WSR 24-04-001
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed January 24, 2024, 12:53 p.m., effective February 24, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of revenue is updating WAC 458-20-134 and 458-20-178 due to changes from recent legislation, SHB 1764 (2023). The legislation amended RCW 82.04.450 to provide a valuation method for asphalt and aggregate used in public road construction.

Additionally, the update includes several grammar and punctation changes to enhance clarity and readability.

Citation of Rules Affected by this Order: Amending WAC 458-20-134 Commercial or industrial use and 458-20-178 Use tax and the use of tangible personal property.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060.

Adopted under notice filed as WSR 23-23-159 on November 21, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 24, 2024.

Atif Aziz
Rules Coordinator

OTS-5089.1

AMENDATORY SECTION (Amending WSR 22-04-026, filed 1/24/22, effective 2/24/22)

WAC 458-20-134 Commercial or industrial use. (1) **Definitions.**

(a) The term "commercial or industrial use" means the following uses of products, including by-products, by the same person that extracted or manufactured them:

(i) Any use as a consumer; and

(ii) ((~~The~~)) Manufacturing of articles, substances, or commodities. (RCW 82.04.130.)

(b) The term "biomass fuel" means wood waste and other wood residuals, including forest derived biomass, but does not include firewood or wood pellets. "Biomass fuel" also includes partially organic by-products of pulp, paper, and wood manufacturing processes.

(2) **Examples of commercial or industrial use.** The following are examples of commercial or industrial use:

(a) The use of lumber by the manufacturer of that lumber to build a shed for its own use.

(b) The use of a motor truck by the manufacturer of that truck as a service truck for itself.

(c) The use by a boat manufacturer of patterns, jigs, and dies ((~~which~~)) that it has manufactured.

(d) The use by a contractor building or improving a publicly owned road of crushed rock or pit run gravel ((~~which~~)) that 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 manufacturing or extracting B&O tax classifications, 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 Value of products, for additional information.

(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 article used, unless a specific exemption is provided. See WAC 458-20-178 Use tax and the use of tangible personal property, for further explanation of use tax and the definition of "value of the article used."

(5) **Exemptions.** The following uses of articles produced for commercial or industrial use are expressly exempt from use tax.

(a) RCW 82.12.0263 exempts from the use tax the use of biomass fuel by the same person that extracted or manufactured that biomass fuel when it is used directly in the operation of the particular extractive operation or manufacturing plant ((~~which~~)) that produced or manufactured the same biomass fuel.

(b) Property produced for use in manufacturing ferrosilicon, which is subsequently used to make magnesium for sale, is exempt from use tax if the primary purpose is to create a chemical reaction directly through contact with an ingredient of ferrosilicon. RCW 82.04.190(1).

(c) Hog fuel used to produce electricity, steam, heat, or biofuel is exempt from use tax. RCW 82.12.956. For the purposes of this exemption, "hog fuel" means wood waste and other wood residuals including forest derived biomass, but not including firewood or wood pellets. "Biofuel" means a liquid or gaseous fuel derived from organic matter intended for use as a transportation fuel including, but not limited to, biodiesel, renewable diesel, ethanol, renewable natural gas, and renewable propane.

(6) **Special provisions regarding value of article used.** RCW 82.12.010 provides the following special valuation provisions to persons manufacturing products for commercial or industrial use:

(a) In the case of articles manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the United States Department of Defense, the value of the articles used is determined according to the value of the ingredients of those articles.

(b) 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 is determined by:

(i) The retail selling price of such new or improved product when first offered for sale; or

(ii) The value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

(c) In the case of a person manufacturing or extracting asphalt or aggregates used in providing services taxable under RCW 82.04.280 (1)(b), the value of the asphalt or aggregates used is based on cost. Specifically, the value of the asphalt or aggregates equals the sum of all direct and indirect costs attributable to the asphalt or aggregates used, plus a public road construction market adjustment of five percent of those costs.

OTS-5090.1

AMENDATORY SECTION (Amending WSR 23-14-002, filed 6/21/23, effective 7/22/23)

WAC 458-20-178 Use tax and the use of tangible personal property. (1) **Introduction.** This rule provides general use tax-reporting information for consumers. It discusses who is responsible for remitting use tax, and when and how to remit the tax. The rule also explains the imposition of use tax as it applies to the use of tangible personal property within this state when the acquisition of the tangible personal property was not subject to retail sales or deferred sales tax.

(a) **Examples.** Examples found in this rule identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(b) **Additional information available.** For information on use tax exemptions please refer to chapter 82.12 RCW. When appropriate, this rule refers the reader to applicable statutes and rules. In addition, the reader may wish to refer to the following:

(i) WAC ((~~458-20-145, Local sales and use tax, provides information on sourcing local sales and use taxes.~~

~~(ii)~~)) 458-20-112, Value of products, provides information on the measure of tax for certain sales.

(ii) WAC 458-20-145, Local sales and use tax, provides information on sourcing local sales and use taxes.

(iii) WAC 458-20-15503, Digital products, provides information on sales and use tax liability on digital products such as: Digital goods, including digital audio works, digital audio-visual works, and digital books; digital automated services; digital codes used to obtain digital goods or digital automated services; and remote-access software.

((~~(iii)~~)) (iv) WAC 458-20-169, Nonprofit organizations, provides information on a use tax exemption for donated items to a nonprofit charitable organization.

((~~(iv)~~)) (v) WAC 458-20-17803, Use tax on promotional material, provides information about the use tax reporting responsibilities of persons who distribute or cause the distribution of promotional material, except newspapers, the primary purpose of which is to promote the sale of products or services in Washington.

((~~(v)~~)) (vi) WAC 458-20-190, Sales to and by the United States—Doing business on federal reservations—Sales to foreign governments,

provides tax reporting information for businesses doing business with the United States.

((~~(vi)~~)) (vii) WAC 458-20-192, Indians—Indian country, provides information on use tax pertaining to Indians and Indian tribes and use tax pertaining to non-Indians in Indian country.

((~~(vii)~~)) (viii) WAC 458-20-257, Warranties and service contracts, provides information on tax responsibilities of persons selling or performing services covered by warranties, service contracts, and mixed agreements for tangible personal property.

(2) **What is use tax?** Use tax complements the retail sales tax, and in most cases mirrors the retail sales tax. Articles of tangible personal property used or certain services purchased in Washington are subject to use tax when the state's retail sales tax has not been paid, or where an exemption is not available. Tangible personal property or services used or purchased by the user in any manner are taxable including, but not limited to:

- Purchases directly from out-of-state sellers;
- Purchases through the internet, telemarketing, mail order; or
- Acquisitions at casual or isolated sales.

(a) **Example 1.** ABC Company (ABC) orders office supplies from out-of-state vendors and also through catalogs. In addition, ABC pays annual subscriptions for magazines for their own use. None of these vendors is required to collect Washington's retail sales tax. Use tax is due on all taxable items ordered including the annual subscriptions.

(b) **Example 2.** Mary is a music instructor that teaches adults how to play the piano. Mary does not charge her students retail sales tax on the costs of the weekly piano lessons. Use tax is not due on the lessons, as the lessons are not a retail sales taxable service. See WAC 458-20-224, Service and other business activities.

(3) **"Use" defined.** For purposes of this rule, "use," "used," "using," or "put to use" have their ordinary meaning and include the first act by which a person takes or assumes dominion or control over the article (as a consumer). It includes installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within the state. (See RCW 82.12.010.) Multiple uses of the same article by the same person do not generally result in multiple use tax liabilities.

(4) **Measure of tax - Value of article used.** Use tax generally is levied and collected on an amount equal to the value of the article used by the taxpayer. RCW 82.12.010 defines this value to generally be the purchase price of the article. There are a number of specific situations where this value may be different than the amount of consideration paid or given by the buyer to the seller. See subsection (7) of this rule for exceptions.

(a) **When the value is the purchase price.** The term "purchase price" has the same meaning as "selling price." The selling price is the total amount of consideration, except trade-in property of like kind, including cash, credit, property, and services, for which tangible personal property is sold, leased, or rented, valued in money, whether received in money or otherwise. The selling price, and therefore the "value of the article used" also includes delivery charges. Delivery charges are charges made by the seller for preparing and delivering tangible personal property to a location designated by the buyer and include, but is not limited to, charges for transportation, shipping, postage, handling, crating, and packing. (See RCW 82.08.010 and 82.12.010.)

(b) **When the purchase price does not represent true value.** When an article is sold under conditions in which the purchase price does not represent the true value, the "value of the article used" is to be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character. (See RCW 82.12.010.) This is frequently referred to as the fair market value of the property. For additional information regarding the measure of tax for articles in these situations, refer to WAC 458-20-112, Value of products. Refer to subsection (4)(i)(i) of this rule for determining use tax when there is no similar article of like quality and character.

A comparison((~~/~~)) and examination of arm's length sales transactions is required when determining the value of the article used on the basis of the retail selling price of similar products. An arm's length sale generally involves a transaction negotiated by unrelated parties, each acting in his or her own self-interest.

(i) In an arm's length sales transaction, the value placed on the property by the parties to the transaction may be persuasive evidence of the true value of the property. Where there is a conflict regarding the true value of tangible personal property between sales documents, entries in the accounting records ((~~and/~~)), or value reported for use tax purposes, the department often looks to the person's accounting records as an indication of the minimum value of capitalized property. Neither the department nor the taxpayer is necessarily bound by this value if it is established that the entry in the books of account does not fairly represent the true value of the article used.

(ii) Some arm's length sales transactions involve multiple pieces of property or different types of property (such as when both real and personal property are sold). While the total sales price may represent a true value for the property in total, the values allocated to the specific components may not in and of themselves represent true values for those components. This is especially apparent when the values assigned by the parties to the sales transaction vary from those entered into the accounting records ((~~and/~~)) or reported for use tax purposes. In such cases, the value of the article used for the purpose of the use tax must be determined as nearly as possible according to the retail selling price, at the place of use, of similar products of like quality and character.

(c) **Property acquired and used outside Washington before use occurs in Washington.** The purchase price of property acquired and used outside Washington before being used in this state may not represent the property's true value. Under these circumstances, the value of article used is the retail selling price at place of use of similar products of like quality and character as of the time the article is first used in Washington.

(d) **Imported property.** When property is imported from outside the United States for use in Washington state, the value of the article used includes any amount of tariff or duty paid with respect to importation.

(e) **Articles produced for commercial or industrial use.** A person who extracts or manufactures products or by-products for commercial or industrial use is subject to use tax and the business and occupation (B&O) tax on the value of products or by-products used. "Commercial or industrial use" is the use of products, including by-products, as a consumer by the person who extracted or manufactured the products or by-products. See WAC 458-20-134, Commercial or industrial use and WAC 458-20-136, Manufacturing, processing for hire, fabricating.

Tax applies even if the person is not generally in the business of extracting, producing, or manufacturing the products, or the extracting or manufacturing activity is incidental to the person's primary business activity. Thus, a clothing retailer who manufactures signs or other materials for display purposes incurs a liability even though the clothing retailer is not otherwise in the business of manufacturing signs and other display materials for sale.

(i) The extractor or manufacturer is responsible for remitting retail sales or use tax on all materials used while developing or producing an article for commercial or industrial use. This includes materials that are not components of the completed article.

(ii) The value of the extracted or manufactured article is subject to use tax when the article is completed and used. The measure of use tax due for the completed article may be reduced by the value of any materials actually incorporated into that article if the manufacturer or extractor previously paid sales or use tax on the materials. See subsection (4)(g) of this rule for an explanation of the measure of tax for a completed prototype.

(f) **Bailment.** For property acquired by bailment, the "value of the article used" for the bailee is an amount representing a reasonable rental for the use of the bailed article, 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. (See RCW 82.12.010.) If the nature of the article is such that it can only be used once, the reasonable rental value is the full value of the article used. See also WAC 458-20-211, Leases or rentals of tangible personal property, bailments.

(g) **Prototypes.** The value of the article used with respect to an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product is:

• The retail selling price of such new or improved product when first offered for sale; or

• The value of materials incorporated into the prototype in cases where the new or improved product is not offered for sale. (See RCW 82.12.010.)

(h) **Articles manufactured and used in the production of products for the department of defense.** When articles are manufactured and used in the production of products for the department of defense, use tax is due except where there is an exemption. The value of the article used with respect to an article manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the department of defense of the United States is the value of the ingredients of the manufactured or produced article. (See RCW 82.12.010.) However, refer to WAC 458-20-13601, Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment, to determine if such articles qualify for exemption under RCW 82.12.02565.

(i) **Property temporarily brought into Washington for business use.** 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 180 days in any period of 365 consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used must be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under chapter 82.08 or 82.12 RCW upon the full value of the article used.

However, this measure of "value of article used" is a separate provision from RCW 82.12.0251 use tax exemption. The use tax exemption is provided to nonresidents bringing property into Washington for his or her use or enjoyment while temporarily within the state, unless the property is used in conducting a nontransitory business activity. The term "nontransitory business activity," for the purposes of this exemption, 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.

(i) **Reasonable rental value.** A reasonable rental value is normally determined by the rental price or using the fair market rental value of similar products of like quality and character if rental price is not reasonable. If a reasonable rental value cannot be determined because of the nature of property, such as it may not be possible to find similar products of like quality and character, monthly reasonable rental value may be determined based on depreciation plus one percent (per month) of the purchase price. For the purpose of this computation, depreciation should be computed on a straight-line basis with an assumption that there is no salvage value. The life of the asset must be based on "book" life rather than an accelerated life that might be used for federal tax purposes. This calculation applies even if the asset is fully depreciated.

(ii) **Example.** A piece of equipment that originally cost $100,000 and has a book life of 48 months results in a monthly rental value of $3,083 ((100,000/48) + (100,000 x .01)). This monthly value applies even if the asset is fully depreciated or is greater or less than the actual depreciation used for federal tax purposes. A lesser value can be used if the taxpayer retains documentation supporting the lesser value and that value is based on rental values.

(j) **Special provisions for vessel dealers and manufacturers.** The value of an article used for a vessel held in inventory and used by a vessel dealer or vessel manufacturer for personal use is the reasonable rental value of the vessel used. This value applies only if the vessel dealer or manufacturer can show that the vessel is truly held for sale and that the dealer or manufacturer is and has been making good faith efforts to sell the vessel. (See RCW 82.12.802.) This may result in a vessel manufacturer incurring multiple use tax liabilities with respect to multiple uses of the same vessel.

The use of a vessel by a vessel dealer or vessel manufacturer for certain purposes is not subject to use tax. For specific information on these exemptions see RCW 82.12.800 and 82.12.801.

(k) **Special provision for asphalt and aggregate.** In the case of a person manufacturing or extracting asphalt or aggregates used in providing services taxable under RCW 82.04.280 (1)(b), the value of the asphalt or aggregates used is based on cost. Specifically, the value of the asphalt or aggregates equals the sum of all direct and indirect costs attributable to the asphalt or aggregates used, plus a public road construction market adjustment of five percent of those costs.

(5) **Who is liable for the tax?** RCW 82.12.020 imposes use tax upon every person using tangible personal property or certain retail services as a consumer in the state of Washington. The law does not distinguish between persons using property (or certain retail services)

for business or personal use. Thus, a Washington resident purchasing personal items via the internet or through a mail-order catalog has the same legal responsibility to report and remit use tax as does a corporation purchasing office supplies. The rate of the use tax is the same as the retail sales tax rate in the location where the property is used. Refer to WAC 458-20-145, Local sales and use tax, for further discussion about determining where use occurs.

(a) **When tax liability arises.** Use tax is owed at the time the tangible personal property is first put to use in this state, unless an exemption is available.

(b) **Reporting and remitting payment to the department of revenue.**

(i) **Registered taxpayers.** Persons registered with the department under RCW 82.32.030 to do business in Washington should use their excise tax return to report and remit use tax.

(ii) **Unregistered persons.** Persons not required to be registered with the department should use a Consumer Use Tax Return to report and remit use tax. The Consumer Use Tax Return is available by:

(A) Using the department's website at dor.wa.gov;

(B) Calling the department's telephone information center at 360-705-6705; or

(C) Requesting the form at any of the department's local field offices.

The completed Consumer Use Tax Return, with payment, is due on or before the 25th day of the month following the month in which the tax liability occurs. For example, a person acquires clothing without payment of the retail sales tax during August. The Consumer Use Tax Return and the tax are due by September 25th.

The return and payment can be submitted electronically using the department's online system at dor.wa.gov, mailed, or delivered to any of the department's local field offices.

(6) **How does use tax differ from the retail sales tax?** There are circumstances where the law does not provide a use tax exemption to complement a retail sales tax exemption. Where there is no complementary use tax exemption, the buyer((/)) or user is still responsible for remitting use tax on his or her use of the purchased property.

For instance, there is no complementary use tax exemption to the retail sales tax exemption in RCW 82.08.0251. This exemption provides a retail sales tax exemption for articles acquired in casual sales transactions, if the seller is not required to be registered with the department. Because there is no complementary use tax exemption, the buyer((/)) or user is responsible for remitting the use tax on his or her use of the purchased property. For example, if a person purchases furniture through a classified ad from a homeowner, the buyer is responsible for reporting and paying the use tax although the sale is exempt from retail sales tax.

(7) **Exceptions.** The law provides certain exceptions to the imposition of tax on a single event. These exceptions occur when the law provides a method of determining the measure of tax different than the full value of the article being used.

(a) **Destroyed property.** The mere destruction or discarding of tangible personal property as unusable or worthless is usually not considered a taxable "use." The following examples identify a number of facts and then state a conclusion.

(i) **Example 4.** AA Computer Software (AA) has some obsolete inventory that will no longer sell as an updated version of the software is now available for purchase. AA decides to throw away this inventory

even though it has never been used. As the software was never used, use tax is not owed on the destroyed inventory.

(ii) **Example 5.** WW Dealer purchases a used vehicle for resale. WW Dealer publicizes an upcoming sale by airing a television commercial in which WW Dealer destroys the vehicle. WW Dealer's destruction of the vehicle for publicity purposes is considered use by a consumer. The vehicle is subject to use tax sourced at the location where WW Dealer destroys the vehicle.

(b) **Tangible personal property acquired by gift or donation.** ((~~The use of~~)) Using property acquired by gift or donation is subject to the use tax, unless the person ((~~gifting~~)) giving or donating the property previously paid or remitted Washington retail sales or use tax on the purchase or use of the property. (See RCW 82.12.020.) However, a credit for tax paid in another jurisdiction is available if documentation of tax paid is provided. See subsection (8) of this rule for additional information.

Use tax does not apply when the same property is ((~~gifted~~)) given or donated back to the original ((~~giftor~~)) giver or donor if the original ((~~giftor~~)) giver or donor previously paid the retail sales tax or use tax.

Example 6. John purchases a vehicle, pays retail sales tax on the purchase, and ((~~gifts~~)) gives the vehicle to Mary. Mary's use of the vehicle is not subject to use tax because John paid sales tax when he purchased the vehicle. After two years, Mary returns the vehicle to John. John's use of the vehicle is not subject to use tax because he paid sales tax when he originally purchased the vehicle. However, use tax is due if Mary ((~~gifts~~)) gives or donates the vehicle to a person other than John because Mary has not previously paid retail sales or use tax.

(c) **Tangible personal property put to both an exempt and taxable use.** If property is first used for an exempt or nontaxable purpose and is later used for a nonexempt or taxable purpose, use tax is due on the value of the property when first used for the nonexempt or taxable purpose. For instance, RCW 82.12.0251 provides a use tax exemption for the temporary use within Washington of watercraft brought in by certain nonresidents. (See WAC 458-20-238, Sales of watercraft to nonresidents—Use of watercraft in Washington by nonresidents, for a detailed explanation of the exemption requirements.) However, use tax is due if the nonresident exceeds the temporary use threshold or the nonresident subsequently becomes a Washington resident.

(d) **Intervening use of property purchased for resale.** Persons purchasing tangible personal property for resale in the regular course of business may purchase the property at wholesale without paying retail sales tax provided the property is not put to intervening use, and the buyer provides the seller with a completed reseller permit. (See RCW 82.04.050 and 82.04.060.)

A buyer who purchases taxable property at wholesale and subsequently puts the property to intervening use is subject to either the retail sales tax (commonly referred to as "deferred retail sales tax") or use tax, unless a specific use tax exemption applies to the intervening use. The tax applies even if the property is at all times held out for sale and is in fact later sold. Tax is due even if the intervening use is the result of an unforeseen circumstance, such as when property is purchased for resale, the customer fails to satisfy the terms of the sales agreement, and the property is used until another customer is found. See WAC 458-20-102 Reseller permits regarding tax-

reporting requirements when a person purchases property for both resale and consumption.

(e) **Using inventory to promote sales.** Intervening use does not include the use of inventory for floor or window display purposes if that merchandise is subsequently sold as new merchandise. Likewise, intervening use does not include the use of inventory for demonstration purposes occurring with efforts to sell the same merchandise if that merchandise is subsequently sold as new merchandise. The fact that the selling price may be discounted because the property is shop worn from display or demonstration is not, by itself, controlling for the purposes of determining whether intervening use has occurred.

Evidence that property has been put to intervening use includes, but is not limited to, the following:

(i) **Property not sold as new merchandise.** Intervening use occurs if, after use of the property for display or demonstration purposes, the property can no longer be sold as new merchandise. An indication that intervening use has occurred is if property is without a new model warranty if the sale of the property normally includes such a warranty.

(ii) **Capitalizing demonstrator or display property.** The capitalization and depreciation of property is evidence of intervening use. Thus, there is a rebuttable presumption that intervening use occurs if the accounting records identify the property as a demonstrator or as display merchandise. The burden is on the person making such entries in the accounting records to substantiate any claims the property was not put to intervening use.

(iii) **Loaning property to promote sales.** Intervening use includes loaning property to a customer or potential customer for the purpose of promoting sales of other products. For example, intervening use occurs if a coffee manufacturer ((~~and/~~)) or distributor loans brewing equipment to a customer to promote coffee sales, even if the equipment is subsequently sold to the same or different customer. In this example, the coffee manufacturer ((~~and/~~)) or distributor loaning the equipment would owe use tax on the full value of the equipment. If the manufacturer ((~~and/~~)) or distributor had not paid use tax, the customer would owe use tax on the reasonable rental value as this is a bailment situation. See subsection (4)(f) of this section for the measure of tax on bailed articles.

(f) **Effect of the trade-in exclusion.** The exclusion for the value of trade-in property from the measure of tax applies only if the trade-in property is of the same general type or classification as the property for which it was traded-in. There is no requirement that Washington's retail sales or use tax be previously paid on the trade-in property. There is also no requirement that the property subject to use tax be acquired in Washington, or that the user be a Washington resident at the time he or she acquired the property. For additional information refer to WAC 458-20-247, Trade-ins, selling price, sellers' tax measure.

(8) **Credit for taxes paid in other jurisdictions.** RCW 82.12.035 provides a credit against Washington's use tax for legally imposed retail sales or use taxes paid by the purchaser to: Any other state, possession, territory, or commonwealth of the United States, or any political subdivision of a state, the District of Columbia, or any foreign country or political subdivision of a foreign country. (See RCW 82.56.010.)

(a) This use tax credit is available only if the present user, or his or her bailor or donor, has documentation that shows the retail

sales or use tax was paid with respect to such property, extended warranty, digital products, digital codes, or service defined as a retail sale in RCW 82.04.050 to the other taxing jurisdiction.

(b) This credit is not available for other types of taxes such as, but not limited to, value-added taxes (VATs).

(c) For the purposes of allocating state and local use taxes, the department first applies the credit against the amount of any use tax due the state. Any unused portion of the credit is then applied against the amount of any use tax due to local jurisdictions. RCW 82.56.010, Multistate Tax Compact, Article V. Elements of Sales and Use Tax Laws.

(9) **No apportionment of use tax liability.** Unless specifically provided by law, the value of the article or use tax liability may not be apportioned even though the user may use the property both within and without Washington, or use the property for both taxable and exempt purposes.

(a) **Example 7.** A construction company using an airplane for traveling to and from its Washington office and out-of-state job sites must remit use tax on the full value of the airplane, even if the airplane was purchased and delivery taken outside Washington. There is no apportionment of this value even though the airplane is used both within and outside of Washington.

(b) **Exemption.** For an exemption pertaining to use tax liability, see WAC 458-20-17401, Use tax liability for motor vehicles, trailers, and parts used by motor carriers operating in interstate or foreign commerce.

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PERMANENT RULES
DEPARTMENT OF REVENUE
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Purpose: The department of revenue amended WAC 458-20-265 to incorporate the changes made to RCW 82.08.025661 and 82.12.025661 made by the Washington legislature in SHB 1318.

Citation of Rules Affected by this Order: Amending WAC 458-20-265 Sales and use tax exemption—Airplane maintenance repair stations.

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OTS-5074.1

AMENDATORY SECTION (Amending WSR 22-24-103, filed 12/6/22, effective 1/6/23)

WAC 458-20-265 Sales and use tax exemption—Airplane maintenance repair stations. (1)(a) **Introduction.** This rule explains the retail sales and use tax exemption, as described in RCW 82.08.025661 and 82.12.025661, for the construction of airplane maintenance repair stations operated by an eligible maintenance repair operator.

(b) **Other rules that may apply.** Readers may also want to refer to additional rules for further information, including the following:

(i) WAC 458-20-229 Refunds.

(ii) WAC 458-20-267 Annual tax performance reports for certain tax preferences.

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

(a) **"Airplane maintenance repair station"** has the same meaning as "repair station" adopted by the National Air Transportation Association and is a maintenance facility that has a certificate issued by the Federal Aviation Administration under Title 14 of the Code of Federal Regulations (14 C.F.R.) Part 145 that is engaged in the mainte-

nance, preventive maintenance, inspection, alteration of airplanes, and alteration of airplane products.

(b) **"Commercial airplane,"** as defined in RCW 82.32.550(1), is an airplane certified by the Federal Aviation Administration for transporting persons or property, and any military derivative of such an airplane.

(c) **"Component,"** as defined in RCW 82.32.550(2), means a part or system certified by the Federal Aviation Administration for installation or assembly into a commercial airplane.

(d) **"Eligible maintenance repair operator"** means a person classified by the Federal Aviation Administration as qualified to operate a Federal Aviation Regulation Part 145 certified repair station that is located in ((~~an international~~)) a commercial services airport owned by a county with a population ((~~greater than 1,500,000~~)) less than 1,000,000 or a commercial services airport jointly owned by a city and county.

(e) **"Operationally complete"** means constructed to the point of being functionally capable of hosting the repair and maintenance of airplanes.

(3) **Retail sales or use tax exemption.**

(a) Subject to the requirements of RCW 82.08.025661 and this rule, state and local retail sales and use taxes do not apply to the items and services as described in (b) of this subsection that are charged or sold to, or purchased or used by:

(i) An eligible maintenance repair operator engaged in the maintenance of airplanes; or

(ii) A port district, political subdivision, or municipal corporation, if the new airplane maintenance repair station is to be leased to an eligible maintenance repair operator engaged in the maintenance of airplanes.

(b) The exempt items and services include:

(i) Labor and services to construct a new airplane maintenance repair station;

(ii) Tangible personal property that will be incorporated as an ingredient or component during the course of constructing the new airplane maintenance repair station; and

(iii) Labor and services to install, during the course of constructing the new airplane maintenance repair station, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565.

(c) To qualify for the exemption described in this rule, the port district, political subdivision, or municipal corporation must have first entered into an agreement with an eligible maintenance repair operator to build the new facility, prior to starting construction of the new facility.

(4) **Remittance application.** The exemption described in this rule is a remittance.

(a) A business claiming the state and local retail sales or use tax exemption must first pay all applicable state and local retail sales or use taxes on all purchases qualifying for the exemption under subsection (3)(b) of this rule.

(b) The business may then file a quarterly remittance application with the department for the previously paid retail sales or use tax that is determined by the department to qualify for the exemption. The remittance form may be sent electronically to the department or to the mailing address found in (b)(ii) of this subsection.

(i) The remittance application must specify and separately identify the amount of the exempted state and local retail sales and use

taxes claimed and the qualifying purchases or acquisitions for which the exemption is claimed, along with any supporting documents required by the department. Refer to the department's website at ((~~https://www.~~))dor.wa.gov for documentation requirements.

(ii) The application for remittance is titled "Application for Refund or Credit" and is available on the department's website at ((~~https://www.~~))dor.wa.gov. You may also contact the telephone information center at 360-705-6705 or write to the following address:

Attn: New Construction for FAR Part 145
Repair Station Refunds
Taxpayer Account Administration Division
Department of Revenue
P.O. Box 47476
Olympia, WA 98504-7476

(c) Local retail sales and use taxes that qualify for this exemption are eligible for remittance ((~~beginning on the exemption's effective date of July 1, 2016~~)) the first quarter after construction commences.

(d) State retail sales and use taxes that qualify for this exemption are eligible for remittance the later of either:

(i) The date on which the airplane maintenance and repair station has been operationally complete for four years; or

(ii) December 1, 2021.

(e) The business must provide written notice to the department when the maintenance and repair station is operationally complete as defined in subsection (2)(e) of this rule. The notice should be sent electronically to the department or to the mailing address found in (b)(ii) of this subsection.

(f) The state and local retail sales and use taxes described in this rule are not eligible for remittance on purchases of items or services under subsection (3)(b) of this rule that occur on or after the exemption's expiration date of January 1, ((~~2027~~)) 2031.

(5) **Department must determine eligibility.**

(a) The department must determine eligibility for the exemption based on information provided by the business and through audit and other administrative records.

(b) The business must retain, in adequate detail to enable the department to determine whether the equipment or construction meets the criteria under this rule, construction invoices and documents including, but not limited to, invoices, proof of tax paid, and documents describing the location and size of new structures.

(c) By the end of the calendar quarter that follows the quarter in which the refund application was submitted, the department will remit qualified exempted amounts to a qualifying business, in accordance with subsection (4)(c) and (d) of this rule, for local and state retail sales and use taxes.

(d) The department may not remit the state portion of the retail sales and use taxes paid if the business did not report at least 100 average employment positions with an average annualized wage of $80,000 to the employment security department for ((~~October 1, 2020, through September 30, 2021, with an average annualized wage of $80,000~~)) four consecutive calendar quarters, beginning with the first calendar quarter after the date the facility is issued an occupancy permit by the local permit issuing authority. The business must provide the department with the unemployment insurance number provided to

the employment security department for verification of employment ((~~levels~~)) requirements.

If a new airplane maintenance repair station owned by a port district, political subdivision, or municipal corporation is leased to an eligible maintenance repair operator engaged in the maintenance of airplanes, only the business lessee, and not the lessor, must meet the employment requirement described in (d) of this subsection.

(6) **Annual tax performance report.** An eligible maintenance repair operator receiving a remittance under this rule must electronically file an annual report with the department in accordance with RCW 82.32.534. For more information about filing an annual report, see WAC 458-20-267 and visit the department's website at ((~~https://www.~~))dor.wa.gov or contact the telephone information center at 360-705-6705.

WSR 24-04-003
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed January 24, 2024, 1:43 p.m., effective February 24, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To update the rule to incorporate changes enacted in 2023 legislation, chapter 374, Laws of 2023 (SHB [SSB] 5565) and 2019 legislation, chapter 63, Laws of 2019 (2SHB 1059). In addition, the department of revenue updated references to our online filing and payment system, rule names, and statute section numbers.

Citation of Rules Affected by this Order: Amending WAC 458-20-228 Returns, payments, penalties, extensions, interest, stays of collection.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060.

Adopted under notice filed as WSR 23-23-125 on November 16, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 24, 2024.

Atif Aziz
Rules Coordinator

OTS-5066.1

AMENDATORY SECTION (Amending WSR 23-14-002, filed 6/21/23, effective 7/22/23)

WAC 458-20-228 Returns, payments, penalties, extensions, interest, stays of collection. (1) **Introduction.** This rule discusses the responsibility of taxpayers to pay their tax by the appropriate due date, and the acceptable methods of payment. It discusses the interest and penalties that are imposed by law when a taxpayer fails to pay the correct amount of tax by the due date. It also discusses the circumstances under which the law allows the department of revenue (department) to waive interest or penalties.

(a) **Where can I get my questions answered, or learn more about what I owe and how to report it?** Washington's tax system is based largely on voluntary compliance. Taxpayers have a legal responsibility to become informed about applicable tax laws, to register with the department, to seek instruction from the department, to file accurate returns, and to pay their tax liability in a timely manner (chapter 82.32A RCW, Taxpayer rights and responsibilities). The department has

a taxpayer services program to provide taxpayers with accurate tax-reporting assistance and instructions. The department staffs local district offices, maintains a question and information phone line (360-705-6705), provides information and electronic forms on the internet (((~~http://~~))dor.wa.gov), and conducts free public workshops on tax reporting. The department also publishes notices, interpretive statements, and rules discussing important tax issues and changes.

(b) **What is ((~~electronic filing (or e-file),~~)) My DOR and how can it help me?** ((~~E-file~~)) My DOR is an internet-based application ((~~that provides~~)) providing a secure and encrypted way for taxpayers to file and pay many of Washington state's ((~~business related~~)) excise taxes online. The ((~~e-file~~)) My DOR system automatically performs math calculations and checks for other types of reporting errors. **Using ((~~e-file~~)) My DOR to file electronically will help taxpayers avoid penalties and interest related to unintentional underpayments and delinquencies.** ((~~E-file~~)) My DOR can be accessed on the department's internet site ((~~http://dor.wa.gov. Open the page for electronic filing. The page contains additional links to pages answering frequently asked questions, and explains the registration process for e-file~~)) dor.wa.gov. Taxpayers may also call the department's ((~~toll-free electronic filing help desk~~)) telephone center at 360-705-6705 for more information((~~, during regular business hours~~)).

All taxpayers are required to electronically file and electronically pay their taxes unless the department waives the requirement ((~~for good cause, or the taxpayer has an assigned reporting frequency that is less than quarterly. The requirement for electronic filing and payment also includes taxpayers who once met the criteria for being assigned to a monthly reporting frequency, but whom since have been authorized by the department to file and remit taxes on a less frequent basis~~)) in accordance with RCW 82.32.080. For more detailed information on the requirement and exceptions for ((~~electronic filing (e-file) and electronic payment (e-pay)~~)) electronically filing using My DOR and submitting payment electronically, see WAC 458-20-22802 (Electronic filing and payment).

(c) **Index of subjects addressed in this rule:**

Topic—Description	See subsection
Where can I get my questions answered, or learn more about what I owe and how to report it? - By phone or online, the department provides a number of free and easy resources to help you find answers.	(1)(a) of this rule, (see above)
What is ((~~electronic filing (or e-file),~~)) My DOR and how can it help me? - ((~~E-filing~~)) My DOR guides you through the return and helps you avoid many common mistakes.	(1)(b) of this rule, (see above)
Do I need to file a return? - How do I access returns and file them?	(2) of this rule
What methods of payment can I use? - What can I use to pay my taxes?	(3) of this rule
When is my tax payment due? - Different reporting frequencies can have different due dates. What if the due date is a weekend or a holiday? If my payment is in the mail on the due date, am I late or on time?	(4) of this rule

Topic—Description	See subsection
Penalties - What types of penalty exist? How big are they? When do they apply?	(5) of this rule
Statutory restrictions on imposing penalties - More than one penalty can apply at the same time, but there are restrictions. Which penalties can be combined?	(6) of this rule
Interest - In most cases interest is required. What interest rates apply? How is interest applied?	(7) of this rule
Application of payment towards liability - Interest, penalties, and taxes are paid in a particular order. If my payment doesn't pay the entire liability, how can I determine what parts have been paid?	(8) of this rule
Waiver or cancellation of penalties - I think I was on time, or I had a good reason for not paying the tax when I should have. What reasons qualify me for a waiver of penalty? How can I get a penalty removed?	(9) of this rule
Waiver or cancellation of interest - Interest will only be waived in two limited situations. What are they?	(10) of this rule
Interest and penalty waiver for active duty military personnel - Is a majority owner of the business on active duty with the military? BOTH interest and penalty can be waived if all the statutory requirements are met. What are the requirements?	(11) of this rule
Stay of collection - Revenue will sometimes temporarily delay collection action on unpaid taxes. When can this happen? Can I request that revenue delay collection?	(12) of this rule
Extensions - Can I get an extension of my due date? How long does an extension last? A special extension may be available if the governor proclaims a state of emergency in your area.	(13) of this rule

(2) **Do I need to file a return?** A "return" is defined as any paper or electronic document a person is required to file by the state of Washington in order to satisfy or establish a tax or fee obligation which is administered or collected by the department, and that has a statutorily defined due date. RCW ((~~82.32.045~~)) 82.32.050.

(a) Electronic returns and payments are to be filed with the department by every person liable for any tax which the department administers and/or collects, except for the taxes imposed under chapter 82.24 RCW (Tax on cigarettes), which are collected through sales of revenue stamps. Returns must be filed through the ((~~electronic filing (e-file)~~)) My DOR system (see subsection (1)(b) of this rule), or by other means if approved by the department.

((~~E-file~~)) Taxpayers who file with My DOR do not receive paper returns. However, ((~~if an e-file taxpayer specifically requests it, the department will send~~)) taxpayers can set up alerts in My DOR and

an electronic reminder for each upcoming return as the time to file approaches.

(b) Taxpayers whose accounts are placed on an "active nonreporting" status ((~~do not automatically receive~~)) are required to timely notify the department and file a tax return ((~~and must request a return, or register to file by e-file,~~)) with My DOR if they no longer qualify for this reporting status. ((~~(~~))See WAC 458-20-101((~~,~~)) (Tax registration((~~,~~)) and tax reporting) for an explanation of the active nonreporting status.((~~)~~))

(c) Some consumers may not be required to register with the department and obtain a tax registration endorsement. (Refer to WAC 458-20-101 for detailed information about tax registration and when it is required.) But even if they do not have to be registered, consumers may be required to pay use tax directly to the department if they have purchased items without paying Washington's sales tax. An unregistered consumer must report and pay their use tax liability directly to the department. Use tax can be reported and paid on a "Consumer Use Tax Return" or the consumer can create an online account at the department's website to conveniently report and pay use tax electronically. Consumer use tax returns are available from the department at any of the local district offices. A consumer may also call the department's telephone information center at 360-705-6705 to request a consumer use tax return by ((~~fax or~~)) mail. Finally, the consumer use tax return is available for download from the department's internet site at ((~~http://~~))dor.wa.gov, along with a number of other returns and forms which are available there.

The interest and penalty provisions of this rule may apply if use tax is not paid on time. Unregistered consumers should refer to WAC 458-20-178 (Use tax and use of tangible personal property) for an explanation of their tax reporting responsibilities.

(3) **What methods of payment can I use?** The law requires taxpayers to file and pay their taxes electronically. There are two electronic payment methods: Electronic funds transfer (EFT) and credit card. The department may waive the electronic payment requirement for any taxpayer or class of taxpayers, for good cause ((~~or for whom the department has assigned a reporting frequency that is less than quarterly~~)). Waivers may be temporary or permanent, and may be made on the department's own motion. (See WAC 458-20-22802 for more information on electronic filing and payment.)

(a) For taxpayers not required to pay electronically, payment may be made by cash, check, cashier's check, or money order.

(b) Payment by cash should only be made at an office of the department to ensure that the payment is safely received and properly credited.

(c) Payment may be made by uncertified bank check, but if the check is not honored by the financial institution on which it is drawn, the taxpayer remains liable for the payment of the tax, as well as any applicable interest and penalties. RCW 82.32.080. The department may refuse to accept any check which, in its opinion, would not be honored by the financial institution on which that check is drawn. If the department refuses a check for this reason the taxpayer remains liable for the tax due, as well as any applicable interest and penalties.

