(3) Notice of appeal for an appeal authorized under RCW 82.03.130(2), shall be filed and served in duplicate with the county auditor pursuant to RCW 84.08-.130 within thirty days of the mailing of the decision, and in accordance with such forms and requirements as may be designated by the board of tax appeals. The county auditor shall forthwith transmit one copy of the notice of appeal to the board of tax appeals. The petitioner shall mail a copy of the notice of appeal to all other parties. Appeals which have not been filed with the county auditor within the thirty day period provided above shall be dismissed. Appeals not otherwise complying with this subsection shall be continued or dismissed as deemed appropriate.

[Statutory Authority: RCW 82.03.170. 88-13-021 (Order 88-2), § 456-08-006, filed 6/7/88; Order 6, § 456-08-006, filed 4/1/75; Rule 11, filed 10/4/67.]

Reviser's note: See WAC 456-08-700 et seq. for rules relating to pleadings.

WAC 456-08-705 Rules relating to pleadings--Type of hearing. (1) If the appellant in its notice of appeal does not request a formal hearing under the Administrative Procedure Act (chapter 34.04 RCW), the department of revenue in those cases appealed under RCW 82.03.190 may within ten days of service of the notice of appeal upon it file with the clerk of the board written notice of its intention that the hearing be held pursuant to the Administrative Procedure Act.

(2) In appeals taken under RCW 82.03.130(2), the appellant may elect, within thirty days after the date of the filing with the county auditor of the notice of appeal required by RCW 84.08.130, to have the case determined by a formal hearing under the Administrative Procedure Act (chapter 34.04 RCW). Such election shall be made by service of a written notice upon the board. The board shall thereupon notify the appellant and respondent that such election has been made: *Provided, however*, That no such election can be made less than five days prior to the scheduled date of the informal hearing. *And provided further*, That in an appeal pursuant to RCW 84.08.130, the respondent (whether assessor or taxpayer) may elect a formal hearing by filing with the clerk of the board within 20 days from the receipt of the notice of appeal, notice of intention that the hearing be held pursuant to the Administrative Procedure Act.

(3) When appeals are taken from the same decision, order or determination by different parties, a timely request by any party permitted to elect a formal hearing will result in the appeal being conducted as a formal hearing.

(4) The failure to file with the board of tax appeals, without having obtained a continuance, of the notice of appeal in the form required by WAC 456-08-710 within thirty days of having elected a formal hearing shall constitute a withdrawal of the request for a formal hearing and the hearing shall proceed as an informal proceeding.

[Statutory Authority: RCW 82.03.170. 88-13-021 (Order 88-2), § 456-08-705, filed 6/7/88; Order 6, § 456-08-705, filed 4/1/75; Order 2, § 456-08-705, filed 7/2/70; Rule 13, filed 10/4/67.]

Title 458 WAC
REVENUE, DEPARTMENT OF

Chapters

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

WAC

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

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

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

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

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

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

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

Chapter 458-14 WAC
RECONVENING COUNTY BOARDS OF EQUALIZATION

WAC

WAC 458-14-020 Reconvening county boards of equalization--Contents of request. The request shall designate the board to be reconvened, shall specifically set forth the matters such board is to consider, shall contain a brief, definite statement of the facts which demonstrate that action upon the matter so specified would be within the powers of the reconvened board, and shall briefly and definitely state sufficient facts to reasonably demonstrate why the board should be reconvened.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 88-07-005 (Order PT 88-5), § 458-14-020, filed 3/3/88; Order PT 70-1, § 458-14-020, filed 4/8/70; Tax Commission Rule 2, filed 7/6/66.]

WAC 458-14-040 Limitations on reconvening. (1) No order reconvening the July session of the county board of equalization shall be issued subsequent to the 30th day of April immediately following the time the board was in regular session, except where the request for the order alleges sufficient facts to substantiate:

(a) A prima facie showing that there was either actual fraud on the part of the taxpayer or taxing officers; or

(b) That an error occurred because the taxing officers, acting with due diligence, did not have available all of the facts when performing their duties;

(2) Notwithstanding the provisions of subsection (1) of this section, in cases in which the department orders upon its own initiative the reconvening of a county board, the department has grounds to substantiate a prima facie showing that there was actual fraud on the part of the taxpayer or taxing officers or constructive fraud on the part of taxing officers;

(3) No board shall be reconvened to act upon or consider a change in the valuation of real estate when a bona fide purchaser or contract buyer of record has acquired an interest in such real property subsequent to the first day of July of the assessment year: *Provided*, That subject to the limitations in subsection (1) of this section, a board may be reconvened to act upon or consider a reduction in the valuation of real estate if the property sold subsequent to the first day of July of the assessment year and the sales price was less than ninety percent of the assessed value.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 88-07-005 (Order PT 88-5), § 458-14-040, filed 3/3/88; 85-17-016 (Order PT 85-3), § 458-14-040, filed 8/12/85; Order PT 70-1, § 458-14-040, filed 4/8/70; Tax Commission Rule 4, filed 7/6/66.]

WAC 458-14-045 Reconvening upon timely filed petition--Limitations. Notwithstanding the provisions of WAC 458-14-010 through 458-14-040 except for WAC 458-14-040(3):

(1) Any July session of the county board of equalization which has timely received a petition as required by WAC 458-14-120, and which has adjourned in accordance with WAC 458-14-075, shall reconvene upon a date set by the board to consider said timely filed petition.

(2) Any July session of the board may reconvene upon the request of the taxpayer or the assessor to consider a subsequent year(s) value when an order of the county board or the state board of tax appeals adjusting a value is issued after the convening of the July board of the subsequent year(s) and no intervening change of value has occurred and the request is filed with the board within thirty days of the order or a notice of a change sent by the assessor.

(3) No board shall reconvene later than three years after the adjournment of its regular session.

(4) No July session of the county board of equalization shall reconvene to consider any petition not timely filed except upon written order of the department of revenue or as provided in this section.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 88-07-005 (Order PT 88-5), § 458-14-045, filed 3/3/88; 85-17-016 (Order PT 85-3), § 458-14-045, filed 8/12/85; 82-19-012 (Order PT 82-6), § 458-14-045, filed 9/7/82.]

Chapter 458-15 WAC
HISTORIC PROPERTY

WAC

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

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

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

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

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

(1) "Act" means chapter 84.26 RCW.

(2) "Additional tax" means those additional taxes, interest, and penalties specified in RCW 84.26.090.

(3) "Agreement" means an instrument executed by an applicant and the local review board.

(4) "Applicant" means the owner(s) of record of property who submit(s) an application for special valuation.

(5) "Assessed value" means the true and fair value of the property for which each special valuation is sought.

(6) "Board" or "local review board" means any appointed committee designated by local ordinance to make determinations concerning the eligibility of historic properties for special valuation and to approve or deny applications therefor.

(7) "Cost" means the actual cost of rehabilitation, which cost shall be at least twenty-five percent of the assessed valuation of the historic property, exclusive of the assessed value attributable to the land, prior to rehabilitation.

(8) "County recording authority" means the county auditor or the county recording authority which records real property transactions.

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

(10) "Disqualification" means the loss of eligibility of a property to receive special valuation.

(11) "Eligible historic property" means a property determined by the board to be:

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

(b) Eligible for special valuation.

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

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

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

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

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

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

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

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

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

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

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

(b) The owner of the property; and

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

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

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

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

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

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

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

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

(1) Be an historic property;

(2) Fall within a class of historic property determined eligible for special valuation by the local legislative authority under an ordinance or administrative rule;

(3) Be rehabilitated at a cost which meets the definition set forth in RCW 84.26.020(2) within twenty-four months prior to the application for special valuation; and

(4) Be protected by an agreement between the owner and the board as described in RCW 84.26.050(2).

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

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

(1) Record the original agreement, the certification and the application with the county recording authority.

(2) Enter upon the assessment rolls for the subsequent year the special valuation as defined in WAC 458-15-015(13).

(3) The assessor shall calculate and enter on the assessment rolls a special value each succeeding year. The property shall receive the special valuation until:

(a) Ten assessment years have elapsed; or

(b) The special valuation is lost through disqualification or removal.

(4) Retain copies of all documents.

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

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

(1) Expiration of the ten-year special valuation period;

(2) Notice by the owner to remove the special valuation;

(3) Sale or transfer to an ownership making it exempt from taxation;

(4) Sale or transfer of the property through the exercise of the power of eminent domain;

(5) Sale or transfer to a new owner; and

(a) The property no longer qualifies as historic property; or

(b) The new owner does not sign the notice of compliance contained on the real estate excise tax affidavit;

(6) Determination by the board that the property no longer qualifies as historic property; or

(7) Determination by the board and notice to the assessor that the owner has failed to comply with the conditions established under RCW 84.26.050, chapter 254-20 WAC or the agreement.

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

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

(1) If the owner gives notice to discontinue the special valuation, the owner shall specify in the notice the effective date of removal.

(2) In case of sale or transfer, the date of disqualification shall be the date of the instrument of conveyance.

(3) If removal is based on a board decision, the board shall determine the effective date of disqualification to be the date of any disqualifying change in the property or the owner's noncompliance with conditions established under RCW 84.26.050. If the board does not specify the date of such an occurrence, then the date of the board order shall be the effective date of disqualification.

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

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

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

(1) No additional tax shall be levied prior to the assessor notifying the owner by mail, return receipt requested, that the property is no longer qualified for special valuation.

(2) Except as provided for in subsection (3) of this section, an additional tax shall be due which is the sum of the following:

(a) The cost shall be multiplied by the levy rate for each year the property received the special valuation.

(b) For the year of disqualification or removal, the cost multiplied by the levy rate shall be multiplied by a fraction, the denominator of which is the number of days in the current year and the numerator of which shall be the number of days in the current year the property received the special valuation.

(c) Interest at the statutory rate on delinquent property taxes shall be added for each year of special valuation from April 30th of that year to the effective date of disqualification or removal.

(d) A penalty in the amount of twelve percent of the sum of (a), (b) and (c) of this subsection.

(3) No additional tax shall be due if the disqualification or removal resulted solely from:

(a) Expiration of the ten-year special valuation period;

(b) Sale or transfer of the property to an ownership making it exempt from taxation;

(c) Alteration or destruction through no fault of the owner; or

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

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

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

(a) The delinquent property tax rate after that date; and

(b) Foreclosure as provided for in chapter 84.64 RCW.

Such additional tax when collected shall be distributed by the county treasurer in the same manner in

which current taxes applicable to the subject property are distributed.

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

WAC 458-15-100 Appeals. (1) The owner may appeal a determination of eligibility of special valuation by a local review board to superior court under RCW 34-.04.130 or to the legislative authority if local ordinances so provide.

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

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

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

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

WAC 458-15-120 Revaluation and new construction. (1) The assessor shall continue to revalue the historic property on the regular revaluation cycle, deducting the cost from the assessed value to determine the special valuation.

(2) While rehabilitation is being accomplished, the assessor shall assess the property as required by the new construction assessment dates contained in RCW 36.21-.080.

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

Chapter 458-16 WAC
PROPERTY TAX--EXEMPTIONS

WAC

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

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

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

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

[Statutory Authority: RCW 84.36.389 and 84.36.865. 88-13-041 (Order PT 88-8), § 458-16-030, filed 6/9/88; 83-19-029 (Order PT 83-5), § 458-16-030, filed 9/14/83; Order PT 74-6, § 458-16-030, filed 9/11/74.]

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

1985 through 1988 Taxes

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

Income Range		
$12,001 to $15,000	–	Exempt from 100% of excess levies.

1989 Taxes and Thereafter

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

[Statutory Authority: RCW 84.36.389. 88-02-008 (Order PT 87-8), § 458-16-050, filed 12/28/87. Statutory Authority: RCW 84.36.389 and 84.36.865. 83-19-029 (Order PT 83-5), § 458-16-050, filed 9/14/83. Statutory Authority: RCW 84.36.389. 81-05-018 (Order PT 81-6), § 458-16-050, filed 2/11/81; Order PT 74-6, § 458-16-050, filed 9/11/74.]

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

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

Late penalties:

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

Refunds:

Fees and penalties will be refunded if:

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

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

(3) A request for withdrawal of the application for exemption is received in writing prior to the department issuing a determination. The request shall include a signed statement clearly withdrawing the claim for exemption. The person requesting the withdrawal must be the same person who signed the application or another person authorized by the legal owner.

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

[Statutory Authority: RCW 84.36.389 and 84.36.865. 88-13-041 (Order PT 88-8), § 458-16-111, filed 6/9/88. Statutory Authority: RCW 84.36.865. 85-05-025 (Order PT 85-1), § 458-16-111, filed 2/15/85; 81-05-017 (Order PT 81-7), § 458-16-111, filed 2/11/81; Order PT 77-2, § 458-16-111, filed 5/23/77.]

WAC 458-16-130 Real property sold or acquired by property owner deemed to be exempt. As required by RCW 84.36.855, real property which is transferred or converted by an exempt body to taxable ownership or use or which is no longer exempt for any reason shall be subject to a prorata portion of taxes allocable to that property for the remaining portion of that year, after the date of the execution of the instrument of sale, contract or exchange, or the conversion to a taxable use or the date the property is no longer exempt as provided in RCW 84.40.350 through 84.40.390. Real property exempted pursuant to RCW 84.36.030, 84.36.037, 84.36.040, 84.36.050 and 84.36.060 is also subject to the provisions of RCW 84.36.810.

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

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

[Statutory Authority: RCW 84.36.389 and 84.36.865. 88-13-041 (Order PT 88-8), § 458-16-130, filed 6/9/88. Statutory Authority: RCW 84.36.865. 85-05-025 (Order PT 85-1), § 458-16-130, filed 2/15/85. Statutory Authority: RCW 84.36.389 and 84.36.865. 83-19-029 (Order PT 83-5), § 458-16-130, filed 9/14/83. Statutory Authority: RCW 84.36.865. 81-21-009 (Order PT 81-13), § 458-16-130, filed 10/8/81; 81-05-017 (Order PT 81-7), § 458-16-130, filed 2/11/81; Order PT 77-2, § 458-16-130, filed 5/23/77; Order PT 76-2, § 458-16-130, filed 4/7/76. Formerly WAC 458-12-148.]

WAC 458-16-210 Nonprofit, nonsectarian organizations. (1) The real and personal property owned by nonsectarian organizations is exempt from taxation, provided that: (a) The organization is nonprofit and is organized and conducted primarily for nonsectarian purposes, (b) the property is, except as provided in RCW 84.36.805 and subsections (2) and (4) of this section, used for character-building, benevolent, protective, rehabilitative social services directed at persons of all ages or used by a student loan agency and (c) if these organizations were not conducting these activities the government would provide this service.

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

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

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

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 84.36.865. 88-02-010 (Order PT 87-10), § 458-16-210, filed 12/28/87; 86-12-034 (Order PT 86-2), § 458-16-210, filed 5/30/86; 85-05-025 (Order PT 85-1), § 458-16-210, filed 2/15/85. Statutory Authority: RCW 84.36.389 and 84.36.865. 83-19-029 (Order PT 83-5), § 458-16-210, filed 9/14/83. Statutory Authority: RCW 84.36.865. 81-05-017 (Order PT 81-7), § 458-16-210, filed 2/11/81; Order PT 77-2, § 458-16-210, filed 5/23/77; Order PT 76-2, § 458-16-210, filed 4/7/76. Formerly WAC 458-12-205.]

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

(1) Day care centers, as defined by RCW 74.15.020;

(2) Preschools;

(3) Free public libraries;

(4) Orphanages and orphan asylums;

(5) Homes for the aged;

(6) Homes for the sick or infirm;

(7) Hospitals for the sick including any portion of the hospital building or other buildings used as a nurse's home or residence for hospital employees, or operated as a portion of the hospital unit;

(8) Outpatient dialysis facilities.

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

Property owned by an organization exempt under this rule which is irrevocably dedicated to the purposes of the organization is included in this exemption: *Provided,*

That the organization can evidence irrevocable intent to put the property to a qualifying use. The forms of proof set forth in WAC 458-16-200 may be utilized for this purpose. To be exempted, the property must be in use or under construction which is designed for use.

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

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

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

(9) The loan or rental of this property does not subject the property to tax if (a) the rents and donations received for the use of the portion of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; and (b) the property would be exempt from tax if owned by the organization to which it is loaned or rented. (RCW 84.36.805) Maintenance and operating expenses means those items of rental expense as allowed and defined in generally accepted accounting principles.

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

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

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

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

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

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

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

[Statutory Authority: RCW 84.36.865. 88-02-010 (Order PT 87-10), § 458-16-260, filed 12/28/87; 85-05-025 (Order PT 85-1), § 458-16-260, filed 2/15/85. Statutory Authority: RCW 84.36.389 and 84-.36.865. 83-19-029 (Order PT 83-5), § 458-16-260, filed 9/14/83. Statutory Authority: RCW 84.36.865. 81-05-017 (Order PT 81-7), § 458-16-260, filed 2/11/81; Order PT 77-2, § 458-16-260, filed 5/23/77; Order PT 76-2, § 458-16-260, filed 4/7/76. Formerly WAC 458-12-225.]

Chapter 458-18 WAC
PROPERTY TAX--ABATEMENTS, CREDITS, DEFERRALS AND REFUNDS

WAC

WAC 458-18-010 Deferral of special assessments and/or property taxes--Definitions. (1) "Claimant" means a person who is receiving a property tax exemption under RCW 84.36.381 through 84.36.389 and who either elects or is required under RCW 84.64.030 or 84-.64.050 to defer payment of the special assessments and/or real property taxes on his or her residence. If two individuals of a household seek to defer, they must determine between them as to who the claimant shall be.

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

(3) "Equity value" means the amount by which the true and fair value of a residence as shown on the county property tax rolls for the year the deferral is to be made exceeds the total amount of all liens, obligations and encumbrances against the property excluding the deferral liens.

(4) "Special assessment" means the charge or obligation imposed by a city, town, county or other municipal corporation upon property specially benefited by a local improvement as provided in chapters:

(a) 35.44 RCW—Local improvements—Assessments and reassessments (cities and towns)

(b) 36.88 RCW—County road improvement districts (counties)

(c) 36.94 RCW—Sewer, water and drainage systems (counties)

(d) 53.08 RCW—Powers (port districts)

(e) 54.16 RCW—Powers (public utility districts)

(f) 56.20 RCW—Utility local improvement districts (sewer districts)

(g) 57.16 RCW—Comprehensive plan—Local improvement districts (water districts)

(h) 86.09 RCW—Flood control districts—1937 Act (flood control)

(i) 87.03 RCW—Irrigation districts generally (irrigation)

along with any others that may be relevant.

The term does not include the charge or obligation for services specially benefiting property not involving the construction of permanent improvements to real property, e.g., mosquito control, weed control, etc.

(5) "Real property taxes" means ad valorem property taxes levied on a residence in this state. It includes foreclosure costs, interest and penalties accrued to the date the declaration for deferral is filed.

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

(7) "Lien" means any interest in property given to secure payment of a debt or performance of an obligation, and shall include a deed of trust. It shall include the total amount of assessments and/or property taxes deferred and the interest thereon.

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

WAC 458-18-020 Deferral of special assessments and/or property taxes--Qualifications for deferral. A person may defer payment of special assessments and/or real property taxes on his property that is receiving an exemption under RCW 84.36.381 through 84.36.389 on up to eighty percent of the amount of his equity value in said property if the following conditions are met:

(1) The claimant must have owned, at the time of filing, the residence on which the special assessment and/or real property taxes have been imposed. For purposes of this subsection a residence owned by a marital community or owned by cotenants shall be deemed to be owned by each spouse and cotenant. A claimant who has only a share ownership in cooperative housing, a life estate, a lease for life or a revocable trust does not satisfy the ownership requirement.

(2) If the amount deferred is to exceed one hundred percent of the claimants equity value in the land or lot only, the claimant must have and keep in force fire and casualty insurance in sufficient amount to protect the interest of the state of Washington and shall designate the state as a loss payee upon said policy. In no case shall the deferred amount exceed the amount of the insured value of the improvement plus the land value.

(3) In the case of special assessment deferral, the claimant must have opted for payment of such special assessments on the installment method if such method was available.

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

WAC 458-18-060 Deferral of special assessments and/or property taxes--Limitations of deferral--Interest. No deferral shall be granted if the liens created by the deferrals of special assessments and/or real property taxes equal or exceed eighty percent of the claimant's equity value in said property. Equity value will be determined as of January 1 in the year the taxes are to be deferred.

The liens shall include:

(1) The total amount of special assessments and/or real property taxes deferred, plus

(2) Interest on the amount deferred at the rate of eight percent per year, from the time it could have been paid before delinquency until said lien is paid. When a declaration is filed after the taxes are delinquent, interest at the rate of eight percent per year on the amount deferred will begin accruing on the date the declaration is filed and will continue until the obligation is paid.

[Statutory Authority: RCW 84.38.180. 88-13-042 (Order PT 88-9), § 458-18-060, filed 6/9/88; 84-21-010 (Order PT 84-4), § 458-18-060, filed 10/5/84; 81-21-008 (Order 81-12), § 458-18-060, filed 10/8/81; Order PT 76-1, § 458-18-060, filed 4/7/76.]

WAC 458-18-210 Refunds--Procedure--Interest. (1) Refunds provided for by chapter 84.69 RCW are made by one of the following two methods:

(a) The county legislative authority acts upon its own motion and orders a refund; or

(b) The taxpayer files a claim for refund with the county. Such claim shall be:

(i) Verified by the person who paid the tax, his guardian, executor or administrator; and

(ii) Filed within three years after making of the payment sought to be refunded; and

(iii) Stating the statutory ground upon which the refund is claimed.

(2) All claims for refunds must be certified as correct by the county assessor and treasurer and not be refunded until so ordered by the county legislative authority.

(3) For all refunds, the rate of interest shall be as contained in WAC 458-18-220. The rate of interest is based upon the date the taxes were paid or the claim for refund is filed, whichever is later.

(4) Except as provided in subsections (5) and (6) of this section, the interest shall accrue from the time the taxes were paid or the claim for refund was filed, whichever is later, until the refund is made.

(5) Refunds on a state, county or district-wide basis shall not commence to accrue interest until six months following the date of the final order of the court.

(6) Refunds may be made without interest within sixty days after the date of payment if:

(a) Paid more than once; or

(b) The amount paid exceeds the amount due on the property as shown on the tax roll.

[Statutory Authority: RCW 84.69.100 as amended by 1987 c 319 and 84.08.010(2). 87-19-141 (Order PT 87-7), § 458-18-210, filed 9/23/87.]

WAC 458-18-220 Refunds--Rate of interest. The following rates of interest shall apply based upon the date the taxes were paid or the claim for refund was filed, whichever is later:

Prior to July 27, 1987	.0500	(5.00%)
July 27, 1987 through December 31, 1987	.0596	(5.96%)
January 1, 1988 through December 31, 1988	.0600	(6.00%)

[Statutory Authority: RCW 84.69.100 and 84.08.010(2). 88-07-003 (Order PT 88-3), § 458-18-220, filed 3/3/88. Statutory Authority: RCW 84.69.100 as amended by 1987 c 319 and 84.08.010(2). 87-19-141 (Order PT 87-7), § 458-18-220, filed 9/23/87.]

Chapter 458-20 WAC
EXCISE TAX RULES

WAC

WAC 458-20-108 Returned goods, allowances, cash discounts. (1) When a contract of sale is made subject to cancellation at the option of one of the parties or to revision in the event the goods sold are defective or if the sale is made subject to cash or trade discount, the gross proceeds actually derived from the contract and the selling price are determined by the transaction as finally completed.

(2) RETURNED GOODS. When sales are made either upon approval or upon a sale or return basis, and the purchaser returns the property purchased and the entire selling price is refunded or credited to the purchaser, the seller may deduct an amount equal to the selling price from gross proceeds of sales in computing tax liability, if the amount of sales tax previously collected from the buyer has been refunded by the seller to the buyer. If the property purchased is not returned within the guaranty period as established by contract or by customs of the trade, or if the full selling price is not refunded or credited to the purchaser, a presumption is raised that the property returned is not returned goods but is an exchange or a repurchase by the vendor.

To illustrate: S sells an article for $60.00 and credits his sales account therewith. The purchaser returns the article purchased within the guaranty period and the purchase price and the sales tax theretofore paid by the buyer is refunded or credited to him. S may deduct $60.00 from the gross amount reported on his tax return.

(3) DEFECTIVE GOODS. When bona fide refunds, credits or allowances are given within the guarantee period by a seller to a purchaser on account of defects in goods sold, the amount of such refunds, credits or allowances may be deducted by the seller in computing tax liability, if the proportionate amount of the sales tax previously collected from the buyer has been refunded by the seller.

To illustrate: S sells an article to B for $60.00 and credits his sales account therewith. The article is later found to be defective.

(a) S gives B credit of $50.00 on account of the defect, and also a credit of sales tax collectible on that amount. S may deduct $50.00 from the gross amount reported in his tax returns. This is true whether or not B retains the defective article.

(b) B returns the article to S who gives B an allowance of $50.00 on a second article of the same kind which B purchases for an additional payment of $10.00, plus sales tax thereon. S may deduct $50.00 from the gross amount reported in his tax returns. The sale of the second article, however, must be reported for tax purposes as a $60.00 sale and included in the gross amount in his tax return.

(c) B returns the article to S who replaces it with a new article of the same kind free of charge, and without sales tax. S may deduct $60.00 from the gross amount reported in his tax returns, but the $60.00 selling price of the substituted article must be reported in the gross amount.

No deduction is allowed from the gross amount reported for tax if S in (b) and (c) of this subsection, does not credit his sales account with the selling price of the new article furnished to replace the defective one, but instead merely credits the sales account with an amount equal to the additional payment received, if any. In such case, the allowance for the defect is already shown in the sales account by the reduced sales price of the new article.

(4) MOTOR VEHICLE WARRANTIES. In the 1987 session, the Washington legislature enacted a "lemon law" creating enforcement provisions for new motor vehicle warranties. A manufacturer which repurchases a new motor vehicle under warranty because of a defective condition is required to refund to the consumer the "collateral charges" which include retail sales tax. The refund shall be made to the consumer by the manufacturer or by the dealer for the manufacturer. The department will then credit or refund the amount of the tax so refunded.

EVIDENCE. To receive a credit or refund, the manufacturer or dealer must provide evidence that the retail sales tax was collected by the dealer and that it was refunded to the consumer. Acceptable proof will be:

(a) A copy of the dealer invoice showing the sales tax was paid by the consumer; and

(b) A signed statement from the consumer acknowledging receipt of the refunded tax. The statement should include the consumer's name, the date, the amount of the tax refunded, and the name of the dealer or the manufacturer making the refund.

(5) DISCOUNTS. The selling price of a service or of an article of tangible personal property does not include the amount of bona fide discounts actually taken by the buyer and the amount of such discount may be deducted from gross proceeds of sales providing such amount has been included in the gross amount reported.

(a) Discounts are not deductible under the retail sales tax when such tax is collected upon the selling price before the discount is taken and no portion of the tax is refunded to the buyer.

(b) Discount deductions will be allowed under the extracting or manufacturing classifications only when the value of the products is determined from the gross proceeds of sales.

(c) Patronage dividends which are granted in the form of discounts in the selling price of specific articles (for example, a rebate of one cent per gallon on purchases of gasoline) are deductible. (Some types of patronage dividends are not deductible. See WAC 458-20-219.)

[Statutory Authority: RCW 82.32.300. 88-01-050 (Order 87-9), § 458-20-108, filed 12/15/87; 83-07-034 (Order ET 83-17), § 458-20-108, filed 3/15/83; Order ET 70-3, § 458-20-108 (Rule 108), filed 5/29/70, effective 7/1/70.]

WAC 458-20-115 Sales of packing materials and containers. (1) Definitions. The term "packing materials" means and includes all boxes, crates, bottles, cans, bags, drums, cartons, wrapping papers, cellophane, twines, gummed tapes, wire, bands, excelsior, waste paper, and all other materials in which tangible personal property may be contained or protected within a container, for transportation or delivery to a purchaser.

(2) Business and occupation tax.

(a) Sales of packing materials to persons who sell tangible personal property contained therein or protected thereby are sales for resale and subject to tax under the wholesaling classification.

(b) Sales of containers to persons who sell tangible personal property therein, but who retain title to such containers which are to be returned, are sales for consumption and subject to tax under the retailing classification. This class includes wooden or metal bottle cases, barrels, gas tanks, carboys, drums, bags and other items, when title thereto remains in the seller of the tangible personal property contained therein, and even though a deposit is not made for the containers, and when such articles are customarily returned to the seller. If a charge is made against a customer for the container, with the understanding that such charge will be cancelled or rebated when the container is returned, the amount charged is deemed to be made as security for the return of the container and is not part of the selling price for tax purposes.

(c) Title to containers for beverages and food sold at retail, including beer, milk, soft drinks, mixers and the like, will be deemed to pass to the customer along with the contents. In such cases, amounts charged for the containers are part of the selling price and subject to retailing tax.

(d) Sales of packing materials to persons engaged in the business of custom or commercial packing are sales for consumption and are subject to the retail sales tax.

(3) Retail sales tax.

(a) All sales taxable under the retailing classification of the business and occupation tax as indicated in subsection (2) of this section are also subject to retail sales tax except those specifically distinguished hereafter in this subsection.

(b) Retail sales tax does not apply to sales of returnable food and beverage containers, and vendors may take a deduction from gross retail sales for the amount of such sales in reporting sales tax due, providing (i) the seller separately states the charge for the container and (ii) the separately stated charge is the amount the vendor will pay for a repurchase of the container. Return of the containers is a repurchase by the vendor, and sales tax is not due on amounts paid to the customer on such repurchases, since the vendor will resell the containers in the regular course of his business. (RCW 82.08.0282.)

(c) No deduction is allowed in computing tax under the retail sales tax classification where the retail sales tax is collected from the customer upon the charge for the container.

(d) Sales of packing materials to cooperative marketing associations, agents, or independent contractors for the purpose of packing fresh perishable horticultural products for the growers thereof, are not subject to retail sales tax. See also WAC 458-20-214 (3) and (4).

(4) Use tax. The use tax applies to uses of packing materials and containers to which retail sales tax would apply as indicated in subsection (3) of this section but, for some reason, was not paid at the time such materials and containers were acquired.

Effective July 1, 1974.

[Statutory Authority: RCW 82.32.300. 88-20-014 (Order 88-6), § 458-20-115, filed 9/27/88; Order 74-2, § 458-20-115, filed 6/24/74; Order ET 70-3, § 458-20-115 (Rule 115), filed 5/29/70, effective 7/1/70.]

WAC 458-20-130 Sales of real property, standing timber, minerals, natural resources. (1) BUSINESS AND OCCUPATION TAX—RETAIL SALES TAX.

(a) Amounts derived from the sale of real estate are not subject to tax under the business and occupation tax or the retail sales tax. However, no exemption is allowed where a mere license to use real estate is granted (see WAC 458-20-118). Further, no exemption is allowed for commissions received in connection with sales of real estate nor for interest received by persons engaged in the business of selling real estate on time or installments contracts. RCW 82.04.390.

(b) Sales of standing timber, minerals in place, and other natural resources in place are sales of real estate, and are not subject to tax under the business and occupation tax or the retail sales tax.

(c) Timber, minerals, and other natural resources, after being severed from the real estate, lose their identity as real property, and sales thereof after severance are subject to the provisions of the business and occupation tax and the retail sales tax.

(d) Any person who cuts timber, or who mines or quarries minerals, or who takes other natural resources is subject to tax as an extractor under the business and occupation tax. (See WAC 458-20-135.)

(2) REAL ESTATE EXCISE TAX.

(a) Sales of real property for a valuable consideration are subject to the real estate excise tax. See chapter 82-.45 RCW and chapter 458-61 WAC.

(b) Effective May 18, 1987, the conveyance tax was repealed and the real estate excise tax was increased proportionately.

[Statutory Authority: RCW 82.32.300. 87-19-007 (Order ET 87-5), § 458-20-130, filed 9/8/87; 83-07-034 (Order ET 83-17), § 458-20-130, filed 3/15/83; Order ET 70-3, § 458-20-130 (Rule 130), filed 5/29/70, effective 7/1/70.]

WAC 458-20-136 Manufacturing, processing for hire, fabricating. (1) Definitions. "The term 'to manufacture' embraces all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different or useful substance or article of tangible personal property is produced for sale or commercial or industrial use, and shall include the production or fabrication of special made or custom made articles." (RCW 82.04.120.) It means the business of producing articles for sale, or for commercial or industrial use from raw materials or prepared materials by giving these matters new forms, qualities, properties, or combinations. It includes such activities as making, fabricating, processing, refining, mixing, slaughtering, packing, curing, aging, canning, etc. It includes also the preparing, packaging and freezing of fresh fruits, vegetables, fish, meats and other food products, the making of custom made suits, dresses, coats, awnings, blinds, boats, curtains, draperies, rugs, and tanks, and other articles constructed or made to order, and the curing of animal hides and food products.

(2) The word "manufacturer" means every person who, from the person's own materials or ingredients manufactures for sale, or for commercial or industrial use any articles, substance or commodity either directly, or by contracting with others for the necessary labor or mechanical services.

(3) However, a nonresident of the state of Washington who owns materials processed for hire in this state is not deemed to be a manufacturer because of such processing. Further, any owner of materials from which a nuclear fuel assembly is fabricated in this state by a processor for hire is also not deemed to be a manufacturer because of such processing.

(4) The term "to manufacture" does not include conditioning of seed for use in planting or activities which consist of cutting, grading, or ice glazing of seafood which has been cooked, frozen, or canned outside this state; the mere cleaning and freezing of whole fish; or the repairing and reconditioning of tangible personal property for others.

(5) The term "processing for hire" means the performance of labor and mechanical services upon materials belonging to others so that as a result a new, different or useful article of tangible personal property is produced for sale or commercial or industrial use. Thus, a processor for hire is any person who would be a manufacturer if that person were performing the labor and mechanical services upon that person's own materials.

(6) Persons who both manufacture and sell those products in this state must report their gross receipts under both the manufacturing and retailing or wholesaling classifications. A credit may then be taken against the selling tax in the amount of the manufacturing tax reported. (See also WAC 458-20-19301.)

(7) Manufacturing—interstate or foreign sales. Persons who manufacture products in this state and sell the same in interstate or foreign commerce are taxable under the classification manufacturing upon the value of the products so sold, and are not taxable under retailing or wholesaling–all others in respect to such sales. (See also WAC 458-20-193A.) A credit may be applicable if a gross receipts tax is paid on the selling activity to another state. (See also WAC 458-20-19301.)

(8) Business and occupation tax—hops. The business and occupation tax shall not apply to amounts received by hop growers or dealers for hops which are shipped outside the state of Washington for first use, if those hops have been processed into extract, pellets, or powder in this state. Amounts charged by a processor or warehouser for processing or warehousing, however, are not exempt.

(9) Manufacturing—special classifications. The law provides several special classifications and rates for activities which constitute "manufacturing" as defined in this rule. These include manufacturing wheat into flour, barley into pearl barley, soybeans into soybean oil, or sunflower seeds into sunflower oil (RCW 82.04.260(2)); splitting or processing dried peas (RCW 82.04.260(3)); manufacturing seafood products which remain in a raw, raw frozen, or raw salted state (RCW 82.04.260(4)); manufacturing by canning, preserving, freezing or dehydrating fresh fruits and vegetables (RCW 82.04.260(5)); and manufacturing nuclear fuel assemblies (RCW

82.04.260(9)). In all such cases the principles set forth in subsections (6) and (7) of this section concerning multiple tax classifications and credit provisions are also applicable.

(10) The special classification and rate for slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale (RCW 82.04.260(7)) combines manufacturing and nonmanufacturing activities into a single taxable business activity. For persons who break, slaughter, and/or process meat products for others, the statutory classification and rate are applicable to the value of products so processed and delivered to customers within this state and to interstate or foreign customers. The mere wholesale selling of perishable meat products not manufactured by the vendor is subject to the statutory classification and rate only upon gross receipts from sales within this state. Interstate or foreign sales are deductible from gross proceeds of sales. (See WAC 458-20-193A.)

(11) Manufacturing for commercial use. Persons who manufacture products in this state for their own commercial or industrial use are taxable under the classification manufacturing on the value of the products so manufactured and used. (See WAC 458-20-134 for definition of commercial or industrial use.)

(12) Processing for hire. Persons processing for hire for consumers or for persons other than consumers are taxable under the processing for hire classification upon the total charge made therefor.

(13) Materials furnished in part by customer. In some instances, the persons furnishing the labor and mechanical services undertakes to produce a new article, substance, or commodity from materials or ingredients furnished in part by them and in part by the customer. In such instances, tax liability is as follows:

(a) The persons furnishing the labor and mechanical services will be presumed to be the manufacturer if the value of the materials or ingredients furnished by them is equal to or exceeds 20% of the total value of all materials or ingredients which become a part of the finished product.

(b) If the person furnishing the labor and mechanical services furnishes materials constituting less than 20% of the value of all of the materials which become a part of the finished product, such person will be presumed to be processing for hire. The person for whom the work is performed is the manufacturer in that situation, and will be taxable as such.

(c) In cases where the person furnishing the labor and mechanical services supplies, sells, or furnishes to the customer, before processing, 20% or more in value of the materials from which the finished product is made, the person furnishing the labor and mechanical services will be deemed to be the owner of the materials and taxable as a manufacturer.

(14) Retail sales tax. Persons taxable as engaging in the business of manufacturing and selling at retail any of the products manufactured and persons manufacturing, fabricating, or processing for hire tangible personal property for consumers shall collect the retail sales tax upon the total charge made to their customers.

(15) Sales to processors for hire and to manufacturers of articles of tangible personal property which do not become an ingredient or component part of a new article produced, or are not chemicals used in processing the same, are retail sales, and the retail sales tax must be collected thereon. (However, see WAC 458-20-113 and 458-20-134 for certain express exemptions.)

(16) Use tax. Manufacturers are taxable under the use tax upon the use of articles manufactured by them for their own use in this state. (See WAC 458-20-113 and 458-20-134 for certain express exemptions.)

(17) See WAC 458-20-244 for sales and use tax on food products.

[Statutory Authority: RCW 82.32.300. 88-21-014 (Order 88-7), § 458-20-136, filed 10/7/88; 86-20-027 (Order 86-17), § 458-20-136, filed 9/23/86; 83-07-032 (Order ET 83-15), § 458-20-136, filed 3/15/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-136, filed 6/27/78; Order ET 71-1, § 458-20-136, filed 7/22/71; Order ET 70-3, § 458-20-136 (Rule 136), filed 5/29/70, effective 7/1/70.]

WAC 458-20-163 Insurance companies, including surety companies, fraternal benefit societies, fraternal fire insurance associations, beneficiary corporations or societies and Washington state health insurance pool. (1) EXEMPTIONS. The provisions of the business and occupation tax do not apply to:

(a) Any person with respect to insurance business upon which a tax based on gross premiums is paid to the state of Washington. (RCW 82.04.320.) It should be noted, however, that the statute provides expressly that this exemption does not extend to "any person engaging in the business of representing any insurance company, whether as general or local agent or acting as broker for such companies," or to "any bonding company . . . with respect to gross income derived from the completion of any contract as to which it is a surety, or as to any liability as successor to the liability of the defaulting contractor." In addition, the exemption does not apply to any business engaged in by an insurance company other than its insurance business.

(b) Fraternal benefit societies or fraternal fire insurance associations organized or licensed pursuant to Title 48 RCW; and beneficiary corporations or societies organized under and existing by virtue of Title 24 RCW, if such beneficiary corporations or societies provide in their bylaws for the payment of death benefits. This exemption, however, is limited to gross income from premiums, fees, assessments, dues or other charges directly attributable to the insurance or death benefits provided by such persons.

(2) DEDUCTIONS. Effective May 18, 1987, a member of the Washington state health insurance pool is entitled to a deduction from the business and occupation tax for assessments paid by that member to the pool. (Chapter 431, Laws of 1987.) If the deduction cannot be fully utilized because the assessment total exceeds the business and occupation tax liability, the member may carry forward the deduction to succeeding reporting periods until the deduction is exhausted. This deduction does not apply to a member who has deducted such assessments from the insurance premiums tax, RCW 48.14.020.

(3) RETAIL SALES AND USE TAX. Insurance companies are subject to the retail sales tax or use tax upon retail purchases or articles acquired for their own use.

[Statutory Authority: RCW 82.32.300. 87-19-007 (Order ET 87-5), § 458-20-163, filed 9/8/87; 83-07-033 (Order ET 83-16), § 458-20-163, filed 3/15/83; Order ET 70-3, § 458-20-163 (Rule 163), filed 5/29/70, effective 7/1/70.]

WAC 458-20-166 Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc. (1) DEFINITIONS.

(a) A hotel, motel, boarding house, rooming house, apartment hotel, resort lodge, auto or tourist camp, and bunkhouse, as used in this ruling, includes all establishments which are held out to the public as an inn, hotel, public lodging house, or place where sleeping accommodations may be obtained, whether with or without meals or facilities for preparing meals.

