Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-500, filed 8/6/86; 82-15-070 (Order PT 82-5), § 458-61-500, filed 7/21/82.]

WAC 458-61-510 Lease with option to purchase. The real estate excise tax shall apply to a lease with option to purchase when the purchase option is exercised:

(1) If the option to purchase must be exercised within a period no longer than two years after the original commencement of the lease and the amount of lease payments will not exceed half of the purchase price; or

(2) If none of the lease payments apply toward the ultimate sales price.

Transactions lacking the above criteria are taxable at the time that the lease with option to purchase agreement originates. The sales price shall be considered to be the purchase price stated in the lease-option agreement. If the selling price is not stated in the instrument, the grantor, grantee or the agent of either shall, by affidavit, state the option price intended and the tax levied hereunder shall be on such stated option price: *Provided*, That upon execution and delivery of the instrument of conveyance or transfer pursuant to such option a second affidavit stating the actual consideration shall be filed with the county treasurer. If the actual consideration passing is greater than the option price stated in the affidavit filed at the time the lease-option was executed, there shall be collected the tax on such additional amounts prior to the time the deed is accepted for recording. If the actual consideration is the same as the option price originally stated, no additional tax will be collected. If the actual consideration is less than the option price stated, refund of excess tax shall be made.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 84-17-002 (Order PT 84-3), § 458-61-510, filed 8/2/84; 82-15-070 (Order PT 82-5), § 458-61-510, filed 7/21/82.]

WAC 458-61-520 Mineral rights. (1) The real estate excise tax applies to the sale of mineral rights in private property. A quitclaim deed, in itself, is not a valid reason for tax exemption.

(2) A conditional sale of mining property in which the buyer has the right to terminate the contract at any time, and a lease and option to buy mining property in which the lessee-buyer has the right to terminate the lease and option at any time, shall be taxable at the time of execution only on the consideration received by the seller or lessor for execution of such contract. The tax due on any additional consideration paid by the buyer and received by the seller shall be paid to the county treasurer (a) at the time of termination, or (b) at the time that all of the consideration due to the seller has been paid and the transaction is completed except for the delivery of the deed to the buyer, or (c) at the time when the buyer unequivocally exercises an option to purchase the property, whichever of the three events occurs first.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-520, filed 7/21/82.]

WAC 458-61-530 Mining claims. (1) Patented mining claims are real property and their sale is subject to the real estate excise tax. Conveyance of patented mining claims by quitclaim deed is not a reason, in itself, for tax exemption.

(2) Unpatented mining claims are intangible personal property and therefore not subject to the real estate excise tax.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-530, filed 7/21/82.]

WAC 458-61-540 Mobile home sales. (1) The real estate excise tax applies to transfers of mobile homes that:

(a) Have become affixed to land by being placed upon a foundation (post or blocks) with fixed pipe connections with sewer, water, and other utilities;

(b) The mobile home's removal from the land is not a condition of sale; and

(c) The retail sales or use tax has been paid on a previous sale or use of the home.

(2) The retail sales or use tax applies to any of the following mobile home sales:

(a) Initial retail sale;
 (b) Sale from a dealer's lot of either a new or used unit;
 (c) Sale conditional on removal of the unit from its fixture to land; or

(d) Sale of a unit that is not affixed to land by virtue of its placement upon a foundation (posts or blocks) with fixed pipe connections with sewer, water, and other utilities.

(3) The sale of a new or used mobile home is subject either to the real estate excise tax as set forth in subsection (1) of this section, or to the retail sales or use tax as set forth in subsection (2) of this section. A single sale of a mobile home is not subject to both taxes.

(4) The decision whether to apply the real estate sales tax versus the retail sales or use tax should be made without considering the mobile home's status as real or personal property on the assessment rolls. Both taxes are upon transfers of property and it is the characteristics of the transfer, not the classification, that determines which tax to apply.

