Title 458 WAC
REVENUE, DEPARTMENT OF

Chapters

DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE

Chapter 458-08
UNIFORM PROCEDURAL RULES FOR THE CONDUCT OF CONTESTED CASES

458-08-010 Application and scope of chapter 458-08 WAC. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-010, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.

458-08-020 Definitions. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-020, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.

458-08-030 Appearance and practice before agency—Who may appear. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-030, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.

458-08-040 Appearance and practice before agency—Standards of ethical conduct. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-040, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.

458-08-050 Appearance and practice before agency—Appearance by former employee of agency or former member of attorney general's staff. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-050, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.

458-08-060 Appearance and practice before agency—Former employee as expert witness. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-060, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.

458-08-070 Pleadings. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-070, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.

458-08-080 Discovery in contested cases—Scope. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-080, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.

458-08-090 Depositions and interrogatories in contested cases—Right to take. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-090, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.

458-08-100 Depositions and interrogatories in contested cases—Officer before whom taken. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-100, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.

458-08-110 Depositions and interrogatories in contested cases—Authorization. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-110, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.

458-08-120 Depositions and interrogatories in contested cases—Protection of parties and deponents. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-120, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.

458-08-130 Deposition and interrogatories in contested cases—Oral examination and cross-examination. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-130, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.

458-08-140 Depositions and interrogatories in contested cases—Recordation. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-140, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.

458-08-150 Depositions and interrogatories in contested cases—Signing attestation and return. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-150, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.

458-08-160 Depositions and interrogatories in contested cases—Use and effect. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-160, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.

458-08-170 Depositions and interrogatories in contested cases—Fees of officers and deponents. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-170, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.

458-08-180 Depositions upon interrogatories—Submission of interrogatories. [Statutory Authority: RCW 82.01.060(2) and 34.12.080. 85-23-049 (Order PR 85-1), § 458-08-180, filed 11/18/85.] Repealed by 95-07-067, filed 3/14/95, effective 4/14/95. Statutory Authority: RCW 82.32.300.

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

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

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

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

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

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

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

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

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

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

Chapter 458-24
UNFAIR CIGARETTE SALES BELOW COST ACT RULES AND REGULATIONS

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

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

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

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

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

458-24-060 Form and contents of complaint. [Statutory Authority: RCW 82.32.300. 82-19-028 (Order ET 82-9), § 458-24-060, filed 9/10/82; Order ET 72-2, § 458-24-060, filed 9/29/72.] Repealed by 96-21-141, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

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

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

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

Chapter 458-52
PROPERTY TAX ANNUAL RATIO STUDY

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

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

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

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

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

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

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

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

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

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

(Order PT 79-3), filed 10/11/79. Statutory Authority: RCW 84.48.075. Later promulgation, see WAC 458-53-160.

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

458-52-120 Use of indicated ratios. [Statutory Authority: RCW 84.48.075. 78-02-052 (Order PT 78-1), § 458-52-120, filed 1/19/78.] Repealed by 79-11-029 (Order PT 79-3), filed 10/11/79. Statutory Authority: RCW 84.48.075. Later promulgation, see WAC 458-53-180.

458-52-130 County assessor's review. [Statutory Authority: RCW 84.48.075. 78-02-052 (Order PT 78-1), § 458-52-130, filed 1/19/78.] Repealed by 79-11-029 (Order PT 79-3), filed 10/11/79. Statutory Authority: RCW 84.48.075. Later promulgation, see WAC 458-53-190.

458-52-140 Certification of county indicated ratios. [Statutory Authority: RCW 84.48.075. 78-02-052 (Order PT 78-1), § 458-52-140, filed 1/19/78.] Repealed by 79-11-029 (Order PT 79-3), filed 10/11/79. Statutory Authority: RCW 84.48.075. Later promulgation, see WAC 458-53-200.

458-52-150 Assessor's appeal. [Statutory Authority: RCW 84.48.075. 78-02-052 (Order PT 78-1), § 458-52-150, filed 1/19/78.] Repealed by 79-11-029 (Order PT 79-3), filed 10/11/79. Statutory Authority: RCW 84.48.075. Later promulgation, see WAC 458-53-210.

Chapter 458-56
RULES RELATING TO GIFT TAXES

458-56-010 Scope of rules. [Order IT-75-1, § 458-56-010, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-56-020 Imposition of tax. [Order IT-75-1, § 458-56-020, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-56-030 Requirement of return. [Order IT-75-1, § 458-56-030, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-56-040 Joint accounts and trusts. [Order IT-75-1, § 458-56-040, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-56-050 Annual exclusion. [Order IT-75-1, § 458-56-050, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-56-060 Time and place for filing return. [Order IT-75-1, § 458-56-060, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-56-070 Gifts made during prior calendar years. [Order IT-75-1, § 458-56-070, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-56-080 Gross gifts made during calendar year. [Order IT-75-1, § 458-56-080, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-56-090 Description of property. [Order IT-75-1, § 458-56-090, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-56-100 Valuation of property. [Order IT-75-1, § 458-56-100, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-56-110 Exempt gifts. [Order IT-75-1, § 458-56-110, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-56-120 Specific exemptions. [Order IT-75-1, § 458-56-120, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-56-130 Community property and separate property. [Order IT-75-1, § 458-56-130, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-56-140 (Reserved.) Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-56-150 Penalties. [Order IT-75-1, § 458-56-150, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-56-160 Payment of tax. [Order IT-75-1, § 458-56-160, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-56-170 Gifts taxable as inheritance. [Order IT-75-1, § 458-56-170, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-56-180 Gift tax returns. [Order IT-75-1, § 458-56-180, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-56-190 Liens. [Order IT-75-1, § 458-56-190, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-56-200 Valuation of securities and accounts. [Order IT-75-1, § 458-56-200, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-56-210 Federal audits. [Order IT-75-1, § 458-56-210, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-56-220 Receipts. [Order IT-75-1, § 458-56-220, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

458-56-230 Appeals and appellate procedure. [Order IT-75-1, § 458-56-230, filed 11/21/75.] Repealed by 96-21-143, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 34.05.354.

Chapter 458-60
REAL ESTATE EXCISE TAX

458-60-002 Real estate excise tax—Definitions. [Statutory Authority: RCW 82.45.120 and 28A.45.120. 80-15-033 (Order PT 80-2), § 458-60-002, filed 10/9/80.] Repealed by 82-15-070 (Order PT 82-5), filed 7/21/82. Statutory Authority: RCW 82.45.120 and 82.45.150. Later promulgation, see chapter 458-61 WAC.

458-60-010 Leases with options to purchase—General policy. [Order PT 68-7, § 458-60-010, filed 5/1/68.] Repealed by 82-15-070 (Order PT 82-5), filed 7/21/82. Statutory Authority: RCW 82.45.120 and 82.45.150. Later promulgation, see chapter 458-61 WAC.

458-60-020 Leases with options to purchase—Tax payable only when option exercised. [Order PT 68-7, § 458-60-020, filed 5/1/68.] Repealed by 82-15-070 (Order PT 82-5), filed 7/21/82. Statutory Authority: RCW 82.45.120 and 82.45.150. Later promulgation, see chapter 458-61 WAC.

458-60-030 Leases with options to purchase—Special procedures for lease-option agreements. [Order PT 68-7, § 458-60-030, filed 5/1/68.] Repealed by 82-15-070 (Order PT 82-5), filed 7/21/82. Statutory Authority: RCW 82.45.120 and 82.45.150. Later promulgation, see chapter 458-61 WAC.

458-60-040 Leases with options to purchase—Determination of purchase price. [Order PT 68-7, § 458-60-040, filed 5/1/68.] Repealed by 82-15-070 (Order PT 82-5), filed 7/21/82. Statutory Authority: RCW 82.45.120 and 82.45.150. Later promulgation, see chapter 458-61 WAC.

458-60-045 Payment of the excise tax on real estate sales—Recording instrument of conveyance. [Statutory Authority: RCW 82.45.120 and 28A.45.120. 80-15-033 (Order PT 80-2), § 458-60-045, filed 10/9/80.] Repealed by 82-15-070 (Order PT 82-5), filed 7/21/82. Statutory Authority: RCW 82.45.120 and 82.45.150. Later promulgation, see chapter 458-61 WAC.

458-60-046 Real estate excise tax affidavit—Contents—Oath requirement—Signatures—Affidavit. [Statutory Authority: RCW 82.45.120 and 28A.45.120. 80-15-033 (Order PT 80-2), § 458-60-046, filed 10/9/80.] Repealed by 82-15-070 (Order PT 82-5), filed 7/21/82. Statutory Authority: RCW 82.45.120 and 82.45.150. Later promulgation, see chapter 458-61 WAC.

458-60-048 Real estate excise tax affidavit—When required—When not required. [Statutory Authority: RCW 82.45.120 and 28A.45.120. 80-15-033 (Order PT 80-2), § 458-60-048, filed 10/9/80.] Repealed by 82-15-070 (Order PT 82-5), filed 7/21/82. Statutory Authority: RCW 82.45.120 and 82.45.150. Later promulgation, see chapter 458-61 WAC.

Chapter 458-12 WAC

PROPERTY TAX DIVISION—RULES FOR ASSESSORS

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

458-12-145 Listing of property—Exemptions—Generally—Rules of construction. [Order PT 73-7, § 458-12-145, filed 1/16/74; Order PT 68-6, § 458-12-145, filed 4/29/68.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-100.

458-12-146 Listing of property—Applications—Who must file, annual filing requirement, application forms, what covered, filing fee, financial statement, extensions of time, evidence of timely filing. [Order PT 73-7, § 458-12-146, filed 1/16/74.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-110.

458-12-147 Listing of property—Determination—Notification—Appeals. [Order PT 73-7, § 458-12-147, filed 1/16/74.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-120.

458-12-148 Listing of property—Properties sold or acquired by organizations deemed to be exempt. [Order PT 73-7, § 458-12-148, filed 1/16/74.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-130.

458-12-150 Listing of property—Proof of exemption. [Order PT 73-7, § 458-12-150, filed 1/16/74; Order PT 68-6, § 458-12-150, filed 4/29/68.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-140.

458-12-151 Listing of property—Cessation of use—Taxes collectible. [Order PT 73-7, § 458-12-151, filed 1/16/74; Order 73-2, § 458-12-151, filed 5/9/73.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-150.

458-12-152 Listing of property—Inaccurate information—What constitutes. [Order PT 73-7, § 458-12-152, filed 1/16/74.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-160.

458-12-153 Listing of property—Rental or lease of property deemed to be exempt. [Order PT 73-7, § 458-12-153, filed 1/16/74.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-170.

458-12-190 Listing of property—Cemeteries. [Order PT 73-7, § 458-12-190, filed 1/16/74; Order PT 68-6, § 458-12-190, filed 4/29/68.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-180.

458-12-195 Listing of property—Churches, parsonages and convents. [Order PT 73-7, § 458-12-195, filed 1/16/74; Order PT 68-6, § 458-12-195, filed 4/29/68.] Repealed by Order PT

76-2, filed 4/7/76. Later promulgation, see WAC 458-16-190.

458-12-200 Listing of property—Grounds upon which a church or parsonage shall be built. [Order PT 73-7, § 458-12-200, filed 1/16/74; Order PT 68-6, § 458-12-200, filed 4/29/68.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-200.

458-12-205 Listing of property—Nonprofit, nonsectarian organizations. [Order PT 73-7, § 458-12-205, filed 1/16/74; Order PT 68-6, § 458-12-205, filed 4/29/68.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-210.

458-12-206 Listing of property—Church camps. [Order PT 73-7, § 458-12-206, filed 1/16/74.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-220.

458-12-210 Listing of property—Character building organizations. [Order PT 73-7, § 458-12-210, filed 1/16/74; Order PT 68-6, § 458-12-210, filed 4/29/68.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-230.

458-12-215 Listing of property—Veterans organizations. [Order PT 73-7, § 458-12-215, filed 1/16/74; Order PT 68-6, § 458-12-215, filed 4/29/68.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-240.

458-12-220 Listing of property—Relief organizations. [Order PT 73-7, § 458-12-220, filed 1/16/74; Order PT 68-6, § 458-12-220, filed 4/29/68.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-250.

458-12-225 Listing of property—Day care centers, libraries, orphanages, homes for the aged, homes for the sick or infirm, hospitals. [Order PT 73-7, § 458-12-225, filed 1/16/74; Order PT 68-6, § 458-12-225, filed 4/29/68.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-260.

458-12-230 Listing of property—Schools and colleges. [Order PT 73-7, § 458-12-230, filed 1/16/74; Order PT 68-6, § 458-12-230, filed 4/29/68.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-270.

458-12-235 Listing of property—Art, scientific and historical collections—Fire companies—Humane societies. [Order PT 73-7, § 458-12-235, filed 1/16/74; Order PT 68-6, § 458-12-235, filed 4/29/68.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-280.

458-12-236 Listing of property—Nature conservancy lands. [Order PT 73-7, § 458-12-236, filed 1/16/74.] Repealed by Order PT 76-2, filed 4/7/76. Later promulgation, see WAC 458-16-290.

458-12-238 Listing of property—Sheltered workshops for handicapped. [Order PT 73-7, § 458-12-238, filed 1/16/74.] Repealed by Order PT 76-2, filed 4/7/76.

458-12-240 Listing of property—Nonprofit organizations—Taxable interests in real property owned or used by nonprofit organizations. [Order PT 68-6, § 458-12-240, filed 4/29/68.] Repealed by 93-08-049, filed 4/2/93, effective 5/3/93. Statutory Authority: RCW 84.41.090 and 84.08.010.

458-12-250 Listing of property—Ships and vessels—Definition. [Order PT 68-6, § 458-12-250, filed 4/29/68.] Repealed by 85-22-083 (Order PT 85-4), filed 11/6/85, effective 1/1/86. Statutory Authority: RCW 84.08.070.

458-12-255 Listing of property—Ships and vessels—Taxable situs in Washington. [Order PT 68-6, § 458-12-255, filed 4/29/68.] Repealed by 85-22-083 (Order PT 85-4), filed 11/6/85, effective 1/1/86. Statutory Authority: RCW 84.08.070.

458-12-260 Listing of property—Ships and vessels—Vessels under construction. [Order PT 68-6, § 458-12-260, filed 4/29/68.] Repealed by 85-22-083 (Order PT 85-4), filed 11/6/85, effective 1/1/86. Statutory Authority: RCW 84.08.070.

458-12-265 Listing of property—Ships and vessels—Partial exemption. [Order PT 68-6, § 458-12-265, filed 4/29/68.] Repealed by 85-22-083 (Order PT 85-4), filed 11/6/85, effective 1/1/86. Statutory Authority: RCW 84.08.070.

458-12-285 Relationship between average inventory provisions of RCW 84.40.020, the "transient trader" provision of RCW 84.56.180 and the "freeport exemption" (RCW 84.36.171-84.36.174). [Order 68-8, § 458-12-285, filed 10/31/68; Order PT 68-6, § 458-12-285, filed 4/29/68.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.

458-12-290 Identification and reporting requirements for "freeport exemption" (RCW 84.36.171-84.36.174). [Order PT 68-6, § 458-12-290, filed 4/29/68.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.

458-12-325 Valuation of property—Leasehold interests. [Order PT 68-6, § 458-12-325, filed 4/29/68.] Repealed by Order PT 75-1, filed 2/13/75.

458-12-380 Levy—Tax Freeze Act of 1967. [Order PT 68-6, § 458-12-380, filed 4/29/68.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.

458-12-400 Leasehold estates—Definitions. [Order PT 75-1, § 458-12-400, filed 2/13/75.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.

458-12-401 Leasehold estates—Report to county assessor by public body. [Order PT 75-1, § 458-12-401, filed 2/13/75.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.

458-12-402 Leasehold estates—Report to county treasurer by county assessor. [Order PT 75-1, § 458-12-402, filed 2/13/75.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.

458-12-403 Leasehold estates—Notice of in lieu tax due—Payment to department. [Order PT 75-1, § 458-12-403, filed 2/13/75.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.

458-12-404 Leasehold estates—Determination of economic rent. [Order PT 75-1, § 458-12-404, filed 2/13/75.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.

458-12-405 Leasehold estates—Amount of in lieu tax. [Order PT 75-1, § 458-12-405, filed 2/13/75.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.

458-12-406 Leasehold estates—Disbursement of the in lieu excise tax. [Order PT 75-1, § 458-12-406, filed 2/13/75.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.

458-12-408 Leasehold estates—Operating properties. [Order PT 75-1, § 458-12-408, filed 2/13/75.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.

458-12-410 Leasehold estates—Exemptions. [Order PT 75-1, § 458-12-410, filed 2/13/75.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.

458-12-412 Leasehold estates—Taxation of improvements. [Order PT 75-1, § 458-12-412, filed 2/13/75.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.

458-12-414 Leasehold estates—Continuity. [Order PT 75-1, § 458-12-414, filed 2/13/75.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.

458-12-416 Leasehold estates—Term. [Order PT 75-1, § 458-12-416, filed 2/13/75.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.

458-12-418 Leasehold estates—Valuation. [Order PT 75-1, § 458-12-418, filed 2/13/75.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.

458-12-420 Leasehold estates—Commercial concessions or restrictions. [Order PT 75-1, § 458-12-420, filed 2/13/75.] Repealed by 81-04-054 (Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.

458-12-422 Leasehold estates—Appeal procedures. [Order PT 75-1, § 458-12-422, filed 2/13/75.] Repealed by 81-04-054

(Order PT 81-3), filed 2/4/81. Statutory Authority: RCW 84.08.010 and 84.08.070.

WAC 458-12-005 Definition—Property—Personal. The terms "personal property" and "real property" are defined in RCW 84.04.080 and 84.04.090, respectively. These definitions should routinely be consulted in any case where it is at all doubtful whether a given piece of property is real or personal.

Personal property, as defined in RCW 84.04.080, falls into two categories; namely, *tangible* personal property, that is to say, things which have a physical existence, and *intangible* personal property which consists of rights and privileges having a legal but not a physical existence. The category of tangible personal property includes but is not limited to the following:

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

(a) Inventories, AGO 57-58, No. 206 (1958);

(b) Farm machinery, AGO 1909-1910, p. 51;

(c) Livestock and poultry, RCW 84.44.060;

(d) Logs and lumber, RCW 84.44.030;

(e) Motor vehicles, RCW 84.44.050;

(f) Books, *Booth & Henford Abstract Company v. Phelps,* 8 Wash. 549 (1894);

(g) Coin collections and coin inventories of coin dealers, AGO 63-64, No. 116 (1964);

(h) Tools.

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

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

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

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

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

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

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

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

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

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

(12) All surface leases, whether of public or privately-owned land, except leases for the life of the lessee. RCW 84.04.080; AGO 49-51, No. 476 (1951); TCR 8-8-41: *In Re Barclay's* Estate, 1 Wn.2d 82 (1939). This category includes practically all leases to corporations because the legal life of a corporation is almost always longer than the term of any lease to it. *Pier 67, Inc., v. King County,* 71 W.D.2d 89 (1967).

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

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

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

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

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

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

(6) Public utility franchises owned by public service corporations. A public utility franchise is the right to use publicly-owned real estate for power lines, gas or water lines, sewers or some other public utility facility. *Commercial Electric Light and Power Company v. Judson,* 21 Wash. 49 (1899); *Chehalis Broom Company v. Chehalis County,* 24 Wash. 135 (1901). Such public utility franchises are very similar to public utility easements, which are personal property under Paragraph 8 thereof. However, a Washington corporation's primary franchise to exist and do business in

corporate form is not taxable property. *Bank of Fairfield v. Spokane County,* 173 Wash. 145 (1933).

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

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

WAC 458-12-010 Definition—Property—Real. The term "real property" is defined in RCW 84.04.090; this definition should be consulted as a matter of course in all cases where the meaning of "real property" is in doubt. As there defined, "real property" includes but is not limited to the following:

(1) All land, whether platted or unplatted.