(i) The foregoing terms do not include establishments in the business of renting real estate, such as apartments, nor do these terms include hospitals, sanitariums, nursing homes, rest homes, and similar institutions. Further, the terms do not include private lodging houses, dormitories, bunkhouses, etc., operated by or on behalf of business and industrial firms solely for the accommodation of employees of such firms, and which are not held out to the public as a place where sleeping accommodations may be obtained.

(ii) The terms do not include guest ranches or summer camps which, in addition to supplying meals and lodging, offer special recreation facilities and instruction in sports, boating, riding, outdoor living, etc.

(b) A "boarding house", as used in this section, is an establishment selling meals on the average to five or more persons, exclusive of members of the immediate family. Where meals are furnished to less than five persons, exclusive of members of the immediate family, the establishment will not be considered as engaging in the business of operating a boarding house.

(c) A "trailer camp" as used in this section is an establishment making a charge for the rental of space to transients for locating or parking house trailers, campers, mobile homes, tents and the like which provide sleeping or living accommodations for the occupants. Additional charges for utility services will be deemed part of the charge made for the rental.

(d) The term "transient" as used in this section means: Any guest, resident, or other occupant to whom lodging and other services are furnished under a license to use real property and who does not continuously occupy the premises for a period of one month. Any such occupant who remains in continuous occupancy for more than one month, shall be deemed a transient as to the first month of occupancy, unless such occupant has contracted in advance to remain one month. A person who has contracted in advance and does remain in continuous occupancy for one month, will be deemed a nontransient from the start of the occupancy.

(2) It will be presumed that the establishments first defined above are conferring a license to use real estate, as distinguished from a rental of real estate, where the occupant is a transient. Conversely, where the occupant who receives lodging is or has become a nontransient, it will be conclusively presumed that the occupancy is under a rental or lease of real property.

(3) BUSINESS AND OCCUPATION TAX. The tax liability of hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc., is as follows:

(a) RETAILING. Amounts derived from the charge made to transients for the furnishing of lodging; charges for such services as the rental of radio and television sets and the rental of rooms, space and facilities not for lodging, such as ballrooms, display rooms, meeting rooms, etc., and including automobile parking or storage; also amounts derived from the sale of tangible personal property at retail are taxable under this classification. See "retail sales tax" below for a more detailed explanation of the charges included herein as retailing.

(b) SERVICE AND OTHER BUSINESS ACTIVITIES. Taxable under this classification are amounts derived from the rental of sleeping accommodations by private lodging houses, and by dormitories, bunkhouses, etc., operated by or on behalf of business and industrial firms and which are not held out to the public as a place where sleeping accommodations may be obtained; commissions received from acting as a laundry agent for guests (see WAC 458-20-165) and commissions received for the use of telephone facilities. Summer camps, guest ranches and similar establishments making an unsegregated charge for meals, lodging, instruction and the use of recreational facilities must report the gross income from such charges under this classification. This classification is also applicable to gross income from charges for the use of coin operated laundry facilities when such facilities are situated in an apartment house, hotel, motel, rooming house or trailer camp for the exclusive use of the tenants. (See WAC 458-20-165 for information regarding the tax liability of laundry services generally.)

(c) Charges for lodging and related services described above are subject to tax even though they may be denominated or characterized as membership fees or dues.

(d) Where lodging is furnished to a nontransient, the transaction is deemed a rental of real estate which is exempt of B&O tax (RCW 82.04.390).

(4) RETAIL SALES TAX. All sales and rentals of tangible personal property by the persons defined in this section are subject to the retail sales tax.

(a) The charge made for the furnishing of lodging and other services to transients is subject to the retail sales tax. Included is the charge made by a trailer camp for the furnishing of space and other facilities. Charges for automobile parking and storage are also subject to the retail sales tax.

(b) An occupant does not become entitled to a refund of retail sales tax paid for lodging as a transient by reason of having remained one month and having thereby qualified as a nontransient.

(c) Effective July 1, 1988, there is an exemption from the retail sales tax, convention and trade center tax, and the special hotel/motel tax on the charge made for the furnishing of emergency lodging to homeless persons

purchased via a shelter voucher program administered by cities, towns, and counties or private organizations that provide emergency food and shelter services.

(d) Except as to guest ranches and summer camps as described herein, when a lump sum is charged for lodging to nontransients and for meals furnished, the retail sales tax must nevertheless be paid upon the fair selling price of such meals, and unless accounts are kept showing such fair selling price, the tax will be computed upon double the cost of the meals served; and the cost shall include the price paid for food and drinks served, the cost of preparing and serving meals, and all other costs incidental thereto, including an appropriate portion of overhead expenses. The retail sales tax is not applicable to charges for the use of coin operated laundry facilities when such facilities are situated in an apartment house, hotel, motel, rooming house or trailer camp for the exclusive use of the tenants.

(e) All sales of tangible personal property to such persons, except such property as is to be resold as tangible personal property are subject to the retail sales tax. In this regard, all sales of tangible personal property for use in the furnishing of lodging and related services are subject to the retail sales tax, the charge made for lodging being for services rendered and not for the sale of any tangible property as such; included are items such as soap, towels, linens, laundry, laundry supply services and furnishings. See WAC 458-20-244 (Rule 244) for sales to persons operating guest ranches and summer camps of food supplies for use in the preparation of meals served to guests when such persons make an unsegregated charge for meals, lodging, and services and report such charges under the classification service and other activities as herein provided.

[Statutory Authority: RCW 82.32.300. 88-20-014 (Order 88-6), § 458-20-166, filed 9/27/88; 83-07-033 (Order ET 83-16), § 458-20-166, filed 3/15/83. Statutory Authority: RCW 82.01.060(2) and 82-.32.300. 78-07-045 (Order ET 78-4), § 458-20-166, filed 6/27/78; Order ET 70-3, § 458-20-166 (Rule 166), filed 5/29/70, effective 7/1/70.]

WAC 458-20-168 Hospitals, medical care facilities, and adult family homes. (1) DEFINITIONS.

(a) The term "hospital" means only institutions defined as hospitals in chapter 70.41 RCW.

(b) The term "nursing home" means only institutions defined as nursing homes in chapter 18.51 RCW.

(c) The term "adult family home" means private homes licensed by the department of social and health services as adult family homes (see WAC 388-76-030(2)), and those which are specifically exempt from licensing under the rules of the department of social and health services. (See WAC 388-76-140.)

(2) BUSINESS AND OCCUPATION TAX. The gross income derived from personal and professional services of hospitals, nursing homes, convalescent homes, clinics, rest homes, health resorts, and similar health care institutions is subject to business and occupation tax under the service and other activities classification. The retailing business and occupation tax applies to sales by such persons of tangible personal property sold and billed separately from services rendered.

(3) EXEMPTION. The gross income derived from personal and professional services of adult family homes which are licensed as such, or which are specifically exempt from licensing under the rules of the department of social and health services, is exempt from the business and occupation tax effective June 9, 1987.

(4) DEDUCTIONS.

(a) Hospitals operated by the United States or its instrumentalities or the state of Washington or its political subdivisions may deduct amounts derived as compensation for medical services to patients and sales of prescription drugs and medical supplies furnished as an integral part of such services. (See RCW 82.04.4288.)

(b) Other hospitals operated as nonprofit corporations as well as nursing homes and homes for unwed mothers operated as religious or charitable organizations may also deduct the amounts described in subsection (a) above (see RCW 82.04.4289), provided that:

(i) No part of the net earnings received by such an institution inures, directly or indirectly, to any person other than the institution entitled to deduction hereunder; and

(ii) No deduction will be allowed under (a) of this subsection, unless written evidence is submitted to the department of revenue showing that the hospital building is entitled to exemption from taxation under the property tax laws of this state.

(c) In computing tax liability there may be deducted from gross income so much thereof as was derived from bona fide contributions, donations and endowment funds. (See WAC 458-20-114.)

(5) RETAIL SALES TAX. Retail sales which are subject to retailing business tax, as provided earlier, are also subject to retail sales tax.

(6) EXEMPTIONS. Sales of drugs, medicines, prescription lenses, orthotic devices, medical oxygen, or other substances, prescribed by medical practitioners are exempt of retail sales tax where the written prescription bearing the signature of the issuing medical practitioner and the name of the patient for whom prescribed is retained, and such sales are separately accounted for. Sales of prosthetic devices, hearing aids as defined in RCW 18.35.010(3), and ostomic items whether or not prescribed are also exempt of sales tax. See WAC 458-20-18801.

(7) Sales of medical supplies, durable equipment, and consumables, but excluding prosthetic devices and ostomic items, to hospitals and nursing homes for their own use in providing personal or professional services are subject to the retail sales tax, irrespective of whether or not such hospitals or nursing homes are subject to the business tax.

(For tax liability of hospitals on sales of meals, see WAC 458-20-119 and 458-20-244.)

[Statutory Authority: RCW 82.32.300. 88-01-050 (Order 87-9), § 458-20-168, filed 12/15/87; 87-05-042 (Order 87-1), § 458-20-168, filed 2/18/87; 83-07-033 (Order ET 83-16), § 458-20-168, filed 3/15/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-168, filed 6/27/78; Order ET 74-2, § 458-20-168, filed 6/24/74; Order ET 70-3, § 458-20-168 (Rule 168), filed 5/29/70, effective 7/1/70.]

WAC 458-20-169 Religious, charitable, benevolent, nonprofit service organizations, and sheltered workshops. (1) Introduction. Religious, charitable, benevolent, and nonprofit service organizations are subject to business and occupation tax, retail sales tax, and use tax, unless otherwise provided by this section.

(2) Definitions.

(a) "Sheltered workshops" is defined by the law to mean the performance of business activities of any kind on or off the premises of such nonprofit organizations which are performed for the primary purpose of:

(i) Providing gainful employment or rehabilitation services to the handicapped as an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market or during such time as employment opportunities for them in the competitive labor market do not exist; or

(ii) Providing evaluation and work adjustment services for handicapped individuals.

(b) "Health or social welfare organization" means an organization which renders health or social welfare services as defined below, which is a not–for–profit corporation under chapter 24.03 RCW and which is managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or which is a corporation solely under chapter 24.12 RCW. In addition, in order to be exempt of business and occupation tax under RCW 82.04.4297, a corporation shall satisfy the following conditions:

(i) No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;

(ii) Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the public service of the state;

(iii) Assets of the corporation must be irrevocably dedicated to the activities for which the exemption is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation which also would be entitled to the exemption;

(iv) The corporation must be duly licensed or certified where licensing or certification is required by law or regulation;

(v) The amounts received qualifying for exemption must be used for the activities for which the exemption is granted;

(vi) Services must be available regardless of race, color, national origin, or ancestry; and

(vii) The director of revenue shall have access to its books in order to determine whether the corporation is entitled to this exemption.

(c) "Health or social welfare services" include and are limited to:

(i) Mental health, drug, or alcoholism counseling or treatment;

(ii) Family counseling;

(iii) Health care services;

(iv) Therapeutic, diagnostic, rehabilitative, or restorative services for the care of the sick, aged, or physically–disabled, developmentally–disabled, or emotionally–disabled individuals;

(v) Activities which are for the purpose of preventing or ameliorating juvenile delinquency or child abuse, including recreational activities for those purposes;

(vi) Care of orphans or foster children;

(vii) Day care of children;

(viii) Employment development, training, and placement; and

(ix) Legal services to the indigent.

(3) Fundraising. The following applies to the fundraising activities of religious, charitable, benevolent, and nonprofit service organizations:

(a) Meals. Organizations serving meals for fundraising purposes are not engaged in the business of making sales at retail and are not required to collect the retail sales tax upon such sales, nor pay the business and occupation tax, if such meals are served no more frequently than once every two weeks and the gross receipts are one thousand dollars or less.

(b) Bazaars/rummage sales. Organizations conducting bazaars or rummage sales who are not generally engaged in the business of making sales at retail are not required to collect the retail sales tax nor pay the business and occupation tax if such bazaars or rummage sales are conducted no more than twice per year and do not extend over a period of more than two days each, and if the gross receipts from each such bazaar or rummage sale are one thousand dollars or less.

(c) Fundraising drives/concessions. When organizations make retail sales in the course of annual fundraising drives, or make such sales through concessions operated no more than twice a year which do not extend over a period of more than two days each, for the support of various benevolent, athletic, recreational, or cultural programs, the retail sales tax and business and occupation tax need not be accounted for if the gross receipts from each such annual fundraising drive or concession are one thousand dollars or less.

Persons who serve fundraising meals, conduct bazaars/rummage sales, or fundraising drives/concessions more frequently than provided in (a), (b), or (c) of this subsection, or receive more than the amounts allowed therein, are required to report and pay tax upon their gross receipts from all such activities.

(4) Prepared meals for certain persons. Neither the retail sales tax nor the use tax applies to prepared meals provided to senior citizens, disabled persons, or low–income persons by not–for–profit organizations organized under chapter 24.03 or 24.12 RCW.

(5) Sheltered workshops. The gross income received by nonprofit organizations from the business activities of "sheltered workshops" is exempt from the business and occupation tax.

(6) Health or social welfare services. In computing business tax there may be deducted amounts received from the United States or any instrumentality thereof or from the state of Washington or any municipal corporation or political subdivision thereof as compensation for,

or to support, health or social welfare services rendered by a health or social welfare organization or by a municipal corporation or political subdivision, except deductions are not allowed for amounts that are received under an employee benefit plan.

(7) Other activities. In every case where such organizations conduct business activities other than as outlined above, the retail sales tax and business and occupation tax are fully applicable to the gross sales made and merchandise may be purchased for resale without paying the retail sales tax by furnishing vendors with resale certificates as prescribed in WAC 458-20-102.

[Statutory Authority: RCW 82.32.300. 88-21-014 (Order 88-7), § 458-20-169, filed 10/7/88; 86-02-039 (Order ET 85-8), § 458-20-169, filed 12/31/85; 83-07-033 (Order ET 83-16), § 458-20-169, filed 3/15/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-169, filed 6/27/78; Order ET 70-3, § 458-20-169 (Rule 169), filed 5/29/70, effective 7/1/70.]

WAC 458-20-170 Constructing and repairing of new or existing buildings or other structures upon real property. (1) DEFINITIONS. As used herein:

(a) The term "prime contractor" means a person engaged in the business of performing for consumers, the constructing, repairing, decorating or improving of new or existing buildings or other structures under, upon or above real property, either for the entire work or for a specific portion thereof. The term includes persons who rent or lease equipment to property owners for use in respect to constructing, repairing, etc., buildings or structures upon such property, when the equipment is operated by the lessor.

(b) The word "subcontractor" means a person engaged in the business of performing a similar service for persons other than consumers, either for the entire work or for a specific portion thereof. The term includes persons who rent or lease equipment to prime contractors or subcontractors for use in respect to constructing, repairing, etc., when such equipment is operated by the lessor. When equipment or other tangible personal property is rented without an operator to contractors, subcontractors or others, the transaction is a sale at retail (see RCW 82.04.040 and 82.04.050).

(c) The terms "prime contractor" and "subcontractor" include persons performing labor and services in respect to the moving of earth or clearing of land, cleaning, fumigating, razing, or moving of existing buildings or structures even though such services may not be done in connection with a contract involving the constructing, repairing, or altering of a new or existing building or structure. The terms also include persons constructing streets, roads, highways, etc., owned by the state of Washington.

(d) The term "buildings or other structures" means everything artificially built up or composed of parts joined together in some definite manner and attached to real property. It includes not only buildings in the general and ordinary sense, but also tanks, fences, conduits, culverts, railroad tracks, tunnels, overhead and underground transmission systems, monuments, retaining walls, piling and privately owned bridges, trestles, parking lots, and pavements for foot or vehicular traffic, etc.

(e) The term "constructing, repairing, decorating or improving of new or existing buildings or other structures," in addition to its ordinary meaning, includes: The installing or attaching of any article of tangible personal property in or to real property, whether or not such personal property becomes a part of the realty by virtue of installation; the clearing of land and the moving of earth; and the construction of streets, roads, highways, etc., owned by the state of Washington. The term includes the sale of or charge made for all service activities rendered in respect to such constructing, repairing, etc., regardless of whether or not such services are otherwise defined as "sale" by RCW 82.04.040 or "sales at retail" by RCW 82.04.050. Hence, for example, such service charges as engineering fees, architectural fees or supervisory fees are within the term when the services are included within a contract for the construction of a building or structure. The fact that the charge for such services may be shown separately in bid, contract or specifications does not establish the charge as a separate item in computing tax liability.

(2) SPECULATIVE BUILDERS.

(a) As used herein the term "speculative builder" means one who constructs buildings for sale or rental upon real estate owned by him. The attributes of ownership of real estate for purposes of this rule include but are not limited to the following: (i) The intentions of the parties in the transaction under which the land was acquired; (ii) the person who paid for the land; (iii) the person who paid for improvements to the land; (iv) the manner in which all parties, including financiers, dealt with the land. The terms "sells" or "contracts to sell" include any agreement whereby an immediate right to possession or title to the property vests in the purchaser.

(b) Where an owner of real estate sells it to a builder who constructs, repairs, decorates, or improves new or existing buildings or other structures thereon, and the builder thereafter resells the improved property back to the owner, the builder will not be considered a speculative builder. In such a case that portion of the resale attributable to the construction, repairs, decorations, or improvements by the builder, shall not be considered a sale of real estate and shall be fully subject to retailing business and occupation tax and retail sales tax. It is intended by this provision to prevent the avoidance of tax liability on construction labor and services by utilizing the mechanism of real property transfers. (RCW 82.04-.050 (2)(c).)

(c) Amounts derived from the sale of real estate are exempt from the business and occupation tax. (RCW 82.04.390.) Consequently, the proceeds of sales by legitimate speculative builders of completed buildings are not subject to such tax. Neither does the sales tax apply to such sales, since such a sale involves no charge made for construction for a consumer, but the price paid is for the sale of real estate.

(d) However, when a speculative builder sells or contracts to sell property upon which he is presently constructing a building, all construction done subsequent to the date of such sale or contract constitutes a retail sale

and that portion of the sales price allocable to construction done after the agreement shall be taxed accordingly. Consequently, the builder must pay business and occupation tax under the retailing classification on that part of the sales price attributable to construction done subsequent to the agreement, and shall also collect sales tax from the buyer on such allocable part of the sales price.

(e) Speculative builders must pay sales tax upon all materials purchased by them and on all charges made by their subcontractors. Deductions for such tax paid with respect to materials used or charges made for that part of the construction done after the contract to sell the building should be claimed by the speculative builder on his tax returns in accordance with WAC 458-20-102, under the subheading PURCHASES FOR DUAL PURPOSES.

(f) Persons, including corporations, partnerships, sole proprietorships, and joint ventures, among others, who perform construction upon land owned by their corporate officers, shareholders, partners, owners, co-venturers, etc., are constructing upon land owned by others and are taxable as sellers under this rule, not as "speculative builders."

(3) BUSINESS AND OCCUPATION TAX.

(a) Prime contractors are taxable under the retailing classification, and subcontractors under the wholesaling classification upon the gross contract price.

(b) Where no gross contract price is stated in any contract or agreement between the builder and the property owner, then the measure of business and occupation tax is the total amount of construction costs, including any charges for licenses, fees, permits, etc., required for the construction and paid by the builder.

(4) RETAIL SALES TAX.

(a) Prime contractors are required to collect from consumers the retail sales tax measured by the full contract price. Where no gross contract price is stated, the measure of sales tax is the total amount of construction costs including any charges for licenses, fees, permits, etc., required for construction and paid by the builder.

(b) The retail sales tax does not apply to charges made for janitorial services nor for the mere leveling of land used in commercial farming or agriculture. The tax does apply, however, in respect to contracts for cleaning septic tanks or the exterior walls of buildings, as well as to earth moving, land clearing and the razing or moving of structures, whether or not such services are performed as incidents of a contract to construct, repair, decorate, or improve buildings or structures.

(c) Sales to prime contractors and subcontractors of materials such as concrete, tie rods, lumber, finish hardware, etc., which become part of the structure being built or improved are sales for resale and are not subject to the retail sales tax. Sales of form lumber to such contractors are sales for resale provided that such lumber is used or to be used first by such persons for the molding of concrete in a single contract, project or job and the form lumber is thereafter incorporated into the product of that same contract project or job as an ingredient or component thereof. Sales of form lumber not so incorporated as an ingredient or component are sales at retail.

(d) The retail sales tax applies upon sales and rentals to prime contractors and subcontractors of tools, machinery and equipment, and consumable supplies, such as hand and machine tools, cranes, air compressors, bulldozers, lubricating oil, sandpaper and form lumber which are primarily for use by the contractor rather than for resale as a component part of the finished structure.

(e) The retail sales tax applies upon sales to speculative builders of all tangible personal property, including building materials, tools, equipment and consumable supplies and upon sales of labor, services and materials to speculative builders by independent contractors.

(5) USE TAX.

The use tax applies generally to the use by prime contractors and subcontractors of tools, machinery, equipment and consumable supplies acquired by them primarily for their own use and upon which the retail sales tax has not been paid. This includes equipment and supplies purchased in a foreign state for use or consumption in performing contracts in this state. The use tax applies generally to the use by speculative builders of all tangible personal property, including building materials, purchased or acquired by them without payment of the retail sales tax (see also WAC 458-20-178).

[Statutory Authority: RCW 82.32.300. 87-19-007 (Order ET 87-5), § 458-20-170, filed 9/8/87; 83-07-033 (Order ET 83-16), § 458-20-170, filed 3/15/83; Order ET 71-1, § 458-20-170, filed 7/22/71; Order ET 70-3, § 458-20-170 (Rule 170), filed 5/29/70, effective 7/1/70.]

WAC 458-20-176 Commercial deep sea fishing--Commercial passenger fishing--Diesel fuel. (1) DEFINITIONS. As used herein:

(a) "Commercial deep sea fishing" means fishing done for profit outside the territorial waters of the state of Washington. It does not include sport fishing or the operation of charter boats for sport fishing. (See WAC 458-20-183 for tax liability of such persons.) Nor does the phrase include the operation or purchase of watercraft for kelping, purse seining, or gill netting, because such fishing methods can be legally performed in Washington only within the territorial waters of the state (the three-mile limit). Therefore, watercraft rigged for fishing by any of these methods will be deemed for use in other than commercial deep sea fishing unless proof, including documentation to be retained by sellers, is furnished that said watercraft will be used for these purposes exclusively outside the Washington territorial limit.

(b) "Watercraft" means every type of floating equipment which is designed for the purpose of carrying therein or therewith fishing gear, fish catch or fishing crews, and used primarily in commercial deep sea fishing operations.

(c) "Component part" includes all tangible personal property which is attached to and a part of a watercraft. It includes dories, gurdies and accessories, bait tanks, baiting tables and turntables. It also includes spare parts which are designed for ultimate attachment to a watercraft. The said term does not include equipment or furnishings of any kind which are not attached to a

watercraft, nor does it include consumable supplies. Thus it does not include, among other things, bedding, table and kitchen wares, fishing nets, hooks, lines, floats, hand tools, ice, fuel or lubricants.

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

(2) BUSINESS AND OCCUPATION TAX.

(a) Persons engaged in commercial deep sea fishing are not taxable under the extracting classification with respect to catches obtained outside the territorial waters of this state.

(b) Such persons are taxable under either the retailing or the wholesaling classification with respect to sales made within this state, unless entitled to exemption by reason of the commerce clauses of the federal constitution. (See WAC 458-20-193.)

(3) RETAIL SALES TAX.

(a) By reason of the exemption contained in RCW 82.08.0262, the retail sales tax does not apply upon sales of watercraft (including component parts thereof) which are primarily for use in conducting commercial deep sea fishing operations, nor does said tax apply to sales of or charges made for labor and services rendered in respect to the constructing, repairing, cleaning, altering or improving of such property.

(b) The retail sales tax applies upon sales made to persons engaged in commercial deep sea fishing of every other type of tangible personal property and upon sales of or charges made for labor and services rendered in respect to the construction, repairing, cleaning, altering or improving of such other types of property. Thus, the retail sales tax applies upon sales to such persons of such things as fishing nets, hooks, lines, floats and bait; table and kitchen wares; hand tools, ice, fuel except diesel fuel as noted below, and lubricants for use or consumption, except only sales of watercraft and component parts thereof. For sales of food products see WAC 458-20-119 and 458-20-244.

(4) EXEMPTION CERTIFICATES REQUIRED.

(a) Persons selling watercraft or component parts thereof to persons engaged in commercial deep sea fishing or performing services with respect to such craft or parts, are required to obtain from the purchaser a certificate evidencing the exempt nature of the transaction. This certificate must identify the purchaser by name and address, and by name of the watercraft with respect to which the purchase is made, and must contain a statement to the effect that the property purchased or repaired is for use primarily in commercial deep sea fishing operations.

(b) The certificate should be in substantially the following form:

EXEMPTION CERTIFICATE

I HEREBY CERTIFY that the _____ this day ordered from or purchased from you, will be used primarily in commercial deep sea fishing operations outside the territorial waters of the State of Washington; that the vessel is not for fishing inside such territorial waters, and is not rigged or equipped for such fishing; that the registered name of the watercraft to which said purchase applies is (name of fishing boat); and that said sale is entitled to exemption under the provisions of RCW 82.08.0262.

Dated _____, 19__.

_____
(Name of Purchaser)

By _____
(Name of officer or agent)

Address _____

(c) Incidental use within the waters of this state of fishing boats which are used primarily in deep sea fishing operations, will not deprive the owners thereof of the statutory exemption from the retail sales tax.

(d) In the event the fishing boat with respect to which an exemption is claimed is of a type used in the waters of Puget Sound or the Columbia River and the tributaries thereof, and is not practical for use in deep sea fishing, sellers should collect the retail sales tax upon all sales of such boats and component parts thereof and upon charges made for the repair of the same.

(e) It is a gross misdemeanor for a buyer to make a false certificate of exemption for the purpose of avoiding the tax.

(5) USE TAX.

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

(b) The use tax does apply upon the actual use within this state of all other types of tangible personal property purchased at retail and upon which the sales tax has not been paid (see WAC 458-20-178) except on diesel fuel as noted below.

(6) DIESEL FUEL.

(a) The law provides for sales and use tax exemptions on diesel fuel for both commercial passenger fishing (charter boats for sport fishing) and commercial deep sea fishing operations.

(b) Neither retail sales nor use tax applies with respect to sales or use of diesel fuel in the operation of watercraft in commercial deep sea fishing operations or commercial passenger fishing operations by persons who are regularly engaged in the business of such operations outside the territorial waters (three-mile limit) of this state. For purposes of this exemption a person is not regularly engaged in either business if the person has gross receipts from the extra territorial operations of less than five thousand dollars a year. For persons involved in both commercial deep sea fishing operations and commercial passenger fishing operations, the receipts from both shall be added together to determine eligibility for this exemption.

(c) This exemption is plenary in scope and it is not required that all of the diesel fuel purchased be used outside of the territorial waters of this state. If a person qualifies for the exemptions by virtue of operating a deep sea fishing vessel, and has the requisite amount of gross receipts from that activity, all diesel fuel purchases and uses by such person for such vessel are tax exempt.

(d) DIESEL FUEL EXEMPTION CERTIFICATES REQUIRED. Persons selling diesel fuel to such persons are required to obtain from the purchaser a certificate evidencing the exempt nature of the transaction. This certificate must identify the purchaser by name and address, and by the registered name and number of the watercraft with respect to which the purchase is made. It must contain a statement to the effect that the diesel fuel is for use by a person who is engaged in commercial deep sea fishing and/or commercial passenger fishing operations who has annual gross receipts therefrom of at least five thousand dollars. Blanket certificates covering all diesel fuel purchases for specified watercraft may be used, where appropriate. A seller of diesel fuel who accepts such a certificate in good faith shall not be liable for sales tax on the diesel fuel sold. Certificates must be retained by the sellers in their permanent records as evidence of the exempt nature of diesel sales to eligible buyers. It is a gross misdemeanor for a buyer to make a false certificate of exemption for the purpose of avoiding the tax.

(e) The certificate should be in substantially the following form:

DIESEL FUEL EXEMPTION CERTIFICATE

I HEREBY CERTIFY that diesel fuel which I will purchase from (name of dealer) will be used in the operation of a watercraft which is used in commercial deep sea or commercial passenger fishing operations outside the territorial waters of the state of Washington; that the registered name and number of the watercraft to which said purchase applies is (registered vessel name and number); that the owner(s) of said vessel has gross income, based on federal income tax returns, of not less than five thousand dollars a year from such extra territorial fishing operations; and that said sales are entitled to exemption under the provisions of chapter 494, Laws of 1987.

Dated _____, 19__.

_____
(Name of Purchaser)

By _____
(Name of officer or agent)

Address _____

[Statutory Authority: RCW 82.32.300. 88-03-055 (Order 88-1), § 458-20-176, filed 1/19/88; 83-07-033 (Order ET 83-16), § 458-20-176, filed 3/15/83. Statutory Authority: RCW 82.01.060(2) and 82-.32.300. 78-07-045 (Order ET 78-4), § 458-20-176, filed 6/27/78; Order ET 70-3, § 458-20-176 (Rule 176), filed 5/29/70, effective 7/1/70.]

WAC 458-20-182 Warehouse businesses. (1) DEFINITIONS. For purposes of this section the following terms and meanings will apply:

(a) "Warehouse" means every structure wherein facilities are offered for the storage of tangible personal property.

(b) "Storage warehouse" means a building or structure, or any part thereof, in which goods, wares, or merchandise are received for storage for compensation, except field warehouses, fruit warehouses, fruit packing plants, warehouses licensed under chapter 22.09 RCW (which are agricultural commodities warehouses), public garages storing automobiles, railroad freight sheds, docks and wharves, and "self-storage" or "mini-storage" facilities whereby customers have direct access to individual storage areas by separate access.

(c) "Cold storage warehouse" means a storage warehouse used to store fresh and/or frozen perishable fruits or vegetables, meat, seafood, dairy products, or fowl, or any combination thereof, at a desired temperature to maintain the quality of the product for orderly marketing. This term does not include freezer space or frozen food lockers.

(d) "Automobile storage garage" means any off-street building, structure, or area where vehicles are parked or stored, for any period of time, for a charge.

(2) BUSINESS AND OCCUPATION TAX. Warehouse businesses are taxable according to the nature of their operations and the specific kinds of goods stored, as follows:

(a) Persons engaged in operating any "storage warehouse" or "cold storage warehouse," as defined herein, are subject to tax under the warehousing classification, measured by the gross income of the business. (See RCW 82.04.280.)

(b) Persons engaged in operating any automobile storage garage are subject to tax under the retailing classification, measured by gross proceeds of such operations. (See RCW 82.04.050 (3)(d).)

(c) Persons engaged in operating any warehouse business, other than those of (a) and (b) of this subsection, are subject to tax under the service classification, measured by the gross income of the business. (See RCW 82.04.290.) This includes cold storage and frozen food lockers, field warehouses, fruit warehouses, agricultural commodities warehouses, and freight storage warehouses.

(d) Effective July 1, 1986, no warehouse business or operation of any kind is subject to tax under the public utility tax of chapter 82.16 RCW.

(3) TAX MEASURE. The gross income of the business of operating a warehouse includes all income from the storing, handling, sorting, weighing, measuring, and loading or unloading for storage of tangible personal property.

(4) Where a grain warehouseman purchases or owns grain stored in such warehouse, there shall be included in taxable gross income:

(a) An amount equal to the charges at the customary rate for all services rendered in connection with such grains up to the time of purchase by the warehouseman; and

(b) The amount of any charges for services that are rendered during the period of the warehouseman's ownership thereof billed and stated, as such, separately from the price of the grains on the invoice to the purchaser at the time of the sale by the warehouseman.

(5) RETAIL SALES TAX. Persons operating automobile garage storage businesses must collect and report retail sales tax upon the gross selling price of such parking/storage services.

(6) CONSUMABLES. Persons engaged in operating any of the business activities covered by this section must

pay retail sales tax upon their purchases of consumable supplies, equipment, and materials for their own use as consumers in operating such businesses.

(7) USE TAX. The use tax is due upon the value of all tangible personal property used as consumers by persons operating warehouse businesses, upon which the retail sales tax has not been paid.

For specific provisions covering temporary holding of goods in foreign or interstate movement by water, see WAC 458-20-193D respecting stevedoring and associated activities.

[Statutory Authority: RCW 82.32.300. 87-05-042 (Order 87-1), § 458-20-182, filed 2/18/87; Order ET 74-1, § 458-20-182, filed 5/7/74; Order ET 70-3, § 458-20-182 (Rule 182), filed 5/29/70, effective 7/1/70.]

WAC 458-20-184 Tax on conveyances repealed. (1) Effective May 18, 1987, the tax on conveyances, (deeds or other written instrument) by which lands, tenements, or other realty sold was conveyed, was repealed. The rate of real estate excise tax upon such transactions was increased proportionately.

(2) See chapter 82.45 RCW and chapter 458-61 WAC for provisions governing real estate excise tax upon sales and transfers of real property.

[Statutory Authority: RCW 82.32.300. 87-19-007 (Order ET 87-5), § 458-20-184, filed 9/8/87; 83-07-033 (Order ET 83-16), § 458-20-184, filed 3/15/83; Order ET 70-3, § 458-20-184 (Rule 184), filed 5/29/70, effective 7/1/70.]

WAC 458-20-186 Tax on cigarettes. (1) The Washington state cigarette tax is imposed in the total amount of 31 cents upon each package of 20 cigarettes (38.75¢ per package of 25) by the following statutes:

(a) RCW 82.24.020, which imposes a tax of 11 mills per cigarette, or 22 cents upon each package of 20 (27.5¢ per package of 25).

(b) RCW 82.24.027, which imposes a tax of 4 mills per cigarette, or 8 cents upon each package of twenty (10¢ per package of 25), to provide funding for the water quality account.

(2) This tax is payable by the first person who sells, uses, consumes, handles or distributes the cigarettes in this state. Payment is made through the purchase of stamps from the department of revenue or its authorized agent.

(3) EXEMPTIONS. The cigarette tax does not apply upon cigarettes sold to persons licensed as cigarette distributors in other states when, as a condition of the sale, the seller either delivers the cigarettes to such a buyer at a point outside this state, or delivers the same to a common carrier with the shipment consigned by the seller to such a buyer at a location outside this state. Any person engaged in making sales to licensed distributors in other states or making export sales (see WAC 458-20-193A and 458-20-193C) or in making sales to the federal government or to the established governing bodies of an Indian tribe recognized as such by the United States Department of the Interior and who are authorized by Rule 192 WAC 458-20-192 to receive unstamped cigarettes who furnishes surety bond in a sum satisfactory to the department of revenue, may set aside such part of the person's stock as may be necessary for the conduct of such business without affixing cigarette tax stamps. Such unstamped stock must be kept separate and apart from any stamped stock.

(4) Cigarettes, other than those above mentioned, are not exempt from the tax by reason of their sale either to an Indian or for resale on an Indian reservation (see WAC 458-20-192). Permission to maintain an unstamped stock of cigarettes for sale to a specified Indian tribe may be revoked when it appears that sales to unauthorized purchasers are being, or have been, made.

(5) COLLECTION. Stamps indicating the payment of the cigarette tax must be affixed prior to any sale of the cigarettes. The stamp must be applied to the smallest container or package, unless the department determines that it is impractical to do so.

(6) Every wholesaler or retailer in the state shall stamp within 72 hours after receipt, any of the articles taxed herein. Stamps must be of the heat applied "fuson" type. The use of meter stamping machines for use in imprinting packages, in lieu of attaching stamps, is not authorized by the department. The use of water "decalcomania" type stamps by such vendors is not authorized.

(7) Persons other than wholesalers or retailers, upon holding, owning, possessing or controlling cigarettes in this state, must affix stamps on or before the close of the first business day following receipt of the cigarettes.

(8) Prior to the receipt or transportation of cigarettes in this state such persons must file with a district office of the department of revenue a notice of intent to possess unstamped cigarettes in the state of Washington. A copy of this notice, validated by an agent of the department of revenue, must be in the possession of any such person who is in possession of unstamped cigarettes in this state.

(9) Persons who have filed the aforementioned notice must bring the cigarettes to a district office of the department of revenue and there affix the required stamps within the time limitation provided above.

(10) Any unstamped cigarettes in the possession of persons (other than wholesalers or retailers) who have either failed to file a notice of intent to possess unstamped cigarettes in the state of Washington or who have failed to affix stamps within the time limitation provided above will be deemed contraband and subject to seizure and forfeiture under the provisions of RCW 82.24.130.

(11) The "fuson" type stamps are available, in rolls of 12,000, 19,000, and 30,000 stamps, from an authorized bank. Payment for stamps may be made either at the time of sale, or deferred until later, although the latter form of payment is available only to vendors who meet the requirements of the department and who have furnished a surety bond equal to the proposed total monthly credit limit. In addition, purchases on a deferred payment plan may be made only by the cigarette seller himself or by an agent authorized by him to do so. This authorization may be in the form of a signature card, filed with the bank, from which stamps are usually obtained, and kept current by the vendor. Payments under

a deferred plan are due within 30 days following the purchase, and are to be paid at the outlet from which the stamps were obtained, and may be paid by check payable to the department of revenue. Cigarette dealers, either retail or wholesale, who purchase stamps under either plan are allowed, as compensation for their services in affixing stamps, an amount equal to $4.00 per thousand stamps, which may be offset against the purchase price.

(12) BOOKS AND RECORDS. An accurate set of records, showing all transactions had with reference to the purchase, sale or distribution of articles subject to the cigarette tax must be retained. These records may be combined with those required in connection with the tobacco products tax, by WAC 458-20-185, provided there is a segregation therein the amount involved. All such records must be preserved for 5 years from the date of the transaction.

(13) In particular, persons shipping or delivering any of the articles taxed herein to a point outside of this state shall transmit to the miscellaneous tax section, not later than the 15th of the following calendar month, a true duplicate invoice showing full and complete details of the interstate sale or delivery.

(14) REPORTS AND RETURNS. The department of revenue may require any person dealing with cigarettes, in this state, to complete and return forms, as furnished, setting forth sales, inventory and other data required by the department to maintain control over trade in the articles taxed herein.

(15) Manufacturers selling these articles shall, before the 15th day of each month, transmit to the miscellaneous tax section a complete record of sales of cigarettes in this state during the preceding month.

(16) REFUNDS. Any person may request a refund of the face value of the stamps, less the affixing discount when cigarettes to which they are affixed are:

(a) Damaged, or unfit for sale, and as a result are destroyed or returned to the manufacturer or distributor.

(b) Sold and shipped to a registered dealer regularly making sales of cigarettes in another state.

(17) In either case, the claim for refund, (a form which is provided by the department, Form REV 372063) must be accompanied by an affidavit, in the first instance, of the receipt by the manufacturer and, in the second instance, of the receipt by the buyer of cigarettes bearing stamps from this state.

(18) CRIMINAL PROVISIONS. RCW 82.24.110(1) prohibits certain specified activities with respect to cigarettes and prescribes criminal sanctions for such gross misdemeanors. Also, RCW 82.24.110(2) prohibits transportation and/or possession of unstamped cigarettes under certain conditions and prescribes criminal sanctions for such class C felonies. Persons commercially handling cigarettes in this state must refer to these statutes.

[Statutory Authority: RCW 82.32.300. 87-19-007 (Order ET 87-5), § 458-20-186, filed 9/8/87; 83-07-032 (Order ET 83-15), § 458-20-186, filed 3/15/83; Order ET 75-1, § 458-20-186, filed 5/2/75; Order ET 73-2, § 458-20-186, filed 11/9/73; Order ET 71-1, § 458-20-186, filed 7/22/71; Order ET 70-3, § 458-20-186 (Rule 186), filed 5/29/70, effective 7/1/70.]

WAC 458-20-18801 Prescription drugs, prosthetic and orthotic devices, ostomic items, and medically prescribed oxygen. (1) DEFINITIONS. As used in this section:

(a) "Prescription" means a formula or recipe or an order therefor written by a medical practitioner for the composition, preparation and use of a healing, curative or diagnostic substance, and also includes written directions and specifications by physicians or optometrists for the preparation, grinding, and fabrication of lenses intended to aid or correct visual defects or anomalies of humans.

(b) "Other substances" means products such as catalytics, hormones, vitamins, and steroids, but the term does not include devices, instruments, equipment, and similar articles.

(c) "Food" means any substance the chief general use of which is for human nourishment.

(d) "Medical practitioner" means a person within the scope of RCW 18.64.011(9) who is authorized to prescribe drugs, but excluding veterinarians, and for the purposes of this rule includes also persons licensed by chapter 18.53 RCW to issue prescriptions for lenses.

(e) "Licensed dispensary" means a drug store, pharmacy, or dispensary licensed by chapter 18.64 RCW or a dispensing optician licensed by chapter 18.34 RCW.

(f) "Prosthetic devices" are artificial substitutes which physically replace missing parts of the human body, such as a limb, bone, joint, eye, tooth, or other organ or part thereof, and materials which become ingredients or components of prostheses.

(g) "Orthotic devices" are fitted surgical apparatus designed to activate or supplement a weakened or atrophied limb or function. They include braces, collars, casts, splints, and other specially fitted apparatus as well as parts thereof. Orthotic devices do not include durable medical equipment such as wheelchairs, crutches, walkers, and canes nor consumable supplies such as elastic stockings, arch pads, belts, supports, bandages, and the like, whether prescribed or not.