(4) **When is my tax payment due?** RCW 82.32.045 provides that payment of the taxes due with the excise tax return must be made monthly and within 25 days after the end of the month in which taxable activities occur, unless the department assigns the taxpayer a longer re-

porting frequency. Payment of taxes due with returns covering a ((~~longer~~)) quarterly reporting frequency ((~~is~~)) are due on or before the last day of the month following the period covered by the return. (For example, payment of the tax liability for a first quarter tax return is due on April 30th.) For annual filers, tax payments, along with reports and returns are due on or before April 15th of the year immediately following the end of the period covered by the return. WAC 458-20-22801 (Tax reporting frequency((~~—Forms~~))) explains the department's procedure for assigning a quarterly or annual reporting frequency.

(a) If the date for payment of the tax due on a tax return falls upon a Saturday, Sunday, or legal holiday, the filing will be considered timely if performed on the next business day. RCW 1.12.070 and 1.16.050.

(b) When a taxpayer is not required to electronically file and pay taxes and chooses to file or pay taxes through the U.S. Postal Service, the postmark date as shown by the post office cancellation mark stamped on the envelope will be considered conclusive evidence by the department in determining if a tax return or payment was timely filed or received. RCW 1.12.070. It is the responsibility of the taxpayer to mail the tax return or payment sufficiently in advance of the due date to assure that the postmark date is timely.

(c) Taxpayers required to file and pay taxes electronically should refer to WAC 458-20-22802 (Electronic filing and payment) for more information regarding ((~~electronic filing (e-file)~~)) My DOR, electronic payment ((~~(e-pay)~~)) due dates, and when electronic payments are considered received.

(d) If a taxpayer suspects that it will not be able to file and pay by the coming due date, it may be able to obtain an extension of the due date to temporarily avoid additional penalties. Refer to subsection (12) of this rule for details on requesting an extension.

(5) **Penalties.** Various penalties may apply as a result of the failure to correctly or accurately compute the proper tax liability, or to timely pay the tax. Separate penalties may apply and be cumulative for the same tax. Interest may also apply if any tax has not been paid when it is due, as explained in subsection (7) of this rule. (The department's ((~~electronic filing~~)) My DOR system ((~~(e-file)~~)) can help taxpayers avoid additional penalties and interest. See subsection (1)(b) of this rule for more information.)

The penalty types and rates addressed in this subsection are:

Penalty Type—Description	Penalty Rate	See subsection
Late payment of a return - Nine percent added when payment is not received by the due date, and increases if the tax due remains unpaid.	9/19/29%	(5)(a) of this rule
Unregistered taxpayer - Five percent added against unpaid tax when revenue discovers a taxpayer who has taxable activity but is not registered.	5%	(5)(b) of this rule

Penalty Type—Description	Penalty Rate	See subsection
Assessment - Five percent added when a tax assessment is issued if the tax was "substantially underpaid," and increases if the tax due remains unpaid.	5/15/25% or 0/15/25%	(5)(c) of this rule
Issuance of a warrant - Ten percent added when a warrant is issued to collect unpaid tax, and does not require actual filing of a lien.	10%	(5)(d) of this rule
Disregard of specific written instructions - Ten percent added when the department has provided specific, written reporting instructions and tax is underpaid because the instructions are not followed.	10%	(5)(e) of this rule
Evasion - Fifty percent added when tax is underpaid and there is an intentional effort to hide that fact.	50%	(5)(f) of this rule
Misuse of resale certificates or a reseller permit - Fifty percent added against unpaid sales tax when a buyer uses a resale certificate or reseller permit, but should not have.	50%	(5)(g) of this rule
Failure to remit sales tax to seller - Ten percent added against sales tax when the department proceeds directly against a buyer who fails to pay sales tax to the seller as part of a sales taxable retail purchase.	10%	(5)(h) of this rule
Failure to obtain the contractor's unified business identifier (UBI) number - A two hundred fifty dollar maximum penalty (does not require any tax liability) when specified businesses hire certain contractors but do not obtain and keep the contractor's UBI number.	$250 (max)	(5)(i) of this rule
Disregarded transaction - A thirty-five percent penalty of the additional tax found to be due as a result of engaging in a disregarded transaction.	35%	(5)(j) of this rule

(a) **Late payment of a return.** RCW 82.32.090(1) imposes a nine percent penalty if the tax due on a taxpayer's return is not paid by the due date. A total penalty of 19 percent is imposed if the tax due is not paid on or before the last day of the month following the due date, and a total penalty of 29 percent is imposed if the tax due is still not paid on or before the last day of the second month following the due date. The minimum penalty for late payment is five dollars.

Various sets of circumstances can affect how the late payment of a return penalty is applied. See (a)(i) through (iii) of this subsection for some of the most common circumstances.

(i) **Will I avoid the penalty if I file my return without the payment?** The department may refuse to accept any return that is not accompanied by payment of the tax shown to be due on the return. If the return is not accepted, the taxpayer is considered to have failed or refused to file the return. RCW 82.32.080. Failure to file the return can result in the issuance of an assessment for the actual, or an estimated, amount of unpaid tax. Any assessment issued may include an assessment penalty. (See RCW 82.32.100 and (c) of this subsection for details of when and how the assessment penalty applies.) If the tax return is accepted without payment and payment is not made by the due date, the late payment of return penalty will apply.

(ii) **What if my account is given an active nonreporting status, but I later have taxes I need to report and pay?** WAC 458-20-101 provides information about the active nonreporting status available for tax reporting accounts. In general, the active nonreporting status allows persons, under certain circumstances, to engage in business activities subject to the Revenue Act without filing excise tax returns. Persons placed on an active nonreporting status by the department are required to timely notify the department if their business activities no longer meet the conditions to be in active nonreporting status. One of the conditions is that the person is not required to collect or pay a tax the department is authorized to collect. The late payment of return penalty will be imposed if a person on active nonreporting status incurs a tax liability that is not paid by the due date for taxpayers that are on an annual reporting basis ((~~(i.e., the last day of January next succeeding the year in which the tax liability accrued)~~)).

(iii) **I ((~~didn't~~)) did not register my business with the department when I started it, and now I think I was supposed to be paying taxes! What should I do?** You should fill out ((~~and send in~~)) a business license application to get your business registered. It is important for you to register before the department identifies you as an unregistered taxpayer and contacts you about your business activities. (WAC 458-20-101 provides information about registering your business.) Except as noted below, if a person engages in taxable activities while unregistered, but then registers prior to being contacted by the department, the registration is considered voluntary. When a person voluntarily registers, the late payment of return penalty does not apply to those specific tax-reporting periods representing the time during which the person was unregistered.

(A) However, even if the person has voluntarily registered as explained above, the late payment of return penalty will apply if the person:

(I) Collected retail sales tax from customers and failed to remit it to the department; or

(II) Engaged in evasion or misrepresentation with respect to reporting tax liabilities or other tax requirements; or

(III) Engaged in taxable business activities during a period of time in which the person's previously open tax reporting account had been closed.

(B) Even though other circumstances may warrant retention of the late payment of return penalty, if a person has voluntarily registered, the unregistered taxpayer penalty (see (b) of this subsection) will not be due.

(b) **Unregistered taxpayer.** RCW 82.32.090(4) imposes a five percent penalty on the tax due for any period of time where a person engages in a taxable activity and does not voluntarily register prior to being contacted by the department. "Voluntarily register" means to properly complete and submit a master application to any agency or entity participating in the unified business identifier (UBI) program for the purpose of obtaining a UBI number, all of which is done before any contact from the department. For example, if a person properly completes and submits a business license application to the department of labor and industries for the purpose of obtaining a UBI number, and this is done prior to any contact from the department of revenue, the department considers that person to have voluntarily registered. A person has not voluntarily registered if a UBI number is obtained by any means other than submitting a properly completed business license application. WAC 458-20-101 (Tax registration and tax reporting) provides additional information regarding the UBI program.

(c) **Assessment.** If the department issues an assessment for substantially underpaid tax, a five percent penalty will be added to the assessment when it is issued. If any tax included in the assessment is not paid by the due date, or by any extended due date, the penalty will increase to a total of 15 percent against the amount of tax that remains unpaid. If any tax included in the assessment is not paid within 30 days of the original or extended due date, the penalty will further increase to a total of 25 percent against the amount of tax that remains unpaid. The minimum for this penalty is five dollars. RCW 82.32.090(2).

(i) As used in this rule, "substantially underpaid" means that:

(A) The taxpayer has paid less than 80 percent of the amount of tax determined by the department to be due for all of the types of taxes included in, and for the entire period of time covered by, the department's examination; and

(B) The amount of underpayment is at least $1,000. If both of these conditions are true when an assessment is issued, it will include the initial five percent assessment penalty. If factual adjustments are made after issuance of an assessment, and those adjustments change whether a taxpayer paid less than 80 percent of the tax due, the department will reevaluate imposition of the original five percent penalty.

(ii) If the initial five percent assessment penalty is included with an assessment when it is issued, the penalty is calculated against the total amount of tax that was not paid when originally due and payable (see RCW 82.32.045). Audit payments made prior to issuance of an assessment will be applied to the assessment after calculation of the initial five percent assessment penalty. At the discretion of the department, preexisting credits or amendments paid prior to an audit or unrelated to the scope of the assessment may be applied before the five percent assessment penalty is calculated, reducing the amount of the penalty. Additional assessment penalty is assessed against the amount of tax that remains unpaid at that particular time, after payments are applied to the assessment.

(d) **Issuance of a warrant.** If the department issues a tax warrant for the collection of any fee, tax, increase, or penalty, an additional penalty will immediately be added in the amount of 10 percent of the amount of the tax due, but not less than $10.00. RCW 82.32.090(3). Refer to WAC 458-20-217 for additional information on the application of warrants and tax liens.

(e) **Disregard of specific written instructions.** If the department finds that all or any part of a deficiency resulted from the disregard of specific written instructions as to reporting of tax liabilities, an additional penalty of 10 percent of the additional tax found due will be imposed because of the failure to follow the instructions. RCW 82.32.090(5).

(i) **What is "disregard of specific written instructions"?** A taxpayer is considered to have received specific written instructions when the department has informed the taxpayer in writing of its tax obligations and specifically advised the taxpayer that failure to act in accordance with those instructions may result in this penalty being imposed. The specific written instructions may be given as a part of a tax assessment, audit, determination, or closing agreement. The penalty applies when a taxpayer does not follow the specific written instructions, resulting in underpayment of the tax due. The penalty may be applied only against the taxpayer given the specific written instructions. However, the taxpayer will not be considered to have disregarded the instructions if the taxpayer has appealed the subject matter of the instructions and the department has not issued its final instructions or decision.

(ii) **What if I try to follow the written instructions, but I still don't get it quite right?** The penalty will not be applied if the taxpayer has made a good faith effort to comply with specific written instructions.

(f) **Evasion.** If the department finds that all or any part of the deficiency resulted from an intent to evade the tax due, a penalty of 50 percent of the additional tax found to be due will be added. RCW 82.32.090(7). The evasion penalty is imposed when a taxpayer knows a tax liability is due but attempts to escape detection or payment of the tax liability through deceit, fraud, or other intentional wrongdoing. An intent to evade does not exist where a deficiency is the result of an honest mistake, miscommunication, or the lack of knowledge regarding proper accounting methods. The department has the burden of showing the existence of an intent to evade a tax liability through clear, cogent and convincing evidence.

(i) **Evasion penalty only applies to the specific taxes that a taxpayer intended to evade.** To the extent that the evasion involved only specific taxes, the evasion penalty will be added only to those taxes. The evasion penalty will not be applied to those taxes which were inadvertently underpaid. For example, if the department finds that the taxpayer intentionally understated the purchase price of equipment in reporting use tax and also inadvertently failed to collect or remit the sales tax at the correct rate on retail sales of merchandise, the evasion penalty will be added only to the use tax deficiency and not the sales tax.

(ii) **What actions may establish an intent to evade?** The following is a nonexclusive list of actions that are generally considered to establish an intent to evade a tax liability. This list should only be used as a general guide. A determination of whether an intent to evade exists may be ascertained only after a review of all the facts and circumstances.

(A) The use of an out-of-state address by a Washington resident to register property to avoid a Washington excise or use tax, when at the time of registration the taxpayer does not reside at the out-of-state address on a more than temporary basis. Examples of such an address include, but are not limited to, the residence of a relative,

mail forwarding or post office box location, motel, campground, or vacation property;

(B) The willful failure of a seller to remit retail sales taxes collected from customers to the department; and

(C) The alteration of a purchase invoice or misrepresentation of the price paid for property (e.g., a used vehicle) to reduce the amount of tax owing.

(g) **Misuse of resale certificates, reseller permits, and other documents.** Any buyer who uses a resale certificate, a reseller permit, or other documentation authorized under RCW 82.04.470, to purchase items or retail services without payment of sales tax, and who is not entitled to use the certificate, permit, or other documentation for the purchase, will be assessed a penalty of 50 percent of the tax due. RCW 82.32.291. The penalty can apply even if there was no intent to evade the payment of the tax. For more information concerning this penalty or the proper use of resale certificates, reseller permits, and other documentation, refer to WAC 458-20-102 (((~~Resale certificates~~)) Reseller permits).

(h) **Failure to remit sales tax to seller.** The department may assert an additional 10 percent penalty against a buyer who has failed to pay the seller the retail sales tax on taxable purchases, if the department proceeds directly against the buyer for the payment of the tax. This penalty is in addition to any other penalties or interest prescribed by law. RCW 82.08.050.

(i) **Failure to obtain the contractor's unified business identifier (UBI) number.** If a person who is liable for any fee or tax imposed by chapters 82.04 through 82.27 RCW contracts with another person or entity for work subject to chapter 18.27 RCW (Registration of contractors) or chapter 19.28 RCW (Electricians and electrical installations), that person must obtain and preserve a record of the UBI number of the person or entity performing the work. A person failing to do so is subject to the public works contracting restrictions in RCW 39.06.010 (Contracts with unregistered or unlicensed contractors prohibited), and a penalty determined by the director, but not to exceed $250. RCW 82.32.070(2).

(j) **Engaging in disregarded transactions.** RCW 82.32.090 imposes a 35 percent penalty for engaging in a disregarded transaction as defined in RCW 82.32.655(3). See RCW 82.32.090(6), 82.32.655, and 82.32.660.

(6) **Statutory restrictions on imposing penalties.** Depending on the circumstances, the law may impose more than one type of penalty on the same tax liability. However, those penalties are subject to the following restrictions:

(a) The penalties imposed for the late payment of a return, unregistered taxpayer, assessment, and issuance of a warrant (see subsection (5)(a) through (d) of this rule) may be applied against the same tax concurrently, each unaffected by the others, up to their combined maximum rates. Application of one or any combination of these penalties does not prohibit or restrict full application of other penalties authorized by law, even when they are applied against the same tax. RCW 82.32.090(8).

(b) The department may impose either the evasion penalty (subsection (5)(f) of this rule) or the penalty for disregarding specific written instructions (subsection (5)(e) of this rule), but may not impose both penalties on the same tax. RCW 82.32.090(9). The department also will not impose the penalty for the misuse of a resale certificate (subsection (5)(g) of this rule) in combination with either the

evasion penalty or the penalty for disregarding specific written instructions on the same tax.

(c) The penalty provided in subsection (5)(j) of this rule may be assessed together with any other applicable penalties provided in this rule on the same tax found to be due, except for the evasion penalty provided in subsection (5)(f) of this rule.

(7) **Interest.** The department is required by law to add interest to assessments for tax deficiencies and overpayments. RCW 82.32.050 and 82.32.060. Interest accrued against an underpayment only applies to underpaid tax. (Refer to WAC 458-20-229 for a discussion of interest as it relates to refunds and WAC 458-20-230 for a discussion of the statute of limitations as applied to interest.)

(a) For interest imposed after December 31, 1998, interest will be added from the last day of the month following each calendar year included in a notice, or the last day of the month following the final month included in a notice if not the end of the calendar year, until the due date of the notice. However, for 1998 taxes only, interest may not begin to accrue any earlier than February 1, 1999, even if the last period included in the notice is not at the end of calendar year 1998. If payment in full is not made by the due date of the notice, additional interest will be due until the date of payment. The rate of interest continues at the annual variable interest rates described below in (c) of this subsection.

(b) **How is interest applied to an assessment that includes underpaid tax from multiple years?** The following is an example of how the interest provisions apply. Assume that a tax assessment is issued with a due date of June 30, 2010. The assessment includes periods from January 1, 2008, through September 30, 2009.

(i) For calendar year 2008 tax, interest begins February 1, 2009, (from the last day of the month following the end of the calendar year). When the assessment is issued interest is computed through June 30, 2010, (the due date).

(ii) For the 2009 tax period ending with September 30, 2009, interest begins November 1, 2009, (from the last day of the month following the last month included in the assessment period). When the assessment is issued interest is computed through June 30, 2010, (the due date).

(iii) Interest will continue to accrue on any portion of the assessed taxes which remain unpaid after the due date, until the date those taxes are paid.

(c) **How is each year's interest rate determined?** The annual variable interest rate will be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate for each new year will be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. The average is calculated using the federal short-term rates from January, April, July of the calendar year immediately preceding the new year, and October of the previous preceding 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.

(d) **How is the interest applied if an assessment includes some years that are underpaid and some that are overpaid?** If the assessment contains tax deficiencies in some years and overpayments in other years with the net difference being a tax deficiency, the interest rate for tax deficiencies will also be applied to the overpayments. (Refer to WAC 458-20-229 for interest on refunds.)

(8) **Application of payment towards liability.** The department will apply taxpayer payments in the following order:

- Interest;
- Penalties;
- Fees;
- Other nontax amounts;
- Tax, except spirits tax;
- Spirits tax;

without regard to any direction of the taxpayer. RCW 82.32.080.

In applying a partial payment to a tax assessment, the payment will first be applied against the oldest tax liability. For purposes of RCW 82.32.145 (Limited liability business entity – Terminated, dissolved, abandoned, insolvent – Collection of unpaid trust fund taxes), it will be assumed that any payments applied to the tax liability will be first applied against any retail sales tax liability, and then to other trust fund tax liabilities. For example, an audit assessment is issued covering a period of two years, which will be referred to as "YEAR 1" (the earlier year) and "YEAR 2" (the most recent year). The tax assessment includes total interest and penalties for YEAR 1 and YEAR 2 of $500, retail sales tax of $400 for YEAR 1, $600 retail sales tax for YEAR 2, $2,000 of other taxes for YEAR 1, and $7,000 of other taxes for YEAR 2. The order of application of any payments will be first against the $500 of total interest and penalties, second against the $400 retail sales tax in YEAR 1, third against the $2,000 of other taxes in YEAR 1, fourth against the $600 retail sales tax of YEAR 2, and finally against the $7,000 of other taxes in YEAR 2.

(9) **Waiver or cancellation of penalties.** RCW 82.32.105 authorizes the department to waive or cancel penalties under limited circumstances.

(a) **Circumstances beyond the control of the taxpayer.** The department will waive or cancel the penalties imposed under chapter 82.32 RCW upon finding that the underpayment of the tax, or the failure to pay any tax by the due date, was the result of circumstances beyond the control of the taxpayer. It is possible that a taxpayer will qualify for a waiver of one type of penalty, without obtaining a waiver for all penalties associated with a particular tax liability. Circumstances determined to be beyond the control of the taxpayer when considering a waiver of one type of penalty are not necessarily pertinent when considering a waiver of a different penalty type. For example, circumstances that qualify for waiver of a late payment of return penalty do not necessarily also justify waiver of the substantial underpayment assessment penalty. Refer to WAC 458-20-102 (Reseller permits) for examples of circumstances which are beyond the control of the taxpayer specifically regarding the penalty for misuse of a reseller permit found in RCW 82.32.291.

(i) A request for a waiver or cancellation of penalties should contain all pertinent facts and be accompanied by such proof as may be available. The taxpayer bears the burden of establishing that the circumstances were beyond its control and directly caused the late payment. The request should be made in the form of a letter; however, verbal requests may be accepted and considered at the discretion of the department. Any petition for correction of assessment submitted to the department's administrative review and hearings division for waiver of penalties must be made within the period for filing under RCW 82.32.160 (within 30 days after the issuance of the original notice of the amount owed or within the period covered by any extension of the due date granted by the department), and must be in writing, as ex-

plained in WAC 458-20-100 (Informal administrative reviews). Refund requests must be made within the statutory limitation period.

(ii) The circumstances beyond the control of the taxpayer must actually cause the late payment. Circumstances beyond the control of the taxpayer are generally those which are immediate, unexpected, or in the nature of an emergency. Such circumstances result in the taxpayer not having reasonable time or opportunity to obtain an extension of the due date or otherwise timely file and pay. Circumstances beyond the control of the taxpayer include, but are not necessarily limited to, the following.

(A) The return payment was mailed on time but inadvertently sent to another agency.

(B) Erroneous written information given to the taxpayer by a department officer or employee caused the delinquency. A penalty generally will not be waived when it is claimed that erroneous oral information was given by a department employee. The reason for not canceling the penalty in cases of oral information is because of the uncertainty of the facts presented, the uncertainty of the instructions or information imparted by the department employee, and the uncertainty that the taxpayer fully understood the information given. Reliance by the taxpayer on incorrect advice received from the taxpayer's legal or accounting representative is not a basis for cancellation of a penalty.

(C) The delinquency was directly caused by death or serious illness of the taxpayer, or a member of the taxpayer's immediate family. The same circumstances apply to the taxpayer's accountant or other tax preparer, or their immediate family. This situation is not intended to have an indefinite application. A death or serious illness which denies a taxpayer reasonable time or opportunity to obtain an extension or to otherwise arrange timely filing and payment is a circumstance eligible for penalty waiver.

(D) The delinquency was caused by the unavoidable absence of the taxpayer or key employee, prior to the filing date. "Unavoidable absence of the taxpayer" does not include absences because of business trips, vacations, personnel turnover, or terminations.

(E) The delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.

(F) The delinquency was caused by an act of fraud, embezzlement, theft, or conversion on the part of the taxpayer's employee or other persons contracted with the taxpayer, which the taxpayer could not immediately detect or prevent, provided that reasonable safeguards or internal controls were in place. See (a)(iii)(E) of this subsection.

(G) The department does not respond to the taxpayer's request for a tax return (or other forms necessary to compute the tax) within a reasonable period of time, which directly causes delinquent filing and payment on the part of the taxpayer. This assumes that, given the same situation, if the department had provided the requested form(s) within a reasonable period of time, the taxpayer would have been able to meet its obligation for timely payment of the tax. In any case, the taxpayer has responsibility to insure that its return is filed in a timely manner (e.g., by keeping track of pending due dates) and must anticipatively request a return for that purpose, if one is not received. (Note: Tax returns and other forms are available at no cost from the department's website, dor.wa.gov. When good cause exists, taxpayers are advised to contact the department and request an extension of the due date for filing, before the due date of concern has passed. See subsection (12) of this rule. Taxpayers who have registered to file

electronically with ((~~e-file~~)) My DOR will avoid potential penalties relating to paper returns not received. See subsection (1)(b) of this rule.)

(iii) The following are examples of circumstances that are generally not considered to be beyond the control of the taxpayer and will not qualify for a waiver or cancellation of penalty:

(A) Financial hardship;

(B) A misunderstanding or lack of knowledge of a tax liability;

(C) The failure of the taxpayer to receive a tax return form, EXCEPT where the taxpayer timely requested the form and it was still not furnished in reasonable time to mail the return and payment by the due date, as described in (a)(ii)(G) of this subsection;

(D) Registration of an account that is not considered a voluntary registration, as described in subsection (5)(a)(iii) and (b) of this rule;

(E) Mistakes or misconduct on the part of employees or other persons contracted with the taxpayer (not including conduct covered in (a)(ii)(F) of this subsection); and

(F) Reliance upon unpublished, written information from the department that was issued to and specifically addresses the circumstances of some other taxpayer.

(b) **Waiver of the late payment of return penalty.** The late payment of return penalty (see subsection (5)(a) of this rule) may be waived either as a result of circumstances beyond the control of the taxpayer (RCW 82.32.105 (1) and (a) of this subsection) or after a 24 month review of the taxpayer's reporting history, as described below.

(i) If the late payment of return penalty is assessed on a return but is not the result of circumstances beyond the control of the taxpayer, the penalty will still be waived or canceled if the following two circumstances are satisfied:

(A) The taxpayer requests the penalty waiver for a tax return which was required to be filed under RCW 82.32.045 (taxes reported on the combined excise tax return), RCW 82.23B.020 (oil spill response tax), ((~~RCW 82.27.060 (tax on enhanced food fish),~~)) RCW 82.29A.050 (leasehold excise tax), RCW 84.33.086 (timber and forest lands), RCW 82.14B.030 (tax on telephone access line use); and

(B) The taxpayer has timely filed and paid all tax returns due for that specific tax program for a period of 24 months immediately preceding the period covered by the return for which the waiver is being requested. RCW 82.32.105(2).

If a taxpayer has obtained a tax registration endorsement with the department prior to engaging in business within the state and has engaged in business activities for a period less than 24 months, the taxpayer is eligible for the waiver if the taxpayer had no delinquent tax returns for periods prior to the period covered by the return for which the waiver is being requested. As a result, the taxpayer's very first return due can qualify for a waiver under the 24 month review provision. (See also WAC 458-20-101 for more information regarding the tax registration and tax reporting requirements.) This is the only situation under which the department will consider a waiver when the taxpayer has not timely filed and paid tax returns covering an immediately preceding 24 month period.

(ii) A return will be considered timely for purpose of the waiver if there is no tax liability on it when it is filed. Also, a return will be considered timely if any late payment penalties assessed on it were waived or canceled due to circumstances beyond the control of the taxpayer (see (a) of this subsection). The number of times penalty has

been waived due to circumstances beyond the control of the taxpayer does not influence whether the waiver in this subsection will be granted. A taxpayer may receive more than one of the waivers in this subsection within a 24 month period if returns for more than one of the listed tax programs are filed, but no more than one waiver can be applied to any one tax program in a 24 month period.

For example, a taxpayer files combined excise tax returns as required under RCW 82.32.045, and timber tax returns as required under RCW 84.33.086. This taxpayer may qualify for two waivers of the late payment of return penalty during the same 24 month period, one for each tax program. If this taxpayer had an unwaived late payment of return penalty for the combined excise tax return during the previous 24 month period, the taxpayer may still qualify for a penalty waiver for the timber tax program.

(iii) The 24 month period reviewed for this waiver is not affected by the due date of the return for which the penalty waiver is requested, even if that due date has been extended beyond the original due date.

For example, assume a taxpayer's September 2012 return has had the original due date of October 25th extended to November 25th. The return and payment are received after the November 25th extended due date. A penalty waiver is requested. Since the delinquent return represented the month of September 2012, the 24 months which will be reviewed begin on September 1, 2010, and end with August 31, 2012, (the 24 months prior to September 2012). All of the returns representing that period of time will be included in the review. The extension of the original due date has no effect on the 24 month period under review.

(iv) A 24 month review is only valid when considering waiver of the late payment of return penalty described in subsection (5)(a) of this rule. The 24 month review process cannot be used as justification for a waiver of interest, assessment penalty, or any penalty other than the late payment of return penalty.

(10) **Waiver or cancellation of interest.** The department will waive or cancel interest imposed under chapter 82.32 RCW only in the following situations:

(a) The failure to pay the tax prior to issuance of the assessment was the direct result of written instructions given the taxpayer by the department; or

(b) The extension of the due date for payment of an assessment was not at the request of the taxpayer and was for the sole convenience of the department. RCW 82.32.105(3).

(11) **Interest and penalty waiver for active duty military personnel.** RCW 82.32.055 provides a waiver of BOTH interest and penalty imposed under chapter 82.32 RCW when:

(a) The majority owner of the business is:

(i) On active duty in the military;

(ii) Participating in an armed conflict;

(iii) Assigned to a location outside the territorial boundaries of the United States; and

(b) The gross income of the business is $1,000,000 or less for the calendar year immediately prior to the year in which the majority owner is initially deployed outside the United States for the armed conflict.

Interest and penalty may not be waived or canceled for a period longer than 24 months. The waiver applies to interest or penalty based

on the date they are imposed, which must be within the 24 month waiver period.

To receive a waiver or cancellation of interest and penalty under this subsection, the taxpayer must submit a copy of the majority owner's deployment orders for deployment outside the territorial boundaries of the United States.

(12) **Stay of collection.** RCW 82.32.190 allows the department to initiate a stay of collection, without the request of the taxpayer and without requiring any bond, for certain tax liabilities when they may be affected by the outcome of a question pending before the courts (see (a) of this subsection). RCW 82.32.200 provides conditions under which the department, at its discretion, may allow a taxpayer to file a bond in order to obtain a stay of collection on a tax assessment (see (b) of this subsection). The department will grant a taxpayer's stay of collection request, as described in RCW 82.32.200, only when the department determines that a stay is in the best interests of the state.

(a) Circumstances under which the department may consider initiating a stay of collection without requiring a bond (RCW 82.32.190) include, but are not necessarily limited to, the existence of the following:

(i) A constitutional issue to be litigated by the taxpayer, the resolution of which is uncertain;

(ii) A matter of first impression for which the department has little precedent in administrative practice; or

(iii) An issue affecting other similarly situated taxpayers for whom the department would be willing to stay collection of the tax.

(b) The department will give consideration to a request for a stay of collection of an assessment (RCW 82.32.200) if:

(i) A written request for the stay is made prior to the due date for payment of the assessment; and

(ii) Payment of any unprotested portion of the assessment and other taxes due is made timely; and

(iii) The request is accompanied by an offer of a cash bond, or a security bond that is guaranteed by a specified authorized surety insurer. The amount of the bond will generally be equal to the total amount of the assessment, including any penalties and interest. However, where appropriate, the department may require a bond in an increased amount not to exceed twice the amount for which the stay is requested.

(c) Claims of financial hardship or threat of litigation are not grounds that justify the granting of a stay of collection. However, the department will consider a claim of significant financial hardship as grounds for staying collection procedures, but this will be done only if a partial payment agreement is executed and kept in accordance with the department's procedures and with such security as the department deems necessary.

(d) If the department grants a stay of collection, the stay will be for a period of no longer than two calendar years from the date of acceptance of the taxpayer request, or 30 days following a decision not appealed from by a tribunal or court of competent jurisdiction upholding the validity of the tax assessed, whichever date occurs first. The department may extend the period of a stay originally granted, but only for good cause shown.

(e) Interest will continue to accrue against the unpaid tax portion of a liability under stay of collection.

(13) **Extensions.** The department, for good cause, may extend the due date for filing any return.

(a) Any permanent extension more than 10 days beyond the due date, and any temporary extension in excess of 30 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 30 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.

(b) RCW 82.32.080 allows department of revenue to grant extensions of the due date for any taxes due to department of revenue when the governor has proclaimed a state of emergency under RCW ((~~43.06.040~~)) 43.06.010. In general, the bill gives department of revenue the authority to provide extensions on its own initiative, or at the specific request of any taxpayers affected by the emergency. The specific details of how, where, and to whom any extensions are granted will depend on the type and scope of each unique emergency and will be determined when an emergency is declared.

WSR 24-04-004
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed January 24, 2024, 1:47 p.m., effective February 24, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of revenue is updating WAC 458-20-24001 due to changes from recent legislation, SSB 5565 (2023). The changes include updates to RCW 82.60.020.

Citation of Rules Affected by this Order: Amending WAC 458-20-24001 Sales and use tax deferral—Manufacturing and research/development activities in high unemployment counties—Applications filed after June 30, 2010.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060.

Adopted under notice filed as WSR 23-23-066 on November 9, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 24, 2024.

Atif Aziz
Rules Coordinator

OTS-5073.1

AMENDATORY SECTION (Amending WSR 23-14-002, filed 6/21/23, effective 7/22/23)

WAC 458-20-24001 Sales and use tax deferral—Manufacturing and research/development activities in high unemployment counties—Applications filed after June 30, 2010. (1) **Introduction.** Chapter 82.60 RCW established a limited sales and use tax deferral program. The purpose of the program is to promote economic stimulation, create new employment opportunities in distressed areas, and reduce poverty in certain distressed counties of the state. RCW 82.60.010.

(a) **Deferral program.** This deferral program applies to an eligible investment project for sales and use taxes imposed on the construction, expansion, or renovation of qualified buildings or acquisition of qualified machinery and equipment. The program requires the recipient of the deferral to maintain the manufacturing or research and development activity for an eight-year period.

This rule does not address specific requirements of RCW 82.08.02565 and 82.12.02565 that provide statewide sales and use tax

exemptions for machinery and equipment used directly in a manufacturing operation. Repayment of tax deferred under chapter 82.60 RCW is not required, and interest and penalties under RCW 82.60.070 will not be imposed, on machinery and equipment that qualifies for exemption under RCW 82.08.02565 or 82.12.02565. For additional information on statewide sales and use tax exemptions for machinery and equipment refer to WAC 458-20-13601.

(b) **Program enacted.** The legislature first enacted this program in 1985. It has since made major revisions to the program criteria, specifically to the definitions of "eligible area," "eligible investment project," and "qualified building." For applications made prior to July 1, 2010, see WAC 458-20-24001A.

(c) **Administration of employment and related programs.** The employment security department and the department of commerce administer programs for high unemployment counties and job training and should be contacted directly for information concerning these programs.

(d) **Examples.** Examples found in this rule identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

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

(a) **"Acquisition of machinery and equipment"** means the machinery and equipment is under the dominion and control of the recipient or its agent.

(b) **"Applicant"** means a person applying for a tax deferral under chapter 82.60 RCW.

(c) **"Certificate holder"** means an applicant to whom a tax deferral certificate has been issued.

(d) **"Community empowerment zone (CEZ)"** means an area meeting the requirements of RCW 43.31C.020 and officially designated as a CEZ by the director of the department of community, trade, and economic development.

(e) **"Date of application"** means the date of the U.S. Post Office postmark, fax, or electronic transmittal, or when the application is hand delivered to the department. The statute in effect on the "date of application" will determine the program criteria the applicant must satisfy.

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

(g) **"Eligible area"** means:

(i) Beginning July 1, 2010, an eligible area is a county that has an unemployment rate, as determined by the employment security department, which is at least 20 percent above the state average for the three calendar years immediately preceding the year in which the list of qualifying counties is established or updated, as the case may be. RCW 82.60.020.

The department, with the assistance of the employment security department, established a list of qualifying counties effective July 1, 2010. RCW 82.60.120. The list of qualifying counties is effective for a 24-month period and must be updated by July 1st of the year that is two calendar years after the list was established or last updated, as the case may be; or

(ii) A designated community empowerment zone approved under RCW 43.31C.020. RCW 82.60.049.

(h) **"Eligible investment project"** means an investment project that is located, as of the date the deferral application ((~~required by RCW 82.60.030~~)) is received by the department, in an eligible area.

"Eligible investment project" does not include any portion of an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site where the cogeneration project is an integral part. It also does not include investment projects that have already received deferrals under chapter 82.60 RCW. RCW 82.60.020 and 82.60.049.

(i) **"Industrial fixture"** means an item attached to a building or to land. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and improvements to land such as concrete slabs.

(j) **"Initiation of construction"** means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for:

(i) Construction of the qualified building, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral;

(ii) Construction of the qualified building ((~~when the lessor pays~~)), if the economic benefits of the deferral are passed to a lessee as provided in subsection (3) of this rule; or

(iii) Tenant improvements for a qualified building ((~~when the owner/lessor pays~~)), if the economic benefits of the deferral are passed to a lessee as provided in subsection (3) of this rule((~~; or~~

~~(iv) Tenant improvements for a qualified building when the lessee pays and receives the benefit of the deferral~~)).

"Initiation of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

If the investment project is a phased project, "initiation of construction" shall apply separately to each phase.

(k) **"Investment project"** means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

(l) **"Manufacturing"** has the meaning given in RCW 82.04.120. Manufacturing, in addition, includes the activities performed by research and development laboratories and commercial testing laboratories, and the conditioning of vegetable seeds.

For purposes of this rule, both manufacturers and processors for hire may qualify for the deferral program as being engaged in manufacturing activities. For additional information on processors for hire, refer to WAC 458-20-136.

For purposes of this rule, "vegetable seeds" include the seeds of those crops that are grown in gardens and on truck farms and are generally known and sold under the name of vegetable or herb seeds in this state. "Vegetable seeds" include, but are not limited to, cabbage seeds, carrot seeds, onion seeds, tomato seeds, and spinach seeds. Vegetable seeds do not include grain seeds, cereal seeds, fruit seeds, flower seeds, tree seeds, and other similar properties.

(m) **"Office"** means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. An office may be located in a separate building from the building used for manufacturing or research and development activities, but

the office must be located at the same site as the qualified building to qualify. Each individual office may qualify or disqualify only in its entirety.

(n) **"Operationally complete"** means the project is capable of being used for its intended purpose as described in the application.

(o) **"Person"** has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" may be either a lessee or a lessor/owner, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of chapter 82.60 RCW.

(p) **"Qualified buildings"** means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for manufacturing or research and development activities. "Qualified buildings" includes plant offices and warehouses or other facilities for the storage of raw material or finished goods if such facilities are an essential or an integral part of a factory, mill, plant, or laboratory used for manufacturing or research and development. "Qualified buildings" include construction of:

• Specialized sewerage pipes connected to a qualified building that are specifically designed and used exclusively for manufacturing or research and development; and

• Parking lots connected to or adjacent to the building if the parking lots are for the use of workers performing manufacturing or research and development in the building. Parking lots may be apportioned based on qualifying use.

"Qualified buildings" does not include construction of landscaping or most other work outside the building itself, even though the landscaping or other work outside the building may be required by the city or county government in order for the city or county to issue a permit for the construction of a building.

(q) **"Qualified employment position"** means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of 12 consecutive months. "Full-time" means at least 35 hours a week, 455 hours a quarter, or 1,820 hours a year.

(r) **"Qualified machinery and equipment"** means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" also includes computers; desks; filing cabinets; photocopiers; printers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

(s) **"Qualifying county"** means a county that has an unemployment rate, as determined by the employment security department, which is at least 20 percent above the state average for the three calendar years immediately preceding the year in which the list of qualifying counties is established or updated, as the case may be.

(t) **"Recipient"** means a person receiving a tax deferral under this program.

(u) **"Research and development"** means the development, refinement, testing, marketing, and commercialization of a product, service, or

process before commercial sales have begun, but only when such activities are intended to ultimately result in the production of a new, different, or useful substance or article of tangible personal property for sale. For purposes of this rule, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed $1,000,000.

(v) **"Site"** means one or more immediately adjacent parcels of real property. Adjacent parcels of real property separated only by a public road comprise a single site.

(w) **"Warehouse"** means buildings or facilities used for the storage of raw materials or finished goods. A warehouse may be located in a separate building from the building used for manufacturing or research and development activities, but to qualify the warehouse must be located at the same site as the qualified building. Warehouse space may be apportioned based on qualifying use.

(3) **Who is eligible for the sales and use tax deferral program?** A person engaged in manufacturing or research and development activity is eligible for this deferral program for its eligible investment project.

(a) The lessor or owner of the qualified building is not eligible for deferral unless:

(i) The underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person; or

(ii) The lessor, by written contract, has agreed to pass the economic benefit of the deferral to the lessee;

(iii) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual tax performance report required under RCW 82.60.070; and

(iv) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor and is evidenced by written documentation of any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee.

For example, the economic benefit of the deferral can be passed through to the lessee when evidenced in writing that the amounts paid to the lessor for construction of tenant improvements are reduced by the amount of the sales tax deferred. Another method of passing the economic benefit is if the lessee receives a credit for tenant improvements or other mechanism in the lease, equal to the amount of the sales tax deferred.

(b) The lessor of the qualified building who receives a letter of intent from a qualifying lessee may be eligible for deferral, assuming that all other requirements of chapter 82.60 RCW are met. At the time of application, the lessor, or another qualifying lessee must provide to the department a letter of intent by the lessee to lease the qualified building and any other information to prove that the lessee will engage in qualified manufacturing or research and development once the building construction is complete. After the investment project is certified as operationally complete, the lessee must actually occupy the building as a lessee and engage in qualified manufacturing or research and development. Otherwise, deferred taxes will be immediately due from the lessor.