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

(3) Any fixture permanently affixed to and intended to be annexed to land or permanently affixed to and intended to be a component of a building, structure, or improvement on land, including machinery and equipment which become fixtures. Intent is to be gathered from all the surrounding circumstances at the time of annexation or installation of the item, including consideration of the nature of the item affixed, the manner of annexation and the purpose for which the annexation is made and is not to be gathered exclusively from the statements of the annex or, installer, or owner as to his or her actual state of mind.

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

(i) They are securely attached to the real property; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Penstocks and buried mainlines;

(b) Sub-mains (underground);

(c) River pumping stations;

(d) Water distribution points;

(e) Concrete head ditches;

(f) Irrigation wells;

(g) Electrical distribution stations;

(h) Electrical booster stations;

(i) Electrical distribution lines (underground); and

(j) Buried solid set systems with risers or drip tubes.

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

(a) Hand lines;

(b) Wheel lines;

(c) Center pivots;

(d) Motors;

(e) Pumps;

(f) Screens;

(g) Electrical panels;

(h) Mainlines (above ground); and

(i) Laterals.

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

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

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

WAC 458-12-015 Definition—Interstate commerce. Interstate commerce includes, but is not limited to, that commerce, commercial intercourse, traffic or trade which involves the purchase, sale or exchange of property and its transportation, or the transportation of persons, from one state or territory of the United States to another. (Rules relating to the Revenue Act of 1935, Washington state tax commission, p. 128)

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

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

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

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

WAC 458-12-020 Definition—Foreign commerce—Imports and exports. Foreign commerce: Means that commerce, commercial intercourse, traffic or trade which involves the purchase, sale or exchange of property and its transportation, or the transportation of persons, or the transportation of communications or electrical energy, from a state or territory of the United States to a foreign country, or from a foreign country to a state or territory of the United States. It includes fish seafood or other products originating on the high seas beyond the territorial limits of the state. (Rules relating to the Revenue Act of 1935, Washington tax commission, p.133)

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

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

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

WAC 458-12-025 Compensation for assistance by department of revenue at request of assessor. Whenever the department of revenue receives from any county assessor a request for special assistance in the valuation of property, it shall have the option of either entering into a statutory contract for special assistance, or providing such services on an informal basis. All requests for special assistance must be made in writing by the county assessor or the board of county commissioners. The written request shall state the extent of the work to be accomplished and shall be forwarded to the director of the department of revenue.

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

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

(a) It shall be in writing;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It will be the policy of the department of revenue to permit use of all forms presently in use if, in the department's judgment, they adequately meet the standards and fulfill the statutory requirements. Once the department has approved the forms used in an office, the forms may be used until, in the opinion of the department, the forms need revision because of obsolescence caused by time or statutory change.

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

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

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

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

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

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

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

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

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

[Order PT 68-6, § 458-12-040, filed 4/29/68.]

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

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

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

WAC 458-12-050 Listing of real property—Omitted property. Whenever any real property is omitted from the assessment rolls, the assessor shall have the right and duty to go back and separately value and list such property as omitted property. When improvements or land are omitted, the assessor shall check back for a period of three years and base his assessment on the value of the improvements as of the year or years omitted regardless of the reason why the improvements or land were omitted from the rolls. If it is found that a bona-fide purchaser (third party) had purchased or acquired any interest in the property prior to the time such improvements are assessed and without knowledge that the property is omitted, then there shall be no assessment made. (RCW 84.40.080) If any question arises as to whether or not the improvement has in fact been omitted, the burden of proof shall be on the assessor to show that it has. (TCR 3-17-1953) Under no circumstances, however, is this section to be used for the purpose of revaluation or reassessment. (*Wood Lbr. Company v. Whatcom County,* 5 Wn.2d 63 (1940))

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

[Order PT 68-6, § 458-12-050, filed 4/29/68.]

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

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

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

WAC 458-12-060 Listing of personalty—Burden on taxpayer to list. Every person, firm or corporation regardless of residency who owns or controls personal property not specifically exempted by law located in this state as of 12 noon on the first day of January shall be required to annually submit a personal property listing and statement. Such listing and statement shall be due regardless of whether or not the assessor has provided notice of such listing to the individual taxpayer. (RCW 84.40.190.)

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

WAC 458-12-065 Listing personal property—Form and notice. The assessor shall compile and keep current an alphabetical list of all persons at their last known address to his knowledge in his county who are subject to assessment of personal property. On or before January 1st of each year he shall send a notice and personal property listing form to all persons to his knowledge who own taxable personal property at their last known address, such notice and listing form shall be in accordance with the forms prescribed by the department of revenue.

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

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

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

The county assessor shall not accept a listing that is not signed; however, he may accept a listing that has been signed and not subscribed and sworn to before the assessor, his deputy or a notary public. (RCW 84.40.060)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WAC 458-12-085 Listing of personalty—Merchants—Personalty—Consignments. (1) **Definitions:** **"Merchant"** - Whoever owns, or has in his possession or subject to his control, any goods, merchandise, grain, or produce of any kind, or other personal property within this state, with authority to sell the same, which has been purchased either in or out of this state, with a view to being sold at an advanced price or profit, or which has been consigned to him from any place out of this state for the purpose of being sold at any place within the state, is held to be a merchant. (RCW 84.40.220)

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

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

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

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

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

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

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

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

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

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

WAC 458-12-095 Listing of personalty—Partial listing. Whenever unreported property (see WAC 458-12-100 for unlisted property) is found, reported or discovered, the assessor shall add such property to the assessment rolls, and shall make an assessment of current and back taxes and *any applicable penalties.*

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

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

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

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

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

[Statutory Authority: RCW 84.08.010 and 84.08.070. 82-22-059 (Order PT 82-7), § 458-12-100, filed 11/2/82; Order PT 68-6, § 458-12-100, filed 4/29/68.]

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

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

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

When a person required to list property subject to taxation does not do so by the date prescribed, and it appears to the assessor that the motive for the failure or refusal to list is an intent to defraud, a complaint shall be filed with the prosecuting attorney by either the assessor or the board of county commissioners for the collection of the total tax determined by the assessor to be properly due and a penalty of 100% of such tax. Both the tax and the penalty are to be recovered by the prosecuting attorney in an action in the name of the state and to be paid into the county treasury to the credit of the current expense fund.

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

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

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

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

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

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

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

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

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

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

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

(a) Such goods are sold by the importer;

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

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

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

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

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

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

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

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

WAC 458-12-120 Situs of personalty—Beer kegs. Beer kegs owned by Washington breweries are taxable at the situs of the brewery. Those kegs owned by out-of-state breweries are taxable at the situs of their own actual location. (PTB 9-26-1939.)

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

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

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

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

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

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

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

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

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

If it is found that the herd has not been listed in this state, the assessor shall list and assess the herd in the same manner as if it had been in his county as of January 1st of that year. The fact that the herd may have been listed and assessed in another state or territory for that same year shall in no way exempt said stock from the operation of this section.

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

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

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

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

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

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

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

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

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

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

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

[Order PT 68-6, § 458-12-140, filed 4/29/68.]

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

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

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

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

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

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

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

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

WAC 458-12-165 Listing of property—Public lands—Purchase by state, county or city. Real property acquired either by purchase or condemnation by the state, county, city or any exempt political subdivision shall remain liable for any tax liens existing on the realty at the time the conveyance is completed. (RCW 84.60.050) If the taxes are not delinquent at the time of the purchase or condemnation, the date of completion of the sale shall be noted. If the transfer was before February 15 of the taxable year, there shall be no tax payable. If the transfer is between February 15 and April 30, one-half of the tax shall be payable. If the transfer is after April 30, the full amount of tax shall be payable. (RCW 84.60.060) Whenever only part of a parcel of property is purchased or condemned, the assessor is authorized to segregate the taxes according to the provision of RCW 84.60.070.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Order PT 68-6, § 458-12-245, filed 4/29/68.]

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

(2) **Computer software.** Computer software is a set of directions or instructions that exist in the form of machine-readable or human-readable code, is recorded on physical or electronic medium and directs the operation of a computer system or other machinery and/or equipment. Computer software includes the associated documentation which describes the code and/or its use, operation, and maintenance and typically is delivered with the code to the user. Computer software does not include databases, but does include the computer programs and code which are used to generate databases. Computer software can be canned, custom, or a mixture of both.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) **Acquisition cost.**

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

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

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

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

(a) In the first year in which it will be subject to assessment, canned software shall be listed and valued at one hundred percent of acquisition cost as defined in section (10)(a), above, regardless of whether the software has been expensed or capitalized on the accounting records of the business.

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

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

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

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

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

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

(15) **Exemptions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The husband or wife, when the claimant is a married person; or a widow or widower still residing upon the premises occupied by her or him as a home while married. (AGO 1917-18, p.260)

(4) Any person qualified as "head of family" who has residing on the premises with him or her, and under his or her care and maintenance, any of the following:

(a) His or her minor child or grandchild or the minor child or grandchild of his or her deceased wife or husband;

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

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

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

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

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

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

Grains and flour, fruit and fruit products, vegetables and vegetable products, and fish and fish products, while being transported to or held in storage in a public or private warehouse shall be exempt from taxation if actually shipped to points outside the state on or before April 30th of the first year for which they would otherwise be taxable. In order to claim the exemption, proof of shipment must be furnished to the county assessor before June 1st of the year for which exemption is claimed. (RCW 84.36.140; RCW 84.36.150)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) True and fair value shall be based upon sales of the property being appraised or sales of comparable property made within the past five years. It may be necessary to adjust sales due to such factors as time of sale, location, physical, or other factors affecting value. Any adjustments shall be made to reflect the value as of the assessment date. In using real estate contracts as comparable sales, consideration must be given to the effect the down payment or financing terms may have had on the stated selling price. Consideration must also be given to the extent to which the sale of comparable property actually represents the general effective market demand for property of such type, in the geographical area in which such property is located. When the number of sales of comparable property are inadequate to properly estimate value, then sales of comparable properties in other similar areas should be considered. Sales involving deed releases or similar seller-developer financing arrangements shall not be used as similar properties.

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

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

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

The provisions of (2) shall be the dominant factor in valuation of properties of a complex nature, or being used under terms of a franchise from a public agency or operating as a public utility, or property not having a record of sale within five years and not having a significant number of sales of comparable property in the general area.

When the provisions of (2) are relied on to establish value, the property owner shall be advised, upon his request, of the factors used in arriving at such value.

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

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

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

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

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

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

Trade level may be defined as value at the point in the production stream where an item of manufactured personalty is found, or the production-distribution level in which a product is found.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The value shall be adjusted using current sales data;

(b) The subject property is to be compared to properties that have sold within comparable areas;

(c) Properties shall be valued or adjusted based upon the following uses.

(i) Single family residential

(ii) Residential 2 - 4 units

(iii) Residential multiple units (5 or more)

(iv) Residential hotels, condominiums
(v) Hotels/motels
(vi) Vacation homes and cabins
(vii) Retail
(viii) Warehouse
(ix) Office and professional services
(x) Commercial other than listed
(xi) Manufacturing
(xii) Agricultural
(xiii) Further subclasses may be included as needed.

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

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

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

WAC 458-12-330 Real property valuation—Highest and best use. All property, unless otherwise provided by statute, shall be valued on the basis of its highest and best use for assessment purposes. Highest and best use is the most profitable, likely use to which a property can be put. It is the use which will yield the highest return on the owner's investment.

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

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

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

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

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

WAC 458-12-335 Revaluation process by county assessor. Each county assessor shall maintain an active and systematic program of revaluation on a continuous basis and shall establish and maintain a schedule which will result in revaluation of all taxable real property within the county at least once every four years. Those counties on a revaluation plan that provides for a physical inspection on a five or six year cycle shall adjust the valuation of such property annually during the interval years. The adjustments are to be made based on appropriate statistical data. The valuation, appraisal or adjustment of value shall be placed on the current assessment roll for taxes payable the following year (RCW 84.41.030).

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

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

[Statutory Authority: RCW 84.41.090 and 84.08.010. 83-22-004 (Order PT 83-6), § 458-12-335, filed 10/20/83; Order 73-5, § 458-12-335, filed 8/13/73; Order PT 68-6, § 458-12-335, filed 4/29/68.]

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

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

(a) Comprehensive analysis of numbers of properties to be appraised by revaluation area;

(b) Specific geographical revaluation areas, taxing districts, or parcels;

(c) Appraisal workload and number of personnel required;

(d) Available staff;

(e) Required additional staff;

(f) Contract work or special assistance;

(g) Equipment, supplies, space.

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

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

(a) The method of valuation; and

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

[Statutory Authority: RCW 84.41.090 and 84.08.010. 83-22-004 (Order PT 83-6), § 458-12-336, filed 10/20/83; Order 73-5, § 458-12-336, filed 8/13/73.]

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

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

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

[Statutory Authority: RCW 84.41.090 and 84.08.010. 83-22-004 (Order PT 83-6), § 458-12-337, filed 10/20/83; Order 73-5, § 458-12-337, filed 8/13/73.]

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

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

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

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 84.41.090 and 84.08.010. 83-22-004 (Order PT 83-6), § 458-12-339, filed 10/20/83; Order 73-5, § 458-12-339, filed 8/13/73.]

WAC 458-12-340 Assessment and evaluation—Property assessed as of January 1st. All real and personal property shall be assessed on the basis of its fair market value as of January 1st of each year. (RCW 84.40.030) Market value shall be determined utilizing manuals published or approved by the department of revenue and the approaches to value described in WAC 458-12-305. (*Bellingham Community Hotel Company v. Whatcom,* 190 Wash. 609 (1937))

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

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

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

[Order PT 74-6, § 458-12-341, filed 9/11/74; Order PT 69-2, § 458-12-395 (codified as WAC 458-12-341), filed 8/28/69.]

WAC 458-12-342 New construction—Assessment. (1) New construction covered under the provisions of RCW 36.21.070 and 36.21.080 shall be assessed at its true and fair value as of July 31st each year regardless of its percentage of completion. New construction as used in this section refers only to real property, as defined in RCW 84.04.090 and further defined in WAC 458-12-010, for which a building permit was issued or should have been issued pursuant to chapter 19.27, 19.27A, or 19.28 RCW or other laws providing for building permits.

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

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

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

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

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

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

WAC 458-12-345 Assessment and evaluation—Reforestation lands. Lands devoted to reforestation are subject to a yield tax instead of an ad valorem tax. (Article VII Section 1, state constitution; RCW 84.28.090) Reforestation lands are lands that are logged off or selectively harvested and all unforested lands particularly valuable for the production and growth of forests and all land growing immature forests and forests of no commercial value. (RCW 84.28.005) To qualify as reforestation lands, lands eligible must be classified as such by the department of natural resources. (RCW 84.28.020)

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

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

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

WAC 458-12-350 Assessment and evaluation—Separate valuation of lands and improvements. In assessing any tract or lot of real property the value of the land exclusive of improvements shall be determined. The value of all improvements and structures on the land excluding the value of annual crops growing on cultivated lands shall also be determined. (RCW 84.40.030; *Miethke v. Pierce Co.* 173 Wash. 381)

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

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

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

WAC 458-12-355 Assessment and evaluation—Assessment of classes of property to be uniform within the taxing district. All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only. (Article VII, Section 1, state Constitution; *Carroll Barlow, Snohomish County Assessor v. Washington State Tax Commission* (1967)) The county commissioners are the authority that levies the tax (not individual taxing districts) in the county, (*Carrol Barlow, Snohomish County Assessor v. Washington State Tax Commission* (1967)) and all property that comes within their jurisdiction must be uniformly valued and assessed. This rule firmly prohibits the use of varying assessment ratios within the confines of the county boarders. The assessor must value all real and personal property at its fair market value (see WAC 458-12-305 for definition of fair market value) and then apply the same or a uniform assessment ratio thereto.

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

WAC 458-12-360 Assessment and evaluation—Notice of value change—Real property. Whenever there is a change in the true and fair value of real property, a notice of such change for the tract or lot of land and any improvements shall be mailed for by the assessor to the taxpayer. A copy shall be sent to the legal owner where such is requested, his address is given or is known, and the legal owner is different from the taxpayer.

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

"Taxpayer" shall mean the person charged, or whose property is charged with property tax, and whose name appears on the most recent tax roll or has been otherwise provided to the assessor.

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

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

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

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

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

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

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

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

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

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

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

WAC 458-12-375 Levy—Prorating 40 mill law. If the county assessor shall find that the aggregate rate of levy on any property shall exceed the limitation fixed by Section 2, Article 7 of the state Constitution, he shall recompute and establish a consolidated levy in the following manner:

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

State
County
Road district
City
School district

in the amounts not exceeding the limitations established by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 458-14 WAC
COUNTY BOARDS OF EQUALIZATION

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

458-14-010 Reconvening county boards of equalization—By whom. [Order PT 70-1, § 458-14-010, filed 4/8/70; Tax Commission Rule 1, filed 7/6/66.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-020 Reconvening county boards of equalization—Contents of request. [Statutory Authority: RCW 84.08.010 and 84.08.070. 88-07-005 (Order PT 88-5), § 458-14-020, filed 3/3/88; Order PT 70-1, § 458-14-020, filed 4/8/70; Tax Commission Rule 2, filed 7/6/66.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-030 Content of order—Limitation on what county board may consider. [Order PT 70-1, § 458-14-030, filed 4/8/70; Tax Commission Rule 3, filed 7/6/66.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-040 Limitations on reconvening. [Statutory Authority: RCW 84.08.010 and 84.08.070. 88-07-005 (Order PT 88-5), § 458-14-040, filed 3/3/88; 85-17-016 (Order PT 85-3), § 458-14-040, filed 8/12/85; Order PT 70-1, § 458-14-040, filed 4/8/70; Tax Commission Rule 4, filed 7/6/66.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-045 Reconvening upon timely filed petition—Limitations. [Statutory Authority: RCW 84.08.010 and 84.08.070. 88-07-005 (Order PT 88-5), § 458-14-045, filed 3/3/88; 85-17-016 (Order PT 85-3), § 458-14-045, filed 8/12/85; 82-19-012 (Order PT 82-6), § 458-14-045, filed 9/7/82.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-050 Membership. [Statutory Authority: RCW 84.08.010 and 84.08.070. 82-19-012 (Order PT 82-6), § 458-14-050, filed 9/7/82; Order PT 74-5, § 458-14-050, filed 4/29/74; Order PT 70-3, § 458-14-050, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-051 Composition of board. [Order PT 74-5, § 458-14-051, filed 4/29/74; Order 72-7, § 458-14-051, filed 6/23/72.] Repealed by 82-19-012 (Order PT 82-6), filed 9/7/82. Statutory Authority: RCW 84.08.010 and 84.08.070.