(5) A separate mobile home affidavit is not necessary when the primary affidavit lists the make, model, year and

serial number of the mobile home. This information should be listed as a separate item in the legal description portion of the affidavit.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-540, filed 8/6/86; 82-15-070 (Order PT 82-5), § 458-61-540, filed 7/21/82.]

WAC 458-61-545 Mortgage insurers. The real estate excise tax does not apply to the conveyance of real property from the mortgage lender to a governmental or quasi-governmental mortgage insurer or guarantor. The tax does apply to the conveyance of real property from the mortgage lender to a private mortgage insurer or guarantor in settlement of the insurance claim.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-545, filed 8/6/86.]

WAC 458-61-550 Nominee. When a nominee has received title to or interest in real property on behalf of a third-party principal, the real estate excise tax does not apply to the subsequent transfer of the property from the nominee to the third party, provided that:

(1) The proper tax was paid on the initial transaction;

(2) A notarized statement, as provided in WAC 458-61-150, is attached to the affidavit for the second transaction (such notarized statement must be dated on or prior to the first transaction);

(3) The third-party principal was in legal existence at the time of the initial transaction;

(4) The funds used by the nominee to initially acquire the property were provided by the third-party principal; and

(5) The subsequent transfer from the nominee to the third-party principal is not for a greater consideration than that of the initial acquisition.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-550, filed 8/6/86; 83-02-022 (Order PT 82-10), § 458-61-550, filed 12/28/82; 82-15-070 (Order PT 82-5), § 458-61-550, filed 7/21/82.]

WAC 458-61-555 Option to purchase. The real estate excise tax does not apply to an option to purchase real property when such option does not accompany a lease. See WAC 458-61-510.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 87-12-016 (Order PT 87-4), § 458-61-555, filed 5/27/87; 86-16-080 (Order PT 86-3), § 458-61-555, filed 8/6/86.]

WAC 458-61-560 Partnership—Family. The real estate excise tax shall not apply to a transfer to a partnership which is wholly owned by the transferor and/or the transferor's spouse or children: *Provided*, That if thereafter such transferee partnership voluntarily transfers such real property, or such transferor, spouse, or children voluntarily transfer interest in the transferee partnership capital to other than (1) the transferor and/or the transferor's spouse or children, (2) a trust having the transferor and/or the transferor's spouse or children as the only beneficiaries at the time of the transfer to the trust, or (3) a corporation or partnership wholly owned by the original transferor and/or the transferor's spouse or children, within five years of the original transfer to which this exemption applies, excise

taxes shall become due and payable on the original transfer as otherwise provided by law. (RCW 82.45.010)

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-560, filed 7/21/82.]

WAC 458-61-570 Partnership—Nonfamily. (1) The real estate excise tax does not apply to the sale of general partnership or limited partnership shares where title to real property is not conveyed.

(2) The real estate excise tax applies to the transfer of real property from an individual, partnership, corporation, association, or any other legal entity:

(a) To a general partnership or limited partnership upon the formation of that partnership; or

(b) To an on-going general partnership or limited partnership in return for partnership shares.

(3) The real estate excise tax applies to the transfer of real property from a general partnership or from a limited partnership to any grantee regardless of whether such grantee is an individual, partnership, corporation, association, or other legal entity upon the dissolution of a partnership or withdrawal of partnership member(s).

(4) The real estate excise tax applies to the transfer of real property during the conversion of either a general partnership or limited partnership into a general partnership, into a limited partnership, into a corporation, or into a joint or common tenancy, to the extent that such a conversion involves the transfer of title to real property.

(5) A joint venture is considered the same as a general partnership for purposes of the real estate excise tax.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 87-03-036 (Order PT 87-1), § 458-61-570, filed 1/16/87; 82-15-070 (Order PT 82-5), § 458-61-570, filed 7/21/82.]

WAC 458-61-590 Rescission of sale. The real estate excise tax does not apply to the reconveyance of property from vendee to vendor where no consideration passes otherwise.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-590, filed 8/6/86; 84-17-002 (Order PT 84-3), § 458-61-590, filed 8/2/84; 82-15-070 (Order PT 82-5), § 458-61-590, filed 7/21/82.]