(h) "Ostomic items" are medical supplies used by colostomy, ileostomy, and urostomy patients. These include bags, tapes, tubes, adhesives, deodorants, soaps, jellies, creams, germicides, and sundry related supplies.

(2) BUSINESS AND OCCUPATION TAX. The business and occupation tax applies to the gross proceeds from sales of drugs, medicines, prescription lenses, or other substances used for diagnosis, cure, mitigation, treatment, or prevention of disease or other ailments in humans.

(3) DEDUCTIONS. The following may be deducted from gross proceeds for computing business and occupation tax:

(a) Sales of prescription drugs and other medical and healing supplies furnished as an integral part of services rendered by a publicly operated or nonprofit hospital, nonprofit kidney dialysis facility, nursing home, or home for unwed mothers operated as a religious or charitable organization which meets all the conditions for exemption for services generally under RCW 82.04.4288 or 82.04.4289 (see WAC 458-20-168).

(4) RETAIL SALES TAX. The retail sales tax applies upon all retail sales of tangible personal property unless expressly exempted by law.

(5) EXEMPTIONS. The retail sales tax does not apply to sales to patients of drugs, medicines, prescription lenses, or other substances, but only when

(a) Dispensed by a licensed dispensary

(b) Pursuant to a written prescription

(c) Issued by a medical practitioner

(d) For diagnosis, cure, mitigation, treatment, or prevention of disease or other ailment in humans. (See RCW 82.08.0281.)

(6) This exemption does not apply to sales of food. Thus, dietary supplements or dietary adjuncts do not qualify for this exemption even though prescribed by a physician.

(7) The retail sales tax does not apply to sales of prosthetic devices, orthotic devices prescribed by physicians, osteopaths, or chiropractors, nor to sales of ostomic items, medically prescribed oxygen, or hearing aids. (See RCW 82.08.0283.)

(8) PROOF OF EXEMPTION. Sales claimed to be exempt under this rule must be separately accounted for and for items requiring a prescription, sellers must retain in their files the written prescription bearing the signature of the medical practitioner who issued the prescription and the name of the patient for whom prescribed. See also WAC 458-20-150 Optometrists, ophthalmologists, and oculists; 458-20-151 Dentists, dental laboratories and physicians; and 458-20-168 Hospitals.

(9) USE TAX. The use tax does not apply to the use of articles and products which are exempt from sales tax as specified herein. (See RCW 82.12.0277.)

[Statutory Authority: RCW 82.32.300. 87-05-042 (Order 87-1), § 458-20-18801, filed 2/18/87; 83-07-032 (Order ET 83-15), § 458-20-18801, filed 3/15/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-18801 (Rule 188), filed 6/27/78; Order 74-2, § 458-20-188 (codified as WAC 458-20-18801), filed 6/24/74.]

WAC 458-20-19301 Multiple activities tax credits. (1) Introduction. Under the provisions of RCW 82.04-.440 as amended effective August 12, 1987, Washington state's business and occupation taxes imposed under chapter 82.04 RCW were adjusted to achieve constitutional equality in the tax treatment of persons engaged in intrastate commerce (within this state only) and interstate commerce (between Washington and other states). The business and occupation tax system taxes the privilege of engaging in specified business activities based upon "gross proceeds of sales" (RCW 82.04.070) and the "value of products" (RCW 82.04.450) produced in this state. In order to maintain the integrity of this taxing system, to eliminate the possibility of discrimination between taxpayers, and to provide equal and uniform treatment of persons engaged in extracting, manufacturing, and/or selling activities regardless of where performed, a statutory system of internal and external tax credits was adopted, effective August 12, 1987. This tax credits system replaces the multiple activities exemption which, formerly, assured that the gross receipts tax would be paid only once by persons engaged in more than one taxable activity in this state in connection with the same end products. Unlike the multiple activities exemption which only prevented multiple taxation from within this state, the credits of the new system apply for gross receipts taxes paid to other taxing jurisdictions outside this state as well.

(2) Definitions. For purposes of this section the following terms will apply.

(a) "Credits" means the multiple activities tax credit(s) authorized under this statutory system also referred to as MATC.

(b) "Gross receipts tax" means a tax:

(i) Which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax; and

(ii) Which is not, pursuant to law or custom, separately stated from the selling price.

(c) "Extracting tax" means a gross receipts tax imposed on the act or privilege of engaging in business as an extractor, and includes the tax imposed by RCW 82-.04.230 (tax on extractors) and similar gross receipts taxes paid to other states.

(d) "Manufacturing tax" means a gross receipts tax imposed on the act or privilege of engaging in business as a manufacturer, and includes:

(i) The taxes imposed in RCW 82.04.240 (tax on manufacturers) and subsections (2) through (5) and (7) of RCW 82.04.260 (tax on special manufacturing activities) and

(ii) Similar gross receipts taxes paid to other states.

The term "manufacturing tax," by nature, includes a gross receipts tax upon the combination of printing and publishing activities when performed by the same person.

(e) "Selling tax" means a gross receipts tax imposed on the act or privilege of engaging in business as a wholesaler or retailer of tangible personal property in this state or any other state. The term "selling" has its common and ordinary meaning and includes the acts of making either wholesale sales or retail sales or both.

(f) "State" means:

(i) The state of Washington,

(ii) A state of the United States other than Washington or any political subdivision of such other state,

(iii) The District of Columbia,

(iv) Territories and possessions of the United States, and

(v) Any foreign country or political subdivision thereof.

(g) "Taxes paid" means taxes legally imposed and actually paid in terms of money, credits, or other emoluments to a taxing authority of any "state." The term does not include taxes for which liability for payment has accrued but for which payment has not actually been made. This term also includes business and occupation taxes being paid to Washington state together with the same combined excise tax return upon which MATC are taken.

(h) "Business," "manufacturer," "extractor," and other terms expressly defined in RCW 82.04.020 through 82.04.212 have the meanings given in those statutory sections regardless of how the terms may be used for other states' taxing purposes.

(3) Scope of credits. This integrated tax credits system is intended to assure that gross receipts from sales or the value of products determined by such gross receipts are taxed only one time, whether the activities occur entirely within this state or both within and outside this state. External tax credits arise when activities are taxed in this state and similar activities with respect to the same products produced and sold are also subject to similar taxes outside this state. There are five ways in which external tax credits may arise because of taxes paid in other states.

(a) Products or ingredients are extracted (taken from the ground) in this state and are manufactured or sold and delivered in another state which imposes a gross receipts tax on the latter activity(s). The credit created by payment of the other state's tax may be used to offset the Washington extracting tax liability.

(b) Products are manufactured, in whole or in part, in this state and sold and delivered in another state which imposes a gross receipts tax on the selling activity. Again, payment of the other state's tax may be taken as a credit against the Washington manufacturing tax liability.

(c) Conversely, products or ingredients are extracted outside this state upon which a gross receipts tax is paid in the state of extracting, and which are sold and delivered to buyers here. The other state tax payment may be taken as a credit against Washington's selling taxes.

(d) Similarly, products are manufactured, in whole or in part, outside this state and sold and delivered to buyers here. Any other state's gross receipts tax on manufacturing may be taken as a credit against Washington's selling tax.

(e) Products are partly manufactured in this state and partly in another state and are sold and delivered here or in another state. The combination of all other states' gross receipts taxes paid may be taken as credits against Washington's manufacturing and/or selling taxes.

Thus, the external tax credits may arise in the flow of commerce, either upstream or downstream from the taxable activity in this state, or both. Products extracted in another state, manufactured in Washington state, and sold and delivered in a third state may derive credits for taxes paid on both of the out of state activities.

Internal tax credits arise from multiple business activities performed entirely within this state, all of which are now subject to tax, but with the integrated credits offsetting the liabilities so that tax is only paid once on gross receipts. Under this system Washington extractors and manufacturers who sell their products in this state at wholesale and/or retail must report the value of products or gross receipts under each applicable tax classification. Credits may then be taken in the amount of the extracting and/or manufacturing tax paid to offset the selling taxes due. There are three ways in which credits may arise because of taxes paid exclusively in this state.

(f) Products are extracted in Washington and directly sold in Washington. Extracting business and occupation tax and selling business and occupation tax must both be reported but the payment of the former is a credit against the latter.

(g) Similarly, ingredients are extracted in Washington and manufactured into new products in this state. The extracting business and occupation tax reported and paid may be taken as a credit against manufacturing tax reported.

(h) Products manufactured in Washington are sold in Washington. Again, the payment of the manufacturing tax reported may be credited against the selling tax (wholesaling and/or retailing business and occupation tax) reported.

All of the external and internal tax credits derived from any flow of commerce may be used, repeatedly if necessary, to offset other tax liabilities related to the production and sale of the same products.

(4) Eligibility for taking credits. Statutory law places the following eligibility requirements and limitations upon the MATC system.

(a) The amount of the credit(s), however derived, may not exceed the Washington tax liability against which the credit(s) may be used. Any excess of credit(s) over liability may not be carried over or used for any purpose.

(b) The person claiming the credit(s) must be the same person who is legally obligated to pay both the taxes which give rise to the credit(s) and the taxes against which the credit is claimed. The MATC is not assignable.

(c) The taxes which give rise to the credit(s) must be actually paid before credit may be claimed against any other tax liability. Tax liability merely accrued is not creditable.

(d) The business activity subject to tax, and against which credit(s) is claimed, must involve the same ingredients or product upon which the tax giving rise to the credit(s) was paid. The credits must be product-specific.

(e) The effective date for developing and claiming credit(s) for products manufactured in Washington state and sold and delivered in other states which impose gross receipts selling taxes is June 1, 1987.

(f) The effective date for developing and claiming all credits other than those explained in subsection (e) above, is August 12, 1987.

(g) Persons who are engaged only in making wholesale or retail sales of tangible personal property which they have not extracted or manufactured are not entitled to claim MATC. Also, persons engaged in rendering services in this state are not so entitled, even if such services have been defined as "retail sales" under RCW 82.04.050. (See WAC 458-20-194 for rules governing apportionment of gross receipts from interstate services.)

(5) Other states' qualifying taxes. The law defines "gross receipts tax" paid to other states to exclude income taxes, value added taxes, retail sales taxes, use taxes, or other taxes which are generally stated separately from the selling price of products sold. Only those taxes imposed by other states which include gross receipts of a business activity within their measure or base

are qualified for these credit(s). The burden rests with the person claiming any MATC for other states' taxes paid to show that the other states' tax was a tax on gross receipts as defined herein. Gross receipts taxes generally include:

(a) Business and occupation privileges taxes upon extracting, manufacturing, and selling activities which are similar to those imposed in Washington state in that the tax measure or base is not reduced by any allocation, apportionment, or other formulary method resulting in a downward adjustment of the tax base. If costs of doing business may be generally or routinely deducted from the tax base, the tax is not one which is similar to Washington state's gross receipts tax.

(b) Severance taxes measured by the selling price of the ingredients or products severed (oil, logs, minerals, natural products, etc.) rather than measured by costs of production, stumpage values, the volume or number of units produced, or some other formulary tax base.

(c) Business franchise or licensing taxes measured by the gross volume of business in terms of gross receipts or other financial terms rather than units of production or the volume of units sold.

Other states' tax payments claimed for MATC must be identifiable with the same ingredients or products which incurred tax liability in Washington state, i.e., they must be product specific.

(d) The department will periodically publish an excise tax bulletin listing current taxes in other jurisdictions which are either qualified or disqualified for credit under the MATC system.

(6) Deductions in combination with MATC. Effective August 12, 1987, with the enactment of the MATC system, the liability for actual payment of tax by persons who extract, manufacture, and sell products in this state was shifted from the selling activity (wholesaling or retailing) to the production activity (extracting and/or manufacturing). As explained, the payment of the production taxes may now be credited against the liability for selling taxes on the same products. However, the deductions from tax provided by chapter 82.04 RCW (business and occupation tax deductions) may still be taken before tax credits are computed and used, with noted exceptions. In order for the MATC system to result in the correct computation of tax liabilities and credit applications, the tax deductions which may apply for any reporting period must be taken equally against both levels of tax liability reported, i.e., at both the production and selling levels. Failure to report tax deductions in this manner will result in overreporting tax due and may result in overpayment of tax. Thus, with the exceptions noted below, tax deductions formerly reported only against selling activities should now be reported against production activities as well. All such deductions, the result of which is to reduce the measure of tax reported, should be taken against both the production taxes (extracting or manufacturing) and the selling taxes (wholesaling and/or retailing) equally.

(a) Example:

(i) A company manufactures products in Washington which it also sells at wholesale for $5,000 and delivers to a buyer in this state. The buyer defaults on part of the payment and the seller incurs a $2,000 credit loss which it writes off as a bad debt during the tax reporting period. The bad debt deduction provided by RCW 82.04-.4284 must be shown on both the manufacturing–other line and the wholesaling–other line of the combined excise tax return. Taking the deduction on only one of those activities results in overreported tax liability on the $2,000 loss.

(b) Exceptions. The deductions generally provided by RCW 82.04.4286, for interstate or foreign sales (where goods are sold and delivered outside this state) may not be taken against tax reported at the production level (extracting or manufacturing). This is because the MATC system itself provides for tax credits instead of tax deductions on gross receipts from transactions involving goods produced in this state and sold in interstate or foreign commerce. Thus, deductions which eliminate transactions from tax reporting may be taken only against selling taxes.

(c) Applicable deductions should be shown on the front of the combined excise tax return (Column #3) on each applicable tax classification line and detailed on the back side of the return, as usual, before MATC is taken.

(d) It is not the intent of the MATC law to invalidate or nullify the business and occupation tax exemption for taxable amounts below minimum (see WAC 458-20-104). Thus any person whose gross receipts or value of products reported under any single tax classification with respect to the production and sale of any product is less than the minimum taxable amount will not incur tax liability merely because of the requirement to report those gross receipts or value of products on the same product under other tax classifications as well.

(i) Example: A person both manufactures and sells at wholesale $2,000 worth of widgets in the first quarter of a tax year. The requirement to report the $2,000 tax measure under both the manufacturing–other classification and the wholesaling–other classification gives the false appearance of $4,000 in gross receipts during this quarter. However, only the amount reported under the manufacturing–other classification need be considered to determine eligibility for the amount–below–minimum exemption.

(7) How and when to take MATC. The credits available under the MATC system are all to be taken on the combined excise tax return beginning in August, 1987 and thereafter. The return form has been modified to accommodate these credits. Each tax return upon which MATC has been taken must be accompanied by a completed Schedule C. This schedule details the business activities and credits computations. The line by line instructions insure that no more or no less credits are claimed than are authorized under the law.

(8) Consolidation of tax liabilities and credits. Under the MATC system a person's Washington tax liability for all activities involved in that person's production and sale of the same ingredients or products (extracting,

and/or manufacturing, and/or selling) is to be reported only at the time of the sale of such products or at the time of that person's own use of such products for commercial or industrial consumption. All of the taxable activities are to be reported on that same periodic excise tax return. Also, all external and internal tax credits derived from the payment of any gross receipts taxes on any of these activities are to be taken at that time. Thus, the taxable activities and the tax credits are procedurally consolidated for reporting. This consolidation generally overcomes any need to track ingredients or products from their extraction to their sale. It also overcomes any need to report and pay Washington tax liability during one reporting period and to take credits against that tax liability in a different reporting period. Thus, except as noted below, there can be no credit carryovers or carrybacks under this system.

(a) Exception. Where different tax reporting periods are assigned by Washington state and another state to a company doing business both within and outside Washington state, the other state's gross receipts tax on the same products may not yet have been paid when the Washington tax is due for reporting and payment. In such cases the Washington tax due must be timely reported and paid during the period in which the sale is made. The external credit arising later, when the other state's tax is paid, may be taken as a credit against any Washington business and occupation tax reported during that later period. Thus, the limitation that the MATC must be product–specific by being limited to the amount of Washington tax paid on the same products does not mean that the credit(s) can only be used against precisely those same Washington taxes paid.

(i) In the situation described in subsection (a) above, if there is not sufficient Washington business and occupation tax due for payment in the later period, when the external tax credit arises, to allow for utilization of the entire credit, the amount of any overage may be carried forward and taken against Washington taxes reported in subsequent reporting periods until fully used.

When filing such exception returns, the full amount of any credits should be claimed, even though that credit amount will exceed the amount of tax liability reported for that period. The department of revenue itself will make the necessary adjustments and will perform the carrying over of any excess credits into future reporting periods.

(ii) In the same situation, if the person entitled to claim such credit overage is no longer engaged in taxable business in this state or for any other reason does not incur sufficient Washington business and occupation tax liability to fully utilize the perfected credit overage, a tax refund will be issued.

(iii) No tax refunds, MATC carryovers, or MATC carrybacks will be allowed under any circumstances other than those explained above.

(b) Special circumstances may arise where it is not possible to specifically identify ingredients or products as they move from production to sale (e.g., fungible commodities from various sources stored in a common warehouse). In such cases the taxpayer should seek advance approval from the department, in writing, for tax reporting and credit taking on a test period, formulary, or volume percentage basis, subject to audit verification.

(9) Recordkeeping requirements. Persons claiming the MATC must keep and preserve such records and documents as may be necessary to prove their entitlement to any credits taken under this system (RCW 82.32.070). It is not required to submit copies of such proofs when credits are claimed or together with the Schedule C detail. Rather, such records must be kept for a period no less than five years from the date of the tax return upon which the related tax credits are claimed. Such records are fully subject to audit for confirmation of the validity and amounts of credits taken. Records which must be preserved by persons claiming external tax credits include:

(a) Copies of sales contracts, or other written or memorialized evidence of any sales agreements, including purchase and billing invoices showing the origin state and destination state of products sold.

(b) Copies of shipping or other delivery documents identifying the products sold and delivered, reconcilable with the selling documents of subsection (a) above, if appropriate.

(c) Copies of production reports, transfer orders, and similar such documents which will reflect the intercompany or interdepartmental movement of extracted ingredients or manufactured products where no sale has occurred.

(d) Copies of tax returns or reports filed with other states' taxing authorities showing the kinds and amounts of taxes paid to such other states for which MATC is claimed.

(e) Copies of cancelled checks or other proofs of actual tax payment to the other state(s) giving rise to the MATC claimed.

(f) Copies of any other state(s) taxing statutes, laws, ordinances, and other appropriate legal authorities necessary to establish the nature of the other states' tax as a gross receipts tax, as defined in this section.

(g) Failure to keep and preserve proofs of entitlement to the MATC will result in the denial of credits claimed and the assessment of all taxes offset or reduced by such credits as well as the additional assessment of interest and penalties as required by law. (See RCW 82.32.050.)

(10) MATC in combination with other credits. The tax credits authorized under this system may be taken in combination with other tax credits available under Washington law. Such other credit programs, however, authorize credit carryovers from reporting period to period until the credits are fully utilized. Thus, the MATC must be computed and used to offset business and occupation tax liabilities during any tax reporting period before any other program credits to which a claimant may be entitled are claimed or applied. Failure to compute and take the MATC before applying other available credits may result in the loss of the other credit benefits.

(11) Superseding provisions. The MATC provisions of this section supersede and control the provisions of other sections of chapter 458–20 WAC (other tax rules) relating to intrastate, interstate, and foreign transactions to

the extent that such provisions are or appear to be contrary or conflicting.

(12) Unique or special credit situations—Appeals. The provisions of this section generally explain the nature of the MATC system and the tax credit qualifications, limitations, and claiming procedures. The complexity of the integrated tax reporting and credit taking procedures may develop situations or questions which are not addressed herein. Such matters and requests for specialized rulings should be submitted to the department of revenue for prior determination before credits are claimed. Generally, prior determinations will be provided within sixty days after the department receives the information necessary to make such a ruling. Adverse rulings, tax credit denials, or tax assessments resulting from audits or other examinations of returns upon which the MATC is claimed may be administratively appealed under the provisions of chapter 82.32 RCW and WAC 458-20-100.

[Statutory Authority: RCW 82.32.300. 87-23-008 (Order 87-8), § 458-20-19301, filed 11/6/87.]

WAC 458-20-211 Leases or rentals of tangible personal property, bailments. (1) DEFINITIONS. The terms "leasing" and "renting" are used interchangeably and refer generally to the act of granting to another the right of possession to and use of tangible personal property for a consideration.

(2) The term "bailment" refers to the act of granting to another the temporary right of possession to and use of tangible personal property for a stated purpose without consideration to the grantor.

(3) A true lease, rental, or bailment of personal property does not arise unless the lessee or bailee, or employees or independent operators hired by the lessee or bailee actually takes possession of the property and exercises dominion and control over it. Where the owner of the equipment or the owner's employees or agents maintain dominion and control over the personal property and actually operate it, the owner has not generally relinquished sufficient control over the property to give rise to a true lease, rental, or bailment of the property.

(4) RCW 82.04.050 excludes from the definition "retail sale" any purchases for the purpose of resale, "as tangible personal property." Also, under this statutory definition, the term "retail sale" includes the renting or leasing of tangible personal property to consumers. However, equipment which is operated by the owner or an employee of the owner is considered to be resold, rented, or leased only under the following, precise circumstances:

(a) The property consists of construction equipment;

(b) The agreement between the parties is designated as an outright lease or rental, without reservations; and,

(c) The customer acquires the right of possession, dominion, and control of the equipment, even to the exclusion of the lessor.

(5) The third requirement above is a factual question and the burden of proof is upon the owner/operator of the equipment to establish that the degree of control has been relinquished necessary to constitute a lessor–lessee relationship. Weight will be given to such factors as who has physical, operating control of the equipment; who is responsible for its maintenance, fueling, repair, storage, insurance (risk of loss or damage), safety and security of operation, and whether the operator is a loaned servant. If control of these factors is left with the owner/operator, then as a matter of fact, there has not been a relinquishing of control of the equipment to the degree necessary to create a lessor–lessee relationship. This is true, even though the customer exercises some constructive control over such matters as when and where the equipment is used in connection with the construction work being performed, i.e., the contractor controls the job site.

(6) Thus, the terms leasing, rental, or bailment do not include any arrangements pursuant to which the owner of the equipment reserves dominion and control of the equipment and either operates the equipment or property or provides an employee operator, whether or not such employee operator works under the general supervision or control of the customer.

(7) BUSINESS AND OCCUPATION TAX. Outright rentals of bare (unoperated) equipment or other tangible personal property as well as "true" leases or rentals of operated equipment or property are generally subject to the retailing classification of the business and occupation tax. Under unique circumstances when such things are rented for rerent by the lessee, without intervening use, then the original rental is subject to the wholesaling classification of tax and the subsequent rental is subject to the retailing classification.

(8) Persons who provide equipment or other tangible personal property and, in addition, operate the equipment or supply an employee to operate the same for a charge, without relinquishing substantial dominion and control to the customer, are subject to the business and occupation tax (or public utility tax) according to the classification of the activities performed by the equipment and operator. Thus, the charge made to a construction contractor for equipment with operator used in the construction of a building would be taxable under wholesaling—other and a similar charge to a contractor for use in the construction of a publicly owned road would be taxable under public road construction.

(9) RETAIL SALES TAX. Persons who rent or lease tangible personal property to users or consumers are required to collect from their lessees the retail sales tax measured by gross income from rentals as of the time the rental payments fall due.

(10) RCW 82.04.050 excludes from the definition of the term "retail sale," purchases for resale "as tangible personal property." Thus the retail sales tax does not apply upon sales of tangible personal property to persons who purchase the same solely for the purpose of renting or leasing such property without operators or making "true" leases of operated equipment. However, the retail sales tax applies upon sales to persons who provide such property with operators for a charge, without relinquishing substantial dominion and control, or who intend to make some use of the property other than or in addition to renting or leasing.

(11) The retail sales tax does not apply upon the rental or lease of motor vehicles and trailers to nonresidents of this state for use exclusively in transporting persons or property across the boundaries of this state and in intrastate operations incidental thereto when the motor vehicle or trailer is registered and licensed in a foreign state. For purposes of this exemption, the term "nonresident" shall apply to a renter or lessee who has one or more places of business in this state as well as in one or more other states but the exemption for nonresidents shall apply only to those vehicles which are most frequently dispatched, garaged, serviced, maintained and operated from the renter's or lessee's place of business in another state.

(12) Effective April 3, 1986, (RCW 82.08.0295) the retail sales tax shall not apply to lease payments by a seller/lessee to a purchaser/lessor under a sale/leaseback agreement in respect to property, equipment, and components used by the seller/lessee primarily in the business of canning, preserving, freezing, or dehydrating fresh fruits, vegetables, and fish. Nor does the sales tax apply to the purchase amount paid by the lessee pursuant to an option to purchase this specific kind of processing equipment at the end of the lease term. In both situations the availability of this special sales tax exemption is contingent upon the seller/lessee having paid retail sales tax or use tax at the time of acquisition of such special processing property, equipment, and components.

(13) USE TAX. Consumers who rent or lease tangible personal property from others and who have not paid the retail sales tax to their lessors are liable for the use tax on the amount of the rental payments as of the time the payments fall due.

(14) Effective April 3, 1986, (RCW 82.12.0295) the use tax shall not apply to lease payments by a seller/lessee to a lessor under a sale/leaseback agreement in respect to property, equipment, and components used by the seller/lessee primarily in the business of canning, preserving, freezing, or dehydrating fresh fruits, vegetables, and fish. Nor does the use tax apply to the purchase amount paid by the lessee pursuant to an option to purchase at the end of the lease term. In both situations the availability of this use tax exemption is contingent upon the seller/lessee having paid retail sales tax or use tax at the time of acquisition of such property, equipment, and components.

(15) The value of tangible personal property held or used under bailment is subject to tax if the property was purchased or acquired under conditions whereby the retail sales tax was not paid by the bailor. Tax liability is that of the bailor, or of the bailee if the bailor has not paid the tax. The measure of the use tax for articles acquired by bailment is the reasonable rental for such articles to be determined as nearly as possible according to the rental price at the place of use of similar products of like quality and character. In the absence of rental prices for similar products the reasonable rental may be computed by prorating the retail selling price over the period of possession had by a bailee and payable in monthly installments. No further use tax is due upon property acquired by bailment after tax has been paid by the bailee or any previous bailee upon the full original value of the article.

(16) Use tax does not apply to use by a bailee of any article of tangible personal property which is entirely consumed in the course of research, development, experimental, and testing activities conducted by the user, providing the acquisition or use of such articles by the bailor are exempt from sales or use tax. (RCW 82.12-.0265.)

[Statutory Authority: RCW 82.32.300. 87-17-015 (Order 87-4), § 458-20-211, filed 8/11/87; 83-08-026 (Order ET 83-1), § 458-20-211, filed 3/30/83; Order ET 71-1, § 458-20-211, filed 7/22/71; Order ET 70-3, § 458-20-211 (Rule 211), filed 5/29/70, effective 7/1/70.]

WAC 458-20-214 Cooperative marketing associations and independent dealers acting as agents of others with respect to the sale of fruit and produce. (1) Persons engaged in the business of buying and selling fruit or produce, as agents of others, are taxable under the provisions of the business and occupation tax and the retail sales tax as provided in this section. Tax is due on the business activities of such persons, irrespective of whether the business is conducted as a cooperative marketing association or as an independent produce agent.

(2) Persons who derive income from receiving, washing, sorting, packing, or otherwise preparing for sale, perishable horticultural products for others are also subject to business and occupation tax, except when such activities are performed for the growers of such products (RCW 82.04.4287.)

(3) Business and occupation tax.

(a) Retailing. Taxable with respect to the sale of ladders, picking bags, and similar equipment to consumers.

(b) Wholesaling. Taxable with respect to:

(i) The sale of boxes, nails, labels and similar supplies sold to growers for their use in packing fruit and produce for sale;

(ii) The sale of insecticides used as spray for fruits and produce;

(c) Warehousing. Taxable with respect to gross income from cold storage warehousing, but not including the rental of cold storage lockers. See also WAC 458-20-182.

(d) Service and other business activities. Taxable with respect to:

(i) Commissions for buying or selling;

(ii) Charges made for interest, no deduction being allowed for interest paid;

(iii) Charges for handling;

(iv) Charges for receiving, washing, sorting, and packing of fresh perishable horticultural products and the material and supplies used therein, when performed for persons other than the growers thereof;

(v) Rentals of cold storage lockers; and

(vi) Other miscellaneous charges, including analysis fees, but excepting actual charges made for foreign brokerage and bona fide charges for receiving, washing, sorting and packing fresh perishable horticultural crops

and the materials and supplies used therein when performed for the grower, either as agent or independent contractor.

(4) Where a seller performs packing services for the grower and furnishes the materials and supplies used therein, the amount of the charge therefor is deductible, even though the boxes and other packing material are loaned or charged to the grower prior to the time the fruit or produce is received for packing, provided that the boxes and packing materials are returned by the grower to the seller for use in packing fruit and produce for the grower.

(5) Retail sales tax.

(a) The retail sales tax applies to sales of ladders, picking bags, and other equipment sold to consumers, whether sold by associations to members, or by agents to their principals.

(b) Retail sales tax does not apply to sales of materials and supplies directly used by cooperative marketing associations, agents, or independent contractors for the purpose of packing fresh perishable horticultural products for the growers thereof. "Growers" are those persons described as exempt orchardists or farmers under RCW 82.04.330.

(c) Sales of food products are not subject to retail sales tax. See WAC 458-20-244.

(6) Use tax.

(a) The use tax applies upon the use by consumers of any article of tangible personal property which is subject to retail sales tax as noted above, but upon which retail sales tax has not been paid for any reason.

[Statutory Authority: RCW 82.32.300. 88-20-014 (Order 88-6), § 458-20-214, filed 9/27/88; 83-08-026 (Order ET 83-1), § 458-20-214, filed 3/30/83. Statutory Authority: RCW 82.01.060(2) and 82-.32.300. 78-07-045 (Order ET 78-4), § 458-20-214, filed 6/27/78; Order ET 70-3, § 458-20-214 (Rule 214), filed 5/29/70, effective 7/1/70.]

WAC 458-20-217 Lien for taxes. (1) Any tax due and unpaid, and all increases and penalties thereon, constitute a debt to the state and may be collected by court proceedings in the same manner as any other debt, which remedy is in addition to any and all other remedies.

(2) TAX WARRANTS. When a warrant issued under RCW 82.32.210 and 82.32.220 has been filed with the clerk of the superior court and entered in the judgment docket, the warrant becomes a specific lien upon all goods, wares, merchandise, fixtures, equipment or other personal property used in the conduct of the business of the taxpayer, including property owned by third persons who have a beneficial interest, direct or indirect in the operation thereof, and no sale or transfer of such personal property in any way affects the lien. However, the lien is not superior to bona fide interests of third persons which had vested prior to the filing of the warrant when such third persons do not have a beneficial interest, direct or indirect, in the operation of the business, other than securing the payment of a debt or the receiving of a regular rental on equipment; provided that "bona fide interest of third persons" shall not include any mortgage of real or personal property or any other credit transaction that results in the mortgagee or the holder of the security acting as the trustee for unsecured creditors of the taxpayer mentioned in the warrant who executed such chattel or real property mortgage or the document evidencing such credit transaction.

(a) Thus, where an oil company leases a filling station and other equipment to an operator under conditions whereby the operator is required to sell, or does sell, the products of the lessor, the lien will attach to the personal property leased by the oil company. Likewise, where the owner of a tavern grants to another a concession to operate the lunch counter therein, the lien for unpaid taxes, increases, and penalties with respect to the operation of the lunch counter will attach to any equipment, fixtures, or other personal property owned by the tavern keeper but used by the concessionaire in the conduct of the business. Similarly, the lien attaches to a stock of merchandise supplied to a dealer by a distributor, manufacturer, bank or finance company whether on consignment or under a security agreement where it appears that the distributor, manufacturer, bank or finance company has financed the dealer by means of capital loans or has in any other way aided or assisted in maintaining the dealer in business. The amount of the warrant also becomes a lien upon the title to and interest in all other real and personal property of the taxpayer against whom it is issued and is the same as a judgment in a civil case docketed in the office of the clerk.

(b) Warrants so docketed are sufficient to support the issuance of writs of garnishment in favor of the state, provided the taxpayer has not been denied an opportunity to be heard regarding the assessment.

(3) WITHHOLD AND DELIVER. The department of revenue is authorized to issue to any person, or to any political subdivision or department of the state, a notice and order to withhold and deliver property of any kind whatsoever when there is reason to believe that there is in the possession of such person, political subdivision or department, property which is or shall become due, owing or belonging to any taxpayer against whom a warrant has been filed. The notice and order to withhold and deliver shall constitute a continuing levy on such property until the department shall issue its release of such levy.

(a) The notice and order to withhold and deliver may be served by the sheriff of the county wherein service is made, or by his deputy, or by any authorized representative of the department of revenue. The notice and order to withhold and deliver may also be served by certified mail, return receipt requested, by the sheriff, deputy, or authorized representative of the department. Persons upon whom service has been made are required to answer the notice within twenty days exclusive of the day of service. The answer must be under oath and in writing. If such answer states that it cannot be presently ascertained whether, in fact, any property is or shall become due, owing, or belonging to such taxpayer, the persons served herein are required to further answer when such fact can be ascertained with reasonable certainty.

(b) Property which may be subject to the claim of the department must be delivered forthwith to the department or its duly authorized representative upon demand, to be held in trust by the department for application on the indebtedness involved, or for return, without interest, in accordance with final determination of liability. In the alternative, there must be furnished a good and sufficient bond satisfactory to the department conditioned upon final determination of liability.

(c) Failure of any person to make answer to an order to withhold and deliver within the prescribed time permits the court to render a judgment by default for the full amount claimed by the department in the notice to withhold and deliver, together with costs.

(4) PROBATE, INSOLVENCY, ASSIGNMENT FOR THE BENEFIT OF CREDITORS, OR BANKRUPTCY. In all of these cases the claim of the state for unpaid taxes and increases and penalties thereon is a lien upon all real and personal property of the taxpayer, and the mere existence of such cases or conditions is sufficient to create the lien without any prior or subsequent action by the state, and in all such cases it is the duty of all administrators, executors, guardians, receivers, trustees in bankruptcy or assignees for the benefit of creditors, to notify the department of the existence thereof within thirty days from the date of their appointment and qualification. In the event such notice is not timely given, such persons become personally liable for the payment of the taxes and all increases and penalties.

The lien attaches as of the date of assignment or of the initiation of court proceedings, but shall not affect the validity or priority of any earlier lien that may have attached previously in favor of the state under any other provision of the Revenue Act.

(5) PUBLIC IMPROVEMENT CONTRACTS. The amount of all taxes, increases and penalties due or to become due under any chapter of the Revenue Act from a contractor or his successors or assignees with respect to a public improvement contract wherein the contract price is $20,000 or more is a lien prior to all other liens upon the amount of the retained percentage withheld by the disbursing officers, and the amount of all other taxes, increases and penalties due and owing from the contractor is a lien upon the balance of such retained percentage after all other statutory lien claims have been paid.

Any state, county or municipal officer charged with the duty of disbursing or authorizing the payment of public funds, before making final payment of the retained percentage to any person performing any such contract, or to his successors or assignees, must require the person to secure from the department a certificate that all taxes, increases and penalties due from such person, and all taxes to become due with respect to such contract have been paid in full or that they are, in the department's opinion, readily collectible without recourse to the lien and that said lien is therefore released.

(6) TRUST FUND ACCOUNTABILITY FOR RETAIL SALES TAX.

(a) BACKGROUND: This rule is promulgated pursuant to RCW 82.32.300 which directs that the department of revenue has the authority to implement the provisions of RCW 82.32.237, effective May 1, 1987.

(b) GENERALLY: This rule implements legislation which is intended to enforce the timely remittance of retail sales tax to the department of revenue. The statute accomplishes that intent by imposing personal liability for retail sales tax collected by the retail seller upon those persons who (i) control or supervise the collection of retail sales tax and hold the same in trust pursuant to RCW 82.08.050 or (ii) are charged with the responsibility for the filing of returns or the payment to the state of retail sales tax held in trust.

(c) DEFINITIONS:

(i) PERSON: Person means "person" as defined in RCW 82.04.030. The use of the term person in the singular may mean persons or vice versa where appropriate in the circumstances or where the content requires the same.

(ii) COLLECTED: The term "collected" shall mean actually and physically controlled. A corporation shall be deemed to have actual and physical control if possession shall be in an agent of the corporation.

(iii) TERMINATION: The term "termination" means revocation of the corporation's certificate of registration, the first act of liquidation or distribution of corporate assets with the intent to cease any further business activity after liquidation or distribution, the filing of a petition in bankruptcy court for complete liquidation or any other act evidencing the intent to quit business or close business activity.

(iv) ABANDONMENT: The term "abandonment" means the officers, directors, and shareholders have relinquished all dominion and control of the corporate affairs and there is no one who acknowledges authority to act for or on behalf of the corporation.

(v) DISSOLUTION: The term "dissolution" means statutory dissolution pursuant to chapter 23A.28 RCW.

(d) REQUIREMENTS FOR ASSESSMENT: Before the department may assess trust fund accountability for retail sales tax held in trust, the statute requires that the underlying retail sales tax liability be that of a corporation. Second, there must also be a termination, dissolution or abandonment of the corporation. Third, the person against whom personal liability is sought willfully failed to pay or to cause to be paid retail sales tax collected and held in trust. Fourth, the person against whom personal liability is sought is a person who has control or supervision over the trust funds or is responsible for reporting or remitting the retail sales tax. Finally, there must be no reasonable means to collect the tax directly from the corporation.

(e) PERSONS LIABLE: Any person who controls or supervises the collection of retail sales tax or is charged with the responsibility for the filing of returns or the payment of retail sales tax collected and held in trust, may be personally liable to the state for the retail sales tax which was collected, held in trust, pursuant to RCW 82.08.050 and not paid over to the state. There may be more than one person liable under this statute if the requirements as to each are present.

(i) "Control or supervision of the collection of retail sales tax" shall mean the person who has the power and responsibility under corporate bylaws, job description or other proper delegation of authority (as established by written documentation or through a course of conduct) to collect, account and deposit the corporate revenue and to make payment of the retail sales tax to the department of revenue. The term means significant rather than exclusive control or supervision. Thus, the term shall not mean the sales clerk who actually collects the funds from the customer or the person whose only responsibility is to take control of the funds and deposit the same into the bank, but it shall include the treasurer of the corporation if it is that person's responsibility to assure that the revenue is collected from the cash registers, tills or similar collection devices and that the amounts are deposited into the corporate account. It may also include the bookkeeper if the bookkeeper has the responsibility to collect, account and deposit the corporate revenue. In both examples, it is the treasurer or bookkeeper who have the significant control or supervision.

(ii) "Responsibility for the filing of returns or the payment of the retail sales tax collected and held in trust" shall mean the person who has the authority and discretion to file state excise tax returns and to determine which corporate debts should be paid. The person who signs the state excise tax returns or signs checks on behalf of or for the corporation may be a responsible party if that person also has the authority and discretion to determine which corporate debts should be paid. If the corporate account requires the signature of more than one person, then all such signatories may be a responsible party for trust fund accountability purposes. A member of the board of directors, a shareholder or an officer may also become a responsible party if the director, shareholder or officer actually approves the payment of corporate debts whereby the result of such approval is to pay the trust funds to someone other than the department of revenue.

(f) EXTENT OF PERSONAL LIABILITY: If a person is found personally liable for the retail sales tax held in trust, such person shall be liable for any retail sales tax held in trust including interest and penalties which have accrued or may be accruing on such taxes. The liability of such person shall be limited to only the retail sales tax held in trust (and the interest and penalties accruing thereon) for the time that the person had control or supervision over the retail sales tax collected or had responsibility for the filing of returns or the payment to the state of the retail sales tax held in trust.

(i) The amount of liability assessable against a person for trust fund accountability shall be the amount of the retail sales tax actually collected and held in trust (during the period for which personal liability is sought) plus any penalties and interest accruing on said amount. For corporations who report state excise taxes on the accrual basis or corporations who report retail sales tax in accordance with "method three" of WAC 458-20-199, the amount of the personal liability shall be reduced by payments of retail sales tax actually remitted to the state but not yet collected from the customer.

(ii) If the department has determined that there is no reasonable means of collection of the tax directly from the corporation and the corporation holds property which has a readily ascertainable value, then the department shall reduce the amount of assessable personal liability by an amount that represents the fair market value of such corporate property. The fair market value determined by the department shall be rebuttable by a preponderance of the evidence through persons who are competent and otherwise qualified to give testimony as to value. The term "fair market value" shall have its usual and customary meaning less reasonable costs of liquidation, if applicable.

(g) WILLFULLY FAILS TO PAY OR TO CAUSE TO BE PAID: The statute defines the term "willfully fails to pay or to cause to be paid" as an intentional, conscious and voluntary course of action. The failure to pay over such tax must be the result of a willful failure to pay or to cause to be paid to the state any retail sales tax **collected** on retail sales by the corporation as opposed to retail sales tax due on the corporation's consumable items.

For example, if the treasurer knows that the retail sales tax must be remitted to the state on the twenty-fifth day of the following month, but rather than holding the funds for payment on the twenty-fifth, uses such funds to pay for any other obligation such as the payroll or additional inventory, such act is an intentional, conscious and voluntary course of action. If there are insufficient funds on the twenty-fifth day of the following month to pay over to the state, the treasurer will have willfully failed to pay or to cause to be paid retail sales tax held in trust.