458-14-052 Change of venue. [Statutory Authority: RCW 84.08.010 and 84.08.070. 82-19-012 (Order PT 82-6), § 458-14-052, filed 9/7/82.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-055 Clerk. [Order PT 70-3, § 458-14-055, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-060 Legal advisor. [Order PT 70-3, § 458-14-060, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-062 Property tax advisor. [Order PT 74-5, § 458-14-062, filed 4/29/74.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-065 Appraisers. [Order PT 70-3, § 458-14-065, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-070 Public notice of July meetings. [Statutory Authority: RCW 84.08.010 and 84.08.070. 82-19-012 (Order PT 82-6), § 458-14-070, filed 9/7/82; Order PT 70-3, § 458-14-070, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-075 Meetings. [Statutory Authority: RCW 84.08.010 and 84.08.070. 82-19-012 (Order PT 82-6), § 458-14-075, filed 9/7/82; Order PT 74-5, § 458-14-075, filed 4/29/74; Order PT 70-3, § 458-14-075, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-080 Organization of the board. [Statutory Authority: RCW 84.08.010 and 84.08.070. 82-19-012 (Order PT 82-6), § 458-14-080, filed 9/7/82; Order PT 70-3, § 458-14-080, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-085 Record of proceedings—In general. [Order PT 74-5, § 458-14-085, filed 4/29/74; Order PT 72-11, § 458-14-085, filed 9/29/72; Order PT 70-3, § 458-14-085, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-086 Additional record requirements. [Statutory Authority: RCW 84.08.010 and 84.08.070. 82-19-012 (Order PT 82-6), § 458-14-086, filed 9/7/82; Order PT 74-5, § 458-14-086, filed 4/29/74; Order PT 72-11, § 458-14-086, filed 9/29/72.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-090 Assessment roll and records. [Statutory Authority: RCW 84.08.010 and 84.08.070. 82-19-012 (Order PT 82-6), § 458-14-090, filed 9/7/82; Order PT 70-3, § 458-14-090, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-091 Certification of the valuation of the assessment roll by assessor. [Statutory Authority: RCW 84.08.010 and 84.08.070. 82-19-012 (Order PT 82-6), § 458-14-091, filed 9/7/82; Order 73-4, § 458-14-091, filed 8/13/73.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-092 Change of assessment rolls. [Statutory Authority: RCW 84.08.010 and 84.08.070. 85-17-016 (Order PT 85-3), § 458-14-092, filed 8/12/85; 82-19-012 (Order PT 82-6), § 458-14-092, filed 9/7/82.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-094 Availability of valuation information. [Order PT 74-5, § 458-14-094, filed 4/29/74.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-098 Review of valuation. [Order PT 74-5, § 458-14-098, filed 4/29/74.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-100 Duties of the board. [Statutory Authority: RCW 84.08.010 and 84.08.070. 82-19-012 (Order PT 82-6), § 458-14-100, filed 9/7/82; Order PT 70-3, § 458-14-100, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-110 Notice of raise in valuation by the board. [Statutory Authority: RCW 84.08.010 and 84.08.070. 82-19-012 (Order PT 82-6), § 458-14-110, filed 9/7/82; Order PT 70-3, § 458-14-110, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-115 Exempt properties. [Order PT 74-5, § 458-14-115, filed 4/29/74; Order PT 70-3, § 458-14-115, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91.

Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-120 Petitions. [Statutory Authority: RCW 84.08.010 and 84.08.070. 82-19-012 (Order PT 82-6), § 458-14-120, filed 9/7/82; Order PT 74-5, § 458-14-120, filed 4/29/74; Order PT 70-3, § 458-14-120, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-121 Action on appeals. [Order 72-7, § 458-14-121, filed 6/23/72.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-122 Appeal of board members, assistants, or county governmental authorities. [Statutory Authority: RCW 84.08.010 and 84.08.070. 82-19-012 (Order PT 82-6), § 458-14-122, filed 9/7/82; Order PT 74-5, § 458-14-122, filed 4/29/74; Order 72-7, § 458-14-122, filed 6/23/72.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-125 Hearing on petition. [Statutory Authority: RCW 84.08.010 and 84.08.070. 82-19-012 (Order PT 82-6), § 458-14-125, filed 9/7/82; 81-21-007 (Order PT 81-11), § 458-14-125, filed 10/8/81; Order 71-3, § 458-14-125, filed 4/29/71; Order PT 70-3, § 458-14-125, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-126 Hearing examiners. [Statutory Authority: RCW 84.08.010. 81-04-053 (Order PT 81-2), § 458-14-126, filed 2/4/81.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-130 Orders of the board. [Order PT 70-3, § 458-14-130, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-135 Appeals. [Statutory Authority: RCW 84.08.010 and 84.08.070. 82-19-012 (Order PT 82-6), § 458-14-135, filed 9/7/82; Order PT 70-3, § 458-14-135, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-140 Records to state board. [Order PT 74-5, § 458-14-140, filed 4/29/74; Order PT 70-3, § 458-14-140, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-145 June meeting. [Order PT 70-3, § 458-14-145, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-150 November meeting. [Order PT 70-3, § 458-14-150, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-152 Manifest errors. [Statutory Authority: RCW 84.08.010 and 84.08.070. 85-17-016 (Order PT 85-3), § 458-14-152, filed 8/12/85; Order PT 74-5, § 458-14-152, filed 4/29/74.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

458-14-155 Definitions. [Order PT 74-5, § 458-14-155, filed 4/29/74; Order PT 70-3, § 458-14-155, filed 6/26/70.] Repealed by 91-07-040, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.08.200.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) An error in the legal description;

(b) A clerical or posting error;

(c) Double assessments;

(d) Misapplication of statistical data;

(e) Incorrect characteristic data;

(f) Incorrect placement of improvements;

(g) Erroneous measurements;

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

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

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

(15) "Market value" means the amount of money a buyer of property willing but not obligated to buy would pay a seller of property willing but not obligated to sell, taking into consideration all uses to which the property is adapted and might in reason be applied. True and fair value is the same as market value or fair market value.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) Destroyed property appeals pursuant to RCW 84.70.010.

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) The cancellation or correction of assessment rolls which assessments are manifestly erroneous (RCW 84.48.065).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) If so, the amount thereof.

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

RULES OF PRACTICE AND PROCEDURE

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

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

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

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

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

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

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

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

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

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

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

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

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

for an explanation of the availability, use and exchange of valuation information prior to the hearing before the board.

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

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

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

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

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

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

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

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

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

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

(i) Refuse to consider evidence that was not timely submitted; (ii) Postpone the hearing for a definite time period designated by the board, to provide the parties an opportunity to review all evidence; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The public record shall include:

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

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

(c) All evidence presented to the board.

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

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

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

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

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

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

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

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

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

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

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

(b) If the valuation is increased, the increased valuation shall become effective thirty days after the date of service or mailing of the notice of the adjustment unless the taxpayer or assessor files a petition to the board of tax appeals in accordance with WAC 458-14-170, before the effective date. If such a petition is filed, the increase does not take effect until the board of tax appeals disposes of the matter.

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

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

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

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

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

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

WAC 458-14-127 Reconvened boards—Authority. (1) Boards of equalization may reconvene on their own authority to hear requests concerning the current assessment year when the request is filed with the board by April 30 of the tax year immediately following the board's regularly convened session and at least one of the following conditions is met:

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

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

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

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

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

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

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

(6) All reconvening requests shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Property that they have appraised; or

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

(c) Property with which they have in any way exercised discretion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 458-15 WAC
HISTORIC PROPERTY

WAC

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

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

458-16-140	Property tax exemptions, generally, rules of construction—Proof of exemption. [Order PT 76-2, § 458-16-140, filed 4/7/76. Formerly WAC 458-12-150.] Repealed by Order PT 77-2, filed 5/23/77.
458-16-160	Property tax exemptions, generally, rules of construction—Inaccurate information—What constitutes. [Order PT 76-2, § 458-16-160, filed 4/7/76. Formerly WAC 458-12-152.] Repealed by Order PT 77-2, filed 5/23/77.
458-16-170	Property tax exemptions, generally, rules of construction—Rental or lease of property deemed to be exempt. [Order PT 76-2, § 458-16-170, filed 4/7/76. Formerly WAC 458-12-153.] Repealed by Order PT 77-2, filed 5/23/77.
458-16-250	Property tax exemptions, generally, rules of construction—Relief organizations. [Order PT 76-2, § 458-16-250, filed 4/7/76. Formerly WAC 458-12-220.] Repealed by Order PT 77-2, filed 5/23/77.
458-16-265	Nonprofit homes for the aging. [Statutory Authority: RCW 82.08.010, 84.36.865 and 84.36.041. 90-06-048, § 458-16-265, filed 3/2/90, effective 4/2/90.] Repealed by 95-06-042, filed 2/24/95, effective 3/27/95. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.36.041.
458-16-301	Applications without penalties. [Statutory Authority: RCW 84.36.865. 81-21-010 (Order PT 81-14), § 458-16-301, filed 10/8/81.] Repealed by 82-22-060 (Order PT 82-8), filed 11/2/82. Statutory Authority: RCW 84.36.865.

WAC 458-16-010 Senior citizen and disabled persons exemption—Definitions. (1) The term "residence" means a single family dwelling unit whether such unit be separate or part of a multi-unit dwelling and includes the land on which the dwelling stands not to exceed one acre. The term also includes a share ownership in a cooperative housing association, corporation, or partnership if the person claiming exemption can establish that his or her share represents the specific unit or portion of such structure in which he or she resides. It includes a single family dwelling situated upon leased lands and upon lands the fee of which is vested in the United States, any instrumentality thereof including an Indian tribe, the state of Washington, or its political subdivisions. Also included is a mobile home which has substantially lost its identity as a mobile unit by being fixed in location upon land owned or rented by the owner of said mobile home and placed on a foundation, posts, or blocks with fixed pipe connections for sewer, water or other utilities even though it may be listed and assessed by the county assessor as personal property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(16) "Ownership by a marital community" means property owned in common by both spouses. Property held in separate ownership by one spouse is not owned by the marital community. The person claiming the exemption must own the property for which exemption is claimed. Example: A person qualifying for the exemption by virtue of age or disability cannot claim exemption on a residence owned by the person's spouse as a separate estate outside the marital community unless the person has a life estate therein.

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

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

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

[Statutory Authority: RCW 84.36.389 and 84.36.865. 83-19-029 (Order PT 83-5), § 458-16-010, filed 9/14/83. Statutory Authority: RCW 84.36.389. 81-05-018 (Order PT 81-6), § 458-16-010, filed 2/11/81; Order PT 76-1, § 458-16-010, filed 4/7/76; Order PT 74-6, § 458-16-010, filed 9/11/74.]

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

(1) Death payments:

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

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

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

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

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

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

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

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

(5) Contributions by employer to accident and health plans; contributions by the employer to accident or health plans for compensation (through insurance or otherwise) to his employees for personal injuries or sickness.

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

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

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

(7) Income from discharge of indebtedness:

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

(i) The indebtedness was incurred or assumed:

(A) By a corporation; or

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

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

(b) Railroad corporation; (not applicable).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Any amount received:

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

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

(b) Any amount received to cover expenses for:

(i) Travel;

(ii) Research;

(iii) Clerical help; or

(iv) Equipment;

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

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

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

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

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

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

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

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

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

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

(18) Amounts received under insurance contracts for certain living expenses: General rule; in the case of an individual whose principal residence is damaged or destroyed by fire, storm, or other casualty, or who is denied access to his principal residence by governmental authorities because of the occurrence or threat of occurrence of such a casualty, gross income does not include amounts received by such individual under an insurance contract which are paid to compensate or reimburse such individual for living expenses incurred for himself and members of his household resulting from the loss of use or occupancy of such residence.

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

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

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

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

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

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

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

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

(2) Trade and business deductions of employees:

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

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

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

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

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

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

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

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

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

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

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

(b) Amounts deducted for loss;

(c) Amounts deducted for depreciation;

(d) Pension and annuity receipts;

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

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

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

(h) Dividend receipts;

(i) Interest received on state and municipal bonds.

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

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

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

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

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

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

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

(iii) The payments were made for attendant care and/or to assist the claimant, or the claimant's spouse or cotenant, with household tasks, and such personal care tasks as meal preparation, eating, dressing, personal hygiene, specialized body care, transfer, positioning, ambulation, bathing, toileting, self-medication a person provides for himself or herself, or such other tasks as may be necessary to maintain a person in his or her own home, but shall not include amounts expended for improvements or repair of the home itself.

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

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

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

[Statutory Authority: RCW 84.36.389 and 84.36.865. 92-15-058, § 458-16-013, filed 7/13/92, effective 8/13/92; 83-19-029 (Order PT 83-5), § 458-16-013, filed 9/14/83. Statutory Authority: RCW 84.36.389. 81-05-018 (Order PT 81-6), § 458-16-013, filed 2/11/81.]

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

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

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

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

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

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

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

(4) The amount that the person shall be exempt from an obligation to pay shall be calculated on the basis of combined disposable income, as defined in RCW 84.36.383 and WAC 458-16-010 through 458-16-013. If the person claiming the exemption was retired for two months or more of the preceding year, the combined disposable income of such person including his or her spouse and any cotenant shall be calculated by multiplying the average monthly combined disposable income of such person during the months such person was retired by twelve.

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

[Statutory Authority: RCW 84.36.389 and 84.36.865. 92-15-058, § 458-16-020, filed 7/13/92, effective 8/13/92; 83-19-029 (Order PT 83-5), § 458-16-020, filed 9/14/83. Statutory Authority: RCW 84.36.389. 81-05-018

(Order PT 81-6), § 458-16-020, filed 2/11/81; Order PT 74-6, § 458-16-020, filed 9/11/74.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1985 through 1988 Taxes

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

1989 Taxes and Thereafter

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

[Statutory Authority: RCW 84.36.389. 88-02-008 (Order PT 87-8), § 458-16-050, filed 12/28/87. Statutory Authority: RCW 84.36.389 and 84.36.865. 83-19-029 (Order PT 83-5), § 458-16-050, filed 9/14/83.

Statutory Authority: RCW 84.36.389. 81-05-018 (Order PT 81-6), § 458-16-050, filed 2/11/81; Order PT 74-6, § 458-16-050, filed 9/11/74.]

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

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

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

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

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

[Statutory Authority: RCW 84.36.389. 81-05-018 (Order PT 81-6), § 458-16-060, filed 2/11/81; Order PT 74-6, § 458-16-060, filed 9/11/74.]

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

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

[Statutory Authority: RCW 84.36.389. 81-05-018 (Order PT 81-6), § 458-16-070, filed 2/11/81; Order PT 74-6, § 458-16-070, filed 9/11/74.]

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

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

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

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

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

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

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

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

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

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

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

WAC 458-16-081 Improvements to single family dwellings—Exemption—Filing—Amount—Limits. Any physical improvement to an existing single family dwelling upon real property shall be exempt from taxation for three assessment years: *Provided,* That no exemption shall be allowed unless a claim is filed with the county assessor of the county in which the property is located prior to completing the improvement. The claim shall be on such forms as prescribed by the department of revenue and supplied by the county assessor.

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

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

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

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

[Statutory Authority: RCW 84.36.400. 81-04-052 (Order PT 81-1), § 458-16-081, filed 2/4/81; Order PT 75-3, § 458-16-081, filed 5/23/75.]

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

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

(a) There is no need to construe a statute when its language is plain.

(b) The burden of proving entitlement to a property tax exemption rests upon the taxpayer claiming exemption.

(c) Statutes exempting property from taxation shall be strictly construed, though fairly and in keeping with the ordinary meaning of the language employed.

(d) If there is any doubt regarding the exact meaning of a statute exempting property from taxation, the statute shall be construed in favor of the power to tax and against the person claiming the exemption because taxation is the rule and exemption is the exception.

(e) If the legislature has created an exemption, the exemption must not be enlarged by construction since it is reasonable to presume that the legislature has granted in express terms all that it intended to grant. An exemption must be limited to the very terms of the statute enacted; if not so limited, the exemption would be enlarged beyond what the legislature intended to exempt.

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

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

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

WAC 458-16-110 Applications—Who must file, initial applications, renewal applications, annual certifications. (1) **Introduction.** This section explains the procedures property owners must follow to apply for and to renew all real and personal property tax exemptions provided under chapter 84.36 RCW for which the taxpayer must apply to receive.

(2) **Application required.** All foreign national governments, cemeteries, nongovernmental nonprofit corporations, organizations, and associations, and soil and water conservation districts seeking exemption from ad valorem property taxation under the provisions of chapter 84.36 RCW shall apply for exemption with the department of revenue. Unless otherwise exempted by law, no real or personal property shall be exempt from taxation unless an application has first been filed and exemption has been granted therefor.

(3) **Initial applications.** In general, initial applications for exemption of real or personal property shall be filed with the department of revenue on or before March 31. However, when real property that may qualify for exemption is acquired or when real property is converted to a use that may qualify the property for exemption, in order for the property to be granted exemption, an initial application must be filed with respect to the property within sixty days following acquisition or conversion; if this application is not received within this period, the penalties set forth in WAC 458-16-111 will be applied. All initial applications shall comply with the following:

(a) The application shall be made on a form prescribed by the department and signed by an authorized agent of the applicant.

(b) To the extent exemption is sought for real property, each application may include all property that is contiguous and part of a homogeneous unit. Except with respect to applications for exemption of church property involving a noncontiguous parsonage or convent, a separate application must be submitted for real property that is not both contiguous and part of a homogeneous unit.

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

(ii) A homogeneous unit means one where the property is under the control of a single applicant and the operation and use of the property is integrated with and directly related to the activity of the applicant.

(c) The application shall include copies of the articles of incorporation or association, or constitution or other establishing document, together with all current amendments thereto, and also include a copy of the bylaws of the applicant. The application shall also include a copy of any current letter from the Internal Revenue Service that grants the applicant exemption from payment of federal income taxes, unless the nonprofit organization, association, or corporation is part of a larger organization, association, or corporation, like a church or the boy scouts, that has been issued a group 501 (c)(3) exemption ruling by or is otherwise exempt from filing with the Internal Revenue Service. If copies of these documents have previously been filed with the department and are still current, the application need not include them.

(d) The application shall include an accurate map identifying by dimension the use or proposed use of all real property including buildings, building sites, parking areas, landscaping, vacant areas, and, if requested by the department, floor plans of multistoried buildings from which a determination exempting the total area can be made or from which a segregation for partial exemption can be made.

(e) The application shall accurately describe the real and personal property for which exemption is sought. The application shall include a legal description of all real property and provide the county tax parcel number for each parcel of real property. A copy of the current deed relative to the real property shall also be included with the application.

(f) The application shall indicate whether any of the real or personal property that is the subject of the application is leased or loaned from or to others, and if so, include a copy of the lease agreement and further indicate the following:

(i) Which property is leased or loaned;

(ii) The amount of the rent or other consideration;

(iii) To whom or from whom the property is loaned or leased;

(iv) What use is being made of the property; and

(v) What is the monthly amount of operation and maintenance costs.

(4) **Renewal applications.** In order to requalify for exemption, each applicant (except nonprofit cemeteries) shall submit a renewal application not later than March 31 of each fourth year following the date of the most recent initial application. The renewal application shall be made on forms prescribed by the department and signed by an authorized agent of the applicant, and shall include information regarding any change in use or in exempt status or any change in the items covered in subsection (3)(b) through (f) of this section, since the filing of the initial application or since the filing of the previous renewal application.

(5) **Annual certifications - affidavit.** In order to retain the exemption from property taxation, each applicant (except nonprofit cemeteries) that has previously been granted exemption shall annually file an affidavit with the department certifying that the use and exempt status of the real and personal property claimed as exempt has not changed. These affidavits shall be on forms prescribed by the department and shall be in accordance with the following:

(a) The department shall annually on or before January 1 mail affidavit forms or, when appropriate, renewal forms to owners of record of exempt property at their last known address.

(b) The affidavit form or renewal form shall be filed with the department no later than March 31 and signed by an authorized agent of the applicant. The filing shall be due by March 31 regardless of whether the form was received by the applicant from the department.

(c) If the applicant fails to file the affidavit or renewal form within a reasonable time after the due date, and after the department has mailed an additional notice to the applicant at the applicant's last known address, the department may remove the exemption from the property and upon removal shall so notify the assessor in the county where the property is located.

(6) **Failure to file renewal application or annual certification.** When the exemption has been removed as a result of an applicant's failure to file a renewal application or an annual certification, if the applicant wishes to requalify for exemption:

(a) Within the same assessment year, the applicant must complete and file a renewal application or an annual certification together with any required late filing penalties; or

(b) Within a subsequent assessment year, the applicant must file an initial application together with the initial filing fee and any required late filing penalties.

(7) **Filing fees and penalties.** All initial applications, renewal applications or annual certifications are subject to the filing fees and penalties set forth in WAC 458-16-111.

(8) **Effective date of exemption.** Applications that are approved shall be effective for property taxes due and payable the year following the year of application. Applications for previous years, up to a maximum of three years from the date of payment of the tax, may be accepted if the applicant provides proof acceptable to the department that the property qualified for exemption in the assessment year prior to the tax year for which exemption is claimed and the initial filing fee and late filing penalties are paid.

(9) **Where to obtain application forms.** Applications for exemption may be obtained from any county assessor's office or from the department of revenue.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-110, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. 85-05-025 (Order PT 85-1), § 458-16-110, filed 2/15/85; 81-05-017 (Order PT 81-7), § 458-16-110, filed 2/11/81; Order PT 77-2, § 458-16-110, filed 5/23/77; Order PT 76-2, § 458-16-110, filed 4/7/76. Formerly WAC 458-12-146.]