The following examples illustrate the application process with lessors and lessees.

Example 1. Prior to the initiation of construction, Owner/Lessor AA enters into an agreement with Lessee BB, a company engaged in

qualified manufacturing or research and development. Under the agreement, AA will build a building to house BB's research and development activities, will apply for a tax deferral on construction of the building, will lease the building to BB, and will pass on the economic benefit in the amount of the deferral to BB. BB agrees in writing with the department to complete annual tax performance reports. AA applies for the deferral before the initiation of construction that is prior to the date the building permit is issued. AA is entitled to a deferral on building construction costs assuming all eligibility qualifications are met.

Example 2. The following example assumes no deferral on initial construction activity. After the building construction has begun, Lessee CC asks that certain tenant improvements be added to the building. Lessor DD and Lessee CC each agree to pay a portion of the cost of the improvements. DD agrees with CC in writing that DD will pass on the entire value of DD's portion of the tax deferral to CC, and CC agrees in writing with the department to complete annual tax performance reports. CC and DD each apply for a deferral on the costs of the tenant improvements they are legally responsible for before the date the building permit is issued for the tenant improvements. The department will approve both applications assuming all eligibility qualifications are met. While construction of the building was initiated before submission of the applications, tenant improvements on a building under construction are deemed to be the expansion or renovation of an existing structure. In addition, lessees are entitled to the deferral only if they are legally responsible and actually pay contractors for the improvements, rather than merely reimbursing lessors for the costs.

Example 3. After building construction has begun but before machinery or equipment has been acquired, Lessee EE applies for a deferral on machinery and equipment. The department will approve the application assuming all eligibility qualifications are met, and EE will be required to complete annual tax performance reports. Even though it is too late to apply for a deferral of tax on building costs, it is not too late to apply for a deferral for the machinery and equipment.

(4) **What if an investment project is located in an area that qualifies as a high unemployment county and as a CEZ?** If an investment project is located in an area that qualifies under more than one type of eligible area, the department will automatically assign the project to the eligible area that imposes the least burden on the taxpayer and with the greatest benefit to the taxpayer. If the applicant elects to be bound by the requirements of the other potential eligible area, the applicant must make a written statement to that effect.

Example 4. On October 1, 2014, a city in a high unemployment county qualifies as a CEZ, and the high unemployment county is on the list as a qualifying county. The CEZ employment requirements are more restrictive than those for qualifying counties. The department will assign the project to the qualifying county designation unless the applicant elects in writing to be bound by the CEZ employment requirements. Refer to subsection (7) of this rule for more information on the application process.

(5) **When is apportionment of qualified buildings appropriate?** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of an existing building used in manufacturing or research and development. Where a building(s) is used partly for manufacturing or research and development and partly for purposes that do not qualify for deferral under this rule, apportionment is necessary.

(a) **What are the apportionment methods?** The deferral is determined by one of the following two apportionment methods. The first method of apportionment is based on square footage and does not require tracking the costs of materials for the qualifying/nonqualifying areas of a building. The second method of apportionment tracks the costs of materials used in the qualifying/nonqualifying areas, and it is primarily used by those industries with specialized building requirements.

(i) **First method.** The applicable tax deferral is determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing or research and development purposes bears to the square footage of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent of building eligible}$$

Percent of building eligible x Total Project Costs = Eligible Costs.

"Total Project Costs" is the cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation.

Eligible Costs (as determined above) x Tax Rate = Eligible Tax Deferred.

Example 5. A taxpayer is constructing a 10,000 square foot building, of which 8,000 square feet will be eligible for tax deferral. The cost of the project is $1,000,000. The combined sales/use tax rate at this location is 9.2%.

$$\frac{\text{8,000 qualifying square feet}}{\text{10,000 total square feet}} = \text{80 percent of the building is eligible}$$

Based on the above apportionment formula, 80% of the building is eligible for deferral. By multiplying the qualifying percentage 80% by the cost of $1,000,000 to determine eligible costs of $800,000. Multiply the eligible cost of $800,000 by the sales/use tax rate of 9.2% to determine a sales/use tax deferral of $73,600.

(ii) **Second method.** If the applicable tax deferral is not determined by the first method, it will be determined by calculating the cost of construction of qualifying/nonqualifying areas as follows:

(A) Tax on the cost of construction of areas devoted solely to manufacturing or research and development may be deferred.

(B) Tax on the cost of construction of areas not used at all for manufacturing or research and development may not be deferred.

(C) Tax on the cost of construction of areas used in common for manufacturing or research and development and for other purposes, such as hallways, bathrooms, and conference rooms, may be deferred by apportioning the costs of construction on a square footage basis. The apportioned costs of construction eligible for deferral are established by using the ratio, expressed as a percentage, of the square feet of the construction, expansion, or renovation devoted to manufacturing or research and development, excluding areas used in common, to the total square feet of the construction, expansion, or renovation, excluding areas used in common. That percentage is applied to the cost of construction of the common areas to determine the costs of construction eligible for tax deferral. Expressed as a formula, apportionment of the common areas is determined by:

$$\frac{\text{Square feet devoted to manufacturing or research and development, excluding square feet of common areas}}{\text{Total square feet, excluding square feet of common areas}} = \text{Percentage of common areas eligible for deferral}$$

Example 6. Taxpayer is planning to build a 10,000 square foot building of which 7,000 square feet will be used for manufacturing and 1,000 square feet will be common area. The remaining portion of the building will not be eligible for any deferral. The cost of the project will be $850,000 for the manufacturing area, $260,000 for the common area, and $140,000 for the remaining portion of the building, for a total cost of construction of $1,250,000. The combined sales/use tax rate at this location is 8.8%.

$$\frac{\text{7,000 square feet devoted to manufacturing, excluding square feet of common areas}}{\text{9,000 total square feet, excluding square feet of common areas}} = \text{78\% of common areas eligible for deferral}$$

Based on the apportionment formula: 78% of common area costs are eligible. Multiply the common area costs of $260,000 by 78% to determine that $202,800 of common area costs are eligible for deferral. Therefore the $850,000 for the manufacturing portion of the building plus the $202,800 for common areas total $1,052,800 of eligible project costs. Multiply the eligible project costs of $1,052,800 by the tax rate of 8.8% to determine a sales/use tax deferral of $92,646.

(b) **Are qualified machinery and equipment subject to apportionment?** Unlike buildings, machinery and equipment cannot be apportioned if used for both qualifying and nonqualifying purposes.

(c) **To what extent is leased equipment eligible for the deferral?** The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date, the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

(6) **Are there any hiring requirements for an investment project?** There may or may not be a hiring requirement, depending on the location of the project.

(a) **High unemployment county.** There are no hiring requirements for qualifying projects located in high unemployment counties.

(b) **Community empowerment zone (CEZ).** There are hiring requirements for qualifying projects located in CEZs or in counties containing CEZs. The applicant applies for a deferral of investment that correlates to the estimated number of persons to be hired based on a formula. The applicant will create a position and hire at least one qualified employee for each $750,000 of qualified investment in the project. Refer to subsection (7) of this rule for more information on the application process. The recipient must fill the positions with persons who at the time of hire are residents of the CEZ. The persons must be hired after the date the application is filed with the department. As used in this subsection, "resident" means the person makes his or her home in the CEZ or the county in which the zone is located. A mailing address alone is insufficient to establish that a person is a resident. For example, a "P.O. Box" is not a valid address as it does not establish residence at a physical location where the person

actually lives. A street address would be an example of a valid address.

The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's website at dor.wa.gov. A recipient must fill the qualified employment positions by the end of the calendar year following the year in which the project is certified as operationally complete and retain the positions during the entire tax year. Refer to subsection (12) of this rule for more information on certification of an investment project as operationally complete. If the recipient does not fill the qualified employment positions by the end of the second calendar year following the year in which the project is certified as operationally complete, all deferred taxes are immediately due.

(7) **What are the application and review processes?** An application for sales and use tax deferral under this program must be made prior to the initiation of construction, prior to taking possession of machinery and equipment, and prior to the filling of qualified employment positions. Persons, applying after construction is initiated or finished or after taking possession of machinery and equipment, are not eligible for the program. When an application for sales and use tax deferral is timely submitted, costs incurred before the application date are allowable, if they otherwise qualify. Applications for persons subject to hiring requirements must include information regarding the estimated total project cost and the qualified employment positions.

(a) **How does a taxpayer obtain an application form?** Application forms may be obtained from the department's website at dor.wa.gov, or by contacting the department at 360-705-6705. Applications approved by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. RCW 82.60.100.

(b) **Will the department approve the deferral application?** In considering whether to approve or deny an application for a deferral, the department will not approve an application for a project involving construction unless:

(i) The construction will begin within one year from the date of the application; or

(ii) The applicant shows proof that, if the construction will not begin within one year of application, there is a specific and active program to begin construction of the project within two years from the date of application. Proof may include, but is not limited to:

(A) Affirmative action by the board of directors, governing body, or other responsible authority of the applicant toward an active program of construction;

(B) Itemized reasons for the proposed construction;

(C) Clearly established plans for financing the construction; or

(D) Building permits.

Similarly, after an application has been granted, a deferral certificate is no longer valid and should not be used if construction has not begun within one year from the date of application or there is not a specific and active program to begin construction within two years from the date of application. However, the department will grant requests to extend the period for which the certificate is valid if the holder of the certificate can demonstrate that the delay in starting construction is due to circumstances beyond the certificate holder's

control such as the acquisition of building permit(s). Refer to subsection (9) of this rule for more information on the use of tax deferral certificates.

(c) **When will the department notify approval or disapproval of the deferral application?** The department will verify the information contained in the application and approve or disapprove the application within 60 days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval.

(d) **May an applicant request a review of department disapproval of the deferral application?** The applicant may request administrative review of the department's disapproval of an application, within 30 days from the date of notice of the disallowance, pursuant to the provisions of WAC 458-20-100, Appeals. The filing of a petition for review with the department starts a review of departmental action.

(8) **What happens after the department approves the deferral application?** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral the recipient is eligible for. Recipients must keep track of how much tax is deferred.

(9) **How should a tax deferral certificate be used?** A tax deferral certificate issued under this program is for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified buildings or qualified machinery and equipment as defined in this rule. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment. In addition, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller will be relieved of the responsibility for collecting sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales.

(10) **May an applicant apply for multiple deferrals at the same project location?** The department may not issue a certificate for an investment project that has already received a deferral under chapter 82.60 RCW. For example, replacement machinery and equipment that replaces qualified machinery and equipment is not eligible for the deferral. In addition, if an existing building that received a deferral under chapter 82.60 RCW for the construction of the building is renovated, the renovation is not eligible for the deferral unless the original deferral project is closed and has no more deferral requirements.

(a) If expansion is made from an existing building that has already received a deferral under chapter 82.60 RCW for the construction of the building, the expanded portion of the building may be eligible for the deferral. The expansion must be made for new square footage, either vertically or horizontally. Acquisition of machinery and equip-

ment to be used in the expanded portion of the qualified building may also be eligible.

(b) A certificate may be amended or a certificate issued for a new investment project at an existing facility if all eligibility requirements are met.

(11) **May an applicant or recipient amend an application or certificate?** Applicants and recipients may make a written request to the special programs division to amend an application or certificate when the original estimates change.

(a) Assuming the project continues to meet all eligibility requirement, grounds for requesting amendment include, but are not limited to:

(i) The project will exceed the costs originally stated;

(ii) The project will take more time to complete than originally stated;

(iii) The original application is no longer accurate because of changes in the project;

(iv) The project location changes (only applicable to machinery and equipment); and

(v) Transfer of ownership of the project.

(b) An application may not be amended if the location of the qualified building changes. Taxes become immediately due if the project location changes after the application has been approved.

(c) The department must rule on the request within 60 days. If the request is denied, the department must explain in writing the basis for the denial. An applicant or recipient may appeal a denial within 30 days under WAC 458-20-100, Appeals.

(12) **What are the processes for an investment project?** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) **What should a certificate holder do if its investment project reaches the estimated costs but the project is not yet operationally complete?** If an investment project has reached its estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount on which the deferral taxes are requested along with an explanation for the increase in estimated costs. Requests must be mailed, emailed, or faxed to the department.

(b) **What should a certificate holder do if its investment project reaches the completion date but the project is not yet operationally complete?** If an investment project has reached the completion date and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised completion date along with an explanation for the new completion date. Requests must be mailed, emailed, or faxed to the department prior to the expiration date on the certificate.

(c) **What should a certificate holder do when its investment project is operationally complete?** The certificate holder must notify the department in writing when the investment project is operationally complete. The project is operationally complete once it can be used for its intended purpose as described in the application. The department will certify the qualifying costs and the date when the project became operationally complete. The certificate holder of the deferral

must maintain the manufacturing or research and development activity beginning the year the project is operationally complete and the following seven calendar years. It is important to remember that annual tax performance report reporting requirements begin the year following the operationally complete date, even though the audit certification may not be complete. For information on submitting annual tax performance reports, see subsection (13) of this rule.

Example 7. Taxpayer estimated a project end date of June 2018, but the project was actually operationally complete in November 2017. Taxpayer must submit the 2017 annual tax performance report by May 31, 2018. Taxpayer is responsible for notifying the department when the project is operationally complete regardless of the estimated completion date. If the 2017 annual tax performance report is not submitted timely, taxpayer will be assessed 12.5% of the deferred sales/use tax for this project.

Example 8. Taxpayer estimated a project end date of May 2017, but the project was actually not operationally complete until December 2017. Taxpayer must submit the 2017 annual tax performance report by May 31, 2018. Taxpayer is responsible for notifying the department when the project is operationally complete regardless of the estimated completion date. If the 2017 annual tax performance report is not submitted timely, taxpayer will be assessed 12.5% of the deferred sales/use tax for this project.

(i) If all or any portion of the project does not qualify, the recipient must repay all or a proportional part of the deferred taxes. The department will notify the recipient of the amount due and the due date.

(ii) The department must explain in writing the basis for not qualifying all or any portion of a project. The decision of the department to not qualify all or a portion of a project may be appealed under WAC 458-20-100, Appeals, within 30 days.

(13) **Is a recipient of a tax deferral required to submit annual tax performance report?** RCW 82.32.534 requires each recipient of a tax deferral to complete an annual tax performance report, every year, by May 31st for eight years following the year in which the project is operationally complete, regardless if the department has audited the project. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.025, the lessee must agree in writing to complete the annual tax performance report and the applicant is not required to complete the annual tax performance report. If the annual tax performance report is not submitted by the due date, or any extension under RCW 82.32.590, the recipient of the tax deferral or lessee, if required to submit, will be billed 12.5% of the deferred tax amount. For example, the deferral project is operationally complete in 2017. The recipient is required to submit the 2017-2024 annual tax performance reports that are due by May 31, 2018-2025, respectively. For more information on the requirements to file annual tax performance reports refer to WAC 458-20-267.

(14) **Is a recipient of a tax deferral required to repay deferred taxes for reasons other than not submitting the annual tax performance report?** Repayment of tax deferred under chapter 82.60 RCW is waived, as long as all eligibility requirements are met, except as provided in RCW 82.60.070 and this subsection (14).

The following describes the various circumstances under which repayment of the deferral may occur. Outstanding taxes are determined as of December 31st of each year by reference to the following table. No

proration is allowed for completing a partial year of the deferral use requirement.

Repayment Year		Percentage of Deferred Tax Waived
1	(Year operationally complete)	0%
2		0%
3		0%
4		10%
5		15%
6		20%
7		25%
8		30%

Any action taken by the department to disqualify a recipient for tax deferral or assess interest will be subject to administrative review pursuant to the provisions of WAC 458-20-100, Appeals. The filing of a petition for review with the department starts a review of departmental action.

(a) **Failure of investment project to satisfy general conditions.** If based on the recipient's annual tax performance report or other information, including that submitted by the employment security department, the department finds that an investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, including failure to continue qualifying activity, the department will declare the amount of deferred taxes outstanding to be immediately due. There is no proration of the amount owed under this subsection. No penalties or interest will be assessed on the deferred sales or use taxes; however, all other penalties and interest applicable to excise tax assessments may be assessed and imposed.

(b) **Failure of investment project to satisfy required employment positions conditions.** If based on the recipient's annual tax performance report or other information, the department finds that an investment project has been operationally complete and has failed to create the required number of qualified employment positions the amount of taxes deferred will be immediately due. There is no proration of the amount owed under this subsection. No penalties or interest will be assessed on the deferred sales or use taxes; however, all other penalties and interest applicable to excise tax assessments may be assessed and imposed.

(15) **When will the tax deferral program expire?** This tax deferral program is scheduled to expire July 1, 2020. No applications for deferral of taxes will be accepted after June 30, 2020. Businesses wishing to take advantage of this program are advised to apply to the department by April 30, 2020. While the department will make every effort to process applications in a timely manner, the department is allowed 60 days to review applications and issue deferral certificates. Applications received after April 30, 2020, may not be processed in time for the business to receive a deferral certificate and would not be eligible for the program. In addition, incomplete applications may be denied or not processed in time for the business to be issued a deferral certificate before July 1, 2020.

(16) **Is debt extinguishable because of insolvency or sale?** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition

of the recipient's business extinguish the debt for the deferred taxes.

(17) **Does transfer of ownership terminate tax deferral?** Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of chapter 82.60 RCW, for the remaining periods of the deferral. Any person who becomes a successor to such investment project is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient of the deferral. For additional information on successorship or quitting business refer to WAC 458-20-216.

Any questions regarding the potential eligibility of deferrals to be transferred on the sale of a business, should be directed to the special programs division as provided for in subsection (7)(a) of this rule.

WSR 24-04-005
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed January 24, 2024, 1:53 p.m., effective February 24, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: These amendments update WAC 458-20-210 and 458-20-176 to reflect 2023 legislation, HB 1573, including updates to expiration dates for RCW 82.04.4266 and 82.04.4268. Additionally, out-of-date provisions have been struck and updated.

Citation of Rules Affected by this Order: Amending WAC 458-20-210 Sales of tangible personal property for farming—Sales of agricultural products by farmers and 458-20-176 Commercial deep sea fishing—Commercial passenger fishing—Diesel fuel.

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

Adopted under notice filed as WSR 23-23-160 on November 21, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 24, 2024.

Atif Aziz
Rules Coordinator

OTS-5094.1

AMENDATORY SECTION (Amending WSR 18-13-094, filed 6/19/18, effective 7/20/18)

WAC 458-20-176 Commercial deep sea fishing—Commercial passenger fishing—Diesel fuel. (1) **Introduction.** This rule explains the business and occupation (B&O) tax, sales tax and use tax responsibilities of those engaged in commercial deep sea fishing, and suppliers selling to those persons.

Other rules that may apply. Readers may want to refer to other rules for additional information, including those in the following list:

(a) WAC 458-20-119 Sales by caterers and food service contractors;

(b) WAC 458-20-135 Extracting natural products;

(c) WAC 458-20-178 Use tax and the use of tangible personal property;

(d) WAC 458-20-193 Interstate sales of tangible personal property;

(e) WAC 458-20-244 Food and food ingredients.

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

(a) **Commercial deep sea fishing.** "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. 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) **Commercial passenger fishing.** "Commercial passenger fishing" means that done from charter boats for sport outside the territorial waters of the state of Washington.

(c) **Component part.** "Component part" includes all tangible personal property that 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 that are designed for ultimate attachment to a watercraft. The term "component part" does not include equipment or furnishings of any kind that 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) **Watercraft.** "Watercraft" means every type of floating equipment that is designed for carrying fishing gear, fish catch or fishing crews, and used primarily in commercial deep sea fishing operations.

(3) **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.

(c) Such persons may qualify for a B&O tax exemption under RCW 82.04.4269. This exemption pertains to the value of products or the gross proceeds of sales derived from:

(i) Manufacturing seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or

(ii) In the ordinary course of business, manufactured seafood products that remain in a raw, raw frozen or raw salted state to buyers that transport the goods out of the state of Washington. A person taking an exemption must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the buyer in the ordinary course of business out of the state of Washington.

(d) Persons claiming the exemption in (c) of this subsection must file a completed annual tax performance report with the department under RCW 82.32.534. In addition, persons claiming this tax preference must report the amount of the exemption on their monthly or quarterly

excise tax return. For more information on reporting requirements for this tax preference see RCW 82.32.808.

(e) The exemption provided by RCW 82.04.4269 is scheduled to expire on July 1, ((~~2025~~)) 2035.

(4) **Retail sales tax.**

(a) Under RCW 82.08.0262, the retail sales tax does not apply to sales of watercraft (including component parts thereof) which are primarily for use in conducting commercial deep sea fishing operations, nor does retail sales 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 to sales made to persons engaged in commercial deep sea fishing of every type of tangible personal property (except only sales of watercraft and component parts thereof) and to sales of or charges made for labor and services rendered in respect to the construction, repairing, cleaning, altering or improving of such types of property. Thus, the retail sales tax applies to 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 in subsection (7) of this rule, and lubricants for use or consumption. For sales of food and food ingredients see WAC 458-20-119 and 458-20-244.

(5) **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 buyer a certificate evidencing the exempt nature of the transaction.

(b) Buyers claiming the exemption may use the department's Buyers' Retail Sales Tax Exemption Certificate. The certificate can be found on the department's website at dor.wa.gov. Sellers must retain certificates in its records as evidence of the exempt nature of the sales to eligible buyers.

(c) Fishing boats used primarily in commercial deep sea fishing operations that are incidentally used within the waters of this state are still eligible for the exemption from retail sales tax.

(d) Sales of fishing boats, that are the types used in the waters of Puget Sound or the Columbia River and the tributaries thereof, and are not practical for use in deep sea fishing, are subject to the retail sales tax including sales of component parts thereof and on 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.

(6) **Use tax.**

(a) The use tax does not apply to the use of watercraft or component parts thereof. RCW 82.12.0254.

(b) The use tax applies to the actual use within this state of all other types of tangible personal property purchased at retail where the sales tax has not been paid and no exemption exists.

(7) **Diesel fuel.**

(a) RCW 82.08.0298 and 82.12.0298 provide 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 will be added together to determine eligibility for this exemption.

(c) 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. It is not required that all the diesel fuel purchased be used outside the territorial waters of this state.

(d) **Diesel fuel exemption certificates required.** Persons selling diesel fuel to such persons are required to obtain from the buyer a certificate evidencing the exempt nature of the transaction. This certificate must identify the buyer by name and address, and by the registered name and number of the watercraft with respect to which the purchase is made. 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 is not 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. Buyers may use the Buyers' Retail Sales Tax Exemption Certificate found on the department's website at dor.wa.gov.

OTS-5093.1

AMENDATORY SECTION (Amending WSR 23-14-002, filed 6/21/23, effective 7/22/23)

WAC 458-20-210 Sales of tangible personal property for farming—Sales of agricultural products by farmers. (1) **Introduction.** This rule explains the application of business and occupation (B&O), retail sales, and use taxes to the sale and/or use of feed, seed, fertilizer, spray materials, and other tangible personal property for farming. This rule also explains the application of B&O, retail sales, and litter taxes to the sale of agricultural products by farmers. Farmers should refer to WAC 458-20-101 (Tax registration and tax reporting) to determine whether they must obtain a tax registration endorsement or a temporary registration certificate from the department of revenue (department).

(a) **Examples.** This rule contains examples that identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(b) **Other rules that may be relevant.** Farmers and persons making sales to farmers may also want to refer to rules in the following list for additional information:

(i) WAC 458-20-178 Use tax and the use of tangible personal property;

(ii) WAC 458-20-209 Farming for hire and horticultural services performed for farmers;

(iii) WAC 458-20-222 Veterinarians;

(iv) WAC 458-20-239 Sales to nonresidents of farm machinery or implements, and related services;

(v) WAC 458-20-243 Litter tax; and

(vi) WAC 458-20-262 Retail sales and use tax exemptions for ((~~agricultural employee~~)) farmworker housing.

(2) **Who is a farmer?** A "farmer" is any person engaged in the business of growing, raising, or producing, on the person's own lands or on the lands in which the person has a present right of possession, any agricultural product to be sold. Effective July 1, 2015, a "farmer" also includes eligible apiarists that grow, raise, or produce honey bee products for sale, or provide bee pollination services. A "farmer" does not include a person growing, raising, or producing agricultural products for the person's own consumption; a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard, slaughterhouse, or packing house; or a person in respect to the business of taking, cultivating, or raising timber. RCW 82.04.213.

(3) **What is an agricultural product?** An "agricultural product" is any product of plant cultivation or animal husbandry including, but not limited to: A product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as defined in RCW 15.85.020; plantation Christmas trees; short-rotation hardwoods as defined in RCW 84.33.035; turf; or any animal, including, but not limited to, an animal that is a private sector cultured aquatic product as defined in RCW 15.85.020, a bird, an insect, or the substances obtained from such animals. Effective July 1, 2015, "agricultural product" includes honey bee products. An "agricultural product" does not include animals defined under RCW 16.70.020 as "pet animals." Effective June 12, 2014, RCW 82.04.213 excludes cannabis from the definition of "agricultural product." Cannabis is any product with a THC concentration greater than .3 percent. RCW 82.04.213.

(4) **Who is an eligible apiarist?** An "eligible apiarist" is a person who owns or keeps one or more bee colonies and who grows, raises, or produces honey bee products for sale at wholesale and is registered under RCW 15.60.021.

(5) **What are honey bee products?** "Honey bee products" are queen honey bees, packaged honey bees, honey, pollen, bees wax, propolis, or other substances obtained from honey bees. "Honey bee products" do not include manufactured substances or articles. RCW 82.04.213.

(6) **What is cannabis?** "Cannabis" is any product with a THC concentration greater than .3 percent. For additional information on cannabis see RCW 69.50.101.

(7) **Sales to farmers.** Persons making sales of tangible personal property to farmers are generally subject to wholesaling or retailing B&O tax, as the case may be, on the gross proceeds of sales. Sales of some services performed for farmers, such as installing or repairing tangible personal property, are retail sales and subject to retailing B&O tax on the gross proceeds of such sales. Persons making retail sales must collect retail sales tax from the buyer, unless the sale is specifically exempt by law. Refer to subsection (9) of this rule for information about specific sales tax exemptions available for sales to farmers.

(a) **Documenting wholesale sales.** A seller must take and retain from the buyer a copy of the buyer's reseller permit, or a completed

"Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions" to document the wholesale nature of any transaction.

(b) **Buyer's responsibility when the seller does not collect retail sales tax on a retail sale.** If the seller does not collect retail sales tax on a retail sale, the buyer must pay the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department, unless the sale is specifically exempt by law. The excise tax return does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's excise tax return. If a deferred sales tax or use tax liability is incurred by a farmer who is not required to obtain a tax registration endorsement from the department, the farmer must report the tax on a "Consumer Use Tax Return" and remit the appropriate tax to the department. For detailed information regarding use tax see WAC 458-20-178.

The Consumer Use Tax Return may be obtained by calling the department's telephone information center at 360-705-6705. The return may also be obtained from the department's website at dor.wa.gov.

(c) **Feed, seed, seedlings, fertilizer, spray materials, and agents for enhanced pollination.** Sales to farmers of feed, seed, seedlings, fertilizer, spray materials, and agents for enhanced pollination, including insects such as bees, to be used for the purpose of producing an agricultural product, whether for wholesale or retail sale, are wholesale sales.

However, when these items are sold to consumers for purposes other than producing agricultural products for sale, the sales are retail sales. For example, sales of feed to riding clubs, racetrack operators, boarders, or similar persons who do not resell the feed at a specific charge are retail sales. Sales of feed for feeding pets or work animals, or for raising animals for the purpose of producing agricultural products for personal consumption are also retail sales. Sales of seed, fertilizer, and spray materials for use on lawns and gardens, or for any other personal use, are likewise retail sales.

(i) **What is feed?** "Feed" is any substance used as food to sustain or improve animals, birds, fish, bees, or other insects, including whole and processed grains or mixtures thereof, hay and forages or meals made therefrom, mill feeds and feeding concentrates, stock salt, hay salt, sugar, pollen patties, bone meal, fish meal, cod liver oil, double purpose limestone grit, oyster shell, and other similar substances. Food additives that are given for their beneficial growth or weight effects are "feed."

Hormones or similar products that do not make a direct nutritional or energy contribution to the body are not "feed," nor are products used as medicines.

(ii) **What is seed?** "Seed" is the propagative portions of plants commonly used for seeding or planting whether true seed, bulbs, plants, seed-like fruits, seedlings, or tubers. For purposes of this rule, "seed" does not include seeds or propagative portions of plants used to grow cannabis.

(iii) **What is fertilizer?** "Fertilizer" is any substance containing one or more recognized plant nutrients and is used for its plant nutrient content and/or is designated for use in promoting plant growth. "Fertilizer" includes limes, gypsum, and manipulated animal and vegetable manures. There is no requirement that fertilizers be applied directly to the soil.

(iv) **What are spray materials?** "Spray materials" are any substance or mixture of substances in liquid, powder, granular, dry flow-

able, or gaseous form, which is intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mite, mollusk, fungus, weed, and any other form of plant or animal life normally considered to be a pest. The term includes treated materials, such as grains, that are intended to destroy, control, or repel such pests. "Spray materials" also include substances that act as plant regulators, defoliants, desiccants, or spray adjuvants.

(v) **Examples.**

(A) **Example 1.** Sue grows vegetables for retail sale at a local market. Sue purchases fertilizers and spray materials that she applies to the vegetable plants. She also purchases feed for poultry that she raises to produce eggs for her personal consumption. Because the vegetables are an agricultural product produced for sale, retail sales tax does not apply to Sue's purchases of fertilizers and spray materials, provided she gives the seller a copy of her reseller permit, or a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. Retail sales tax applies to her purchases of poultry feed, as the poultry is raised to produce eggs for Sue's personal consumption.

(B) **Example 2.** WG Vineyards (WG) grows grapes that it uses to manufacture wine for sale. WG purchases pesticides and fertilizers that are applied to its vineyards. WG may purchase these pesticides and fertilizers at wholesale, provided WG gives the seller a copy of their reseller permit, or a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions.

(C) **Example 3.** Seed Co. contracts with farmers to raise seed. Seed Co. provides the seed and agrees to purchase the crop if it meets specified standards. The contracts provide that ownership of the crop is retained by Seed Co., and the risk of crop loss is borne by the farmers. The farmers must pay for the seed whether or not the crop meets the specified standard. The transfer of the possession of the seed to each farmer is a wholesale sale, provided Seed Co. obtains a copy of their reseller permit, or a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions from that farmer.

(d) **Chemical sprays or washes.** Sales of chemical sprays or washes, whether to farmers or other persons, for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay are wholesale sales.

(e) **Farming equipment.** Sales to farmers of farming equipment such as machinery, machinery parts and repair, tools, and cleaning materials are retail sales and subject to retailing B&O and retail sales taxes, unless specifically exempt by law. Refer to subsections (7)(i) and (9) of this rule for information about sales tax exemptions available to farmers.

(f) **Packing materials and containers.** Sales of packing materials and containers, or tangible personal property that will become part of a container, to a farmer who will sell the property to be contained therein are wholesale sales, provided the packing materials and containers are not put to intervening use by the farmer. Thus, sales to farmers of binder twine for binding bales of hay that will be sold or wrappers for fruit and vegetables to be sold are subject to wholesaling B&O tax. However, sales of packing materials and containers to a farmer who will use the items as a consumer are retail sales and subject to retailing B&O and retail sales taxes. Thus, sales of binder twine to a farmer for binding bales of hay that will be used to feed the farmer's livestock are retail sales.

(g) **Purchases for dual purposes.** A buyer normally engaged in both consuming and reselling certain types of tangible personal property who is unable to determine at the time of purchase whether the particular property purchased will be consumed or resold must purchase according to the general nature of his or her business. RCW 82.08.130. If the buyer principally consumes the articles in question, the buyer should not give a copy of its reseller permit for any part of the purchase. If the buyer principally resells the articles, the buyer may provide a copy of its reseller permit for the entire purchase. For the purposes of this subsection, the term "principally" means greater than 50 percent.

If a buyer makes a purchase for dual purposes and does not give a copy of their reseller permit for any of the purchase and thereafter resells some of the articles purchased, the buyer may claim a "taxable amount for tax paid at source" deduction. For additional information regarding purchases for dual purposes and the "taxable amount for tax paid at source" deduction see WAC 458-20-102.

(i) **Potential deferred sales tax liability.** If the buyer gives a copy of its reseller permit for all purchases and thereafter consumes some of the articles purchased, the buyer is liable for deferred sales tax and must remit the tax directly to the department. Refer to (b) of this subsection, WAC 458-20-102 and 458-20-178 for more information regarding deferred sales tax and use tax.

(ii) **Example 4.** A farmer purchases binder twine for binding bales of hay. Some of the hay will be sold and some will be used to feed the farmer's livestock. More than 50 percent of the binder twine is used for binding bales of hay that will be sold. Because the farmer principally uses the binder twine for binding bales of hay that will be sold, the farmer may provide a copy of their reseller permit, or a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions to the seller for the entire purchase. The farmer is liable for deferred sales tax on the binder twine used for binding bales of hay that are used to feed the farmer's livestock and must remit the tax directly to the department.

(h) **"Fruit bin rentals" by fruit packers.** Fruit packers often itemize their charges to farmers for various services related to the packing and storage of fruit. An example is a charge for the bins that the packer uses in the receiving, sorting, inspecting, and storing of fruit (commonly referred to as "bin rentals"). The packer delivers the bins to the grower, who fills them with fruit for eventual storage in the packer's warehouse. Charges by fruit packers to farmers for such bin rentals do not constitute the rental of tangible personal property to the farmer where the bins are under the control of the packer for use in the receiving, sorting, inspecting, and storing of fruit. These charges are income to the packer related to the receipt or storage of fruit. The packer, as the consumer of the bins, is subject to retail sales or use tax on the purchase or use of the bins. For information regarding the taxability of fruit packing by cooperative marketing associations and independent dealers acting as agents for others in the sales of fruit and produce see WAC 458-20-214.

(i) **Machinery and equipment used directly in a manufacturing operation.** Machinery and equipment used directly in a manufacturing operation by a manufacturer or processor for hire is exempt from sales and use taxes provided that all requirements for the exemptions are met. RCW 82.08.02565 and 82.12.02565. These exemptions are commonly referred to as the M&E exemption. Farmers who use agricultural products that they have grown, raised, or produced as ingredients in a

manufacturing process may be entitled to the M&E exemption on the acquisition of machinery and equipment used directly in their manufacturing operation. For more information on the M&E exemption see WAC 458-20-13601.

(8) **Sales by farmers.** Farmers are not subject to B&O tax on wholesale sales of agricultural products. Effective July 1, 2015, bee pollination services provided to farmers by eligible apiarists also qualify for the exemption provided by RCW 82.04.330. Farmers who manufacture products using agricultural products that they have grown, raised, or produced should refer to (b) of this subsection for tax-reporting information.

Farmers are subject to retailing B&O tax on retail sales of agricultural products and retailing or wholesaling B&O tax on sales of nonagricultural products, as the case may be, unless specifically exempt by law. Also, B&O tax applies to sales of agricultural products that the seller has not grown, raised, or produced on the seller's own land or on land in which the seller has a present right of possession, whether these products are sold at wholesale or retail. Likewise, B&O tax applies to sales of animals or substances derived from animals in connection with the business of operating a stockyard, slaughterhouse, or packing house. Farmers may be eligible to claim a small business B&O tax credit if the amount of B&O tax liability in a reporting period is under a certain amount. For more information about the small business B&O tax credit see WAC 458-20-104.

(a) **Litter tax.** The gross proceeds of sales of certain products, including food for human or pet consumption, are subject to litter tax. RCW 82.19.020. Litter tax does not apply to sales of agricultural products that are exempt from B&O tax under RCW 82.04.330. RCW 82.19.050. Thus, farmers are not subject to litter tax on wholesale sales of agricultural products but are liable for litter tax on the gross proceeds of retail sales of agricultural products that constitute food for human or pet consumption. In addition, farmers that manufacture products for use and consumption within this state (e.g., a farmer who produces wine from grapes that the farmer has grown) may be liable for litter tax measured by the value of the products manufactured. For more information about the litter tax see chapter 82.19 RCW and WAC 458-20-243.

Example 5. RD Orchards (RD) grows apples at its orchards. Most apples are sold at wholesale, but RD operates a seasonal roadside fruit stand from which it sells apples at retail. The wholesale sales of apples are exempt from both B&O and litter taxes. The retail sales of apples are subject to retailing B&O and litter taxes but are exempt from sales tax because the apples are sold as a food product for human consumption. Refer to subsection (9)(d) of this rule for more information about the retail sales tax exemption applicable to sales of food products for human consumption.

(b) **Farmers using agricultural products in a manufacturing process.** The B&O tax exemption provided by RCW 82.04.330 does not apply to any person selling manufactured substances or articles. Thus, farmers who manufacture products using agricultural products that they have grown, raised, or produced are subject to manufacturing B&O tax on the value of products manufactured. Farmers who sell their manufactured products at retail or wholesale in the state of Washington are also generally subject to the retailing or wholesaling B&O tax, as the case may be. In such cases, a multiple activities tax credit (MATC) may be available. Refer to WAC 458-20-136 (Manufacturing, processing for hire, fabricating) and WAC 458-20-19301 (Multiple activities tax cred-

its), respectively, for more information about the manufacturing B&O tax and the MATC.

(i) **Manufacturing fresh fruits and vegetables.** RCW 82.04.4266 provides a B&O tax exemption to persons manufacturing fresh fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables. For purposes of this rule, "fruits" and "vegetables" does not include cannabis.

Wholesale sales of fresh fruits or vegetables canned, preserved, frozen, processed, or dehydrated by the seller and sold to purchasers who transport the goods out of this state in the ordinary course of business are also eligible for this exemption. A seller must keep and preserve records for the period required by RCW 82.32.070 establishing that the purchaser transported the goods out of Washington state.

(A) A person claiming the exemption must file a complete annual tax performance report with the department under RCW 82.32.534. In addition, persons claiming this tax preference must report the amount of the exemption on their monthly or quarterly excise tax return. For more information on reporting requirements for this tax preference see RCW 82.32.808.

(B) RCW 82.04.4266 is scheduled to expire July 1, ((~~2025~~)) 2035, at which time the preferential B&O tax rate under RCW 82.04.260 will apply.

(ii) **Manufacturing dairy products.** RCW 82.04.4268 provides a B&O tax exemption to persons manufacturing dairy products, not including any cannabis-infused product, that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135. These products include milk, buttermilk, cream, yogurt, cheese, and ice cream, and also include by-products from the manufacturing of dairy products such as whey and casein.

The exemption also applies to persons selling manufactured dairy products to purchasers who transport the goods out of Washington state in the ordinary course of business and, until July 1, 2025, to purchasers who use such dairy products as an ingredient or component in the manufacturing of a dairy product in Washington state. Unlike the exemption for certain wholesale sales of fresh fruits or vegetables (see (b)(i) of this subsection), the exemption for sales of qualifying dairy products does not require that the sales be made at wholesale.

A seller must keep and preserve records for the period required by RCW 82.32.070 establishing that the purchaser transported the goods out of Washington state or the goods were sold to a manufacturer for use as an ingredient or component in the manufacturing of a dairy product in Washington state.

(A) A person claiming the exemption must file a complete annual tax performance report with the department under RCW 82.32.534. In addition, persons claiming this tax preference must report the amount of the exemption on their monthly or quarterly excise tax return. For more information on reporting requirements for this tax preference see RCW 82.32.808.

(B) RCW 82.04.4268 is generally scheduled to expire July 1, ((~~2025~~)) 2035, at which time the preferential B&O tax rate under RCW 82.04.260 will apply. The exemption for sales of dairy products to purchasers who use such dairy products as an ingredient or component in the manufacturing of a dairy product in Washington state expires July 1, 2025.