(h) CIRCUMSTANCES BEYOND THE CONTROL: Any person, who shall otherwise meet the requirements for personal liability, shall not be personally liable if the failure to pay or to cause to be paid is the result of circumstances beyond the control of such person and that person has exercised good faith in collecting and attempting to hold the funds in trust. The following examples are provided for illustrative purposes only and they do not, in any way, limit the scope of the circumstances which may be beyond the control of the person against whom liability is sought. Each case will be determined in accordance with its particular facts and circumstances.

(i) Immediately prior to timely payment of the retail sales tax, unknown to the person against whom personal liability is sought, the Internal Revenue Service levies and seizes the money. Such occurrence is beyond the control of the person against whom personal liability is sought.

(ii) Immediately prior to timely payment of the retail sales tax, unknown to the person against whom personal liability is sought, the person learns that the business is the victim of an embezzler, the criminal act of which has been reported and duly documented by the local law enforcement authority. Such occurrence is beyond the control of the person against whom personal liability is sought.

(iii) Immediately prior to timely payment of the retail sales tax, unknown to the person against whom personal liability is sought, the bank in which the retail sales tax

has been deposited exercises a right of offset and removes the money from the taxpayer's control. Such occurrence is beyond the control of the person against whom personal liability is sought.

(iv) Prior to the date for timely payment of the retail sales tax, the person against whom personal liability is sought agrees to a judgment against the corporation and allows the judgment creditor to garnish the funds held in trust and become a preferred creditor over the state. Such occurrence lacks good faith and is not beyond the control of the person against whom personal liability is sought.

(i) NO REASONABLE MEANS OF COLLECTION: Before the department is authorized to pursue personal liability for retail sales tax under the trust fund theory, the department must find that there is no reasonable means of collecting the retail sales tax directly from the corporation.

"No reasonable means of collection" shall mean that the burden to pursue the corporation's assets may outweigh the benefits to be achieved. Inconvenience of collection alone is insufficient to establish the absence of a reasonable means of collection. This standard, however, does not require that the department liquidate all assets of the corporation before it can pursue recourse under the theory of trust fund accountability. A lack of a reasonable means of collection is illustrated by the following examples. (These examples are used for illustration only and they shall not be considered the only circumstances under which the meaning of the phrase shall apply.)

(i) Assume that the corporation owned real estate upon which there were first and second mortgages. The value of the property may satisfy the first and second lien holders, but it is doubtful that, after costs of sale, there would be sufficient value remaining to satisfy all or a part of the trust fund liability. A reasonable means of collection is not present, because the cost to pursue the corporation's real property may produce no value with which to satisfy any or all of the liability.

(ii) Assume that the corporation owned miscellaneous office furniture and equipment. The value of the property is negligible. A reasonable means of collecting the tax is not present, because the burden to liquidate all assets in order to recover a negligible value outweighs the benefit of a few dollars to be recovered.

(j) NOTICE OF PERSONAL LIABILITY: The department shall give the person against whom personal liability is sought notice in accordance with RCW 82.32.130. The notice shall include the taxpayer's name as well as registration, tax assessment and tax warrant numbers, if any, of the corporation; the name of the person against whom the personal liability is sought; a statement that there is no reasonable means of collection and the reasons for such conclusion; and the capacity (control/supervision or responsible person) upon which the department seeks to base the personal liability.

(k) APPEAL OF TRUST FUND ACCOUNTABILITY ASSESSMENT: Any person who has received an assessment under the authority of RCW 82.32.237, and this section shall have the right to proceed under WAC 458-20-100 and any other remedy found in RCW 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

[Statutory Authority: RCW 82.32.300. 88-01-050 (Order 87-9), § 458-20-217, filed 12/15/87; Order ET 71-1, § 458-20-217, filed 7/22/71; Order ET 70-3, § 458-20-217 (Rule 217), filed 5/29/70, effective 7/1/70.]

WAC 458-20-240 Manufacturers, tax credits. (1) Introduction. Chapter 82.62 RCW establishes a business and occupation tax credits program. Its purpose is to stimulate the economy and create employment opportunities in specific distressed areas of this state. In addition to the tax credit benefits of this program, specific financial incentives to employers who locate or expand business facilities in this state are administered by the Washington state employment security department. The provisions of this section, however, apply only for manufacturing or research and development activities conducted at specific business facilities in announced eligible areas of this state.

(2) Effective April 1, 1986, persons engaged in manufacturing or research and development activities, who otherwise qualify, will receive credits against their business and occupation tax due under chapter 82.04 RCW. Those credits amount to one thousand dollars for each qualified employment position directly created in an eligible business project, as those terms are defined in this section.

(3) Definitions. For purposes of the tax credits program the following definitions will apply.

(a) "Applicant" means a person applying for tax credit under this program.

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

(c) "Eligible area" means:

(i) A county in which the average level of unemployment for the three years before the year in which an application is filed exceeds the average state unemployment for those years by twenty percent. The department will publish a list of such eligible areas by May 1 of each year during the life of this program.

(ii) A metropolitan statistical area, as defined by the Office of Federal Statistical Policy and Standards, United States Department of Commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application for credit is filed exceeds the average state unemployment for such calendar year by twenty percent. Applications under this subsection shall be filed by April 30, 1989.

(d) "Eligible business project" means manufacturing or research and development activities which are conducted by an applicant in an eligible area at a specific facility: *Provided*, That in order to qualify as an eligible business project, the applicant's average full-time qualified employment positions at the specific facility will be at least fifteen percent greater in the year for which credit is being sought than they were at the same facility in the immediately preceding year.

(e) The term "eligible business project" defined earlier, does not include any of the following:

(i) Any business project undertaken by a light and power business;

(ii) Any portion of a business project creating employment positions outside an eligible area;

(iii) Any business projects of persons who are receiving sales tax deferrals under chapter 82.61 RCW (see WAC 458-20-24002).

(f) "Manufacturing" has the meaning given in RCW 82.04.110 and WAC 458-20-136. For purposes of this section the term also includes computer programming, the production of computer software, and other computer-related services, and the activities of research and development and commercial testing laboratories.

(g) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, services, or process before commercial sales have begun.

(h) "Qualified employment position" means a permanent full-time employee, employed in an eligible business project during the entire tax year: *Provided*, That,

(i) Once a full-time position is established and filled it will continue to qualify for tax credit purposes so long as it is filled by any person or, during any period of vacancy, the employer is training or actively recruiting a replacement employee;

(ii) A position will not be deemed to be filled in order to qualify for tax credit if it is vacant for any period in excess of thirty consecutive days;

(iii) The requirement for employment during the "entire" tax year will be satisfied if the full-time position is filled for a period of twelve consecutive months.

(i) "Permanent full-time employee" means a person who works for the recipient on a paid basis, at least thirty-five hours per week. It does not include independent contractors, independent representatives, persons compensated exclusively on a commissioned basis, or seasonal and similar employment personnel who work for the recipient for only a part of the year.

(j) "Tax year" means the calendar year in which taxes are due.

(k) "Recipient" means a person receiving tax credits under this program.

(l) "Credit computation year" means the tax year for which credits are being sought. The first credit computation year for which any person can seek and qualify for credit approval under this program is tax year 1987.

(m) "Base year" means the entire calendar year immediately preceding the credit computation year. The first base year under this program is 1986.

(4) Application procedures. Application for tax credits under this program must be made using the prescribed application for B & O tax credit on new employees. These forms are available from the department on request. The completed application must be submitted to the department before the actual hiring of qualified employment positions for which credit is sought.

(5) The department will determine if the information contained on the application qualifies the applicant for tax credits and will either approve or disapprove the application within sixty days. If approved, the department will issue a credit approval notice which will notify the recipient in writing of the dollar amount of tax credits available for use and the credit taking procedures. If disapproved, the department will notify the applicant in writing of the specific reasons for disapproval. The applicant may seek administrative review of any credit disapproval pursuant to the provisions of WAC 458-20-100.

(6) Under the law, tax credits may be received only for the creation of qualified employment positions at specific facilities within "eligible areas" as defined earlier. For purposes of making application for tax credits the state-wide and county unemployment statistics last published by the department will be used to determine eligible areas. The department will publish such statistics and a list of eligible areas by county, on May 1 of each year.

(7) A separate application must be submitted for each credit computation year.

(8) Qualifying for credit. There are three qualifying tests, all of which must be met, in order to receive approval for tax credits under this program.

(a) The applicant must be a "manufacturing" business as defined earlier; and

(b) The specific facility at which the manufacturing activities are being conducted must be within an eligible area as defined earlier; and

(c) The average full-time qualified employment positions at the specific facility during the credit computation year must be at least fifteen percent greater than such employment average for the preceding year.

(9) Because chapter 116, Laws of 1986 includes an emergency effective date of April 1, 1986, and because the stated intent is to stimulate the economy and create employment opportunities, this tax credits program is effective immediately. Full-time employees expected to be hired after any application for credits is submitted but before January 1, 1987, will be deemed to be employed as of January 1, 1987. They will be includable within the qualified employment position computation for that year. Thus, credits may be available for all positions hired after the effective date of the law if they otherwise qualify and within the dollar limits explained later.

(10) The threshold, fifteen percent employment increase test (qualifying test number three) is met by:

(a) Stating in the application the actual average number of full-time employment positions which existed at the facility during the base year;

(b) Stating the projected number of new positions to be filled during the credit computation year;

(c) Stating the average number of full-time employment positions for the credit computation year including the new projected positions;

(d) Achieving an increase of at least fifteen percent of (c) over (a) above.

(i) Examples. Applicant has no employees at the facility for base year 1986 and intends to hire ten persons, some in 1986 and some in 1987. Because for first year implementation of the program the 1986 hirees will be deemed to be hired January 1, 1987, the applicant's base year average remains zero. Thus, its credit computation

year average will always meet the fifteen percent increase test, even if only one new position is hired.

(ii) Applicant has an average employment of ten positions in base year 1986 and intends to hire two more persons, one yet in 1986 and one in 1987. This applicant must achieve a 1.5 position increase in 1987 to meet the fifteen percent threshold test. Since its new 1986 hiree will be attributed to January 1, 1987, it must project to hire the other new position by July 1, 1987, in order to meet the fifteen percent increase average of 1.5 for that credit computation year.

(iii) Applicant has an average employment of fifty positions in base year 1986 and intends to hire five more persons by January 1, 1987. This applicant will not qualify for 1987 tax credits because its 1987 average (fifty–five positions) is not at least fifteen percent greater than its base year 1986. In order to qualify for any credits this applicant would have to project hiring of at least eight new positions (a 1987 average of at least 57.5 employment positions) to meet the needed percentage increase.

(iv) The applicant in the previous example intends to hire ten new positions, five yet in 1986 and the other five sometime in 1987. Since the 1986 hirees will be attributed to January 1, 1987 hiring, this applicant must hire the other five new positions early enough in 1987 to be able to compute a 1987 average of at least 57.5 for that year. Thus, the additional five 1987 hirings would have to be projected to be hired by at least July 1, 1987 in order to qualify for credits.

(11) Note. The department will be able to advise applicants of their minimum number of hiring needs and the latest time within the credit computation year that the positions must be filled to qualify for credits, based upon the information provided in the application.

(12) The carry–over of positions hired in 1986 into 1987 is a first year carry–over only. After 1986, all hiring increases must occur during the computation year for purposes of meeting the fifteen percent threshold test. Thus, applications for the 1988 credits computation year will be tested only by the average increase of 1988 employment positions over the 1987 base year average.

(13) In simplest terms, qualification for tax credits depends upon whether enough new positions are expected to be hired early enough to meet the fifteen percent average increase test.

(14) The fifteen percent threshold test to qualify for tax credits is a "lookahead" test which has no relationship to the dollar amount of credits which may be available. Also, the test for qualifying for approval of tax credits is unrelated to the end–of–year reporting and verification of credits, the "look–back" test explained later in this section. Rather, the fifteen percent test is a credits qualification test only.

(15) Applications for tax credits under this program must include the applicant's expected hirings for the full credit computation year for which credits are sought. After an application is approved and tax credits are granted, no adjustment or amendment of the credits approval will be possible for that credit computation year.

(16) Credits approval and use. Tax credits approved by the department may be used to offset current business and occupation tax liability if the recipient has incurred any such liability during the credit computation year. The credits may be used as soon as actual hiring of the projected qualified employment positions begin. For example, if a recipient has been approved for $10,000.00 of tax credits based upon projections to hire ten new positions, that recipient may use each $1,000.00 of tax credit at the time it hires each new employee.

(17) The law provides that the tax credits available under this program must be used to offset business and occupation tax which has been paid during the same tax year. However, rather than paying the tax and then seeking a refund in the amount of credits available, the recipient will take the available credits against current tax liability as it accrues.

(18) The tax credits approved under this program will be taken by the recipients on their regular combined excise tax return for their regular assigned tax reporting period. The amount of credit taken should be filled in on the front of the return form, with a copy of the credit approval notice issued to the recipient attached to that return.

(19) Credits may be used as hiring is done or may accrue until they are most beneficial for the recipient's use. This is true even for first year credits available for hiring new positions in 1986. As soon as credits are approved and hiring begins, credits may be used, even during the remainder of 1986. No tax refunds will be made for any tax credits which exceed actual tax liability during the life of this program. Under no circumstances may tax credits exceed tax liability.

(20) If tax credits derived from qualified hiring exceed the recipients' business and occupation tax liability in any one calendar year under this program, they may be carried forward to the next calendar year, on an on–going basis, until used.

(21) The tax credits approved for a recipient under this program may be used to offset business and occupation tax liability which the recipient owes because of business activity anywhere in this state. The liability for which the credit is used does not have to be incurred or flow from business engaged in at the specific facility in the eligible area.

(22) Tax credits available in any credit computation year may be used to offset business and occupation tax due on the fourth quarterly return or last monthly return of the tax year, even though that return is not actually filed with the department until January 25 of the following year.

(23) Credit and program limitations. Except as noted below, the credit application and approval provisions of this program will expire on July 1, 1994. However, credits which become available under approved applications may be used after July 1, 1994, as actual hiring is done. No applications submitted by metropolitan statistical areas as defined in subsection (3)(c)(ii) of this section will be accepted after April 30, 1989.

(24) No recipient is eligible for tax credits in excess of three hundred thousand dollars during the entire life of this program.

(25) The total of credits approved for all applicants under this program will not exceed fifteen million dollars per biennium. Any application for credits which is otherwise qualified but which is denied in whole or in part for a biennium because of this total program credit limit, will carry over for approval in the next biennium. However, once the total program credit limit has been met for the next biennium as well, no further tax credits will be approved.

(26) The law provides that no recipient may use tax credits approved under this program to decertify a union or to displace existing jobs in any community of the state. Thus, the average expected increase of qualified employment positions at the specific facility for which application is made must reflect a gross increase in the applicant's employment of persons at all locations in this state. Transfers of personnel from existing positions outside of an eligible area to new positions at the specific facility within an eligible area will not be allowed for purposes of approving tax credits. Also, layoffs or terminations of employment by the recipient at locations outside an eligible area for the purpose of hiring new positions within an eligible area will result in the withdrawal of any credits taken or approved.

(27) Perfecting approved credits. In order to perfect its entitlement to any credits approved and legally use such credits against business and occupation tax due, a recipient must actually hire the required number of qualified employment positions to comply with the application upon which tax credits were approved. Such created positions must be maintained for a continuous period of twelve consecutive months. (See the definition of "qualified employment position" at subsection (3)(h) of this section.) The law establishes a "look-back" test at the end of the credit computation year to determine that the tax recipient has complied.

For purposes of administering this program the department will consider a period of twelve consecutive months of employment to satisfy the definition of "qualified employment position," to perfect the entitlement to tax credits used.

(28) Reporting and monitoring. All recipients of tax credits under this program must file an annual report with the department reporting their employment activities through December 31 of each credit computation year. This report must be submitted by January 31 of the following year. Based upon this report the department will verify that the recipient is perfecting its entitlement to any tax credits approved by actually employing the required number of new qualified employment positions as represented in the recipient's credit application.

(29) Because this program is being fully implemented in mid-year 1986, the annual report due on December 31, 1986, will be an informational report only. No tax credits approved, whether actually used in 1986 or not, will be withdrawn or denied based upon this 1986 report. The annual report due on December 31, 1987, will be the first report which may result in tax credits being withdrawn.

(30) The law provides that if any recipient fails to submit a report or submits an inadequate report, the department may declare the amount of taxes for which credit has been used to be immediately assessed and payable. An inadequate report is one which fails to provide any information in the possession of a recipient which is necessary to confirm that the requisite number of employment positions have been created and maintained for twelve consecutive months. As credits are approved, the department will advise all recipients of the nature of information to be included on their annual reports.

(31) The department will monitor credit applications and annual reports on an ongoing basis over the life of this credit program. The department will maintain a running tabulation of credits approved for individual recipients as well as program credit totals and will advise applicants and recipients in writing of the program credit limitations which may affect their entitlement.

(32) Noncompliance—Withdrawal of credits. The law provides that if the department finds that a recipient is not eligible for tax credits for any reason other than failure to create the required number of qualified employment positions, the amount of taxes for which any credit has been used shall be immediately due. No interest or penalty will be assessed in such cases.

(33) However, if the department finds that a recipient has failed to create the specified number of qualified employment positions, the department shall assess interest, but not penalties, on the taxes against which the credit has been used. This interest assessment is mandatory and will be assessed at the statutory rate under RCW 82.32.050, retroactively to the date the tax credit was used. Such interest will accrue until the taxes for which the credit was used are fully repaid.

(34) The administrative review and appeal provisions of chapter 83.32 RCW are available for any actions of the department, under this program, by which any applicant or recipient is adversely affected.

(35) Disclosure of information. The law provides that information contained in applications, reports, or any other information received by the department in connection with this tax credits program shall not be confidential and shall be subject to disclosure.

[Statutory Authority: RCW 82.32.300. 88-17-047 (Order 88-5), § 458-20-240, filed 8/16/88; 87-19-007 (Order ET 87-5), § 458-20-240, filed 9/8/87; 86-14-019 (Order ET 86-13), § 458-20-240, filed 6/24/86; 83-08-026 (Order ET 83-1), § 458-20-240, filed 3/30/83; Order ET 71-1, § 458-20-240, filed 7/22/71; Order ET 70-3, § 458-20-240 (Rule 240), filed 5/29/70, effective 7/1/70.]

WAC 458-20-24001 Sales and use tax deferral--Manufacturing and research/development facilities in distressed areas. (1) Introduction. Chapter 82.60 RCW establishes a sales and use tax deferral program. The purpose of the program is to promote economic stimulation, create employment opportunities, and reduce poverty in certain distressed areas of the state. Thus, the legislature established this tax deferral program to be

effective solely in those distressed areas and under circumstances where the deferred tax payments are for investments or costs that result in the creation of a specified minimum number of jobs. In general, the deferral applies to sales and use taxes on materials, labor, and services rendered in the construction of qualified buildings, machinery, and equipment.

(2) In addition to the tax deferral benefits of this program, the department of employment security administers economic incentives and funding programs which encourage "first source contract" hiring of unemployed persons and state public assistance recipients. The employment security department should be contacted directly for information concerning such nontax-related programs.

(3) Definition of terms. For purposes of this section:

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

(b) "Person" has the meaning given in RCW 82.04-.030. It means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof. For purposes of this section the relationship of landlord and tenant between separate persons, at arms length, shall not be considered as any of the types of relationships which are identified above as "persons."

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

(d) "Recipient" means a person who has been granted a tax deferral under this program.

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

(f) "Eligible area" means:

(i) A county in which the average level of unemployment for the three calendar years preceding the year in which an application is filed exceeds the average state unemployment for those years by twenty percent; or

(ii) A metropolitan statistical area, as defined by the Office of Federal Statistical Policy and Standards, United States Department of Commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under this chapter exceeds the average state unemployment for such calendar year by twenty percent. Applications under this subsection shall be filed by April 30, 1989. For the purpose of (f)(i) of this subsection, the average unemployment rate for the county must be twenty percent above the average unemployment rate for the state in the preceding three calendar years. In determining an eligible area under this subsection the department may compare the county's average unemployment rate in the prior three years to one hundred twenty percent of the state's average unemployment rate based on official unemployment figures published by the department of employment security.

(g) "Eligible investment project" means that portion of an investment project which:

(i) Is directly utilized to create at least one new full time qualified employment position for each three hundred thousand dollars of investment on which a deferral is requested; and

(ii) Either initiates a new operation or expands or diversifies a current operation by expanding or renovating an existing building, machinery and equipment, with costs in excess of twenty-five percent of the true and fair value of the plant complex prior to the improvement. (See the definition of "improvement" in (h)(iii) of this subsection.)

(h) For the purposes of the above paragraph the following definitions will apply:

(i) "Qualified employment position" means a permanent, full time employee employed in the eligible investment project during the entire tax year following the operational completion of the project. In the event an employee is either voluntarily or involuntarily separated from employment the employment position will be considered filled if the employer is either training or actively recruiting a replacement employee so long as the position is not actually vacant for any period in excess of thirty consecutive days.

(ii) The requirement for employment during the "entire tax year," for purposes of this tax deferment program, will be satisfied if the full time position is filled for a period of twelve consecutive months.

(iii) An "improvement" shall mean the physical alteration by significant expansion, modernization, or renovation of an existing plant complex, excluding land, where the cost of such expansion, etc., exceeds twenty-five percent of the true and fair value of the existing plant complex prior to the initiation of the expansion or renovation. The term "improvement" is further defined to include those portions of an existing building which do not increase the usable floor space, but is limited to the renovation, modernization, or any other form of alteration or addition and the equipment and machinery installed therein during the course of construction. The twenty-five percent test may be satisfied by considering the value of both the building and machinery and equipment, however, at least forty percent of the total renovation costs must be attributable to the physical renovation of the building structure alone.

(iv) "True and fair value" means the value listed on the assessment roles as determined by the county assessor for the land, buildings, or equipment for ad valorem property tax purposes at the time of application.

(v) "Plant complex" shall mean land, machinery, and buildings adapted to industrial, computer, warehouse, or research and development use as a single functional or operational unit for the designing, assembling, processing, or manufacturing of finished or partially finished products from raw materials or fabricated parts.

(vi) "Eligible investment project" does not include either an investment project undertaken by a light and power business as defined in RCW 82.16.010(5), or investment projects which have already received deferrals under chapter 82.60 RCW.

(i) "Investment project" means an investment in qualified buildings and qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project. A person who does not build or remodel its own building, but leases from a third party, is eligible for sales and use tax deferral provided that an investment in qualified machinery and equipment is made by such person and a new structure used to house the manufacturing activities is constructed. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, and equipment vests in the same persons.

(j) "Manufacturing" has the meaning given in RCW 82.04.110 and WAC 458-20-136 now and as hereafter amended. Manufacturing, for purposes of this section, shall also include computer programming, the production of computer-related service, and the activities performed by research and development laboratories and commercial testing laboratories.

(k) "Qualified buildings" means new structures used to house manufacturing activities as defined above and includes plant offices, warehouses, or other facilities for the storage of raw material and finished goods if such facilities are essential or an integral part of a manufacturing operation. The term also includes parking lots, landscaping, sewage disposal systems, cafeterias, and the like, which are attendant to the initial construction of an eligible investment project. The term "new structures" means either a newly constructed building or a building newly purchased by the certificate holder. A preowned or existing building is eligible for deferral provided that the certificate holder expands, modernizes, renovates, or remodels the preowned or existing building by physical alteration thereof.

(l) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing operation, as defined above. "Qualified machinery and equipment" includes, but is not limited to, computers, software, data processing equipment, laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a long or short term lease by the recipient. The tax deferral applies to equipment purchased outright by the recipient (or the transfer of machinery and equipment into the state of Washington) and leased equipment. Acquisition of spare parts for machinery, equipment, etc., in excess of normal operating levels shall not be eligible for deferral.

(m) "New machinery and equipment" means either new to the taxing jurisdiction of the state or new to the certificate holder. Used equipment is eligible for deferral provided that the certificate holder either brings the machinery or equipment into Washington for the first time or purchases it at retail in Washington.

(n) "Initiation of construction," for purposes of applying for the investment tax deferral relating to the construction of new buildings, shall mean the date upon which on-site construction work commences.

(o) "Initiation of construction," for purposes of applying for the investment tax deferral relating to a major improvement of existing buildings, shall mean the date upon which the new construction by renovation, modernization, or expansion, by physical alteration, begins.

(p) "Operationally complete" means the eligible investment project is constructed or improved to the point of being fully and functionally useable for its intended purpose as described in the application.

(4) Application procedure. An application for sales and use tax deferral under this program must be made prior to the initiation of construction, as defined above. However, any application by a metropolitan statistical area defined as an "eligible area" in subsection (3)(f)(ii) of this section must be filed by April 30, 1989. Application forms will be supplied to the applicant by the department upon request. The completed application is to be sent in duplicate to the following address:

State of Washington
Department of Revenue
Audit Procedures & Review
Olympia, WA 98504
Mail Stop AX-02

(5) The department will verify the information contained in the application and either approve or disapprove the application within sixty days. If approved, a tax deferral certificate shall be issued effective as of the date the application was received by the department. If disapproved, the department shall notify the applicant as to the reason(s) for disapproval. The applicant may seek administrative review of the department's refusal to issue a certificate pursuant to the provisions of WAC 458-20-100, within twenty days from the date of notice of the department's refusal, or within any extension of such time granted by the department.

(6) For purposes of making application for tax deferral and of approving such applications, the state-wide and county unemployment statistics last published by the department will be used to determine eligible areas. The department will publish a list of eligible areas by county, on May 1 of each year.

(7) Use of the certificate. A tax deferral certificate issued under this program shall be for the use of the recipient thereof for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified buildings and qualified machinery and equipment as defined in this section. Thus, sales and use taxes cannot be deferred on items which do not become part of the qualified buildings, machinery, and equipment.

(8) The tax deferral certificate shall be used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102. The certificate holder shall provide its vendors with a copy of the tax deferral certificate at the time goods or services are purchased. The seller or vendor shall be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller or vendor shall retain a copy of the

certificate as part of its permanent records. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller or vendor is liable for reporting business and occupation tax on all tax deferral sales.

(9) Audit procedure. An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a sales and use tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate. At that time the certificate holder may not utilize the certificate further. If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may apply for a supplemental certificate stating a revised amount upon which the deferral of sales and use taxes is requested. The certificate holder shall amend the original application to account for the additional costs. The department will grant or deny the amended application on the same basis as original applications.

(10) The certificate holder shall notify the department in writing when the construction project is operationally complete. Upon receipt of such notification or other information, the department shall conduct a final audit of the investment project. The certificate holder shall open its books and records to the department and make available the final cost figures for the investment project. The department may request reasonable supporting documentation and other proof to justify the final cost of the project.

(11) Upon completion of the audit the department shall certify the amount of sales and use taxes subject to deferral and the date on which the project was operationally complete. The recipient shall be notified in writing of the total amount of deferred taxes, the date(s) upon which the deferred taxes shall be paid, and any reports required to be submitted in the subsequent years. If the department disallows all or any portion of the amount of sales and use taxes requested for deferral, the recipient may seek administrative review of the department's action pursuant to the provisions of WAC 458-20-100, within twenty days from the date of the notice of disallowance.

(12) The department shall keep a running total of all deferral certificates granted during each fiscal biennium.

(13) The deferral is allowable only in respect to investment in the construction of a new plant complex or the enlargement or improvement of an existing plant complex directly used in manufacturing activities, as defined above. Where a plant complex is used partly for manufacturing and partly for purposes which do not qualify for deferral under this section and it is not possible to identify the nonqualifying items through separate accounting, the applicable tax deferral shall be determined by apportionment according to the ratio which the construction cost per square foot of that portion of the plant complex directly used for manufacturing purposes bears to the construction cost per square foot of the total plant complex.

(14) The amount of tax deferral allowable for leased equipment shall be calculated upon that amount of the consideration paid by the lessee/recipient to the lessor:

(a) Over the initial term of the lease, excluding any period of extension or option to renew, where the lease term ends on or before the last date for repayment of the deferred taxes; or

(b) Over that portion of the lease term to the last date for repayment of deferred taxes as provided hereinafter, where the lease term, excluding any period of extension or option to renew extends beyond such repayment date.

(15) After that date the lessee/recipient shall pay the appropriate sales taxes to the lessor for the remaining term of the lease.

(16) No taxes may be deferred under this section prior to July 1, 1985. No applications for deferral of taxes will be accepted after May 1, 1994 nor will sales or use tax deferral certificates be issued on or after July 1, 1994. See subsection (4) of this section for application deadline for any metropolitan statistical area. In tabulating the total amount of deferrals granted under this law there shall be considered a total of three fiscal biennia within which applications shall be accepted.

(17) Reporting and monitoring procedure. Each recipient of sales and use tax deferral shall submit a report to the department on December 31st of each year during the repayment period until all taxes are repaid. The first report shall be submitted in the third year after the date on which the construction project has been operationally complete to coincide with the first payment of deferred taxes. The report shall contain information from which the department may determine whether the recipient is meeting the requirements of the deferral law.

(18) The report shall be made to the department in a form and manner prescribed by the department. The report shall contain information regarding the recipient's average employment in the state for the prior three years, the actual employment related to the project, the actual wages of the employees related to the project, and any other information required by the department. If the recipient fails to submit a report or submits an inadequate or falsified report, the department may declare the amount of deferred taxes outstanding to be immediately assessed and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

(19) The department shall notify the department of employment security of the names of all recipients of tax deferrals under this program. On or before December 31st of each year a deferral is in effect, the department shall request information on each recipient's employment in the state for that year, including employment related to the deferral project, and the wages of such employees. The department of employment security shall make, and certify to the department, all determinations of employment and wages required under this subsection.

(20) If, on the basis of the recipient's annual report or other information including that submitted by the department of employment security, the department finds that an investment project is not eligible for tax deferral, the department will (a) declare the amount of deferred taxes outstanding to be immediately due or (b) assess interest on the deferred taxes for the project.

(21) If the department finds that an investment project has been operationally complete for three years and has failed to create the required number of qualified employment positions, the department shall assess interest, but not penalties, on the deferred taxes. The interest shall be assessed at the rate of nine percent per annum, shall be assessed retroactively to the date of deferral, and shall accrue until the deferred taxes are paid. A recipient of deferred taxes shall have from the date on which the construction project was certified as operationally complete to December 31st of the first year of repayment in which to create the required number of employment positions under this law.

(22) If the department finds that the investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, the amount of deferred taxes outstanding for the project shall be immediately due. The reasons for disqualification include, but are not limited to, the following:

(a) The facility is not used for a manufacturing, warehouse, computer, or research and development operations;

(b) The recipient has not made an investment in qualified buildings, machinery, and equipment.

(23) Any action taken by the department to assess interest or disqualify a recipient for tax deferral shall be subject to administrative review pursuant to the provisions of WAC 458-20-100.

(24) The law expressly excuses the obligation for repayment of sales or use tax upon the value of labor directly applied in the construction of an investment project for which deferral has been granted, *Provided:*

(a) That deferral has been granted after June 11, 1986; and

(b) That eligibility for the granted tax deferral has been perfected by actually meeting all of the eligibility requirements, based upon the recipient's annual December 31 reports and any other information available to the department.

(25) The recipient must establish, by clear and convincing evidence, the value of all construction and installation labor for which repayment of sales tax is sought to be excused. Such evidence must include, but is not limited to: A written, signed, and dated itemized billing from construction/installation contractors or independent third party labor providers which states the value of labor charged separately from the value of materials.

(26) The above information must be maintained in the recipient's permanent records for the department's review and verification at the time of the final audit of the investment project.

(27) In the absence of such itemized billings in its permanent records, no recipient may be excused from repayment of sales tax on the value of labor in an amount exceeding thirty percent of its gross construction or installation contract charges.

(28) The value of labor for which an excuse from repayment of sales or use tax may be received will not exceed the value which is subject to such taxes under the general provisions of chapters 82.08 and 82.12 RCW.

(29) Payment procedures. The recipient of sales and use tax deferral under this program shall begin paying the deferred taxes in the third year after the date certified by the department as the date on which the construction project was operationally complete. The first payment will be due on December 31st of the third calendar year after such certified date, with subsequent annual payments due on December 31st of the following four years, with amounts of payment scheduled as follows:

Repayment Year	Percentage of Deferred Tax Repaid
1	10%
2	15%
3	20%
4	25%
5	30%

(30) The department may authorize an accelerated repayment schedule upon request of the recipient. Interest shall not be charged on any taxes deferred under this rule during the period of deferral, although other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for any delinquent payments during the repayment period pursuant to chapter 82.32 RCW. The debt for deferred taxes shall not be extinguished by insolvency or other failure of the recipient nor shall the debt for the deferred taxes be extinguished by the sale, exchange, or other disposition of the recipient's business. Any person who becomes a successor (see WAC 458-20-216) to such investment project shall be liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient.

(31) Disclosure of information. The law provides that information contained in applications, reports, and other information received by the department in connection with this tax deferral program shall not be confidential and shall be subject to disclosure.

[Statutory Authority: RCW 82.32.300. 88-17-047 (Order 88-5), § 458-20-24001, filed 8/16/88; 87-19-139 (Order 87-6), § 458-20-24001, filed 9/22/87; 86-14-019 (Order ET 86-13), § 458-20-24001, filed 6/24/86; 85-21-013 (Order ET 85-5), § 458-20-24001, filed 10/7/85.]

WAC 458-20-24002 Sales and use tax deferral--New manufacturing and research/development facilities. (1) Introduction. Chapter 82.61 RCW, as amended, establishes a sales and use tax deferral program for certain manufacturing or research and development investment projects. The deferral will be granted only to persons not

currently engaged in manufacturing or research and development activities in the state of Washington on June 14, 1985, the effective date of the deferral program. Applications for the tax deferral may be accepted up through June 30, 1994; a holder of a tax deferral certificate must initiate construction of the investment project within one hundred eighty days of receiving approval from the department and issuance of the tax deferral certificate. In general, the deferral applies to the construction of new buildings and the acquisition of related machinery and equipment.

(2) In addition to the tax deferral benefits of this program, the department of employment security administers economic incentives and funding programs which encourage "first source contract" hiring of unemployed persons and state public assistance recipients. The employment security department should be contacted directly for information concerning such nontax-related programs.

(3) Definition of terms. Unless the context clearly requires otherwise, the definitions in this section apply throughout this rule.

(4) "Applicant" means a person applying for a tax deferral under this section.

(5) "Person" has the meaning given in RCW 82.04-.030. It means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof. For purposes of this section the relationship of landlord and tenant between separate persons, at arms length, shall not be considered as any of the types of relationships which are identified above as "persons".

(6) "Eligible investment project" means construction of new buildings and the acquisition of new related machinery and equipment when the buildings, machinery, and equipment are to be used for either manufacturing or research and development activities, which construction is commenced prior to December 31, 1994. (See subsection (37) of this section for special provisions relating to aluminum plants.)

(7) "Manufacturing" means all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different, or useful substance or article of tangible personal property is produced for sale or commercial or industrial use and includes the production or fabrication of specially made or custom-made articles.

(8) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun.

(9) "Buildings" means only those new structures used for either manufacturing or research and development activities, including plant offices and warehouses or other facilities for the storage of raw materials or finished goods if such facilities are an essential or integral part of a factory, mill, plant, or laboratory used for manufacturing or research and development purposes. If a building is used partly for manufacturing or research and development purposes and partly for other purposes, the applicable tax deferral shall be determined by apportionment of the costs of construction under this section.

(10) "Machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation.

(11) "Qualified machinery and equipment" includes computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control or operate the machinery. For purposes of this definition, new machinery and equipment means either new to the taxing jurisdiction of the state or new to the certificate holder. Used machinery and equipment are eligible for deferral if the certificate holder either brings the machinery and equipment into Washington for the first time or makes a retail purchase of the machinery and equipment in Washington.

(12) "Acquisition of equipment and machinery" shall have the meaning given to the term "sale" in RCW 82-.04.040. It means any transfer of the ownership of, title to, or possession of, tangible personal property for a valuable consideration. A sale takes place when the goods sold are actually or constructively delivered to the buyer in this state.

(13) "Recipient" means a person receiving a tax deferral under this section.

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

(15) "Operationally complete" means that the eligible investment project is constructed or improved to the point of being fully and functionally useable for the intended purpose as described in the application.

(16) "Initiation of construction" means that date upon which on-site construction commences.

(17) "Plant complex" shall mean land, machinery, and buildings adapted to commercial, industrial, or research and development use as a single functional or operational unit for the designing, assembling, processing or manufacturing of finished or partially finished products from raw materials or fabricated parts.

(18) "Investment project" means an investment in qualified buildings and qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project. A person who does not build its own building, but leases from a third party, is eligible for sales and use tax deferral provided that an investment in qualified machinery and equipment is made by such person and a new structure used to house the manufacturing activities is constructed. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, and equipment vests in the same

persons. An eligible investment project does not include any project which or person who have previously been the recipient of a tax deferral under Washington law.

(19) Application procedures. An application for sales and use tax deferral under this program must be made prior to either the initiation of construction or the acquisition of equipment or machinery, as defined above, whichever occurs first. Application forms will be supplied to the applicant by the department upon request. The completed application is to be sent in duplicate to the following address:

State of Washington
Department of Revenue
Audit Procedures & Review
Olympia, WA 98504
Mail Stop AX-02

(20) The application shall contain information regarding the location of the investment project, estimated or actual costs, time schedules for completion and operation, and other information required by the department, including information relating to employment at the investment project.

(21) The department will examine and verify the information contained in the application and either approve or disapprove the application within sixty days. If approved, a tax deferral certificate will be issued effective as of the date the application was received by the department. If disapproved, the department shall notify the applicant as to the reason(s) for disapproval. The applicant may seek administrative review of the department's refusal to issue a certificate pursuant to the provisions of WAC 458-20-100 within twenty days from the date of notice of the department's refusal, or within any extension of such time granted by the department. A certificate holder shall initiate construction of the investment project within one hundred eighty days of receiving approval from the department and issuance of the tax deferral certificate.

(22) A tax deferral certificate shall only be issued to persons who, on June 14, 1985, are not engaged in manufacturing or research and development activities within this state. For purposes of this section, a person shall not be considered to be engaged in manufacturing or research and development activities where the only activities performed by such person in this state are sales, installation, repair, or promotional activities in respect to products manufactured outside this state. Any person who has succeeded by merger, consolidation, incorporation, or any other form or change of identity to the business of a person engaged in manufacturing or research and development activities in this state on June 14, 1985 and any person who is a subsidiary of a person engaged in manufacturing or research and development activities in this state on June 14, 1985 shall also be ineligible to receive a tax deferral certificate.

(23) No application for deferral of taxes shall be accepted after June 30, 1994. For purposes of this regulation, the time of receipt of an application shall be determined by the date shown by the post office cancellation mark stamped upon the envelope containing the application if transmitted by the United States Postal Service, the date stamped on the envelope if transmitted by another carrier, or the date of receipt if hand delivered to an office of the department.

(24) Use of the certificate. A tax deferral certificate issued under this program shall be for the use of the recipient thereof for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified buildings, machinery, and equipment as defined in this section. Thus, sales and use taxes cannot be deferred on items which do not become part of the qualified buildings, machinery, and equipment.

(25) The tax deferral certificate shall be used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102. The certificate holder shall provide its vendors with a copy of the tax deferral certificate at the time goods or services are purchased. The seller or vendor shall be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller or vendor shall retain a copy of the certificate as part of its permanent records. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller or vendor is liable for reporting business and occupation tax on all deferral sales.

(26) Audit procedures. The certificate holder shall notify the department in writing when the construction project is operationally complete. Upon receipt of such notification or other information, the department shall conduct a final audit of the investment project. The certificate holder shall open its books and records to the department and make available the final cost figures for the investment project. The department may request reasonable supporting documentation and other proof to justify the final cost of the project.

(27) Upon completion of the audit the department shall certify the amount of sales and use taxes subject to deferral and the date on which the project was operationally complete. The recipient shall be notified in writing of the total amount of deferred taxes, the date(s) upon which the deferred taxes shall be paid, and any reports required to be submitted in the subsequent years. If the department disallows all or any portion of the amount of sale and use taxes requested for deferral, the recipient may seek administrative review of the department's action pursuant to the provisions of WAC 458-20-100, within twenty days from the date of the notice of disallowance.

(28) The deferral is allowable only in respect to investment in the construction of a new plant complex used in manufacturing or research and development activities, as defined above. Where a plant complex is used partly for manufacturing or research and development purposes and partly for purposes which do not qualify for deferral under this section and it is not possible to identify the nonqualifying items through separate accounting, the applicable tax deferral shall be determined by apportionment according to the ratio which the construction cost per square foot of that portion of the plant

complex directly used for manufacturing purposes bears to the construction cost per square foot of the total plant complex.

(29) The amount of tax deferral allowable for leased equipment shall be calculated upon that amount of the consideration paid by the lessee/recipient to the lessor:

(a) Over the initial term of the lease, excluding any period of extension or option to renew, where the lease term ends on or before the last date for repayment of the deferred taxes; or

(b) Over that portion of the lease term to the last date for repayment of deferred taxes as provided hereinafter, where the lease term, excluding any period of extension or option to renew extends beyond such repayment date.