WAC 458-61-600 Relocation service. The real estate excise tax applies to a deed naming no grantee which is given to a purchaser for a consideration and which vests equitable title in the purchaser. Subsequent delivery of the deed by such purchaser to a third person named as grantee in the deed for consideration is also a taxable sale.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-600, filed 7/21/82.]

WAC 458-61-610 Rerecord. The real estate excise tax does not apply to the rerecording of documents to correct legal description, change of contract terms, or spelling of name of party to the transaction. An affidavit is required for the rerecording and must refer to the prior affidavit number and the recorded document number for the prior transaction and it also must furnish a complete explanation of why such rerecording is necessary.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-610, filed 7/21/82.]

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WAC 458-61-620 Sales made before imposition of tax. The real estate excise tax does not apply to any transfer for which the lease or contract was entered into prior to the date this tax was first imposed under chapter 28A.45 RCW. (RCW 82.45.010)

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-620, filed 7/21/82.]

WAC 458-61-630 Security documents. A mortgage or other transfer of an interest in real property merely to secure a debt, or the assignment thereof, is not a taxable transaction and completion of the affidavit is not necessary. (RCW 82.45.010; see also WAC 458-61-080: Affidavit requirements.)

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-630, filed 7/21/82.]

WAC 458-61-640 Sheriff's sale. The real estate excise tax does not apply to any sale of real property made by a county sheriff pursuant to a court decree. A real estate excise tax affidavit must be filed with the county treasurer. (RCW 82.45.010)

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-640, filed 7/21/82.]

WAC 458-61-650 Tenants in common. (1) The partition of real property by tenants in common by agreement or as the result of a court decree is not a taxable transaction.

(2) The sale of the interest in real property from one or more tenants in common to remaining tenants or to a third party is a taxable transaction. The taxable amount of the sale is the total of the following:

(a) Any consideration given;

(b) Any consideration promised to be given; plus

(c) The amount of any debt remaining unpaid on the property at the time of sale multiplied by that fraction of interest in the real property being sold.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-650, filed 8/6/86; 82-15-070 (Order PT 82-5), § 458-61-650, filed 7/21/82.]

WAC 458-61-660 Timber, standing. The application of the real estate excise tax to the sale of timber is based upon whether or not the ownership of the timber transferred while the timber was standing.

(1) The sale of standing timber is a taxable transaction.

(2) The seller's irrevocable agreement to sell timber and pass ownership to it as it is cut is a taxable transaction if the total amount of the sale is specified in the original contract.

(3) A contract to transfer the ownership of timber after it has been cut and removed from land by the grantee is a taxable transaction.

(4) A contract between a timber owner and a harvester where the harvester provides the service of cutting the timber and transporting it to the mill is not subject to the real estate excise tax. In this instance the timber owner retains ownership of the timber until it is delivered to and purchased by the mill.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-660, filed 7/21/82.]

WAC 458-61-670 Trade-in credit. (1) Where a single family residential dwelling is being transferred as the entire or part consideration for the purchase of another single family residential dwelling and a licensed real estate broker or one of the parties to the transaction accepts transfer of said property, a credit for the amount of the tax paid at the time of the transfer to the broker or party shall be allowed toward the amount of the tax due upon a subsequent transfer of the same property by the broker or party.

The subsequent transfer must be made within nine months of the original transfer for the credit to be allowed. If the tax which would be due on the subsequent transfer from the broker or party is greater than the tax paid for the prior transfer to said broker or party, the difference shall be paid, but if the tax initially paid is greater, no refund shall be allowed.

(2) The affidavit upon which the trade-in credit is claimed must show all of the following:

(a) The prior affidavit number where the tax was paid on the original (trade-in) transaction;

(b) The county auditor's recorded document number for the original transaction, if such was recorded;

(c) The transaction date of the original transaction; and

(d) The disclosure that both properties involved in the original trade-in transaction are single family dwellings. (RCW 82.45.105)

(Note: The above trade-in credit is allowed toward the subsequent sale of the residence "brought in" on trade - not toward the tax liability of the sale of the residence for which it was traded.)

[Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-670, filed 8/6/86; 82-15-070 (Order PT 82-5), § 458-61-670, filed 7/21/82.]

WAC 458-61-680 Trust. The real estate excise tax does not apply to a conveyance into a revocable trust when such trust agreement names the grantor or the grantor's spouse and/or children as beneficiaries. The tax does not apply to a conveyance from a trustee to the original grantor or a beneficiary where no consideration passes. The real estate excise tax applies to the sale of real property by the trustee to a third party for valuable consideration. (See WAC 458-61-410: Gifts and 458-61-460: Inheritance.)

[Statutory Authority: RCW 82.45.120 and 82.45.150. 84-17-002 (Order PT 84-3), § 458-61-680, filed 8/2/84; 82-15-070 (Order PT 82-5), § 458-61-680, filed 7/21/82.]

WAC 458-61-690 Trustee sale pursuant to deed of trust (nonjudicial). The real estate excise tax does not apply to the foreclosure sale of real property by the trustee under the terms of a deed of trust, whether to the beneficiary listed on that deed or to a third party.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 83-02-022 (Order PT 82-10), § 458-61-690, filed 12/28/82.]

Chapter 458-65 WAC ABANDONED PROPERTY

WAC

458-65-010	Time limitations.
458-65-020	Use of department forms.
458-65-030	Simultaneous reporting and remittance of unclaimed property.
458-65-040	Maturity of automatically renewable instruments.

WAC 458-65-010 Time limitations. The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property shall not prevent the money or property from being presumed abandoned property under chapter 63.28 RCW, nor affect any duty to file a report required by that chapter or to pay or deliver abandoned property to the department of revenue. This rule shall not apply to property presumed abandoned prior to June 9, 1955.

[Rule UCP 1, § 458-65-010, filed 1/17/68.]

Reviser's note: WAC 458-65-010 declared invalid: *Pacific Northwest Bell Telephone Co. v. Department of Revenue*, 78 Wn.2d 961 (1971).

WAC 458-65-020 Use of department forms. (1) The report of unclaimed property required by the Uniform Unclaimed Property Act of 1983 must be on forms provided by or approved by the department.

(2) The report, entitled report of unclaimed property, is to be filed with the department prior to November 1 each year (prior to May 1 by life insurance companies), and it becomes delinquent on that date if it has not been filed and an extension of time to file has not been given written approval by the department. Each report filed must be verified, which is accomplished by simultaneously filing the department supplied verification and checklist.

(3) In some instances, computer printouts can be accepted in place of the department supplied report of unclaimed property. However, essentially the same format must be used and prior written approval by the department is required. It should be emphasized that the filing of a verification and checklist form is required even if the report is made via computer printout.

(4) Because of the necessity of submitting a remittance report several months after the annual report is filed, the remittance report must duplicate the first report in every respect; however, interlineations or annotations may be added to indicate adjustments to the initial report. In other words, the line number of the entry on the form, the identifying number, the owner's last name and address, and all other information shown on the annual report must also be shown on the remittance report submitted subsequently. Where changes are indicated because of payment to the owner, etc., a line may be drawn through the entire line item, or brief explanatory comments may be added to explain the difference between the initially reported amount and the amount eventually remitted.

[Statutory Authority: 1983 c 179 § 38. 83-17-098 (Order IT 83-3), § 458-65-020, filed 8/23/83.]

WAC 458-65-030 Simultaneous reporting and remittance of unclaimed property. Unclaimed property reported to the department for which the reporting holder is not required to report the name of the apparent owner must be delivered to the department at the time of filing the report. Thus, if the holder does not know the owner's name, or if the value of the property belonging to an individual owner is less than \$25, then the property must be turned over to the department at the time of filing the annual report of unclaimed property—before November 1 (before May 1 for life insurance companies). When a remittance is to accompany the annual report of unclaimed property, both the report form and the remittance form must be submitted at the same time. Should the holder have other unclaimed property that does not require remittance with the initial report, he must complete an entirely separate report of unclaimed property which is also to be sent to the department before November 1 (May 1 for life insurance companies), but the remittance for this latter report need not be forwarded until six months after the final date for filing the report.