((~~(C) Effective October 1, 2013, the exemption provided by RCW 82.04.4268 expanded to include wholesale sales by a dairy product manufacturer to a purchaser who uses the dairy products as an ingredient~~

~~or component in the manufacturing in Washington of another dairy product. The definition of dairy products was expanded to include products comprised of not less than 70 percent dairy products measured by weight or volume.~~))

(c) **Raising cattle for wholesale sale.** RCW 82.04.330 provides a B&O tax exemption to persons who raise cattle for wholesale sale provided that the cattle are held for at least 60 days prior to the sale. Persons who hold cattle for fewer than 60 days before reselling the cattle are not considered to be engaging in the normal activities of growing, raising, or producing livestock for sale.

Example 6. A feedlot operation purchases cattle and feeds them until they attain a good market condition. The cattle are then sold at wholesale. The feedlot operator is exempt from B&O tax on wholesale sales of cattle if it held the cattle for at least 60 days while they were prepared for market. However, the feedlot operator is subject to wholesaling B&O tax on wholesale sales of cattle held for fewer than 60 days prior to the sale.

(d) **B&O tax exemptions available to farmers.** In addition to the exemption for wholesale sales of agricultural products, several other B&O tax exemptions available to farmers are discussed in this subsection.

(i) **Growing, raising, or producing agricultural products owned by other persons.** RCW 82.04.330 exempts amounts received by a farmer for growing, raising, or producing agricultural products owned by others, such as custom feed operations.

Example 7. A farmer is engaged in the business of raising cattle owned by others (commonly referred to as "custom feeding"). After the cattle attain a good market condition, the owner sells them. Amounts received by the farmer for custom feeding are exempt from B&O tax under RCW 82.04.330, provided that the farmer held the cattle for at least 60 days. Farmers are not considered to be engaging in the activity of raising cattle for sale unless the cattle are held for at least 60 days while the cattle are prepared for market. (See (c) of this subsection.)

(ii) **Processed hops shipped outside Washington for first use.** RCW 82.04.337 exempts amounts received by hop growers or dealers for hops shipped outside the state of Washington for first use, if those hops have been processed into extract, pellets, or powder in this state. However, the processor or warehouser of such products is not exempt on amounts charged for processing or warehousing such products.

(iii) **Sales of hatching eggs or poultry.** RCW 82.04.410 exempts amounts received for the sale of hatching eggs or poultry by farmers producing hatching eggs or poultry, when these agricultural products are for use in the production for sale of poultry or poultry products.

(9) **Retail sales tax and use tax exemptions.** This subsection provides information about a number of retail sales tax and corresponding use tax exemptions available to farmers and persons buying tangible personal property at retail from farmers. Some exemptions require the buyer to provide the seller with an exemption certificate. Refer to subsection (10) of this rule for additional information regarding exemption certificates.

(a) **Pollen.** RCW 82.08.0277 and 82.12.0273 exempt the sale and use of pollen from retail sales and use taxes.

(b) **Semen.** RCW 82.08.0272 and 82.12.0267 exempt the sale and use of semen used in the artificial insemination of livestock from retail sales and use taxes.

(c) **Feed for livestock at public livestock markets.** RCW 82.08.0296 and 82.12.0296 exempt the sale and use of feed to be consumed by livestock at a public livestock market from retail sales and use taxes.

(d) **Food products.** RCW 82.08.0293 and 82.12.0293 exempt the sale and use of food products for human consumption from retail sales and use taxes. These exemptions also apply to the sale or use of livestock for personal consumption as food. For more information about food products that qualify for this exemption see WAC 458-20-244.

(e) **Auction sales of farm property.** RCW 82.08.0257 and 82.12.0258 exempt from retail sales and use taxes tangible personal property, including household goods, which has been used in conducting a farm activity, if the property is purchased from a farmer, as defined in RCW 82.04.213, at an auction sale held or conducted by an auctioneer on a farm. Effective June 12, 2014, these exemptions do not apply to personal property used by a person in the production of cannabis.

(f) **Poultry.** RCW 82.08.0267 and 82.12.0262 exempt from retail sales and use taxes the sale and use of poultry used in the production for sale of poultry or poultry products.

Example 8. A poultry hatchery produces poultry from eggs. The resulting poultry are sold to egg producers. These sales are exempt from retail sales tax under RCW 82.08.0267. (They are also exempt from B&O tax. See subsection (8)(d)(iii) of this rule.)

(g) **Leases of irrigation equipment.** RCW 82.08.0288 and 82.12.0283 exempt the lease or use of irrigation equipment from retail sales and use taxes, but only if:

(i) The lessor purchased the irrigation equipment for the purpose of irrigating land controlled by the lessor;

(ii) The lessor has paid retail sales or use tax upon the irrigation equipment;

(iii) The irrigation equipment is attached to the land in whole or in part;

(iv) Effective June 12, 2014, the irrigation equipment is not used in the production of cannabis; and

(v) The irrigation equipment is leased to the lessee as an incidental part of the lease of the underlying land and is used solely on such land.

(h) **Beef and dairy cattle.** RCW 82.08.0259 and 82.12.0261 exempt the sale and use of beef and dairy cattle, to be used by a farmer in producing an agricultural product, from retail sales and use taxes.

Example 9. John operates a farm where he raises beef and dairy cattle for sale. He also raises other livestock for sale including hogs, sheep, and goats. John's sales of beef and dairy cattle for use on a farm are exempt from retail sales tax. However, John must collect retail sales tax on all retail sales of sheep, goats, and hogs unless the sales qualify for either the food products exemption described in (d) of this subsection, or the exemption for sales of livestock for breeding purposes described in this subsection (9)(i) of this rule.

(i) **Livestock for breeding purposes.** RCW 82.08.0259 and 82.12.0261 exempt the sale or use of livestock, as defined in RCW 16.36.005, for breeding purposes where the animals are registered in a nationally recognized breed association from retail sales and use taxes.

Example 10. ABC Farms raises and sells quarter horses registered in the American Quarter Horse Association (AQHA). Quarter horses are generally recognized as a definite breed of horse, and the AQHA is a nationally recognized breed association. Therefore, ABC Farms is not

required to collect sales tax on retail sales of quarter horses for breeding purposes, provided it receives and retains a completed exemption certificate from the buyer.

(j) **Bedding materials for chickens.** RCW 82.08.920 and 82.12.920 exempt from retail sales and use taxes the sale to and use of bedding materials by farmers to accumulate and facilitate the removal of chicken manure, provided the farmer is raising chickens that are sold as agricultural products.

(i) **What are bedding materials?** "Bedding materials" are wood shavings, straw, sawdust, shredded paper, and other similar materials.

(ii) **Example 11.** Farmer raises chickens for use in producing eggs for sale. When the chickens are no longer useful for producing eggs, Farmer sells them to food processors for soup and stew meat. Farmer purchases bedding materials used to accumulate and facilitate the removal of chicken manure. The purchases of bedding materials by Farmer are exempt from retail sales tax as long as Farmer provides the seller with a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. See subsection (10) of this rule for where to find an exemption certificate. The seller must retain a copy of the exemption certificate for its records.

The exemption merely requires that the chickens be sold as agricultural products. It is immaterial that Farmer primarily raises the chickens to produce eggs.

(k) **Propane or natural gas used to heat structures housing chickens.** RCW 82.08.910 and 82.12.910 exempt from retail sales and use taxes the sale to and use of propane or natural gas by farmers to heat structures used to house chickens. The propane or natural gas must be used exclusively to heat the structures, and the structures must be used exclusively to house chickens that are sold as agricultural products.

(i) **What are "structures"?** "Structures" are barns, sheds, and other similar buildings in which chickens are housed.

(ii) **Example 12.** Farmer purchases natural gas that is used to heat structures housing chickens. The natural gas is used exclusively to heat the structures, and the structures are used exclusively to house chickens. The chickens are used to produce eggs. When the chickens are no longer useful for producing eggs, Farmer sells the chickens to food processors for soup and stew meat. The purchase of natural gas by Farmer is exempt from retail sales tax as long as Farmer provides the seller with a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. See subsection (10) of this rule for where to find an exemption certificate. The seller must retain a copy of the exemption certificate for its records.

The exemption merely requires that the chickens be sold as agricultural products. It is immaterial that Farmer primarily houses these chickens to produce eggs.

(iii) **Example 13.** Farmer purchases natural gas that is used to heat structures used in the incubation of chicken eggs and structures used for washing, packing, and storing eggs. The natural gas used to heat these structures is not exempt from retail sales tax because the structures are not used exclusively to house chickens that are sold as agricultural products.

(l) ((~~**Farm fuel used for agricultural purposes.**~~

~~(i)~~)) **Diesel, biodiesel, and aircraft fuel((s)) for farm fuel users.** RCW 82.08.865 and 82.12.865 exempt from retail sales and use taxes the sale and use of diesel fuel, biodiesel fuel, and aircraft fuel, to farm fuel users for agricultural purposes. The exemptions ap-

ply to a fuel blend if all of the component fuels of the blend would otherwise be exempt if the component fuels were sold as separate products. The buyer must provide the seller with a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. See subsection (10) of this rule for where to find an exemption certificate. The seller must retain a copy of the exemption certificate for its records.

((~~(A)~~)) (i) The exemptions apply to nonhighway uses for production of agricultural products and for providing horticultural services to farmers. Horticultural services include:

((~~(I)~~)) (A) Soil preparation services;

((~~(II)~~)) (B) Crop cultivation services;

((~~(III)~~)) (C) Crop harvesting services.

((~~(B)~~)) (ii) The exemptions do not apply to uses other than for agricultural purposes. Agricultural purposes do not include:

((~~(I)~~)) (A) Heating space for human habitation or water for human consumption; or

((~~(II)~~)) (B) Transporting on public roads individuals, agricultural products, farm machinery or equipment, or other tangible personal property, except when the transportation is incidental to transportation on private property and the fuel used for such transportation is not subject to tax under chapter 82.38 RCW.

((~~(ii) **Propane and natural gas used in distilling mint on a farm.** Effective October 1, 2013, RCW 82.08.220 and 82.12.220 exempt from retail sales and use taxes sales to and use by farmers of propane or natural gas used exclusively to distill mint on a farm. The buyer must provide the seller with a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. The seller must retain a copy of the exemption certificate for its records. See subsection (10) of this rule for where to find an exemption certificate. The seller must also report amounts claimed for exemption when electronically filing excise tax returns. This exemption is scheduled to expire July 1, 2017.~~))

(m) **Nutrient management equipment and facilities.** RCW 82.08.890 and 82.12.890 provide retail sales and use tax exemptions for the sale to or use by eligible persons of:

(i) Qualifying livestock nutrient management equipment;

(ii) Labor and services rendered in respect to installing, repairing, cleaning, altering, or improving qualifying livestock nutrient management equipment; and

(iii) Labor and services rendered in respect to repairing, cleaning, altering, or improving qualifying livestock nutrient management facilities, or to tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities in the course of repairing, cleaning, altering, or improving such facilities.

(iv) Nonqualifying labor and services. This subsection (9)(m)(iii) of this rule does not include the sale of or charge made for labor and services rendered in respect to the constructing of new, or replacing previously existing, qualifying livestock nutrient management facilities, or tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities during the course of constructing new, or replacing previously existing qualifying livestock nutrient management facilities.

(v) Nutrient management plan must be certified or approved. The exemptions provided by RCW 82.08.890 and 82.12.890 apply to sales made after the livestock nutrient management plan is:

(A) Certified under chapter 90.64 RCW;

(B) Approved as part of the permit issued under chapter 90.48 RCW; or

(C) Approved by a conservation district and who qualifies for the exemption provided under RCW 82.08.855. ((~~Effective June 12, 2014, the requirement for the department to issue exemption certificates was removed.~~)) A Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions should be completed and provided to the seller. In lieu of the exemption certificate, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement. The seller must retain a copy of the certificate or the data elements for the seller's files.

(vi) **Definitions. For the purpose of these exemptions, the following definitions apply:**

(A) **"Animal feeding operation"** means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

• Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

• Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(B) **"Conservation district"** means a subdivision of state government organized under chapter 89.08 RCW.

(C) **"Eligible person"** means a person:

• Licensed to produce milk under chapter 15.36 RCW who has a certified dairy nutrient management plan, as required by chapter 90.64 RCW; or

• Who owns an animal feeding operation and has a permit issued under chapter 90.48 RCW; or

• Who owns an animal feeding operation and has a nutrient management plan approved by a conservation district as meeting natural resource conservation service field office technical guide standards and who qualifies for the exemption provided under RCW 82.08.855.

(D) **"Handling and treatment of livestock manure"** means the activities of collecting, storing, moving, or transporting livestock manure, separating livestock manure solids from liquids, or applying livestock manure to the agricultural lands of an eligible person other than through the use of pivot or linear type traveling irrigation systems.

(E) **"Permit"** means either a state waste discharge permit or a National Pollutant Discharge Elimination System permit, or both.

(F) **"Qualifying livestock nutrient management equipment"** means the tangible personal property listed below for exclusive use in the handling and treatment of livestock manure, including repair and replacement parts for the same equipment:

Aerators
Agitators
Augers
Conveyers
Gutter cleaners
Hard-hose reel traveler irrigation systems
Lagoon and pond liners and floating covers
Loaders
Manure composting devices
Manure spreaders

Manure tank wagons
Manure vacuum tanks
Poultry house cleaners
Poultry house flame sterilizers
Poultry house washers
Poultry litter saver machines
Pipes
Pumps
Scrapers
Separators
Slurry injectors and hoses
Wheelbarrows, shovels, and pitchforks.

(G) **"Qualifying livestock nutrient management facilities"** means the exclusive use in the handling and treatment of livestock manure of the facilities listed below:

Flush systems
Lagoons
Liquid livestock manure storage structures, such as concrete tanks or glass-lined steel tanks
Structures used solely for dry storage of manure, including roofed stacking facilities.

(n) **Anaerobic digesters (effective July 1, 2018).**

(i) RCW 82.08.900 and 82.12.900 provide retail sales and use tax exemptions for purchases and uses by eligible persons:

(A) In respect to equipment necessary to process biogas from a landfill into marketable coproducts including, but not limited to, biogas conditioning, compression, and electrical generation equipment, or to services rendered in respect to installing, constructing, repairing, cleaning, altering, or improving equipment necessary to process biogas from a landfill into marketable coproducts; and

(B) Establishing or operating anaerobic digesters or to services rendered in respect to installing, constructing, repairing, cleaning, altering, or improving an anaerobic digester. The exemptions include sales of tangible personal property that becomes an ingredient or component of the anaerobic digester. Anaerobic digester means a facility that processes organic material into biogas and digestate using microorganisms in a decomposition process within a closed, oxygen-free container as well as the equipment necessary to process biogas or digestate produced by an anaerobic digester into marketable coproducts including, but not limited to, biogas conditioning, compression, nutrient recovery, and electrical generation equipment.

(ii) ((**~~Exemption certificate~~**. ~~Effective July 24, 2015, eligible persons no longer need to apply for an exemption certificate. An "eligible person" is any person establishing or operating an anaerobic digester or landfill or processing biogas from an anaerobic digester or landfill into marketable coproducts.~~

~~(iii)~~)) **Records retention <u>and exemption certificate</u>.** Persons claiming the exemptions under RCW 82.08.900 and 82.12.900 must keep records necessary for the department to verify eligibility. Sellers may make tax exempt sales only if the buyer provides the seller with a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions, and the seller retains a copy of the certificate for its files. See subsection (10) of this rule for where to find an exemption certificate.

(o)(i) **Anaerobic digesters (effective until ((~~July 1, 2018~~)) January 1, 2029).** RCW 82.08.900 and 82.12.900 provide retail sales and use tax exemptions for purchases and uses by eligible persons establishing or operating anaerobic digesters or to services rendered in respect to installing, constructing, repairing, cleaning, altering, or improving an anaerobic digester. The exemptions include sales of tangible personal property that becomes an ingredient or component of the anaerobic digester. The anaerobic digester must be used primarily (more than 50 percent measured by volume or weight) to treat livestock manure. Anaerobic digester is a facility that processes manure from livestock into biogas and dried manure using microorganisms in a decomposition process within a closed, oxygen-free container.

((~~(i) **Exemption certificate.** Effective July 24, 2015, eligible persons no longer need to apply for an exemption certificate. An "eligible person" is any person establishing or operating an anaerobic digester to treat primarily livestock manure.~~))

(ii) **Records retention and exemption certificate.** Persons claiming the exemptions under RCW 82.08.900 and 82.12.900 must keep records necessary for the department to verify eligibility. Sellers may make tax exempt sales only if the buyer provides the seller with a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions, and the seller retains a copy of the certificate for its files. See subsection (10) of this rule for where to find an exemption certificate.

(p) **Animal pharmaceuticals.** RCW 82.08.880 and 82.12.880 exempt from retail sales and use taxes the sale of and use of certain animal pharmaceuticals when sold to, or used by, farmers or veterinarians. To qualify for the exemption, the animal pharmaceutical must be administered to an animal raised by a farmer for the purpose of producing an agricultural product for sale. In addition, the animal pharmaceutical must be approved by the United States Department of Agriculture (USDA) or the United States Food and Drug Administration (FDA).

(i) **Who is a veterinarian?** A "veterinarian" means a person who is licensed to practice veterinary medicine, surgery, or dentistry under chapter 18.92 RCW.

(ii) **How can I determine whether the FDA or USDA has approved an animal pharmaceutical?** The FDA and USDA have an established approval process set forth in federal regulations. The FDA maintains a list of all approved animal pharmaceuticals called the "*Green Book*." The USDA maintains a list of approved biotechnology products called the "*Veterinary Biologics Product Catalogue*." Pharmaceuticals that are not on either of these lists have not been approved and are not eligible for the exemption.

(iii) **Example 17.** Dairy Farmer purchases sterilizing agents. The sterilizing agents are applied to the equipment and facilities where Dairy Farmer's cows are milked. Dairy Farmer also purchases teat dips, antiseptic udder washes, and salves that are not listed in either the FDA's *Green Book* of approved animal pharmaceuticals or the USDA's *Veterinary Biologics Product Catalogue* of approved biotechnology products. The purchases of sterilizing agents are not exempt as animal pharmaceuticals because the sterilizing agents are not administered to animals. The teat dips, antiseptic udder washes, and salves are likewise not exempt because they have not been approved by the FDA or USDA.

(iv) **What type of animal must the pharmaceutical be administered to?** As explained above, the exemptions are limited to the sale and use of animal pharmaceuticals administered to an animal that is raised by

a farmer for the purpose of producing an agricultural product for sale. The conditions under which a farmer may purchase and use tax-exempt animal pharmaceuticals are similar to those under which a farmer may purchase and use feed at wholesale. Both types of purchases and uses require that the particular product be sold to or used by a farmer (or a veterinarian in the case of animal pharmaceuticals), and that the product be given or administered to an animal raised by a farmer for the purpose of producing an agricultural product for sale.

(v) **Examples of animals raised for the purpose of producing agricultural products for sale.** For purposes of the exemptions, the following is a nonexclusive list of examples of animals that are being raised for the purpose of producing an agricultural product for sale, presuming all other requirements for the exemption are met:

(A) Horses, cattle, or other livestock raised by a farmer for sale;

(B) Cattle raised by a farmer for the purpose of slaughtering, if the resulting products are sold;

(C) Milk cows raised and/or used by a dairy farmer for the purpose of producing milk for sale;

(D) Horses raised by a farmer for the purpose of producing foals for sale;

(E) Sheep raised by a farmer for the purpose of producing wool for sale; and

(F) "Private sector cultured aquatic products" as defined by RCW 15.85.020 (e.g., salmon, catfish, and mussels) raised by an aquatic farmer for the purpose of sale.

(vi) **Examples of animals that are not raised for the purpose of producing agricultural products for sale.** For purposes of the exemptions, the following nonexclusive list of examples do not qualify because the animals are not being raised for the purpose of producing an agricultural product for sale:

(A) Cattle raised for the purpose of slaughtering if the resulting products are not produced for sale;

(B) Sheep and other livestock raised as pets;

(C) Dogs or cats, whether raised as pets or for sale. Dogs and cats are pet animals; therefore, they are not considered to be agricultural products. (See subsection (3) of this rule); and

(D) Horses raised for the purpose of racing, showing, riding, and jumping. However, if at some future time the horses are no longer raised for racing, showing, riding, or jumping and are instead being raised by a farmer for the purpose of producing foals for sale, the exemption will apply if all other requirements for the exemption are met.

(vii) **Do products that are used to administer animal pharmaceuticals qualify for the exemption?** Sales and uses of products that are used to administer animal pharmaceuticals (e.g., syringes) do not qualify for the exemptions, even if they are later used to administer a tax-exempt animal pharmaceutical. However, sales and uses of tax-exempt animal pharmaceuticals contained in a product used to administer the animal pharmaceutical (e.g., a dose of a tax-exempt pharmaceutical contained in a syringe or cotton applicator) qualify for the exemption.

(q) **Replacement parts for qualifying farm machinery and equipment.** RCW 82.08.855 and 82.12.855 exempt from retail sales and use taxes sales to and uses by eligible farmers of replacement parts for qualifying farm machinery and equipment. Also included are: Labor and services rendered during the installation of repair parts; and labor

and services rendered during repair as long as no tangible personal property is installed, incorporated, or placed in, or becomes an ingredient or component of the qualifying equipment other than replacement parts.

(i) **The following definitions apply to this subsection:**

(A) "Eligible farmer" as defined in RCW 82.08.855(4).

(B) "Qualifying farm machinery and equipment" means machinery and equipment used primarily by an eligible farmer for growing, raising, or producing agricultural products, and effective July 1, 2015, providing bee pollination services, or both.

(C) "Qualifying farm machinery and equipment" does not include:

• Vehicles as defined in RCW 46.04.670, other than farm tractors as defined in RCW 46.04.180, farm vehicles and other farm implements. "Farm implements" means machinery or equipment manufactured, designed, or reconstructed for agricultural purposes and used primarily by an eligible farmer to grow, raise, or produce agricultural products, but does not include lawn tractors and all-terrain vehicles;

• Aircraft;

• Hand tools and hand-powered tools; and

• Property with a useful life of less than one year.

(D) "Replacement parts" means those parts that replace an existing part, or which are essential to maintain the working condition, of a piece of qualifying farm machinery or equipment. Paint, fuel, oil, hydraulic fluids, antifreeze, and similar items are not replacement parts except when installed, incorporated, or placed in qualifying farm machinery and equipment during the course of installing replacement parts as defined here or making repairs as described above in (p) of this subsection.

(ii) **Records retention and exemption certificate.** ((~~Prior to June 12, 2014, the department was required to provide an exemption certificate to an eligible farmer or renew an exemption certificate when the eligible farmer applied for a renewal.~~

~~(A)~~)) Persons claiming the exemptions must keep records necessary for the department to verify eligibility. Sellers making tax-exempt sales must obtain, and retain in its files, a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions from the farmer. In lieu of the exemption certificate, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement.

((~~(B) The exemptions provided by RCW 82.08.890 and 82.12.890 do not apply to sales made from July 1, 2010, through June 30, 2013.~~))

(10) **Sales tax exemption certificates.** As indicated in subsection (9) of this rule, certain sales of tangible personal property and retail services either to or by farmers are exempt from retail sales tax. A person claiming an exemption must keep records necessary for the department to verify eligibility for each claimed exemption. ((~~Effective June 12, 2014, the requirement for the department to issue certificates to qualified farmers was removed. Instead, farmers~~)) A person claiming an exemption under subsection (9) of this rule may complete and use the department's Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. Refer to the department's website at dor.wa.gov for the exemption certificate. In lieu of an exemption certificate, a seller may capture the relevant data elements as provided under the streamlined sales and use tax agreement as allowed under RCW 82.08.050. Sellers must retain a copy of the exemption certificate or the data elements in their files. Without proper documentation,

sellers are liable for payment of the retail sales tax on sales claimed as exempt.

WSR 24-04-006
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed January 24, 2024, 1:55 p.m., effective February 24, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule is being updated to comply with SHB [HB] 1742 (2023), which authorizes the department of revenue to waive a late fee assessed on a business for not renewing its business license timely. A business is eligible for the waiver if the business has timely renewed all business licenses and paid the applicable business license fees for 24 months immediately prior to the period covered by the renewal application for which the waiver is being requested. This rule is being updated to reflect the availability of the waiver.

Citation of Rules Affected by this Order: Amending WAC 458-02-200 Business licensing service—Applications, licenses, renewals—Fees.

Statutory Authority for Adoption: RCW 19.02.030.

Adopted under notice filed as WSR 23-23-050 on November 7, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 24, 2024.

Atif Aziz
Rules Coordinator

OTS-5068.1

AMENDATORY SECTION (Amending WSR 22-24-055, filed 12/1/22, effective 1/1/23)

WAC 458-02-200 Business licensing service—Applications, licenses, renewals—Fees. (1) **Introduction.** This rule provides information about business license application handling fees, renewal application handling fees, and late filing delinquency fees as described in chapter 19.02 RCW. Information about individual licenses may be obtained from the business licensing service (BLS) of the department of revenue (department) and is available online at dor.wa.gov.

(2) **Definitions.** The definitions in RCW 19.02.020 apply to this rule.

(3) **What fee do I need to pay when applying for or renewing a license?** Individual license fees vary depending on the license(s) for which you are applying or renewing. The fee payable is the total

amount of all applicable individual license fees, business license application handling fees, renewal application handling fees, late filing delinquency fees, and other penalty fees. The method of payment may result in additional charges for credit or debit card processing.

(4) **What does the department do with the fees?** The department will distribute the fees received for individual licenses to the respective regulatory agencies. The application and renewal handling fees and the late filing delinquency fees support the operation of the BLS. Credit or debit card payment processing fees are charged and retained by a third-party payment processor.

(5) **When do I get my business license?** A business license will not be issued until the total fees due are collected and all required information has been submitted. Some individual licenses require review and approval by the regulating authorities, and the business license will not be issued until the regulating authorities have approved them.

(6) **Can I get a refund?** The business license application handling fee and renewal application handling fee collected under RCW 19.02.075 are not refundable. The late filing delinquency fee under RCW 19.02.085 may not be waived or refunded unless:

(a) The department determines that the licensee failed to renew a license by the business license expiration date due to an undisputable error or failure by the department that caused the late filing; or

(b) The licensee requests the waiver and has timely renewed all business licenses and paid the applicable business license fees for a period of 24 months immediately preceding the period covered by the renewal application for which the licensee is requesting the waiver.

When a license is denied or when an applicant withdraws an application, a refund of any other refundable portion of the total payment will be made in accordance with the applicable licensing laws.

(7) **What are the fees?** The business license application handling fee, renewal application handling fee, late renewal filing delinquency fee, and individual license fee amounts are as follows:

Type of fee:	Fee amount:
Business license application handling fee to open the first business location of a new business, or to reopen a closed business:	$50.00
Business license application handling fee for an existing business adding a new business location or requesting a city's license endorsement for a nonresident business:	$0
Business license application handling fee for any other purpose(s):	$10.00
Business license renewal application handling fee:	$5.00
Late renewal filing delinquency fee:	Up to $150.00 per business location. See subsection (9)(b) of this rule.
Individual license fee:	Varies depending on type of license.

(8) **What should I do with my business license?** The business license document must be displayed in a conspicuous place at the business location for which the license is issued.

(9) **Do I need to renew my business license?**

(a) The various licenses endorsed and displayed on the business license may each have a requirement to be renewed periodically. The department may prorate the terms of individual licenses and associated fees as needed so that all requested licenses on the account are due for renewal at the same time.

(b) Licenses requiring renewal must be renewed by the expiration date or the department will assess a delinquency fee. The delinquency fee is calculated according to RCW 19.02.085 and must be paid by the licensee before a business license is renewed. Other regulatory agencies may also assess delinquency fees and/or penalties for late renewal, and may cancel the individual licenses for nonrenewal. Reissuance of individual licenses canceled for nonrenewal may require the filing of a new business license application.

WSR 24-04-007
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-07—Filed January 25, 2024, 8:55 a.m., effective February 25, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The amendments to WAC 220-440-210 Black bear timber damage depredation permits, fully replace the existing rule's text. A new rule provides a permitting process, issuing permits to persons to lethally remove black bears for the purpose of reducing damage to commercial timber. Peeling and consuming tree parts by black bears often results in permanent damage or death to the tree. This damage results in a financial loss to the tree owner. This rule identifies how permits are applied for, applications are reviewed and issued or denied, conditioned, and administered by the department of fish and wildlife (department). A black bear timber damage permit issued under this rule allows a person to remove one or more black bears as conditioned on the removal permit.

Citation of Rules Affected by this Order: Amending WAC 220-440-210.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, 77.36.030, 77.08.030, 77.15.410, and 77.15.750.

Other Authority: RCW 77.04.012, 77.04.055, 77.12.047, 77.36.030, 77.08.030, 77.15.410, and 77.15.750.

Adopted under notice filed as WSR 23-19-042 on September 13, 2023.

Changes Other than Editing from Proposed to Adopted Version: The following [are] changes to the proposed rule from the text published with the CR-102 based on oral and written public comments:

Subsection (1) Purpose, adjustment: The purpose statement was amended to clarify the text to clearly identify that the permit applicant is an owner of private commercial timber, or their designee, experiencing timber damage as originally intended by the department.

Rationale: This permitting process is intended for private commercial timber owners to have a process to address damage to their timber. However, public commenting overwhelmingly indicated a misunderstanding of who the permit applicant was intended to be. Licensed bear hunters seemingly believed they could directly apply to the department for a bear depredation permit. The intent is for permits to be issued to timber owners experiencing damage. These permits are not intended to address timber damage on public commercial timber lands.

Many operations of a commercial nature assign the task of requesting a permit to a family member or employee. This change removes any confusion about the ability to "designate" such a person to act as the owner's agent. This is consistent with how agricultural damage permits are handled already.

Subsection (3) Permit conditions, adjustment: Subsection (3)(a)(xii) was edited by deletion of the second sentence.

Rationale: The line was duplicative of the sentence immediately above it.

Subsection (4) Applying for a black bear timber damage permit, three adjustments (1-3):

(1) Subsection (4)(a) was edited for clarification that only timber owners or designee may apply for a permit, consistent with the edited purpose statement.

Rationale: Adjusted for consistency with the adjusted purpose statement. Many operations of a commercial nature assign the task requesting a permit to a family member or employee. This change removes any confusion about the ability to "designate" such a person to act as the owner's agent. This is consistent with how agricultural damage permits are handled already.

(2) Subsection (4)(b)(viii) was adjusted by placement here from subsection (6)(c) of the permit denial provision from below.

Rationale: Formerly the proposed rule had no application process to certify the applicant had, in the prior season, allowed general bear season hunting access. Instead, it was only listed below as a reason for denial without prior mention.

It is now edited and placed here as an additional permit application "attestation" requirement to certify the applicant allowed public general bear hunting season access during the immediately prior general bear season. It will be a required submission within the permit application.

(3) Subsection (4)(b)(viii) was further adjusted from the former language by defining the required hunting access location as clarification.

Rationale: The requirement in the original proposal to require bear hunting season public access was potentially overly broad and lacked a tie to the area of the damage. The adjusted text clarifies the prior general bear hunting season access needed to have been allowed in the same area where the damage permit is being requested. Some landowners own, or lease vast areas not near where the bear timber damage is occurring. Requiring an applicant to allow bear hunting access in other locations is not directly related to the bear damage permit issue, and so additional clarity was needed.

Note: The adjusted rule is consistent with other existing big game damage permitting requirements, such as for removal of deer and elk. Crop damage depredation permit applicants are currently required to allow general hunting season access as a tool to help regulate wildlife populations causing damage before receiving a damage removal permit.

Subsection (5) the department required determinations, adjustment: Subsection (5)(a) is adjusted to remove "permittee" and replace it with "applicant."

Rationale: At this point in the process, no "permittee" exists. They are an applicant requesting a permit.

Subsection (6) Permit denials, adjustment: Subsection (6)(c) is stricken here as already stated above.

Rationale: A revised version of the deleted text was moved up above to become an attestation in subsection (4)(b)(viii). Further explanation for this change is provided above in paragraph **(3)**.

Note: The proposed subsection's location was moved to become an application requirement; however, in the remaining subsection (6)(b), it continues to state the department may refuse to issue a permit if, "The application fails to meet any of the above application requirements for a permit."

Subsection (7) Permittee-requested permit amendments, adjustment: Subsection (7) is adjusted to a "designee" as applicant.

Rationale: Many operations of a commercial nature assign the task of requesting a permit to a family member or employee. This change removes any confusion about the ability to "designate" such a person to act as their owner's agent. This is consistent with how agricultural damage permits are handled already.

Subsection (8) Permittee-requested permit renewal, adjustment: Subsection (8) is adjusted to a "designee" as applicant.

Rationale: Many operations of a commercial nature assign the task of requesting a permit to a family member or employee. This change removes any confusion about the ability to "designate" such a person to act as their owner's agent. This is consistent with how agricultural damage permits are handled already.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 15, 2023.

Barbara Baker
Commission Chair

OTS-4870.3

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-440-210 Black bear timber damage depredation permits—Requirements, restrictions, and issuance. ((~~This section applies to any person participating in a director-authorized black bear timber depredation hunt pursuant to RCW 77.12.240 or 77.15.245.~~

~~(1) Definitions: As used in this section and in the context of bear depredation removals for damage to timberlands, the following definitions apply:~~

~~(a) "Damage to timberlands" means there is evidence that bears have damaged private commercial timber that is confirmed through criteria outlined by the department.~~

~~(b) "Removal" means the act of killing one or more bear.~~

~~(2) Black bear removal criteria:~~

~~(a) A landowner or the landowner's designee may submit a request for removal to the department following the procedures established by the department.~~

~~(b) Areas permitted for black bear timber depredation action must have confirmed bear caused timber damage as defined in criteria developed by the department.~~

~~(c) The department will verify reported damage.~~

~~(d) The department will consider forest management objectives and shall ensure bear removals are consistent with population management objectives.~~

~~(3) Hunter selection:~~

~~(a) Landowners or the landowner's designee may only select hunters authorized by the department to participate in a black bear timber depredation removal effort on their property.~~

~~(b) The landowner or the landowner's designee and the hunters participating in the removal will be identified as permittees on permits issued for bear removal.~~

~~(4) Permit required for participation in bear removal:~~

~~(a) If approved for a bear removal action, the department will issue a permit for bear removal. The approved selected hunter(s) must be in possession of the bear timber depredation permit while conducting the removal.~~

~~(b) Only hunters whose names appear on the permit may participate in the black bear timber depredation removal.~~

~~(5) General requirements:~~

~~(a) Removals must be reported within twenty-four hours of take as prescribed in the black bear depredation permit.~~

~~(b) All harvested bears must be disposed of as conditioned on the permit.~~

~~(c) Within seven days after harvest, the permittee must submit all animals, parts of animals and all permit materials as prescribed in the black bear timber depredation permit. If a bear is not harvested under the bear depredation permit and the permit expires, the permittees must return all permit materials to the department within seven days of expiration. Failure to comply with this subsection may render the permittee(s) ineligible for the next year's black bear depredation permit as determined by the department.~~

~~(d) The black bear timber depredation permit belongs to the state of Washington. A violation of any condition of the permit may result in revocation of the permit and may render the permittee(s) ineligible for future black bear timber depredation permits as determined by the department.~~

~~(e) A violation of subsection (4) or (5) of this section is punishable under RCW 77.15.245, 77.15.410, or 77.15.750, depending on the circumstances of the violation.~~)) (1) **Purpose.** The purpose of the black bear timber damage permit is to reduce damage to commercial timber caused by black bears peeling and consuming tree parts resulting in permanent damage or death to the tree. Only the owner of private commercial timber, or their designee may apply for a black bear timber damage depredation permit. A black bear timber damage permit allows a person to remove one or more black bears as conditioned on the permit. This section does not apply to federal employees and agents while acting in their official capacities for the purpose of protecting private property.

(2) **Black bear timber damage definitions.** As used in this section and in the context of black bear damage removals for damage to commercial timber, the following definitions apply:

(a) "Commercial timber" means trees that are grown for wood or paper product production where the land for growing is designated as forestland under RCW 84.33.130, or, as determined by WDFW meets the definition listed in RCW 84.33.035(5).

(b) "Timber damage" means there is black bear damage evidence on private commercial timber from springtime of the current calendar year.

(c) "Removal" means the act of killing one or more black bears.

(d) "Use of bait" means the use of a substance placed, exposed, deposited, distributed, scattered, or otherwise used for the purpose of attracting black bears to an area where one or more persons hunt or

intend to hunt them. Bait does not include supplemental feeding in prior years.

(e) "Supplemental feeding" means the establishment and operation of black bear feeding stations, solely to prevent damage to commercial timber.

(f) "Use of dogs" means the use of one or more dogs for hunting under a black bear timber damage permit, or the possession of any dog while in the field under such permit.

(g) "Designated hunter" means a person who is named in a permit to hunt a black bear on behalf of the timber owner.

(3) **Permit conditions.**

(a) All permits issued under this section will be subject to the following conditions:

(i) Permittees and designated hunters must only use the lawful methods and implements allowed for hunting black bears in a general bear season;

(ii) Black bears retained for personal use under a permit count toward the annual black bear bag limit;

(iii) Black bears accompanied by cub(s) shall not be removed;

(iv) The use of bait or use of dogs in exercising the timber damage permit is prohibited;

(v) A black bear timber permit does not authorize trespass;

(vi) The permit is not valid on state or federally owned lands;

(vii) Supplemental feeding must cease, and all visible feed on the ground or in containers must be removed within the permit's designated damage hunt area boundary no later than January 1st of the permit year;

(viii) If the permit's designated damage hunt area is in a GMU located in grizzly bear recovery areas, as identified by the department, permittees and designated hunters must carry proof of successfully completing the annual WDFW online bear identification test or equivalent test from another state;

(ix) Permittees and designated hunters must be identified on, and possess the black bear timber damage permit, or a true copy of the valid permit at all times and in places that black bears are being hunted;

(x) Removals must be reported within 24 hours of taking a bear in accordance with the procedures established in the permit;

(xi) An access or other fee may not be charged to any designated hunter using a bear timber damage permit. Requiring a fully refundable key return deposit is not prohibited;

(xii) A black bear timber damage permit is only valid when signed by the permittee, any designated hunter, and the department permitting representative;

(xiii) The black bear timber damage permit belongs to the state of Washington and may not be transferred or sold;

(xiv) A violation of any condition of the permit may result in revocation of the permit and may render the permittee(s) ineligible for future black bear timber permits as determined by the department.

(b) Based upon WDFW's evaluation of the permit application materials and local environmental conditions, the department may establish permit-specific conditions in individual permits including, but not limited to:

(i) The time, manner, and place the permit is valid to remove one or more black bears;

(ii) The identity of the designated hunters permitted to hunt under the permit;

(iii) Requirements for final disposition of the black bear carcass, as a whole or any black bear parts;

(iv) The number of black bears that can be removed under the permit; and

(v) Procedures for reporting of any removals, including submission of biological samples and reporting documents.

(4) **Applying for a black bear timber damage permit.**

(a) A commercial timber owner, or their designee applicant must complete and submit an application using the current application form to the department's wildlife conflict section manager (or designee);

(b) A complete permit application package must contain the following:

(i) Name, age, phone, and email for the applicant;

(ii) List the timber owner and relationship of the applicant to the timber owner;

(iii) Name, contact information for any proposed designated hunters and a signed agreement that if a permit is issued, the designated hunter would be acting under the direction of and on the applicant's behalf;

(iv) Photos of current timber damage from the site where the permit is being requested;

(v) GPS coordinates for the documented timber damage on the site;

(vi) A map denoting the proposed permit area, the relative locations of documented timber damage, and the distance(s) and direction(s) to any known continuing supplemental bear feeding sites;

(vii) An attestation that supplemental feeding has not occurred within the area that the applicant is requesting to hunt within since January 1st of the current year, and that no feeding is occurring within the proposed permit boundary;

(viii) An attestation that public hunting access was allowed within the requested damage permit area boundaries during the general black bear hunting season within the hunting season immediately prior to the permit request; and

(ix) Any additional information that WDFW determines is necessary to make the required determinations in subsection (5) of this section and to determine appropriate individual permit conditions under subsection (3)(b) of this section.