WAC 458-16-111 Filing fees, penalties and refunds. (1) **Introduction.** This section explains the fee that must accompany an initial application or renewal application for property tax exemption made under the provisions of chapter 84.36 RCW. This section also describes the late filing penalty that is assessed whenever an initial application, renewal application, or annual certification is received after the filing deadline.

(2) **Filing fee.** A filing fee of thirty-five dollars is due with each initial application and each renewal application, as these applications are described in WAC 458-16-110. There is no fee for annual certifications.

(3) **Late filing penalty.** A late filing penalty of ten dollars is due for every month or portion thereof when initial applications, renewal applications or annual certifications are filed after the due date. (See WAC 458-16-110 for the specific deadlines for each type of application or certification.) Late filing penalties are calculated from the date the filing was due to the date of the postmark.

(4) **Full payment required before application or certification will be considered.** The department will not consider an application or a certification for property tax exemption until all filing fees and penalties have been paid. Upon receipt of an application or certification accompanied

by less than the full amount due, the department shall promptly notify the applicant in writing of the amount due.

(5) **Refunds.** No filing fees or late filing penalties will be refunded after a determination on the application or certification is issued by the department. However, filing fees and late filing penalties will be refunded under the following circumstances:

(a) When a duplicate application or certification for exemption for the same property is filed for the same year;

(b) When an application for exemption is received by the department and the department has no authority to consider the application. For example, an application filed by a governmental entity is not one which the department may consider; or

(c) When a written request for withdrawal of the application for exemption is received before a determination has been issued by the department. The request for withdrawal must be signed by an authorized agent of the applicant.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-111, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.389 and 84.36.865. 88-13-041 (Order PT 88-8), § 458-16-111, filed 6/9/88. Statutory Authority: RCW 84.36.865. 85-05-025 (Order PT 85-1), § 458-16-111, filed 2/15/85; 81-05-017 (Order PT 81-7), § 458-16-111, filed 2/11/81; Order PT 77-2, § 458-16-111, filed 5/23/77.]

WAC 458-16-115 Personal property exemption—Exceptions. (1) The personal property exemption in RCW 84.36.110 shall not be applied to:

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

(b) Mobile homes; or

(c) Floating homes.

[Statutory Authority: RCW 84.36.110, 84.08.010(2) and 84.36.865. 89-12-013 (Order 89-7), § 458-16-115, filed 5/26/89.]

WAC 458-16-120 Appeals and notice of determination. The department of revenue shall review each completed application and make a determination thereon, by August 1 or within thirty days whichever is later.

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

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

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

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

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

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

The state board of tax appeals shall consider any appeals which are timely filed to determine (1) if the property is or is not entitled to an exemption, and (2) the amount or portion thereof.

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

[Statutory Authority: RCW 84.36.865. 81-05-017 (Order PT 81-7), § 458-16-120, filed 2/11/81; Order PT 77-2, § 458-16-120, filed 5/23/77; Order PT 76-2, § 458-16-120, filed 4/7/76. Formerly WAC 458-12-147.]

WAC 458-16-130 Change in taxable status of nongovernmental real property. (1) **Introduction.** This section explains what occurs when a change in ownership or use of real property owned or used by a nongovernmental entity causes the property to either gain or lose its tax exempt status.

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

(a) "Cessation of use" means that an owner or user of exempt real property has ceased to physically use the property for an exempt use. The term also refers to property that has lost its exempt status because it was transferred, loaned, or rented to an owner that is not entitled to an exemption.

(b) "Real property" means real property owned or used by a nongovernmental organization, association, corporation, or private individual.

(c) "Rollback" refers to the provisions of RCW 84.36.810 that make previously exempt property subject to back taxes and interest because of a change in ownership or a cessation of an exempt use unless the subject property has been exempt for at least ten years.

(3) **Exempt to taxable status.** A change in the ownership or use of real property that makes the property no longer exempt from taxation shall cause the real property to be assessed and taxed as of the date of the cessation of use or change of ownership, as provided in RCW 84.40.350 through 84.40.390. If the owner or new owner begins to use the property for an exempt use within one hundred twenty days of the date the previous exempt use ceased, the property will not be placed back on the tax assessment roll as of the date of cessation. However, if an agreement establishing an alternate exempt use has not been signed or an alternative exempt use has not been found within one hundred twenty days, the property will be placed back on the assessment roll and, if appropriate, the rollback provisions of RCW 84.36.810 will be applied as of the date the cessation of use occurred. All real property that is no longer exempt from taxation shall be subject to a pro rata share of taxes allocable for the remaining portion of the year in which the cessation of use or change in ownership occurred. If only a portion of

the property no longer qualifies for tax exemption, only that portion shall be assessed and taxed.

(a) Real property changes from exempt to taxable status whenever the property:

(i) Is transferred through either sale, exchange, gift, or contract from tax exempt ownership to taxable ownership;

(ii) Is transferred through either sale, exchange, gift, or contract from tax exempt ownership to another nonprofit organization, association, or corporation that has not applied for a property tax exemption;

(iii) Is converted to a taxable use; or

(iv) When it otherwise loses its exempt status.

(b) Examples.

(i) Example 1. For five years, nonprofit "A" operates a rehabilitative social service facility and receives a property tax exemption for this property. Nonprofit "A" transfers this property to nonprofit "B," who continues to receive the exemption for this property. Two years after acquiring the property nonprofit "B" ceases to use the exempt property for an exempt purpose. One hundred days after the exempt activity ceased, nonprofit "B" sells the exempt property to XYZ Printing Company, a profit seeking business. This property became taxable at the time nonprofit "B" vacated the premises. The provisions of RCW 84.34.810 will be applied as of the date of the move.

(ii) Example 2. A nonprofit hospital owns and occupies a building for which it receives a property tax exemption. The hospital ceases to use the property on January 1, 1992, and does not intend to use or occupy the exempt property any longer. It intends to rent this property to another nonprofit organization and actively advertises and looks for such a tenant. On April 15, 1992, a nonprofit nursing home signs a lease agreement with the hospital to use and occupy the property for an exempt purpose effective June 1, 1992. In this instance, the property will not be subject to taxation for the interim period.

(c) The taxes owing when property changes from exempt to taxable ownership shall be prorated as of:

(i) The date the instrument of sale, exchange, gift, or contract is executed; or

(ii) The date the property is converted to a taxable use.

(d) When the status of real property changes from exempt to taxable, the rollback provisions of RCW 84.36.810 apply. Taxes are collected by the county treasurer in accordance with that statute if this property was previously exempt from ad valorem taxation under any of the following provisions:

(i) It was owned and used by:

(A) A nonprofit organization, association or corporation for character building, benevolent, protective, or rehabilitative social services (RCW 84.36.030);

(B) A nonprofit church, denomination, group of churches, or an organization or association, the membership of which is comprised solely of churches and/or their qualified representatives, as a church camp (RCW 84.36.030);

(C) An organization or society of veterans of any war of the United States (RCW 84.36.030);

(D) Corporations formed under an act of congress to furnish volunteer aid to members of the armed forces of the United States (RCW 84.36.030);

(E) Corporations formed under an act of congress to carry on a system of national and international relief to mitigate and to prevent suffering caused by pestilence, famine, fire, floods, and other national calamities (RCW 84.36.030);

(F) Nonprofit organizations exempt from federal income tax under section 501 (c)(3) of the Internal Revenue Code that are guarantee agencies under the federal guaranteed student loan program or guarantee agencies that issue debt to provide or acquire student loans (RCW 84.36.030);

(G) Nonprofit organizations, associations or corporations in connection with the operation of a public assembly hall, public meeting place, community meeting hall, or community celebration facility (RCW 84.36.037);

(H) Nonprofit organizations for solicitation or collection of gifts, donations, or grants for character building, benevolent, protective, or rehabilitative social services or for distribution to at least five other nonprofit organizations or associations that provide such social services (RCW 84.36.550);

(I) Associations maintaining and exhibiting art, scientific or historical collections for the benefit of the general public and not for profit (RCW 84.36.060);

(J) Fire companies for preventing and fighting fires (RCW 84.36.060); or

(K) Humane societies (RCW 84.36.060).

(ii) It was used by:

(A) Nonprofit day care centers (RCW 84.36.040);

(B) Free public libraries (RCW 84.36.040);

(C) Nonprofit orphanages (RCW 84.36.040);

(D) Nonprofit homes for the sick or infirm or nonprofit hospitals for the sick (RCW 84.36.040);

(E) Nonprofit outpatient dialysis facilities (RCW 84.36.040); or

(F) Nonprofit homes for the aging (RCW 84.36.041).

(iii) It was owned or used for nonprofit schools or colleges (RCW 84.36.050).

(iv) It was owned or leased, and used by:

(A) Nonprofit organizations providing emergency or transitional housing to low-income homeless persons or victims of domestic violence (RCW 84.36.043); or

(B) Associations engaged in the production and performance of musical, dance, artistic, dramatic, or literary works for the benefit of the general public and not for profit (RCW 84.36.060).

(e) When real property that was previously exempt under the provisions of RCW 84.36.260, that is, the property was used to conserve ecological systems, natural resources, or open space, becomes taxable, the rollback provisions of RCW 84.36.262 shall apply.

(4) **Acquiring tax exempt status.** Within sixty days of acquiring real property that may qualify for exemption, or within sixty days of converting real property to a use that may qualify for exemption, any nongovernmental organization, association, or corporation that wishes to have the property exempted from ad valorem taxation must file an application with the department of revenue relating to the subject property seeking either a new or continued exemption from property tax under the provisions of chapter 84.36 RCW. All applications must comply with the requirements set forth in WAC 458-16-110 and 458-16-111.

(a) If the application is approved, the property will be exempt from taxes payable the following year.

(b) If exempt property is transferred from one nonprofit organization, association, or corporation to another, the property shall continue to be exempt from taxation upon the timely receipt of the required application from the purchasing organization and after approval of this application.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-130, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.389 and 84.36.865. 88-13-041 (Order PT 88-8), § 458-16-130, filed 6/9/88. Statutory Authority: RCW 84.36.865. 85-05-025 (Order PT 85-1), § 458-16-130, filed 2/15/85. Statutory Authority: RCW 84.36.389 and 84.36.865. 83-19-029 (Order PT 83-5), § 458-16-130, filed 9/14/83. Statutory Authority: RCW 84.36.865. 81-21-009 (Order PT 81-13), § 458-16-130, filed 10/8/81; 81-05-017 (Order PT 81-7), § 458-16-130, filed 2/11/81; Order PT 77-2, § 458-16-130, filed 5/23/77; Order PT 76-2, § 458-16-130, filed 4/7/76. Formerly WAC 458-12-148.]

WAC 458-16-150 Cessation of use—Taxes collectible for prior years. (1) **Introduction.** This section explains what occurs when property loses its tax exempt status and is placed back on the tax rolls, as well as the back taxes and interest that are collected under the provisions of RCW 84.36.810 when an exempt use ceases, unless the property has been exempt for more than ten years or is otherwise exempt from the provisions of this statute.

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

(a) "Cessation of use" means that an owner or user of exempt real property has ceased to physically use the property for an exempt purpose. The term also refers to property that has lost its exempt status because it was transferred, loaned, or rented to an owner that is not entitled to an exemption.

(b) "Relocation of the activity" means that a portion or all of an exempt use has been relocated from the original site to a new location. The term shall not include undeveloped property of camp facilities.

(c) "Rollback" refers to the provisions of RCW 84.36.810 that make previously exempt property subject to back taxes and interest because of a cessation of an exempt use or a change in ownership unless the subject property has been exempt for at least ten years.

(3) **Applicability of this section.** In accordance with RCW 84.36.810, upon cessation of any exempt use the county treasurer shall collect all taxes that would have been paid if the property had not been exempt during the preceding three years, or for the life of the exemption, whichever is less, plus interest computed at the same rate and in the same manner as that upon delinquent property taxes. If the property has been exempt for more than ten years, this section is not applicable.

(a) When the status of real property changes from exempt to taxable, the rollback provisions of RCW 84.36.810 apply. Taxes are collected by the county treasurer in accordance with that statute if this property was previously exempt from ad valorem taxation under any of the following provisions:

(i) It was owned and used by:

(A) A nonprofit organization, association or corporation for character building, benevolent, protective, or rehabilitative social services (RCW 84.36.030);

(B) A nonprofit church, denomination, group of churches, or an organization or association, the membership of which is comprised solely of churches and/or their qualified representatives, as a church camp (RCW 84.36.030);

(C) An organization or society of veterans of any war of the United States (RCW 84.36.030);

(D) Corporations formed under an act of congress to furnish volunteer aid to members of the armed forces of the United States (RCW 84.36.030);

(E) Corporations formed under an act of congress to carry on a system of national and international relief to mitigate and to prevent suffering caused by pestilence, famine, fire, floods, and other national calamities (RCW 84.36.030);

(F) Nonprofit organizations exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code that are guarantee agencies under the federal guaranteed student loan program or guarantee agencies that issue debt to provide or acquire student loans (RCW 84.36.030);

(G) Nonprofit organizations, associations or corporations in connection with the operation of a public assembly hall, public meeting place, community meeting hall, or community celebration facility (RCW 84.36.037);

(H) Nonprofit organizations for solicitation or collection of gifts, donations, or grants for character building, benevolent, protective, or rehabilitative social services or for distribution to at least five other nonprofit organizations or associations that provide such social services (RCW 84.36.550);

(I) Associations maintaining and exhibiting art, scientific or historical collections for the benefit of the general public and not for profit (RCW 84.36.060);

(J) Fire companies for preventing and fighting fires (RCW 84.36.060); or

(K) Humane societies (RCW 84.36.060).

(ii) It was used by:

(A) Nonprofit day care centers (RCW 84.36.040);

(B) Free public libraries (RCW 84.36.040);

(C) Nonprofit orphanages (RCW 84.36.040);

(D) Nonprofit homes for the sick or infirm or nonprofit hospitals for the sick (RCW 84.36.040);

(E) Nonprofit outpatient dialysis facilities (RCW 84.36.040); or

(F) Nonprofit homes for the aging (RCW 84.36.041).

(iii) It was owned or used for nonprofit schools or colleges (RCW 84.36.050).

(iv) It was owned or leased, and used by:

(A) Nonprofit organizations providing emergency or transitional housing to low-income homeless persons or victims of domestic violence (RCW 84.36.043); or

(B) Associations engaged in the production and performance of musical, dance, artistic, dramatic, or literary works for the benefit of the general public and not for profit (RCW 84.36.060).

(b) This section applies only when the ownership of the property is transferred or when fifty-one percent or more of the area has lost its exempt status. For example, if a nonprofit school or college that owns or uses two hundred acres for educational purposes and is receiving a property tax exemption for this property transfers ten acres, the ten acres are subject to the rollback provisions set forth in subsection (3) of this section if the property has been exempt for less than ten years. The nonprofit school or college will continue to receive a property tax exemption for the remaining one hundred ninety acres as long as the exempt property is used for the exempt use.

(c) This additional tax shall not be imposed if the cessation of use results solely from any of the following:

(i) Transfer to a nonprofit organization, association, or corporation for a use that also qualifies for and is granted exemption under the provisions of chapter 84.36 RCW;

(ii) A taking through an exercise of the power of eminent domain;

(iii) A sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of this power;

(iv) An official action by an agency of the state of Washington or by the county or city within which the exempt property is located that disallows the present exempt use of the property;

(v) A natural disaster (such as a flood, windstorm, earthquake, or other such calamity) that changes the use of the property;

(vi) Relocation of the activity and use of another location or site;

(vii) Cancellation of a lease on property previously exempt as:

(A) A nonprofit day care center;

(B) A library;

(C) An orphanage;

(D) A home for the sick or infirm;

(E) A hospital;

(F) An outpatient dialysis facility;

(G) A nonprofit home for the aging;

(H) A nonpermanent shelter for low-income homeless persons or victims of domestic violence; and

(I) An organization that either produces or performs, or both, musical, dance, artistic, dramatic, or literary works.

(viii) A change in the exempt portion of a home for the aging, as long as some portion of the home remains exempt; or

(ix) The conversion of a home for the aging from full exemption to a partial exemption or to taxable status for taxes payable in 1994, 1995, and 1996 (RCW 84.36.041).

(4) **Duty to notify.**

(a) An owner of exempt property who knows of or who has information regarding a change in the use of exempt property shall notify the department of revenue of this change. An owner of exempt property must also report the loan or rental of all or a portion of the exempt property since the loan or rental of exempt property may change its taxable status.

(b) Any other person who knows or has information regarding a change in use of exempt property shall notify the county assessor of any such change. The assessor, in turn, shall report this information to the department of revenue.

(c) After being notified about a change in use of exempt property, the department may physically inspect the property to determine if the reported change has taken place.

(d) After a change in use, the final determination of the taxable status of the subject property will be made by the department of revenue.

(5) **Notice to owner.** When it is determined that a change in use has occurred and the rollback provisions may apply, the department of revenue shall notify the current owner of exempt property and, in the case of a transfer, the previous legal owner of exempt property that the change in use changed the taxable status of the property and that the property may be subject to the rollback provisions set forth in subsection (3) of this section. The owner(s) of this property shall have thirty days from the date of the notice to submit any comments or information to the department as to why the rollback provisions should not be applied. The department shall then issue a final determination.

(6) **County treasurer.** Upon notification from the department of revenue that the exempt use of the property has ceased, the county treasurer shall compute and collect the taxes payable, including interest computed at the same rate and in the same manner as that upon delinquent property taxes. The interest collected shall be placed in the county current expense fund.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-150, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. 86-12-034 (Order PT 86-2), § 458-16-150, filed 5/30/86; 85-05-025 (Order PT 85-1), § 458-16-150, filed 2/15/85. Statutory Authority: RCW 84.36.389 and 84.36.865. 83-19-029 (Order PT 83-5), § 458-16-150, filed 9/14/83. Statutory Authority: RCW 84.36.865. 82-22-060 (Order PT 82-8), § 458-16-150, filed 11/2/82; 81-05-017 (Order PT 81-7), § 458-16-150, filed 2/11/81; Order PT 77-2, § 458-16-150, filed 5/23/77; Order PT 76-2, § 458-16-150, filed 4/7/76. Formerly WAC 458-12-151.]

WAC 458-16-165 Conditions under which nonprofit organizations, associations, or corporations may obtain a property tax exemption. (1) **Introduction.** Nonprofit organizations, associations, and corporations may obtain a property tax exemption under the provisions of RCW 84.36.030, 84.36.035, 84.36.037, 84.36.040, 84.36.041, 84.36.043, 84.36.045, 84.36.047, 84.36.050, 84.36.060, 84.36.350, 84.36.480, and 84.36.550. To be exempt from property taxation, these nonprofit organizations, associations, or corporations must also comply with the requirements contained in RCW 84.36.805 and RCW 84.36.840. This section explains the conditions and requirements set forth in RCW 84.36.805 and 84.36.840. Property exempt under RCW 84.36.030 is not subject to the requirements of RCW 84.36.840.

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

(a) "Maintenance and operation expenses" means items of expense allowed under generally accepted accounting principles.

(b) "Revenue" means income received from the loan or rental of exempt property when the income exceeds the amount of the expenses of maintenance and operation attributable to the portion of the property loaned or rented.

(c) "Personal service contract" means a contract between a nonprofit organization, association, or corporation and an independent contractor under which the independent contractor provides a service on the organization's, association's, or corporation's tax exempt property. (See example contained in subsection (3)(c) of this section.)

(3) **Exclusive use.** Unless the applicable statute states otherwise, the exempt property shall be exclusively used for the actual operation of the nonprofit organization, association, or corporation that applied for and received the property tax exemption and the amount of exempt property shall not exceed an area reasonably necessary for that purpose.