Thus, it is probable that most holders of unclaimed property will submit two completely separate reports of unclaimed property each year: One (to be accompanied by remittance) for all of those accounts under \$25 or for those accounts where the name of the owner is missing and one for all other instances where in the remittance may be forwarded six months after filing the annual report.

[Statutory Authority: 1983 c 179 § 38. 83-17-098 (Order IT 83-3), § 458-65-030, filed 8/23/83.]

WAC 458-65-040 Maturity of automatically renewable instruments. Automatically renewable property, such as a time deposit, is matured for purpose of abandonment upon the expiration of its initial time period or after one year if the initial period is less than one year, unless the owner of the property takes some specific action relative to the property before that time. Such action may include communicating in writing with the holding institution or otherwise indicating an interest in the property as evidenced by a memorandum or other record on file prepared by an employee of the financial organization holding the subject property.

For purposes of reporting unclaimed property which is automatically renewable, the abandonment period commences upon the first expiration of its time period subsequent to August 31, 1979. However, if the initial period of automatic renewal is less than one year, then the abandonment period commences after one year or September 1, 1979, whichever date is later.

Property unclaimed by its owner during the specified abandonment period is reportable as of June 30th in the fiscal year (the 12 month period running from July 1 to June 30 of the following calendar year) in which its full abandonment period is completed.

EXAMPLE: A 12 month certificate of deposit is automatically renewable and its 12 month period expired on September 1, 1979. If no contact is had with the owner, the certificate of deposit is considered abandoned after five years—September 1, 1984. It must then be included in the report covering property abandoned as of the next June 30th (1985). The annual report of unclaimed property for 1985, to be submitted prior to November 1, should thus include the

value of this certificate of deposit abandoned on September 1, 1979, as well as all other similar property whose initial period of abandonment commenced between September 1, 1979 and June 30, 1980.

The interest rate the certification of deposit earned while in the possession of the holder must be shown in column 9 of the annual report.

[Statutory Authority: 1983 c 179 § 38. 83-17-098 (Order IT 83-3), § 458-65-040, filed 8/23/83.]

Chapter 458-276 WAC ACCESS TO PUBLIC RECORDS

WAC

458-276-010	Declaration of purpose.
458-276-020	Definitions.
458-276-030	Description of central and field organization of the department.
458-276-040	Operations and procedures.
458-276-050	Public records available.
458-276-060	Public records officer.
458-276-070	Hours for records inspection and copying.
458-276-080	Requests for public records.
458-276-090	Copying.
458-276-100	Exemptions.
458-276-110	Review of denials of public records requests.
458-276-120	Limitations on disclosure.
458-276-130	Records index.
458-276-140	Administrative offices.
458-276-150	Adoption of form.

WAC 458-276-010 Declaration of purpose. This chapter is promulgated by the department of revenue in compliance with RCW 42.17.250 and to set out procedures by which public records of the department will be made available to the public for inspection and copying.

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-010, filed 1/23/78.]

WAC 458-276-020 Definitions. (1) Public records. "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

(2) Writing. "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents.

(3) Department of revenue. The department of revenue is an agency headed by a director appointed by the governor subject to conformation by the state senate. The powers and duties of the director are, inter alia, those prescribed by RCW 82.01.060. The department of revenue will hereinafter be referred to as the "department," and the director will hereinafter be referred to as the "director." Where appropriate, the term department also refers to the staff and employees of the department of revenue.

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-020, filed 1/23/78.]