(c) The applicant must contact the WDFW wildlife conflict specialist at the appropriate geographic department regional office to arrange for property access for a department representative to visit the site and verify timber damage;

(d) The applicant may provide additional supporting information as to the extent of damage if the department proposes restrictions on a requested permit location or timing; and

(e) If the applicant seeks a permit in GMUs located in grizzly bear recovery areas, as identified by the department, the applicant and the proposed designated hunters must successfully complete the annual WDFW online bear identification test or equivalent test from another state and carry proof of successful completion.

(5) **WDFW required determinations.** Before the department issues a permit, the department's wildlife conflict section manager (or designee) must find:

(a) The applicant has submitted a complete application and completed all steps in the application process;

(b) The applicant is at least 18 years of age and owns, is employed by, or leases commercial timber;

(c) Any proposed designated hunter, other than the applicant, possesses a valid unexpired Washington bear hunting license and tag;

(d) Reasonable belief that timber damage will continue if a permit is not issued; and

(e) Permit issuance shall not impair the department's ability to meet population objectives.

(6) **Permit denials.** The department may refuse to issue a black bear timber damage permit to an applicant if:

(a) Within the last year of the date of the application the applicant:

(i) Failed to follow the conditions of a prior black bear timber permit;

(ii) Failed to report removal success from a prior permit;

(b) The application fails to meet any of the above application requirements for a permit; or

(c) The department determines the requested permit would create a safety risk and/or a conservation concern.

(7) **Permittee-requested permit amendments.** A permit may not be changed, or altered without prior approval by the department. A permittee, or their designee may submit a request in writing for permit amendments. These changes, if approved by the department's wildlife conflict section manager (or designee) in writing, may include:

(a) Change, or addition of designated hunter;

(b) Change to any geographic area; and

(c) Change to any permit-specific conditions developed pursuant to subsection (3)(b) of this section.

(8) **Permittee-requested permit renewal.** A permittee, or their designee may submit a request in writing to the department's wildlife conflict section manager (or designee) for permit renewal. The permittee must submit the following documentation at least five days prior to the permit expiration date:

(a) A current, completed black bear timber damage permit application form with the updated information; and

(b) Documentation demonstrating new or continuing timber damage at the site.

(9) **Permit revocation.** The department may revoke a black bear timber damage permit for the following reasons:

(a) Failure to follow any of the conditions of a black bear timber permit;

(b) The department discovers an overarching safety concern for the permit area;

(c) The department discovers a conservation concern from continued use of the permit; or

(d) The department discovers false information was provided when the person originally applied for the permit.

(10) **Appeals.** For any permittee or applicant whose permit is denied, revoked, or modified under this section wishing to challenge a permitting decision, the provisions of this subsection shall apply.

Informal resolution:

(a) If the permittee or applicant would like to discuss a department permit denial, revocation, or modification, they may request a meeting by notifying the department wildlife conflict section manager in writing within 10 days of receiving the notice of department action;

(b) A department representative and the permittee or applicant will meet and attempt to come to mutual resolution;

Formal resolution:

(c) If the parties do not reach a resolution through informal discussions, or the permittee or applicant wishes to appeal the department's permit denial, revocation, or modification, they may request an administrative hearing within 30 days of the decision to appeal the department's action. The department will administer such appeals in accordance with chapter 34.05 RCW;

Manner and content of request for an administrative hearing. Each request for adjudicative proceeding shall substantially comply with this subsection.

(d) The request shall be in writing;

(e) The request shall identify the order that the person seeks to contest. This can be done by reference to the number of the order, by reference to the subject and date of the order, or by reference to a copy of the order attached to the request;

(f) The request shall state the grounds upon which the person contests the order. If the person contests the factual basis for the order, the person shall allege the facts that the person contends are relevant to the appeal; and

(g) The request shall identify the relief that the person seeks from the adjudicative proceeding by specifying whether the person asks to have the order vacated, or provisions of the order corrected.

(11) A violation of this section is punishable under the appropriate statute, depending on the circumstances of the violation, including RCW 77.15.160(6), 77.15.410, 77.15.245, and 77.15.750(1).

(12) Nothing within this section limits the department in the exercise of its existing lawful authority to manage black bears for research, safety, protection of property from damage, including timber damage, or any other management purpose.

WSR 24-04-016
PERMANENT RULES
DEPARTMENT OF COMMERCE
[Filed January 26, 2024, 2:40 p.m.]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Chapter 365-240 WAC, Affordable and supportive housing—Local sales and use tax. In response to SB [SSB] 5604 (Laws of 2023), the department of commerce is amending WAC 365-240-020 and 365-240-030 to align with changes made to RCW 82.14.540.

Citation of Rules Affected by this Order: Amending WAC 365-240-020 and 365-240-030.

Statutory Authority for Adoption: RCW 82.14.540.

Adopted under notice filed as WSR 23-23-174 on November 22, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 24, 2024.

Amanda Hathaway
Rules Coordinator

OTS-5049.1

AMENDATORY SECTION (Amending WSR 20-09-064, filed 4/13/20, effective 5/14/20)

WAC 365-240-020 Authorized uses of tax revenue. Counties ((~~with populations over four hundred thousand and cities with populations over one hundred thousand~~)) and cities may use tax revenue for:

(1) Acquiring, rehabilitating, or constructing affordable housing, which may include new units within an existing structure or facilities providing supportive housing services under RCW 71.24.385 (behavioral health organizations); ((~~or~~))

(2) Operations and maintenance costs of new units of affordable or supportive housing((~~.~~

~~Counties with populations under four hundred thousand and cities with populations under one hundred thousand population may use tax revenue for the activities outlined above, as well as to provide rental assistance to tenants that are at or below sixty percent of the median income of the county or city that is imposing the tax~~));

(3) Providing rental assistance to tenants that are at or below 60 percent of the area median income of the county or city that is imposing the tax; or

(4) Administrative costs of the county or city associated with administering this section, which may not exceed 10 percent of the annual tax distributed to the jurisdiction under this section.

AMENDATORY SECTION (Amending WSR 20-09-064, filed 4/13/20, effective 5/14/20)

WAC 365-240-030 Annual report to the department of commerce. Jurisdictions must submit a report to the department by October 1st annually with the following information pertaining to the most recent fiscal year. Reports submitted by a lead jurisdiction or managing entity pursuant to an interlocal agreement must be accompanied by contract language designating the responsible entity for submitting annual reports and ensuring their accuracy.

The first report will be due October 1, 2020, and annually thereafter.

(1) General:

(a) All references made in this section to funds, funds pooled, or funds utilized or bonded against are in regard to those derived from a jurisdiction's affordable and supportive housing sales and use tax distribution from the department of revenue for the corresponding fiscal year.

(b) An annual report submitted by a lead jurisdiction or managing entity pursuant to an interlocal agreement must be accompanied by agreed language designating it as the responsible party for report timeliness and accuracy.

(c) Information submitted by a lead jurisdiction or managing entity pursuant to an interlocal agreement must include the total combined revenue collection and program activities for all jurisdictions subject to the agreement. A separate report on revenue collection and program activities must be submitted for each jurisdiction choosing to additionally expend funds outside the agreement, if applicable.

(d) All reports submitted pursuant to this section must include contact information for the preparer.

(2) Revenue collection:

(a) Total affordable and supportive housing sales and use tax distribution for the reporting jurisdiction(s);

(b) Applicable affordable housing and supportive housing sales and use tax rate(s) for the reporting jurisdiction(s);

(c) If an interlocal agreement is in place, the total revenue utilized jointly pursuant to the agreement;

(d) If an interlocal agreement is in place, the total revenue utilized by jurisdiction(s) separately, not according to the terms of the agreement.

(3) Program activities:

(a) Total funds committed;

(b) Number, types, and status of projects supported with funds;

(c) Degree of leverage with other public and private funds;

(d) Total funds utilized for rent assistance; and

(e) Duration of affordability for projects supported with funds.

(4) Program outputs:

(a) Total funds committed for loans and grants;

(b) Total funds obligated to support bonding activities;

(c) Total funds committed for operations and maintenance of new units of affordable or supportive housing;

(d) Total funds spent on administrative costs associated with administering this section, not to exceed 10 percent of the annual tax distributed to the jurisdiction;

(e) Total number of households served with funds used for rent assistance; and

((~~(e)~~)) (f) Target populations served with funds.

WSR 24-04-020
PERMANENT RULES
TRANSPORTATION COMMISSION
[Filed January 29, 2024, 10:40 a.m., effective February 29, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of this rule is to adjust toll rates for the SR 167 high occupancy toll (HOT) lanes and I-405 express toll lanes (ETLs) in order to meet performance and financial needs for the facilities. The effects of this change are as follows:

- The minimum toll rate on the SR 167 HOT lanes will increase from $0.50 to $1.
- The maximum toll rate on the SR 167 HOT lanes will increase from $9 to $15.
- The minimum toll rate on the I-405 ETLs will increase from $0.75 to $1.
- The maximum toll rate on the I-405 ETLs will increase from $10 to $15.
- The hours of operation on the SR 167 HOT lanes will change from 5 a.m. - 7 p.m. (seven days a week) to 5 a.m. - 8 p.m. (seven days a week).
- The hours of operation on the I-405 ETLs will change from 5 a.m. - 7 p.m. (M-F) to 5 a.m. - 8 p.m. (M-F).
- Adjust the time in which three or more high occupancy vehicle (HOV) lanes are in effect on the I-405 ETLs.

Citation of Rules Affected by this Order: New WAC 468-270-079; and amending WAC 468-270-075, 468-270-077, 468-270-078, and 468-270-120.

Statutory Authority for Adoption: RCW 47.56.880, 47.56.795, 47.56.850, 47.56.888.

Adopted under notice filed as WSR 24-01-144 on December 20, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 29, 2024.

Reema Griffith
Executive Director

OTS-5111.1

AMENDATORY SECTION (Amending WSR 11-04-007, filed 1/20/11, effective 12/3/11)

WAC 468-270-075 What are the toll rates for the SR 167 HOT lanes pilot project? Toll rates will vary based upon several factors including time of day, traffic volumes, traffic demand, and overall corridor performance. The toll rate schedule shall be adjusted as needed by WSDOT to meet HOV performance criteria as defined in RCW 47.56.403 and WAC 468-300-828 in order to maintain average HOT lane vehicle speeds above ((~~forty-five~~)) 45 miles per hour, at least ((~~ninety~~)) 90 percent of the time during peak hours.

When the SR 167 HOT lanes are in operation, the minimum toll rate is ((~~$0.50~~)) $1.00 and the maximum toll rate is ((~~$9.00~~)) $15.00.

AMENDATORY SECTION (Amending WSR 16-16-014, filed 7/21/16, effective 8/21/16)

WAC 468-270-077 What are the toll rates for the I-405 express toll lanes? When tolling is in effect on the I-405 express toll lanes, the *Good To Go!*™ toll rate schedule shall be a minimum toll rate of ((~~$0.75~~)) $1.00 and a maximum toll rate of ((~~$10.00~~)) $15.00. *Good To Go!*™ Pass toll rates shall vary in amount by time of day and level of traffic congestion, and will automatically adjust within the established toll schedule using dynamic tolling to ensure average vehicle speeds in the lanes above ((~~forty-five~~)) 45 miles per hour at least ((~~ninety~~)) 90 percent of the time during peak hours. In the event there is a disruption in the ability to set tolls dynamically, the department may, on a temporary basis, adjust toll rates by time of day and level of traffic congestion within the range set forth in this section.

The commission shall periodically review the *Good To Go!*™ toll rate schedule against traffic performance of all lanes in the I-405 express toll lanes corridor, as outlined in RCW 47.56.880 to determine if the *Good To Go!*™ toll rates are effectively maintaining travel time, speed, and reliability for all lanes. Based on this review, the commission shall adjust the toll rate schedule as needed.

The toll rate for a Pay By Mail transaction is equal to the *Good To Go!*™ Pass toll rate plus $2.00.

AMENDATORY SECTION (Amending WSR 16-16-014, filed 7/21/16, effective 8/21/16)

WAC 468-270-078 What are the hours that tolling will be in effect on the I-405 express toll lanes? Tolling will be in effect on the I-405 express toll lanes weekdays, Monday through Friday, from 5:00 a.m. to ((~~7:00~~)) 8:00 p.m. (excluding the weekdays on which holidays[i] are observed).

When tolling is not in effect on the I-405 express toll lanes, including on weekends and holidays[i], the lanes are open to all vehicles regardless of occupancy, and a transponder is not needed to travel toll-free.

[i] New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

NEW SECTION

WAC 468-270-079 What are the hours that tolling will be in effect on the SR-167 high occupancy toll lanes? Tolling will be in effect on the SR-167 high occupancy toll lanes from 5:00 a.m. to 8:00 p.m. (excluding the days on which holidays[i] are observed).

When tolling is not in effect on the SR-167 high occupancy toll lanes, including holidays[i], the lanes are open to all vehicles regardless of occupancy.

[i] New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

AMENDATORY SECTION (Amending WSR 16-16-014, filed 7/21/16, effective 8/21/16)

WAC 468-270-120 How many occupants are required to be considered an eligible carpool for toll exemption on I-405 express toll lanes? Between ((~~5~~)) 5:00 a.m. to ((~~9~~)) 9:00 a.m. and ((~~3~~)) 3:00 p.m. to ((~~7~~)) 8:00 p.m., Monday through Friday, (excluding the weekdays on which holidays[i] are observed) you must have three or more occupants in your vehicle to qualify as a toll-free carpool. At all other times when tolling is in effect on the I-405 express toll lanes, you must have two or more occupants in your vehicle to qualify as a toll-free carpool. Occupancy requirements do not apply to vehicles that are otherwise exempt from tolls pursuant to WAC 468-270-110 or authorized as an HOV vehicle as defined in chapter 468-510 WAC.

[i] New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

WSR 24-04-024
PERMANENT RULES
BOARD OF ACCOUNTANCY
[Filed January 29, 2024, 12:05 p.m., effective July 1, 2024]

Effective Date of Rule: July 1, 2024.

Purpose: Rule making is needed to: (1) Ensure consistency with the Public Accountancy Act (chapter 18.04 RCW) for legislation passed (SB 5519) on March 17, 2022, with an effective date of July 1, 2024; (2) remove references to certificate holders; (3) allow the remaining population of certificate holders to transition to a CPA license in an inactive status and provide the opportunity for the certificate holders to become fully licensed; (4) create a new inactive license status; (5) align board rules with other CPA jurisdictions; and (6) rename some of the rules.

Citation of Rules Affected by this Order: New WAC 4-30-084 Converting from certificate to license; repealing WAC 4-30-104 How do I renew a Washington CPA-Inactive certificate and/or license granted through foreign reciprocity?; and amending WAC 4-30-010 Definitions, 4-30-020 What are the authority for and the purpose of the board's rules?, 4-30-028 Rules governing the formal adjudicative proceedings and the brief adjudicative proceedings before the board, 4-30-030 What are the requirements for communicating with the board and staff?, 4-30-032 Do I need to notify the board if I change my address?, 4-30-034 Must I respond to inquiries from the board?, 4-30-036 What enforcement actions must be reported to the board?, 4-30-038 Fees, 4-30-082 How does a CPA-Inactive certificate holder apply for licensure?, 4-30-088 What is the effect on a Washington individual licensee or CPA-inactive certificate holder in the armed forces, reserves, or National Guard if the individual receives orders to deploy for active military duty?, 4-30-094 How do I renew my individual license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner?, 4-30-120 I am a CPA-Inactive certificate holder—Prior to July 1, 2001, I held a license—How do I apply to return to my previous status as a licensee?, 4-30-122 If I retire my license or CPA-Inactive certificate, how do I apply to renew my license or CPA-Inactive certificate out of retirement?, 4-30-124 How do I reinstate a lapsed license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner?, 4-30-126 How do I reinstate a revoked or suspended license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner?, 4-30-134 Continuing professional education (CPE) requirements, 4-30-136 Reporting continuing professional education (CPE) to the board, and 4-30-142 What are the bases for the board to impose discipline?

Statutory Authority for Adoption: RCW 18.04.055.

Adopted under notice filed as WSR 23-23-103 on November 15, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 18, Repealed 1.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 18, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 26, 2024.

Michael J. Paquette, CPA
Executive Director

OTS-4805.1

AMENDATORY SECTION (Amending WSR 23-04-085, filed 1/31/23, effective 3/3/23)

WAC 4-30-010 Definitions. For purposes of these rules the following terms have the meanings indicated unless a different meaning is otherwise clearly provided in these rules:

"Act" means the Public Accountancy Act codified as chapter 18.04 RCW.

"Active individual participant" means an individual whose primary occupation is at the firm or affiliated entity's business. An individual whose primary source of income from the business entity is provided as a result of passive investment is not an active individual participant.

"Applicant" means an individual who has applied:

(a) To take the national uniform CPA examination;

(b) For an initial individual license, an initial firm license, or initial registration as a resident nonlicensee owner;

(c) To renew an individual license, ((~~a CPA-Inactive certificate,~~)) a CPA firm license, or registration as a resident nonlicensee firm owner;

(d) To reinstate an individual license((~~, a CPA-Inactive certificate,~~)) or registration as a resident nonlicensee firm owner((~~, or practice privileges~~));

(e) To convert an inactive license to an active license.

"Attest" means providing the following services:

(a) Any audit or other engagement to be performed in accordance with the statements on auditing standards;

(b) Any review of a financial statement to be provided in accordance with the statements on standards for accounting and review services;

(c) Any engagement to be performed in accordance with the statements on standards for attestation engagements; and

(d) Any engagement to be performed in accordance with the public company accounting oversight board auditing standards.

"Audit," "review," and **"compilation"** are terms reserved for use by licensees, as defined in this section.

"Board" means the board of accountancy created by RCW 18.04.035.

"Breach of fiduciary responsibilities/duties" means when a person who has a fiduciary responsibility or duty acts in a manner adverse or contrary to the interests of the person to whom they owe the fiduciary responsibility or duty. Such actions would include profiting from their relationship without the express informed consent of the beneficiary of the fiduciary relationship, or engaging in activities that

represent a conflict of interest with the beneficiary of the fiduciary relationship.

"Certificate" ((~~means a certificate as a CPA-Inactive issued in the state of Washington prior to July 1, 2001, as authorized by the act, unless otherwise defined in rule~~)) issued under this act means an alternative license type previously issued by the board indicating that the certificate holder had passed the CPA examination, but had no verified experience, and was not fully licensed to practice public accounting. Certificates remained valid until June 30, 2024, at which time they convert to a CPA license in an inactive status. This definition does not include certificates issued by other jurisdictions which may be substantially equivalent to a Washington CPA license.

((~~**"Certificate holder"** means the holder of a valid CPA-Inactive certificate where the individual is not a licensee and is prohibited from practicing public accounting.~~))

"Client" means the person or entity that retains a licensee, as defined in this section, ((~~a CPA-Inactive certificate holder,~~)) a nonlicensee firm owner of a licensed firm((~~,~~)) or an entity affiliated with a licensed firm to perform professional services through other than an employer/employee relationship.

"Compilation" means providing a service to be performed in accordance with statements on standards for accounting and review services that is presenting in the form of financial statements, information that is the representation of management (owners) without undertaking to express any assurance on the statements.

"CPA" or **"certified public accountant"** means an individual holding a license to practice public accounting under chapter 18.04 RCW or recognized by the board in the state of Washington, including an individual exercising practice privileges pursuant to RCW 18.04.350(2).

((~~**"CPA-Inactive"** means an individual holding a CPA-Inactive certificate recognized in the state of Washington. An individual holding a CPA-Inactive certificate is prohibited from practicing public accounting and may only use the CPA-Inactive title if they are not offering accounting, tax, tax consulting, management advisory, or similar services to the public.~~))

"CPE" means continuing professional education.

"Fiduciary responsibility/duty" means a relationship wherein one person agrees to act solely in another person's interests. Persons having such a relationship are fiduciaries and the persons to whom they owe the responsibility are principals. A person acting in a fiduciary capacity is held to a high standard of honesty and disclosure in regard to a principal. Examples of fiduciary relationships include those between broker and client, trustee and beneficiary, executors or administrators and the heirs of a decedent's estate, and an officer or director and the owners of the entity.

"Firm" means a sole proprietorship, a corporation, or a partnership. "Firm" also means a limited liability company or partnership formed under chapters 25.15 and 18.100 RCW and a professional service corporation formed under chapters 23B.02 and 18.100 RCW.

"Firm mobility" means an out-of-state firm that is not licensed by the board and meets the requirements of RCW 18.04.195 (1)(a)(iii)(A) through (D) exercising practice privileges in this state.

"Generally accepted accounting principles" (GAAP) is an accounting term that encompasses the conventions, rules, and procedures necessary to define accepted accounting practice at a particular time. It includes not only broad guidelines of general application, but also

detailed practices and procedures. Those conventions, rules, and procedures provide a standard by which to measure financial presentations.

"Generally accepted auditing standards" (GAAS) are guidelines and procedures, promulgated by the AICPA, for conducting individual audits of historical financial statements.

"Holding out" means any representation to the public by the use of restricted titles as set forth in RCW 18.04.345 by a person that the person holds a license or practice privileges under the act and that the person offers to perform any professional services to the public. "Holding out" shall not affect or limit a person not required to hold a license under the act from engaging in practices identified in RCW 18.04.350.

"Inactive" means ((~~the individual held a valid certificate on June 30, 2001, has not met the current requirements of licensure and has been granted CPA-Inactive certificate holder status through the renewal process established by the board. A CPA-Inactive may not practice public accounting nor may the individual use the CPA-Inactive title if they are offering accounting, tax, tax consulting, management advisory, or similar services to the public~~)) a status of a license which prohibits a licensee from practicing public accounting. A person holding an inactive license may apply to the board to convert the license to an active status through an approval process established by the board.

"Individual" means a living, human being.

"Independence" means an absence of relationships that impair a licensee's impartiality and objectivity in rendering professional services for which a report expressing assurance is prescribed by professional standards.

"Interactive self-study program" means a CPE program that provides feedback throughout the course.

"IRS" means Internal Revenue Service.

"License" means a license to practice public accounting issued to an individual or a firm under the act, or ((~~the act of~~)) a license or certificate to practice public accounting in another state or jurisdiction.

"Licensee" means an individual or firm holding a valid license to practice public accounting issued under the act, ((~~including out-of-state~~)) and individuals ((~~exercising~~)) holding licenses or certificates to practice public accounting granted by out-of-state jurisdiction who are allowed to exercise practice privileges in this state under RCW 18.04.350(2) and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195 (1)(a) and (b).

"Manager" means a manager of a limited liability company licensed as a firm under the act.

"Nano learning" is a stand-alone continuing professional education (CPE) course that is a minimum of 10 minutes (0.2 CPE credit hours) consisting of electronic self-study with a stated learning objective and a minimum of two final assessment questions.

"NASBA" means the National Association of State Boards of Accountancy.

"Nonlicensee firm owner" means an individual, not licensed in any state to practice public accounting, who holds an ownership interest in a firm permitted to practice public accounting in this state.

"PCAOB" means Public Company Accounting Oversight Board.

"Peer review" means a study, appraisal, or review of one or more aspects of the attest or compilation work of a licensee or licensed firm in the practice of public accounting, by a person or persons who hold licenses and who are not affiliated with the person or firm being reviewed, including a peer review, or any internal review or inspection intended to comply with quality control policies and procedures, but not including the "quality assurance review" under this section.

"Person" means any individual, nongovernmental organization, or business entity regardless of legal form, including a sole proprietorship, firm, partnership, corporation, limited liability company, association, or not-for-profit organization, and including the sole proprietor, partners, members, and, as applied to corporations, the officers.

"Practice privileges" are the rights granted by chapter 18.04 RCW to a person who:

(a) Has a principal place of business outside of Washington state;

(b) Is licensed to practice public accounting in another substantially equivalent state;

(c) Meets the statutory criteria for the exercise of privileges as set forth in RCW 18.04.350(2) for individuals or RCW 18.04.195 (1)(b) for firms;

(d) Exercises the right to practice public accounting in this state individually or on behalf of a firm;

(e) Is subject to the personal and subject matter jurisdiction and disciplinary authority of the board in this state;

(f) Must comply with the act and all board rules applicable to Washington state licensees to retain the privilege; and

(g) Consents to the appointment of the issuing state board of another state as agent for the service of process in any action or proceeding by this state's board against the certificate holder or licensee.

"Principal place of business" means the office location designated by the licensee for purposes of substantial equivalency and reciprocity.

"Professional services" include all services requiring accountancy or related skills that are performed for a client, an employer, or on a volunteer basis. These services include, but are not limited to, accounting, audit and other attest services, tax, bookkeeping, management consulting, financial management, corporate governance, personal financial planning, business valuation, litigation support, educational, and those services for which standards are promulgated by the appropriate body for each services undertaken.

"Public practice" or the **"practice of public accounting"** means performing or offering to perform by a person or firm holding itself out to the public as a licensee, or as an individual exercising practice privileges, for a client or potential client, one or more kinds of services involving the use of accounting or auditing skills, including the issuance of "reports," or one or more kinds of management advisory, or consulting services, or the preparation of tax returns, or the furnishing of advice on tax matters. The "practice of public accounting" shall not include practices that are permitted under the provisions of RCW 18.04.350(10) by persons or firms not required to be licensed under the act.

"Quality assurance review or QAR" is the process, established by and conducted at the direction of the board, to study, appraise, or review one or more aspects of the audit, compilation, review, and oth-

er professional services for which a report expressing assurance is prescribed by professional standards of a licensee or licensed firm in the practice of public accounting, by a person or persons who hold licenses and who are not affiliated with the person or firm being reviewed.

"Reciprocity" means board recognition of licenses, permits, certificates or other public accounting credentials of another jurisdiction that the board will rely upon in full or partial satisfaction of licensing requirements.

"Report," when used with reference to any attest or compilation service, means an opinion, report, or other form of language that states or implies assurance as to the reliability of the attested information or compiled financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in the practice of public accounting. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is involved in the practice of public accounting, or from the language of the report itself. "Report" includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the attested information or compiled financial statements referred to and/or special competence of the part of the person or firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance and/or such special knowledge or competence. "Report" does not include services referenced in RCW 18.04.350 (10) or (11) provided by persons not holding a license under this chapter as provided in RCW 18.04.350(14).

"Representing oneself" means having a license, practice privilege, ((~~certificate~~)) or registration that entitles the holder to use the title "CPA," "CPA-Inactive," or be a nonlicensee firm owner.

"Rules of professional conduct" means rules adopted by the board to govern the conduct of licensees, as defined in this section, while representing themselves to others as licensees. These rules also govern the conduct of ((~~CPA-Inactive certificate holders~~)) licensees with an inactive status, nonlicensee firm owners, and persons exercising practice privileges pursuant to RCW 18.04.350(2).

"SEC" means the Securities and Exchange Commission.

"Sole proprietorship" means a legal form of organization owned by one person meeting the requirements of RCW 18.04.195.

"State" includes the states and territories of the United States, including the District of Columbia, Puerto Rico, Guam, and the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands at such time as the board determines that the Commonwealth of the Northern Mariana Islands is issuing licenses under the substantially equivalent standards of RCW 18.04.350 (2)(a).

"Statements on auditing standards (SAS)" are interpretations of the generally accepted auditing standards and are issued by the Auditing Standards Board of the AICPA. Licensees are required to adhere to these standards in the performance of audits of financial statements.

"Statements on standards for accounting and review services (SSARS)" are standards, promulgated by the AICPA, to give guidance to licensees who are associated with the financial statements of nonpublic companies and issue compilation or review reports.

"Statements on standards for attestation engagements (SSAE)" are guidelines, promulgated by the AICPA, for use by licensees in attest-

ing to assertions involving matters other than historical financial statements and for which no other standards exist.

"Substantial equivalency" or **"substantially equivalent"** means a determination by the board or its designee that the education, examination, and experience requirements contained in the statutes and administrative rules of another jurisdiction are comparable to or exceed those listed in this chapter.

OTS-4806.1

AMENDATORY SECTION (Amending WSR 11-07-070, filed 3/22/11, effective 4/22/11)

WAC 4-30-020 ((~~What are the authority for and the~~)) Authority and purpose of the board's rules((~~?~~)). The Public Accountancy Act (act), chapter 18.04 RCW, establishes the board as the licensing and disciplinary agency for certified public accountants (CPA), ((~~CPA-Inactive certificate holders,~~)) CPA firms, and owners of CPA firms. The act authorizes the board to promulgate rules to carry out the purpose of the act, which include:

- Protecting the public interest;
- Enhancing the reliability of information used for guidance in financial transactions or for accounting for or assessing financial status or performance;
- Establishing one set of qualifications to be a licensee of this state;
- Assuring that CPAs practicing in Washington have substantially equivalent qualifications to those practicing in other states;
- Regulating ownership of CPA firms;
- Publishing consumer alerts and public protection information regarding persons and firms who violate the act or board rules; and
- Providing general consumer protection information to the public.

The board's rules, contained in Title 4 WAC, encompass these subjects:

- Definitions;
- Administration of the board;
- Ethics and prohibited practices;
- Entry and renewal requirements;
- Continuing competency; and
- Regulation and enforcement.

OTS-4807.1

AMENDATORY SECTION (Amending WSR 22-04-074, filed 1/31/22, effective 3/3/22)

WAC 4-30-028 ((~~Rules governing the~~)) Formal adjudicative proceedings and ((~~the~~)) brief adjudicative proceedings before the board.

Except where they are inconsistent with the rules in this chapter and subject to additional rules that the board may adopt from time to time, adjudicative proceedings in and before the board are governed by the Administrative Procedure Act, chapter 34.05 RCW, and the uniform procedural rules codified in the Washington Administrative Code, chapter 10-08 WAC.

For certain types of decisions, the board has adopted an appeal process authorized by RCW 34.05.482 through 34.05.494 which is called a brief adjudicative proceeding. Decisions to which this appeal process will be applied are:

(1) Denials of initial individual license ((~~applications~~)), renewal((~~s~~)), conversion, or ((~~applications for~~)) reinstatement applications;

(2) ((~~Denials of CPA-Inactive certificate renewals or applications for reinstatement;~~

~~(3)~~)) Denials of initial resident nonlicensee firm owner registration applications, renewals, or applications or requests for reinstatement;

((~~(4)~~)) (3) Denials of initial firm license applications, renewals, and amendments;

((~~(5)~~)) (4) Denials of exam applications;

((~~(6)~~)) (5) A proposed suspension as a result of a determination by a lending agency of nonpayment or default on a federally or state-guaranteed student loan or service conditional scholarship; and

((~~(7)~~)) (6) Lifts of stays of suspension from a board order.

To appeal a decision you must submit your request for a brief adjudicative proceeding, **in writing**, to the board **within 30 days** after the decision by board staff is posted in the U.S. mail. The board chair or the board vice chair, if the board chair is unavailable, will appoint one member of the board as the presiding officer for brief adjudicative proceedings. The presiding officer renders a decision either upholding or overturning the denial. This decision, called an order, will be provided to you at the last address you furnished to the board.

If you are dissatisfied with the order in the brief adjudicative proceeding, you may appeal to the board's vice chair, or designee. This appeal process is called an administrative review. Your appeal must be received by the board, **orally or in writing**, **within 21 days** after the brief adjudicative proceedings order is posted in the U.S. mail. The vice chair, or designee, considers your appeal and either upholds or overturns the brief adjudicative proceeding order. The vice chair's, or designee's, decision, also called an order, will be provided to you at the last address you furnished to the board.

OTS-4808.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-030 ((~~What are the requirements for~~)) Communicating with the board and staff((~~?~~)). Individuals and firms must communicate with the board as follows:

Note: (1) Failure to timely inform the board ((~~of matters required by WAC 4-30-032, 4-30-036, 4-30-100, and 4-30-110~~)) can result in late fees and/or board discipline.
(2) Failure to timely respond to board requests for information may result in board discipline.

Condition	Time Period	Preferred Form of Contact	WAC
Complete and/or submitted applications, including requested information, documents, and fees.	Prior to holding out as a credentialed person.	Online system, board form, letter, or email with required information.	Various
Request for brief adjudicative proceeding (BAP).	Within 30 days after the staff decision is posted in U.S. mail.	Email or written correspondence.	4-30-028
Request for appeal of brief adjudicative proceeding (BAP).	Within 21 days after the BAP decision is posted in U.S. mail.	Oral, email or written correspondence.	4-30-028
1. Change of individual physical address; or 2. Change in the physical address of a firm's main office or branch office(s).	Within 30 days of any change of address.	Online system, board form, letter, or email with required information.	((~~4-30-32 [4-30-032]~~)) 4-30-032
Board requests for information or documents from licensees, ((~~certificate holders,~~)) nonlicensee firm owners, or applicants.	Within 20 days after the date of the request.	Email or written correspondence with requested information.	((~~4-30-34 [4-30-034]~~)) 4-30-034
1. Notification of orders or sanctions imposed by the SEC, PCAOB, IRS, or another state board of accountancy for reasons other than payment of a license fee or failure to meet the CPE requirements of another state board of accountancy. 2. Charges filed by the SEC, IRS, PCAOB, another state board of accountancy or a federal or state taxing, insurance or securities regulatory body.	Within 30 days of receipt of an initial notice.	Board form, letter, PDF, or email with required information.	4-30-036
Licensees ((~~or certificate holders~~)) granted issued through foreign reciprocity. Any investigations undertaken or sanctions imposed by a foreign credentialing body against a foreign credential.	Within 30 days of receiving notice that an investigation has begun or a sanction was imposed.	Board form, letter, PDF, or email with required information.	4-30-036
Reporting firm changes: • Change in legal form; • Dissolution of a firm; • Change in resident manager(s) or owner(s); • Change in branch or main office location(s); • Change in firm name; • Noncompliance with firm ownership requirements.	Within 90 days after the condition occurs.	Board form, letter, PDF, or email with required information.	4-30-110

Condition	Time Period	Preferred Form of Contact	WAC
A foreign license, permit, or certificate has lapsed or otherwise becomes invalid.	Within 30 days after the credential issued by the other jurisdiction has lapsed or otherwise becomes invalid.	Board form, letter, PDF, or email with required information.	((~~4-30-100~~)) 4-30-102

OTS-4809.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-032 ((~~Do I need to notify the board if I change my address?~~)) Change of address. ((~~Yes.~~)) All individuals licensed in this state, ((~~CPA-Inactive certificate holders,~~)) CPA firms licensed in this state, individuals registered with the board as resident nonlicensee firm owners, and applicants must notify the board **in writing** within ((~~thirty~~)) 30 days of any change of address. Firms licensed in this state must notify the board of any opening, closing, or relocation of the main office or a branch office in this state.

OTS-4810.1

AMENDATORY SECTION (Amending WSR 16-17-036, filed 8/9/16, effective 9/9/16)

WAC 4-30-034 ((~~Must I respond to inquiries from the board?~~)) Responding to board inquiries. ((~~Yes.~~)) All licensees, including out-of-state individuals exercising practice privileges in this state under RCW 18.04.350(2) and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195 (1)(a) and (b), ((~~CPA-Inactive certificate holders,~~)) nonlicensee firm owners, and applicants must respond, **in writing**, to board communications requesting a response. Your response must be made within **((~~twenty~~)) 20 days of the date** the board's communication is posted in the U.S. mail. Communications from the board to you are directed to the last address you furnished the board.

OTS-4811.1

AMENDATORY SECTION (Amending WSR 11-06-062, filed 3/2/11, effective 4/2/11)

WAC 4-30-036 ((~~What~~)) Enforcement actions ((~~must be reported~~)) reportable to the board((~~?~~)). (1) A licensee((~~, CPA-Inactive certifi-~~

~~cate holder,~~)) or nonlicensee firm owner must notify the board, of the following matters, in the manner prescribed by the board, within **((~~thirty~~)) 30 days** of the issuance of:

(a) A sanction, order, suspension, revocation, or modification of a license, certificate, permit or practice rights by the SEC, PCAOB, IRS, or another state board of accountancy for any cause other than failure to pay a professional license fee by the due date or failure to meet the continuing professional education requirements of another state board of accountancy; or

(b) Charges filed by the SEC, IRS, PCAOB, another state board of accountancy, or a federal or state taxing, insurance or securities regulatory body that the licensee, ((~~CPA-Inactive certificate holder,~~)) or nonlicensee firm owner committed a prohibited act that would be a violation of board ethical or technical standards.

(2) Licensed CPA firms with more than one licensed owner are not required to report on action taken against owners, principals, partners, or employees.

(3) If you hold a license ((~~or CPA-Inactive certificate~~)) issued through the foreign reciprocity provisions of the act, you must notify the board of any investigations undertaken, or sanctions imposed, by a foreign credentialing body against your foreign credential within ((~~thirty~~)) 30 days of receiving notice that an investigation has begun or a sanction was imposed.

OTS-4812.1

AMENDATORY SECTION (Amending WSR 18-04-071, filed 2/2/18, effective 3/5/18)

WAC 4-30-038 Fees. RCW 18.04.065 provides that the board shall set fees related to licensure at a level adequate to pay the costs of administering chapter 18.04 RCW. The board has established the following fee schedule:

(1)	Initial application for individual license, individual license through reciprocity, CPA firm license (sole proprietorships with no employees are exempt from the fee), or registration as a resident nonlicensee firm owner	$330
(2)	Renewal of individual license, ((~~CPA-Inactive certificate,~~)) CPA firm license (sole proprietorships with no employees are exempt from the fee), or registration as a resident nonlicensee firm owner	$230
(3)	Application for ((~~CPA-Inactive certificate holder~~)) a licensee to convert ((~~to a license~~)) from an inactive to an active status	$0
(4)	Application for reinstatement of license((~~, CPA-Inactive certificate,~~)) or registration as a resident nonlicensee owner	$480
(5)	Quality assurance review (QAR) program fee (includes monitoring reviews for up to two years)	
	Firm submits reports for review	$400

	Firm submits a peer review report for review	$60
	Firm is exempted from the QAR program because the firm did not issue attest reports	$0
(6)	Late fee *	$100
(7)	Amendment to firm license except for a change of firm address (there is no fee for filing a change of address)	$35
(8)	Replacement CPA wall document	$50
(9)	Dishonored check fee (including, but not limited to, insufficient funds or closed accounts)	$35
(10)	CPA examination. Exam fees are comprised of section fees plus administrative fees. **The total fee is contingent upon which section(s) is/are being applied for and the number of sections being applied for at the same time.** The total fee is the section fee(s) for each section(s) applied for added to the administrative fee for the number of section(s) applied for.	
(a)	Section fees: Section fees for the computerized uniform CPA examination are set by third-party providers for the development and delivery of the exam. These fees are collected and retained by the third-party provider.	
(b)	Administrative fees: Administrative fees for the qualification and application processes are set by a third-party provider. These fees are collected and retained by the third-party provider.	

* The board may waive late filing fees for individual hardship including, but not limited to, financial hardship, critical illness, or active military deployment.

OTS-4813.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-082 ((~~How does a CPA-Inactive certificate holder apply for licensure?~~)) Certificate holder applying for initial licensure. ((~~CPA-Inactive~~)) Certificate holders ((~~are individuals who held a valid certificate on June 30, 2001, but did not hold a valid Washington state license to practice public accounting on that date. Individuals who did not hold a valid certificate on June 30, 2001 and current licensees are not eligible for CPA-Inactive certificate holder status~~)) who did not hold a valid certificate on the conversion date of June 30, 2024, must apply for a license and meet the requirements for initial licensure.