(a) Loan or rental of exempt property. As a general rule, the loan or rental of the property or a portion of the property does not subject the property to taxation if the rents or donations received for the use of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented and the property would be exempt from tax if owned by the organization to which it is loaned or rented, except for property owned by organizations and societies of war veterans, public assembly halls, public meeting places, community meeting halls, and community celebration facilities.

(i) Exception - loaned or rented for less than fifteen days. If exempt property is loaned or rented the tax exempt status of the property will not be affected if:

(A) The property is loaned or rented for a period of fifteen consecutive days or less;

(B) The property is loaned or rented to another nonprofit organization, association, or corporation that would qualify for exemption if it owned the loaned or rented property, unless the property is owned by organizations and societies of war veterans, public assembly halls, public meeting places, community meeting halls, and community celebration facilities; and

(C) All income received from the rental is devoted exclusively to the exempt purpose of the nonprofit organization, association, or corporation that receives the tax exemption.

(ii) Loaned or rented to produce income. If the property is loaned or rented and the lessor or lessee intends to produce revenue from the loan or rental, the subject property shall not be exempt. Property loaned or rented from which revenue is to be produced must be segregated and taxed whether or not the revenue is devoted to exempt purposes.

(iii) Example. If a room or floor within a building owned by a nonprofit hospital is rented to a social service agency and the social service agency intends to use this area to produce revenue, the rented portion of the building must be segregated from the remainder of the building that is being used for exempt purposes. The segregated and rented portion of the building will then be subject to ad valorem property taxes.

(b) Fund-raising activities. The use of exempt property for fund-raising activities sponsored by an exempt organization, association, or corporation does not subject the property to taxation if the fund-raising activities are consistent with the purposes for which the exemption was granted. The term "fund raising" means any revenue-raising activity limited to less than five days in length that disburses fifty-one percent or more of the profits realized from the activity to the exempt nonprofit organization, association, or corporation that is holding the fund raising.

(i) Example 1. A nonprofit social service agency holds an art auction in the auditorium of its tax exempt facility to raise funds. Since the fund-raising activity is being held on exempt property, the activity must be less than five days in length and fifty-one percent of the profits must be disbursed to the social service agency.

(ii) Example 2. A nonprofit school has a magazine subscription drive to raise funds during which the subscriptions are sold door-to-door by students. Since the subscription drive is not being held on exempt property, the drive is not limited to less than five days and fifty-one percent of the profits from this fund-raising activity do not have to be remitted to the school.

(c) Personal service contract - exempt programs. Programs provided under a personal service contract will not jeopardize the exemption if the following conditions are met:

(i) The program is compatible and consistent with the purposes of the exempt organization, association, or corporation;

(ii) The exempt organization, association, or corporation maintains separate financial records as to all receipts and expenses related to the program; and

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

(iv) Example. A nonprofit school may decide to offer aerobic classes to promote general health and fitness. All brochures and bulletins that advertise these classes must show that the school is sponsoring the classes. Under the terms of the contract between the nonprofit school and the aerobic instructor, an independent contractor, the instructor must provide the classes for a predetermined fee. All fees collected from the participants of the classes must be received by the school; the school, in turn, will absorb all costs related to the classes.

(d) Personal service contract - nonexempt programs. Programs provided under a personal service contract (i) that require the contractor to reimburse the nonprofit organization for program expenses or (ii) in which the instructor is paid a fee based on the number of people that attend the program will be viewed as a rental agreement and will subject the property to ad valorem property tax.

(4) **Irrevocable dedication required.** The property must be irrevocably dedicated to the purpose for which the exemption was granted. Upon liquidation, dissolution, or abandonment by a nonprofit organization, association, or corporation, said property shall not directly or indirectly benefit any shareholder or individual except a nonprofit organization, association, or corporation that would be entitled to a property tax exemption if it applied for it.

Exception: If, under the terms of a loan or rental agreement, a nonprofit organization, association, or corporation receives the benefit of the property tax exemption, the property need not be irrevocably dedicated if it is loaned or rented to a nonprofit organization, association, or corporation for use as:

(a) A nonprofit day care center (RCW 84.36.040);

(b) A library (RCW 84.36.040);

(c) An orphanage (RCW 84.36.040);

(d) A home for the sick or infirm (RCW 84.36.040);

(e) A hospital (RCW 84.36.040);

(f) An outpatient dialysis facility (RCW 84.36.040);

(g) A nonprofit home for the aging (RCW 84.36.041);

(h) A nonpermanent shelter to low-income homeless persons or victims of domestic violence (RCW 84.36.043); or

(i) A facility used to produce or perform musical, dance, artistic, dramatic, or literary works (RCW 84.36.060).

(5) **No discrimination allowed.** The facilities located on and the services offered on the exempt property shall be available to all persons regardless of race, color, national origin, or ancestry.

(6) **Compliance with licensing or certification requirements.** The nonprofit organization, association, or corporation shall comply with all applicable licensing and

certification requirements when a law or regulation of the federal, state, or local government requires it.

(7) **Property sold subject to an option to repurchase.** If property is sold to a nonprofit organization, association, or corporation subject to an option to repurchase by the seller, the property shall not qualify for exempt status.

(8) **Duty to produce financial records.** In order to determine whether an organization, association, or corporation is exempt under the provisions of chapter 84.36 RCW and before the exemption is renewed each year, the organization, association, or corporation claiming a property tax exemption under chapter 84.36 shall file a signed statement, made under oath, with the department of revenue on forms furnished by the director or his/her designee, that its income and receipts, including donations, have been applied to the actual expenses of maintenance and operation or for its capital expenditures and to no other purpose. This signed statement shall also include a statement of the receipts and disbursements of the organization, association, or corporation.

(a) The provisions of this subsection do not apply to an organization, association, or corporation either applying for or receiving exemption under RCW 84.36.030.

(b) When an organization, association, or corporation has been granted exemption from ad valorem taxation, this signed statement must be submitted on or before April 1 each year. If this statement is not received on or before April 1, the department shall remove the tax exemption from the property. However, the department shall allow a reasonable extension of time for filing if the tax exempt organization, association, or corporation has submitted a written request for this extension on or before the required filing date and for good cause shown therein.

(9) **Caretaker's residence.** If a nonprofit organization, association, or corporation exempt under chapter 84.36 RCW employs a caretaker to provide either security or maintenance service and a caretaker's residence is located on exempt property, the residence may qualify for exemption if the following conditions are met:

(a) The caretaker's duties include regular surveillance, patrolling of the exempt property, and routine maintenance services;

(b) The size of the residence is reasonable and appropriate in light of the caretaker's duties and the size of the exempt property; and

(c) The caretaker receives the use of the residence as part of his or her compensation and does not pay rent. Reimbursement of utilities expenses created by the caretaker's presence will not be considered as rent.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-165, filed 3/3/94, effective 4/3/94.]

WAC 458-16-180 Cemeteries. (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.020 to public burying grounds or cemeteries.

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

(a) "Burial" means the placement of uncremated human remains in the ground.

(b) "Dedicated" means a written declaration of dedication of the property to which the exemption is to be applied has been filed with the county auditor in the county where the property is located, dedicating the property exclusively as a public burying ground or cemetery.

(c) "Entombment" means the placement of uncremated human remains in a crypt in a mausoleum.

(d) "Interment" means the disposition of human remains by cremation and inurnment, entombment, or burial in a place used, or intended to be used, and dedicated, for a public burying ground or cemetery.

(e) "Inurnment" means placing cremated remains in an urn or other container.

(f) "Necessary administration and maintenance" means those administrative and maintenance functions necessary to administer and maintain the cemetery and the necessity of which would be nonexistent but for the presence of the cemetery.

(g) "Public burying grounds or cemeteries" means places used, and dedicated, for the interment of human remains, and also includes:

(i) An "abandoned cemetery," "historical cemetery," and "historic grave" as defined in chapter 68.60 RCW;

(ii) Indian graves as protected under chapter 27.44 RCW; and

(iii) Nonprofit cemeteries owned or operated by any recognized religious denomination or any of its churches that qualifies for a property tax exemption under the provisions relating to churches under the provisions of RCW 84.36.020.

(3) **Exemption.** The following property shall be exempt from taxation when used without discrimination as to race, color, national origin, or ancestry:

(a) All lands used, or to the extent used, exclusively for public burying grounds or cemeteries.

(b) All buildings required for and used, or to the extent used, exclusively for necessary administration and maintenance of public burying grounds or cemeteries including, but not limited to, the groundskeeping or maintenance building and the administration building. This exemption does not generally include a residential building; however, a caretaker's residence may be exempt if the following conditions are met:

(i) The caretaker's duties include regular surveillance and patrolling of the property;

(ii) The size of the residence is reasonable and appropriate in light of the caretaker's duties and the size of the exempt property;

(iii) The caretaker, or the caretaker's substitute, is required on the premises at all hours the cemetery is closed or at least during the time when vandalism or other damage is most likely to occur; and

(iv) The caretaker receives the use of the residence as part of his or her compensation and does not pay rent. Reimbursement of utilities expenses created the caretaker's presence will not be considered as rent.

(4) **Applications and annual certifications.** Nonprofit cemetery corporations or associations are only required to file an initial application for exemption as described in WAC 458-16-110. For profit cemetery corporations or associations shall file renewal applications and annual certifications as required by WAC 458-16-110.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-180, filed 3/3/94, effective 4/3/94; Order PT 77-2, § 458-16-180, filed 5/23/77; Order PT 76-2, § 458-16-180, filed 4/7/76. Formerly WAC 458-12-190.]

WAC 458-16-190 Churches, parsonages and convents. (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.020 to churches, parsonages, and convents.

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

(a) "Church purposes" means the use of real and personal property owned by a nonprofit religious organization for religious worship or related administrative, educational, eleemosynary, and social activities. This definition is to be broadly construed. The term "use" includes real property owned by a nonprofit religious organization upon which a church shall be built.

(b) "Clergy person" means a person ordained or regularly licensed for religious service and includes both male and female individuals.

(c) "Commercial" refers to an activity or enterprise that has profit making as one of its primary purposes.

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

(e) "Eleemosynary" means charitable, including types of activities in which some social objective is served or general welfare is advanced.

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

(g) "Parsonage" means a residence, owned by a church, that is occupied by a clergy person designated for a particular congregation and who holds regular services for that congregation.

(h) "Regular services" means religious services that are conducted on a routine and systematic basis at prearranged times, days, and places. This term includes religious services that are conducted by a visiting or circuit clergy person who may only hold services once a month in a particular location if that person is scheduled to conduct services on a routine and prearranged basis on the exempt property.

(i) "Unoccupied land" means land that is undeveloped, unused, and upon which no structures or improvements have been built.

(A) This land includes, but is not limited to, greenbelt, wetland, and other undeveloped areas contiguous to an exempt church, parsonage, or convent.

(B) This land does not include parking lots, landscaped grounds, or playing fields.

(3) **Property exempt and extent of exemption.** All churches and the ground upon which a church is or shall be built, together with a parsonage, convent, structures and ground necessary for street access, parking, light, ventilation, and buildings and improvements required to maintain and safeguard the property owned by a nonprofit religious organization and wholly used for church purposes shall be exempt from property taxation to the following extent:

(a) The exempt area shall not exceed five acres of land, including ground that is occupied and unoccupied. Occupied ground is ground covered by the church, parsonage, convent, structures and ground necessary for street access, parking, light, ventilation, and buildings and improvements required for the maintenance and security of such property.

(b) The unoccupied land included within this five-acre limitation may not exceed one-third of an acre (fourteen thousand four hundred square feet), unless additional unoccupied land is required to conform with state or local codes, zoning, or licensing requirements.

(4) **Noncontiguous property.** A parsonage or convent may qualify for exemption even if located on land that is not contiguous to the church property; however, the five acre limitation still applies, as does the limitation described in subsection (3)(b) of this section with respect to unoccupied land.

(5) **Exemption of caretaker's residence.** A caretaker's residence located on church property may qualify for exemption if the following conditions are met:

(a) The caretaker's duties include regular surveillance and patrolling of the property;

(b) The size of the residence is reasonable and appropriate in light of the caretaker's duties and the size of the exempt property;

(c) The caretaker is required to provide either security or maintenance service described as follows:

(i) Security of the premises is provided by the caretaker, not merely by his or her presence, but by regular surveillance and patrolling of the grounds, locking gates if necessary, and generally acting in a manner to ensure the security of the property; or

(ii) Maintenance service is provided on a daily basis to open and close the premises, activate or shut down environmental systems, and provide other maintenance and custodial services necessary for the effective operation and utilization of the facilities; and

(d) The caretaker receives the use of the residence as part of his or her compensation and does not pay rent. Reimbursement of utilities expenses created by the caretaker's presence will not be considered as rent.

(6) **Property not used for church purposes.** When property is not used for church purposes, the exemption is lost. If a portion of the exempt property is used for commercial rather than church purposes, that portion must be segregated and taxed whether or not the proceeds received by the church from the commercial use are applied to church purposes.

(7) **Loan or rental of exempt property.** The tax exempt status of any property exempt under this section will not be affected if it is loaned or rented under the following conditions:

(a) The loan or rental must be to a nonprofit organization, association, corporation, or school;

(b) The loan or rental must be for an eleemosynary activity; and

(c) The rental income must be reasonable and devoted solely to the operation and maintenance of the property.

(8) **Fund-raising activities.** The use of exempt property for fund-raising activities sponsored by an exempt organization, association, or corporation does not subject the property to taxation if the fund-raising activities are consistent with the purposes for which the exemption was granted. The term "fund-raising" means any revenue-raising activity limited to less than five days in length, that disburses fifty-

one percent or more of the profits realized from the activity to the exempt nonprofit organization, association, or corporation that is holding the fund-raising, and that takes place on exempt property.

(a) Example 1. A nonprofit social service agency holds an art auction in the church basement to raise funds. Since the fund-raising activity is being held on exempt property, the activity must be less than five days in length and fifty-one percent of the profits must be disbursed to the social agency.

(b) Example 2. The women's auxiliary of the church has a candy sale to raise funds for the church's program to provide meals to the homeless during which the candy is sold door-to-door by members of the auxiliary. Since the candy sale is not being held on the exempt property, the sale is not limited to five days in duration nor do fifty-one percent of the profits from this fund-raising activity have to be remitted to the church.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-190, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. 82-22-060 (Order PT 82-8), § 458-16-190, filed 11/2/82; 81-21-009 (Order PT 81-13), § 458-16-190, filed 10/8/81; Order PT 77-2, § 458-16-190, filed 5/23/77; Order PT 76-2, § 458-16-190, filed 4/7/76. Formerly WAC 458-12-195.]

WAC 458-16-200 Land upon which a church or parsonage shall be built. (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.020 to land upon which a church is to be built or upon which a parsonage or convent is being built in conjunction with and on land contiguous to a church.

(2) **Exemption.** Any property upon which a church is to be built may be exempt from ad valorem taxation if the church has a specific plan and clear intent to use the land for this and no other purpose.

(a) This property may include land upon which a parsonage or convent is to be built on land contiguous to a church.

(b) A parsonage or convent to be built on noncontiguous real property shall not be entitled to exemption until the parsonage or convent is built and occupied by a clergy person.

(3) **Burden of proof.** A nonprofit religious organization claiming this exemption must submit proof that a reasonably specific and active program is being carried out to construct a church within a reasonable period of time. Such proof shall include sufficient information from which the department will be able to determine what portion of the property will qualify for exemption when construction is completed.

(4) **Proof of required intent.** Proof that may be submitted to evidence the required intent to build may include, but is not limited to:

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

(b) Itemized reasons for the proposed construction, such as:

(i) Need for expansion due to growth;

(ii) Replacement of wornout buildings; or

(iii) Initial facilities for a newly organized congregation or nonprofit religious organization;

(c) Clearly established plans for financing the construction;

(d) Proposed architectural plans that would show what portion of the property will be under actual exempt use;

(e) Building permits; or

(f) Any other proof the department may deem relevant to show an active program aimed at construction.

(5) **Time limit regarding future construction.** The length of time under which a property may be held for future construction under this section shall be dependent upon the intent evidenced under the circumstances of each individual situation. If there is no evidence of progress towards construction within a calendar year, the exemption will be removed.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-200, filed 3/3/94, effective 4/3/94; Order PT 77-2, § 458-16-200, filed 5/23/77; Order PT 76-2, § 458-16-200, filed 4/7/76. Formerly WAC 458-12-200.]

WAC 458-16-210 Nonprofit organizations or associations organized and conducted for nonsectarian purposes. (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.030(1) to nonprofit organizations or associations organized and conducted for nonsectarian purposes.

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

(a) "Benevolent" refers to social services or programs that are directed at persons of all ages, that arise from or are prompted by motives of charity or a sense of benevolence, that are marked by a kindly disposition to promote the happiness and prosperity of others, by generosity in and pleasure at doing good works, or that are organized for the purpose of doing good. For example, a benevolent organization may provide a food bank, a soup kitchen, or counseling services at cost.

(b) "Character building" means social services or programs that are designed for the general public good, that assist people with general living skills, that develop interview and job seeking skills, or that assist people in working towards independent living and self sufficiency. These services include, but are not limited to, programs designed to develop an individual's moral or ethical strength, leadership, integrity, self-discipline, fortitude, self-esteem, and reputation.

(c) "Commercial" refers to an activity or enterprise that has profit making as its primary purpose.

(d) "Community outreach group" means a nonprofit group organized to extend social services to a particular segment of the community; for example, a rescue mission organized to feed the homeless or a program that targets juveniles "at risk" of criminal or abusive behavior.

(e) "Nonsectarian purpose" means a purpose that is not associated with or limited to a particular religious group.

(f) "Protective" refers to activities that are meant to cover, to guard, or to shield other persons from injury or destruction or to save others from financial loss. For example, a protective organization may provide housing for battered persons or for the developmentally disabled or may assist persons with behavioral problems by providing encouragement, support, and training.

(g) "Rehabilitative or rehabilitation" refers to activities designed to restore individuals to a former capacity, to a condition of health, or to useful or constructive activity. For example, a rehabilitative organization may assist persons to overcome alcohol or substance abuse, or to overcome the affects of a physical injury, stroke, or heart attack.

(h) "Social service" means programs designed to help people resolve problems, become more self-sufficient, prevent dependency, strengthen family relationships, and/or enhance the functioning of individuals in society. These services include, but are not limited to, programs in the general categories of:

(i) Socialization and development; and

(ii) Therapy, help, rehabilitation, and social protection.

(3) **Exemption.** The real and personal property owned by a nonprofit organization or association is exempt from taxation if the organization, association, or corporation is organized and conducted for nonprofit and nonsectarian purposes. To be exempt, the property must be used for and integrally related to character-building, benevolent, protective, or rehabilitative social services directed at persons of all ages.

(a) To qualify for this exemption, there must be an element of gift and giving in the nonprofit organization's, association's, or corporation's activities, in relation to the people it serves. This element of gift and giving requires giving something of value with no expectation of compensation or remuneration. The words "gift" and "giving," within the context of this section, mean a voluntary act. In order to meet this requirement of gift and giving, the nonprofit organization, association, or corporation must annually meet one of the following conditions:

(i) Provide goods and/or services free of charge or at a rate that is at least twenty percent below the total actual cost of such goods and/or services to a minimum of fifteen percent of the total number of people assisted by that nonprofit organization, association, or corporation; or

(ii) Contribute at least ten percent of its total annual income towards the support of character-building, benevolent, protective or rehabilitative social services or programs. "Total annual income" refers to the total income reported to the Internal Revenue Service for that year and includes, but is not limited to, funds received through direct and indirect public support, government grants, membership fees, and other contributions. The term does not include funds that are specifically donated or contributed for capital improvements.

(A) In order to meet this ten percent requirement, a nonprofit organization, association, or corporation may include, but is not limited to, the value of time volunteers donate to carry out program services and functions, the loan of its facilities to community outreach groups, and gifts of scholarships and other fee subsidies.

(B) If a nonprofit organization utilizes volunteer time to reach the ten percent requirement, it must maintain records identifying the individuals who donate their services and the number of hours they donate. The value of donated time will be calculated by using the federal minimum wage standard.