(30) After that date the lessee/recipient shall pay the appropriate sales tax to the lessor for the remaining term of the lease.

(31) No taxes may be deferred under this section prior to June 14, 1985. No applications for deferral of taxes will be accepted after June 30, 1994, nor will sales or use tax deferral certificates be issued after August 29, 1994. A certificate holder must commence construction of the investment project within one hundred eighty days of receiving approval from the department and issuance of the tax deferral certificate but no later than December 31, 1994.

(32) Reporting and monitoring procedure. An applicant must provide the department with the estimated cost of the investment project at the time the application is made. The applicant shall also provide information relative to the number of jobs contemplated to be created by the project.

(33) The department and the department of trade and economic development shall jointly make two reports to the legislature about the effect of this deferral law on new manufacturing and research and development activities and projects in Washington. The report shall contain information concerning the number of deferral certificates granted, the amount of state and local sales and use taxes deferred, the number of jobs created, and other information useful in measuring such effects. The departments shall submit their joint reports to the legislature by January 1, 1986 and by January 1 of each year through 1995.

(34) Any recipient of a sales and use tax deferral may be asked to submit reports to the department or department of trade and economic development during any period of time the recipient is receiving benefits under this deferral law. The report shall be made to the department in a form and manner prescribed by the department. The recipient may be asked to report information regarding the actual average employment related to the project, the actual wages of the employees related to the project, and any other information required by the department. If the recipient fails to submit a report, the department may not impose any penalties or sanctions against the recipient.

(35) Payment procedures. The recipient of sales and use tax deferral under this program shall begin paying the deferred taxes in the third year after the date certified by the department as the date on which the construction project was operationally complete. The first payment will be due on December 31st of the third calendar year after such certified date, with subsequent annual payments due on December 31st of the following four years, with amounts of payment scheduled as follows:

Repayment Year	Percentage of Deferred Tax Repaid
1	10%
2	15%
3	20%
4	25%
5	30%

(36) The department may authorize an accelerated repayment schedule upon request of the recipient. Interest shall not be charged on any taxes deferred under this program during the period of deferral, although other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for any delinquent payments during the repayment period pursuant to chapter 82.32 RCW. The debt for deferred taxes shall not be extinguished by insolvency or other failure of the recipient nor shall the debt for the deferred taxes be extinguished by the sale, exchange, or other disposition of the recipient's business. Any person who becomes a successor (see WAC 458-20-216) to such investment project shall be liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient.

(37) Special provisions affecting aluminum production facilities. Effective May 19, 1987, the law makes special provisions for sales and use tax deferrals for new or used equipment, machinery and operating property, and labor and services in connection with the startup or continued operation of aluminum smelter facilities which were in operation before 1975, but which have ceased operations (or are in imminent danger of ceasing operations). Also, such special provisions may apply to modernization projects involving the construction, acquisition, or upgrading of new or used equipment and machinery to increase the operating efficiency of aluminum smelters or aluminum rolling mills and facilities. Such special provisions entail consultation with collective bargaining units for existing employees as well as the concurrence by such bargaining units with the deferral requested. Persons who operate such facilities should contact the department of revenue to determine if the sales and use tax deferrals are available in any specific case.

(38) Disclosure of information. The law provides that information contained in applications, reports, and other information received by the department in connection with this tax deferral program shall not be confidential and shall be subject to disclosure.

[Statutory Authority: RCW 82.32.300. 88-17-047 (Order 88-5), § 458-20-24002, filed 8/16/88; 87-19-007 (Order ET 87-5), § 458-20-24002, filed 9/8/87; 86-14-019 (Order ET 86-13), § 458-20-24002, filed 6/24/86; 85-21-013 (Order ET 85-5), § 458-20-24002, filed 10/7/85.]

WAC 458-20-244 Food products. (1) Introduction. Effective on June 1, 1988, the law is changed regarding the exemption of retail sales tax and use tax on food products. Formerly, sales of food products were sometimes taxable depending upon how and where the products were sold. Under the changes in the law the intent is to tax such product sales or exempt them from tax in a uniform and consistent manner so that the tax either applies or not equally for all sellers and buyers. Generally, it is the intent of the law, as amended, to provide the exemption for groceries and other unprepared food products with some specific exclusions. It is the intent of the law to tax the sales of meals and food prepared by the seller regardless of where it is served or delivered to the buyer. Again, there are some specific exclusions. This section provides the guidelines for determining if food product sales are taxable or exempt of tax under the changed law. It also explains special tax exemption provisions for food purchased with food stamps.

(2) Definitions. As used herein and for purposes of the sales tax and use tax exemptions, the following definitions apply:

(a) "Food products" means only substances, products, and byproducts sold for use as food or drink by humans. The term includes, but is not limited to, the following items:

Baby foods, formulas
Bakery products
Candy
Cereal products
Chewing gum
Chocolate
Cocoa
Coffee and coffee substitutes
Condiments
Crackers
Dietfood, not including dietary supplements or adjuncts
Eggs, egg products
Extracts and flavoring for food
Fish, fish products
Flour
Food coloring
Frozen foods
Fruit, fruit products
Gelatin
Honey
Ice cream, toppings
Jam, jelly, jello
Marshmallows
Mayonnaise
Yeast
Baking soda and powder
Bouillon cubes
Meat, meat products, including livestock sold for human consumption
Milk, milk products
Mustard
Noncarbonated soft drinks
Nuts
Oleomargarine
Olives, olive oil
Peanut butter
Popcorn
Popsicles
Potato chips
Powdered drink mixes
Salt and salt substitutes
Sandwich spreads
Sauces
Sherbet
Shortening
Soup
Spices and herbs
Sugar, sugar products, sugar substitutes
Syrups
Tea
Vegetables, vegetable products

(b) "Nonfood products" means certain substances which may be sold at food and grocery stores and which may be ingested by humans but which are not treated as food for purposes of the tax exemptions. Tax exempt food products do not include any of the following nonfood products:

Alcoholic beverages
Aspirin
Beer or wine making supplies
Breeding stock
Calcium tablets
Carbonated beverages
Chewing tobacco
Cod liver oil
Cough medicines (liquid or lozenge)
Dietary supplements or adjuncts as defined below
First–aid products
Ice, bottled water (mineral or otherwise)
Mouthwashes
Nonedible cake decorations
Nonprescription medicines
Patent medicines
Pet food and supplies
Seeds and growing plants including edible plants
Tobacco products
Tonics, vitamins
Toothpaste

(c) "Dietary supplements or adjuncts" are medicines or preparations in liquid, powdered, granular, tablet, capsule, lozenge, or pill form taken in addition to natural or processed foods in order to meet special vitamin or mineral needs. Dietary supplements or adjuncts are not food products entitled to tax exemption. However, the term "dietary supplements or adjuncts" does not include products whose primary purpose is to provide the complete nutritional needs of persons who cannot ingest natural or processed foods. Also, this term does not include food in its raw or natural state which has been merely dried, frozen, liquified, fortified, or otherwise merely changed in form rather than content.

Such substances as dried milk, powdered spices and herbs, brewers yeast, desiccated liver, powdered kelp, herbal extracts, and the like are not dietary supplements or adjuncts subject to tax.

(d) "Eligible foods," as used in subsection (10) of this section, means any food which can be purchased with food stamps under the Federal Food Stamp Act of 1977. "Eligible foods" include any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods or hot food products prepared for immediate consumption. The term also includes seeds and plants used to grow foods for personal consumption (7 U.S.C.A. U 2012). Thus some substances are "eligible foods" which are defined above as "nonfood products."

(3) Business and occupation tax. There is no general tax exemption for sales of food or food products for B&O tax purposes. The gross proceeds of sales of food are subject to the wholesaling or retailing classification of B&O tax, as the case may be.

(4) Retail sales tax – Taxable sales. Sales of food products are subject to retail sales tax under any of the following circumstances:

(a) Effective June 1, 1988, sales by any retail vendor of any food handled on the vendor's premises which by law requires the vendor to have a food and beverage service worker's permit under RCW 69.06.010 (handling unwrapped or unpackaged food) are subject to sales tax. Such sales include, but are not limited to, sandwiches prepared or chicken cooked on the premises, deli trays,

home delivered pizzas or meals, and salad bars. However, certain sales of foods which require a permit are expressly excluded from taxation. See subsection (5)(a) of this section.

(b) Food products sold for consumption within a place, the entrance to which is subject to an admission charge, except for national or state parks or monuments, are subject to sales tax.

(i) Example. Food of any kind sold at a snack bar, food stand, restaurant, or by individual roving food vendors inside a sports arena, theater, or similar place of amusement or recreation which charges admission is subject to sales tax.

(ii) Even sales of food products within national or state parks where admission is charged are subject to retail sales tax upon any food the preparation of which requires the retail vendor to have a permit specified in (a) of this subsection.

(c) Sales of baked goods as a part of meals or with beverages in unsealed containers are subject to sales tax. (However, see the provision for combination businesses in subsection (6) of this section.)

(d) Vending machine sales. Sales of any food products dispensed by vending machines are subject to sales tax under a formula which requires the tax to be reported and paid by the vending machine owner or operator upon fifty–seven percent of the gross receipts from such machines. However, sales tax must be reported and paid upon one hundred percent of the gross receipts of vending machines which dispense hot prepared food products, e.g., hot coffee, soups, tea, chocolate, etc.

(i) It is not required that food vending machines be posted with prices separately showing the sales tax amount or rate charged.

(ii) The retail sales tax may be factored out of the gross receipts of such vending machines to derive the measure for reporting B&O tax.

(5) Retail sales tax – Exempt sales. RCW 82.08.0293 exempts sales of food products for human consumption from the retail sales tax except for the taxable sales described in subsection (4) of this section.

(a) Sales of the following food products are exempt of sales tax even though sold by a person required to have a food handler's permit (i.e., handling unwrapped or unpackaged foods):

(i) Raw meat prepared by persons who slaughter animals, including fish and fowl, or dress or wrap slaughtered raw meat such as fish mongers, butchers, or meat wrappers;

(ii) Meat and cheese sliced and/or wrapped, in any quantity determined by the buyer, sold by vendors such as meat markets, delicatessens, and grocery stores;

(iii) Baked goods sold by bakeries which sell no food products other than baked goods, including bakeries located in grocery stores. (See the provision for combination businesses in subsection (6) of this section);

(iv) Bulk food products sold from bins or barrels, including but not limited to, flour, fruits, vegetables, sugar, salt, candy, chips, and cocoa;

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

(vi) Prepared meals sold to or for senior citizens, disabled persons, or low–income persons by a not–for–profit organization organized under chapter 24.03 or 24.12 RCW.

(b) Retailers of food products must keep adequate records to demonstrate that any sales claimed to be tax exempt qualify for exemption as explained above.

(6) Combination businesses. Persons operating a combination of two kinds of food sales businesses at one location are required to keep their accounting records and sales receipts segregated between taxable and tax exempt sales.

(a) Examples of combination businesses are:

(i) A grocery store with a lunch counter or salad–deli bar.

(ii) A bakery which sells baked goods "to go" and also sells baked goods with meals or beverages in unsealed containers.

(b) Combination businesses must collect and report retail sales tax upon their charges for meals and servings of food which require such businesses to have a food handler's permit.

(c) It is sufficient segregation for accounting purposes if cash registers or electronic checking machines are programmed to identify and separately tax food products which are not tax exempt.

(d) If the combined food businesses are commingled in accounting, all sales of food products will be deemed subject to sales tax.

(7) Combination and specialty packages. When a package consists of both food and nonfood products, such as a holiday or picnic basket containing beer and pretzels, cups or glasses containing food items, or carbonated beverages along with cheese and crackers, the food portion may be tax exempt if its price is stated separately; if the price is a lump sum, the sales tax applies to the entire price.

(8) Promotional items. Nonfood items given to buyers to promote food product sales such as coffee sold in a decorative apothecary container or cheese sold in a serving dish are not taxable and are not deemed combination packages where it is clear that the container or dish is simply a gift furnished as a sales inducement for the food. In the same way, promotional give–aways of food items as an inducement for sales of nonfood items are not exempt (e.g., the sale of crystal ware containing candy or nuts is fully subject to sales tax).

(9) Food vending vans. Food products sales from vehicular vending vans are taxable or exempt of retail sales tax in the same manner as food sales at grocery stores. Thus, sales of candy bars, gum, or any prewrapped food products which are prepackaged by a manufacturer other than the retail vendor operating the van are exempt of retail sales tax. Sales of any unwrapped or unpackaged food items, including but not limited to, hotdogs, sandwiches, bakery items, soups, and hot or cold beverages as well as sales of hot food cooked or heated by the retail vendor are subject to sales tax.

(10) Food stamps. Sales of "eligible foods," as defined earlier, which are purchased with food stamps are exempt of retail sales tax.

(a) When both food stamps and cash (or check) are used to make purchases, the food stamps must be applied first to "eligible foods" which are not otherwise tax exempt "food products," for example, dietary supplements, carbonated beverages, garden seeds, bottled water, and ice. The cash or check portion of the purchase price must then be applied to items listed above which qualify as tax exempt food products. The intent is to always apply the stamps and cash in such a way as to provide the greatest possible amount of sales tax exemption under the law.

(b) The obligation rests with the seller to determine which items are eligible for purchase with food stamps.

(c) The following examples show how the tax exemptions apply in cases where a purchase of ten dollars each is made for meat (a food product), dietary supplements (an eligible food), and soap (a nonfood item) using both food stamps and cash. A tax rate of 7.8% is used for these examples.

(i) A customer pays the thirty dollar selling price with ten dollars worth of food stamps and twenty dollars cash. The stamps are applied to the dietary supplements, making them tax exempt. The cash is used for the meat and soap. The result is that sales tax is due only on the soap, in the amount of .78 (7.8% x $10.00 worth of soap).

(ii) The customer pays with five dollars in stamps and twenty–five dollars in cash. Again, the stamps are applied against the dietary supplements, leaving five dollars of their value to be purchased with cash. The meat is tax exempt and the soap and the rest of the dietary supplements are taxable. Tax is due in the amount of $1.78 (7.8% x $15.00 worth of soap and supplements).

(iii) The customer pays with fifteen dollars in stamps and fifteen dollars in cash. The stamps are applied first to the supplements (ten dollars worth) and then to the meat (five dollars worth). The cash applies to the rest of the meat and the soap. The tax due is .78 (7.8% x $10.00 worth of soap).

(11) Use tax on food. The provisions of the use tax of chapter 82.12 RCW apply for taxation or tax exemption under the same circumstances outlined above regarding retail sales tax. (See RCW 82.12.0293.) The use tax applies under any circumstance where the retail sales tax is due upon food sales in this state but the sales tax has not been paid for any reason.

(12) Other food and meals vendors. Specific provisions govern certain persons who sell food and prepared meals. See the following referenced sections for provisions regarding:

(a) Restaurants and transportation companies (e.g., air, rail, water) and other businesses or groups furnishing meals to employees, guests, patients, students, etc., see WAC 458–20–119.

(b) Hotels, motels, boarding or rooming houses, resorts, and trailer camps, see WAC 458–20–166.

(c) Religious, charitable benevolent, and nonprofit service organizations, see WAC 458–20–169.

[Statutory Authority: RCW 82.32.300. 88–15–066 (Order 88–4), § 458–20–244, filed 7/19/88; 87–19–139 (Order 87–6), § 458–20–244, filed 9/22/87; 86–21–085 (Order ET 86–18), § 458–20–244, filed 10/17/86; 86–02–039 (Order ET 85–8), § 458–20–244, filed 12/31/85; 83–17–099 (Order ET 83–6), § 458–20–244, filed 8/23/83; 82–16–061 (Order ET 82–7), § 458–20–244, filed 7/30/82. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78–05–041 (Order ET 78–1), § 458–20–244 (Rule 244), filed 4/21/78, effective 7/1/78.]

WAC 458–20–252 Hazardous substance tax. (1) Introduction. Under the provisions of chapter 82.22 RCW a hazardous substance tax is imposed, effective January 1, 1988, upon the wholesale value of certain substances and products, with specific credits and exemptions provided. This tax is an excise tax upon the privilege of possessing hazardous substances or products in this state. It is imposed in addition to all other taxes of an excise or property tax nature and is not in lieu of any other such taxes.

(a) RCW 82.22.020 defines certain specific substances as being hazardous and includes other substances by reference to federal legislation governing such things. It also provides authority to the director of the state department of ecology to designate any substances or products as hazardous which could present a threat to human health or the environment. The department of ecology, by duly published rule, defines and enumerates hazardous substances and products and otherwise administers the provisions of the law relating to hazardous and toxic or dangerous materials, waste, disposal, cleanup, remedial actions, and monitoring. (See chapter 173–340 WAC.)

(b) Chapter 82.22 RCW consists of the tax provisions relating to hazardous substances and products which are administered exclusively under this section. The tax provisions relate exclusively to the possession of hazardous substances and products. The tax provisions do not relate to waste, releases or spills of any materials, cleanup, compensation, or liability for such things, nor does tax liability under the law depend upon such factors. The incidence or privilege which incurs tax liability is simply the possession of the hazardous substance or product, whether or not such possession actually causes any hazardous or dangerous circumstance.

(c) The hazardous substance tax is imposed upon any possession of a hazardous substance or product in this state by any person who is not expressly exempt of the tax. However, it is the intent of the law that the economic burden of the tax should fall upon the first such possession in this state. Therefor, the law provides that if the tax has not been paid upon any hazardous substance or product the department may collect the tax from any person who has had possession. The amount of tax paid then constitutes a debt owed by the first person having had taxable possession to the person who pays the tax. The provisions of parts (10) and (11) of this section reduce the tax payment obligations of successive possessors of hazardous substances and products to the greatest extent allowable under the law.

(2) Definitions. For purposes of this section the following terms will apply.

(a) "Tax" means the hazardous substance tax imposed by RCW 82.22.030.

(b) "Hazardous substance" means anything designated as such by the provisions of chapter 173-340 WAC, administered by the state department of ecology, as adopted and thereafter amended. In addition, the law defines this term to include:

(i) Any substance that, on January 1, 1988, is a hazardous substance under section 101(14) of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by Public Law 99-499. These substances consist of chemicals and elements in their purest form. Products containing CERCLA chemicals and/or elements as ingredients will not be taxable unless specifically designated as hazardous substances by the department of ecology.

(ii) Petroleum products (further defined below);

(iii) Pesticide products required to be registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); and

(iv) Anything else enumerated as a hazardous substance in chapter 173-340 WAC by the department of ecology.

(v) Until April 1, 1988, "hazardous substance" does not include substances or products packaged as a household product and distributed for domestic use.

(c) "Product(s)" means any item(s) containing a combination of ingredients, some of which are hazardous substances and some of which are not hazardous substances.

(d) "Petroleum product" means any plant condensate, lubricating oil, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, asphalt base, liquefied or liquefiable gases, such as butane, ethane and propane, and every other product derived from the refining of crude oil, but the term does not include crude oil.

(i) The term "derived from the refining of crude oil" as used herein, means produced because of and during petroleum processing. "Petroleum processing" includes all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to crude oil or any byproduct of crude oil so that as a result thereof a fuel or lubricant is produced for sale or commercial or industrial use. "Fuel" includes all combustible gases and liquids suitable for the generation of energy. The term "derived from the refining of crude oil" does not mean petroleum products which are manufactured from refined oil derivatives, such as petroleum jellies, cleaning solvents, asphalt paving, etc. Such further manufactured products become hazardous substances only when expressly so designated by the director of ecology.

(e) "Possession" means control of a hazardous substance located within this state and includes both actual and constructive possession.

(i) "Control" means the power to sell or use a hazardous substance or to authorize the sale or use by another.

(ii) "Actual possession" occurs when the person with control has physical possession.

(iii) "Constructive possession" occurs when the person with control does not have physical possession.

(f) "Previously taxed hazardous substance" means a hazardous substance upon which the tax has been paid and which has not been remanufactured or reprocessed in any manner.

(i) Remanufacturing or reprocessing does not include the mere repackaging or recycling for beneficial reuse. Rather, these terms embrace activities of a commercial or industrial nature involving the application of skill or labor by hand or machinery so that as a result, a new or different substance or product is produced.

(ii) "Recycling for beneficial reuse" means the recapturing of any used substance or product, for the sole purpose of extending the useful life of the original substance or product in its previously taxed form, without adding any new, different, or additional ingredient or component.

(iii) Example: Used motor oil drained from a crankcase, filtered, and containerized for reuse is not remanufactured or reprocessed. If the tax was paid on possession of the oil before use, the used oil is a previously taxed substance.

(iv) Possessions of used hazardous substances by persons who merely operate recycling centers or collection stations and who do not reprocess or remanufacture the used substances are not taxable possessions.

(g) "Wholesale value" is the tax measure or base. It means:

(i) The price paid by a wholesaler or retailer to a manufacturer, or

(ii) The price paid by a retailer to a wholesaler when the price represents the value at the time of first possession in this state.

(iii) In cases where no sale has occurred, wholesale value means the fair market wholesale value, determined as nearly as possible according to the wholesale selling price at the place of use of similar substances of like quality and character. In such cases the wholesale value shall be the "value of the products" as determined under the alternate methods set forth in WAC 458-20-112.

(iv) It is the intent of the law that the "wholesale value," which is the tax measure, should be as uniform and constant as possible throughout the chain of distribution from manufacture to retail sale. For special tax reporting formulas for retailers, see part (11) of this section.

(h) "Selling price" means consideration of any kind expressed in terms of money paid or delivered by a buyer to a seller, without any deductions for any costs whatsoever. Bona fide discounts actually granted to a buyer result in reductions in the selling price rather than deductions.

(i) "State," for purposes of the credit provisions of the hazardous substance tax, means:

(i) The state of Washington,

(ii) States of the United States or any political subdivisions of such other states,

(iii) The District of Columbia,

(iv) Territories and possessions of the United States,

(v) Any foreign country or political subdivision thereof.

(j) "Person" means any natural or artificial person, including a business organization of any kind, and has the further meaning defined in RCW 82.04.030.

(i) The term "natural person," for purposes of the tax exemption provided by RCW 82.22.040(2) regarding substances used for personal or domestic purposes, means human beings in a private, as opposed to a business sense.

(k) Except as otherwise expressly defined in this section, the definitions of terms provided in chapters 82.04, 82.08, and 82.12 RCW apply equally for this section. Other terms not expressly defined in these chapters or this section are to be given their common and ordinary meanings.

(3) Tax rate and measure. The tax is imposed upon the privilege of possessing hazardous substances in this state. The tax rate is eight tenths of one percent (.008). The tax measure or base is the wholesale value of the substance, as defined herein.

(4) Exemptions. The following are expressly exempt from the tax:

(a) Any successive possessions of any previously taxed hazardous substances are tax exempt.

(i) Any person who possesses a hazardous substance which has been acquired from any other person who is registered with the department of revenue and doing business in this state may take a written statement certifying that the tax has been previously paid. Such certifications must be taken in good faith and must be in the form provided in the last part of this section. Blanket certifications may be taken, as appropriate, which must be renewed at intervals not to exceed four years. These certifications may be used for any single hazardous substance or any broad classification of hazardous substances, e.g., "all chemicals."

(ii) In the absence of taking such certifications, the person who possesses any hazardous substance must prove that it purchased or otherwise acquired the substance from a previous possessor in this state and that the tax has been paid.

(iii) This exemption for taxes previously paid is available for any person in successive possession of a taxed hazardous substance even though the previous payment may have been satisfied by the use of credits or offsets available to the previous person in possession.

(iv) Example. Company A brings a substance into this state upon which it has paid a similar hazardous substance tax in another state. Company A takes a credit against its Washington tax liability in the amount of the other state's tax paid. It then sells the substance to Company B, and provides Company B with a certificate of previously taxed substance. Company B's possession is tax exempt even though Company A has not directly paid Washington's tax but has used a credit against its Washington liability.

(b) Any possession of a hazardous substance by a natural person for use of a personal or domestic nature rather than a business nature is tax exempt.

(i) This exemption extends to relatives, as well as other natural persons who reside with the person possessing the substance, and also to regular employees of that person who use the substance for the benefit of that person.

(ii) This exemption does not extend to possessions by any independent contractors hired by natural persons, which contractors themselves provide the hazardous substance.

(iii) Examples: Possessions of spray materials by an employee–gardener or soaps and cleaning solvents by an employee–domestic servant, when such substances are provided by the natural person for whose domestic benefit such things are used, are tax exempt. Also, possessions of fuel by private persons for use in privately owned vehicles are tax exempt.

(c) Any possessions of the following substances are tax exempt:

(i) Alumina, natural gas, or petroleum coke;

(ii) Liquid fuel or fuel gas used in processing petroleum;

(iii) Petroleum products that are exported for use or sale outside this state as fuel.

(iv) The exemption for possessions of petroleum products for export sale or use as fuel may be taken by any person within the chain of distribution of such products in this state. To perfect its entitlement to this exemption the person possessing such substance(s) must take from its buyer or transferee of the substance(s) a written certification in substantially the following form:

Certificate of Tax Exempt Export Petroleum Products

I hereby certify that the petroleum products specified herein, purchased by or transferred to the undersigned, from (seller or transferor), are for export for use or sale outside Washington state as fuel. I will become liable for and pay any hazardous substance tax due upon all or any part of such products which are not so exported outside Washington state. This certificate is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion.

Registration No. _____ (If applicable) Type of Business _____

Firm Name _____ Registered Name _____ (If different)

Authorized Signature _____

Title _____

Identity of Petroleum Product _____ (Kind and amount by volume)

Date _____

(v) Each successive possessor of such petroleum products must, in turn, take a certification in this form from any other person to whom such petroleum products are sold or transferred in this state. Failure to take and keep such certifications as part of its permanent records will incur hazardous substance tax liability by such sellers or transferors of petroleum products.

(vi) Persons in possession of such petroleum products who themselves export or cause the exportation of such products to persons outside this state for further sale or use as fuel must keep the proofs of actual exportation required by WAC 458–20–193, parts A or C. Example: Carriers who will purchase fuel in this state to be taken

out of state in the fuel tanks of any ship, airplane, truck, or other carrier vehicle will provide their fuel suppliers with this certification. Then such carriers will directly report and pay the tax only upon the portion of such fuel actually consumed by them in this state. (With respect to fuel brought into this state in fuel tanks and partially consumed here, see the credit provisions of part (5)(b) of this section.

(d) Persons or activities which the state is prohibited from taxing under the United States Constitution are tax exempt.

(i) This exemption extends to the U.S. government, its agencies and instrumentalities, and to any possession the taxation of which has been expressly reserved or preempted under the laws of the United States.

(ii) The tax will not apply with respect to any possession of any hazardous substance purchased, extracted, produced or manufactured outside this state which is shipped or delivered into this state until the interstate transportation of such substance has finally ended in this state. Thus, out of state sellers or producers need not pay the tax on substances shipped directly to customers in this state. The customers must pay the tax upon their first possession unless otherwise expressly exempt.

(iii) Out of state sellers or producers will be subject to tax upon substances shipped or delivered to warehouses or other in state facilities owned, leased, or otherwise controlled by them.

(iv) However, the tax will not apply with respect to possessions of substances which are only temporarily stored or possessed in this state in connection with through, interstate movement of the substances from points of origin to points of destination both of which are outside of this state.

(e) Any possession of any hazardous substances which were already possessed before January 1, 1988 are tax exempt. This exemption extends to current inventories and stocks of hazardous substances on hand on January 1, 1988 when the tax first takes effect. The intent is that the hazardous substance tax has no retroactive application.

(i) It is the intent, under the law, that this exemption will apply to the substances throughout their succeeding chain of distribution, in the possession of any person, for the life of those substances. That is, hazardous substances already possessed as of December 31, 1987 will not incur tax liability in the possession of any person at any time.

(ii) Persons who already possess any hazardous substances on December 31, 1987 must use a first–in–first–out (FIFO) accounting method for depleting such supplies, supported by their purchase, sales, or transfer records.

(iii) Because this exemption will follow the hazardous substances into the possession of any subsequent or succeeding possessors, sellers of such exempt current inventory substances should provide their registered buyers in this state with the certificate of previously taxed hazardous substance set forth in part (15) of this section.

(5) Credits. There are three distinct kinds of tax credits against liability which are available under the law.

(a) A credit may be taken by any manufacturer or processor of a hazardous substance produced from ingredients or components which are themselves hazardous substances, and upon which the hazardous substance tax has been paid by the same person or is due for payment by the same person.

(i) Example. A manufacturer possesses hazardous chemicals which it combines to produce an acid which is also designated as a hazardous substance or product. When it reports the tax upon the wholesale value of the acid it may use a credit to offset the tax by the amount of tax it has already paid or reported upon the hazardous chemical ingredients or components. In this manner the intent of the law to tax hazardous substances only once is fulfilled.

(ii) Under circumstances where the hazardous ingredient and the hazardous end product are both possessed by the same person during the same tax reporting period, the tax on the respective substances must be computed and the former must be offset against the latter so that the tax return reflects the tax liability after the credit adjustment.

(iii) This credit may be taken only by manufacturers who have the first possession in this state of both the hazardous ingredients and the hazardous end product.

(b) A credit may be taken in the amount of the hazardous substance tax paid upon the value of fuel which is carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle.

(i) The purpose of this credit is to extend the same tax exclusion which exists for exported fuel (part (4)(c) above) to fuel which is possessed and partly used in this state before crossing the boundaries of this state in any fuel tank attached to any transportation vehicle powered by such fuel.

(ii) The credit may be claimed only for the amount of tax actually paid on the fuel, not the amount representing the value of the fuel.

(iii) The nature of this credit is such that it generally has application only for interstate and foreign carriers whose fuel tanks contain fuel which was not first possessed by some other person in this state who paid the tax. The credit is limited to the person who carries the fuel from this state and cannot be claimed by any person who previously possessed the fuel in this state and paid the tax.

(iv) Interstate/foreign carriers who purchase fuel in this state do not require, and may not use this credit in respect to such locally purchased fuel. Instead, the export fuel exemption set forth at part (4)(c)(iii) will be used. Thus, this fuel–in–tanks credit is applicable only for fuel brought into this state in fuel tanks, part of which is then taken out of this state in the fuel tanks. The intent is that the tax will apply only to so much of such fuel as is consumed by such carriers in this state.

(v) Example. An airline company enters this state with its fuel tanks partially full of fuel which has not been possessed and taxed earlier in this state. The fuel in

the tanks is, therefor, first possessed in this state by the airline company, has not been previously taxed, and the possession is not expressly tax exempt. Only the amount of fuel actually used in this state is subject to the tax because this credit may be taken for the tax paid on the portion of fuel allocated to use after the airplane exits this state.

(c) A credit may be taken against the tax owed in this state in the amount of any other state's hazardous substance tax which has been paid by the same person measured by the wholesale value of the same hazardous substance.

(i) In order for this credit to apply, the other state's tax must be significantly similar to Washington's tax in all its various respects. The taxable incident must be possessing the substance; the tax purpose must be that the substance is hazardous; and the tax measure must be stated in terms of the wholesale value of the substance, without deductions for costs of doing business, such that the other state's tax does not constitute an income tax or added value tax.

(ii) This credit may be taken for the amount of any other state's qualifying tax which has actually been paid either before or after Washington state's tax is paid.

(iii) The amount of credit is limited to the amount of tax paid in this state upon possession of the same hazardous substance in this state. Also, the credit may not be applied against any tax paid or owed in this state other than the hazardous substance tax imposed by RCW 82.22.030.

(iv) Exchange agreements under which hazardous substances or products possessed in this state are exchanged through any accounts crediting system with like substances possessed in other states do not qualify for this credit. The substance taxed in another state, and for which this credit is sought, must be actually, physically possessed in this state.

(v) Persons claiming this credit must maintain records necessary to verify that the credit taking qualifications have been met. See WAC 458-20-19301, part (9) for recordkeeping requirements. The department of revenue will publish an Excise Tax Bulletin listing other states' taxes which qualify for this credit.

(6) Newly defined hazardous substances. The director of ecology may identify and designate things as being hazardous substances after January 1, 1988. Also, things designated as hazardous substances may be deleted from this definition. Such actions are done by the adoption and subsequent periodic amendments to rules of the department of ecology under the Washington Administrative Code.

(a) The law allows the addition or deletion of substances as hazardous by rule amendments, no more often than twice in any calendar year.

(b) When such definitions are changed, they do not take effect for tax purposes until the first day of the following month which is at least thirty days after the effective date of rule action by the department of ecology.

(i) Example. The department of ecology adopts or amends the rule by adding a new substance and the effective date of the amendment is January 15. Possession of the substance does not become taxable until March 1.

(ii) The exemption for current inventories and stocks on hand explained at part (5)(e) of this section does not apply to possessions of hazardous substances newly added by rule. The tax is owed by any person who has possession of the newly designated hazardous substance upon the tax effective date as explained herein. It is immaterial that the person in possession on that date was not the first person in possession of the substance in this state before it was designated as hazardous.

(7) Recurrent tax liability. It is the intent of the law that all hazardous substances possessed in this state should incur this tax liability only once unless they are expressly exempt. This is true of hazardous ingredients of products as well as the manufactured end product itself, if designated as a hazardous substance. The *exemption* for previously taxed hazardous substances does not apply to "products" which have been manufactured or remanufactured simply because an ingredient or ingredients of that product may have already been taxed when possessed by the manufacturer. Instead of an exemption, manufacturers in possession of both the hazardous ingredient(s) and end product(s) should use the *credit* provision explained at part (5)(a) of this section.

(a) However, the term "product" is defined to mean only an item or items which contain a combination of both hazardous substance(s) and nonhazardous substance(s). The term does not include combinations of only hazardous substances. Thus, possessions of substances produced by combining other hazardous substances upon all of which the tax has previously been paid will not again be taxable.

(b) When any hazardous substance(s) is first produced during and because of any physical combination or chemical reaction which occurs in a manufacturing or processing activity, the intermediate possession of such substance(s) within the manufacturing or processing plant is not considered a taxable possession if the substance(s) becomes a component or ingredient of the product being manufactured or processed or is otherwise consumed during the manufacturing or processing activity.

(i) However, when any intermediate hazardous substance is first produced during a manufacturing or processing activity and is withdrawn for sale or transfer outside of the manufacturing or processing plant, a taxable first possession occurs.

(c) Concentrations or dilutions for shipment or storage. The mere addition or withdrawal of water or other nonhazardous substances to or from hazardous substances designated under CERCLA or FIFRA for the sole purpose of transportation, storage, or the later manufacturing use of such substances does not result in any new hazardous product.

(8) How and when to pay tax. The tax must be reported on a special line of the combined excise tax return designated "hazardous substances." It is due for payment together with the timely filing of the return

upon which it is reported, covering the tax reporting period during which the hazardous substance(s) is first possessed within this state. Any person who is not expressly exempt of the tax and who possesses any hazardous substance in this state, without having proof that the tax has previously been paid on that substance, must report and pay the tax.

(a) It may be that the person who purchases a hazardous substance will not have billing information from which to determine the wholesale value of the substance when the tax return for the period of possession is due. In such cases the tax is due for payment no later than the next regular reporting due date following the reporting period in which the substance(s) is first possessed.

(b) The taxable incident or event is the possession of the substance. Tax is due for payment by the purchaser of any hazardous substance whether or not the purchase price has been paid in part or in full.

(c) Special provision for manufacturers, refiners, and processors. Because it is not possible to know, at the time of first possession in this state, whether a hazardous substance may be used or sold in a manner which would entitle the first possession to tax exemption, manufacturers, refiners, and processors who possess hazardous substances are required to report the tax and take any available exemptions and credits only at the time that such hazardous substances are withdrawn from storage for purposes of their sale, transfer, remanufacture, or consumption.

(9) How and when to claim credits. Credits should be claimed and offset against tax liability reported on the same excise tax return when possible. The tax return form provides a line for reporting tax on hazardous substances and a line for taking credits as an offset against the tax reported. It is not required that any documents or other evidences of entitlement to credits be submitted with the report. Such proofs must be retained in permanent records for the purpose of verification of credits taken.

(10) Successive possessions of the same hazardous substance. The law provides that the department of revenue may collect the tax from any person who has had possession of a hazardous substance in this state, if the tax has not already been paid by any person. The law also provides that the tax measure, wholesale value, should be as uniform as possible throughout the chain of possession. Wholesale value is determined by the wholesale selling price.

(a) When tax is collected by the department from any person having successive possession of a substance, because no tax was previously paid on that same substance, the wholesale selling price means the price paid to any manufacturer or wholesaler who first had possession in this state.

(b) In determining this wholesale selling price, the charges for shipping, delivery, warehousing, or any other such charges representing cost increments accrued after the first wholesale sale in this state are not included. Thus, the tax collected from any person having successive possession should be no greater than what the tax would have been if collected from the person who had first possession of the substance in this state.

(11) Formulary or percentage tax reporting. The law provides that when the burden of the tax falls upon retailers, when they are the first persons in possession in this state, the tax burden should be equal to the same burden when it falls upon manufacturers or first level wholesalers earlier in the distribution chain. Because the tax measure is the wholesale value of the substance when first possessed in this state, that measure should remain constant regardless of who is the first person in possession. This is true even when the first person in possession is a retailer or any other purchaser or transferee of a hazardous substance from any out–of–state seller or transferor other than the out of state manufacturer of the substance.

(a) It may be that the retailer or other importer first in possession will not have access to records reflecting the manufacturer's wholesale value of a hazardous substance. RCW 82.22.030 provides that in such cases the tax may be imposed upon a "percentage of sales" for any class of retailer so as to equalize the tax burden for all persons in possession of hazardous substances. Therefor, in order to derive a tax measure which will reasonably approximate the manufacturer's wholesale selling price, retailers or other importers who are the first persons in possession of hazardous substances in this state may report and pay the tax under one of the following methods:

(i) Measured by manufacturer's wholesale value as shown upon any actual accounting records available; or,

(ii) Measured by sixty percent of gross receipts from retail sales of hazardous substances which have not been previously taxed; or,

(iii) Measured by the possessor's cost, less twenty percent, of all such substances not previously taxed; or,

(iv) Under circumstances where none of the above methods fairly reflects what the wholesale value would have been at the time and place of first possession by a manufacturer in this state, then the retailer may submit a percentage of sales formula for prior approval by the department of revenue.

(v) It is not the intent of these formulary tax measurement provisions to derive any tax measure below or less than the manufacturer's wholesale value.

(b) Special provision for consumer/first possessors. Under circumstances where the consumer is the first person in possession of any nonexempt hazardous substance (e.g., substances imported by the consumer), or where the consumer is the person who must pay the tax upon substances previously possessed in this state (fuel purchased for export in fuel tanks) the consumer's tax measure will be sixty percent of its retail purchase price. This provision, again, is intended to equalize the tax measure for all taxable persons possessing hazardous substances.

(12) Hazardous substances or products on consignment. Consignees who possess hazardous substances or products in this state with the power to sell such things, in their own name or on behalf of a disclosed or undisclosed consignor are liable for payment of the tax. The

exemption for previously taxed substances is available for such consignees only if the consignors have paid the tax and the consignee has retained the certification or other proof of previous tax payment referred to in part (4)(i) and (ii) of this section. Possession of consigned hazardous substances by a consignee does not constitute constructive possession by the consignor.

(13) Hazardous substances untraceable to source. Various circumstances may arise whereby a person will possess hazardous substances in this state, some of which have been previously taxed in this or other states and some of which may not. In such cases the formulary tax reporting of part (11) of this section may be used, including the request for a special ruling by the department of revenue.

(a) Example. Fungible petroleum products from sources both within and outside this state are commingled in common storage facilities. Formulary reporting is appropriate based upon volume percentages reflecting the ratio of in–state production to out–of–state production or other form of acquisition.

(14) Administrative provisions. The provisions of chapter 82.32 RCW regarding due dates, reporting periods, tax return requirements, interest and penalties, tax audits and limitations, disputes and appeals, and all such general administrative provisions apply equally to the hazardous substance tax. Special requested rulings covering unique circumstances generally will be issued within sixty days from the date upon which complete information is provided to the department of revenue.

(15) Certification of previously taxed hazardous substance. Certification that the hazardous substance tax has already been paid by a person previously in possession of the substance(s) may be taken in substantially the following form:

I hereby certify that this purchase – all purchases of_____
(omit one)

_____ by _____,
(identify substance(s) purchased) (name of purchaser)

who possesses registration no. _____,
(buyer's number, if registered)

consists of the purchase of hazardous substance(s) or product(s) upon which the tax imposed by RCW 82.22-.030 has been paid in full by a person previously in possession of the substance(s) or product(s) in this state. This certificate is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion, and with the full knowledge and agreement that the undersigned hereby assumes any liability for hazardous substance tax which has not been previously paid because of possession of the hazardous substance(s) or product(s) identified herein.

___ The registered seller named below personally paid the tax upon possession of the hazardous substances.

___ A person in possession of the hazardous substances prior to the possession of the registered seller named below paid the tax.

___ This certificate is being used to cover tax exempt existing inventories which were possessed in this state on December 31, 1987.

(Check the appropriate line.)