(1) To qualify for licensure ((~~a CPA-Inactive certificate holder~~)) you must meet the following criteria and requirements:

(a) Good character requirements of RCW 18.04.105 (1)(a);

(b) Experience requirements of WAC 4-30-070 within the eight-year period immediately preceding your application; and

(c) CPE requirements of WAC 4-30-134(5).

(2) ((~~To apply for a license, you must also submit to the board a certification that you meet the requirements of subsection (1) of this section and:~~

~~(a) Have not held out in public practice during the time in which you were a CPA-Inactive certificate holder; and~~

~~(b) Other required documentation or information deemed necessary by the board.~~

~~(3)~~)) You must ((~~provide~~)) submit the required information, documents, and fees (if applicable) to the board either by making application through the board's online application system or on a form provided upon request.

((~~(4) You must submit all requested information, documents, and fees (if applicable) to the board before the application will be evaluated.~~

~~(5)~~)) (3) Upon assessment of your qualifications and approval of your application, your license status will be posted in the board's licensee database and, therefore, made publicly available for confirmation. A hard copy of your ((~~credential~~)) license can be provided upon request.

((~~(6) Your CPE reporting period and your renewal cycle will remain the same.~~

~~(7)~~)) (4) Your license will expire on June 30th of the third calendar year following initial licensure.

(5) You may not use the title "CPA" or "Certified Public Accountant" until the date the approval of your license is posted in the board's licensee database and, therefore, made publicly available for confirmation.

OTS-4814.1

NEW SECTION

WAC 4-30-084 Converting from certificate to license. Previous certificate holders were automatically converted on July 1, 2024, to a license in an inactive status. In order to practice public accounting, you must convert your license to an active status.

(1) To qualify to apply for an active license you must:

(a) Meet the experience requirements of WAC 4-30-070, without regard to the eight-year limitation; and

(b) Meet the CPE requirements of WAC 4-30-134(5); and

(c) Submit the required information, documents, and fees (if applicable) to the board either by submitting an application through the board's online application system or on a form provided upon request.

(2) Upon assessment of your qualifications and approval of your application, your license status will be posted in the board's licensee database and, therefore, made publicly available for confirmation. A hard copy of your license can be provided upon request.

(3) Your CPE reporting period and your renewal cycle will remain the same.

(4) You may not use the title "CPA" or "Certified Public Accountant" until the date the approval of your license is posted in the board's licensee database and, therefore, made publicly available for confirmation.

OTS-4815.1

AMENDATORY SECTION (Amending WSR 14-22-033, filed 10/28/14, effective 11/28/14)

WAC 4-30-088 ((~~What is the effect on a Washington individual licensee or CPA-inactive certificateholder in the armed forces, reserves, or National Guard if the individual receives orders to deploy for active military duty?~~)) Military service. (1) **Definitions.** For purposes of this rule:

(a) "Active military duty" means:

(i) Deployed upon order of the President of the United states, the U.S. Secretary of Defense or Homeland Security in the case of a member of the armed forces or armed force reserves; or

(ii) Deployed upon order of the governor of this state in the case of the National Guard.

(b) "Armed forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard and reserves of each branch of the armed forces.

(c) "Active duty" means full-time employment in the armed forces of the United States. Such term does not include National Guard duty.

(d) "Military individual" means a living human being serving full time in the United States armed forces.

(e) "Military spouse" means the husband, wife, or registered domestic partner of a military individual.

(2) **Active military duty.**

(a) An individual fully employed on active duty in the armed forces of the United States applying for an initial license in this state shall receive priority processing of the application for initial licensing.

(b) A military applicant who obtains an initial license or a military individual holding a current license issued by this board, will be classified as "military" if the services provided to the armed forces include services within the definition of the practice of public accounting.

(c) An individual in the armed forces, reserves or National Guard and called to "active military duty" while holding an active or inactive license ((~~or CPA-Inactive certificate~~)) issued by this board may apply for a waiver of renewal fees and continuing professional education (CPE):

(i) The request for waiver of renewal fees and continuing professional education may be made through the board's online application and payment system or on a form provided by the board upon request;

(ii) The request for waiver must be supported by submitting documentation to substantiate the military individual's "active military duty" status;

(iii) Upon approval the waiver will serve to classify the individual as "military inactive";

(iv) The CPE reporting period and renewal year will not be affected by this reclassification of status;

(v) The waiver will continue to maintain an individual's military inactive status without fee or CPE until the individual is released from active military duty or discharged from the armed forces, reserves, or National Guard;

(vi) The board must be notified within six months after the date of release from active military duty or discharge from the armed forces. The board must be notified within six months of the date of release from a treatment facility if the individual is or has been in a treatment facility and a discharge was the result of injury or other reasons.

(3) **Return to previously held status after release from "active military duty" or discharge from the armed forces.**

(a) If a military individual desires to return to a previously held status after release from active military duty or discharge from the armed forces, all required information, documents, and fees must be submitted to the board before the application will be evaluated. An application for return to previously held status may be made through the board's online application and payment system or on a form provided by the board upon request and must include the following:

(i) Documentation to substantiate:

• Release from "active military duty"; or

• Type of discharge from the armed forces.

(ii) Documentation to substantiate completion of the following qualified CPE:

• If the application is submitted in the last year of the previous CPE reporting period the individual must have completed four CPE credit hours in ethics and regulation in Washington state and receive a passing grade of ((~~ninety~~)) 90 percent on the board prepared examination available on the board's website. The renewal fee is waived in this circumstance;

• If the application is submitted in the second year of the previous CPE reporting period the individual must have completed ((~~forty~~)) 40 CPE credit hours including four CPE credit hours in ethics and regulation in Washington state and receive a passing grade of ((~~ninety~~)) 90 percent on the board prepared examination available on the board's website;

• If the application is submitted in the first year of the previous CPE reporting period the individual must have completed ((~~eighty~~)) 80 CPE credit hours including four CPE credit hours in ethics and regulation in Washington state and receive a passing grade of ((~~ninety~~)) 90 percent on the board prepared examination available on the board's website.

(iii) A military individual may receive an expedited license while completing any specific requirements that are not related to CPE or other board rules.

(b) The previously held status will not become effective until the status has been posted to the board's database and, therefore, made available to the general public.

(4) **Military spouses.**

(a) A military spouse or state registered domestic partner of an individual in the military may receive an expedited license while completing any specific additional requirements that are not related to training or practice standards for the profession, provided the military spouse or state registered domestic partner:

(i) Holds an unrestricted, active license in another state that has substantially equivalent licensing standards for the same profession to those in Washington; and

(ii) Is not subject to any pending investigation, charges, or disciplinary action by the regulatory body of another state or jurisdiction of the United States.

(b) To receive expedited license treatment, the military spouse or state registered domestic partner of an individual in the military must provide all required information, documents, and fees to the board either by making application through the board's online application and payment system or on a form provided by the board upon request before the application will be evaluated.

(c) The application for expedited licensing will not be processed until the applicant submits copies to the board of the military individual's orders and official documents to establish the applicant's relationship to the military individual, such as one or more following documents:

(i) The military issued identification card showing the individual's military information and the applicant's relationship to that individual;

(ii) A marriage license; or

(iii) Documentation verifying a state registered domestic partnership.

(d) A military spouse or state registered domestic partner may only use a restricted title and practice public accounting under another state's license without an expedited license issued by this board for ((~~ninety~~)) 90 days from the date the spouse entered this state for temporary residency during the military individual's transfer to this state.

OTS-4816.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-094 ((~~How do I renew my individual license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner?~~)) Renewals. ((~~A licensee may not renew as a CPA-Inactive certificate holder.~~))

To renew your individual license((~~, CPA-Inactive certificate,~~)) or registration as a resident nonlicensee firm owner, you must by April 30th of the year of expiration make application through the board's online application system or on a form provided by the board upon request and provide the board with:

(1) Complete renewal information including:

(a) Your certification that you have complied with the CPE requirements of WAC 4-30-134((~~(1)~~)) and the supporting documentation requirements of WAC 4-30-138; and

(b) A listing of all states and foreign jurisdictions in which you hold or have applied for a license, certificate, or permit to practice;

(2) All required documentation, required information, and other documentation deemed necessary by the board; and

(3) All applicable fees.

A renewal application is not complete and cannot be processed until all required information, documents, and all applicable fees are submitted to the board.

Upon assessment of your continued qualifications and approval of your application, your status will be posted in the board's licensee database and, therefore, made publicly available for confirmation. A hard copy of your credential can be provided upon request.

An individual license((~~, CPA-Inactive certificate,~~)) or registration as a resident nonlicensee firm owner renewal expires on June 30 of the third calendar year following the calendar year of renewal.

Late renewal application: Failure to file a complete application for renewal of an individual license((~~, CPA-Inactive certificate,~~)) or registration as a resident nonlicensee firm owner by April 30th of the year of expiration will result in late fees. The board may waive, reduce, or extend the due date of renewal and/or late fees based on individual hardship including, but not limited to, financial hardship, critical illness, or active military deployment.

Failure to file a renewal application: If you fail to file a complete application for renewal of an individual license((~~, CPA-Inactive certificate,~~)) or registration as a resident nonlicensee firm owner by June 30th of the year of renewal, your individual license((~~, CPA-Inactive certificate,~~)) or registration as a resident nonlicensee firm owner will lapse.

Failure to complete CPE: If you did not complete the credit hours of continuing professional education (CPE) required to renew ((~~your credential~~))~~,~~ or did not submit ((~~a timely~~)) an extension request~~,~~ and/or ((~~was~~)) were not granted an extension of time ((~~for reasonable cause within which~~)) to complete the deficiency, your individual license((~~, CPA-Inactive certificate,~~)) or registration as a resident nonlicensee firm owner will lapse on June 30th of the year of renewal.

Lapsed credentials: A lapsed credential is subject to reinstatement.

If your individual license((~~, CPA-Inactive certificate,~~)) or registration as a resident nonlicensee firm owner has lapsed, you may not use the restricted title(s) or exercise other privileges that are dependent upon the renewal ((~~of your credential~~)).

OTS-4818.2

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-120 ((~~I am a CPA-Inactive certificate holder—Prior to July 1, 2001, I held a license—How do I apply to return to my previous status as a licensee?~~)) Converting license status from inactive to active. ((~~CPA-Inactive certificate holders who held a license at any time prior to July 1, 2001, may apply to return to their previous status as a licensee. If you are a CPA-Inactive certificate holder, you may not use the title "CPA" or "Certified Public Accountant" until you return to your previous status as a licensee.~~

~~If you hold a valid CPA-Inactive certificate, you must provide certain information to the board either by making application through the board's online application system or on a form provided by the board upon request. An application is not complete and cannot be processed until all required information, required documentation, fees, and other documentation deemed necessary by the board are submitted to the board.~~

~~To apply to return to your previous~~)) To convert to an active status as a licensee you must submit to the board:

(1) Complete application information including your certification that you have:

(a) Not held out ((~~in~~)) or practiced public ((~~practice~~)) accounting during the time in which you were ((~~a CPA-Inactive certificate holder~~)) inactive; and

(b) Met the CPE requirements of WAC 4-30-134(5)((~~;~~)).

(2) ((~~All other required information, documents, and all fees.~~)) The required information, documents, and fees (if applicable) to the board either by making application through the board's online application system or on a form provided upon request.

Upon assessment of your continued qualifications and approval of your application, your active status will be posted in the board's licensee database and, therefore, made publicly available for confirmation. A hard copy of your license can be provided upon request.

((~~You may not use the title CPA until your status as a licensee is posted in the board's licensee database.~~))

OTS-4819.2

AMENDATORY SECTION (Amending WSR 20-02-059, filed 12/24/19, effective 1/24/20)

WAC 4-30-122 ((~~If I retire my license or CPA-Inactive certificate, how do I apply to renew my license or a CPA-Inactive certificate out of retirement?~~)) Renewal out of retirement. If you notify the board that you wish to retire your license ((~~or CPA-Inactive certificate~~)) prior to the end of your renewal cycle, pursuant to RCW 18.04.215, you may renew your license ((~~or CPA-Inactive certificate~~)) out of retirement at a later date and are not subject to the requirements of reinstatement; however, you may not use the title CPA or CPA-Inactive or exercise the privileges related to those titles until you renew out of retirement.

((~~If you previously held a license and requested that the license be retired, you are not eligible to apply for CPA-Inactive certificate holder status.~~))

To apply to renew a license ((~~or a CPA-Inactive certificate~~)) out of retirement, you must provide certain information to the board either by making application through the board's online application system or on a form provided by the board upon request. An application is not complete and cannot be processed until all required information, documents, and fees are submitted to the board.

To apply to renew out of retirement, you must submit to the board:

(1) Complete application information including your certification that you have:

(a) Not used the title CPA or CPA-Inactive during the time in which your license ((~~or CPA-Inactive certificate~~)) was retired; and

(b) Met the CPE requirements to renew out of retirement in WAC 4-30-134(5)((~~; and~~)).

(2) ((~~All applicable fees.~~)) The required information, documents, and fees (if applicable) to the board either by making application through the board's online application system or on a form provided upon request.

Upon assessment of your continued qualifications and approval of your application, your status will be posted in the board's licensee database and, therefore, made publicly available for confirmation. A hard copy of your credential can be provided upon request.

Your license ((~~or CPA-Inactive certificate~~)) will expire on June 30th of the third calendar year following the calendar year of the renewal out of retirement. The CPE reporting period for your next renewal begins on January 1st of the calendar year in which the renewal of your retired license ((~~or CPA-Inactive certificate~~)) was approved by the board and ends on December 31st of the second calendar year following approval of the renewal out of retirement. CPE credit hours utilized to qualify for renewal of a retired license ((~~or CPA-Inactive certificate~~)) cannot be utilized for subsequent renewal ((~~of your credential renewed out of retirement~~)).

You may not use the title CPA ((~~or CPA-Inactive~~)) until your renewal out of retirement application has been approved.

OTS-4820.1

AMENDATORY SECTION (Amending WSR 20-02-059, filed 12/24/19, effective 1/24/20)

WAC 4-30-124 ((~~How do I reinstate a lapsed individual license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner?~~)) Reinstatements. If your individual license((~~, CPA-Inactive certificate,~~)) or registration as a resident nonlicensee firm owner has lapsed, you may not use the restricted title(s) until your individual credential has been reinstated by the board.

((~~Individuals who held a valid license on June 30, 2001, and individuals obtaining a license after June 30, 2001, are not eligible to reinstate as CPA-Inactive certificate holders.~~))

To reinstate a lapsed individual license((~~, CPA-Inactive certificate,~~)) or registration as a nonlicensee firm owner you must provide certain information to the board either by making application through the board's online application system or on a form provided by the board upon request. An application is not complete and cannot be processed until all required information and documents, and fees have been submitted to the board.

To reinstate, you must submit to the board:

(1) Complete reinstatement information including your certification that you have:

(a) *For those who wish to reinstate a license ((~~or CPA-Inactive certificate~~))*: Not used the title CPA or CPA-Inactive during the time

in which your individual license ((~~or CPA-Inactive certificate~~)) was lapsed; or

(b) *For those who wish to reinstate a registration as a resident nonlicensee firm owner*: Not participated as an owner in a CPA firm during the time in which your registration as a resident nonlicensee firm owner was ((~~suspended or revoked~~)) lapsed; and

(c) Met the CPE requirements for reinstatement in WAC 4-30-134(5); and

(d) Met the CPE supporting documentation requirements in WAC 4-30-138;

(2) ((~~Source~~)) Provide documents as evidence of eligibility for CPE credit for all courses claimed in order to meet CPE requirements as defined by WAC 4-30-138;

(3) A listing of all states and foreign jurisdictions in which you hold or have applied for a license, certificate, or practice privileges;

(4) Other required documents; and

(5) All applicable fees.

Upon approval of your reinstatement application, your status will be posted in the board's licensee database and, therefore, made publicly available for confirmation. A hard copy of your credential can be provided upon request.

Your license((~~, CPA-Inactive certificate,~~)) or registration as a nonlicensee firm owner will expire on June 30th of the third calendar year following approval of the reinstatement. The CPE reporting period for your next renewal begins on January 1st of the calendar year in which the reinstatement of your license((~~, CPA-Inactive certificate,~~)) or registration as a nonlicensee firm owner was approved by the board and ends on December 31st of the second calendar year following approval of the reinstatement. CPE credit hours utilized to qualify for reinstatement cannot be utilized for subsequent renewal ((~~of your reinstated credential~~)).

You may not use the ((~~restricted title(s)~~)) title CPA or CPA-Inactive or hold an interest in a licensed CPA firm as a resident licensee firm owner until your reinstatement application has been approved ((~~and posted to the board's database~~)).

OTS-4821.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-126 ((~~How do I reinstate~~)) Reinstatement of a revoked or suspended license((~~, CPA-Inactive certificate,~~)) or registration as a resident nonlicensee firm owner((~~?~~)). If your license ((~~or CPA-Inactive certificate~~)) was revoked or suspended by the board pursuant to the act, you may not use the title CPA or CPA-Inactive until your license ((~~or CPA-Inactive certificate~~)) is reinstated by the board.

If your registration as a resident nonlicensee firm owner was revoked or suspended by the board pursuant to the act, you may not be a firm owner until your registration is reinstated by the board.

You may request that the board modify the suspension or revocation after three years have elapsed from the effective date of the

board's order revoking or suspending your license((~~, CPA-Inactive certificate,~~)) or registration as a resident nonlicensee firm owner unless the board sets some other period by order. However, if you made a previous request with respect to the same order, no additional request will be considered before the lapse of an additional three years following the board's decision on the last such previous application for reinstatement.

To request reinstatement of a revoked or suspended license((~~, CPA-Inactive certificate,~~)) or registration as a resident nonlicensee firm owner you must provide the board with certain information either by making application through the board's online application system or on a form provided by the board upon request. An application is not complete and cannot be processed until all required information, documents, and fees are submitted to the board.

To request reinstatement, you must submit to the board:

(1) Complete information including your certification that you have:

(a) *For those who wish to reinstate a license ((~~or CPA-Inactive certificate~~))*: Not used the title CPA or CPA-Inactive during the time in which your license ((~~or CPA-Inactive certificate~~)) was suspended or revoked; or

(b) *For those who wish to reinstate a registration as a resident nonlicensee firm owner*: Not participated as an owner in a CPA firm during the time in which your registration as a resident nonlicensee firm owner was suspended or revoked; and

(c) Met the CPE requirements for reinstatement in WAC 4-30-134((~~(6)~~)) (5), by submitting the documentation to support the CPE claimed;

(2) A listing of all states and foreign jurisdictions in which you hold or have applied for a license, ((~~CPA-Inactive~~)) certificate, permit, or practice privilege under substantial equivalence;

(3) All applicable fees;

(4) Written substantiation of the reasons constituting good cause for the reinstatement; and

(5) Two supporting recommendations from licensees who have personal knowledge of your activities since the suspension or revocation was imposed.

In considering the reinstatement application, the board may consider all relevant factors, including but not limited to:

(a) The offense for which you were disciplined;

(b) Your activities since the disciplinary penalty was imposed;

(c) Your activities during the time the license((~~, CPA-Inactive certificate,~~)) or registration as a resident nonlicensee firm owner was in good standing;

(d) Your rehabilitative efforts;

(e) Restitution to damaged parties in the matter for which the penalty was imposed; and

(f) Your general reputation for integrity, objectivity, and ethical commitment.

If the board decides to consider the merits of your application for reinstatement, in the board's discretion, a hearing may be held following such procedures as the board deems suitable for the particular case. If the board decides that it will not consider the merits of your application for reinstatement, then this constitutes final agency action and there is no further administrative review available to you. As a condition of reinstatement, the board may impose such terms and conditions as it deems suitable.

The board will not consider a request for reinstatement while you are under sentence for any criminal offense, including any period during which you are on court-imposed probation or parole.

If the board approves your application, your status will be posted in the board's licensee database and, therefore, made publicly available for confirmation. A hard copy of your reinstated credential can be provided upon request.

Your reinstated license((~~, CPA-Inactive certificate,~~)) or registration will expire on June 30th of the third calendar year following approval of the reinstatement. The CPE reporting period for your next renewal begins on January 1st of the calendar year in which the reinstatement of your license((~~, CPA-Inactive certificate,~~)) or registration was approved by the board and ends on December 31st of the second calendar year following approval of the reinstatement. CPE credit hours utilized to qualify for reinstatement of a license((~~, CPA-Inactive certificate,~~)) or registration cannot be utilized for subsequent renewal ((~~of your credential~~)).

You may not use the title CPA or CPA-Inactive or hold an interest in a licensed CPA firm as a resident nonlicensee firm owner until your reinstatement application has been approved.

OTS-4822.1

AMENDATORY SECTION (Amending WSR 19-16-074, filed 7/31/19, effective 1/1/20)

WAC 4-30-134 Continuing professional education (CPE) requirements. (1) **Renewal.**

(a) CPE requirements for renewal are pursuant to RCW 18.04.215(5).

(b) An individual seeking renewal shall assert in a manner acceptable to the board that they met all of the CPE requirements for renewal during their CPE reporting period ending December 31st of the year prior to their license expiration date.

(c) **CPA ((~~licensee~~)) license in an active status.**

(i) Completion of a minimum of ((~~one hundred twenty~~)) 120 CPE credit hours within the three-year CPE reporting period;

(ii) Completion of a four credit hour Washington state board approved ethics course meeting the requirements of WAC 4-30-132;

(iii) Completion of a minimum of ((~~twenty~~)) 20 CPE credit hours during each calendar year included in the three-year CPE reporting period. Restrictions on the type of CPE credit hours qualifying to meet the ((~~twenty~~)) 20 credit hour minimum are specified in WAC 4-30-133; and

(iv) Completion of no more than ((~~sixty~~)) 60 CPE credit hours in nontechnical subject areas as specified in WAC 4-30-132.

Exception: If the licensee qualifies for CPE reciprocity, see the CPE requirements under the provisions of subsection (7) of this section.

(d) **((~~CPA-Inactive certificate holder~~)) CPA license in an inactive status or nonlicensee firm owner.** Completion of a four credit hour Washington state board approved ethics course meeting the requirements of WAC 4-30-132.

(2) **First renewal cycle.**

(a) After license issuance:

(i) CPE credit is allowable only for those programs taken in time periods after the first CPA license is issued pursuant to the authority of the board under chapter 18.04 RCW.

(ii) Credit is not allowed for programs taken to prepare an applicant for the CPA examination or the AICPA ethics examination as a requirement for initial licensure.

(b) After conversion of a ((~~CPA-Inactive to a CPA license~~)) license from an inactive to an active status.

(i) If your ((~~license~~)) active status was issued during the **first calendar year** of your CPE reporting period, you must have completed ((~~eighty~~)) 80 CPE credit hours which is limited to ((~~forty~~)) 40 CPE credit hours in nontechnical subject areas and must include a four credit hour Washington state board approved ethics course meeting the requirements of WAC 4-30-132.

(ii) If your ((~~license~~)) active status was issued during the **second calendar year** of your CPE reporting period, you must have completed ((~~forty~~)) 40 CPE credit hours which is limited to ((~~twenty~~)) 20 CPE credit hours in nontechnical subject areas and must include a four credit hour Washington state board approved ethics course meeting the requirements of WAC 4-30-132.

(iii) If your ((~~license~~)) active status was issued during the **third calendar year** of your CPE reporting period, you must have completed a four credit hour Washington state board approved ethics course meeting the requirements of WAC 4-30-132.

(3) **Extension requests for renewal.**

(a) If an individual has failed to complete the required CPE as defined in WAC 4-30-134 by December 31st of the last year of their three-year CPE reporting period, the individual must notify the board prior to their expiration date to request an extension of time to complete their CPE requirement by their expiration date.

(b) Credits earned during the interim period between January 1st and June 30th of the individual's renewal year that are used to meet the prior reporting period's CPE requirement will be carried back to the CPE reporting period ended December 31st. These credits cannot be counted towards the requirement for the individual's current CPE reporting period.

(c) An individual is allowed only one CPE extension in any two consecutive CPE reporting periods (six year period).

(4) **Failure to obtain required CPE for renewal.** Under the following circumstances the board will serve notice that a license((~~, CPA-Inactive certificate,~~)) or nonlicensee firm owner registration will lapse and the individual will have an opportunity to request a brief adjudicative proceeding:

(a) An individual who applied for renewal and failed to obtain the required CPE credit hours by December 31st of the last year of their CPE reporting period and failed to request an extension by their expiration date;

(b) An individual who applied for renewal and failed to obtain the required CPE credit hours by December 31st for the second time in any two consecutive CPE reporting periods; or

(c) An individual who applied for renewal and failed to obtain the necessary CPE credit hours by June 30th of their renewal year after submitting an extension request.

(5) **Applications other than renewal.**

(a) For the following applications, you must have completed the requirements of this section within the ((~~thirty-six~~)) 36-month period immediately preceding the date an application is submitted to the board; however, the completion of a four credit hour Washington state board approved ethics course must be within the six-month period immediately preceding the date your application and the CPE documentation are submitted to the board:

(i) You are applying to renew a license out of retirement;

(ii) You are applying to convert your inactive status to active;

(iii) You are a ((~~CPA-Inactive~~)) certificate holder applying for ((~~a~~)) an initial license; or

((~~(iii)~~)) (iv) You are applying for reinstatement of a lapsed, suspended, or revoked license.

(b) For the following applications, you must have completed a four credit hour Washington state board approved ethics course within the six-month period immediately preceding the date your application and the CPE documentation are submitted to the board: ((~~(i) You are applying to renew a CPA-Inactive certificate out of retirement;~~

~~(ii) You are applying to reinstate a lapsed, suspended, or revoked CPA-Inactive certificate; or~~

~~(iii)~~)) You are applying to reinstate a lapsed, suspended, or revoked registration as a resident nonlicensee firm owner.

(6) **Individuals operating under mobility.** Licensees from other substantially equivalent U.S. states or jurisdictions, eligible to exercise practice privileges under RCW 18.04.195, are exempt from the CPE requirements of this section provided that they have met the CPE requirements of the state in which they are licensed.

(7) **CPE reciprocity.**

(a) A nonresident licensee seeking renewal of a license in this state shall be determined to have met the CPE requirements of this rule by meeting the CPE requirements for renewal of a license in the state in which the licensee's principal place of business is located.

(b) Nonresident applicants for renewal shall demonstrate compliance with the CPE renewal requirements of the state in which the licensee's principal place of business is located by signing a statement on the renewal application of this state.

(c) If the state of residence has no CPE requirements for renewal, the nonresident licensee must comply with all CPE requirements for this state.

OTS-4823.1

AMENDATORY SECTION (Amending WSR 19-16-074, filed 7/31/19, effective 1/1/20)

WAC 4-30-136 Reporting continuing professional education (CPE) to the board. In order to apply for renewal of your license((~~, certificate,~~)) or registration as a resident nonlicensee firm owner, you must satisfy the board's CPE and supporting documentation requirements.

The reporting of compliance with CPE requirements is concurrent with filing your renewal application. When you complete your application for renewal, you are required to certify that you complied with

the board's CPE requirements as defined in WAC 4-30-134 and supporting documentation requirements as defined in WAC 4-30-138.

The board may verify through audit compliance with CPE and supporting documentation requirements as certified during the renewal application process. As part of this audit the board may require additional information to demonstrate your compliance with the board's rules.

OTS-4824.1

AMENDATORY SECTION (Amending WSR 16-17-036, filed 8/9/16, effective 9/9/16)

WAC 4-30-142 ((~~What are the bases for the board to impose discipline?~~)) Disciplinary actions. RCW 18.04.055, 18.04.295, 18.04.305, and 18.04.350 authorize the board to revoke, suspend, refuse to issue, renew, or reinstate an individual or firm license((~~, CPA-Inactive certificate,~~)) the right to exercise practice privileges in this state, or registration as a resident nonlicensee firm owner; impose a fine not to exceed ((~~thirty thousand dollars~~)) $30,000; recover investigative and legal costs; impose full restitution to injured parties; impose remedial sanctions; impose conditions precedent to renew; or prohibit a resident nonlicensee from holding an ownership interest in a firm licensed in this state for the specific acts listed below.

The following are specific examples of prohibited acts that constitute grounds for discipline under RCW 18.04.295, 18.04.305, and 18.04.350. The board does not intend this listing to be all inclusive.

(1) Fraud or deceit in applying for the CPA examination, obtaining a license, registering as a resident nonlicensee firm owner, or in any filings with the board.

(2) Fraud or deceit in renewing or requesting reinstatement of a license((~~, CPA-Inactive certificate,~~)) or registration as a resident nonlicensee firm owner.

(3) Cheating on the CPA exam.

(4) Making a false or misleading statement in support of another person's application or request to:

(a) Take the national uniform CPA examination;

(b) Obtain a license or registration required by the act or board;

(c) Reinstate or modify the terms of a revoked or suspended license((~~, certificate,~~)) or registration as a resident nonlicensee firm owner in this state;

(d) Reinstate revoked or suspended practice privileges of an individual or firm licensed in another state.

(5) Dishonesty, fraud, or negligence while representing oneself as a licensee((~~, CPA-Inactive certificate holder,~~)) or a resident nonlicensee firm owner including, but not limited to:

(a) Practicing public accounting in Washington state prior to obtaining a license required per RCW 18.04.215, obtaining a firm license as required by RCW 18.04.195, or without qualifying to operate under firm mobility;

(b) Offering or rendering public accounting services in this state by an out-of-state individual not qualified for practice privileges under RCW 18.04.350(2);

(c) Offering or rendering public accounting services in this state by an out-of-state firm not qualified for practice privileges under firm mobility per RCW 18.04.195.

(d) Making misleading, deceptive, or untrue representations;

(e) Engaging in acts of fiscal dishonesty;

(f) Purposefully, knowingly, or negligently failing to file a report or record, or filing a false report or record, required by local, state, or federal law;

(g) Unlawfully selling unregistered securities;

(h) Unlawfully acting as an unregistered securities salesperson or broker-dealer;

(i) Discharging a trustee's duties in a negligent manner or breaching one's fiduciary duties, acting in a manner not in compliance with chapter 11.96A RCW; or

(j) Withdrawing or liquidating, as fees earned, funds received by a licensee((~~, CPA-Inactive certificate holder,~~)) or a resident nonlicensee firm owner from a client as a deposit or retainer when the client contests the amount of fees earned, until such time as the dispute is resolved.

(6) The following shall be prima facie evidence that a licensee, as defined in WAC 4-30-010, ((~~CPA-Inactive certificate holder,~~)) a nonlicensee firm owner, or the employees of such persons has engaged in dishonesty, fraud, or negligence while representing oneself as a licensee, as defined in WAC 4-30-010, ((~~CPA-Inactive certificate holder,~~)) a nonlicensee firm owner, or an employee of such persons:

(a) An order of a court of competent jurisdiction finding that the person or persons committed an act of negligence, fraud, or dishonesty or other act reflecting adversely on the person's fitness to represent himself, herself, or itself as a licensee, as defined in WAC 4-30-010, ((~~CPA-Inactive certificate holder,~~)) or a nonlicensee firm owner;

(b) An order of a federal, state, local or foreign jurisdiction regulatory body, or a PCAOB, finding that the licensee, as defined in WAC 4-30-010, ((~~CPA-Inactive certificate holder,~~)) or nonlicensee firm owner, or employee of such persons committed an act of negligence, fraud, or dishonesty or other act reflecting adversely on the person's fitness to represent himself, herself, or itself as a licensee, as defined in WAC 4-30-010, ((~~a CPA-Inactive certificate holder,~~)) or a nonlicensee firm owner;

(c) Cancellation, revocation, suspension, or refusal to renew the right to practice as a licensee((~~, certificate holder,~~)) or a nonlicensee firm owner by any other state for any cause other than failure to pay a fee or to meet the requirements of continuing education in the other state; or

(d) Suspension or revocation of the right to practice before any state agency, federal agency, or the PCAOB.

(7) Sanctions and orders entered by a nongovernmental professionally related standard-setting body for violation of ethical or technical standards in the practice of public accounting by a licensee((~~, CPA-Inactive certificate holder,~~)) or nonlicensee firm owner;

(8) Any state or federal criminal conviction or commission of any act constituting a crime under the laws of this state, or of another state, or of the United States.

(9) A conflict of interest such as:

(a) Self dealing as a trustee, including, but not limited to:

(i) Investing trust funds in entities controlled by or related to the trustee;

(ii) Borrowing from trust funds, with or without disclosure; and

(iii) Employing persons related to the trustee or entities in which the trust has a beneficial interest to provide services to the trust (unless specifically authorized by the trust creation document).

(b) Borrowing funds from a client unless the client is in the business of making loans of the type obtained by the licensee, as defined in WAC 4-30-010, ((~~CPA-Inactive certificate holder,~~)) or nonlicensee firm owner and the loan terms are not more favorable than loans extended to other persons of similar credit worthiness.

(10) A violation of the Public Accountancy Act or failure to comply with a board rule contained in Title 4 WAC, by a licensee, defined in WAC 4-30-010, ((~~CPA-Inactive certificate holder,~~)) or employees of such persons of this state or a licensee of another substantially equivalent state qualified for practice privileges, including but not limited to:

(a) An out-of-state individual exercising the practice privileges authorized by RCW 18.04.350(2) when not qualified;

(b) Submission of an application for firm license on behalf of a firm licensed in another state that does not meet the firm mobility requirements under RCW 18.04.195 (1)(a)(iii)(A) through (D) by an out-of-state individual not qualified under RCW 18.04.350(2) or authorized by the firm to make such application;

(c) Failure of an out-of-state individual exercising the practice privileges authorized under RCW 18.04.350(2) to cease offering or performing professional services in this state, individually or on behalf of a firm, when the license from the state of the out-of-state individual's principal place of business is no longer valid;

(d) Failure of an out-of-state individual exercising the practice privileges authorized under RCW 18.04.350(2) to cease offering or performing specific professional services in this state, individually or on behalf of a firm, when the license from the state of the out-of-state individual's principal place of business has been restricted from performing those specific services;

(e) Failure of an out-of-state firm operating under firm mobility per RCW 18.04.195 (1)(a)(iii), in this state to cease offering or performing professional services in this state through one or more out-of-state individuals whose license from the state of those individuals' principal place(s) of business is (are) no longer valid or is (are) otherwise restricted from performing the specific engagement services;

(f) Failure of a firm licensed in this state, or a firm operating under firm mobility to comply with the ownership requirements of RCW 18.04.195 within a reasonable time period, as determined by the board;

(g) Failure of a firm licensed in this state or another state to comply with the board's quality assurance program requirements, when applicable.

(11) Violation of one or more of the rules of professional conduct included in Title 4 WAC.

(12) Concealing another's violation of the Public Accountancy Act or board rules.

(13) Failure to cooperate with the board by failing to:

(a) Furnish any papers or documents requested or ordered to produce by the board;

(b) Furnish in writing a full and complete explanation related to a complaint as requested by the board;

(c) Respond to an inquiry of the board;

(d) Respond to subpoenas issued by the board, whether or not the recipient of the subpoena is the accused in the proceeding.

(14) Failure to comply with an order of the board.

(15) Adjudication of a licensee, as defined by WAC 4-30-010, ((~~CPA-Inactive certificate holder,~~)) or a nonlicensee firm owner as mentally incompetent is prima facie evidence that the person lacks the professional competence required by the rules of professional conduct.

(16) Failure of a licensee, as defined by WAC 4-30-010, ((~~CPA-Inactive certificate holder,~~)) nonlicensee firm owner, or out-of-state person exercising practice privileges authorized by RCW 18.04.195 and 18.04.350 to timely notify the board, in the manner prescribed by the board, of any of the following:

(a) A sanction, order, suspension, revocation, or modification of a license, certificate, permit or practice rights by the SEC, PCAOB, IRS, or another state board of accountancy for any cause other than failure to pay a professional license fee by the due date or failure to meet the continuing professional education requirements of another state board of accountancy;

(b) Charges filed by the SEC, IRS, PCAOB, another state board of accountancy, or a federal or state taxing, insurance or securities regulatory body that the licensee((~~, CPA-Inactive certificate holder,~~)) or nonlicensee firm owner committed a prohibited act that would be a violation of board ethical or technical standards;

(c) Sanctions or orders entered against such persons by a nongovernmental professionally related standard-setting body for violation of ethical or technical standards in the practice of public accounting by a licensee((~~, CPA-Inactive certificate holder,~~)) or nonlicensee firm owner.

OTS-4817.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 4-30-104	How do I renew a Washington CPA-Inactive certificate and/or license granted through foreign reciprocity?

WSR 24-04-028
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed January 30, 2024, 8:52 a.m., effective March 1, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of social and health services (department) is adopting amendments to WAC 388-310-1600 WorkFirst-Sanctions. These amendments support implementation of 2SHB 1447 (chapter 418, Laws of 2023), which adds a good cause reason for failure to participate in WorkFirst program activities if a recipient is experiencing a hardship as defined by the department in rule.

Related emergency rules are currently in effect under WSR 23-23-093. When effective, this permanent rule will supersede the emergency rule filed as WSR 23-23-093.

Citation of Rules Affected by this Order: Amending WAC 388-310-1600.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090, 74.09.035, 74.09.530, 74.62.030; chapters 74.08A and 74.12 RCW.

Adopted under notice filed as WSR 23-23-147 on November 20, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: January 30, 2024.

Katherine I. Vasquez
Rules Coordinator

SHS-4981.4

AMENDATORY SECTION (Amending WSR 21-12-030, filed 5/24/21, effective 7/1/21)

WAC 388-310-1600 WorkFirst—Sanctions. (1) **What WorkFirst requirements do I have to meet?**

You must do the following when you are a mandatory WorkFirst participant:

(a) Give the department the information we need to develop your individual responsibility plan (IRP) (see WAC 388-310-0500);

(b) Show that you are participating fully to meet all of the requirements listed on your individual responsibility plan;

(c) Go to scheduled appointments listed in your individual responsibility plan;

(d) Follow the participation and attendance rules of the people who provide your assigned WorkFirst services or activities; and

(e) Accept available paid employment when it meets the criteria in WAC 388-310-1500.

(2) **What happens if I don't meet WorkFirst requirements?**

(a) If you do not meet WorkFirst requirements, we will send you a letter telling you what you did not do, and inviting you to a noncompliance case staffing.

(i) A noncompliance case staffing is a meeting with you, your case manager, and other people who are working with your family, such as representatives from tribes, community or technical colleges, employment security, department of children, youth, and families, family violence advocacy providers or limited-English proficient (LEP) pathway providers to review your situation and compliance with your participation requirements.

(ii) You will be notified when your noncompliance case staffing is scheduled so you can attend.

(iii) You may invite anyone you want to come with you to your noncompliance case staffing.

(b) You will have ((~~ten~~)) 10 days to contact us so we can talk with you about your situation. You can contact us in writing, by phone, by going to the noncompliance case staffing described in the letter, or by asking for an individual appointment.

(c) If you do not contact us within ((~~ten~~)) 10 days, we will make sure you have been screened for family violence and other barriers to participation and that we provided necessary supplemental accommodations as required by chapter 388-472 WAC. We will use existing information to decide whether:

(i) You were unable to do what was required; or

(ii) You were able, but refused, to do what was required.

(d) If you had a good reason not to do a required activity we will work with you and may change the requirements in your individual responsibility plan if a different WorkFirst activity would help you move towards independence and employment sooner. If you have been unable to meet your WorkFirst requirements because of family violence, you and your case manager will develop an individual responsibility plan to help you with your situation, including referrals to appropriate services.

(3) **What is considered a good reason for not doing what WorkFirst requires?**

You have a good reason if you were not able to do what WorkFirst requires (or get an excused absence, described in WAC 388-310-0500(5)) due to a significant problem or event outside your control. Some examples of good reasons include, but are not limited to:

(a) You had an emergent or severe physical, mental, or emotional condition, confirmed by a licensed health care professional that interfered with your ability to participate;

(b) You were threatened with or subjected to family violence;

(c) You could not locate child care for your children under ((~~thirteen~~)) 13 years that was:

(i) Affordable (did not cost you more than your copayment would under the working connections child care program in chapter 110-15 WAC);

(ii) Appropriate (licensed, certified, or approved under federal, state, or tribal law and regulations for the type of care you use and

you were able to choose, within locally available options, who would provide it); and

(iii) Within a reasonable distance (within reach without traveling farther than is normally expected in your community).