(C) If a nonprofit organization allows community outreach groups to use its facilities free of charge, it must maintain records identifying the community outreach groups that used the exempt property and the number of hours each group used the exempt property. The value of this use will be calculated by multiplying the number of hours, or any portion of an hour, the facility is used by these groups times the usual and customary charge the nonprofit organization, association, or corporation charges to rent its facility to any other group.

(b) A nonprofit organization, association, or corporation may not impose conditions or restrictions on the use of the exempt property by persons who do not personally pay the total actual cost of a social service, except conditions or restrictions that are reasonably necessary to safeguard the exempt property and to comply with the purposes of this exemption.

(c) Property used by a fraternal organization or association for fraternal purposes does not qualify for an exemption under this section.

(d) If any portion of the organization's or association's property is used for a commercial rather than a nonprofit, nonsectarian exempt purpose that portion must be segregated and taxed.

(e) The sale of donated merchandise shall not be considered a commercial use of the property if the proceeds are dedicated to the exempt purpose associated with the nonprofit, nonsectarian organization or association. For example, thrift store operations that are restricted to the sale of "donated merchandise" will not jeopardize this exemption if the claimant can verify the proceeds are directed to an exempt purpose.

(4) **Additional requirements.** Any organization or association that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.030.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-210, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. 88-02-010 (Order PT 87-10), § 458-16-210, filed 12/28/87; 86-12-034 (Order PT 86-2), § 458-16-210, filed 5/30/86; 85-05-025 (Order PT 85-1), § 458-16-210, filed 2/15/85. Statutory Authority: RCW 84.36.389 and 84.36.865. 83-19-029 (Order PT 83-5), § 458-16-210, filed 9/14/83. Statutory Authority: RCW 84.36.865. 81-05-017 (Order PT 81-7), § 458-16-210, filed 2/11/81; Order PT 77-2, § 458-16-210, filed 5/23/77; Order PT 76-2, § 458-16-210, filed 4/7/76. Formerly WAC 458-12-205.]

WAC 458-16-215 Nonprofit organizations that solicit, collect, and distribute gifts, donations, or grants. (1) **Introduction.** This section explains the property tax exemption available under RCW 84.36.550 to nonprofit organizations that solicit or collect gifts, donations, or grants to be distributed to other nonprofit organizations for character-building, benevolent, protective, or rehabilitative social services.

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

(a) "Benevolent" refers to social services or programs that are directed at persons of all ages, that arise from or are prompted by motives of charity or a sense of benevolence, that are marked by a kindly disposition to promote the happiness and prosperity of others, by generosity in and pleasure at doing good works, or that are organized for the purpose of doing good. For example, a benevolent organization may provide a food bank, a soup kitchen, or counseling services at cost.

(b) "Gifts, donations, or grants" means only amounts that are given or received as outright gifts. Any amount, however designated, that is given or received in return for any goods, services, or other benefits will not be considered a "gift, donation, or grant" for the purposes of this rule. A "gift, donation, or grant" is an amount given or received without conditions, from detached and disinterested generosity, out of affection, respect, charity or like impulses and not because of any moral or legal duty or from the expectation of anticipated benefits. For example, the purchase of a "raffle ticket" or "bingo card" does not qualify as a "gift, donation, or grant" because the sponsor of the raffle or bingo game is selling a chance to win a prize and the participant is paying a portion of the purchase price of that prize and is receiving the chance to receive the prize or prizes in exchange for his or her payment.

(c) "Nonsectarian purpose" means a purpose that is not associated with or limited to a particular religious group.

(d) "Organization" includes associations and corporations.

(e) "Protective" refers to activities that are meant to cover, to guard, or to shield other persons from injury or destruction or to save others from financial loss. For example, a protective organization may provide housing for battered persons or for the developmentally disabled or may assist persons with behavioral problems by providing encouragement, support, and training.

(f) "Rehabilitative or rehabilitation" refers to activities designed to restore individuals to a former capacity, to a condition of health, or to useful or constructive activity. For example, a rehabilitative organization may assist persons to overcome alcohol or substance abuse, or to overcome the effects of a physical injury, stroke, or heart attack.

(g) "Social service" means programs designed to help people resolve problems, become more self-sufficient, prevent dependency, strengthen family relationships, and/or enhance the functioning of individuals in society. These services include, but are not limited to, programs in the general categories of:

(i) Socialization and development; and

(ii) Therapy, help, rehabilitation, and social protection.

(3) **Exemption.** The real and personal property owned by a nonprofit organization is exempt from taxation if the property is owned by a nonprofit organization and is used to solicit or collect gifts, donations, or grants for distribution to other nonprofit organizations, associations, or corporations organized and conducted for nonsectarian purposes that provide character-building, benevolent, protective, or rehabilitative social services directed at persons of all ages. To qualify for this exemption, the nonprofit organization must meet all of the following conditions:

(a) Organized and conducted for nonsectarian purposes;

(b) Affiliated with a state or national organization that authorizes, approves, or sanctions volunteer charitable fundraising organizations;

(c) Qualified for exemption under section 501 (c)(3) of the federal Internal Revenue Code;

(d) Governed by a volunteer board of directors;

(e) Use the gifts, donations, and grants solicited or collected for character-building, benevolent, protective, or rehabilitative social services directed at persons of all ages or distribute the gifts, donations, or grants in accordance with (f) of this subsection;

(f) Annually distribute gifts, donations, or grants to at least five other nonprofit organizations, associations, or corporations organized and conducted for nonsectarian purposes that provide character-building, benevolent, protective, or rehabilitative social services directed at persons of all ages.

(4) **Examples.**

(a) The United Way solicits and collects gifts, donations, and grants from numerous sources such as government employees, private businesses, and corporate sponsors. The gifts, donations, and grants received by the United Way are, in turn, distributed to other nonprofit organizations, associations, and corporations that provide character-building, benevolent, protective, or rehabilitative social services directed at persons of all ages. The United Way does not necessarily provide these social services itself but it does own property that is used to solicit and collect gifts, donations, and grants. The United Way would be entitled to receive this exemption if, in addition to owning and using the property to solicit and collect gifts, donations, and grants, it meets all of the conditions listed in subsection (3) of this section.

(b) A nonprofit organization owns real and personal property that is used for bingo games, pull-tabs, and food services to raise funds for the organization's charitable activities that are not conducted at this location. Even if the nonprofit organization in this case is organized for nonsectarian purposes, affiliated with a national organization that authorizes, approves, and sanctions volunteer charitable fundraising organizations, classified as a section 501 (c)(3) organization with the Internal Revenue Service, and governed by a volunteer board of directors, the bingo facility would not be entitled to an exemption because this property is not used to solicit or collect gifts, donations, or grants because the purchase of a bingo card is not a "gift, donation, or grant" within the meaning of this rule.

(5) **Additional requirements.** Any organization or association that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.550.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 94-15-041, § 458-16-215, filed 7/14/94, effective 8/14/94.]

WAC 458-16-220 Church camps. (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.030(2) to property used as a church camp and owned by a nonprofit church, denomination, group of churches, or an organization or association of churches.

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

(a) "Church purposes" means the use of real and personal property as a church camp and owned by a nonprofit religious organization for religious worship or related administrative, educational, eleemosynary, and social activities.

(b) "Property" means real or personal property owned by a nonprofit church, denomination, group of churches, or an organization or association of churches.

(3) **Exemption.** Property owned by a nonprofit church, denomination, group of churches, or an organization or association comprised solely of churches or their qualified representatives that is used exclusively on a regular and scheduled basis for organized and supervised recreational or educational activities and church purposes related to such camp facilities is exempt from ad valorem taxation up to a maximum of two hundred acres as selected by the church, including buildings and other improvements thereon.

(4) **Additional requirements.** Any organization or association that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.030.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-220, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. 86-12-034 (Order PT 86-2), § 458-16-220, filed 5/30/86; 85-05-025 (Order PT 85-1), § 458-16-220, filed 2/15/85; Order PT 77-2, § 458-16-220, filed 5/23/77; Order PT 76-2, § 458-16-220, filed 4/7/76. Formerly WAC 458-12-206.]

WAC 458-16-230 Character building organizations. (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.030(3) to property owned by a nonprofit organization or association engaged in character building of children under eighteen years of age.

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

(a) "Character building" refers to activities for children under eighteen years of age that are for the general public good. The activities may build, improve, or enhance a child's moral constitution by developing moral or ethical strength, leadership, integrity, self-discipline, fortitude self-esteem, and reputation. For example, "character building" activities may involve organized and supervised recreational activities including, but not limited to, exploring, hiking, beachcombing, swimming, fishing, studying, and discussion groups.

(b) "Commercial" refers to as activity or enterprise that has profit making as its primary purpose.

(c) "Property" means real and personal property owned and used by a nonprofit organization or association engaged in character building of children under eighteen years of age and includes all buildings, structures, and improvements required to maintain and to safeguard the property.

(3) **Exemption.** Property that is owned by nonprofit organizations or associations engaged in character building of children under eighteen years of age is exempt from taxation if it is exclusively used, or to the extent it is exclusively used, to promote character building.

(a) To be entitled to receive this exemption, the organization or association must be nonprofit and its purpose must be for the general public good. All property of a character building organization or association must be devoted to the general public benefit.

(b) Only property that is exclusively used for character building is exempt under this section. If the property is used for any other purpose, whether commercial or otherwise, it must be segregated and taxed.

(c) A nonprofit character building organization or association may also qualify for this exemption if, prior to 1971, its articles of incorporation or charter mandated the organization or association to provide services to children up to the age of twenty-one years.

(4) **Additional requirements.** Any organization or association that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.030.

(5) **Related statute.** See RCW 82.04.4271; if a "nonprofit youth organization" is exempt from property taxation under RCW 84.36.030, it may deduct membership fees and certain service fees in calculating the amount of business and occupation tax due.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-230, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. 86-12-034 (Order PT 86-2), § 458-16-230, filed 5/30/86; 85-05-025 (Order PT 85-1), § 458-16-230, filed 2/15/85; Order PT 77-2, § 458-16-230, filed 5/23/77; Order PT 76-2, § 458-16-230, filed 4/7/76. Formerly WAC 458-12-210.]

WAC 458-16-240 Veterans organizations. (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.030(4) for real and personal property owned by organizations and societies of veterans of any war of the United States.

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

(a) "Inadvertent use or inadvertently used" means any unintentional or accidental use of exempt property by an individual, organization, association, or a corporation to promote business activities through either carelessness, lack of attention, lack of knowledge, mistake, surprise, or neglect.

(b) "Maintenance and operation expenses" means items of expense allowed under generally accepted accounting principles.

(c) "Property" means real and personal property owned by organizations or societies of war veterans.

(3) **Exemption.** Property owned by organizations or societies of war veterans, which are recognized by the department of defense and nationally chartered, is exempt from taxation.

(a) The general purposes and objectives of these organizations or societies shall be:

(i) To preserve memories and associations incident to war service; and

(ii) To devote their members' efforts to mutual helpfulness and to patriotic and community service to state and nation.

(b) In order to qualify for this exemption, the property must be used in a manner reasonably necessary to carry out the purposes and objectives of the organization or society of war veterans. For example, a building owned by a chapter of the veterans of foreign wars that is used to hold meetings to plan a Veterans Day celebration may qualify for exemption.

(c) The tax exempt status of the property will not be affected if it is loaned or rented and the amount of rent or donations collected for the use, loan, or rental of the exempt property:

(i) Is reasonable; and

(ii) Does not exceed the maintenance and operation expenses that are created by the corresponding use, loan, or rental.

(4) **Use of property for pecuniary gain or to promote business activities.** If property owned by an organization or society of veterans that is exempt under subsection (3) of this section is used for pecuniary gain or to promote business activities, the property tax exemption will be lost for the assessment year in which the exempt property was so used. The exemption will not be lost if:

(a) The exempt property is used for pecuniary gain not more than three days a year; or

(b) The exempt property is inadvertently used by an individual, organization, association, or a corporation to promote business activities as long as the inadvertent use is not a pattern of use. A "pattern of use" is presumed when an inadvertent use of the property to promote business activities is repeated within the same assessment year or within two or more successive assessment years.

(5) **Additional requirements.** Any organization, association, or corporation that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.030.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-240, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. 86-12-034 (Order PT 86-2), § 458-16-240, filed 5/30/86; 85-05-025 (Order PT 85-1), § 458-16-240, filed 2/15/85; Order PT 77-2, § 458-16-240, filed 5/23/77; Order PT 76-2, § 458-16-240, filed 4/7/76. Formerly WAC 458-12-215.]

WAC 458-16-245 Student loan agencies. (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.030(6) to a nonprofit organization, association, or corporation that is exempt from federal income taxation and either guarantees student loans or issues debt to provide or acquire student loans.

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

(a) "Student loan agency" means a nonprofit organization or association that is exempt from federal income tax under section 501(c)(3) of the Federal Internal Revenue Code of 1954 (as amended) and:

(i) Is a guarantee agency under the federal guaranteed student loan program; or

(ii) Issues debt to provide or acquire student loans.

(b) "Property" means real or personal property owned by a nonprofit organization, association, or corporation that qualifies as a "student loan agency."

(c) "Commercial" refers to an activity or enterprise that has profit making as its primary purpose.

(3) **Exemption.**

(a) Property owned and used by a nonprofit organization, association, or corporation that is a guarantee agency under the federal guaranteed student loan program or that issues debt to provide or acquire student loans is exempt from taxation.

(b) If any portion of the organization's, association's, or corporation's property is used for a commercial rather than an exempt purpose that portion must be segregated and taxed.

(4) **Additional requirements.** Any organization, association, or corporation that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165 that explains the additional conditions and requirements necessary to obtain a property tax exemption pursuant to RCW 84.36.030.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-245, filed 3/3/94, effective 4/3/94.]

WAC 458-16-260 Nonprofit day care centers, libraries, orphanages, homes for sick or infirm, hospitals, outpatient dialysis facilities. (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.040 to property used by nonprofit day care centers, libraries, orphanages, homes for the sick or infirm, hospitals, and outpatient dialysis facilities.

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

(a) "Convalescent and chronic care" means any or all procedures commonly employed in caring for the sick including, but not limited to, administering medicines, preparing special diets, providing bedside nursing care, applying dressings and bandages, and carrying out any treatment prescribed by a duly licensed practitioner of the healing arts.

(b) "Day care center" means a facility that regularly provides care for a group of children for periods of less than twenty-four consecutive hours.

(c) "Home for the sick or infirm" means any home, place, or institution that operates or maintains facilities to provide convalescent or chronic care, or both, for three or more persons not related by blood or marriage to the operator, who by reason of illness or infirmity, are unable to properly care for themselves.

(i) The services must be provided to persons over a continuous period of twenty-four hours or more.

(ii) A boarding home, guest home, hotel, or similar institution that is held forth to the public as providing and supplying only room, board, or laundry services to persons who do not need medical or nursing treatment or supervision is not considered a "home for the sick or infirm" for purposes of this section.

(d) "Hospital" means a nonprofit organization, association, or corporation engaged in providing medical, surgical, nursing or related health care services for the prevention, diagnosis or treatment of human disease, pain, injury, disability, deformity, mental illness, or retardation, as well as the equipment and facilities used by a nonprofit organization, association, or corporation to deliver such services to inpatients. These services must be provided over a continuous period of twenty-four hours or more.

(i) "Hospital" also means any portion of a hospital building, or other buildings used in connection therewith, and the equipment therein operated as a part of a hospital unit or used as a residence for persons engaged or employed in the operation of a hospital including, but not limited to, a nurse's home or a residence for hospital employees.

(ii) "Hospital" does not mean:

(A) Hotels or similar places that furnish only food and lodging or simple domiciliary care;

(B) Clinics or physician's offices where patients are not regularly kept as bed patients for twenty-four hours or more;

(C) Nursing homes as defined in chapter 18.51 RCW; and

(D) Maternity homes as defined in 18.46 RCW.

(e) "Hospital unit" means all buildings or properties that are part of an integrated, interrelated, homogeneous unit exclusively used for exempt hospital purposes. The term includes residential units exclusively used to temporarily house families of inpatients in an integrated program of hospital therapy.

(f) "Property" means real or personal property used by a nonprofit organization, association, or corporation.

(3) **Exemption for exclusively used property.** All real and personal property exclusively used by a nonprofit organization, association, or corporation for the following institutions shall be exempt from taxation:

(a) Day care centers;

(b) Preschools;

(c) Free public libraries;

(d) Orphanages and orphan asylums;

(e) Homes for the sick or infirm;

(f) Hospitals for the sick; and

(g) Outpatient dialysis facilities.

(4) **Exemption for loaned or rented property.** Property loaned to or rented by an institution listed in subsections (3)(a) through (g) of this section shall also be exempt from taxation if:

(a) The property is exclusively used by the nonprofit organization, association, or corporation;

(b) The benefit of the exemption inures to the user; and

(c) The property was specifically identified as loaned or rented when the application for exemption was made.

(5) **Exclusive use required.** Any portion of property exempt under either subsection (3) or (4) of this section that is not exclusively used in a manner furthering the exempt purposes of the nonprofit organization, association, or corporation must be segregated and taxed. For example, hospital property used by a physician to conduct his private practice must be segregated and taxed.

(6) **Actual use and irrevocable dedication required.** To be exempt from taxation under this section, all property owned by a nonprofit organization, association, or corporation must be:

(a) In use; and

(b) Irrevocably dedicated to the exempt purpose of the nonprofit organization, association, or corporation.

(7) **Additional requirements.** Any organization or association that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.040.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-260, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. 88-02-010 (Order PT 87-10), § 458-16-260, filed 12/28/87; 85-05-025 (Order PT 85-1), § 458-16-260, filed 2/15/85. Statutory Authority: RCW 84.36.389 and 84.36.865. 83-19-029 (Order PT 83-5), § 458-16-260, filed 9/14/83. Statutory Authority: RCW 84.36.865. 81-05-017 (Order PT 81-7), § 458-16-260, filed 2/11/81; Order PT 77-2, § 458-16-260, filed 5/23/77; Order PT 76-2, § 458-16-260, filed 4/7/76. Formerly WAC 458-12-225.]

WAC 458-16-270 Schools and colleges. (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.050 to property owned by or used for a nonprofit school or college.

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

(a) "Campus purposes" means property that is only needed because of the presence of the nonprofit school or college and is principally designed to further the educational purposes and functions of a nonprofit school or college.

(b) "Cultural or art education program" includes and is limited to:

(i) An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;

(ii) A musical or dramatic performance or series of performances; or

(iii) An educational seminar or program, or series of such programs, offered by a nonprofit school or college to the general public on an artistic, cultural, or historical subject.

(c) "Educational purposes" means systematic instruction, either formal or informal, in any and all branches of learning directed to an indefinite class of persons and from which a substantial public benefit is derived. The term includes all purposes that seek to promote or advance education.

(d) "Schools and colleges" means:

(i) Nonprofit educational institutions that are approved by the superintendent of public instruction or whose students and credentials are accepted without examination by schools and colleges established under either Title 28A or 28B RCW and offer students an educational program of a general academic nature; or

(ii) Nonprofit institutions that meet the following criteria:

(A) They have a definable curriculum and measurable outcomes for a specific group of students;

(B) They have a qualified or certified faculty;

(C) They have facilities and equipment that are designed for the primary purpose of the educational program;

(D) They have an attendance policy and requirement;

(E) They have a schedule or course of study that supports the instructional curriculum; and

(F) They are accredited, recognized, or approved by an external agency that certifies educational institutions and the transferability of courses.

(e) "Revenue" means income received from the loan or rental of exempt property when the income exceeds the amount of the maintenance and operation expenses attributable to the portion of the property loaned or rented.

(3) **Exemption.** Property owned or used by any nonprofit school or college within this state shall be exempt

to the extent that it is used exclusively for educational purposes or cultural or art educational programs.

(a) Real property exempt under this section shall not exceed four hundred acres and shall be used exclusively for school, college, or campus purposes. The property shall include, but is not limited to:

(i) Buildings and grounds principally designed for the educational, athletic, or social programs of the nonprofit school or college and the need for which would be nonexistent except for the existence of the school or college;

(ii) Buildings that house part-time or full-time students;

(iii) Buildings that house religious faculty; and

(iv) Buildings that house the chief administrator.