Name of registered seller _____ Registration No. _____

Firm name _____ Address _____

Type of business _____

Authorized signature _____ Title _____

Date _____

[Statutory Authority: RCW 82.32.300. 88-06-028 (Order 88-2), § 458-20-252, filed 2/26/88.]

WAC 458-20-253 Mobile homes and mobile home park fees. (1) DEFINITIONS.

(a) "Landlord" means the owner of a mobile home park and includes the agents of the owner.

(b) "Lot" means a portion of a mobile home park designated as the location for one mobile home and its accessory buildings, and intended for the exclusive use by the occupants of that mobile home as a primary residence.

(c) "Mobile home" means a structure, transportable in one or more sections, which is thirty–two body feet or more in length and is eight body feet or more in width and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities. The term includes the plumbing, heating, air–conditioning, and electrical systems contained within the structure. It does not include modular homes.

(d) "Mobile home park" means any real property which is rented or held out for rent for the placement of two or more mobile homes for the primary purpose of production of income, except where such real property is rented or held out for rent for seasonal, recreational purposes only and is not intended for continuous occupancy.

(e) "Tenant" means a person who rents a lot for a term of one month or longer, and who owns the mobile home on the lot.

(f) "Used mobile home as defined in RCW 82.45-.032" means a mobile home which has been previously sold at retail and has been subjected to sales tax, or which has been previously used and has been subjected to use tax, and which has substantially lost its identity as a mobile unit by virtue of its being fixed in location upon land owned or leased by the owner of the mobile home and placed on a foundation (posts or blocks) with fixed pipe connections with sewer, water, and other utilities.

(2) SALES BY DEALERS OR SELLING AGENTS. Dealers or selling agents applying for new certificates of ownership for mobile homes they have sold must remit the sales tax on such sales to the county auditor or the department of licensing at the time of application.

(a) County auditors and the department of licensing must collect sales tax on these transactions unless the mobile home dealer or selling agent presents a written statement signed by the department of revenue or its duly authorized agent showing that no sales tax or use tax is due.

(b) The application for a new certificate of ownership must state the selling price paid for the mobile home. The selling price does not include the value of trade–in property of like kind. See WAC 458-20-247.

(c) Dealers and selling agents remitting sales tax to county auditors or the department of licensing should report the income from such sales on their combined excise tax returns and take a sales tax deduction in the amount of sales tax so remitted.

(d) Where sales tax on the purchase of a mobile home has been remitted to a county auditor or the department of licensing and the purchaser believes that sales tax was not legally due, such purchaser may apply for a refund directly from the department of revenue. The application for refund must be received by the department of revenue within four years from payment of the tax. If the application for refund is denied the purchaser may seek a refund in accordance with the procedures described in WAC 458-20-100.

(3) USED MOBILE HOMES.

(a) Sales tax. Sales tax does not apply to the sale of used mobile homes as defined in RCW 82.45.032.

(b) Use tax. Use tax does not apply to the use of used mobile homes as defined in RCW 82.45.032.

(4) RENTAL OR LEASE OF MOBILE HOMES. Sales tax does not apply to the rental or lease of mobile homes if the rental agreement or lease exceeds thirty days in duration and if the rental or lease is not in conjunction with the provision of short term lodging for transients.

(5) MOBILE HOME PARK FEES.

(a) Duties of landlords.

(i) Landlords, as defined in subdivision (1)(a) of this section, must register with the department of revenue for purposes of the mobile home park fees imposed in RCW 59.22.060.

(ii) Landlords must themselves pay a fee of one dollar per year for each lot within the mobile home park, whether rented or not.

(iii) In addition, landlords must, on January 1 of each year, collect from each tenant, as defined in subdivision (1)(e) of this section, a fee of one dollar for each lot rented to that tenant on that date.

(iv) Landlords must remit both fees to the department of revenue by January 31 of each year. The fee collected by landlords from tenants shall be deemed to be held in trust by the landlord until paid to the department of revenue. Any landlord who converts the fee collected to its own use shall be guilty of a gross misdemeanor.

(b) Duties of tenants. Tenants must, on January 1 of each year, pay a fee of one dollar to their landlord for each lot rented.

(c) Failure to collect fee. If a landlord fails to collect the fee from a tenant, whether or not such failure is due to circumstances beyond the landlord's control, the landlord is liable to the department for the tenant's fee.

(6) REGISTRATION FOR MOBILE HOME PARKS. Landlords who are registered with the department of revenue for excise tax purposes need not submit a separate registration. Landlords who are not otherwise registered with the department of revenue must register by means of the master business application. There is no cost for registering solely for purposes of reporting the mobile home park fees. A registration remains valid for as long as the landlord owns the mobile home park. The department of revenue will provide registered landlords with returns for reporting the mobile home park fees.

[Statutory Authority: RCW 82.32.300. 89-01-033 (Order 88-8), § 458-20-253, filed 12/13/88.]

Chapter 458-30 WAC
OPEN SPACE TAXATION ACT RULES

WAC

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

458-30-005 Definitions. [Order PT 73-9, § 458-30-005, filed 10/30/73; Order 71-3, § 458-30-005, filed 4/29/71; Order 71-2, § 458-30-005, filed 3/26/71.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-010 Classified lands. [Order PT 73-9, § 458-30-010, filed 10/30/73; Order 71-2, § 458-30-010, filed 3/26/71.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-015 Agreement. [Order PT 73-9, § 458-30-015, filed 10/30/73; Order 71-2, § 458-30-015, filed 3/26/71.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-020 Application. [Order PT 73-9, § 458-30-020, filed 10/30/73; Order 71-2, § 458-30-020, filed 3/26/71.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-025 Application fee. [Order PT 73-9, § 458-30-025, filed 10/30/73; Order 71-2, § 458-30-025, filed 3/26/71.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-030 Withdrawal—Change of use. [Order PT 73-9, § 458-30-030, filed 10/30/73; Order 71-2, § 458-30-030, filed 3/26/71.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-045 Removal of a portion. [Order PT 73-9, § 458-30-045, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 chapter 84.34 RCW.

458-30-050 Removal of classification. [Order PT 73-9, § 458-30-050, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-055 Notification upon removal. [Order PT 73-9, § 458-30-055, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-056 Additional tax. [Statutory Authority: RCW 84.34-.141. 78-07-027 (Order PT 78-3), § 458-30-056, filed 6/16/78.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-057 Penalty. [Statutory Authority: RCW 84.34.141. 78-07-027 (Order PT 78-3), § 458-30-057, filed 6/16/78.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-060 Additional tax—Date due. [Order PT 73-9, § 458-30-060, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-070 Agreement may be abrogated by legislature. [Order PT 73-9, § 458-30-070, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-075 Assessor. [Order PT 73-9, § 458-30-075, filed 10/30/73; Order 71-2, § 458-30-035, filed 3/26/71.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-080 Assessor to act on agricultural classification. [Order PT 73-9, § 458-30-080, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-085 Assessor to determine value. [Order PT 73-9, § 458-30-085, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-090 Assessor may require reports—Failure to comply. [Order PT 73-9, § 458-30-090, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-095 Assessor to note classification on assessment and tax roll. [Order PT 73-9, § 458-30-095, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-100 Assessor to record agreement and other notices. [Order PT 73-9, § 458-30-100, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-105 Notice of withdrawal to be filed with assessor—Assessor to withdraw. [Order PT 73-9, § 458-30-105, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-110 Assessor to notify owner of value change. [Order PT 73-9, § 458-30-110, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-115 Granting authority. [Order PT 73-9, § 458-30-115, filed 10/30/73; Order 71-2, § 458-30-040, filed 3/26/71.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-120 Granting authority's action on application. [Statutory Authority: RCW 84.34.141. 78-07-027 (Order PT 78-3), § 458-30-120, filed 6/16/78; Order PT 73-9, § 458-30-120, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-125 Owner applicant. [Order PT 73-9, § 458-30-125, filed 10/30/73; Order 71-2, § 458-30-045, filed 3/26/71.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-130 Treasurer. [Order PT 73-9, § 458-30-130, filed 10/30/73; Order 71-2, § 458-30-050, filed 3/26/71.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-135 Advisory committee. [Order PT 73-9, § 458-30-135, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-140 Basis for assessment. [Order PT 73-9, § 458-30-140, filed 10/30/73; Order 71-3, § 458-30-055, filed

4/29/71; Order 71-2, § 458-30-055, filed 3/26/71.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-145 Valuation procedures. [Statutory Authority: RCW 84.34.141. 86-09-088 (Order PT 86-1), § 458-30-145, filed 4/23/86; 78-07-027 (Order PT 78-3), § 458-30-145, filed 6/16/78; Order PT 73-9, § 458-30-145, filed 10/30/73. Prior: Order 71-3, § 458-30-060, filed 4/29/71.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-146 Valuation cycle. [Statutory Authority: RCW 84.34-.141. 78-07-027 (Order PT 78-3), § 458-30-146, filed 6/16/78.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-150 Change of timber land classification to chapter 84.33 RCW. [Order PT 73-9, § 458-30-150, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-155 Reclassification of farm and agricultural land under 1973 amendatory act. [Order PT 73-9, § 458-30-155, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-160 Training. [Order PT 73-9, § 458-30-160, filed 10/30/73; Order 71-3, § 458-30-065, filed 4/29/71.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

WAC 458-30-005 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-010 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-015 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-020 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-025 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-030 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-045 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-050 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-055 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-056 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-057 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-060 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-070 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-075 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-080 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-085 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-090 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-095 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-100 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-105 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-110 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-115 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-120 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-125 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-130 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-135 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-140 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-145 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-146 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-150 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-155 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-160 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-200 Definitions. The terms listed in this section are intended to act in concert with each other as appropriate, and with other definitions as they appear in the several sections of this chapter. When a term appears in a section, reference is to be made to the definition listed within this section, or the section that defines the term.

(1) "Act" means the Open Space Taxation Act, chapter 84.34 RCW.

(2) "Additional tax" means such tax and interest that will be collected when land that is classified according to the provisions of the act is withdrawn or removed from such classification.

(3) "Affidavit" means the real estate excise tax affidavit required by chapter 82.45 RCW and chapter 458-61 WAC.

(4) "Agreement" means an open space taxation agreement, executed between an owner and the granting authority approving the classification of land according to the act. The term also includes an approved application for the farm and agricultural land classification.

(5) "Applicant" means the owner who submits an application for classification of land according to the act.

(6) "Application" means an application for classification of land according to the act.

(7) "Approval" means a determination by the granting authority or assessor that the land qualifies for classification under the act.

(8) "Aquaculture" means the growing and harvesting, for commercial agricultural purposes, of marine or fresh water flora or fauna in a soil or water medium.

(9) "Assessor" means the county assessor or such agency or person who is authorized to act on behalf of the assessor.

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

(11) "Classified land" means a parcel(s) of land that has been approved by the appropriate granting authority for taxation under the act.

(12) "Commercial agricultural purposes" means use on a continuous and regular basis, prior to and subsequent to application for classification, which use demonstrates an intent of an owner or lessee to obtain through lawful means, a monetary profit from cash income received by:

(a) Raising, harvesting, and selling lawful crops;

(b) Feeding, breeding, managing, and selling of livestock, poultry, fur-bearing animals, or honey bees, or products thereof;

(c) Dairying or selling of dairy products;

(d) Animal husbandry;

(e) Aquaculture;

(f) Horticulture; or

(g) Participation in a government-funded crop reduction or acreage set-aside program.

(13) "Conjunction" means a parcel of land on which appurtenances may be located; such parcel may be separate from or contiguous with farm and agricultural land and which does not qualify for classification by itself, but is an integral part in such use of the land for commercial agricultural purposes in association with the land.

(14) "Contiguous" means land that adjoins other land when such lands are held by the same ownership. A parcel of land divided by a public road, railroad, public right of way, or waterway, shall be considered contiguous.

(15) "County financial authority" and "financial authority" mean the county treasurer or any other agency or person charged with the responsibility for billing and collecting property taxes.

(16) "County legislative authority" means the county commission, council, or other county legislative body.

(17) "County recording authority" means the county auditor or any agency or person charged with the recording of documents.

(18) "Current" and "currently" mean the date on which property is to be listed and valued by the assessor.

(19) "Current use value" means the taxable value of a parcel of land placed on the assessment rolls that is classified according to the provisions of the act without regard to its highest and best use.

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

(21) "Farm woodlot" means a land area that is five acres or more but less than twenty acres not used for commercial agricultural purposes and which is contained within a parcel of classified farm and agricultural land. However, in no case shall the farm woodlot exceed fifty percent of a parcel of land classified under the act. A farm woodlot may be converted to commercial agricultural purposes at any time. Farm woodlots shall be valued at their current use value.

(22) "Granting authority" means the appropriate agency or official who acts on an application for classification according to the act.

(23) "Gross income" means cash income derived from commercial agricultural purposes, including payments received from the United States Department of Agriculture for participation in any crop reduction or acreage set-aside program when payments are based on the productive capacity of the land. The term shall not include the following:

(a) The value of the owner's or lessee's own consumption of any of the products that are produced;

(b) Cash income from leases, or use of the land for other than commercial agricultural purposes; or

(c) Payments for soil conservation programs.

(24) "Net cash rental" means the earning or productive capacity less those production costs customarily or typically paid by the owner.

(25) "Owner" means the person(s) having a fee interest in a parcel of land, except when the land is subject to a real estate contract; the vendee when the land is subject to a real estate contract; or both spouses when a marital community is the owner.

(26) "Parcel of land" means a property identified as such on the assessment roll. However, for purposes of the act and this chapter, a parcel shall not include any land area not owned by the applicant, including but not

limited to public roads and rights of way, railroads, and waterways.

(27) "Penalty" means the amount that is added to the additional tax when classified land is removed or withdrawn by the assessor according to the act.

(28) "Planning authority" means the local government agency empowered by the appropriate legislative authority to develop policies and proposals relating to land use.

(29) "Primary use" means the existing use of a parcel or parcels of land such that in considering the characteristic use of that land, a conflicting or nonrelated use is limited or excluded.

(30) "Qualification of land" means the approval of classification of land by the granting authority.

(31) "Rating system" means a public benefit rating system adopted for the open space classification according to RCW 84.34.055.

(32) "Tax year" means the year when a property tax is due and payable.

(33) "Transfer" means a change of ownership without an exchange of valuable consideration.

(34) "True and fair value" is the value of a parcel of land placed on the assessment rolls at its highest and best use without regard to its current use value.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-200, filed 11/15/88.]

WAC 458-30-205 Department of revenue--Duties. The department shall maintain general administrative authority to assure that the act and this chapter are effectively and equitably applied throughout the state. The department shall, upon request, provide all reasonable assistance to assessors relating to administration of the act and this chapter.

The department shall design all application and other administrative forms necessary under the act and this chapter for the assessor to prepare and provide to applicants for classification, except those forms necessary for the rating system. The department shall provide the guidelines and necessary training to assessors and county boards of equalization for administration of the act and this chapter. Members of the advisory committee and members of any granting authority may attend the training sessions provided by this section.

The department, by order, shall annually issue by December 31, a five-year average of wheat and barley prices for use in the assessment year following the year when the order was issued.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-205, filed 11/15/88.]

WAC 458-30-210 Classified lands. Land classified under the act shall be placed under one of three classifications defined as:

(1) "Open space land" means:

(a) Any parcel(s) of land so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly; or

(b) Any parcel(s) of land, whereby preservation in its present use would:

(i) Conserve and enhance natural or scenic resources; or

(ii) Protect streams or water supply; or

(iii) Promote conservation of soils, wetlands, beaches, or tidal marshes; or

(iv) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, natural reservations or sanctuaries, or other open spaces; or

(v) Enhance public recreation opportunities; or

(vi) Preserve historic sites; or

(vii) Retain in its natural state, tracts of land of not less than five acres in size situated in an urban area and open to public use on such conditions as may be reasonably required by the granting authority.

(2) "Farm and agricultural land" means either:

(a) A parcel of land twenty acres or more in size or contiguous parcels of land which, when taken together are twenty or more acres in size, the primary use of which is commercial agricultural purposes; or

(b) Any parcel of land or contiguous parcels of land which, when taken together are five acres or more in size, but less than twenty acres in size, the primary use of which is commercial agricultural purposes, and which produced a gross income that averaged one hundred dollars or more in cash per acre per year for three of the five calendar years preceding the date of application for classification; or

(c) Any parcel of land or contiguous parcels of land which, when taken together are less than five acres in size, the primary use of which is commercial agricultural purposes, and which produced a gross income of one thousand dollars or more in cash per year for three of the five calendar years preceding the date of application for classification.

(d) Farm and agricultural lands also include:

(i) Farm woodlots that are five acres or more in size but less than twenty acres in size;

(ii) Land on which appurtenances necessary for commercial agricultural purposes exist in conjunction with the lands producing such products; and

(iii) Any noncontiguous parcel of land from one to five acres in size, otherwise constituting an integral part of the commercial agricultural purpose of the parcel classified under the act.

A parcel of land enrolled in the farm and agricultural land classification that is twenty acres or more in size, including a homesite, shall be exempt from the gross income requirements imposed on smaller parcels.

(3) "Timber land" means:

(a) A parcel of land five acres or more in size or contiguous parcels of land which, when taken together are five or more acres in size, devoted primarily to the growth and commercial harvest of forest crops;

(b) Not listed on the assessment roll as classified or designated forest land according to chapter 84.33 RCW; and

(c) Does not include the land on which nonforest crops or any improvements to the land are sited.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-210, filed 11/15/88.]

WAC 458-30-215 Application process. The assessor and the county legislative authority shall make available application forms for classification and shall supply them upon request. The assessor and the county legislative authority shall provide the appropriate forms, prepare informational materials and provide reasonable assistance to an owner who submits an application for classification of land according to the act. Should the county legislative authority adopt a rating system for the open space classification, it shall prepare the appropriate forms and provide informational materials and assistance to prospective applicants.

The applicant shall be the owner of the land described on the application.

In the event a parcel is conveyed while approval of a timely filed application is pending, the purchaser or transferee shall, upon written request to the granting authority, be given the same consideration as if that party was the original applicant. However, except for the application fee, the granting authority shall require the purchaser or transferee to satisfy all requirements that otherwise would have been required in accordance with the original application.

Application for classification as farm and agricultural land shall be made to the assessor, who shall be the granting authority.

Application for classification as open space or timber land shall be made to the county legislative authority. If the parcel(s) of land is in an unincorporated area, the county legislative authority shall be the granting authority. If the parcel(s) of land is in an incorporated area, the application shall be forwarded to the city or town legislative authority. In such situations, a joint county/city legislative authority consisting of three members from each legislative authority, acting as the granting authority, shall act on the application. Application for classification of land according to the act shall be made from January 1 through December 31 for classification and assessment to begin on January 1 in the year following application.

An owner who submits an application for classification of land as open space and timber land need file only one application. However, the applicant shall provide a legal description of the parcel of land that is acceptable to the assessor and the granting authority, who shall determine the appropriate classification according to the provisions of the act and this chapter. The assessor may segregate the parcels as necessary.

If the land described in the application for classification is in more than one county, the owner shall file a separate application with each granting authority.

If application for classification is denied, a reapplication covering the same parcel of land, or a portion thereof, may not be submitted to the granting authority until three hundred sixty-five days have elapsed from the date the initial application was received.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-215, filed 11/15/88.]

WAC 458-30-220 Application fee. A fee, not to exceed thirty dollars, for processing the application, may be established by the city or county legislative authority. Such fee shall accompany each application. If any agreement is to be recorded, the cost of such recording shall come from the fee. The fee shall be made payable to the county financial authority, who shall forward a portion of the fee to any city in which the parcel of land for which classification is sought is located. The portion of the fee forwarded to the city shall be equivalent to that portion of the parcel that lies within its boundary.

If the application is denied, the fee shall be returned to the applicant. The application fee shall not be returned if the owner withdraws the application prior to approval. The fee will not be refunded if the owner does not sign and return the agreement within twenty-five days after receiving it from the granting authority.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-220, filed 11/15/88.]

WAC 458-30-225 Assessor to respond to farm and agricultural classification applications. The assessor shall act on each application for classification as farm and agricultural land with due regard to all relevant evidence, and may approve the application in whole or in part.

Except as provided by the act and this chapter, the assessor cannot impose conditions or restrictions regarding approval of an application for classification as farm and agricultural land. The assessor shall consider the relevant zoning and, if the zoning ordinance prohibits the farm and agricultural activity for which classification is being sought, deny the application. Prospective use of the land shall not be relevant evidence in acting upon an application.

The assessor may, at any time, require applicants to provide data regarding the use of such land, including the productivity of typical crops, sales receipts, federal income tax returns including schedules documenting farm income, other related income and expense data and any other information relevant to the application. Failure to provide the information requested pursuant to this section shall be cause to deny an application.

If no written determination is provided to the applicant prior to May 1 of the year following receipt of the application, the application shall be considered approved. However, the assessor may review the classification at any time after the classification has been granted.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-225, filed 11/15/88.]

WAC 458-30-230 Legislative authority to act on open space and timber land applications. An application for classification of a parcel(s) of land as open space or timber land shall be filed with the granting authority and processed as follows:

(1) If a comprehensive plan has been enacted, it shall be treated in the same manner as a proposed amendment to that plan; and

(2) If a comprehensive plan has not been enacted, a public hearing on the application shall be conducted. Notice of such hearing shall be announced once by publication in a newspaper of general circulation in the city or county no less than ten days before the hearing. The owner shall be notified in writing of the hearing.

The granting authority shall either approve or disapprove the application within six months after it has been received. If approved, valuation of the land at its current use value shall begin on January 1 of the year following the year the application was filed. However, any application approved on or after July 1 of any year shall cause the land to be listed on the assessment roll at its current use value on January 1 of the following assessment year.

Any conditions imposed in the agreement shall be in consideration of the benefits to the general public and shall not exceed the duration of the agreement.

The granting authority shall keep a record of each application, agreement, and records relating to each agreement.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-230, filed 11/15/88.]

WAC 458-30-235 Granting authority response. (1) The granting authority may approve all or part of an application. An applicant may withdraw the application if part of it is rejected. The granting authority may not require the owner of classified timber land to grant an easement.

(2) In determining whether an application for classification as open space or timber land should be approved, the granting authority shall take cognizance of the benefits to the general welfare of preserving the current use of the parcel(s) of land described in the application, and shall consider the following:

(a) The revenue impact that will result from granting the application; and

(b) Whether preservation of the land in its current use will:

(i) Conserve or enhance natural or scenic resources; or

(ii) Protect streams, stream corridors, wetlands, natural shorelines, and aquifers; or

(iii) Protect soil resources and critical wildlife and native plant habitat; or

(iv) Promote conservation principles by example or by offering educational opportunities; or

(v) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries, or other open spaces; or

(vi) Enhance recreation opportunities; or

(vii) Preserve historic and archaeological sites; or

(viii) Affect any other factors relevant in weighing benefits to the general welfare of preserving the current use of such land.

(3) In addition to the foregoing, the granting authority shall consider:

(a) The existence of any mining claim or mining lease on the land, and if so, whether it will seriously interfere with the considerations stated in subsection (2) of this section. If the granting authority determines serious interference will occur, it may deny the application in whole, or in part. If a mining claim or mining lease is obtained after the land is classified, the same determination must be made in deciding whether serious interference will occur; and

(b) The zoning of the parcel(s) of land at the time when the application for classification is filed.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-235, filed 11/15/88.]

WAC 458-30-240 Agreement execution. Once an application for classification as open space or timber land has been approved by the granting authority, said authority shall prepare an agreement. The agreement shall state all conditions attached to the approval.

Within five calendar days following approval, in whole or in part, the granting authority shall deliver by certified mail, return receipt requested, the approved agreement to the owner for signature.

The owner may accept or reject the agreement. If accepted, the agreement shall be signed and returned to the granting authority within twenty-five calendar days following delivery.

Unless the owner is prevented from returning the agreement by events beyond their control, the granting authority shall conclusively presume the agreement has been rejected if it is not signed and returned to them within thirty calendar days after mailing.

To be properly executed, the agreement shall be signed by the owner and shall become effective commencing upon the date the granting authority receives the signed agreement from the property owner.

The granting authority shall, within ten days after receiving the signed agreement, send one copy to the assessor.

The agreement shall apply to the parcel(s) of land described in the agreement and the conditions and requirements shall be binding upon the heirs, successors, and assignees of the parties thereto.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-240, filed 11/15/88.]

WAC 458-30-245 Recording of documents. The assessor shall, within ten working days after receiving an agreement from the granting authority, or approving an application for the farm and agricultural land classification, submit such documents to the county recording authority for recording. The county recording authority shall return the documents to the assessor following recording.

The county recording authority shall also record all notices of withdrawal or of breach that are received from the assessor. The owner shall pay all recording fees for such notices.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-245, filed 11/15/88.]

WAC 458-30-250 Denial and appeal. (1) All denials of an application for classification shall be in writing and shall include the reasons for denial.

(2) The owner shall have the right to appeal any denial of an application for classification.

(3) In the event the assessor denies an application for classification as farm and agricultural land, in whole or in part, the applicant may appeal to the county legislative authority within thirty calendar days following mailing of the denial.

(4) In the event the granting authority denies an application for classification as either open space or timber land, appeal can be made only to the superior court of the county where the application was made.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-250, filed 11/15/88.]

WAC 458-30-255 Determination of value. The assessor shall determine the current use value of land classified under the act according to the procedures and standards set forth in this chapter. In determining the value, the assessor shall consider only the current use of such land and shall not consider any potential use and income.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-255, filed 11/15/88.]

WAC 458-30-260 Valuation procedures and standards. The assessor shall use all available information to determine the productive capacity of classified farm and agricultural land. Consideration shall be given to actual production within an area, averaged over not less than the immediate past five years. Farm production information and other related data shall be available to the assessor as provided by the act and this chapter. Reliable statistical sources may also be used. A soil capability analysis may be considered in determining the productive or earning capacity of the land.

In determining the current use value of farm and agricultural land, the assessor shall use the capitalization of income method described in the following subsections of this section.

(1) The net cash rental to be capitalized shall be determined as follows:

(a) The assessor shall use leases of farm land paid on an annual basis, in cash or its equivalent. The land must have been available for lease for a period of at least three years to any reliable person without unreasonable restrictions on its use for production of agricultural crops. If leases do not meet these requirements, they will not be used. The lease payments shall be averaged as follows:

(i) Each annual lease payment, or rent, shall be averaged for the typical crops within that area; and

(ii) The typical cash rental for each year shall be averaged for not less than the last five crop years. A deduction shall be allowed for the customary costs that are paid by the land owner. All costs and expenses shall be averaged over the immediate past five years. If the land is irrigated by a sprinkler system, an amount for the irrigation equipment shall be deducted from the gross cash rent to determine the net rent for the land only. However, such irrigation equipment shall be placed on the assessment roll at its true and fair value.

(b) Should there be an insufficient number of leases available to adequately determine net cash rental, it shall be established by determining:

(i) The landlord's share of the cash value of typical or usual crops grown on land of similar quality. The cash value shall include government subsidies if they are based on the productive capacity of the land. The acreage kept out of production because of these subsidies shall be included in the total acreage valued by capitalization of the income;

(ii) The landlord's share of the standard cost of production will be determined and deducted from his or her share of the cash value established pursuant to this subsection.

The resulting amount shall be averaged for not less than five crop years.

(c) When the land being valued is not in use for commercial agricultural purposes, or where the available information is insufficient to determine an agricultural income, the assessor shall compute a reasonable amount to be capitalized as income, based on the land's estimated productive capacity.

(2) The capitalization rate to be used in valuing land shall be the sum of the following:

(a) An interest component to be determined by the department and certified to the assessor on or before January 1st of each year, and shall be comparable to interest rates charged on long-term loans secured by mortgages on farms or agricultural lands averaged over the last five years; plus

(b) A component for property taxes that shall be determined by dividing the total taxes levied within the county for the year preceding the assessment by the total assessed value of the county.

(3) The value of the agricultural land shall be the net cash rental of the land divided by the capitalization rate determined in subsection (2) of this section.

(4) The department's determination of the interest rate established in subsection (2)(a) of this section may be appealed to the state board of tax appeals not later than thirty days after the notice has been issued by:

(a) An owner of a parcel(s) of land classified as farm and agricultural; or

(b) The assessor of any county containing parcels of land that are classified as farm and agricultural.

(5) Land presently used as a residential building site shall be valued at its true and fair value as a homesite in accordance with WAC 458-12-301. However, land that migratory farm labor accommodations, bunkhouses, storeyards, barns, machine sheds, and similar type

structures are located upon shall not be considered as a residential building site.

(6) Except for a parcel(s) of land classified under a rating system, a parcel of land classified as open space shall have an assessed value not less than what it would have if classified as farm and agricultural land.

(7) Timber land shall be valued according to chapter 84.33 RCW.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-260, filed 11/15/88.]

WAC 458-30-265 Valuation cycle. In determining the true and fair value and the current use value of classified lands, the assessor shall follow a revaluation cycle that adheres to the requirements contained in WAC 458-12-335 through 458-12-339, as now or hereafter amended. The cycle used shall be the same as that used for other real property in the county and shall be in an orderly manner, pursuant to a regular plan, and in a manner that is not arbitrary, capricious, or intentionally discriminatory.

The assessor shall notify the owner of classified lands of any change in the true and fair value and/or current use value in the same manner as prescribed in RCW 84.40.045.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-265, filed 11/15/88.]

WAC 458-30-270 Income and expense data. The assessor is authorized to require an owner to report data relevant to continuing the eligibility of any parcel of land for classification. Such information includes, but is not limited to: Receipts from sales of agricultural products produced on that land, federal income tax returns including schedules documenting farm income, production and other operating expenses, rent and lease receipts, government payments and subsidies, crop and livestock production data and other related income and expense information.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-270, filed 11/15/88.]

WAC 458-30-275 Continuing classification--Sale or ownership--Transfer of classified land. When the ownership of classified land is transferred to a new owner who intends to continue classification, such notation shall be made by the new owner on the affidavit.

(1) When a parcel(s) of land classified as open space is sold or transferred, the signature of the new owner must be on the notice of continuance in order to continue the classification. The assessor will request information from the new owner, and consult with the granting authority to determine if the parcel of land qualifies for continued classification.

(2) When a parcel(s) of land classified as timber land is sold or transferred, the signature of the new owner must be on the notice of continuance in order to continue the classification. The assessor will request information from the new owner, and consult with the granting authority to determine if the parcel of land qualifies for continued classification.

(3) When a parcel(s) of land classified as farm and agricultural is sold or transferred to a new owner:

(a) In a sale or transfer involving twenty acres or more, the new owner will be required to:

(i) Sign the notice of continuance on the affidavit; and

(ii) Provide the assessor with a statement whether he or she will use the parcel(s) of land in such manner as to continue its eligibility for classification under the act.

The assessor will then determine if the land qualifies for continued classification.

(b) In a sale or transfer involving less than twenty acres, the new owner will be required to:

(i) Sign the notice of continuance on the affidavit; and

(ii) Provide the assessor with a statement whether he or she will use the parcel(s) of land in such manner as to continue its eligibility for classification under the act; and

(iii) Provide gross income data for three of the past five years. Said data shall be consistent with the income and acreage requirements stated in the act and this chapter.

The assessor will then determine if the land qualifies for continued classification.

(c) In a sale or transfer involving a land segregation, the owner of the newly created parcel(s) shall comply with the requirements of (a) or (b) of this subsection before the assessor determines if the land qualifies for continued classification.

(4) The assessor may, upon being informed that classified land is being sold or transferred to a new owner, obtain relevant information pursuant to WAC 458-30-270. Within fifteen calendar days after receiving such data, the assessor will determine if the land qualifies for continued classification as of the date of conveyance. The new owner, upon signing the notice of continuance, warrants the information in the original application continues to be correct and that future use of the land will conform to the provisions of the act and this chapter.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-275, filed 11/15/88.]

WAC 458-30-280 Notice to withdraw from classification. Except as otherwise provided, land classified under the provisions of the act shall remain under such classification and shall not be applied to any other use, for at least ten assessment years from the effective date of classification.

During the ninth or later assessment year of classification, the owner may file with the assessor an irrevocable notice of request for withdrawal. The request for withdrawal may involve all or part of the land.

Upon receiving the request for withdrawal the assessor shall, within seven working days, transmit one copy of the request to the granting authority that approved the original application.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-280, filed 11/15/88.]

WAC 458-30-285 Withdrawal from classification. A parcel of land may be withdrawn from classification in whole or in part. If part of the parcel is to be withdrawn, the assessor shall:

(1) If the parcel is classified as farm and agricultural land, verify that the remaining portion of the parcel meets the requirements of the act and this chapter; and

(2) If the parcel is in the open space or timber land classification, consult with the granting authority before determining whether the remaining portion of the parcel meets the requirements of the act and this chapter; and

(3) May segregate the portion that is withdrawn for valuation and taxation purposes.

After twenty-four months have elapsed following the date of receipt of the request to withdraw the parcel(s) of land from classification, the assessor shall withdraw the parcel(s) from classification and place the true and fair value on said land. The assessor shall, not later than thirty days after making the withdrawal, notify the owner in writing that the parcel(s) has been withdrawn from classification.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-285, filed 11/15/88.]

WAC 458-30-290 Additional tax--Withdrawal. When land is withdrawn from classification, an additional tax shall be collected from the owner that is equal to the sum of:

(1) The difference between the property tax that was levied on the current use value, and the tax that would have been levied on its true and fair value for the seven tax years preceding withdrawal, in addition to the portion of the tax year when the withdrawal takes place; plus

(2) Interest at the statutory rate specified in RCW 84.56.020 charged on delinquent property taxes from May 1 of the year the tax would have been paid without interest to the date the additional tax is paid; plus

(3) A penalty of twenty percent added to the total amounts computed in subsections (1) and (2) of this section if:

(a) Parcel(s) of land which has been classified under the act for fewer than nine consecutive assessment years are withdrawn by the owner; or

(b) The owner withdraws the parcel(s) of land from classification under the act and does not provide the assessor with at least twenty-four months notice of withdrawal in advance of such withdrawal.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-290, filed 11/15/88.]

WAC 458-30-295 Removal of classification. The assessor shall remove from classification all or a portion of the parcel upon occurrence of any of the following:

(1) Receipt of written notice from the owner directing removal.

(2) Sale or transfer to an owner exempt from paying property taxes.

(3) Sale or transfer of all or a portion of such land to a new owner who is not exempt from paying property taxes. However, the new owner may, on the affidavit, sign a notice of continuance to continue the classified use of the sold or transferred land.

(4) Failure of an owner to respond to a request for data pursuant to WAC 458-30-270. If the assessor does not receive the requested information, the parcel(s) of land may be removed from classification. However, if the owner does not respond to the first request for such information, the assessor shall send by certified mail, return receipt requested, a second request for that information. If the owner does not provide the information within ninety calendar days after receipt, or within ninety calendar days of mailing if the owner refuses receipt, the assessor may remove the classification and impose the additional tax and penalty.

(5) A determination by the assessor based on field inspections, analysis of income and expense data, or any other reasonable evidence that all, or a portion of, the parcel(s) of land is no longer devoted to the primary use that qualified it for classification.

Within thirty days after removal, the assessor shall notify the owner in writing, setting forth the reasons for such removal. The seller, transferor, or owner may appeal such removal to the first July board of equalization convened subsequent to the date of removal or a board of equalization within thirty calendar days of the date of notice of removal, whichever is later.

Upon removal of a portion of a parcel of land classified as open space, farm and agricultural, or timber land, the assessor may, for valuation and tax purposes, segregate the portion that is removed.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-295, filed 11/15/88.]

WAC 458-30-300 Additional tax--Removal. (1) In the event a parcel(s) of land is removed from classification, an additional tax shall be collected. Such additional tax shall be equal to the sum of:

(a) The difference between the property tax that was levied on the current use value, and the tax that would have been levied on its true and fair value for the seven tax years preceding removal in addition to the portion of the tax year when the removal takes place; plus

(b) Interest at the statutory rate charged on delinquent property taxes specified in RCW 84.56.020 from May 1 of the year the tax would have been paid without penalty to the date the additional tax is paid; plus

(c) A penalty of twenty percent added to the total amount computed in (a) and (b) of this subsection.

(2) If the notice of continuance on the affidavit is not signed, an additional tax and penalty shall be calculated according to subsection (1) of this section.

(3) There shall be no additional tax imposed upon removal of a parcel(s) of land from classification if such removal resulted solely from one or more of the following:

(a) Transfer to a governmental entity in exchange for other land located within the state of Washington; or

(b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power; or

(c) Sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in such land, whether the sale or transfer be made by the personal representative, heirs, or devisees of the deceased owner. An inheritance is not a transfer under the provisions of chapter 84.34 RCW. If the owner of a fifty percent interest inherits the other fifty percent, the land will remain classified and cannot be removed without paying the additional tax unless it is sold within two years. If the owner purchases the decedent's fifty percent interest within two years, the land may be removed without payment of the additional tax and penalty and without signing the notice of continuance. If the notice of continuance is signed, classification will continue as if no transfer occurred; or

(d) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the landowner changing the use of such property; or

(e) Official action by an agency of the state of Washington or by the county or city where the land is located disallowing the current use of such land; or

(f) Transfer to a church when such land would qualify for property tax exemption pursuant to RCW 84.36.020. The conditions set forth in RCW 84.36.020 shall apply to the affected parcel of land only and shall not relieve any portion not so affected from the potential tax liability; or

(g) Acquisition of property interests by public agencies or private organizations qualified under RCW 84-.34.210 and 64.04.130 for the purposes specified therein. However, when these interests are not used as specified, the additional tax and penalty shall be imposed.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-300, filed 11/15/88.]

WAC 458-30-305 Additional tax--Date due. (1) The additional tax and penalty required upon removal of a parcel(s) of land from classification pursuant to WAC 458-30-300 shall become due and payable immediately at the time of sale or transfer.

(2) In all other situations, the assessor shall compute the amount of additional tax due, and the county financial authority shall notify, in writing, the party liable for such tax of the amount and the date when the payment is to be made, which date shall be not more than thirty days following notice from the financial authority.

Any additional tax unpaid on its due date shall thereon become delinquent. Such additional tax and penalty shall attach at the time a parcel of land is removed from classification, and shall, as of said date, become a lien on such land and shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which such land may become charged or liable. Such lien may be foreclosed upon expiration of the same period after delinquency and in same manner provided by law, for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050 now or as amended. Starting with the date of delinquency until paid, interest shall be charged at the same rate applied by law to delinquent ad valorem property taxes.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-305, filed 11/15/88.]

WAC 458-30-310 County recording authority--Duties. The county recording authority shall not accept for recording any instrument of conveyance involving a parcel of land classified according to the act unless:

(1) Any required additional tax has been paid; or

(2) The notice of continuance is signed by the new owner or transferee.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-310, filed 11/15/88.]

WAC 458-30-315 County financial authority--Duties. (1) The county financial authority shall, upon receipt of the notice of the current use value and the true and fair value from the assessor, list each in the place and manner provided for listing delinquent taxes.

(2) Upon receipt of a notice of withdrawal from the assessor, the financial authority shall bill and collect all additional taxes and penalties due pursuant to WAC 458-30-290.

(3) Upon receipt of a removal of classification notice, the financial authority shall bill and collect all additional taxes and penalties due pursuant to WAC 458-30-300.

(4) Upon collection of the additional tax, interest and penalty by the financial authority, said funds shall be distributed in the same manner that current taxes applicable to the subject land are distributed. The financial authority shall treat all additional taxes and penalties which are not timely paid in the same manner as delinquent taxes.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-315, filed 11/15/88.]

WAC 458-30-320 Assessment and tax rolls. Following classification of a parcel of land, the assessor shall, each year, enter on the assessment and tax rolls, the current use value and the true and fair value of that parcel. The assessor shall provide notice of these values to the county financial authority who shall list such notice in the place or manner provided for recording delinquent taxes.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-320, filed 11/15/88.]

WAC 458-30-325 Transfers of classifications. There shall be no additional tax or penalty imposed when:

(1) Land classified as farm and agricultural is transferred to timber land pursuant to chapter 84.34 RCW;

(2) Land classified as timber land, pursuant to chapter 84.34 RCW, is transferred to the farm and agricultural land classification;

(3) Land classified or designated as forest land pursuant to chapter 84.33 RCW, is transferred to the farm and agricultural or timber land classifications pursuant to chapter 84.34 RCW; or

(4) Timber land classified pursuant to chapter 84.34 RCW, is transferred to designated forest land pursuant to chapter 84.33 RCW.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-325, filed 11/15/88.]

WAC 458-30-330 Rating system. The county legislative authority may direct the county planning authority to set open space priorities and adopt, following a public hearing, an open space plan and rating system for the county. The plan shall include but not be limited to the following:

(1) Criteria to determine land eligibility;

(2) A process for establishing a rating system; and

(3) An assessor-developed valuation schedule that shall be a percentage of market value based on the rating system.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-330, filed 11/15/88.]

WAC 458-30-335 Rating system--Establishment. The rating system shall provide for the rating of parcel(s) of land classified as open space, according to the provisions of the act. The granting authority shall include within the rating system the criteria contained in the act and shall consider such criteria when acting on an application to preserve the current use of the parcel(s).