WAC 458-276-030 Description of central and field organization of the department. The department of revenue administers state tax laws, acts as advisor on revenue matters to the governor, the legislature, and other state and local agencies, and supervises and assists in the administration of property tax laws at state and local levels. The central administrative offices of the department and its staff are located at General Administration Building, Fourth Floor, Olympia, Washington 98504. Operating divisions of the department are: Field Operations, Interpretation and Appeals, Research and Information, Office Operations, Inheritance Tax, Property Tax, Administrative Services, and Forest Tax.

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-030, filed 1/23/78.]

WAC 458-276-040 Operations and procedures. Each of the major operating divisions of the department is the immediate responsibility of an assistant director of the department who is designated as director of that division.

(1) **Field operations.** The director of field operations directs employees engaged in field audits, enforcement, audit review and taxpayer assistance through 16 branch offices, 4 regional offices, and several out-of-state auditors.

(2) **Interpretation and appeals.** The director of interpretation and appeals and his hearing officers conduct tax hearings, publish excise tax bulletins and guidelines, issue formal and informal interpretations, and provide advice to the legislature on excise tax matters. The division administers rules published under the Washington Administrative Code, and makes written determinations on appeals involving disputed tax liability.

(3) **Research and information.** The director of research directs the preparation of revenue forecasts for state government and develops other statistical analyses used in the preparation of the governor's budget. The division is responsible for the analysis of proposed legislation, and advises both the executive and legislative branches of the fiscal impact of proposed tax measures.

The director of research also is in charge of informational services and the publication of official state and local statistical documents. His staff also provides supportive data, analyses, and advice to the other divisions.

(4) **Office operations.** The director of office operations supervises employees assigned to taxpayer registration, accounts receivable, taxpayer office audits and investigation, miscellaneous tax processing, and records maintenance.

(5) **Inheritance tax.** The director of inheritance tax administers the collection of gift and inheritance taxes and supervises escheats and unclaimed property.

(6) **Property tax.** The director of property taxes oversees the administration of property taxation at the state and local level, including the development of guidelines and regulations affecting the operation of assessors in the 39 counties. The division directly appraises the intercounty operating properties of railroad, power, gas, transportation, communications, and water companies.

Activities include assessment ratio studies used, in part, as a basis for allocating state funds to local taxing districts; tax mapping, coding, and appraisal assistance to the counties; appraisal manuals and tax reporting forms; motor vehicle

excise tax valuations; statewide supervision of property tax exemptions and determination of eligibility for property tax exemptions for nonprofit organizations; rules for open space taxation; and supervision of county boards of equalization.

(7) **Administrative services.** The director of administrative services directs employees engaged in budget and fiscal controls, centralized word processing, office services, systems and procedures, and automated data processing.

(8) **Forest tax.** The director of forest tax is responsible for developing semi-annual timber stumpage value rates used in determining the tax liability for all timber harvested from private lands, and for the timely collection of the forest excise tax, and computation of the distribution of revenues to the state and local taxing districts. The division also develops forest land values annually to be used by the county assessors for the assessment of all classified and designated forest lands for property tax purposes. Field inspections of harvest sites, timber sales, and forest land sales are also performed by the division for audit, compliance, and valuation purposes.

(9) **Director of personnel.** The personnel officer coordinates departmental employment, personnel relations and labor relations, and also is in charge of personnel administration, employee development, employee benefits, services and safety, and affirmative action.

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-040, filed 1/23/78.]

WAC 458-276-050 Public records available. All public records of the department, as defined in WAC 458-276-020(1) are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 42.17.310, 42.17.330, WAC 458-276-100, and other applicable laws.

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-050, filed 1/23/78.]

WAC 458-276-060 Public records officer. The department's public records are in the charge of the public records officer designated by the director. The person so designated will be located in the central administrative office, research and information division, of the department. The public records officer is responsible for the following: The implementation of the department's rules and regulations regarding release of public records, coordinating the staff of the department in this regard, and generally ensuring compliance by the department with the public records disclosure requirements of chapter 42.17 RCW.

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-060, filed 1/23/78.]