(d) You could not locate other care services for an incapacitated person who lives with you and your children((~~.~~))<u>;</u>

(e) You had an immediate legal problem, such as an eviction notice; ((~~or~~))

(f) You are a person who gets necessary supplemental accommodation (NSA) services under chapter 388-472 WAC and your limitation kept you from participating. If you have a good reason because you need NSA services, we will review your accommodation plan((~~.~~))<u>; or</u>

<u>(g) You have another hardship(s) that would reasonably prevent you from participating. For purposes of this subsection, a hardship is defined as a significant problem or event.</u>

(4) **What happens in my noncompliance case staffing?**

(a) At your noncompliance case staffing we will ensure you were offered the opportunity to participate and discuss with you:

(i) Whether you had a good reason for not meeting WorkFirst requirements((~~.~~))<u>;</u>

(ii) What happens if you are sanctioned;

(iii) How you can participate and get out of sanction status;

(iv) How you and your family benefit when you participate in WorkFirst activities;

(v) That your case may be closed after you have been in grant reduction sanction status for ((~~ten~~)) <u>10</u> months in a row;

(vi) How you plan to care for and support your children if your case is closed. We will also discuss the safety of your family, as needed, using the guidelines under RCW 26.44.030; and

(vii) How to reapply if your case is closed.

(b) If you do not come to your noncompliance case staffing, we will make a decision based on the information we have. We will send you a letter letting you know whether we found that you had a good reason for not meeting WorkFirst requirements.

(5) **What if we decide that you did not have a good reason for not meeting WorkFirst requirements?**

(a) Before you are placed in sanction, a supervisory level employee will review your case to make sure:

(i) You knew what was required;

(ii) You were told how you can resume WorkFirst participation to avoid or end your sanction;

(iii) We tried to talk to you and encourage you to participate; and

(iv) You were given a chance to tell us if you were unable to do what we required.

(b) If we decide that you did not have a good reason for not meeting WorkFirst requirements, and a supervisory level employee approves the sanction and sanction penalties, we will send you a letter that tells you:

(i) What you failed to do;

(ii) That you are in sanction status;

(iii) Penalties that will be applied to your grant;

(iv) When the penalties will be applied;

(v) How to request an administrative hearing if you disagree with this decision; and

(vi) How to end the penalties and get out of sanction status.

(c) We will also provide you with information about resources you may need if your case is closed. If you are sanctioned, then we will actively attempt to contact you another way so we can talk to you about the benefits of participation and how to end your sanction.

(6) **What is sanction status?**

When you are a mandatory WorkFirst participant, you must follow WorkFirst requirements to qualify for your full grant. If you or someone else on your grant doesn't do what is required and you can't prove that you had a good reason, you are placed in WorkFirst sanction status.

(7) **Are there penalties when you or someone in your household goes into sanction status?**

When you or someone in your household is in sanction status, we impose penalties. The penalties last until you or the household member meet WorkFirst requirements. Your household will only enter sanction status if we determine that you or someone else in your household did not have a good reason for failing to meet the WorkFirst requirements.

(a) You will receive a grant reduction sanction penalty following two months of noncompliance((~~.~~))<u>;</u>

(b) Your grant is reduced by one person's share or ((~~forty percent~~)) <u>40%</u>, whichever is more((~~.~~))<u>;</u>

(c) The reduction is effective the first of the month following ((~~ten~~)) <u>a 10</u>-day notice from the department; and

(d) Your case may be closed effective the first of the month after your grant has been reduced for ((~~ten~~)) <u>10</u> months in a row.

(8) **What happens before your case is closed due to sanction?**

(a) Before we close your case due to sanction status, we will send you a letter to tell you:

(i) What you failed to do;

(ii) When your case will be closed;

(iii) How you can request an administrative hearing if you disagree with this decision;

(iv) How you can end your penalties and keep your case open (if you are able to participate for four weeks in a row before we close your case); and

(v) How your participation before your case is closed can be used to meet the participation requirement in subsection (12).

(b) Attempt to contact you each month to begin the process of ending penalties and getting out of sanction status.

(9) **What happens to my WorkFirst sanction after July 1, 2021?**

If your case enters sanction status after July 1, 2021, your case may be closed after you have been in grant reduction sanction status for ((~~ten~~)) <u>10</u> months in a row.

(10) **How do I resume participation to avoid or end sanction status?**

(a) You must provide the information we requested to develop your individual responsibility plan; ((~~and/~~))or

(b) Start and continue to do your required WorkFirst activities for four weeks in a row (that is, ((~~twenty-eight~~)) <u>28</u> calendar days). The four weeks starts on the day you complete your comprehensive evaluation and you agree to your individual responsibility plan activities.

(11) **What happens when I get out of sanction status before my case is closed?**

When you get out of sanction status before your case is closed, your grant will be restored to the level you are eligible for beginning the first of the month following your four weeks of participa-

tion. For example, if you finished your four weeks of participation on June 15, your grant would be restored on July 1.

(12) **What if I reapply for TANF or SFA and I was in sanction status when my case closed?**

(a) For cases that close on or after July 1, 2021:

(i) If your case closed due to sanction, you will need to follow the sanction reapplication process in subsection (13).

(ii) If your case closed for another reason while you were in sanction status and is reopened, you will reopen in grant reduction sanction status. For example, if you closed while you were in month four of grant reduction sanction status, your grant will be opened in month five of grant reduction sanction status.

(b) For cases that closed prior to July 1, 2021, your case will not open in sanction status, and subsection (13) will not apply.

(13) **What if I reapply for TANF or SFA after my case is closed due to sanction?**

If you reapply for TANF or SFA after your case is closed due to sanction, you must participate for four weeks in a row before you can receive cash. Once you have met your four week participation requirement, your cash benefits will start, going back to the date we had all the other information we needed to make an eligibility decision.

WSR 24-04-035
PERMANENT RULES
BUILDING CODE COUNCIL
[Filed January 30, 2024, 10:47 a.m.]

Effective Date of Rule: March 15, 2024.

Purpose: WAC 51-51-0202 and 51-51-0331, Amendments to 2021 international residential code to modify provisions for family home child care. This adoption increases the maximum children allowed in a family home child care scenario from 12 to 16. Additional safety features are also included in this rule making to be used when the children present exceed 12. Applicable sections in chapters 51-50 and 51-54A WAC will also be amended with expedited rule making for consistency across codes. The changes are necessary to align with SB [E2SSB] 5237 which allows the department of children, youth, and families to issue a waiver to the limit of 12 children. The changes allow up to 16 children to be placed in a family home child care scenario while still using code requirements within the International Residential Code (IRC).

Citation of Rules Affected by this Order: Amending WAC 51-51-0202 and 51-51-0331.

Statutory Authority for Adoption: RCW 19.27.031.

Other Authority: RCW 19.27.074.

Adopted under notice filed as WSR 23-23-038 on November 3, 2023.

Changes Other than Editing from Proposed to Adopted Version: Changes are depicted using ~~strikeout~~ and underline. Strikeout depicts deletions, underline depicts additions.

51-51-0331	Subsection R331.1	Smoke alarms ~~and heat detectors~~ shall be installed in accordance with the requirements of new construction per ~~IRC~~ Section R314. ~~Provide an additional.~~ In addition to the required smoke alarms, a heat ~~detector~~ alarm shall be provided in each kitchen.	Changes in this section are editorial and intended to clarify the code language. In the event of fire, occupant notification will be faster than out of date systems. The addition of kitchen heat detectors adds an additional location of detection.
	New Subsection 331.2.1	**R331.2.1 Illumination in the event of power failure.** In addition to illumination requirements of Section R311.7.9, ~~provide~~ an artificial light source that activates upon termination of building power supply shall be installed at all interior stairs serving child care areas.	This section requires additional emergency lighting when there are more than 12 children receiving care in a "family home child care."
	New Subsection 331.3 (Option 1)	**(OPTION 1)** **~~R331.3 Sprinklers.~~** ~~An automatic residential sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D.~~	This first option would require a P2904 or NFPA 13D sprinkler system for "family home child care" when more than 12 children receive care. This option was not adopted.

	New Subsection 331.3 (Option 2)	**(OPTION 2)** **R331.3 Sprinklers.** An automatic residential sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D. **Exception:** Subject to approval of the *code official*, a sprinkler system is not required where all of the following conditions are met: 1. Child care areas are located on a floor within 4 feet of grade level; ~~and~~ 2. Each room used for child care ~~area~~ shall have a door compliant with Section R311.2 and R311.3, leading directly to the exterior of the building. The exterior landing at the door shall comply with Section R311.3 but need not comply with Section R311.3.1.	This second option would require a P2904 or NFPA 13D sprinkler system for "family home child care" when more than 12 children receive care. It also allows for an exception to the sprinkler requirement based on code official approval, exiting door requirements, and proximity to grade requirements. This option was adopted instead of option one with editorial changes. The changes are intended to clarify the language of this section. Editorial changes were made to clarify code language of this section.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 19, 2024.

Daimon Doyle
Council Chair

OTS-5065.2

AMENDATORY SECTION (Amending WSR 23-02-058, 23-12-104, and 23-20-024, filed 1/3/23, 6/7/23, and 9/25/23, effective 3/15/24)

WAC 51-51-0202 Section R202—Definitions.

ADULT FAMILY HOME. A dwelling, licensed by the state of Washington department of social and health services, in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services. An existing adult family home may provide services to up to eight adults upon approval from the department of social and health services in accordance with RCW 70.128.066.

BUILDING. Any one- or two-family *dwelling* or *townhouse*, or portion thereof used or intended to be used for human habitation, for living,

sleeping, cooking or eating purposes, or any combination thereof, or any accessory structure.

BUILDING, EXISTING. A *building* or structure erected prior to the adoption of this code, or one that has passed a final inspection.

CHILD CARE, FAMILY HOME. A child care facility, licensed by Washington state, located in the dwelling of the person or persons under whose direct care and supervision the child is placed, for the care of ((~~twelve~~)) sixteen or fewer children, including children who reside at the home.

CHILD DAY CARE, shall, for the purposes of these regulations, mean the care of children during any period of a 24 hour day.

CONDITIONED SPACE. An area, room or space that is enclosed within the building thermal envelope and that is directly or indirectly heated or cooled. Spaces are indirectly heated or cooled where they communicate through openings with conditioned spaces, where they are separated from conditioned spaces by uninsulated walls, floors or ceilings, or where they contain uninsulated ducts, piping or other sources of heating or cooling.

DISTRIBUTED WHOLE-HOUSE VENTILATION. A whole-house ventilation system shall be considered distributed when it supplies outdoor air directly (not transfer air) to each dwelling or sleeping unit habitable space (living room, den, office, interior adjoining spaces or bedroom), and exhausts air from all kitchens and bathrooms directly outside.

DWELLING UNIT. A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. Dwelling units may also include the following uses:

1. Adult family homes, foster family care homes and family day care homes licensed by the Washington state department of social and health services.

2. Offices, mercantile, food preparation for off-site consumption, personal care salons or similar uses which are conducted primarily by the occupants of the dwelling unit and are secondary to the use of the unit for dwelling purposes, and which do not exceed 500 square feet (46.4 m^2).

EGRESS ROOF ACCESS WINDOW. A skylight or roof window designed and installed to satisfy the *Emergency Escape and Rescue Opening* requirements of Section R310.2.

ENCLOSED KITCHEN. A kitchen whose permanent openings to interior adjacent spaces do not exceed a total of 60 square feet (6 m^2).

FIRE SEPARATION DISTANCE. The distance measured from the foundation wall or face of the wall framing, whichever is closer, to one of the following:

1. To the closest interior *lot line*; or
2. To the centerline of a street, an alley or public way; or
3. To an imaginary line between two buildings on the *lot*.

The distance shall be measured at a right angle from the wall.

FLOOR AREA. The area within the inside perimeter of exterior walls of the building. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above.

LANDING PLATFORM. A landing provided as the top step of a stairway accessing a *Loft*.

LOCAL EXHAUST. An exhaust system that uses one or more fans to exhaust air from a specific room or rooms within a residential dwelling or sleeping unit.

LOFT. A space on an intermediate level or levels between the floor and ceiling of a dwelling or sleeping unit, open on one or more sides to the room or space in which the loft is located, and in accordance with Section R333.

LOT LINE. The line which bounds a plot of ground described as a *lot* in the title to the property.

SALT WATER COASTAL AREA. Those areas designated as salt water coastal areas by the local jurisdiction.

SMALL BUSINESS. Any business entity (including a sole proprietorship, corporation, partnership or other legal entity) which is owned and operated independently from all other businesses, which has the purpose of making a profit, and which has fifty or fewer employees.

TOWNHOUSE UNIT. A single-family *dwelling unit* in a *townhouse* that extends from foundation to roof and that has a yard or public way on not less than two sides that extends at least 50 percent of the length of each of these two sides.

AMENDATORY SECTION (Amending WSR 20-03-023, filed 1/6/20, effective 7/1/20)

WAC 51-51-0331 Section R331—Family home child care.

R331.1 Family home child care. For family home child care with more than six children, each floor level used for family child care purposes shall be served by two remote means of egress. Exterior exit doors shall be operable from the inside without the use of keys or any special knowledge or effort.

Basements located more than 4 feet below grade level shall not be used for family home child care unless one of following conditions exist:

1. Stairways from the basement open directly to the exterior of the building without entering the first floor;

2. One of the two required means of egress discharges directly to the exterior from the basement level, and a self-closing door is installed at the top or bottom of the interior stair leading to the floor above;

3. One of the two required means of egress is an operable window or door, approved for emergency escape or rescue, that opens directly to a public street, public alley, yard or exit court; or

4. ((~~A residential sprinkler system is provided throughout the entire building in accordance with NFPA 13d.~~)) An automatic residential sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D.

Floors located more than 4 feet above grade level shall not be occupied by children in family home child care.

EXCEPTIONS: 1. Use of toilet facilities while under supervision of an adult staff person;
2. Family home child care may be allowed on the second story if one of the following conditions exists:

2.1. Stairways from the second story open directly to the exterior of the building without entering the first floor;
2.2. One of the two required means of egress discharges directly to the exterior from the second story level, and a self-closing door is installed at the top or bottom of the interior stair leading to the floor below; or
2.3. ((~~A residential sprinkler system is provided throughout the entire building in accordance with NFPA 13d.~~)) An automatic residential sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D.

Every sleeping or napping room in a family home child care shall have at least one operable window for emergency rescue.

EXCEPTION: Sleeping or napping rooms having doors leading to two separate means of egress, or a door leading directly to the exterior of the building.

Rooms or spaces containing a commercial-type cooking kitchen, boiler, maintenance shop, janitor closet, laundry, woodworking shop, flammable or combustible storage, or painting operation shall be separated from the family home child care area by at least 1-hour ((~~fire-resistive~~)) fire-resistant construction.

EXCEPTION: A ((~~fire-resistive~~)) fire-resistant separation shall not be required where the food preparation kitchen contains only a domestic cooking range, and the preparation of food does not result in the production of smoke or grease laden vapors.

Smoke alarms shall be installed in accordance with the requirements of new construction per Section R314. In addition to the required smoke alarms, a heat alarm shall be provided in each kitchen.

R331.2 Additional requirements for family home child care with thirteen to sixteen children. In addition to the requirements of Section 331.1 the provisions of this section shall apply to *family home child care* with thirteen to sixteen children.

R331.2.1 Illumination in the event of power failure. In addition to illumination requirements of Section R311.7.9, an artificial light source that activates upon termination of building power supply shall be installed at all interior stairs serving child care areas.

R331.2.2 Exterior exit doors serving child care areas. Exterior exit doors serving child care areas shall comply with the requirements of Sections R311.2 and R311.3.

R331.3 Sprinklers. An automatic residential sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D.

EXCEPTION: Subject to approval of the *code official*, a sprinkler system is not required where all of the following conditions are met:
1. Child care areas are located on a floor within 4 feet of grade level;
2. Each room used for child care shall have a door compliant with Section R311.2 and R311.3, leading directly to the exterior of the building. The exterior landing at the door shall comply with Section R311.3 but need not comply with Section R311.3.1.

WSR 24-04-042
PERMANENT RULES
LIQUOR AND CANNABIS BOARD

[Filed January 31, 2024, 10:44 a.m., effective March 2, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The Washington state liquor and cannabis board (board) has adopted amendments to the rules below to implement SSB 5448 (chapter 279, Laws of 2023) and to respond to a petition for rule making accepted by the board in January 2023 to allow MAST 13 permit holders to pour beer and wine away from the customer's table.

Citation of Rules Affected by this Order: New WAC 314-03-600; repealing WAC 314-03-205; and amending WAC 314-03-035, 314-03-200, 314-03-500, 314-03-505, 314-03-510, 314-11-040, and 314-17-015.

Statutory Authority for Adoption: RCW 66.08.030, 66.20.330, 66.24.710(7).

Adopted under notice filed as WSR 23-24-100 on December 6, 2023.

Changes Other than Editing from Proposed to Adopted Version: The changes made are described in the table below.

Variations Between Proposed and Final Rule Language			
Rule Section	**Proposed Rule Language**	**Final Rule Language**	**Basis for Change**
WAC 314-03-200 Outside or extended alcohol service. (AMENDED)	(2)(f) The same food service offered inside the licensed premises must also be offered in the outdoor alcohol service area;	(2)(f) Any food service requirements by the license type apply to both indoor and outside alcohol service areas;	Removes any possible concern for interpretation that these rules create an outdoor food service requirement where the premises is not required to serve food indoors.
	(3)(f) The same food service offered inside the licensed premises must also be offered in the outdoor alcohol service area;	(3)(f) Any food service requirements by the license type apply to both indoor and outside alcohol service areas;	
	(2)(g) The outdoor alcohol service area must be enclosed with a permanent or movable barrier a minimum of 42 inches in height. However, the board may grant limited exceptions to the required 42 inch high barrier for outdoor alcohol service areas if the licensee has permanent boundaries for the outdoor alcohol service area, but may not grant limited exceptions to beer gardens, standing room only venues, catered events, or permitted special events;	(2)(g) The outdoor alcohol service area must be enclosed with a permanent or movable barrier a minimum of 42 inches in height. However, the board may grant limited exceptions to the required 42 inch high barrier for outdoor alcohol service areas if the licensee has permanent boundaries for the outdoor alcohol service area, but may not grant limited exceptions to beer gardens, standing room only venues, or permitted special events;	Removes "catered events" from the list that board cannot grant limited exceptions to. This was initially added to the original rules as part of the proposed rules and is now being removed based on stakeholder feedback.
	(3)(c)(iii) The exception identified in (c)(ii) of this subsection does not apply to beer gardens, standing room only venues, catered events, and permitted special events, all of which must always have a permanent or moveable barrier a minimum of 42 inches in height;	(3)(c)(iii) The exception identified in (c)(ii) of this subsection does not apply to beer gardens, standing room only venues, and permitted special events, all of which must always have a permanent or moveable barrier a minimum of 42 inches in height;	Removes "catered events" from the list that must always have permanent or moveable barriers. This was initially added to the original rules as part of the proposed rules and is now being removed based on stakeholder feedback.
WAC 314-03-600 Takeout/ delivery endorsement comparison table. (NEW)	Adjusted margins and table layout without changing content.		Desire to make tables clearer and better identify the categories of x and y axis.

A final cost-benefit analysis is available by contacting Daniel Jacobs, Rules and Policy Coordinator, 1025 Union Avenue S.E., Olympia, WA 98501, phone 360-480-1238, fax 360-664-3208, email rules@lcb.wa.gov, website www.lcb.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 5, Repealed 1.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 2, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 7, Repealed 1.

Date Adopted: January 31, 2024.

David Postman
Chair

OTS-4973.2

AMENDATORY SECTION (Amending WSR 17-17-030, filed 8/9/17, effective 9/9/17)

WAC 314-03-035 Consumer orders, internet sales, and delivery for on-premises beer and/or wine liquor licensees. An on-premises beer and/or wine licensee may accept orders for beer or wine from, and deliver beer or wine to, customers, if the licensee obtains a delivery endorsement under RCW 66.24.710.

(1) **Resale.** Beer and wine shall not be for resale.

(2) **Stock location.** Beer and wine must come directly from a licensed on-premises retail location.

(3) **How to place an order.** Beer and wine may be ordered in person at a licensed location, by mail, telephone, internet, or by other similar methods.

(4) **Sales and payment.**

(a) Only a licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a licensee, except for transmittal of payment through a third-party service. The use of internet or mobile applications for retail customers to purchase alcohol in Washington state ((~~are~~)) is allowed under the following conditions:

(i) The sale must be made by the licensee;

(ii) The licensee processes the payment; and

(iii) The liquor licensee pays the owner of the mobile application a service fee.

(b) All orders and payments shall be fully processed before liquor transfers ownership ((~~or, in the case of delivery, leaves a licensed premises~~)).

(c) Payment method. Payment methods include, but are not limited to: Cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account. An existing prepaid account may not have a negative balance.

(d) Internet. To sell beer and wine via the internet, a new license applicant must request internet-sales privileges in his or her application. An existing licensee must notify the board prior to beginning internet sales. A corporate entity representing multiple stores may notify the board in a single letter on behalf of affiliated licensees, as long as the liquor license numbers of all licensee locations utilizing internet sales privileges are clearly identified.

(5) **Delivery location.** Delivery shall be made only to a residence or business that has an address recognized by the United States Postal Service; however, the board may grant an exception to this rule at its discretion. A residence includes a hotel room, a motel room, or other similar lodging that temporarily serves as a residence.

(6) **Hours of delivery.** Beer and wine may be delivered each day of the week between the hours of 6:00 a.m. and 2:00 a.m. Delivery must be fully completed by 2:00 a.m.

(7) **Age requirement.**

(a) Per chapter 66.44 RCW, any person under ((~~twenty-one~~)) 21 years of age is prohibited from purchasing, delivering, or accepting delivery of beer and wine.

(b) A delivery person must verify the age of the person accepting delivery before handing over beer and wine.

(c) If no person ((~~twenty-one~~)) 21 years of age or older is present to accept a beer and wine order at the time of delivery, the beer and wine shall be returned to the licensee.

(8) **Intoxication.** Delivery of beer and wine is prohibited to any person who shows signs of intoxication.

(9) **Containers and packaging.**

(a) Individual units of beer and wine must be factory sealed in bottles, cans, or other like packaging. Delivery of growlers, jugs or other similar, nonfactory sealed containers is prohibited. Delivery of malt liquor in kegs or other containers capable of holding four gallons or more of liquid is allowed, provided that kegs or containers are factory sealed and that the keg sales requirements (see WAC 314-02-115) are met prior to delivery. For the purposes of this subsection, "factory sealed" means that a unit is in ((~~one hundred~~)) 100 percent resalable condition, with all manufacturer's seals intact.

(b) The outermost surface of a beer and wine package((~~, delivered by a third party,~~)) must have language stating that:

(i) The package contains liquor;

(ii) The recipient must be ((~~twenty-one~~)) 21 years of age or older; and

(iii) Delivery to intoxicated persons is prohibited.

(10) **Required information.**

(a) Records and files shall be retained at a licensed premises. Each delivery sales record shall include the following:

(i) Name of the purchaser;

(ii) Name of the person who accepts delivery;

(iii) Street addresses of the purchaser and the delivery location; and

(iv) Times and dates of purchase and delivery.

(b) ((~~A private carrier~~)) An employee delivering beer or wine must obtain the signature of the person who receives beer and wine upon delivery.

(c) A sales record does not have to include the name of the delivery person, but it is encouraged.

(11) **Website requirements.** When selling over the internet, all website pages associated with the sale of beer and wine must display a licensee's registered trade name.

(12) **Accountability.** A licensee shall be accountable for all deliveries of beer and wine made ((~~on its behalf~~)) by employees.

(13) **Violations.** The board may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges, or any combination thereof, should a licensee violate any condition, requirement or restriction.

OTS-4974.5

AMENDATORY SECTION (Amending WSR 23-14-119, filed 7/5/23, effective 7/5/23)

WAC 314-03-200 Outside or extended alcohol service. (1) A licensee must request approval from the board's licensing division for ongoing outside ((~~or extended~~)) alcohol service or extended indoor alcohol service. Any language in this rule referring to outdoor alcohol service applies also to extended indoor alcohol service.

((~~Except as provided in rules for outdoor alcohol service in WAC 314-03-205, the following conditions must be met:~~

~~(1) The area must be enclosed with a permanent or movable barrier a minimum of 42 inches in height.~~

~~(2) There must be an interior access to the licensed premises. If the interior access is from a minor restricted area of the premises, minors are prohibited in the outside or extended alcohol service area.~~

~~(3) There must be an attendant, wait staff, or server dedicated to the outside service area when patrons are present.~~

~~(4) Must have leasehold rights to the area and have and be connected to the licensed premises.~~

~~(5) Openings into and out of the outside area cannot exceed 10 feet. If there is more than one opening along one side, the total combined opening may not exceed 10 feet.~~

~~(6) **Exception.** For sidewalk cafe outside service, the board allows local regulations that, in conjunction with a local sidewalk cafe permit, requires a 42 inch barrier or permanent demarcation of the designated alcohol service areas for continued enforcement of the boundaries.~~

~~(a) The permanent demarcation must be at all boundaries of the outside service area;~~

~~(b) The permanent demarcation must be at least six inches in diameter;~~

~~(c) The permanent demarcation must be placed no more than 10 feet apart;~~

~~(d) There must be an attendant, wait staff, or server dedicated to the outside service area when patrons are present;~~

~~(e) This exception only applies to restaurant liquor licenses with sidewalk cafe service areas contiguous to the liquor licensed premises. "Contiguous" means touching along a boundary or at a point;~~

~~(f) This exception does not apply to beer gardens, standing room only venues, and permitted special events. Board approval is still required with respect to sidewalk cafe barrier requirements.~~

~~(7) **Limited exception.** The board may grant limited exceptions to the required 42 inch high barrier for outside alcohol service areas.~~

~~(a) The licensee must have exclusive leasehold rights to the outside service area.~~

~~(b) There must be permanent demarcations at all boundaries of the outside service area for continued enforcement of the boundaries.~~))

(2) **Outdoor alcohol services in privately owned spaces.** For outdoor alcohol service located in privately owned spaces, a licensee must meet the following requirements:

(a) The licensee must have legal authority to use the outdoor alcohol service area including, but not limited to, ownership or leasehold rights;

(b) The licensee must have a building that provides indoor dining or production in order to qualify for an outdoor alcohol service area;

(c) The outdoor alcohol service area must be contiguous to the licensed business or located on the same property or parcel of land as the licensed business;

(d) The outdoor alcohol service area must have an attendant, wait staff, or server dedicated to the area when patrons are present;

(e)(i) Interior access to the licensed premises from the outdoor alcohol service area is not required. However, unless there is (A) interior access to the licensed premises from the outdoor alcohol service area, or (B) an unobstructed direct line of sight from inside the licensed premises to the outdoor alcohol service area, an employee with a mandatory alcohol server training (MAST) permit under chapter 314-17 WAC must be in the outdoor alcohol service area at all times that patrons are present, in order to monitor alcohol consumption. This requirement is in addition to the requirement in (d) of this subsection that the outdoor alcohol service area must have an attendant, wait staff, or server dedicated to the area when patrons are present;

(ii) If the interior access is from an area classified by the board as off limits to any person under the age of 21, people under the age of 21 are prohibited in the outside or extended alcohol service area;

(f) If there are food service requirements for the licensee, then the required food service must be available in any outdoor or extended alcohol service area;

(g) The outdoor alcohol service area must be enclosed with a permanent or movable barrier a minimum of 42 inches in height. However, the board may grant limited exceptions to the required 42 inch high barrier for outdoor alcohol service areas if the licensee has permanent boundaries for the outdoor alcohol service area, but may not grant limited exceptions to beer gardens, standing room only venues, or permitted special events;

(h) Openings into and out of the outdoor alcohol service area cannot exceed 10 feet. If there is more than one opening along one side, the total combined opening may not exceed 10 feet; and

(i) Licensees must comply with local building codes, local health jurisdiction requirements, department of labor and industries requirements, and any other applicable laws and rules.

(3) **Outdoor alcohol services in public spaces.** For outdoor alcohol service located in public spaces, a licensee must request approval from the board's licensing division and meet the following requirements:

(a) The licensed business must have a permit from their local jurisdiction allowing the business to use the public space as a service area, such as a sidewalk cafe permit or other similar outdoor area permit authorized by local regulation;

(b) The licensee must have a building that provides indoor dining or production in order to qualify for an outdoor alcohol service area;

(c)(i) Except as provided in (c)(ii) of this subsection, the outdoor alcohol service area must be enclosed with a permanent or movable barrier a minimum of 42 inches in height.

(ii) Licensees with outdoor alcohol service areas contiguous to the licensed premises may use a permanent fence-free demarcation of the designated alcohol service area for continued enforcement of the boundaries, instead of a permanent or movable barrier a minimum of 42 inches in height. The permanent fence-free demarcation used must be:

(A) At all boundaries of the outdoor alcohol service area;

(B) At least six inches in diameter; and

(C) Placed no more than 10 feet apart;

(iii) The exception identified in (c)(ii) of this subsection does not apply to beer gardens, standing room only venues, and permitted special events, all of which must always have a permanent or movable barrier a minimum of 42 inches in height;

(d) Openings into and out of the outdoor alcohol service area cannot exceed 10 feet. If there is more than one opening along one side, the total combined opening may not exceed 10 feet;

(e) The outdoor alcohol service area must have an attendant, wait staff, or server dedicated to the area when patrons are present;

(f) If there are food service requirements for the licensee, then the required food service must be available in any outdoor or extended alcohol service area; and

(g) Licensees must comply with local building codes, local health jurisdiction requirements, department of labor and industries requirements, and any other applicable laws and rules.

(4) For multiple licensees to share an outdoor alcohol service area, the licensees must request approval from the board's licensing division and meet the following requirements:

(a) The licensees' property parcels or buildings must be located in direct physical proximity to one another. For the purposes of this subsection, "direct physical proximity" means that the property parcels or buildings are physically connected or touching each other along a boundary or at a point;

(b)(i) If the shared outdoor alcohol service area is located on public space, the licensees sharing the space must meet all of the requirements in subsection (3) of this section and shared use of the outdoor service area must be authorized by the licensees' local jurisdiction permits; or

(ii) If the shared outdoor alcohol service area is located in a privately owned space, the licensees sharing the space must meet all of the requirements in subsection (2) of this section and must have legal authority to share use of the outdoor service area including, but not limited to, ownership or leasehold rights;

(c) The licensees must maintain separate storage of products and separate financial records for the shared outdoor alcohol service area. If licensees share any point of sale system, the licensees must keep complete documentation and records for the shared point of sale system showing clear separation as to what sales items and categories belong to each respective licensee;

(d) The licensees must use distinctly marked glassware or serving containers in the shared outdoor alcohol service area to identify the source of any alcohol product being consumed. The distinctive markings may be either permanent or temporary. Any temporary markings must remain on the glassware or serving containers through the duration of use by the customer;

(e) The licensees must complete an operating plan for the shared outdoor alcohol service area. The operating plan should demonstrate in general how responsibility for the outdoor alcohol service area is shared among the licensees. Licensees are required to submit the operating plan to the board's licensing division at the time of application or alteration and must keep documentation of an up-to-date plan available for inspection on premises; and

(f) Consistent with WAC 314-11-065, a licensee may not permit the removal of alcohol in an open container from the shared outdoor alcohol service area, except to reenter the licensed premises where the

alcohol was purchased. Signage prohibiting the removal of alcohol in an open container must be visible to patrons in the shared outdoor alcohol service area.

(5) If multiple licensees use a shared outdoor alcohol service area as described in subsection (4) of this section, all participating licensees are jointly responsible for any violation or enforcement issues unless it can be demonstrated that the violation or enforcement issue was due to one or more licensee's specific conduct or action, in which case the violation or enforcement action applies only to those identified licensees.

(6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Alcohol service" means service of liquor as defined in RCW 66.04.010.

(b) "Contiguous" means touching along a boundary or at a point.

(c) "Sidewalk cafe" means a designated seating area on the sidewalk, curb space, or other public space where a business provides table service and seating for their patrons during business hours.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 314-03-205	Outdoor alcohol service for on-premises licensees.

OTS-4975.4

AMENDATORY SECTION (Amending WSR 23-14-119, filed 7/5/23, effective 7/5/23)

WAC 314-03-500 Endorsement for sale of manufacturer sealed alcohol products through takeout or delivery service. (1) An endorsement for the sale of manufacturer sealed alcohol products is available through takeout and delivery service as set forth in ((~~section 1 (5)(d), chapter 279, Laws of 2023~~)) RCW 66.24.710. There is no fee for a licensee to apply for and obtain this endorsement.

(2)(a)(i) An endorsement to sell manufacturer sealed alcohol products at retail through takeout or delivery service is available to the following licensees: Beer and wine restaurants; spirits, beer, and wine restaurants; taverns; ((~~domestic wineries; domestic breweries and microbreweries; distilleries;~~)) snack bars; nonprofit arts licensees; and caterers.

(ii) This endorsement allows licensees authorized to sell spirits to sell ready-to-drink cocktails through takeout or delivery service.

(b) This endorsement is separate from the endorsements in WAC 314-03-505 and 314-03-510 that authorize the sale through takeout or delivery service of nonmanufacturer or nonfactory sealed premixed cocktails, wine by the glass, premixed wine and spirits cocktails, premixed wine drinks, or growlers.

(3) In order to obtain and maintain the endorsement described in this section, licensees must meet the following requirements:

(a) Alcohol products must be sold in closed, factory or manufacturer sealed packages or containers, such as cans((~~,~~)) and bottles((~~, and kegs~~)). Licensees may only sell the types of manufacturer sealed alcohol products under this endorsement that they are authorized to sell under the terms of their license.

(b)((~~(i) Except as provided in (b)(ii) of this subsection,~~)) If an alcohol product authorized for sale under this endorsement is enclosed inside a bag, box, or other packaging before the alcohol product is provided to the customer through takeout or delivery service, the exterior of the bag, box, or other packaging must be clearly marked or labeled with the words "CONTAINS ALCOHOL, FOR PERSONS 21+" in a size that is legible and readily visible.

((~~(ii) Brewery, winery, and distillery licensees are not required to mark or label the exterior of the bag, box, or other packaging as described in (b)(i) of this subsection if the alcohol product is provided to the customer through takeout service.~~))

(c) If the alcohol products authorized for sale under this endorsement are sold through delivery service:

(i) Licensees must comply with the requirements in the consumer orders, internet sales, and delivery rules in this title. For these requirements, see WAC 314-03-020 through 314-03-040.

(ii)(A) At the time of delivery, the employee making the delivery must verify that the person receiving the delivery is at least 21 years of age using an acceptable form of identification in WAC 314-11-025. See RCW 66.44.270.

(B) Delivery of an alcohol product must be performed by an employee of an alcohol delivery endorsement holder who is 21 years of age or older and possesses a class 12 permit, in accordance with RCW 66.20.310.

(iii) As set forth in ((~~section 1(8), chapter 279, Laws of 2023~~)) RCW 66.24.710, upon delivery of the alcohol product, the signature of the person ((~~age 21 or over~~)) who is 21 years of age or older receiving the delivery must be obtained. Delivery sales records must meet the requirements in the consumer orders, internet sales, and delivery rules. For general record retention requirements, see WAC 314-11-095.

(iv) If no person age 21 or over is present to accept the alcohol product at the time of delivery, the alcohol product must be returned to the licensee. An alcohol product may not be left unattended at a delivery location.

(v) Delivery of an alcohol product may not be made to any person who shows signs of intoxication. See RCW 66.44.200.

(vi) Alcohol delivery under this section shall be performed by direct employees of the licensee.

(d)(i) In addition to the signs required by WAC 314-11-060, signs provided electronically by the board regarding public consumption and transportation of any alcohol products sold through takeout or delivery service must be posted in plain view at:

(A) The main entrance to the area of the premises where alcohol products are sold; and

(B) The areas of the premises where alcohol products are picked up for takeout or delivery service.

(ii) The signs will be designed to remind customers purchasing alcohol products through takeout or delivery service that they must comply with applicable laws and rules including, but not limited to, restrictions on consuming alcohol in public in RCW 66.44.100 and re-

strictions on drinking or having an open container in a vehicle in RCW 46.61.519.

(e) Delivery services conducted and alcohol sold for takeout by beer and wine restaurant licensees and spirits, beer and wine restaurant licensees must be accompanied by a purchased meal prepared and sold by the license holder under RCW 66.24.710.

(4) In addition to the requirements listed in this section, licensees must comply with all applicable requirements in Title 66 RCW, Title 314 WAC, and any other applicable laws and rules including, but not limited to((~~: Keg sale requirements in WAC 314-02-115 and~~)), restrictions on sales to minors and intoxicated persons in chapter 66.44 RCW and WAC 314-16-150.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Alcohol product" means liquor as defined in RCW 66.04.010.

(b) "Factory sealed" or "manufacturer sealed" means that a package or container is in 100 percent resalable condition, with all manufacturer's seals intact.

(c) "Ready-to-drink cocktail" means a drink made by combining spirits with other alcoholic or nonalcoholic beverages and ingredients including, but not limited to, fruit juice, carbonated beverages, flavorings, or cream, that is:

(i) Factory sealed or manufacturer sealed;

(ii) No more than 12 percent alcohol per volume; and

(iii) No more than 12 ounces in volume.

(d) "Spirits" has the same meaning as defined in RCW 66.04.010.

(6) The delivery service endorsement described in this section expires July 1, 2025, as set forth in ((~~section 1(3), chapter 279, Laws of 2023~~)) RCW 66.24.710.

AMENDATORY SECTION (Amending WSR 23-14-119, filed 7/5/23, effective 7/5/23)

WAC 314-03-510 Endorsement for sale of growlers through takeout or delivery service. (1)(a) An endorsement is available for the sale of growlers through takeout and delivery service as set forth in ((~~section 1(4), chapter 279, Laws of 2023~~)) RCW 66.24.710. There is no fee for a licensee to apply for and obtain this endorsement.

(b) This endorsement is separate from the endorsements in WAC 314-03-500 and 314-03-505 that authorize the sale through takeout or delivery service of manufacturer sealed alcohol products at retail, or nonmanufacturer or nonfactory sealed premixed cocktails, wine by the glass, premixed wine and spirits cocktails, and premixed wine drinks.

(2) As set forth in ((~~section 1(4), chapter 279, Laws of 2023~~)) RCW 66.24.710, an endorsement to sell growlers for off-premises consumption through takeout or delivery service is available to licensees that were authorized by statute or rule before January 1, 2020, to sell growlers.

(a) Licensees eligible for this endorsement include: Taverns; beer and wine restaurants; spirits, beer, and wine restaurants; grocery stores; beer and wine specialty shops; breweries; microbreweries; wineries; combination spirits, beer, and wine licensees; and hotel licensees.

(b) For a beer and wine specialty shop to be eligible for the endorsement described in this section, the beer and wine specialty shop

must meet the requirement in RCW 66.24.371(3), as it existed on December 31, 2019, that the licensee's beer and/or wine sales must be more than 50 percent of the licensee's total sales.

(3) In order to obtain and maintain this endorsement, licensees must meet the following requirements:

(a) Sale of growlers must meet federal alcohol and tobacco tax and trade bureau requirements.

(b)(i) Growlers must be filled at the tap by the licensee at the time of sale, except that beer and wine specialty shops licensed under RCW 66.24.371 and domestic breweries and microbreweries with this endorsement may sell prefilled growlers as set forth in ((~~section 1(4), chapter 279, Laws of 2023~~)) RCW 66.24.710. Prefilled growlers must be sold the same day they are prepared for sale and not stored overnight for sale on future days.