In developing the open space plan, the county planning authority shall take all reasonable steps to determine open space priorities, or use recognized sources for the same purpose, or both. Recognized sources include, but are not limited to: The natural heritage data base, state office of historic preservation, interagency committee for outdoor recreation inventory of dry accretion beach and shoreline features, governmental historic place registers, shoreline master programs, or studies by the parks and recreation commission, and the departments of fisheries, natural resources, and wildlife.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-335, filed 11/15/88.]

WAC 458-30-340 Rating system--Loss of qualification. Upon adoption of the open space plan and rating system, an owner of land classified as open space will be notified of the parcel's new assessed value. A parcel of land that no longer qualifies for classification will not be removed from classification, but will be rated according to the rating system. Such a parcel may be removed from classification upon request of the owner without application of the additional tax or penalty within thirty days after receiving notification of the new value. There shall be no partial removal of a parcel of land included in the rating system.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-340, filed 11/15/88.]

WAC 458-30-345 Advisory committee. The county legislative authority may appoint a five-member advisory committee representing the active farming community to advise the assessor in implementing assessment guidelines as established by the department for farm and agricultural land and, where appropriate, for open space and timber land. The committee shall elect officers and adopt operating procedures. All meetings and records shall be open to the public according to chapters 42.30 and 42.17 RCW.

Upon appointment, each member of the advisory committee shall serve a one-year term. Members may be removed from the advisory committee by majority vote of the county legislative authority.

The advisory committee shall not give advice regarding the valuation or assessment of specific parcels of land. However, it may supply the assessor with advice on typical crops, land quality, and net cash rental assessments to assist in determining appropriate values.

Failure of the county legislative authority to appoint an advisory committee shall not invalidate the listing of property on the assessment or the tax rolls.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-345, filed 11/15/88.]

WAC 458-30-350 Reclassification. Land classified under the provisions of chapter 84.34 RCW prior to July 16, 1973, meeting the definition of farm and agricultural land pursuant to RCW 84.34.020(2) as amended by chapter 212, Laws of 1973 1st ex. sess., shall be reclassified as such upon request for such change by the owner to the assessor. Such change shall be made without additional tax, penalty, or other requirements. After such reclassification, the land shall be subject to the provisions of the act.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-350, filed 11/15/88.]

WAC 458-30-355 Agreement may be abrogated by legislature. The agreement is not a contract between the owner and any other party and can be abrogated at any time by the legislature, in which event no additional tax or penalty shall be imposed.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-355, filed 11/15/88.]

WAC 458-30-500 Definitions. For the purposes of WAC 458-30-500 through 458-30-590, unless otherwise required by the context:

(1) "Farm and agricultural land" means that land classified by the assessor, prior to creation of the district, as farm and agricultural under chapter 84.34 RCW.

(2) "Local government" means any city, town, county, sewer district, water district, public utility district, port district, irrigation district, flood control district, or any other municipal corporation, quasi-municipal corporation, or other political subdivision authorized to levy special benefit assessments for sanitary and/or storm sewerage systems, domestic water supply and/or distribution systems, or road construction or improvement purposes.

(3) "District" means any local improvement district, utility local improvement district, local utility district, road improvement district or any similar unit created by a local government for the purpose of levying special benefit assessments against property specially benefited by improvements relating to such districts.

(4) "Owner" means the party or parties having the fee interest in land, except that where land is subject to real estate contract, "owner" means the contract vendee.

(5) The term "average rate of inflation" means the annual rate of inflation as adopted each year by the department of revenue according to WAC 458-30-580 averaged over the period of time as provided in WAC 458-30-550 and 458-30-570.

(6) "Special benefits assessments" means special assessments levied or capable of being levied in any local improvement district or otherwise levied or capable of being levied by a local government to pay for all or part of the costs of a local improvement and which may be levied only for the special benefits to be realized by property by reason of that local improvement.

(7) "Connection charge" or "charge for connection" is the charge required to be paid to the district for connection to the service as opposed to the assessment based upon the benefits derived.

[Statutory Authority: RCW 84.34.360. 87-07-009 (Order PT 87-3), § 458-30-500, filed 3/10/87.]

WAC 458-30-510 Creation of district--Protest--Final assessment roll. RCW 84.34.320 requires local government officials to take certain steps upon "creation" of a district. This section defines when a district shall be deemed to have been "created."

(1) For districts outside of cities, a district shall be considered created upon its actual adoption at the required hearing.

(2) For districts within cities, creation shall occur thirty days after passage of the ordinance ordering the improvement, thereby allowing the protest period set forth in RCW 35.43.180.

(3) For districts within cities, a protest may be filed with the city or town council within thirty days from the date of passage of the ordinance ordering the improvement. Creation of said district can be prevented by the property owners within whose combined payments for said improvement(s) are equal to, or in excess of sixty percent of the cost of the improvement. For all other districts their creation can be prevented by opposition of the property owners within whose combined property ownership is equal to or greater than forty percent of the area included in the district.

(4) For those districts that have an annual assessment roll hearing on capital assessments, the final assessment roll will be considered as "adopted" upon confirmation of the roll at the hearing in the first year.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-510, filed 11/15/88. Statutory Authority: RCW 84.34.360. 87-07-009 (Order PT 87-3), § 458-30-510, filed 3/10/87.]

WAC 458-30-520 Notification of district--Certification by assessor--Estimate by district. (1) Upon creation of a district, the local government shall immediately notify the assessor and legislative authority of the county where the district is located of said creation.

(2) Upon receipt of notification that a district has been created, the assessor shall certify in writing to the district whether or not classified farm and agricultural land is within its boundaries.

(a) If there is any such land, the assessor shall certify what land is within by providing parcel numbers and legal descriptions of such property.

(b) If any owner of land within the created district has timely filed, as of January 1st, an application for current use assessment as farm and agricultural land and no action has been taken, the assessor will report the status of pending applications to the district and take immediate action to render a decision for its approval or denial. The assessor shall also inform the district that any decision is appealable under RCW 84.34.035, and that the classification as farm and agricultural land would become effective as of the initial filing date, January 1.

(c) If the legislature extends the filing date for applying for classification as farm and agricultural land beyond December 31, those applications approved will receive their status as of January 1 of the filing year.

(3) The district, upon receipt of the assessor's certification required by subsection (2) of this section, shall notify the assessor and the legislative authority of:

(a) The extent to which classified lands may be subject to a partial assessment for connection to the service provided by the improvement(s). Said estimate will be based upon WAC 458-30-560.

(b) Confirmation and approval of the special benefit assessment roll. Said confirmation shall include the lands exempted from assessment and the amounts that would have been levied had the land not been exempt.

(4) The assessor shall notify the district when any exempt farm and agricultural land is removed from classification.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-520, filed 11/15/88. Statutory Authority: RCW 84.34.360. 87-07-009 (Order PT 87-3), § 458-30-520, filed 3/10/87.]

WAC 458-30-530 Notification of owner. The assessor, upon receiving notice of the creation of such a district, shall notify the owner of the farm and agricultural lands as shown on the current assessment rolls. Such notification shall be made on forms approved by the department of revenue and shall contain the following:

(1) Notice of the creation of the district.

(2) Notice of the exemption of that land from special benefit assessments.

(3) Notice that the farm and agricultural land will become subject to the special benefit assessments if the owner waives the exemption by filing a notarized document with the governing body of the local government creating the district before confirmation of the final special benefit assessment roll.

(4) Notice of potential liability if the exemption is not waived and the land is subsequently withdrawn or removed from the farm and agricultural land classification.

(5) The portion of the land measured as the benefited "residence" as provided in WAC 458-30-560 will be assessed for benefits received.

(6) That connection to the system, shall result in a connection charge.

(7) That connection to the system subsequent to creating the district and initial assessment will result in being liable for the amounts as calculated in WAC 458-30-570.

(8) The property owner shall have the right of appeal as is guaranteed any other property owner within the district.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-530, filed 11/15/88. Statutory Authority: RCW 84.34.360. 87-07-009 (Order PT 87-3), § 458-30-530, filed 3/10/87.]

WAC 458-30-540 Waiver. (1) The owner of land exempted from special benefit assessments may waive that exemption by filing a notarized statement to that effect with the local government creating the district. Said statement must be filed prior to confirmation of the final special benefit assessment roll.

(2) A copy of said waiver shall be filed by the local government with the assessor and the county legislative authority, but the failure of such filing shall not affect the waiver.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-540, filed 11/15/88. Statutory Authority: RCW 84.34.360. 87-07-009 (Order PT 87-3), § 458-30-540, filed 3/10/87.]

WAC 458-30-550 Exemption--Removal. (1) No further action will be required of the owner of classified farm and agricultural land who chooses to remain exempt and not connect to the improvement(s) made by the district. The status of the property will not change and it will not be included on the assessment roll.

(2) If the owner initially chose to remain exempt, but subsequently is removed or withdrawn from the farm and agricultural land classification, immediate payment shall be required of the total special benefit assessment amount listed in the notice provided for in RCW 84.34-.320 in the following manner:

(a) If the bonds used to fund the improvement have not been completely retired when the land is withdrawn or removed from classification, the liability will be:

(i) The amount of the special benefit assessment, plus;

(ii) Interest on that amount, compounded annually at a rate equal to the average rate of inflation from the time the initial notice is filed by the governmental entity creating the district to the time the land is withdrawn or removed from exempt status.

(b) If the bonds used to fund the improvement in the district have been completely retired when the land is withdrawn or removed from classification, immediate payment shall be due for:

(i) The amount of the special benefit assessment, plus;

(ii) Interest on that amount compounded annually at a rate equal to the average rate of inflation from the time the initial notice is filed to the time the bonds used to fund the improvement have been retired, plus;

(iii) Interest on the total amount of (i) and (ii) at a simple per annum rate equal to the average rate of inflation from the time the bonds used to fund the improvement have been retired to the time the land is withdrawn or removed from exempt status.

(3) If property is withdrawn or removed from the farm and agricultural land classification, but has been partially assessed for connection to a sewer and/or water system, credit shall be given for the amount paid when computing the total liability.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-550, filed 11/15/88. Statutory Authority: RCW 84.34.360. 87-07-009 (Order PT 87-3), § 458-30-550, filed 3/10/87.]

WAC 458-30-560 Partial assessment--Computation. A portion of the exempt classified farm and agricultural land shall be subject to special benefit assessment if it is actually connected to the domestic water system or sewerage facilities, or for access to a road improvement. The amount of special benefit assessment shall be calculated by the method used in the district to assess nonexempt property. If a district uses more than one method to calculate the assessment, it shall use the one that results in the least cost to the property owner, regardless of the owner's property holdings and/or exempt status. The district shall provide the owner of such property with a written estimate of the partial assessment as determined from the following methods:

(1) Sanitary and/or storm sewerage service or domestic water service.

(a) Square foot method: If the special benefit assessment is determined on a square footage basis, the assessable portion of the exempt land shall be determined as follows:

Calculate the square footage of the residential area, i.e., the "main dwelling." This area shall include all those facilities normally found on a residential lot such as a garage or carport, driveway, front and back yards, etc. Also included in the area shall be any buildings or facilities directly benefited by an actual connection to the improvement. (For example: A dairy barn connected to a sewer or water system.)

(b) Front foot method: If the special benefit assessment is determined on a front footage basis, the assessable portion of the exempt land shall be determined by one of the following:

(i) Calculate the square footage for the residential area in the same manner as the square foot method. The square foot measurement of the entire "residence," shall then be converted into the area of a square. The calculated square will be used as the unit to be charged for the special benefit assessment. One side of the square will be used as front footage; or

(ii) Determine the mean (average) front footage of all nonexempt properties within the district, and use it to assess the portion of otherwise exempt property for the special benefit assessment, i.e., add all of the nonexempt front footage relevant to the improvement and divide by the number of nonexempt properties within the district.

(c) Zone-termini method: If the special benefit assessment is determined on a zone-termini basis, the assessable portion of the exempt land shall be determined by one of the following:

(i) Convert the square foot area of the residence to a square as in the front foot method. Use this square as the zone for assessing the portion of otherwise exempt property for the special benefit assessment; or

(ii) Calculate the mean (average) width and depth (length) of all nonexempt properties within the district, using these averages to create a rectangular unit as the zone for assessing the portion of otherwise exempt property for the special benefit assessment. To perform this calculation:

(A) Add all nonexempt front footage relevant to the improvement and divide by the number of nonexempt properties within the district to determine the mean width of the zone; and

(B) Add the depths (lengths) of all nonexempt properties within the district and divide by the number of nonexempt properties within the district to determine the mean depth of the zone.

(d) Equivalent residential unit method (ERU): The ERU method shall be used in the same manner as it is used on all other properties within the district. The value to be determined is based on the amount of benefit derived or, when appropriate, the degree of contribution to the service, such as drainage or sewer. This amount shall be measured for all uses of property. (For example, if a dairy barn uses a greater amount of water or contributes a greater amount of sewerage than the normal residential unit, it shall be classified as more than one ERU and shall be charged a proportionately greater amount.)

(e) Combined methods: In districts making assessments using a combination of two or more methods (e.g., an assessment based on a front footage charge plus a square foot charge), the procedures for determining the assessable portion of previously exempt property shall be the same as those described above.

(2) Road construction and/or improvements. If the property is provided access to the constructed or improved road, the assessment will be based upon the percentage of current use value to true and fair value as evidenced by the last property tax assessment roll as equalized by the county board of equalization to what the assessment would have been if the owner had waived the exemption. (For example, if the current use value is forty-five percent of its true and fair value, then the assessable portion would be forty-five percent of the amount it would have been had the owner waived the exemption.)

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-560, filed 11/15/88. Statutory Authority: RCW 84.34.360. 87-07-009 (Order PT 87-3), § 458-30-560, filed 3/10/87.]

WAC 458-30-570 Connection subsequent to final assessment roll--Interest--Connection charge. (1) The owner of property exempted from special benefit assessments under the current use farm and agricultural land classification who connects to the water and/or sewer systems and/or road improvements provided by the district after the assessment roll has been approved will be liable for the foregone assessments as determined by WAC 458-30-560 including interest, but not penalties. In addition, the annual payment required for each year following the connection shall be made.

(2) In addition to the assessments imposed in subsection (1) of this section, the owner will also be liable for the cost of connection.

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-570, filed 11/15/88. Statutory Authority: RCW 84.34.360. 87-07-009 (Order PT 87-3), § 458-30-570, filed 3/10/87.]

WAC 458-30-580 Rate of inflation--When published--Calculation. In computing the interest as required by WAC 458-30-550, upon withdrawal or removal from classification as farm and agricultural land, the department of revenue will, each year, publish an annual inflation rate. The rate will be based upon the implicit price deflator for personal consumption expenditures calculated by the United States Department of Commerce. The rate will be published by December 31st of each year and will apply to all withdrawals or removals that occur in the following year. An owner will become liable for the interest from the time the district was created to the time of withdrawal or removal. If more than one year is involved, an annual average inflation rate shall be used to calculate the interest. This rate will be determined by summing the inflation rates for all years in question and then dividing by the number of years. The interest shall take effect on the date the action warranting the charge as provided for in WAC 458-30-550 is taken. Interest for withdrawal or removal will be calculated only for the time (years and months) the property was in exempt status. (For example, if a property was withdrawn July 1, 1987, and the district was created in January 1980, the interest would be calculated using the inflation rates given for 1980 through 1987; in the year when the withdrawal or removal occurred, the interest would be calculated for six months, January through June, as the property was still in exempt status.)

[Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84-.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-580, filed

11/15/88. Statutory Authority: RCW 84.34.360. 87-07-009 (Order PT 87-3), § 458-30-580, filed 3/10/87.]

WAC 458-30-590 Rates of inflation. The rates of inflation to be used for calculating the interest as required by WAC 458-30-550 are as follows:

Year	%	Year	%	Year	%
1976	5.7	1980	10.7	1984	3.8
1977	6.5	1981	9.2	1985	3.5
1978	7.3	1982	5.7	1986	2.1
1979	9.2	1983	4.1	1987	4.0

[Statutory Authority: RCW 84.34.360. 88-07-004 (Order PT 88-4), § 458-30-590, filed 3/3/88; 87-07-009 (Order PT 87-3), § 458-30-590, filed 3/10/87.]

Chapter 458-40 WAC
TAXATION OF FOREST LAND AND TIMBER

WAC

WAC 458-40-540 Property tax, forest land--Forest land values-- 1989. The true and fair values, per acre, for each grade of forest land for the 1989 assessment year are determined to be as follows:

1989
WASHINGTON FOREST LAND VALUES

LAND GRADE	OPERABILITY CLASS	VALUE PER ACRE
1	1	$126
	2	121
	3	117
	4	85
2	1	106
	2	102
	3	98
	4	71
3	1	83
	2	80
	3	78
	4	60
4	1	63
	2	61
	3	60
	4	47
5	1	46
	2	42
	3	41
	4	27
6	1	23
	2	22
	3	22
	4	21
7	1	11
	2	11
	3	10
	4	10
8		1

[Statutory Authority: RCW 84.33.120 and 84.33.130. 88-23-055 (Order FT-88-3), § 458-40-540, filed 11/15/88; 87-22-068 (Order FT-87-3), § 458-40-540, filed 11/4/87. Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-540, filed 12/31/86.]

WAC 458-40-650 Timber excise tax--Timber quality codes defined. The timber quality code numbers for each species of timber shown in the stumpage value tables contained in this chapter are defined as follows:

TABLE 1--Timber Quality Code Table
Stumpage Value Areas 1, 2, 3, 4, and 5

WESTERN WASHINGTON MERCHANTABLE SAWTIMBER

Timber Quality Code Number	Species	Log Grade Specifications[1]
1	Douglas-Fir & Spruce	Over 50% No. 2 Sawmill & better log grade and over 40% Special Mill, No. 1 Sawmill & better log grade
	Western Redcedar & Alaska-Cedar	Over 30% No. 2 Sawmill & better log grade and 15% & over Special Mill, No. 1 Sawmill, Peeler & better log grade
	Western Hemlock, True Firs & Other Conifer	Over 50% No. 2 Sawmill & better log grade and over 25% Special Mill, No. 1 Sawmill & better log grade
	Hardwoods	All No. 3 Sawmill logs & better log grades
2	Douglas-Fir & Spruce	Over 50% No. 2 Sawmill & better log grade and 15-40% inclusive Special Mill, No. 1 Sawmill & better log grade
	Western Redcedar & Alaska-Cedar	Over 30% No. 2 Sawmill & better log grade and less than 15% Special Mill, No. 1 Sawmill, Peeler & better log grade
	Western Hemlock, True Firs & Other Conifer	Over 50% No. 2 Sawmill & better log grade and 5-25% inclusive Special Mill, No. 1 Sawmill & better log grade

TABLE 1--cont.

Timber Quality Code Number	Species	Log Grade Specifications[1]
	Douglas-Fir & Spruce	Over 50% No. 2 Sawmill & better log grade and less than 15% Special Mill, No. 1 Sawmill & better log grade
3	Western Redcedar & Alaska-Cedar	5-30% inclusive No. 2 Sawmill & better log grade
	Western Hemlock, True Firs & Other Conifer	Over 50% No. 2 Sawmill & better log grade and less than 5% Special Mill, No. 1 Sawmill & better log grade
	Douglas-Fir & Spruce	25-50% inclusive No. 2 Sawmill & better log grade
4	Western Redcedar & Alaska-Cedar	Less than 5% No. 2 Sawmill & better log grade
	Western Hemlock & Other Conifer	25-50% inclusive No. 2 Sawmill & better log grade
	Douglas-Fir & Spruce	5% to but not including 25% No. 2 Sawmill & better log grade
	Western Hemlock & Other Conifer, except Western Redcedar & Alaska-Cedar	5% to but not including 25% No. 2 Sawmill & better log grade
5	Conifer Utility	All conifer logs graded as utility log grade
	Hardwood Utility	All No. 4 Sawmill log grade and all hardwood logs graded as utility
6	Douglas-Fir, Spruce, Western Hemlock & Other Conifer, except Western Redcedar & Alaska-Cedar	Less than 5% No. 2 Sawmill & better log grade

[1] For detailed descriptions and definitions of approved log scaling, grading rules, and procedures see WAC 458-40-680.

TABLE 2--Timber Quality Code Table Stumpage Value Areas 6 and 7

EASTERN WASHINGTON MERCHANTABLE SAWTIMBER

Timber Quality Code Number	Species	Log Grade Specifications
	Ponderosa Pine	Less than 10 logs 16 feet long per thousand board feet Scribner scale
1	All Conifers Other Than Ponderosa Pine	All log sizes
	Hardwoods	Sawlogs only

TABLE 2--cont.

Timber Quality Code Number	Species	Log Grade Specifications
2	Ponderosa Pine	10 or more logs 16 feet long per thousand board feet Scribner scale
5	Utility	All logs graded as utility

TABLE 3--Timber Quality Code Table Stumpage Value Area 10

EASTERN WASHINGTON MERCHANTABLE SAWTIMBER

Timber Quality Code Number	Species	Log Grade Specifications
1	Ponderosa Pine & Other Conifers	Less than 5 logs 16 feet long per MBF net log Scribner scale
	Hardwoods	All logs graded as sawlogs
2	Ponderosa Pine	5 to 9 logs inclusive 16 feet long per MBF net log Scribner scale
	Other Conifer	5 to 12 logs inclusive 16 feet long per MBF net log scale
3	Ponderosa Pine	More than 9 logs 16 feet long per MBF net log Scribner scale
	Other Conifer	More than 12 logs 16 feet long per MBF net log Scribner scale
5	Utility	All logs graded as utility

[Statutory Authority: RCW 84.33.091 and chapter 84.33 RCW. 88-14-032 (Order FT-88-2), § 458-40-650, filed 6/30/88. Statutory Authority: Chapter 84.33 RCW. 87-14-042 (Order 87-2), § 458-40-650, filed 6/30/87; 87-02-023 (Order 86-4), § 458-40-650, filed 12/31/86.]

WAC 458-40-660 Timber excise tax--Stumpage value tables. The following stumpage value tables are hereby adopted for use in reporting the taxable value of stumpage harvested during the period January 1 through June 30, 1989:

TABLE 1--Stumpage Value Table Stumpage Value Area 1 January 1 through June 30, 1989

WESTERN WASHINGTON MERCHANTABLE SAWTIMBER

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir	DF	1	$341	$334	$327	$320	$313
		2	294	287	280	273	266
		3	269	262	255	248	241
		4	246	239	232	225	218
		5	193	186	179	172	165
		6	145	138	131	124	117

TABLE 1--cont.

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Western Redcedar[2]	RC	1	446	439	432	425	418
		2	431	424	417	410	403
		3	283	276	269	262	255
		4	204	197	190	183	176
Sitka Spruce	SS	1	496	489	482	475	468
		2	448	441	434	427	420
		3	245	238	231	224	217
		4	213	206	199	192	185
		5	168	161	154	147	140
		6	119	112	105	98	91
Western Hemlock[3]	WH	1	335	328	321	314	307
		2	240	233	226	219	212
		3	213	206	199	192	185
		4	194	187	180	173	166
		5	153	146	139	132	125
		6	67	60	53	46	39
Other Conifer	OC	1	335	328	321	314	307
		2	240	233	226	219	212
		3	213	206	199	192	185
		4	194	187	180	173	166
		5	153	146	139	132	125
		6	67	60	53	46	39
Red Alder	RA	1	74	67	60	53	46
Black Cottonwood	BC	1	31	24	17	10	3
Other Hardwood	OH	1	31	24	17	10	3
Hardwood Utility	HU	5	16	16	16	16	16
Conifer Utility	CU	5	6	6	6	6	6

[1] Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.
[2] Includes Alaska-Cedar.
[3] Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

TABLE 2--Stumpage Value Table
Stumpage Value Area 1
January 1 through June 30, 1989

WESTERN WASHINGTON SPECIAL FOREST PRODUCTS

Stumpage Values per Product Unit

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Western Redcedar Shake Blocks & Boards[1]	RCS	1	$342	$335	$328	$321	$314
Western Redcedar Flatsawn & Shingle Blocks[1]	RCF	1	153	146	139	132	125
Western Redcedar & Other Posts[2]	RCP	1	0.76	0.76	0.76	0.76	0.76
Douglas-Fir Christmas Trees[3]	DFX	1	0.25	0.25	0.25	0.25	0.25
True Fir & Other Christmas Trees[3]	TFX	1	0.50	0.50	0.50	0.50	0.50

[1] Stumpage value per MBF net Scribner Scale. See conversion methods WAC 458-40-684 and 458-40-686.
[2] Stumpage value per 8 lineal feet or portion thereof.
[3] Stumpage value per lineal foot.

TABLE 3--Stumpage Value Table
Stumpage Value Area 2
January 1 through June 30, 1989

WESTERN WASHINGTON MERCHANTABLE SAWTIMBER

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir	DF	1	$397	$390	$383	$376	$369
		2	380	373	366	359	352
		3	317	310	303	296	289
		4	255	248	241	234	227
		5	193	186	179	172	165
		6	145	138	131	124	117
Western Redcedar[2]	RC	1	395	388	381	374	367
		2	393	386	379	372	365
		3	309	302	295	288	281
		4	167	160	153	146	139
Sitka Spruce	SS	1	482	475	468	461	454
		2	169	162	155	148	141
		3	163	156	149	142	135
		4	129	122	115	108	101
		5	116	109	102	95	88
		6	104	97	90	83	76
Western Hemlock[3]	WH	1	297	290	283	276	269
		2	240	233	226	219	212
		3	220	213	206	199	192
		4	175	168	161	154	147
		5	131	124	117	110	103
		6	57	50	43	36	29
Other Conifer	OC	1	297	290	283	276	269
		2	240	233	226	219	212
		3	220	213	206	199	192
		4	175	168	161	154	147
		5	131	124	117	110	103
		6	57	50	43	36	29
Red Alder	RA	1	68	61	54	47	40
Black Cottonwood	BC	1	31	24	17	10	3
Other Hardwood	OH	1	31	24	17	10	3
Hardwood Utility	HU	5	16	16	16	16	16
Conifer Utility	CU	5	6	6	6	6	6

[1] Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.
[2] Includes Alaska-Cedar.
[3] Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

TABLE 4--Stumpage Value Table
Stumpage Value Area 2
January 1 through June 30, 1989

WESTERN WASHINGTON SPECIAL FOREST PRODUCTS

Stumpage Values per Product Unit

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Western Redcedar Shake Blocks & Boards[1]	RCS	1	$342	$335	$328	$321	$314

TABLE 4--cont.
Stumpage Values per Product Unit

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Western Redcedar Flatsawn & Shingle Blocks[1]	RCF	1	153	146	139	132	125
Western Redcedar & Other Posts[2]	RCP	1	0.76	0.76	0.76	0.76	0.76
Douglas-Fir Christmas Trees[3]	DFX	1	0.25	0.25	0.25	0.25	0.25
True Fir & Other Christmas Trees[3]	TFX	1	0.50	0.50	0.50	0.50	0.50

[1]Stumpage value per MBF net Scribner Scale. See conversion methods WAC 458-40-684 and 458-40-686.
[2]Stumpage value per 8 lineal feet or portion thereof.
[3]Stumpage value per lineal foot.

TABLE 5--Stumpage Value Table
Stumpage Value Area 3
January 1 through June 30, 1989

WESTERN WASHINGTON MERCHANTABLE SAWTIMBER

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir[2]	DF	1	$420	$413	$406	$399	$392
		2	343	336	329	322	315
		3	324	317	310	303	296
		4	293	286	279	272	265
		5	167	160	153	146	139
		6	161	154	147	140	133
Western Redcedar[3]	RC	1	396	389	382	375	368
		2	336	329	322	315	308
		3	230	223	216	209	202
		4	210	203	196	189	182
Western Hemlock[4]	WH	1	380	373	366	359	352
		2	276	269	262	255	248
		3	190	183	176	169	162
		4	154	147	140	133	126
		5	103	96	89	82	75
		6	88	81	74	67	60
Other Conifer	OC	1	380	373	366	359	352
		2	276	269	262	255	248
		3	190	183	176	169	162
		4	154	147	140	133	126
		5	103	96	89	82	75
		6	88	81	74	67	60
Red Alder	RA	1	58	51	44	37	30
Black Cottonwood	BC	1	31	24	17	10	3
Other Hardwood	OH	1	31	24	17	10	3
Hardwood Utility	HU	5	16	16	16	16	16
Conifer Utility	CU	5	6	6	6	6	6

[1]Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.
[2]Includes Western Larch.
[3]Includes Alaska-Cedar.
[4]Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

TABLE 6--Stumpage Value Table
Stumpage Value Area 3
January 1 through June 30, 1989

WESTERN WASHINGTON SPECIAL FOREST PRODUCTS

Stumpage Values per Product Unit

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Western Redcedar-Shake Blocks & Boards[1]	RCS	1	$342	$335	$328	$321	$314
Western Redcedar Flatsawn & Shingle Blocks[1]	RCF	1	153	146	139	132	125
Western Redcedar & Other Posts[2]	RCP	1	0.76	0.76	0.76	0.76	0.76
Douglas-Fir Christmas Trees[3]	DFX	1	0.25	0.25	0.25	0.25	0.25
True Fir & Other Christmas Trees[3]	TFX	1	0.50	0.50	0.50	0.50	0.50

[1]Stumpage value per MBF net Scribner Scale. See conversion methods WAC 458-40-684 and 458-40-686.
[2]Stumpage value per 8 lineal feet or portion thereof.
[3]Stumpage value per lineal foot.

TABLE 7--Stumpage Value Table
Stumpage Value Area 4
January 1 through June 30, 1989

WESTERN WASHINGTON MERCHANTABLE SAWTIMBER

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir[2]	DF	1	$396	$389	$382	$375	$368
		2	292	285	278	271	264
		3	287	280	273	266	259
		4	209	202	195	188	181
		5	167	160	153	146	139
		6	161	154	147	140	133
Western Redcedar[3]	RC	1	470	463	456	449	442
		2	292	285	278	271	264
		3	262	255	248	241	234
		4	203	196	189	182	175
Western Hemlock[4]	WH	1	396	389	382	375	368
		2	278	271	264	257	250
		3	217	210	203	196	189
		4	183	176	169	162	155
		5	167	160	153	146	139
		6	123	116	109	102	95
Other Conifer	OC	1	396	389	382	375	368
		2	278	271	264	257	250
		3	217	210	203	196	189
		4	183	176	169	162	155
		5	167	160	153	146	139
		6	123	116	109	102	95
Red Alder	RA	1	67	60	53	46	39
Black Cottonwood	BC	1	31	24	17	10	3
Other Hardwood	OH	1	31	24	17	10	3

TABLE 7--cont.

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Hardwood Utility	HU	5	16	16	16	16	16
Conifer Utility	CU	5	6	6	6	6	6

[1] Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.
[2] Includes Western Larch.
[3] Includes Alaska-Cedar.
[4] Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

TABLE 8--Stumpage Value Table
Stumpage Value Area 4
January 1 through June 30, 1989

WESTERN WASHINGTON SPECIAL FOREST PRODUCTS

Stumpage Values per Product Unit

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Western Redcedar Shake Blocks & Boards[1]	RCS	1	$342	$335	$328	$321	$314
Western Redcedar Flatsawn & Shingle Blocks[1]	RCF	1	153	146	139	132	125
Western Redcedar & Other Posts[2]	RCP	1	0.76	0.76	0.76	0.76	0.76
Douglas-Fir Christmas Trees[3]	DFX	1	0.25	0.25	0.25	0.25	0.25
True Fir & Other Christmas Trees[3]	TFX	1	0.50	0.50	0.50	0.50	0.50

[1] Stumpage value per MBF net Scribner Scale. See conversion methods WAC 458-40-684 and 458-40-686.
[2] Stumpage value per 8 lineal feet or portion thereof.
[3] Stumpage value per lineal foot.

TABLE 9--Stumpage Value Table
Stumpage Value Area 5
January 1 through June 30, 1989

WESTERN WASHINGTON MERCHANTABLE SAWTIMBER

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir[2]	DF	1	$469	$462	$455	$448	$441
		2	317	310	303	296	289
		3	278	271	264	257	250
		4	177	170	163	156	149
		5	166	159	152	145	138
		6	161	154	147	140	133

TABLE 9--cont.

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Western Redcedar[3]	RC	1	402	395	388	381	374
		2	273	266	259	252	245
		3	245	238	231	224	217
		4	187	180	173	166	159
Western Hemlock[4]	WH	1	434	427	420	413	406
		2	238	231	224	217	210
		3	222	215	208	201	194
		4	181	174	167	160	153
		5	107	100	93	86	79
		6	73	66	59	52	45
Other Conifer	OC	1	434	427	420	413	406
		2	238	231	224	217	210
		3	222	215	208	201	194
		4	181	174	167	160	153
		5	107	100	93	86	79
		6	73	66	59	52	45
Red Alder	RA	1	70	63	56	49	42
Black Cottonwood	BC	1	31	24	17	10	3
Other Hardwood	OH	1	31	24	17	10	3
Hardwood Utility	HU	5	16	16	16	16	16
Conifer Utility	CU	5	6	6	6	6	6

[1] Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.
[2] Includes Western Larch.
[3] Includes Alaska-Cedar.
[4] Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

TABLE 10--Stumpage Value Table
Stumpage Value Area 5
January 1 through June 30, 1989

WESTERN WASHINGTON SPECIAL FOREST PRODUCTS

Stumpage Values per Product Unit

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Western Redcedar Shake Blocks & Boards[1]	RCS	1	$342	$335	$328	$321	$314
Western Redcedar Flatsawn & Shingle Blocks[1]	RCF	1	153	146	139	132	125
Western Redcedar & Other Posts[2]	RCP	1	0.76	0.76	0.76	0.76	0.76
Douglas-Fir Christmas Trees[3]	DFX	1	0.25	0.25	0.25	0.25	0.25
True Fir & Other Christmas Trees[3]	TFX	1	0.50	0.50	0.50	0.50	0.50

[1] Stumpage value per MBF net Scribner Scale. See conversion methods WAC 458-40-684 and 458-40-686.
[2] Stumpage value per 8 lineal feet or portion thereof.
[3] Stumpage value per lineal foot.

TABLE 11--Stumpage Value Table
Stumpage Value Area 6
January 1 through June 30, 1989

EASTERN WASHINGTON MERCHANTABLE SAWTIMBER

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir[2]	DF	1	$158	$152	$146	$140	$134
Engelmann Spruce	ES	1	104	98	92	86	80
Lodgepole Pine	LP	1	76	70	64	58	52
Ponderosa Pine	PP	1	240	234	228	222	216
		2	164	158	152	146	140
Western Redcedar[3]	RC	1	139	133	127	121	115
True Firs[4]	WH	1	118	112	106	100	94
Western White Pine	WP	1	197	191	185	179	173
Hardwoods	OH	1	23	17	11	5	1
Utility	CU	5	18	18	18	18	18

[1] Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.
[2] Includes Western Larch.
[3] Includes Alaska-Cedar.
[4] Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

TABLE 12--Stumpage Value Table
Stumpage Value Area 6
January 1 through June 30, 1989

EASTERN WASHINGTON SPECIAL FOREST PRODUCTS

Stumpage Values per Product Unit

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Western Redcedar Flatsawn & Shingle Blocks[1]	RCF	1	$54	$48	$42	$36	$30
Lodgepole Pine & Other Posts[2]	LPP	1	0.25	0.25	0.25	0.25	0.25
Pine Christmas Trees[3]	PX	1	0.25	0.25	0.25	0.25	0.25
Douglas-Fir & Other Christmas Trees[4]	DFX	1	0.25	0.25	0.25	0.25	0.25

[1] Stumpage value per MBF net Scribner Scale. See conversion methods WAC 458-40-684 and 458-40-686.
[2] Stumpage value per 8 lineal feet or portion thereof.
[3] Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
[4] Stumpage value per lineal foot.

TABLE 13--Stumpage Value Table
Stumpage Value Area 7
January 1 through June 30, 1989

EASTERN WASHINGTON MERCHANTABLE SAWTIMBER

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir[2]	DF	1	$107	$101	$95	$89	$83
Engelmann Spruce	ES	1	86	80	74	68	62
Lodgepole Pine	LP	1	81	75	69	63	57
Ponderosa Pine	PP	1	166	160	154	148	142
		2	118	112	106	100	94
Western Redcedar[3]	RC	1	153	147	141	135	129
True Firs[4]	WH	1	92	86	80	74	68
Western White Pine	WP	1	181	175	169	163	157
Hardwoods	OH	1	23	17	11	5	1
Utility	CU	5	10	10	10	10	10

[1] Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.
[2] Includes Western Larch.
[3] Includes Alaska-Cedar.
[4] Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

TABLE 14--Stumpage Value Table
Stumpage Value Area 7
January 1 through June 30, 1989

EASTERN WASHINGTON SPECIAL FOREST PRODUCTS

Stumpage Values per Product Unit

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Western Redcedar Flatsawn & Shingle Blocks[1]	RCF	1	$54	$48	$42	$36	$30
Lodgepole Pine & Other Posts[2]	LPP	1	0.25	0.25	0.25	0.25	0.25
Pine Christmas Trees[3]	PX	1	0.25	0.25	0.25	0.25	0.25
Douglas-Fir & Other Christmas Trees[4]	DFX	1	0.25	0.25	0.25	0.25	0.25

[1] Stumpage value per MBF net Scribner Scale. See conversion methods WAC 458-40-684 and 458-40-686.
[2] Stumpage value per 8 lineal feet or portion thereof.
[3] Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
[4] Stumpage value per lineal foot.

TABLE 15--Stumpage Value Table
Stumpage Value Area 10
January 1 through June 30, 1989

EASTERN WASHINGTON MERCHANTABLE SAWTIMBER

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir[2]	DF	1	$230	$224	$218	$212	$206
		2	186	180	174	168	162
		3	138	132	126	120	114
Engelmann Spruce	ES	1	118	112	106	100	94
		2	110	104	98	92	86
		3	108	102	96	90	84
Lodgepole Pine	LP	1	125	119	113	107	101
		2	115	109	103	97	91
		3	105	99	93	87	81
Ponderosa Pine	PP	1	256	250	244	238	232
		2	246	240	234	228	222
		3	150	144	138	132	126
Western Redcedar[3]	RC	1	149	143	137	131	125
		2	136	130	124	118	112
		3	126	120	114	108	102
True Firs[4]	WH	1	277	271	265	259	253
		2	221	215	209	203	197
		3	157	151	145	139	133
Western White Pine	WP	1	359	353	347	341	335
		2	240	234	228	222	216
		3	121	115	109	103	97
Hardwoods	OH	1	23	17	11	5	1
Utility	CU	5	7	7	7	7	7

[1] Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.
[2] Includes Western Larch.
[3] Includes Alaska-Cedar.
[4] Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

TABLE 16--Stumpage Value Table
Stumpage Value Area 10
January 1 through June 30, 1989

EASTERN WASHINGTON SPECIAL FOREST PRODUCTS

Stumpage Values per Product Unit

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Western Redcedar Flatsawn & Shingle Blocks[1]	RCF	1	$54	$48	$42	$36	$30
Lodgepole Pine & Other Posts[2]	LPP	1	0.25	0.25	0.25	0.25	0.25
Pine Christmas Trees[3]	PX	1	0.25	0.25	0.25	0.25	0.25
Douglas-Fir & Other Christmas Trees[4]	DFX	1	0.25	0.25	0.25	0.25	0.25

[1] Stumpage value per MBF net Scribner Scale. See conversion methods WAC 458-40-684 and 458-40-686.
[2] Stumpage value per 8 lineal feet or portion thereof.
[3] Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
[4] Stumpage value per lineal foot.

[Statutory Authority: RCW 84.33.091 and chapter 84.33 RCW. 89-02-027 (Order FT-88-5), § 458-40-660, filed 12/30/88; 88-14-032 (Order FT-88-2), § 458-40-660, filed 6/30/88; 88-02-026 (Order FT-87-5), § 458-40-660, filed 12/31/87. Statutory Authority: Chapter 84.33 RCW. 87-14-042 (Order 87-2), § 458-40-660, filed 6/30/87; 87-02-023 (Order 86-4), § 458-40-660, filed 12/31/86.]

WAC 458-40-670 Timber excise tax--Stumpage value adjustments. Harvest value adjustments relating to the various logging and harvest conditions shall be allowed against the stumpage values as set forth in WAC 458-40-660 for the designated stumpage value areas with the following limitations:

(1) No harvest adjustment shall be allowed against conifer utility, hardwood utility, or any of the special forest products.

(2) Stumpage value rates for conifer and hardwoods shall be adjusted to a value no lower than one dollar per MBF.

(3) Timber harvesters planning to remove timber from areas having damaged timber may apply to the department for adjustment in stumpage values. Such applications should contain a map with the legal descriptions of the area, a description of the damage sustained by the timber, and a list of estimated costs to be incurred. Such applications shall be sent to the department before the harvest commences. Upon receipt of such application, the department will determine the amount of adjustment allowed, and notify the harvester. Such amount may be taken as a credit against tax liabilities or, if harvest is terminated, a refund may be authorized. In the event the extent of such timber damage or additional costs are not known at the time the application is filed, the harvester may supplement the application not later than ninety days following completion of the harvest unit.