WAC 458-276-070 Hours for records inspection and copying. Public records maintained in the central administrative offices will be available for inspection and copying at the administrative office during the customary office hours of the department. For the purposes of this chapter, the customary office hours are 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding legal holidays. Specific records not available in the central administrative offices will be made available pursuant to the procedures described in WAC 458-276-080(3).

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-070, filed 1/23/78.]

WAC 458-276-080 Requests for public records. (1) Chapter 42.17 RCW requires that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency. Accordingly, whenever the department believes these or other provisions of law would be violated by immediate disclosure of records, requests for inspection or copying by members of the public shall be in writing upon a form prescribed by the department which will be available at its administrative and all branch offices. The form shall be presented either to the public records officer at the central administrative offices of the department or to any tax service representative of the department at the administrative or any branch office of the department during customary office hours. Customary office hours at branch offices may vary from those of the department's administrative offices. If a tax service representative is not available at a branch office the request form may be completed and presented to the person in charge of the office at the time the request is made or mailed to the Public Records Officer, Research and Information Division, Department of Revenue, 414 General Administration Building, Olympia, Washington 98504. The request shall include the following information:

- (a) The name of the person requesting the record;
- (b) The time of day and calendar date on which the request is made;
- (c) The nature of the request;
- (d) If the matter requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in such current index;
- (e) If the requested matter is not identifiable by reference to the department's current index, an appropriate description of the record requested.

(2) In all cases in which a member of the public is making a request, it is the obligation of the public records officer, or staff member to whom the request is made, to assist the member of the public in appropriately identifying the public record requested.

(3) If the record is not maintained in the central administrative offices of the department, after approval of the request, the public records officer will retrieve the record and advise the person making the request by telephone or mail of the time and place the record will be available, which time will be as reasonably soon after the request is made as possible.

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-080, filed 1/23/78.]

WAC 458-276-090 Copying. There is no fee for the inspection of public records. The department will charge a fee of twenty-five cents per page of copy for providing copies of public records and for use of the department's copy equipment. This charge is to reimburse the department for its costs incident to such copying.

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-090, filed 1/23/78.]

WAC 458-276-100 Exemptions. (1) The department reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 458-276-080 is exempt under the provisions of RCW 42.17.310, and other applicable laws.

(2) In addition, pursuant to RCW 42.17.260, the department reserves the right to delete identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosure of such details would be an invasion of privacy protected by chapter 42.17 RCW. The public records officer will fully justify such deletion in writing.

(3) All denials of written requests for public records will be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

(4) The department reserves the right provided by RCW 42.17.330 to move the various superior courts to enjoin the examination of any specific public record when it believes such examination would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions.

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-100, filed 1/23/78.]

WAC 458-276-110 Review of denials of public records requests. (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request will refer it to the director. The petition will be reviewed promptly and the action of the public records officer approved or disapproved. Such approval or disapproval shall constitute final department action for purposes of judicial review under RCW 42.17.340.

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-110, filed 1/23/78.]

WAC 458-276-120 Limitations on disclosure. The department will give due regard in considering requests for public records to RCW 82.32.330, 83.36.020, and other applicable limitations on disclosure.

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-120, filed 1/23/78.]

WAC 458-276-130 Records index. The department will maintain and make available for public inspection and copying an appropriate index or indices in accordance with RCW 42.17.260.

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-130, filed 1/23/78.]

WAC 458-276-140 Administrative offices. All communications with the department regarding administration or enforcement of chapter 42.17 RCW and these rules, and requests for copies of the department's decisions and other matters, shall be addressed as follows: Public Records Officer, Research and Information Division, Department of Revenue, 414 General Administration Building, Olympia, Washington 98504.

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-140, filed 1/23/78.]

WAC 458-276-150 Adoption of form. The department hereby adopts for use by all persons making written request for inspection and/or copying or copies of its records under WAC 458-276-080, the Form S.F. 276 as it exists or may hereafter be revised.

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-150, filed 1/23/78.]