(ii) Brewery and microbrewery products that meet federal alcohol and tobacco tax and trade bureau labeling requirements are not considered prefilled growlers and are not subject to the overnight storage prohibition.

(c) Growlers must be filled with alcohol products, such as beer, wine, or cider, that the licensee was authorized by statute or rule before January 1, 2020, to sell in growlers.

(d) If the growlers authorized for sale under this endorsement are sold through delivery service:

(i) Licensees must comply with the requirements in the consumer orders, internet sales, and delivery rules in this title, except to the extent that those rules allow delivery by third-party service providers and prohibit the delivery of growlers. For these requirements, see WAC 314-03-020 through 314-03-040.

(ii) Delivery must be made by an employee of the licensed business who is at least 21 years of age. Delivery may not be made by third-party service providers.

(iii) At the time of delivery, the employee making the delivery must verify that the person receiving the delivery is at least 21 years of age using an acceptable form of identification in WAC 314-11-025. See RCW 66.44.270.

(iv) As set forth in ((~~section 1(8), chapter 279, Laws of 2023~~)) RCW 66.24.710, upon delivery of the alcohol product, the signature of the person age 21 or over receiving the delivery must be obtained. Delivery sales records must meet the requirements in the consumer orders, internet sales, and delivery rules. For general record retention requirements, see WAC 314-11-095.

(v) If no person age 21 or over is present to accept the alcohol product at the time of delivery, the alcohol product must be returned to the licensee. An alcohol product may not be left unattended at a delivery location.

(vi) Delivery of an alcohol product may not be made to any person who shows signs of intoxication. See RCW 66.44.200.

(e)(i) In addition to the signs required by WAC 314-11-060, signs provided electronically by the board regarding public consumption and transportation of any alcohol products sold through takeout or delivery service must be posted in plain view at:

(A) The main entrance to the area of the premises where alcohol products are sold; and

(B) The areas of the premises where alcohol products are picked up for takeout or delivery service.

(ii) The signs will be designed to remind customers purchasing alcohol products through takeout or delivery service that they must

comply with applicable laws and rules including, but not limited to, restrictions on consuming alcohol in public in RCW 66.44.100 and restrictions on drinking or having an open container in a vehicle in RCW 46.61.519.

(4) In addition to the requirements listed in this section, licensees must comply with all applicable requirements in Title 66 RCW, Title 314 WAC, and any other applicable laws and rules including, but not limited to, restrictions on sales to minors and intoxicated persons in chapter 66.44 RCW and WAC 314-16-150.

(5) Growlers sold under this endorsement do not need to be accompanied by a purchased meal prepared and sold by the license holder under RCW 66.24.710.

(6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Alcohol product" means liquor as defined in RCW 66.04.010.

(b) "Beer" has the same meaning as defined in RCW 66.04.010.

(c) "Cider" has the same meaning as defined in RCW 66.24.210.

(d) "Growlers" has the same meaning as defined in ((~~section 2(10), chapter 48, Laws of 2021: Sanitary containers brought to the premises by the purchaser or furnished by the licensee and filled by the retailer at the time of sale~~)) RCW 66.24.710.

(e) "Wine" has the same meaning as defined in RCW 66.04.010.

((~~(6)~~)) (7) The delivery service endorsement described in this section expires July 1, 2025, as set forth in ((~~section 1(4), chapter 279, Laws of 2023~~)) RCW 66.24.710.

OTS-5097.3

AMENDATORY SECTION (Amending WSR 23-14-119, filed 7/5/23, effective 7/5/23)

WAC 314-03-505 Endorsement for sale of premixed cocktails, wine by the glass, premixed wine and spirits cocktails, or premixed wine drinks through takeout or delivery service. (1) An endorsement is available for the sale of premixed cocktails, wine by the glass, premixed wine and spirits cocktails, or premixed wine drinks through takeout and delivery service as set forth in ((~~section 1(3), chapter 279, Laws of 2023~~)) RCW 66.24.710. There is no fee for a licensee to apply for and obtain this endorsement.

(2) As set forth in ((~~section 1 (2) and (3), chapter 279, Laws of 2023~~)) RCW 66.24.710:

(a) An endorsement is available to spirits, beer, and wine restaurants to sell premixed cocktails, wine by the glass, or premixed wine and spirits cocktails through takeout or delivery service. This endorsement does not authorize the sale of full bottles of spirits for off-premises consumption.

(b) An endorsement is also available to beer and wine restaurant licensees to sell wine or premixed wine drinks by the glass through takeout or delivery service.

(3) This endorsement is separate from the endorsements in WAC 314-03-500 and 314-03-510 that authorize the sale through takeout or delivery service of manufacturer sealed alcohol products at retail, or growlers.

(4) In order to obtain and maintain the endorsement described in this section, licensees must meet the following requirements:

(a)(i) For spirits, beer, and wine restaurants, food that qualifies as a complete meal under WAC 314-02-010 must be sold with the premixed cocktails, wine by the glass, or premixed wine and spirits cocktails authorized for sale through takeout or delivery service under this endorsement, as set forth in RCW 66.24.710.

(ii) Spirits, beer, and wine restaurants can sell up to three ounces of spirits per complete meal.

((~~(ii)~~)) (iii) For beer and wine restaurants, a food item that qualifies as minimum food service under WAC 314-02-010 must be sold with the wine or premixed wine drinks by the glass authorized for sale through takeout or delivery service under this endorsement, as set forth in RCW 66.24.710.

(b) The alcohol products authorized for sale through takeout or delivery service under this endorsement must be prepared the same day they are sold.

(c) The alcohol products authorized for sale through takeout or delivery service under this endorsement must be packaged in a container that has been sealed in a manner designed to prevent consumption without removal of the tamper-evident lid, cap, or seal, as set forth in RCW 66.24.710. For the purposes of this subsection, "tamper-evident" means a lid, cap, or seal that visibly demonstrates when a container has been opened. Tape is not a tamper-evident seal. The following list of examples is not comprehensive and is not intended to capture all of the possible types of allowed or disallowed containers:

(i) Examples of containers that are allowed:

(A) Containers with a screw top cap or lid that breaks apart when the container is opened.

(B) Containers with a plastic heat shrink wrap band, strip, or sleeve extending around the cap or lid to form a seal that must be broken when the container is opened.

(C) Vacuum or heat-sealed pouches without holes or openings for straws.

(ii) Examples of containers that are not allowed:

(A) Containers with lids with sipping holes or openings for straws.

(B) Containers such as styrofoam, paper, or plastic cups that lack a tamper-evident lid, cap, or seal.

(d) The containers that the alcohol products authorized for sale under this endorsement are packaged in must be clearly marked or labeled with the words "CONTAINS ALCOHOL, FOR PERSONS 21+" in a size and manner that is legible and readily visible. If a container of alcohol authorized for sale under this endorsement is enclosed inside a bag, box, or other packaging before it is provided to the customer through takeout or delivery service, the exterior of the bag, box, or other packaging must be clearly marked or labeled with the words "CONTAINS ALCOHOL, FOR PERSONS 21+" in a size and manner that is legible and readily visible.

(e) To deter public consumption or consumption in a vehicle of premixed cocktails, wine by the glass, premixed wine and spirits cocktails, and premixed wine drinks sold through takeout or delivery service, licensees may not put ice directly into the containers that the alcohol products authorized for sale under this endorsement are packaged in, except for frozen or blended drinks. Ice may be provided separately along with the takeout or delivery order.

(f) The premixed cocktails, wine by the glass, premixed wine and spirits cocktails, and premixed wine drinks authorized for sale through takeout or delivery service under this endorsement must be placed in the trunk of the vehicle or beyond the immediate reach of the driver or any passengers in compliance with open container requirements in RCW 46.61.519 before being transported off the licensee's premises.

(g) If the premixed cocktails, wine by the glass, premixed wine and spirits cocktails, and premixed wine drinks authorized for sale under this endorsement are sold through delivery service:

(i) Licensees must comply with the requirements in the consumer orders, internet sales, and delivery rules in this title, except to the extent that those rules prohibit the sale of nonfactory sealed containers. For these requirements, see WAC 314-03-020 through 314-03-040.

(ii) As set forth in RCW 66.24.710, delivery must be made by an employee of the licensed business who is at least 21 years of age and holds a class 12 mandatory alcohol server training (MAST) permit under chapter 314-17 WAC. Delivery may not be made by third-party service providers.

(iii) At the time of delivery, the employee making the delivery must verify that the person receiving the delivery is at least 21 years of age using an acceptable form of identification in WAC 314-11-025. See RCW 66.44.270.

(iv) As set forth in ((~~section 1(8), chapter 279, Laws of 2023~~)) RCW 66.24.710, upon delivery of the alcohol product, the signature of the person age 21 or over receiving the delivery must be obtained. Delivery sales records must meet the requirements in the consumer orders, internet sales, and delivery rules. For general record retention requirements, see WAC 314-11-095.

(v) If no person age 21 or over is present to accept the alcohol product at the time of delivery, the alcohol product must be returned to the licensee. An alcohol product may not be left unattended at a delivery location.

(vi) Delivery of an alcohol product may not be made to any person who shows signs of intoxication. See RCW 66.44.200.

(h)(i) In addition to the signs required by WAC 314-11-060, signs provided electronically by the board regarding public consumption and transportation of any alcohol products sold through takeout or delivery service must be posted in plain view at:

(A) The main entrance to the area of the premises where alcohol products are sold; and

(B) The areas of the premises where alcohol products are picked up for takeout or delivery service.

(ii) The signs will be designed to remind customers purchasing alcohol products through takeout or delivery service that they must comply with applicable laws and rules including, but not limited to, restrictions on consuming alcohol in public in RCW 66.44.100 and restrictions on drinking or having an open container in a vehicle in RCW 46.61.519.

((~~(4)~~)) (5) In addition to the requirements listed in this section, licensees must comply with all applicable requirements in Title 66 RCW, Title 314 WAC, and any other applicable laws and rules including, but not limited to, restrictions on sales to minors and intoxicated persons in chapter 66.44 RCW and WAC 314-16-150.

((~~(5)~~)) (6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Alcohol product" or "alcoholic beverage" means liquor as defined in RCW 66.04.010.

(b) "Premixed cocktail" means a drink made by combining spirits with other alcoholic or nonalcoholic beverages and ingredients including, but not limited to, fruit juice, carbonated beverages, flavorings, or cream.

(c) "Premixed wine and spirits cocktail" means a drink made by combining wine and spirits with other alcoholic or nonalcoholic beverages and ingredients including, but not limited to, fruit juice, carbonated beverages, flavorings, or cream.

(d) "Premixed wine drink" means a drink made by combining wine with nonalcoholic beverages and ingredients including, but not limited to, fruit juice, carbonated beverages, flavorings, or cream. A premixed wine drink may not include alcoholic beverages other than wine.

(e) "Spirits" has the same meaning as defined in RCW 66.04.010.

(f) "Wine" has the same meaning as defined in RCW 66.04.010.

((~~(6)~~)) (7) The delivery service endorsement described in this section expires July 1, 2025, as set forth in ((~~section 1(3), chapter 279, Laws of 2023~~)) RCW 66.24.710.

OTS-5069.3

NEW SECTION

WAC 314-03-600 Takeout/delivery endorsement comparison table.

Meal Required		Endorsement					
		Takeout or Delivery			Takeout Only		
		Takeout/Delivery - Factory Sealed Containers WAC 314-03-500	Takeout/Delivery - Premixed Cocktails/Wine WAC 314-03-505	Growlers Takeout/Delivery WAC 314-03-510	Off premises WAC 314-02-045; 314-02-070	Off premises sale wine WAC 314-02-015	Spirits/beer/wine keg to go WAC 314-02-015
License Type	Beer/wine restaurant	Y	Y*	N	N	n/a	n/a
	Spirits/ beer/wine restaurant	Y	Y	N	n/a	N	N
	Tavern	N	n/a	N	N	n/a	n/a
	Winery	n/a	n/a	N	n/a	n/a	n/a
	Brewery	n/a	n/a	N	n/a	n/a	n/a
	Distillery	n/a	n/a	n/a	n/a	n/a	n/a

Third-Party Delivery Allowed		Endorsement					
		Takeout or Delivery			Takeout Only		
		Takeout/Delivery - Factory Sealed Containers WAC 314-03-500	Takeout/Delivery - Premixed Cocktails/Wine WAC 314-03-505	Growlers Takeout/Delivery WAC 314-03-510	Off premises WAC 314-02-045; 314-02-070	Off premises sale wine WAC 314-02-015	Spirits/beer/wine keg to go WAC 314-02-015
License Type	Beer/wine restaurant	N	N*	N	N	n/a	n/a
	Spirits/ beer/wine restaurant	N	N	N	n/a	N	N
	Tavern	N	n/a	N	N	n/a	n/a
	Winery	n/a**	n/a	N	n/a	n/a	n/a
	Brewery	n/a**	n/a	N	n/a	n/a	n/a
	Distillery	n/a**	n/a	n/a	n/a	n/a	n/a

* Wine drinks only
** Third-party delivery authorized by statute in RCW 66.20.410, 66.24.170, 66.24.240, 66.24.244.

OTS-4976.3

AMENDATORY SECTION (Amending WSR 12-17-006, filed 8/1/12, effective 9/1/12)

WAC 314-11-040 ((What)) Permissible duties ((can)) of an employee under ((twenty-one)) 21 years of age ((perform)) on a licensed premises((?)). A person must be ((twenty-one)) 21 years of age or older to be employed in the sale, handling, or service of liquor, except as provided in this chapter.

(1) Per RCW 66.44.340 and RCW 66.44.350, persons between ((eighteen and twenty-one)) 18 and 21 years of age may perform the following duties:

	Duties 18, 19, and 20 year old employees may perform, as long as there is a person ((twenty-one)) 21 years of age or older on duty supervising the sale of liquor	**Duties 18, 19, and 20 years old employees may not perform**
(a) In a grocery store or beer/wine specialty shop:	■ Sell, stock, and handle beer and wine; and ■ Deliver beer and/or wine to a customer's car with the customer (for the purposes of this rule, there is no minimum age requirement for an employee of a grocery store or a beer/wine ((speciality)) specialty shop to deliver beer and/or wine to a customer's car with the customer).	Supervise employees who sell, stock, or handle beer and/or wine.
(b) In a spirits retail business:	■ As long as there are at least two supervisors at least ((twenty-one)) 21 years of age on duty, persons 18, 19, and 20 years old may sell, stock, and handle spirits. ■ Deliver spirits to a customer's car with the customer (for purposes of this rule, there is no minimum age requirement for an employee of a spirits retailer to deliver spirits to a customer's car with the customer).	Supervise employees who sell, stock, or handle spirits.
(c) In an establishment that sells liquor for on-premises consumption:	■ Take orders for, serve, and sell liquor in areas classified as open to persons under ((twenty-one)) 21 years of age; and	Functions of a bartender, including:

	Duties 18, 19, and 20 year old employees may perform, as long as there is a person ((~~twenty-one~~)) 21 years of age or older on duty supervising the sale of liquor	Duties 18, 19, and 20 years old employees may not perform
	■ Enter areas designated as off-limits to persons under ((~~twenty-one~~)) 21 years of age to perform duties such as picking up liquor for service in other parts of the establishment; cleaning up, setting up, and arranging tables; delivering messages; serving food; and seating patrons; provided the employee does not remain in the area any longer than is necessary to perform the duties.	■ ((~~Mixing drinks~~)) Pouring spirits or mixing cocktails; ■ Drawing beer or wine from a tap or spigot; ■ Opening or pouring beer or wine ((~~anywhere except at the patrons table~~)) in an area classified by the board as off limits to any person under the age of 21; and ■ Providing an employee spirits((~~,~~)) or beer by the pitcher or glass, or wine by the carafe or glass for delivery to a customer.
(d) In a spirits retail business:		Supervise employees who sell, stock, or handle spirits.

(2) Per RCW 66.44.316 and 66.44.318, the following persons that are ((~~eighteen, nineteen, or twenty~~)) 18, 19, or 20 years of age may remain on licensed premises or portions of premises that are restricted from persons under ((~~twenty-one~~)) 21 years of age, but only during the course of his or her employment:

(a) Persons performing janitorial services during the hours when there is no sale, service, or consumption of liquor on the premises;

(b) Employees of amusement device companies for the purpose of installing, maintaining, repairing, or removing any amusement device;

(c) Security or law enforcement officers and firefighters during the course of their official duties and if they are not the direct employees of the licensee; and

(d) Professional musicians, per WAC 314-11-045.

OTS-4977.3

AMENDATORY SECTION (Amending WSR 10-12-124, filed 6/2/10, effective 7/3/10)

WAC 314-17-015 ((~~What are the two~~)) Types of alcohol server training permits((~~?~~)). There are two types of permits for persons who serve, mix, sell, or who supervise the sale of, alcohol at a retail licensed premises.

Class 12 permit		Class 13 permit	
(1)	A class 12 permit holder must be at least ((~~twenty-one~~)) 21 years of age.	(5)	A class 13 permit holder must be at least ((~~eighteen~~)) 18 years of age.
(2)	A class 12 permit is required for any person who:	(6)	A class 13 permit is required for any person who:
(a)	Manages a retail licensed premises licensed to sell alcoholic beverages for on-premises consumption;	(a)	Takes orders for alcoholic beverages for on-premises consumption;
(b)	Sells, mixes or draws from a dispensing device alcoholic beverages for on-premises consumption; or	(b)	Delivers alcoholic beverages to customers for on-premises consumption; or

Class 12 permit	Class 13 permit
(c) Supervises a class 13 permit holder.	(c) Opens or pours beer or wine into a customer's glass ((~~at a customer's table~~)) without opening or pouring in an area classified by the board as off limits to any person under the age of 21.
(3) A class 12 permit includes all authorities granted under a class 13 permit.	(7) See RCW 66.20.310 for exceptions for grocery store employees.
(4) See RCW 66.20.310 for exceptions for grocery store employees.	

(8) Upon a temporary absence of a class 12 permit holder, a class 13 permit holder may perform the functions of a class 12 permit holder until a class 12 permit holder arrives to fulfill those duties provided that a class 13 permit holder:

(a) Is ((~~twenty-one~~)) 21 years of age or older; and

(b) Functions as a class 12 permit holder for no more than ((~~thirty~~)) 30 calendar days per year.

(9) See RCW 66.44.310, 66.44.316, 66.44.318, and 66.44.350 for additional information about permissions and restrictions for ((~~eighteen to twenty~~)) 18 to 20-year-old persons.

WSR 24-04-077
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed February 5, 2024, 7:40 a.m., effective March 7, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of revenue is amending this rule to recognize provisions of SHB 1163 (2023) which added a new leasehold excise tax exemption for all leasehold interests in the public or entertainment areas, as well as some of the office areas, of a qualified arena that: (a) Has a seating capacity of more than 4,000; (b) is located on city-owned land; (c) is located in a city with a population of over 100,000; and (d) the cost of constructing improvements to the arena were 100 percent incurred by private entities that were not reimbursed by the public owner. Taxpayers claiming an exemption for this type of arena must file a complete tax performance report as provided in RCW 82.32.534.

Citation of Rules Affected by this Order: Amending WAC 458-29A-400 Leasehold excise tax—Exemptions.

Statutory Authority for Adoption: RCW 82.29A.140.

Other Authority: RCW 82.29A.130.

Adopted under notice filed as WSR 23-23-020 on November 2, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 5, 2024.

Brenton Madison
Rules Coordinator

OTS-5021.1

AMENDATORY SECTION (Amending WSR 22-24-105, filed 12/6/22, effective 1/6/23)

WAC 458-29A-400 Leasehold excise tax—Exemptions. (1) **Introduction.**

(a) This rule explains the exemptions from leasehold excise tax provided by RCW 82.29A.125, 82.29A.130, 82.29A.132, 82.29A.134, 82.29A.135, and 82.29A.136. To be exempt from the leasehold excise tax, the property subject to the leasehold interest must be used exclusively for the purposes for which the exemption is granted.

(b) This rule also explains the expiration date for new tax preferences for the leasehold excise tax pursuant to the language found at RCW 82.32.805.

(c) **Rule examples.** This rule includes a number of examples that identify a set of facts and then states a conclusion. The examples should be used only as a general guide. The department of revenue (department) will evaluate each case on its particular facts and circumstances and apply both this rule and other statutory and common law authority.

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

(a) "New tax preference" means a tax preference that initially takes effect after August 1, 2013, or a tax preference in effect as of August 1, 2013, that is expanded or extended after August 1, 2013, even if the expanding or extending legislative amendment includes any other changes to the tax preference.

(b) "Tax preference" has the same meaning as in RCW 43.136.021 with respect to any state tax administered by the department, except does not include the Washington estate and transfer tax in chapter 83.100 RCW.

(3) **Operating properties of a public utility.**

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

(b) **Example.** Assume ABC Railroad Company is a public utility. Tracks leased to ABC Railroad Company are exempt from leasehold excise tax because ABC Railroad Company is a public utility assessed and taxed under chapter 84.12 RCW and the tracks are part of the railroad's operating properties.

(4) **Student housing at public and nonprofit schools and colleges.**

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

(b) **Example.** Assume State Public University leases a building to use as a dormitory for its students. The leasehold interest associated with this building is exempt from the leasehold excise tax. This is because the dormitory is used to house State Public University's students.

(5) **Subsidized housing.**

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

(b) **Example.** Assume an apartment building and the property on which it is located is:

• Owned in fee simple by the state of Washington; and

• Used as subsidized housing for residents subject to income qualification requirements.

If the United States Department of Housing and Urban Development holds the leasehold interest on the property it is exempt from leasehold excise tax. This is because the property is owned in fee simple by the state of Washington, used for subsidized housing, and the residents are subject to income qualification requirements.

(6) **Nonprofit fair associations.**

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

(b) **Example.** Assume a leasehold interest held by Local Nonprofit Fair Association is exempt from leasehold excise tax. Local Nonprofit Fair Association subleases some of the buildings on the fairgrounds to private parties for storage during the winter. These subleases are subject to the leasehold excise tax.

(7) **Public employee housing.**

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

(b) **Examples.**

(i) A park ranger employed by the National Park Service, an agency of the United States government, resides in a house furnished by the agency at a national park. The ranger is required to be on call 24 hours a day to respond to requests for assistance from park visitors staying at an adjacent overnight campground. The use of the house is exempt from leasehold excise tax because the lodging enables the ranger to properly perform her duties.

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

(iii) A professor employed by State University is given the choice of residing in university-owned campus housing free of charge or of residing elsewhere and receiving a cash allowance in addition to her regular salary. If she elects to reside in the campus housing free of charge, the value of the lodging furnished to the professor would

be subject to leasehold excise tax because her residence on campus is not required for her to perform properly the duties of her employment.

(8) **Interests held by enrolled Indians.**

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

(b) Any leasehold interest held by an enrolled Indian or a tribe, where the leasehold is located within the boundaries of an Indian reservation, on trust land, on Indian country, or is associated with the treaty fishery or some other treaty right, is not subject to leasehold excise tax.

(c) **Example.** Assume an enrolled member of the Puyallup Tribe leases port land at which the member keeps his or her boat, and the boat is used in a treaty fishery. The leasehold interest is exempt from the leasehold tax. For more information on excise tax issues related to enrolled Indians, see WAC 458-20-192 (Indians—Indian country).

(9) **Leases on Indian lands to non-Indians.**

(a) Leasehold interests held by non-Indians (not otherwise exempt from tax due to the application of the balancing test described in WAC 458-20-192) in any real property of any Indian or Indian tribe, band, or community that is held in trust by the United States or subject to a restriction against alienation imposed by the United States are exempt from leasehold excise tax if the amount of contract rent paid is greater than or equal to 90 percent of fair market rental value. In determining whether the contract rent of such lands meets the required level of 90 percent of market value, the department will use the same criteria used to establish taxable rent under RCW 82.29A.020 (2)(g) and WAC 458-29A-200.

(b) **Example.** Harry leases land held in trust by the United States for the Yakama Nation for the sum of $900 per month. The fair market value for similar lands used for similar purposes is $975 per month. The lease is exempt from the leasehold excise tax because Harry pays at least 90 percent of the fair market value for the qualified lands. For more information on the preemption analysis and other tax issues related to Indians, see WAC 458-20-192.

(10) **Annual taxable rent is less than $250.**

(a) Leasehold interests for which the taxable rent is less than $250 per year are exempt from leasehold excise tax. For the purposes of this exemption, if the same lessee has a leasehold interest in two or more contiguous parcels of property owned by the same lessor, the taxable rent for each contiguous parcel will be combined and the combined taxable rent will determine whether the threshold established by this exemption has been met. To be considered contiguous, the parcels must be in closer proximity than merely within the boundaries of one piece of property. When determining the annual leasehold rent, the department will rely upon the actual substantive agreement between the parties. Rent payable pursuant to successive leases between the same parties for the same property within a 12-month period will be combined to determine annual rent; however, a single lease for a period of less than one year will not be projected on an annual basis.

(b) **Examples.**

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

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

(iii) Grace leases a lot from the City of Flora, from which she sells crafts at different times throughout the year. She pays $50 per month for the lot, and has a separate lease for each season during which she sells. She has one lease from May through September, and a separate lease for the time between Thanksgiving and Christmas, which might run 30 to 40 days, depending on the year. The leases will be combined for the purposes of determining the leasehold excise tax. They relate to the same piece of property, for the same activity by the same lessee, and occur within the same year.

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

(11) **Leases for a continuous period of less than 30 days.** Leasehold interests that provide use and possession of public property or property of a community center which is exempt from property tax for a continuous period of less than 30 days are exempt from leasehold excise tax. In determining the duration of the lease, the department will rely upon the actual agreement and/or practice between the parties. If a single lessee is given successive leases or lease renewals of the same property, the arrangement is considered a continuous use and possession of the property by the same lessee. A leasehold interest does not give use and possession for a period of less than 30 days based solely on the fact that the lessor has reserved the right to use the property or to allow third parties to use the property on an occasional, temporary basis.

(12) **Month-to-month leases in residential units to be demolished or removed.**

(a) Leasehold interests in properties rented for residential purposes on a month-to-month basis pending destruction or removal for construction of a public highway or public building are exempt from the leasehold excise tax. Thus, if the state or other public entity has acquired private property for purposes of building or expanding a highway, or for the construction of public buildings at an airport, the capitol campus, or some other public facility, and the public entity rents the property for residential purposes on a month-to-month basis pending destruction or removal for construction, these leases do not create taxable leasehold interests. This exemption does not require evidence of imminent removal of the residential units; the term

"pending" merely means "while awaiting." The exemption is based upon the purpose for which the public entity holds the units.

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

(13) **Public works contracts.**

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

(b) **Example.** Assume Tinker Construction is a contractor performing work to construct a second deck on the Nisqually Bridge pursuant to a public works contract between the state of Washington and Tinker Construction. During construction of the second deck on the Nisqually Bridge any leasehold interest in real or personal property created for Tinker Construction solely for the purpose of performing the work necessary under the terms of the contract is exempt from leasehold excise tax.

(14) **Correctional industries in state adult correctional facilities.**

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

(b) **Examples.**

(i) Assume ABC Retail Company, a for-profit corporation, operates and manages a business within a state prison under an agreement between it and the department of corrections. ABC Retail Company is exempt from leasehold excise tax for its use and possession of state property.

(ii) Assume ABC Charitable Society, a nonprofit organization, operates and manages a business within a state prison under an agreement between it and the department of corrections. ABC Charitable Society is exempt from leasehold excise tax for its use and possession of state property.

(15) **Camp facilities for persons with disabilities.**

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

(b) **Example.** Assume a county park with camping facilities is leased to Charity Campgrounds, a nonprofit charitable organization that allows the property to be used by the general public for recreational activities throughout the year and as a camp for disabled persons for two weeks during the summer. Charity Campgrounds is exempt from leasehold excise tax because the nonprofit allows the property to

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

(16) **Public or entertainment areas of certain baseball stadiums.**

(a) Leasehold interests in public or entertainment areas of a baseball stadium with natural turf and a retractable roof or canopy, located in a county with a population of over 1,000,000 people, with a seating capacity of over 40,000, and constructed on or after January 1, 1995, are exempt from leasehold excise tax.

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

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

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

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

(20) **Sales/leasebacks by regional transit authorities.** All leasehold interests in property of a regional transit authority or public corporation created under RCW 81.112.320 under an agreement under RCW 81.112.300 are exempt from leasehold excise tax. RCW 82.29A.134.

(21) **Interests consisting of 3,000 or more residential and recreational lots.** All leasehold interests consisting of 3,000 or more residential and recreational lots that are or may be subleased for residential and recreational purposes are exempt from leasehold excise tax. Any combination of residential and recreational lots totaling at least 3,000 satisfies the requirement of this exemption. RCW 82.29A.136.

(22) **Historic sites owned by the United States government or municipal corporations.** All leasehold interests in property listed on any federal or state register of historical sites are exempt from leasehold excise tax if the property is:

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

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

(23) **Amphitheaters.**

(a) All leasehold interests in the public or entertainment areas of an amphitheater are exempt from leasehold excise tax if a private entity is responsible for 100 percent of the cost of constructing the amphitheater which is not reimbursed by the public owner, both the public owner and the private lessee sponsor events at the facility on a regular basis, the lessee is responsible under the lease or agreement to operate and maintain the facility, and the amphitheater has a seating capacity of over 17,000 reserved and general admission seats and is in a county that had a population of over 350,000, but less than 425,000 when the amphitheater first opened to the public.

(b) For the purposes of this subsection, "public or entertainment areas" include box offices or other ticket sales areas, entrance gates, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas including lawn seating areas and suites, stages, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" do not include office areas used predominately by the lessee.

(24) **Military housing.**

(a) All leasehold interests in real property used for the placement of housing that consists of military housing units and ancillary supporting facilities are exempt from leasehold excise tax if the property is situated on land owned in fee by the United States, is used for the housing of military personnel and their families, and is a development project awarded under the military housing privatization initiative of 1996, 10 U.S.C. Sec. 2885, as existing on June 12, 2008.

(b) For the purposes of this subsection, "ancillary supporting facilities" means facilities related to military housing units, including facilities to provide or support elementary or secondary education, child care centers, day care centers, child development centers, tot lots, community centers, housing offices, dining facilities, unit offices, and other similar facilities for the support of military housing.

(25) **Community colleges and technical colleges.**

(a) All leasehold interests in facilities owned or used by a community college or technical college are exempt from leasehold excise tax if the leasehold interest provides:

(i) Food services for students, faculty, and staff;

(ii) The operation of a bookstore on campus; or

(iii) Maintenance, operational, or administrative services to the community college or technical college.

(b) Provisions of RCW 82.32.805 and 82.32.808 do not apply to the exemption specified in this subsection.

(26) **Anaerobic digesters.**

(a) Beginning July 1, 2018, all leasehold interests in buildings, machinery, equipment, and other personal property which are used primarily for the operation of an anaerobic digester, the land upon which this property is located, and land that is reasonably necessary in the operation of an anaerobic digester are exempt from leasehold taxes for

a period of six years from the date on which the facility or the addition to the existing facility becomes operational.

(b) Claims for the exemption described in (a) of this subsection must be filed with the department on the form *Leasehold excise tax exemption to operate an anaerobic digester* available at https://dor.wa.gov. Once filed, the exemption is valid for six assessment years following the date on which the facility or the addition to the existing facility becomes operational and may not be renewed. The department must verify and approve claims as it determines to be justified and in accordance with this subsection. No claims may be filed after December 31, 2024.

(c) For the purposes of this subsection, "anaerobic digester" means a facility that processes organic material into biogas and digestate using microorganisms in a decomposition process within a closed, oxygen-free container as well as the equipment necessary to process biogas or digestate produced by an anaerobic digester into marketable coproducts including, but not limited to, biogas conditioning, compression, nutrient recovery, and electrical generation equipment. See RCW 82.08.900.

(27) **Exemptions for public or entertainment areas of certain arenas.** Leasehold interests in the public or entertainment areas of ((~~an arena~~)) the following two types of arenas are exempt from the leasehold excise tax ((~~if the arena has~~)):

(a) An arena with a seating capacity of more than 2,000((~~, and is~~)); located on land owned by a city with a population over 200,000; and within a county with a population of less than 1,500,000. For the purposes of this ((~~subsection~~)) paragraph, the term "public or entertainment areas" has the same meaning as set forth in subsection (23) of this rule.

(b) Beginning October 1, 2023, an arena with a seating capacity of more than 4,000; located on land owned by, and within, a city with a population over 100,000; and private entities were responsible for 100 percent of the cost of constructing improvements to the arena which were not reimbursed by the public owner. For the purposes of this paragraph, "public or entertainment areas" has the same meaning as set forth in subsection (23) of this rule, except that it also includes office areas used predominately by the lessee.

(i) A taxpayer claiming an exemption for this type of arena must file a complete tax performance report as provided in RCW 82.32.534.

(ii) This exemption does not apply to leasehold interests on or after October 1, 2033.

(28) **Certain facilities owned by the state parks and recreation commission.** Beginning January 1, 2023, leasehold interests in facilities owned by the state parks and recreation commission that are listed on the national register of historic places or the Washington heritage register are exempt from leasehold excise tax. This exemption expires January 1, 2034.

(29) **Electric vehicle infrastructure.**

(a) Until July 1, 2025, leasehold interests in public lands for the purpose of installing, maintaining, and operating electric vehicle infrastructure are exempt from leasehold excise tax.

(b) For purposes of this subsection, the following definitions apply:

(i) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any

standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(ii) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(iii) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, battery exchange stations, fueling stations that provide hydrogen for fuel cell electric vehicles, green electrolytic hydrogen production facilities, and renewable hydrogen production facilities. See RCW 82.29A.125.

(iv) "Green electrolytic hydrogen" means hydrogen produced through electrolysis, and does not include hydrogen manufactured using steam reforming or any other conversion technology that produces hydrogen from a fossil fuel feedstock.

(v) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(vi) "Renewable hydrogen" means hydrogen produced using renewable resources both as the source for hydrogen and the source for energy input into the production process.

(vii) "Renewable resource" means: Water, wind, solar energy; geothermal energy; renewable natural gas; renewable hydrogen; wave, ocean, or tidal power; biodiesel fuel not derived from crops raised on land cleared from old growth or first growth forests; or biomass energy.

(30) **Expiration date for new tax preferences.**

(a) RCW 82.29A.025 incorporates the language found at RCW 82.32.805 establishing the expiration date of new tax preferences for the leasehold excise tax.

(i) Generally, every new tax preference expires on the first day of the calendar year that is subsequent to the calendar year that is 10 years from the effective date of the tax preference.

(ii) A future legislative amendment that expands a tax preference does not extend the tax preference beyond the period provided in this subsection unless an extension is expressly and unambiguously stated in the legislative amendment.

(b) This subsection does not apply if legislation creating a new tax preference includes an expiration date for the new tax preference.

(c) This subsection does not apply to an existing tax preference that is amended to clarify an ambiguity or correct a technical inconsistency. Future enacted legislation intended to make such clarifications or corrections must explicitly indicate that intent.

WSR 24-04-097
PERMANENT RULES
SECRETARY OF STATE
[Filed February 7, 2024, 10:27 a.m., effective March 9, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: These proposed rules are to institute random assignment of initiative numbers and update the filing fee. The filing fee has been unchanged since 1913 and will be updated using the rate of inflation. Changing the number assignment system will clarify the difference between the two types of initiatives, year of filing, and employ a randomly assigned number.

Citation of Rules Affected by this Order: New WAC 434-379-0071; and amending WAC 434-379-005.

Statutory Authority for Adoption: RCW 29A.04.611.

Adopted under notice filed as WSR 24-02-096 on January 3, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 1, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 7, 2024.

Amanda Doyle
Chief of Staff

OTS-4871.5

AMENDATORY SECTION (Amending WSR 17-12-090, filed 6/6/17, effective 7/7/17)

WAC 434-379-005 Filing of an initiative or referendum—Fee—Required documents. (1) A person desiring to file with the secretary of state a proposed initiative to the people, initiative to the legislature, or referendum measure may do so by filing the following documents:

((~~(1)~~)) (a) A legible copy of the measure proposed, or the act or part of such act on which a referendum is desired;

((~~(2) An~~)) (b) A signed affidavit declaring under penalty of perjury:

((~~(a)~~)) (i) That the person submitting the proposed measure is over ((~~eighteen~~)) 18 years of age and competent to testify;

((~~(b)~~)) (ii) That the person submitting the proposed measure is a registered voter in the state of Washington;

((~~(c)~~)) (iii) Whether the proposed measure is an initiative to the people, initiative to the legislature, or referendum; and

((~~(d)~~)) (iv) The subject of the initiative, or the bill number of the legislation being referred; and

((~~(3)~~)) (c) A nonrefundable filing fee of ((~~five dollars~~)) $156 for each measure submitted.

(2) The secretary may update the amount of the filing fee in subsection (1)(c) of this section at the beginning of each calendar year prior to the first day for initial filing of proposed initiatives to the people for that year.

(a) The filing fee amount may be updated by applying the federal bureau of labor statistics consumer price index inflation calculator rate, or its successor, to the original filing fee of five dollars set in 1913 for the state initiative and referendum process.

(b) Once the year's filing fee is determined, it shall be rounded down to the nearest whole dollar amount and posted online on the office of the secretary of state website, prior to the first day for initiative filing of proposed initiatives for that year.

(c) This filing fee amount shall be used for all initiative and referendum filings until the next fee adjustment is made.

(3) The proposed measure is not considered filed with the secretary of state until all documents and fees are filed, including any original versions required.

(4) Once the proposed text to an initiative or referendum is filed, the secretary of state shall submit the text with required information to the code reviser within one business day.

OTS-4888.4

NEW SECTION

WAC 434-379-0071 Maintenance of initiative and referendum series and assignment of serial numbers. (1) The secretary of state shall maintain a separate series of serial numbers for initiatives to the people, initiatives to the legislature, referendum bills, and referendum measures.

(a) The series for initiatives to the legislature shall be eight characters in length, commencing with the letters IL, followed by the last two digits of the calendar year in which the initiative to the legislature will be heard by the legislature and/or voted upon by the people, a hyphen after the last two digits of the calendar year, followed by a unique, randomly-selected three-digit number, as prescribed by subsection (2) of this section.

(b) The series for initiatives to the people shall be eight characters in length, commencing with the letters IP, followed by the last two digits of the calendar year in which the initiative to the people will be voted upon by the people, a hyphen after the last two digits of the calendar year, followed by a unique, randomly-selected three-digit number, as prescribed by subsection (2) of this section.

(c) The series for referendum measures shall commence with the letters RM, followed by a unique number which is the next on the list of referendum measure numbers sequentially.

(d) The series for referendum bills shall commence with the letters RB, followed by a unique number which is the next on the list of referendum bill numbers sequentially.

(2) For each annual series of serial numbers, there are 1,000 potential numbers to assign. The randomly-selected three-digit number shall be added to the five characters identifying the initiative type, year, and hyphen. As each available number is assigned, it shall be removed from the list. The secretary of state shall select the random three-digit serial number for each initiative to the legislature and initiative to the people using one of the following processes:

(a) A roll of three 10-sided dice numbered zero through nine shall determine the number for each digit of the number starting with the one's place, then the 10s place, and then the 100s place. Once selected, this number shall be used in creating the serial number for the proposed initiative following the two-character designation (IL or IP) and year, and the hyphen.

(i) If the digit zero is rolled for the one's, the 10s place, and the 100s place, the dice shall be rolled again to select a number between one and 999.

(ii) If the selected number has been previously assigned and is no longer available on the list, the roll of the dice must be repeated until a unique number is selected; or

(b) Another method approved by the secretary of state.

(3) Random number selection shall not occur until the final text has been submitted by the sponsor and prior to transmitting the proposed initiative to the attorney general per WAC 434-379-0073.

(a) The dice roll shall be conducted at the office of the secretary of state and recorded.

(b) The recording showing the dice roll shall be posted online to the secretary of state website.