The following harvest adjustment tables are hereby adopted for use during the period of January 1 through June 30, 1989:

TABLE 1--Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, and 5
January 1 through
June 30, 1989

WESTERN WASHINGTON MERCHANTABLE SAWTIMBER

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 40 thousand board feet per acre.	$0.00
Class 2	Harvest of 20 thousand board feet to 40 thousand board feet per acre.	- $4.00
Class 3	Harvest of 10 thousand board feet to but not including 20 thousand board feet per acre.	- $7.00
Class 4	Harvest of 5 thousand board feet to but not including 10 thousand board feet per acre.	- $9.00
Class 5	Harvest of less than 5 thousand board feet per acre.	- $10.00

TABLE 1--cont.

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
II. Logging conditions		
Class 1	Favorable logging conditions and easy road construction. No significant rock outcrops or swamp barriers. Generally flat to gentle slopes under 40%.	$0.00
Class 2	Average logging conditions and average road construction. Some rock outcrops or swamp barriers. Generally slopes between 40% to 60%.	- $15.00
Class 3	Difficult logging and road building conditions because of numerous rock outcrops and bluffs. Generally rough, broken ground with slopes in excess of 60%.	- $31.00
Class 4	For logs which are yarded from stump to landing by helicopter. This does not include special forest products.	- $78.00
III. Remote island adjustment:		
For timber harvested from a remote island		- $50.00
IV. Thinning (see WAC 458-40-610(20))		
Class 1	Average log volume of 50 board feet or more.	- $25.00
Class 2	Average log volume of less than 50 board feet.	- $35.00

TABLE 2--Harvest Adjustment Table
Stumpage Value Areas 6, 7, and 10
January 1 through
June 30, 1989

EASTERN WASHINGTON MERCHANTABLE SAWTIMBER

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	$0.00
Class 2	Harvest of 3 thousand board feet to 8 thousand board feet per acre.	- $7.00
Class 3	Harvest of less than 3 thousand board feet per acre.	- $10.00
II. Logging conditions		
Class 1	Favorable logging conditions and easy road construction. No significant rock outcrops or swamp barriers. Generally flat to gentle slopes under 40%.	$0.00
Class 2	Average logging conditions and average road construction. Some rock outcrops or swamp barriers. Generally slopes between 40% to 60%.	- $13.00
Class 3	Difficult logging and road building conditions because of numerous rock outcrops and bluffs. Generally rough, broken ground with slopes in excess of 60%.	- $26.00
Class 4	For logs which are yarded from stump to landing by helicopter. This does not include special forest products.	- $78.00
III. Remote island adjustment:		
For timber harvested from a remote island		- $50.00

TABLE 3--DOMESTIC MARKET ADJUSTMENT

Harvest of timber not sold by a competitive bidding process which is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber which must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska yellow cedar. (Stat. Ref. - 36 CFR 223.10)

State Timber Sales: Western red cedar only. (Stat. Ref. - 50 USC appendix 2406.1)

The adjustment amounts shall be as follows:

Class 1: All eligible species in Western Washington (SVA's 1 through 5) - $34.00 per MBF

Class 2: All eligible species in Eastern Washington (SVA's 6, 7, and 10) - $19.00 per MBF

Note: The adjustment will not be allowed on conifer utility, hardwood utility or special forest products.

[Statutory Authority: RCW 84.33.091 and chapter 84.33 RCW. 89-02-027 (Order FT-88-5), § 458-40-670, filed 12/30/88; 88-14-032 (Order FT-88-2), § 458-40-670, filed 6/30/88; 88-02-026 (Order FT-87-5), § 458-40-670, filed 12/31/87. Statutory Authority: Chapter 84.33 RCW. 87-14-042 (Order 87-2), § 458-40-670, filed 6/30/87; 87-02-023 (Order 86-4), § 458-40-670, filed 12/31/86.]

Chapter 458-50 WAC
INTERCOUNTY UTILITIES AND TRANSPORTATION COMPANIES--ASSESSMENT AND TAXATION

WAC

WAC 458-50-070 Annual assessment--Procedure. (1) **In general.** Annually between the fifteenth day of March and the first day of July the department shall proceed to list and value the operating property of each company subject to assessment by the department. The department shall prepare a report summarizing the information, factors and methods used in determining the tentative value of each such company (hereafter called "report of tentative value"). The department shall prepare an assessment roll upon which shall be placed after the name of each company a general description of the operating property of the company described in accordance with RCW 84.12.200 (16) and WAC 458-50-010, following which shall be entered the actual cash value as tentatively determined by the department.

(2) **Notice of tentative value.** On or before the thirtieth day of June, (for purposes of the 1988 assessment year only, such notice shall be given on or before the thirty-first day of July) the department shall notify each company by mail of the tentative valuation entered upon such assessment roll. At the time of making such notification, the department shall also transmit to the company the report of tentative value prepared by the department. Upon written request of a county assessor the department shall also transmit the report of tentative value to such assessor.

(3) **Hearings.**

(a) *In general.* Each company may petition the department for a hearing relating to the value of its operating property as tentatively determined by the department and to the value of other taxable properties in the counties in which its operating property is situated. Such petition shall be made in writing and filed with the department on or before the ninth day of July. (For purposes of the 1988 assessment year only, such petition must be filed on or before the ninth day of August.) The department shall appoint a time between the tenth and twenty–fifth days of July, (for purposes of the 1988 assessment year only, the time frame specified shall be between the tenth and twenty–fifth days of August) for the conduct of such hearing, which may be held in such places throughout the state as the department may deem proper or necessary. Notice of the time and place of any or all hearings shall be given to any person upon request.

(b) The hearing shall be conducted by the director or by any employee or agent of the department designated by the director. A record of the proceedings shall be kept and shall be considered a public record. The hearing shall be recorded with a recording device and the recordings shall become a part of the record of the proceedings and considered a part of the public record. All records and documents presented at the hearing shall become a part of the record of the proceeding and shall be considered a part of the public record, except as provided in (c) of this subsection.

(c) The hearing shall be open to the public, except (i) when the company proposes to offer in evidence information relating to its assessment if disclosure of such information to other persons would violate the company's right to privacy or would result in an unfair competitive disadvantage to such company; or (ii) when the department proposes to offer in evidence information which has been obtained pursuant to RCW 84.12.240 if the disclosure of such information to other persons would violate the company's right to privacy or would result in an unfair competitive disadvantage to such company. The hearing at this point shall be closed to the public unless the company consents to the proceeding remaining open to the public.

(d) Testimony recorded, and all records and documents of a confidential nature introduced, during the period when the hearing is closed to the public shall become a part of the record, but shall not be disclosed except upon order of a court of competent jurisdiction or upon consent of the company.

(e) Records of the proceedings shall be maintained for a period of seven years following the close of the hearing.

(4) **Determination of final value.** On or before the twentieth day of August, the department shall make a final determination of the true and correct actual cash value of each company's operating property appearing on the assessment roll. The department may raise or lower the value from that amount tentatively set pursuant to this section: *Provided*, That failure of a company to request a hearing shall not preclude the department from setting a final value higher or lower than that amount tentatively set pursuant to this section: *Provided further*, That where a company has not requested a hearing, the department shall not adopt a final value higher than that tentatively set except after giving five days written notice to the company. The department shall notify each company by mail of the final true and correct actual cash value as determined by the department.

[Statutory Authority: RCW 84.12.340 and 84.12.390. 88–15–016 (Order PT 88–10), § 458–50–070, filed 7/11/88; Order PT 75–2, § 458–50–070, filed 3/19/75.]

WAC 458–50–100 Apportionment of operating property to the various counties and taxing districts. In general. The department shall apportion the value of all public utility companies to the various counties in such a manner as will reasonably reflect the true cash value of the operating property located within each county and taxing district. Since it is impossible to determine with mathematical precision the precise value of each item of property located within each county and taxing district, the department shall apportion the value of operating property on the following basis:

(1) *Railroad companies* – The ratio that mileage of track, as classified by the department, situated within each county and taxing district bears to the total mileage of track within the state as of January 1 of the assessment year. In the event there exists operating property of railroad companies in counties or taxing districts not having track mileage, the department shall situs such property and apportion value directly on the basis of cost as determined in accordance with the cost approach set forth in WAC 458–50–080(A).

(2) *Pipeline companies* – The ratio that inch–equivalent of miles of pipeline situated within each county or taxing district bears to the total inch–equivalent of miles of pipeline within the state as of January 1 of the assessment year. In the event there exists operating property of pipeline companies in counties or taxing districts not having pipeline mileage, the department shall situs such property and apportion value to such county or taxing district directly on the basis of cost as determined in accordance with the cost approach set forth in WAC 458–50–080(A).

(3) *Telegraph companies* – The ratio that the cost (historical or original) of operating property situated within each county and taxing district bears to the cost (historical or original) of all operating property within the state as of January 1 of the assessment year.

(4) *Telephone companies* – The ratio that the cost (historical or original) of operating property situated within each county or taxing district bears to the total cost (historical or original) of all operating property within the state as of January 1 of the assessment year.

(5) *Electric light and power companies* – The ratio that cost (historical or original) of operating property situated within each county and taxing district bears to the total cost (historical or original) of all operating property within the state as of January 1 of the assessment year.

(6) *Gas companies* – The ratio that cost (historical or original) of operating property situated within each county and taxing district bears to the total cost (historical or original) of all operating property within the state as of January 1 of the assessment year: *Provided*, The value of pipeline shall be allocated on the basis of the ratio that inch–equivalent of miles of pipeline situated within each county or taxing district bears to the total inch–equivalent of miles of pipeline within the state as of January 1 of the assessment year.

(7) *Airplane companies* – The ratio that cost (historical or original) of operating property situated within each county and taxing district bears to the total cost (historical or original) of operating property within the state as of January 1 of the assessment year: *Provided*, That the value of aircraft shall be apportioned on the basis of the ratio that landings and take–offs of such aircraft within each county and taxing district bears to the total landings and take–offs within the state during the previous calendar year.

(8) *Steamboat companies* – The ratio that cost (historical or original) of operating property situated within each county and taxing district bears to the total cost (historical or original) of operating property within the state as of January 1 of the assessment year: *Provided*, That the value of watercraft shall be apportioned on the basis of the ratio that calls of such watercraft at ports within each county and taxing district bears to the total calls at all ports of call within the state during the previous calendar year.

[Statutory Authority: RCW 84.12.390. 88–02–009 (Order PT 87–9), § 458–50–100, filed 12/28/87; Order PT 75–2, § 458–50–100, filed 3/19/75.]

Chapter 458–53 WAC
PROPERTY TAX ANNUAL RATIO STUDY

WAC

WAC 458–53–110 Property values used in the ratio study. The following property values will be included in the ratio study as provided in these rules:

(1) Values established by law or required to be determined by the department by law, but excluding property valued under chapters 84.08, 84.12, and 84.16 RCW.

(2) Values determined by county assessors according to the provisions of chapter 84.41 RCW.

(3) Values of land classified under chapter 84.33 RCW.

(4) Values of land and improvements classified under chapter 84.34 RCW will be included in determination of the indicated real property ratios as a separate element for counties whose current use land values are fifteen percent or greater in proportion to the total county locally assessed real property value.

(5) Advisory values supplied to the assessor by the department shall not be included in the ratio study unless the property falls within the sales study provided for in WAC 458–53–070 or 458–53–100 or is selected in the appraisal or audit study in accordance with WAC 458–53–130 and 458–53–140.

(6) Values of individual real properties which equal or exceed twenty percent of the total of all locally assessed real property.

(7) Values of individual assessments of personal property which equal or exceed twenty percent of the total of all locally assessed personal property.

(8) Values of mobile homes which are identified in WAC 458–53–163(2).

(9) Before values in subsections (6) and (7) of this section can be included, a request in writing identifying the properties, must be submitted to the department prior to October 1st of each ratio study period.

[Statutory Authority: RCW 84.48.075. 87–12–029 (Order PT 87–5), § 458–53–110, filed 5/29/87; 86–21–004 (Order PT 86–6), § 458–53–110, filed 10/2/86; 84–14–039 (Order PT 84–2), § 458–53–110, filed 6/29/84; 81–22–036 (Order PT 81–15), § 458–53–110, filed 10/30/81; 79–11–029 (Order PT 79–3), § 458–53–110, filed 10/11/79.]

WAC 458–53–141 Personal property audit selection. (1) Beginning with 1982 assessments and thereafter, each county shall classify and code every personal property account based upon the following classification codes:

(a) Agriculture, fishing, and forestry (not logging)
(b) Mining, quarrying, and contract construction
(c) Manufacturing
(d) Retail – wholesale
(e) Finance, insurance, real estate and services
(f) Transportation, communication, utilities, improvements on exempt land, and all other not classified

(2) Those accounts which contain property of more than one classification shall be coded based upon which class has the greatest value.

(3) For those counties with the ability to perform the stratification process by use classification, subject to department approval, use classes of property will be used for the purpose of determining the indicated personal property ratio. The classes of property shall follow the guidelines outlined in subsection (1) of this section and will be separated into value stratums for the individual classification codes. The value strata may be subject to different parameters than normally used.

(4) Those counties who do not have the ability to prepare a ratio study by use classification shall use value stratas as shown in WAC 458–53–140.

[Statutory Authority: RCW 84.48.075. 87–12–029 (Order PT 87–5), § 458–53–141, filed 5/29/87; 84–14–039 (Order PT 84–2), § 458–53–141, filed 6/29/84; 81–22–036 (Order PT 81–15), § 458–53–141, filed 10/30/81.]

WAC 458–53–160 Indicated personal property ratio—Computation. (1) For each personal property assessed value stratum, excluding properties identified in WAC 458–53–110(7) and 458–53–165 and average sample assessed value and an average sample true and

fair value will be determined from the results of selected audit studies. These average stratum sample values will be multiplied by the corresponding number of personal property accounts in each stratum to derive a stratum estimated total assessed value and a stratum estimated total true and fair value. These estimated stratum total estimated assessed and true and fair values will be added to provide a county total estimated assessed value and a county total estimated true and fair value.

(2) To the actual personal property assessed value and ratio–related true and fair value totals for a county (subsection (1) of this section) are added assessed values of those properties identified in WAC 458–53–110(7) and 458–53–165 and related true and fair values calculated by the ratio relationships determined for those same properties.

(3) The sum of the total personal property assessed and true and fair values as determined by subsections (1) and (2) of this section shall be the basis for the county's indicated personal property ratio. The sum total of assessed values will be divided by the sum total of true and fair values to derive the ratio. Values from each county's *Assessor's Certificate of Assessment Rolls to County Board of Equalization* will be used in the computation of each county's indicated personal property ratio except as provided in WAC 458–53–150(6).

(4) The following illustration, using simulated values and ratios, indicates simplified ratio study computation procedures for personal property.

Step 1 – Determination of Average Sample Values

Stratum	(1) Number of Samples	(2) Total Assessed Value of Samples	(3) Average Assessed Value of Samples (Col. 2 ÷ Col. 1)	(4) Total Market Value of Samples	(5) Average Market Value of Samples (Col. 4 ÷ Col. 1)
$ 0 – 9,999	15	$ 75,000	$ 5,000	$100,000	$ 6,667
10,000 – 39,999	20	400,000	20,000	500,000	25,000
Over 39,999	10	500,000	50,000	750,000	75,000

Step 2 – Weighting of Average Sample Values

Stratum	(1) Total Property Listings	(2) Average Sample Assessed Value	(3) Total Estimated Assessed Value (Col. 2 × Col. 1)	(4) Average Sample Market Value	(5) Total Estimated Market Value (Col. 4 × Col. 1)	(6) Ratio (Col. 3 ÷ Col. 5)
$ 0 – 9,999	125	$ 5,000	$ 625,000	$ 6,667	$ 833,375	.7500
10,000 – 39,999	216	20,000	4,320,000	25,000	5,400,000	.8000
Over 39,999	79	50,000	3,950,000	75,000	5,925,000	.6667
Outriders	2		1,000,000		1,366,775	.7316
			$9,895,000		$13,525,150	73.16
Sample study weighted ratio.						73.16%

Step 3 - Application of Sample Weighted Relationship to Actual Assessed Value.

	(1) Actual County Assessed Value Personal Property (From Assessor's Certificate)	(2) Determined Assessment to Market Ratio	(3) County Market Value Related to Actual Assessed Value (Col. 1 ÷ Col. 2)
	$ 9,100,000	.7316 (from Step 2)	$12,438,491
Add Other (WAC 458-53-110(7) or 458-53-165 properties)	100,000	1.000	100,000
Totals	$ 9,200,000	÷	$12,538,491 = .7337
County indicated personal property ratio			73.37%

(5) Individual assessed or true and fair personal property values, classified as "outriders" according to WAC 458-53-150(8), will be used in personal property ratio computation in a manner similar to that used for real property outriders in real property ratio computation.

[Statutory Authority: RCW 84.48.075. 87-12-029 (Order PT 87-5), § 458-53-160, filed 5/29/87; 86-21-004 (Order PT 86-6), § 458-53-160, filed 10/2/86; 84-14-039 (Order PT 84-2), § 458-53-160, filed 6/29/84; 79-11-029 (Order PT 79-3), § 458-53-160, filed 10/11/79. Formerly WAC 458-52-100.]

WAC 458-53-163 Mobile homes--Use in study. Sales and appraisals of mobile homes, properly stratified, shall be included in the ratio study in the following manner:

(1) Mobile homes which are assessed as other real property and are intermixed with other real property on the real property rolls shall be included with all other real property in the study;

(2) Mobile homes which meet the definition of real property contained in RCW 84.04.090 shall be included in the real property study as provided in WAC 458-53-150 (4)(b);

(3) Sales of mobile homes which meet the criteria of the sales exclusion list contained in WAC 458-53-080(2) shall be excluded from the mobile home study.

[Statutory Authority: RCW 84.48.075. 87-12-029 (Order PT 87-5), § 458-53-163, filed 5/29/87; 84-14-039 (Order PT 84-2), § 458-53-163, filed 6/29/84.]

Chapter 458-61 WAC
REAL ESTATE EXCISE TAX

WAC 458-61-030 Definitions. For the purposes of chapter 458-61 WAC, unless otherwise required by the context:

(1) "Affidavit" shall mean the real estate excise tax affidavit which the department shall prescribe and furnish to the county treasurers. Such affidavit shall require the following information:

(a) Identification of the seller and purchaser, including their current mailing addresses;

(b) Legal description of the property transferring, including the tax parcel or account numbers;

(c) Date of sale;

(d) Type of instrument of sale;

(e) Nature of transfer;

(f) Gross sales price;

(g) Value of personal property involved in the transfer;

(h) Taxable sales price;

(i) Whether or not the land is classified or designated as forest land under chapter 84.33 RCW;

(j) Whether or not the land is classified as open space land, farm and agricultural land, or timber land under chapter 84.33 RCW;

(k) Whether or not the property is exempt from property tax under chapter 84.36 RCW, at the time of sale;

(l) Whether or not the property is:

(i) Land only;

(ii) Land with new building; or

(iii) Land with a previously used building;

(m) A notice of continuance, signed by all new owners, for classified forest land (RCW 84.33.120), designated forest land (RCW 84.33.180) (RCW 84.33.130) or classified open space land, farm and agricultural land or timber land (RCW 84.34.108) shall be signed for those affidavits conveying land subject to the provisions of chapters 84.33 and 84.34 RCW, if the new owner desires to continue said classification or designation. The county assessor shall determine from information provided by the grantor or grantee if the land qualifies for continued classification or designation and shall so note this determination on the affidavit prior to the acceptance of the affidavit by the county treasurer;

(n) The affidavit shall list the following questions, the responses to which are not required:

(i) Is this property at the time of sale subject to an elderly, disability, or physical improvement exemption?

(ii) Does any building have a heat pump or solar heating or cooling system?

(iii) Does this transaction divide a current parcel of land?

(iv) Does this transaction include current crops or merchantable timber?

(v) Does this transaction involve a trade, or partial interest, corporate affiliates, related parties, a trust, a receivership, or an estate?

(vi) Is the grantee acting as a nominee for a third party?

(vii) Is the principal use of the land agricultural, apartments (four or more units), commercial, condominium, industrial, mobile home site, recreational, residential, or growing timber?

(o) The affidavit form shall contain a statement of the potential compensating and additional tax liability under chapter 84.34 RCW, a statement of the collection of taxes under RCW 84.36.262 and 84.36.810, and a statement of the applicable penalties for perjury under chapter 9A.72 RCW.

Each county shall use the affidavit form prescribed and furnished by the department of revenue.

The affidavit shall be signed by either the seller or the buyer, or the agent of either, under oath attesting to all required information.

(2) "Consideration" shall mean money or anything of value, either tangible or intangible, paid or delivered or contracted to be paid or delivered or services performed or contracted to be performed in return for real property or estate or interest in real property. The term shall further include the market value of real property transferred to a corporation by its shareholders, officers, or corporate affiliates so as to increase the assets of the grantee corporation.

(3) "Court decree" and "court order" shall have the same meaning and may be used interchangeably for the purposes of these rules. This shall be the judgment of a court of competent jurisdiction.

(4) "Date of taxability" shall mean the date of transfer as defined in subsection (15) of this section.

(5) "Department" shall mean the Washington state department of revenue.

(6) "Mining property" shall mean property containing or believed to contain metallic minerals and sold or leased under terms which require the purchaser or lessee to conduct exploration or mining work thereon and for no other use. (RCW 82.45.035)

(7) "Mobile home" shall mean a mobile home as defined by RCW 46.04.302, as now or hereafter amended. (RCW 82.45.032)

(8) "Mortgage" shall have its ordinary meaning and shall include "deed of trust" for the purposes of these rules, unless the context clearly indicates otherwise.

(9) "Nominal sales prices" shall mean sales prices stated on the real estate excise tax affidavit that are so low in comparison to the actual value of the real estate as to cause disbelief by a reasonable person.

(10) "Nonsale" as defined by RCW 82.45.010 includes those real property transfers which, by their nature, are exempt from the real estate excise tax (see WAC 458-61-080: Affidavit requirements):

(a) Gift, device or inheritance (see WAC 458-61-410 and 458-61-460);

(b) Leasehold interest, other than option to purchase real property, including timber (see WAC 458-61-500);

(c) Cancellation or forfeiture of a vendee's interest in a real estate contract, whether or not such contract contains a forfeiture clause (Note: Tax exemption applies only to transfer back to original vendor or contract holder and is not the basis for refund of tax paid on original transfer — See WAC 458-61-210(1); see also WAC 458-61-330);

(d) Deed in lieu of foreclosure of a mortgage (where no consideration passes otherwise. See WAC 458-61-210(1));

(e) Assumption of mortgage, deed of trust, or real estate contract where no consideration passes otherwise (see WAC 458-61-210(1));

(f) Deed in lieu of forfeiture of a real estate contract, where no consideration passes otherwise (see WAC 458-61-210(1));

(g) Partition of property by tenants in common, whether by agreement or court decree (see WAC 458-61-650);

(h) Divorce decree or property settlement incident thereto (see WAC 458-61-340);

(i) Seller's assignment (see WAC 458-61-220);

(j) Condemnation by governmental body (see WAC 458-61-280);

(k) Security documents (mortgage, real estate contract, or other security interests apart from actual title) (see WAC 458-61-630);

(l) Court ordered sale or execution of judgment (see WAC 458-61-330);

(m) Transfer prior to imposition of this tax under chapter 82.45 RCW or previous chapter 28A.45 RCW;

(n) The transfer of any grave or lot in an established cemetery (see WAC 458-61-250); and

(o) A transfer to or from the United States, the state of Washington or any political subdivision thereof, or a municipal corporation of this state. (See WAC 458-61-420)

(11) "Real estate" shall mean real property, including improvements the title to which is held separately from the title to the land to which the improvements are affixed, the term also includes used mobile homes and used floating homes. (RCW 82.45.032)

(12) "Sale" shall have its ordinary meaning and shall include any conveyance, grant, assignment, quitclaim, exchange, or transfer of the ownership of or title to real property, including standing timber, or any estate or interest therein for a valuable consideration, and any contract for such conveyance, grant, assignment, quitclaim, exchange, or transfer, and any lease with an option to purchase real property, including standing timber, or any estate or interest therein or other contract under which possession of the property is given to the purchaser, or any other person by his/her direction, which title is retained by the vendor as security for the payment of the purchase price. (RCW 82.45.010)

(13) "Seller" shall mean any individual, receiver, assignee, trustee for a deed of trust, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, quasi municipal corporation, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise; but it shall not include the United States or the state of Washington or any political subdivision thereof, or a municipal corporation of this state. (RCW 82.45.020)

(14) "Selling price" shall mean consideration, including money or anything of value, paid or delivered or contracted to be paid or delivered in return for the transfer of the real property or estate or interest in real property, and shall include the amount of any lien, mortgage, contract indebtedness, or other incumbrance, either given to secure the purchase price, or any part thereof, or remaining unpaid on such property at the time of sale: *Provided*, That when the sale is that of a fractional interest in real property, the principal balance of any such debt remaining unpaid at the time of sale shall be multiplied by that same fraction and the result added as a component of the total sales price. The term shall not include the amount of any outstanding lien or encumbrance in favor of the United States, the state of Washington or a municipal corporation for the taxes, special benefits, or improvements. The value maintained on the county assessment rolls at the time of the transaction will be used for the sales price if such cannot otherwise be ascertained. In the event that the property is under current use assessment, the market value assessment maintained by the county assessor shall be used for the sales price. (RCW 82.45.030)

(15) "Date of transfer," "date of sale," "conveyance date" and "transaction date" shall have the same meaning and may be used interchangeably for the purposes of these rules. This shall be the date shown on the instrument of conveyance or sale.

(16) "Used mobile home" shall mean a mobile home which has been previously sold at retail and a previous sale has already been subject to the retail sales tax under chapter 82.08 RCW, or which has been previously used and a previous use has already been subject to the use tax under chapter 82.12 RCW, and which has substantially lost its identity as a mobile unit by virtue of its being fixed in location upon land owned or leased by the owner of the mobile home and placed on a foundation (posts or blocks) with fixed pipe connections with sewer, water, and other utilities. (RCW 82.45.032)

(17) "Wilful fraud" shall mean knowingly making false statements or taking actions so as to intentionally underpay or not pay the proper real estate excise tax due on the transfer of real estate.

(18) "Used floating home" shall mean a building on a float used in whole or in part for human habitation as a single-family dwelling, which is not designed for self propulsion by mechanical means or for propulsion by means of wind, and which is on the property tax rolls of the county in which it is located and in respect to which tax has been paid under chapter 82.08 or 82.12 RCW.

(19) "Rescinded transfer" shall mean a real property transfer wherein both grantor and grantee have been restored to their original positions. In such case, title to the real property has been reconveyed to the grantor and all valuable consideration paid toward the sales price principal has been returned to the grantee.

(20) "Air rights" shall mean the exclusive undisturbed use and control of a designated air space within the perimeter of a stated land area and within stated elevations.

(21) "Development rights" shall means those rights that are subject to conveyancing and are the unused development which is the difference between the density allowed by zoning and that which exists on a parcel of land.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 87-12-016 (Order PT 87-4), § 458-61-030, filed 5/27/87; 87-03-036 (Order PT 87-1), § 458-61-030, filed 1/16/87; 86-16-080 (Order PT 86-3), § 458-61-030, filed 8/6/86; 84-17-002 (Order PT 84-3), § 458-61-030, filed 8/2/84; 83-02-022 (Order PT 82-10), § 458-61-030, filed 12/28/82; 82-15-070 (Order PT 82-5), § 458-61-030, filed 7/21/82. Formerly chapter 458-60 WAC.]

GENERAL PROVISIONS

WAC 458-61-050 Payment of tax--County treasurer as agent for the state. (1) The tax imposed by RCW 82.45.060 and herein shall be paid to and collected by the treasurer of the county within which is located the real property which was sold.

(2) The county treasurer shall act as agent for the department in carrying out the provisions of chapter 82-.45 RCW and these rules.

(3) The county treasurer shall cause a stamp evidencing satisfaction of the tax lien to be affixed to the instrument of sale or conveyance prior to its recording or to the real estate excise tax affidavit in the case of used mobile home sales. Such stamp shall bear reference to the affidavit number, date and amount of the payment and shall be initialed by the person affixing said stamp. The county treasurer shall not affix such stamp to the instrument of sale or conveyance unless one of the following criteria is met:

(a) Continuance of use has been approved by the county assessor under chapter 84.33 or 84.34 RCW;

(b) Compensating or additional taxes have been collected as required by RCW 84.33.120 (5)(b) and (e), 84.33.140 (1)(c), 84.34.108 (1)(c), 84.36.812, or 84.26-.080; or

(c) Property is not so classified, designated, exempted or specially valued.

Delay in either securing the approval of continuance of use or payment of the compensating tax does not forestall the real estate excise tax delinquent penalty imposed by WAC 458-61-090. However, the taxpayer may pay the real estate excise tax and thus preclude any furtherance of the real estate excise tax delinquent penalty. (See WAC 458-61-030 (1)(m).)

(4) A receipt issued by the county treasurer for the payment of the tax shall be evidence of the satisfaction of the lien imposed under RCW 82.45.070 and these rules and may be recorded in the manner prescribed for recording satisfaction of mortgages.

(5) No lease, assignment of lease nor memorandum of either lease or assignment of lease, nor instrument of sale or conveyance evidencing a sale subject to the tax shall be accepted by the county auditor for filing or recording until the tax shall have been paid and the stamp affixed thereto. In the case the tax is not due on the transfer, the instrument shall not be so accepted until suitable notation of such fact has been made on the instrument by the county treasurer. In addition, no instrument of conveyance shall be filed or recorded by the county auditor or recorder if such property is classified or designated as forest land under chapter 84.33 RCW, classified as open space land, farm and agricultural land, or timber land under chapter 84.34 RCW or receiving a special valuation as historic property under chapter 84-.26 RCW unless the compensating or additional tax has been paid, or the new owner shall have signed a notice of continuance which shall either be on the excise tax affidavit or attached thereto.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 87-03-036 (Order PT 87-1), § 458-61-050, filed 1/16/87; 86-16-080 (Order PT 86-3), § 458-61-050, filed 8/6/86; 82-15-070 (Order PT 82-5), § 458-61-050, filed 7/21/82.]

WAC 458-61-080 Affidavit requirements. (1) Except for the transfers listed under subsection (2) of this section, the real estate excise tax affidavit shall be required for all transfers of real property including, but not limited to, the following:

(a) Conveyance from one spouse to the other as a result of a decree of divorce or dissolution of a marriage or in fulfillment of a property settlement agreement incident thereto;

(b) Conveyance made pursuant to an order of sale by the court in any mortgage or lien foreclosure proceeding;

(c) Conveyance made pursuant to the provisions of a deed of trust;

(d) Conveyance of an easement in which consideration passes;

(e) A deed in lieu of foreclosure of mortgage;

(f) A deed in lieu of forfeiture of a real estate contract;

(g) Conveyance to the heirs in the settlement of an estate;

(h) Conveyance to or from the United States, the state of Washington, or any political subdivision or municipal corporation of this state;

(i) A declaration of forfeiture of a real estate contract;

(j) Conveyance of development rights or air rights.

(2) The real estate excise tax affidavit shall not be required for the following:

(a) Conveyance of cemetery lots or graves;

(b) Conveyance for security purposes only and the instrument states on the face of it:

(i) For security only;

(ii) To secure a debt;

(iii) Assignment of a debt;

(iv) For collateral purposes only;

(v) Release of collateral;

(vi) To release security;

(c) A lease of real property that does not contain an option to purchase, or does not transfer lessee-owned improvements;

(d) A mortgage or deed of trust or satisfaction thereof;

(e) Conveyance of an easement in which no consideration passes or an easement to the United States, the state of Washington, or any political subdivision or municipal corporation of this state;

(f) A recording of a contract that changes only the contract terms and not the legal description, purchaser, or sales price, if the affidavit number of the previous transaction is reported;

(g) A seller's assignment of deed and contract;

(h) A fulfillment deed.

(3) County treasurers shall not accept incomplete affidavits. It is the taxpayers' responsibility to furnish complete documentation for claimed tax exemptions. It is the county treasurers' responsibility and authority to require that such documentation, as required by this chapter, shall be furnished by the taxpayers or their agents.

(a) Among other requirements set forth in WAC 458-61-030(1), all affidavits which state claims for tax exemption must show:

(i) Current assessed values of parcels involved as of transaction date; and

(ii) Complete reasons for exemptions, including reference to the specific tax exemption in this chapter, (in all cases where the exemption is based upon a prior payment of the tax, the prior payment date, amount and affidavit number must be provided on the current affidavit. A quitclaim deed is a conveyance instrument. It is not, in itself, a reason for tax exemption. A valid reason for the exemption must be shown on the affidavit. Likewise statements such as "to clear title only" and "no consideration" are not complete reasons for tax exemption.

(b) When the transfer of property is to two or more grantees, the affidavit must clearly state the relationship

between them such as joint tenants, tenants in common, partners, etc., and the form and proportion of interest that they are each acquiring.

(c) In the case of a used mobile home that is sold with the land upon which it is located, the county treasurer may require the completion of either two affidavits, both real and mobile home, or a single real property affidavit. At the county treasurer's option, a separate mobile home affidavit may not be required if the real property affidavit lists the make, model, year, size and serial number of the unit. Such information should be contained as a separate item within the legal description portion of the affidavit.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 87-03-036 (Order PT 87-1), § 458-61-080, filed 1/16/87; 86-16-080 (Order PT 86-3), § 458-61-080, filed 8/6/86; 84-17-002 (Order PT 84-3), § 458-61-080, filed 8/2/84; 82-15-070 (Order PT 82-5), § 458-61-080, filed 7/21/82.]

WAC 458-61-150 Supplemental statements. The department shall provide the county treasurer offices with a uniform multi-use supplemental statement as required by the following sections of this chapter:

(1) WAC 458-61-210, Assignments—Purchasers
(2) WAC 458-61-230, Bankruptcy
(3) WAC 458-61-320, Corporation—Nonfamily
(4) WAC 458-61-410, Gifts
(5) WAC 458-61-550, Nominee

The supplemental statements shall be completed as required by the instructions therein and by each of the sections listed in subsections (1) through (5) of this section. The county treasurer shall distribute the supplemental statement as follows: Original attached to original of affidavit; first copy attached to the department's copy of the affidavit; second copy attached to the assessor's copy of the affidavit; and third copy attached to the taxpayer's copy of the affidavit. Except for the notary requirements of WAC 458-61-320(4) and 458-61-550, such statements shall be unsworn written statements which meet the requirements set forth in RCW 9A.72.085.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 87-03-036 (Order PT 87-1), § 458-61-150, filed 1/16/87; 86-16-080 (Order PT 86-3), § 458-61-150, filed 8/6/86.]

TAXABILITY OF TRANSFERS

WAC 458-61-210 Assignments--Purchasers. (1) The real estate excise tax does not apply to the following types of purchaser's assignments, provided that no consideration passes to the grantor:

(a) Cancellation or forfeiture of the vendee's interest in a contract of sale, deed in lieu of foreclosure of mortgage or deed in lieu of forfeiture of a real estate contract all of which are being conveyed to the lien holder as the result of default of the obligation;

(b) Assumption by a grantee of the balance owing on an existing obligation which is secured by a mortgage, deed of trust or real estate contract where the grantee has become personally and principally liable for payment of that obligation.

The real estate excise tax affidavit is required for each of the above. If the transfer is an assumption under (b) of this subsection, the grantor must furnish the supplemental statement, as provided by WAC 458-61-150, signed by both the grantor and grantee that no additional consideration of any kind is being paid by the grantee to the grantor. (See WAC 458-61-150)

The tax exemption provided in (b) of this subsection does not apply to the following transfers:

(i) Between a corporation and its stockholders, officers, or affiliated corporations (except that tax exemption contained in WAC 458-61-320(3));

(ii) Between a partnership and its members or another partnership or corporation owned by the same members;

(iii) Between joint venturers;

(iv) Between joint tenants;

(v) Between tenants in common; or

(vi) During the conversion of a joint or common tenancy, a joint venture, partnership, or corporation from one form of ownership to another form of ownership.

(2) The real estate excise tax applies to transfers where the purchaser of real property assigns his/her interest in such property and receives valuable consideration for that interest. The measure of the real estate excise tax is the sum of the consideration paid or contracted to be paid to the grantor of such assignment plus the unpaid principal balance due on the assigned mortgage or real estate contract. (Note: The consideration passing to the assignor of such interest in real property nullifies the exemptions granted in subsection (1) of this section, because each of these exemptions is granted upon the condition that no consideration passes to the transferrer of the interest of real property.)

[Statutory Authority: RCW 82.45.120 and 82.45.150. 87-03-036 (Order PT 87-1), § 458-61-210, filed 1/16/87; 86-16-080 (Order PT 86-3), § 458-61-210, filed 8/6/86; 84-17-002 (Order PT 84-3), § 458-61-210, filed 8/2/84; 83-02-022 (Order PT 82-10), § 458-61-210, filed 12/28/82; 82-15-070 (Order PT 82-5), § 458-61-210, filed 7/21/82.]

WAC 458-61-335 Development rights and air rights. The real estate excise tax applies to the sale of both development rights and air rights. The real estate excise tax affidavit must be completed for the transfer of development rights and air rights whether or not a taxable sale has occurred.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 87-03-036 (Order PT 87-1), § 458-61-335, filed 1/16/87.]

WAC 458-61-490 Joint tenancy. The real estate excise tax does not apply to the transfer of real property for the creation or dissolution of a joint tenancy where no consideration passes. The tax applies to the sale of interest in real property for the creation or dissolution of a joint tenancy. The taxable amount of the sale is the total of the following:

(1) Any consideration given;

(2) Any consideration promised to be given; plus

(3) The amount of any debt remaining unpaid on the property at the time of sale multiplied by that fraction of interest in the real property being sold.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 87-03-036 (Order PT 87-1), § 458-61-490, filed 1/16/87; 82-15-070 (Order PT 82-5), § 458-61-490, filed 7/21/82.]

WAC 458-61-555 Option to purchase. The real estate excise tax does not apply to an option to purchase real property when such option does not accompany a lease. See WAC 458-61-510.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 87-12-016 (Order PT 87-4), § 458-61-555, filed 5/27/87; 86-16-080 (Order PT 86-3), § 458-61-555, filed 8/6/86.]

WAC 458-61-570 Partnership--Nonfamily. (1) The real estate excise tax does not apply to the sale of general partnership or limited partnership shares where title to real property is not conveyed.

(2) The real estate excise tax applies to the transfer of real property from an individual, partnership, corporation, association, or any other legal entity:

(a) To a general partnership or limited partnership upon the formation of that partnership; or

(b) To an on-going general partnership or limited partnership in return for partnership shares.

(3) The real estate excise tax applies to the transfer of real property from a general partnership or from a limited partnership to any grantee regardless of whether such grantee is an individual, partnership, corporation, association, or other legal entity upon the dissolution of a partnership or withdrawal of partnership member(s).

(4) The real estate excise tax applies to the transfer of real property during the conversion of either a general partnership or limited partnership into a general partnership, into a limited partnership, into a corporation, or into a joint or common tenancy, to the extent that such a conversion involves the transfer of title to real property.

(5) A joint venture is considered the same as a general partnership for purposes of the real estate excise tax.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 87-03-036 (Order PT 87-1), § 458-61-570, filed 1/16/87; 82-15-070 (Order PT 82-5), § 458-61-570, filed 7/21/82.]

Title 460 WAC
SECURITIES DIVISION (DEPARTMENT OF LICENSING)

Chapters

Chapter 460-16A WAC
GENERAL RULES

WAC

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

460-16A-100	Number of outstanding options. [Order 304, § 460-16A-100, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.] Repealed by 88-03-015 (Order SDO-164A-87), filed 1/11/88. Statutory Authority: RCW 21.20.450.
460-16A-107	Amount of cheap stock. [Order 304, § 460-16A-107, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.] Repealed by 88-03-015 (Order SDO-164A-87), filed 1/11/88. Statutory Authority: RCW 21.20.450.
460-16A-130	Escrow. [Order 304, § 460-16A-130, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.] Repealed by 88-03-015 (Order SDO-164A-87), filed 1/11/88. Statutory Authority: RCW 21.20.450.
460-16A-135	Operation of escrow. [Order SD-131-77, § 460-16A-135, filed 11/23/77; Order 304, § 460-16A-135, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.] Repealed by 88-03-015 (Order SDO-164A-87), filed 1/11/88. Statutory Authority: RCW 21.20.450.
460-16A-140	Consent to transfer escrowed shares. [Order 304, § 460-16A-140, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.] Repealed by 88-03-015 (Order SDO-164A-87), filed 1/11/88. Statutory Authority: RCW 21.20.450.
460-16A-145	Restrictions on dividends/distribution for promotional shares. [Order 304, § 460-16A-145, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.] Repealed by 88-03-015 (Order SDO-164A-87), filed 1/11/88. Statutory Authority: RCW 21.20.450.

WAC 460-16A-050 Opinion of counsel. There shall be submitted a signed or conformed copy of an attorney's opinion as to:

(1) The legality of form and status of existence of the registrant;

(2) Status of litigation in which the registrant is involved or of which the attorney has actual notice that may be pending or threatened.

[Statutory Authority: RCW 21.20.450. 88-03-015 (Order SDO-164A-87), § 460-16A-050, filed 1/11/88; Order 304, § 460-16A-050, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-100 Repealed. See Disposition Table at beginning of this chapter.