(b) The use of exempt property by professional organizations for conferences, seminars, or other activities that enhance the reputation of the nonprofit school or college will not nullify the exemption. Similarly, the use of exempt property owned by a nonprofit school or college for any education purpose will not nullify the exemption.

(c) All property that is not part of the main campus of a school or college and for which the institution wishes to obtain an exemption under this section, the department may require said institution to provide, in detail, the following information:

(i) The names of courses taught at the off-campus site;

(ii) A calendar of dates and times that shows how the subject property was used; and

(iii) The number of students that participated in the educational activities conducted at the off-campus site.

(d) To be eligible to receive this exemption, the nonprofit school or college must be open to all persons regardless of race, color, national origin, or ancestry. However, there is no limitation on the type of courses the institution may offer.

(4) **Property leased to a nonprofit school or college.** If property is leased to a nonprofit school or college, in order to be exempt, the property must be:

(a) Irrevocably dedicated to the purpose for which exemption has been granted; and

(b) The benefit of the exemption must inure to the user.

(c) For example, if a nonprofit foundation leases real or personal property to a nonprofit school or college to be used for educational purposes or cultural or art educational programs, the leased property may qualify for exemption if it meets the requirements of subsection (3)(a), (b), and (c) of this section.

(5) **Production of financial records.** In addition to the financial records that must be produced to comply with the requirements of WAC 458-16-165, a nonprofit school or college claiming exemption under this section shall annually submit a detailed summary containing the following information regarding the previous calendar year:

(a) A list of all property that it claimed was exempt;

(b) The purpose for which the property was used;

(c) The income derived from the property;

(d) The manner in which the income received was applied;

(e) The number of students who attended the school or college;

(f) The total income of the school or college and the sources from which it was derived; and

(g) The purposes to which the total income of the school or college was applied including, but not limited to, all income received and expenditures made.

(6) **Additional requirements.** Any organization, association, or corporation that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.050.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-270, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. 85-05-025 (Order PT 85-1), § 458-16-270, filed 2/15/85. Statutory Authority: RCW 84.36.389 and 84.36.865. 83-19-029 (Order PT 83-5), § 458-16-270, filed 9/14/83. Statutory Authority: RCW 84.36.865. 82-22-060 (Order PT 82-8), § 458-16-270, filed 11/2/82; 81-05-017 (Order PT 81-7), § 458-16-270, filed 2/11/81; Order PT 77-2, § 458-16-270, filed 5/23/77; Order PT 76-2, § 458-16-270, filed 4/7/76. Formerly WAC 458-12-230.]

WAC 458-16-280 Art, scientific, and historical collections. (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.060 to art, scientific, or historical collections.

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

(a) "Governmental entity" means any political unit or division of the federal, state, city, county, or municipal government.

(b) "Property" means all real and personal property exclusively used to secure, maintain, or exhibit art, scientific, or historical collections.

(3) **Exemption.** All art, scientific, or historical collections maintained for and exhibited to the general public and not for profit, as well as all real and personal property used exclusively to secure, maintain, or exhibit the collections, shall be exempt from taxation under the following conditions:

(a) An organization, association, or corporation must be organized and operated exclusively for artistic, scientific, historical, literary or educational purposes.

(b) The organization, association, or corporation organized and operated for artistic, scientific, historical, literary, or educational purposes must receive a substantial part of its income from a governmental entity or through direct or indirect contributions of money, real or personal property, or services from the general public. Admission or entrance fees derived from exercising or performing its purpose or function shall not be included within the figures used to calculate "a substantial part" of the organization's, association's, or corporation's income.

(i) For example, an art museum may receive support from a city government and from donations made by the general public in addition to general admission fees paid by visitors. When determining whether the art museum receives a substantial part of its income from a governmental entity or through contributions from the general public, the admission fees may not be considered as contributions from the general public.

(ii) Any organization, association, or corporation that relies on services donated by the general public for a substantial part for its support must maintain records identifying the individuals who donate their services and the number of hours they donate. The value of donated time will be calculated by using the federal minimum wage standard.

(4) **Additional requirements.** Any organization, association, or corporation that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.060.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-280, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. 86-12-034 (Order PT 86-2), § 458-16-280, filed 5/30/86; 85-05-025 (Order PT 85-1), § 458-16-280, filed 2/15/85; 81-21-009 (Order PT 81-13), § 458-16-280, filed 10/8/81; Order PT 77-2, § 458-16-280, filed 5/23/77; Order PT 76-2, § 458-16-280, filed 4/7/76. Formerly WAC 458-12-235.]

WAC 458-16-282 Musical, dance, artistic, dramatic and literary associations. (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.060 to organizations, associations, or corporations that either produce or perform, or both, musical, dance, artistic, dramatic, or literary works.

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

(a) "Governmental entity" means any political unit or division of the federal, state, county, city, or municipal government.

(b) "Property" means all real and personal property exclusively used to produce or perform musical, dance, artistic, dramatic, or literary works.

(3) **Exemption.** All real and personal property owned by or leased to a nonprofit organization, association, or corporation whose purpose is either to produce or perform or to produce and perform musical, dance, artistic, dramatic, or literary works for the benefit of the general public and not for profit shall be exempt from taxation under the following conditions:

(a) The property must be used exclusively to produce or perform musical, dance, artistic, dramatic, or literary works.

(b) An organization, association, or corporation must be organized and operated exclusively for musical, dance, artistic, dramatic, literary, or educational purposes.

(c) The organization, association, or corporation organized and operated for musical, dance, artistic, dramatic, literary, or educational purposes must receive a substantial portion of its income from a governmental entity or through direct or indirect contributions of money, real or personal property, or services from the general public. Admission or entrance fees derived from exercising or performing its purpose or functions shall not be included within the figures used to calculate "a substantial part" of the organization's, association's or corporation's income.

(i) For example, a theater may receive support from a city government and from donations made by the general public in addition to ticket sales for admission to its performances. When determining whether the theater receives a substantial part of its income from a governmental entity or through contributions from the general public, the ticket sales may not be considered as contributions from the general public.

(ii) Any organization that relies on services donated by the general public for a substantial portion of its support must maintain records identifying the individuals who donate their services and the number of hours they donate. The value of donated time will be calculated by using the federal minimum wage standard.

(4) **Additional requirements.** Any organization, association, or corporation that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.060.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-282, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. 86-12-034 (Order PT 86-2), § 458-16-282, filed 5/30/86; 85-05-025 (Order PT 85-1), § 458-16-282, filed 2/15/85; 81-21-010 (Order PT 81-14), § 458-16-282, filed 10/8/81.]

WAC 458-16-284 Fire companies. (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.060 to fire companies.

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

(a) "Fire company" means any nonprofit organization, association, or corporation whose purpose is to extinguish or prevent fires in any city or town within the state of Washington.

(b) "Property" means real or personal property that is owned by a city, town, or nonprofit fire company.

(c) "Commercial" refers to an activity or enterprise that has profit making as its primary purpose.

(3) **Exemption.** The following property shall be exempt from property taxes if it is owned by a city, town, or nonprofit fire company located within a city or town:

(a) All fire engines and other equipment used to extinguish or fight fires;

(b) Buildings or other structures that are exclusively used, or to the extent that they are exclusively used, to store or to safeguard fire fighting equipment; and

(c) Buildings or other structures that are exclusively used, or to the extent they are exclusively used, for meetings of the fire company. If any portion of the fire company's property is used for a commercial rather than an exempt purpose that portion must be segregated and taxed.

(4) **Additional requirements.** Any organization, association, or corporation that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165 that explains the additional conditions and requirements necessary to obtain a property tax exemption pursuant to RCW 84.36.060.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-284, filed 3/3/94, effective 4/3/94.]

WAC 458-16-286 Humane societies. (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.060 to humane societies.

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

(a) "Humane society" means a nonprofit organization, association, or corporation, the primary purpose of which is to prevent cruelty to animals, place unwanted animals in homes, provide other services relating to "lost and found" pets, and provide animal care education to the public, as well as sponsoring a neutering program to control the animal population.

(b) "Actual use" means that the property is currently being used by a humane society to provide services or care related to homeless animals or "lost and found" pets, or to prevent cruelty to animals within the state.

(c) "Property" means real or personal property that is owned and is actually used by a humane society.

(d) "Commercial" refers to an activity or enterprise that has profit making as its primary purpose.

(3) **Exemption.** Property that is owned and in actual use by a humane society shall be exempt from taxation. Any portion of this property that is not in actual use by the humane society or that is used for a commercial rather than an exempt purpose must be segregated and taxed.

(4) **Additional requirements.** Any organization, association, or corporation that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165 that explains the additional conditions and requirements necessary to obtain a property tax exemption pursuant to RCW 84.36.060.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-286, filed 3/3/94, effective 4/3/94.]

WAC 458-16-290 Nature conservancy lands. (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.260 to a nonprofit corporation or association, primary purpose of which is to conduct or facilitate scientific research or to conserve natural resources or open space for the general public.

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

(a) "Cessation of use" means a nonprofit association or corporation that has an interest in, or a nonprofit association or corporation that exclusively used exempt real property, has ceased to physically use the property for a use exempt under the provisions of subsection (3) of this section. The term also refers to the situation where the property is no longer being used for an exempt use even though the owner intends to find or is pursuing an alternative exempt use for the property. "Cessation of use" also refers to property that has lost its exempt status because it was transferred, loaned, or rented to an entity that is not qualified to be exempt from ad valorem taxes.

(b) "Conservation futures" means rights in perpetuity to the future development of any open space land, farm and agricultural land, and timber land, so designated under the provisions of chapter 84.34 RCW and taxed at the current use assessment rate as provided by that chapter that are purchased or acquired (except by eminent domain) by a county, city, town, municipal corporation, nonprofit historic preservation corporation, or nonprofit conservancy corporation or association.

(c) "Governmental entity" means any political unit or division of the federal, state, county, city, or municipal government.

(d) "Nonprofit conservancy corporation or association" means an organization that qualifies as being tax exempt under 29 U.S.C. Sec. 501(c)(3) of the United States Internal Revenue Code as it existed on June 25, 1976, and that has as one of its principal purposes: The conducting or facilitating of scientific research; the conserving of natural resources, including but not limited to biological resources, for the general public; or the conserving of open spaces, including but not limited to wildlife or plant habitat to be utilized as public access areas, for the use and enjoyment of the general public.

(e) "Nonprofit historical preservation corporation" means an organization that qualifies as being tax exempt under 29 U.S.C. Sec. 501(c)(3) of the United States Internal Revenue Code of 1954, as amended, and has as one of its principal purposes the conducting or facilitating of historic preservation activities within a state including, but not limited to, the conservation or preservation of historic sites, districts, buildings, and artifacts.

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

(g) "Real property interests" means any interest in real property including, but not limited to, fee simple or a lesser ownership interest, developmental rights, easements, covenants, and conservation futures.

(h) "Rollback" refers to the provisions of RCW 84.36.262 that make previously exempt property subject to back taxes and interest because of the cessation of an exempt use or a change in ownership.

(3) **Exemption.** All real property interests exclusively used to conserve ecological systems, natural resources, or open space, including park lands, by a nonprofit association or corporation whose primary purpose is to conduct or facilitate scientific research or to conserve natural resources or open space for the general public shall be exempt from ad valorem taxation if either of the following conditions is met:

(a) The property, to the extent feasible considering the nature of the interest involved, is:

(i) Used and effectively dedicated primarily to providing scientific research or educational opportunities to the general public or to preserving native plants, animals, biotic communities, works of ancient man, or geological or geographical formations of distinct scientific and educational interests;

(ii) Open to the general public for educational and scientific research purposes subject to reasonable restrictions designed to protect the property; and

(iii) Not for the pecuniary benefit of any person or company; or

(b) The property is subject to an option, which has been accepted in writing by any political unit or department of the federal, state, county, or city government, for purchase by the United States, a state, a county, or a city at a price not exceeding the lesser of the following amounts:

(i) The sum of the original purchase price paid by the nonprofit association or corporation plus interest from the date of acquisition at the rate of six percent per annum compounded annually to the date the option is exercised; or

(ii) The appraised value of the property interest, as determined by the department of revenue, at the time the option is accepted in writing.

(4) **Property used for recreational activities.** Property used merely for recreational activities does not qualify for an exemption under this section.

(5) **Application for exemption under this section.** A nonprofit association or corporation that wants to obtain the property tax exemption described in subsection (3) of this section must submit an application for exemption.

(a) No real property shall be exempt from taxation unless an application has been filed and exemption has been granted therefor.

(b) Prior to approval, the department of revenue must receive a copy of the application and, if the property is subject to an option for purchase, a copy of the option agreement and the written acceptance thereof.

(6) **Cessation of exempt use.** Upon cessation of the use that gave rise to the exemption set forth in subsection (3) of this section, the county treasurer shall collect all taxes that would have been paid if the property had not been exempt during the preceding ten years, or for the life of the exemption, whichever is less, plus interest computed at the same rate and in the same manner as that upon delinquent property taxes.

(a) Type of property affected. The provisions of this section apply to the cessation of use relating to exempt property:

(i) Used to provide scientific research or educational opportunities to the general public (RCW 84.36.260(1));

(ii) Used to preserve native plants, animals, biotic communities, works of ancient man, or geological or geographic formations of distinct scientific and educational interests (RCW 84.36.260(1)); or

(iii) Subject to an option for purchase by the United States, a state, a county, or a city (RCW 84.36.260(2)).

(b) Duty to notify.

(i) An owner of exempt property who knows of or who has information regarding a change in the use of exempt property shall notify the department of revenue of this change. An owner of exempt property must also report the loan or rental of all or a portion of the exempt property since loaning or renting this property may change the taxable status of exempt property.

(ii) Any other person who knows or has information regarding a change in use of exempt property shall notify the county assessor of any such change. The assessor, in turn, shall report this information to the department of revenue.

(iii) After being notified about a change in use of exempt property, the department may physically inspect the property to determine if the reported change has taken place.

(iv) After a change in use, the final determination of the taxable status of the subject property will be made by the department of revenue.

(c) Notice to owner. When it determines that a change in use has occurred, the department of revenue shall notify the current owner of exempt property and, in the case of a transfer, the previous legal owner of exempt property that the change in use may change the taxable status of the property and that the property may be subject to the rollback provisions set forth in subsection (6) of this section. The owner(s) of this property shall have thirty days from the date of the notice to submit any comments or information relevant to this change in use to the department. The department shall then issue a final determination about the taxable status of this property.

(d) County treasurer. Upon notification from the department of revenue that the exempt use of the property has ceased, the county treasurer shall compute the taxes payable, including interest computed at the same rate and in the same manner as that upon delinquent property taxes. The interest collected shall be placed in the county current expense fund.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-290, filed 3/3/94, effective 4/3/94; Order PT 77-2, § 458-16-290, filed 5/23/77; Order PT 76-2, § 458-16-290, filed 4/7/76. Formerly WAC 458-12-236.]

WAC 458-16-300 Public meeting hall—Public meeting place—Community meeting hall. (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.037 for real and personal property owned by a nonprofit organization, association, or corporation and used exclusively as a public meeting hall, public meeting place, or community meeting hall.

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

(a) "Inadvertent use or inadvertently used" means any unintentional or accidental use of exempt property by an individual, organization, association, or a corporation to promote business activities through either carelessness, lack of attention, lack of knowledge, mistake, surprise, or neglect.

(b) "Public gathering" means any social function that the general public could, if invited, attend. For example, a public gathering includes, but is not limited to, a wedding, reception, funeral, reunion, or meeting of any organization, association, or corporation that is open to nonmembers. The term does not mean a meeting to which only members of a specific organization, association, or corporation are allowed to attend.

(c) "Maintenance and operation expenses" means items of expense allowed under generally accepted accounting principles.

(d) "Owner" means a nonprofit organization, association, or corporation.

(e) "Property" means real or personal property owned by a nonprofit organization, association, or corporation.

(3) **Exemption.** Real and personal property owned by a nonprofit organization, association, or corporation and used exclusively as a public assembly hall, public meeting place, or community meeting hall shall be exempt from taxation under the following conditions:

(a) Exclusive use. The property is used exclusively for public gatherings and is available to any individual, organization, association, or corporation that may desire to use the property. However, membership in a particular organization, association, or corporation shall not be a prerequisite to use the property.

(b) Exemption for real property - area. The area of real property exempt under this section shall not exceed one acre.

This area shall include the building(s), the land under the building(s), and any additional area needed for parking.

(c) Statement of availability and fees required. The owner of the property shall prepare and make available upon request a schedule of fees, a policy on the availability of the facility, and any restrictions on the use of the facility. The owner may impose any conditions or restrictions reasonably necessary to safeguard the property and to comply with the purposes of this exemption.

(d) Annual summary required. The owner shall provide the department of revenue a detailed summary containing the following information regarding the use during the preceding year of all property it claimed to be exempt under this section:

(i) The name of any person, organization, association, or corporation that used the property;

(ii) The date(s) on which the property was used;

(iii) The purpose for which the property was used;

(iv) The income derived from the rental of the property; and

(v) The expenses incurred relating to the use of the property.

(e) Entities that schedule regular meetings. Any property owned by a nonprofit organization, association, or corporation that schedules regular meetings of its members or shareholders will also qualify for this exemption if:

(i) The owner meets the conditions set forth in (a) through (d) of this subsection;

(ii) The owner does not use the property more than twenty-five percent of the useable time; and

(iii) The facility is used an equal number or greater number of times for public gatherings than the number of times it is used by the owner for gatherings not open to the general public.

(f) Loan or rental of property. The tax exempt status of the property will not be affected if it is loaned or rented and the amount of rent or donations collected for the use, loan, or rental of the exempt property:

(i) Is reasonable; and

(ii) Does not exceed the maintenance and operation expenses that are created by the corresponding use, loan, or rental.

(g) Property not included within this exemption. Property that is used more than fifty percent of the time by a nonprofit organization, association, or corporation that allows only members to attend its activities does not qualify for this exemption.

(4) **Use of property for pecuniary gain or to promote business activities.** If a public meeting hall, public meeting place, or community meeting hall exempt under subsection (3) of this section is used for pecuniary gain or to promote business activities, the property tax exemption will be lost for the assessment year following the year in which the exempt property is so used. The exemption will not be lost if:

(a) The exempt property is used for pecuniary gain not more than three days a year; or

(b) The exempt property is inadvertently used by an individual, organization, association, or a corporation to promote business activities if the inadvertent use is not a pattern of use. A "pattern of use" is presumed when an inadvertent use of the property to promote business activities is repeated within the same assessment year or within two or more successive assessment years.

(5) **Additional requirements.** Any organization, association, or corporation that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.037.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-300, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. 81-21-010 (Order PT 81-14), § 458-16-300, filed 10/8/81.]

WAC 458-16-310 Community celebration facilities. (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.037 for real and personal property owned by a nonprofit organization, association, or corporation and used primarily for annual community celebration events.

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

(a) "Inadvertent use or inadvertently used" means any unintentional or accidental use of exempt property by an individual, organization, association, or corporation to promote business activities through either carelessness, lack of attention, lack of knowledge, mistake, surprise, or neglect.

(b) "Public gathering" means any social function that the general public could, if invited, attend. For example, a public gathering includes, but is not limited to, a wedding, reception, funeral, reunion, or meeting of any organization, association, or corporation that is open to nonmembers. The term does not mean a meeting to which only members of a specific organization, association, or corporation are allowed to attend.

(c) "Maintenance and operation expenses" means items of expense allowed under generally accepted accounting principles.

(d) "Property" means real or personal property owned by a nonprofit organization, association, or corporation.

(3) **Exemption.** Real and personal property owned by a nonprofit organization, association, or corporation and used primarily for annual community celebration events shall be exempt from taxation under the following conditions:

(a) Exemption for real property - area. The area of real property to be exempt shall not exceed twenty-nine acres.

(b) Primary use. The property has been primarily used for annual community celebration events for at least ten years.

(c) Essentially unimproved property. The property is essentially unimproved except for restroom facilities and covered shelters. A "covered shelter," for example, may consist of a covered area that is unenclosed but allows some protection from the elements or it may provide a sheltered eating area with or without a picnic table or outside grill, or both.

(d) Purpose. The purpose of the property is to provide a facility for an annual community celebration.

(e) Statement of availability and fees required. The owner of the property shall prepare and make available upon request a schedule of fees, a policy on the availability of the facility, and any restrictions on the use of the facility. The owner may impose conditions and restrictions that are reasonably necessary to safeguard the property and to promote the purposes of this exemption.

(f) Annual summary required. The owner shall annually provide the department of revenue a detailed summary containing the following information regarding the use during the preceding year of all property it claimed to be exempt under this section:

(i) The name of any person, organization, association, or corporation that used the property;

(ii) The date(s) on which the property was used;

(iii) The purpose for which the property was used;

(iv) The income derived from the rental of the property; and

(v) The expenses incurred relating to the use of the property.

(g) Loan or rental of property. The tax exempt status of the property will not be affected if it is loaned or rented and the amount of rent or donations collected for the use, loan, or rental of the exempt property:

(i) Is reasonable; and

(ii) Does not exceed the maintenance and operation expenses that are created by the corresponding use, loan, or rental.

(4) **Use of property for pecuniary gain or to promote business activities.** If a community celebration facility exempt under subsection (3) of this section is used for pecuniary gain or to promote business activities, the property tax exemption will be lost for the assessment year following the year in which the exempt property is so used. The exemption will not be lost if:

(a) The exempt property is used for pecuniary gain not more than three days a year; or

(b) The exempt property is inadvertently used by an individual, organization, association, or a corporation to promote business activities if the inadvertent use is not a pattern of use. A "pattern of use" is presumed when an inadvertent use of the property to promote business activities is repeated within the same assessment year or within two or more successive assessment years.

(5) **Additional requirements.** Any organization, association, or corporation that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.037.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-310, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. 81-21-010 (Order PT 81-14), § 458-16-310, filed 10/8/81.]

WAC 458-16-320 Emergency or transitional housing. (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.043 to real and personal property used by a nonprofit organization, association, or corporation to provide emergency or transitional housing to low income persons or victims of domestic violence who are homeless for personal safety reasons.

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

(a) "Emergency housing" means a facility whose primary purpose is to provide temporary or transitional shelter and supportive services to the homeless in general or to a specific population of the homeless for no more than sixty days.

(b) "Homeless" means a person, persons, family, or families who do not have fixed, regular, adequate, or safe shelter nor sufficient funds to pay for such shelter.

(c) "Low-income" means income that does not exceed eighty percent of the median income for the standard metropolitan statistical area in which the city or town is located.

(d) "Supportive services" means resume writing, training, vocational and psychological counselling, or other similar programs designed to assist the homeless into independent living.

(e) "Transitional housing" means a facility that provides housing and supportive services to homeless individuals or families for up to two years and whose primary purpose is to enable homeless individuals or families to move into independent living and permanent housing.

(f) "Victim(s) of domestic violence" means either an adult(s) or a child(ren) who have been physically or mentally abused and who fled his or her home out of fear for his or her safety.

(g) "Property" means real or personal property used by a nonprofit organization, association, or corporation in providing emergency or transitional housing and supportive services for low-income homeless persons or victims of domestic violence.

(h) "Commercial" refers to an activity or enterprise that has profit making as its primary purpose.

(3) **Exemption.** The real and personal property exclusively used, or to the extent that it is exclusively used, by a nonprofit organization, association or corporation to provide emergency or transitional housing to low-income homeless persons or victims of domestic violence shall be exempt from taxation if the following conditions are met:

(a) The amount of the charge or fee for the housing does not exceed maintenance and operation expenses;

(b) The property is either:

(i) Owned by a nonprofit organization, association, or corporation; or

(ii) For taxes payable in 1992 through 2000, rented or leased by a nonprofit organization, association, or corporation and the benefit of the exemption inures to a nonprofit organization, association, or corporation; and

(c) If any portion of the organization's, association's or corporation's property is used for a commercial purpose rather than for an exempt purpose, that portion of the property must be segregated and taxed.

(4) **Additional requirements.** Any organization, association, or corporation that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165 that explains the additional conditions and requirements necessary to obtain a property tax exemption pursuant to RCW 84.36.043.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-320, filed 3/3/94, effective 4/3/94.]

WAC 458-16-330 Sheltered workshops for the handicapped. (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.350 to real and personal property owned by a nonprofit organization, association, or corporation and used in operating a sheltered workshop for handicapped persons.

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

(a) "Handicapped person" means an individual who is physically, mentally, or developmentally disabled. For purposes of this section, a substance, either drug or alcohol, abuser is considered physically disabled.

(b) "Sheltered workshop" means a facility, or any portion thereof, operated by a nonprofit organization, association, or corporation where business activities are carried on and whose primary purpose is:

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

(ii) To provide evaluation and work adjustment services to handicapped individuals.

(c) "Property" means real or personal property owned and used by a nonprofit organization, association, or corporation in operating a sheltered workshop for handicapped persons.

(d) "Commercial" refers to an activity or enterprise that has profit making as its primary purpose.

(3) **Exemption.** The real or personal property owned and used by a nonprofit organization, association, or corporation in connection with the operation of a sheltered workshop for handicapped persons and used primarily to manufacture and handle, sell, or distribute goods constructed, processed, or repaired in a sheltered workshop is exempt from ad valorem taxation.

(a) Inventory owned by a sheltered workshop is also exempt from taxation if the inventory is for sale or lease by the sheltered workshop or the inventory is to be furnished under a contract of service. For example, "inventory" includes, but is not limited to, raw materials, work in process, and finished products.

(b) The primary use of any property exempt under this section must be to provide training, gainful employment, or rehabilitation services to persons who meet the definition of "handicapped person" contained in subsection (2) of this section.

(c) Example. A sheltered workshop that teaches trade skills and work habits to the blind so that trainees might enter the competitive labor market may qualify for this exemption. This workshop may also qualify if it provides training in recreational activities and living skills, such as housekeeping and cooking.

(d) If any portion of the organization's, association's, or corporation's property is used for a commercial purpose rather than for an exempt purpose, that portion of the property must be segregated and taxed.

(4) **Cross reference to excise tax exemption.** A nonprofit organization, association, or corporation that receives a property exemption under RCW 84.36.350 may also be exempt from certain excise taxes. See RCW 82.04.385 for more specific information.

(5) **Additional requirements.** Any organization, association, or corporation that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165 that explains the additional conditions and requirements necessary to obtain a property tax exemption pursuant to RCW 84.36.350.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-330, filed 3/3/94, effective 4/3/94.]

Chapter 458-16A WAC
NONPROFIT HOMES FOR THE AGING

WAC 458-16A-010 Nonprofit homes for the aging. (1) **Introduction.** Under RCW 84.36.041, a nonprofit home for the aging may be totally or partially exempt from property tax. This section explains the exemptions allowed and the criteria that must be met in order to receive an exemption under this statute. Throughout this section, all requirements will pertain to all types of homes for the aging including, but not limited to, adult care homes, assisted living facilities, continuing care retirement communities (CCRC), and independent housing, unless a particular type of home is separately identified.

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

(a) "Acquisition" means that an existing home for the aging (or home) currently in operation is acquired by a nonprofit organization and the ownership of the facility will change as a result of a purchase, gift, foreclosure, or other method.

(b) "Assistance with activities of daily living" means the home provides, brokers, or contracts for the provision of auxiliary services to residents, such as meal and housekeeping service, transportation, ambulatory service, and attendant care including, but not limited to, bathing and other acts related to personal hygiene, dressing, shopping, food preparation, monitoring of medication, and laundry services.

(c) "Combined disposable income" means the disposable income of the person submitting the income verification form, plus the disposable income of his or her spouse, and the disposable income of each cotenant occupying the dwelling unit for the preceding calendar year, less amounts paid by the person submitting the income verification form or his or her spouse or cotenant during the previous year for the treatment or care of either person received in the dwelling unit or in a nursing home.

(i) If the person submitting the income verification form was retired for two months or more of the preceding calendar year, the combined disposable income of the person will be calculated by multiplying the average monthly combined disposable income of the person during the months the person was retired by twelve.

(ii) If the income of the person submitting the income verification form is reduced for two or more months of the preceding calendar year by reason of the death of the person's spouse, the combined disposable income of the person will be calculated by multiplying the average monthly combined disposable income of the person after the death of the spouse by twelve.

(d) "Complete and separate dwelling units" means that the individual units of a home contain complete facilities for living, sleeping, cooking, and sanitation.

(e) "Construction" means the actual construction or building of all or a portion of a home that did not exist prior to the construction.

(f) "Continuing care retirement community" or "CCRC" means an entity that provides shelter and services under continuing care contracts with its residents or includes a health care facility or health service.

(g) "Continuing care contract" means a contract to provide a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related or personal care services, that is conditioned upon the transfer of property, the payment of an entrance fee to the provider of the services, and/or the payment of periodic charges in consideration for the care and services provided. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

(h) "Cotenant" means a person who resides with an eligible resident and who shares personal financial resources with the eligible resident.

(i) "Disposable income" means adjusted gross income as defined in the federal Internal Revenue Code, as amended prior to January 1, 1994, plus all of the following items to the extent they are not included in or have been deducted from adjusted gross income:

(i) Capital gains, other than nonrecognized gain on the sale of a principal residence under section 1034 of the federal Internal Revenue Code, or gain excluded from income under section 121 of the federal Internal Revenue Code to the extent it is reinvested in a new principal residence;

(ii) Amounts deducted for loss;

(iii) Amounts deducted for depreciation;

(iv) Pension and annuity receipts;

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

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

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

(viii) Dividend receipts; and

(ix) Interest received on state and municipal bonds.

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

(i) Occupied the dwelling unit as a principal place of residence as of January 1st of the year in which the claim for exemption is filed. The exemption will not be nullified if the eligible resident is confined to a hospital or nursing home and the dwelling unit is temporarily unoccupied or occupied by a spouse, a person financially dependent on the claimant for support, or both;

(ii) Is sixty-one years of age or older on December 31st of the year in which the claim for exemption is filed, or is, at the time of filing, retired from regular gainful employment by reason of physical disability. A surviving spouse of a person who was receiving an exemption at the time of the person's death will qualify for this exemption if the surviving spouse is fifty-seven years of age or older and otherwise meets the requirements of this subsection; and

(iii) Has a combined disposable income that is no more than the greater of twenty-two thousand dollars or eighty percent of the median income adjusted for family size as determined by the federal Department of Housing and Urban Development (HUD) for the county in which the person resides and in effect as of January 1 of the year the application for exemption is submitted.

(k) "Home for the aging" or "home" means a residential housing facility that:

(i) Provides a housing arrangement chosen voluntarily by the resident, the resident's guardian or conservator, or another responsible person;

(ii) Has only residents who are at least sixty-one years of age or who have needs for care generally compatible with persons who are at least sixty-one years of age; and

(iii) Provides varying levels of care and supervision, as agreed to at the time of admission or as determined necessary at subsequent times of reappraisal.

(l) "HUD" means the federal Department of Housing and Urban Development.

(m) "Local median income" means the median income adjusted for family size as most recently determined by HUD for the county in which the home is located and in effect on January 1st of the year the application for exemption is submitted.

(n) "Low income" means that the combined disposable income of a resident is eighty percent or less of the median income adjusted for family size as most recently determined by HUD for the county in which the home is located and in effect as of January 1st of the year the application for exemption is submitted.

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

(p) "Property that is reasonably necessary" means all property that is:

(i) Operated and used by a home; and

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

(q) "Refinancing" means the discharge of an existing debt with funds obtained through the creation of new debt. For purposes of this section, even if the application for tax exempt bond financing to refinance existing debt is treated by the financing agent as something other than refinancing, an application for a property tax exemption because of refinancing by tax exempt bonds will be treated as refinancing and the set-asides specific to refinancing will be applied. "Refinancing" shall include tax exempt bond financing in excess of the amount of existing debt that is obtained to modify, improve, restore, extend, or enlarge a facility currently being operated as a home.

(r) "Rehabilitation" means that an existing building or structure, not currently used as a home, will be modified, improved, restored, extended, or enlarged so that it will be used as a home for elderly and disabled individuals. A project will be considered a rehabilitation if the costs of rehabilitation exceed five thousand dollars. If a home has acquired tax exempt bond financing and does not meet the definition of "rehabilitation" contained in this subsection, the home may be eligible for a total exemption under the "refinancing" definition and if it meets the "refinancing" set-aside requirements. If such a home is not eligible for a total exemption, the department will determine the home's eligibility for a partial exemption in accordance with the pertinent parts of RCW 84.36.041 and this section.

(s) "Set-aside(s)" means the percentage of dwelling units reserved for low-income residents when the construction, rehabilitation, acquisition, or refinancing of a home is financed under a financing program using tax exempt bonds.

(t) "Shared dwelling units" or "shared units" means individual dwelling units of a home that do not contain complete facilities for living, eating, cooking, and sanitation.

(u) "Taxable value" means the value of the home upon which the tax rate is applied in order to determine the amount of property taxes due.

(v) "Total amount financed" means the total amount of financing required by the home to fund construction, acquisition, rehabilitation, or refinancing. Seventy-five percent of this amount must be supplied by tax exempt bonds to receive the total exemption from property tax available under the tax exempt bond financing provision of RCW 84.36.041.

(3) **General requirements.** To be exempt under this section, a home for the aging must be:

(a) Exclusively used for the purposes for which exemption is granted, except as provided in RCW 84.36.805;

(b) Operated by an organization that is exempt from income tax under section 501(c) of the federal Internal Revenue Code; and

(c) The benefit of the exemption must inure to the home.

(4) **Total exemption.** There are three ways in which a home may be totally exempt from property tax. All real and personal property used by a nonprofit home that is reasonably necessary for the purposes of the home is exempt if it meets the general requirements listed in subsection (3) of this section and:

(a) At least fifty percent of the occupied dwelling units in the home are occupied by eligible residents;

(b) The home is subsidized under a HUD program; or

(c) The construction, rehabilitation, acquisition, or refinancing of a home is financed under a program using bonds exempt from federal income tax if at least seventy-five percent of the total amount financed uses tax exempt bonds and the financing program requires the home to reserve or set-aside a percentage of all dwelling units so financed for low-income residents. See subsections (5), (6), and (7) of this section for tax exempt bond requirements and the percentage of units that must be set-aside for low-income residents in order for the home to be totally exempt.

(5) **Homes or CCRCs financed by tax exempt bonds—Generally.** All real and personal property used by a nonprofit home or CCRC may be totally exempt from property tax if at least seventy-five percent of the total amount financed for construction, rehabilitation, acquisition, or refinancing uses tax exempt bonds and the financing program requires the home or CCRC to reserve or set-aside a percentage of all dwelling units so financed for low-income residents.

(a) The percentage of set-aside units required will vary depending on whether the home is a CCRC, the purpose for which the tax exempt bond financing was obtained, the type of dwelling unit, and the receipt of Medicaid funds. The set-aside requirements for homes are set forth in subsection (6) of this section and for CCRCs are set forth in subsection (7) of this section.

(b) The exemption will be granted in direct correlation between the total amount financed by tax exempt bonds and the portion of the home or CCRC that is constructed, acquired, rehabilitated, or refinanced by tax exempt bonds.

(c) If tax exempt bonds are used for refinancing, the set-aside requirements set forth in subsections (6) and (7) of this section will be applied to the actual area or portion of the home or CCRC to which the bonds correspond.

(i) Example 1. A CCRC (that accepts Medicaid funds) is composed of a multistory building, six duplexes, and two independent homes and the CCRC has secured tax exempt bonds to satisfy an existing mortgage on the multistory building. Only the multistory building will be considered eligible for a total exemption from property tax because of tax exempt bond financing. To receive the exemption, at least twenty percent of the dwelling units of the multistory building must be set-aside for residents at or below fifty percent of the local median income or at least forty percent of the dwelling units must be set-aside for residents at or below sixty percent of the local median income.

(ii) Example 2. A home obtains tax exempt bonds to refinance a portion of the home and to fund construction. The department will separately consider the area of the home that corresponds to the purpose for which the tax exempt bonds were obtained. The set-aside requirements related to refinancing will be applied to the portion of the home that corresponds to the mortgage being refinanced and the set-aside requirements related to construction will be applied to the area of the home to be newly constructed. The department will determine the eligibility for partial exemption of the remainder of the home that is not being refinanced or constructed.

(d) If a total exemption is granted under the tax exempt bond financing provision, the total exemption will remain in effect as long as:

(i) The home or CCRC remains in compliance with the requirements under which it received the tax exempt bonds;

(ii) The tax exempt bonds are outstanding; and

(iii) The set-aside requirements are met.

(e) If a home or CCRC has obtained tax exempt bond financing to modify, improve, restore, extend, or enlarge its existing facility and the project does not meet the definition of rehabilitation contained in subsection (2) of this section, the project will not be considered a rehabilitation and the set-aside requirements related to refinancing or acquisition will be applied in determining eligibility for a total exemption.

(f) When a home or CCRC no longer meets the criteria for exemption under the tax exempt bond financing portion of the statute, eligibility for exemption under RCW 84.34.041 will be determined by the other provisions of the statute. In other words, a home may receive a total or partial exemption depending on the number of residents who are deemed to be "eligible residents" or who require "assistance with activities of daily living." For example, if a home that previously received a total exemption due to the receipt of tax exempt bond financing has one hundred dwelling units and sixty of those dwelling units are occupied by eligible residents, the home may receive a total exemption.

(6) **Set-aside requirements related to homes and tax exempt bond financing.** A specified number of dwelling units within a home must be set-aside for low income residents to obtain a total property tax exemption because of tax exempt bond financing. The set-aside requirements for homes will be determined according to the type of dwelling units contained in the home and the purpose for which the tax exempt bond financing was obtained. The provisions of this section do not apply to CCRCs. The specific set-aside requirements for CCRCs are described in subsection (7) of this section.

(a) Complete and separate dwelling units - construction or rehabilitation. If financing was obtained for the construction or rehabilitation of a home with any complete and separate units, the following set-asides will apply:

(i) Ten percent of the total dwelling units financed must be set-aside for residents with incomes at or below eighty percent of the local median income; and

(ii) Ten percent of the total dwelling units must be set-aside for residents at or below fifty percent of the local median income.

(b) Complete and separate dwelling units - acquisition or refinancing. If financing was obtained to acquire or refinance a home with any complete and separate units, the following set-asides will apply:

(i) Twenty percent of the total dwelling units financed must be set-aside for residents with incomes at or below fifty percent of the local median income; or

(ii) Forty percent of the total dwelling units must be set-aside for residents at or below sixty percent of the local median income.

(c) Shared dwelling units - construction, rehabilitation, acquisition, or refinancing. If financing was obtained for the construction, rehabilitation, acquisition, or refinancing of a home with only shared units, the following set-asides apply:

(i) Ten percent of the total dwelling units financed must be set-aside for residents with incomes at or below eighty percent of the local median income; and

(ii) Ten percent of the total dwelling units must be set-aside for residents at or below fifty percent of the local median income.

(7) **Set-aside requirements related to CCRCs and tax exempt bond financing.** A specified number of dwelling units of a CCRC must be set-aside for low income residents to obtain a total property tax exemption because of tax exempt bond financing. The set-aside requirements for CCRCs will be determined by whether the CCRC does or does not have Medicaid contracts for continuing care contract residents and the purpose for which the tax exempt bond financing was obtained. The provisions of this section do not apply to other homes. The specific set-aside requirements for other homes are described in subsection (6) of this section.

(a) The continuing care contract between the resident and the CCRC is a contract to provide shelter along with nursing, medical, health-related or personal care services to the resident for the duration of the resident's life or for a term in excess of one year. A resident's tenancy may not be terminated due to inability of the resident to fully pay the monthly service fee when the resident establishes facts to justify a waiver or reduction of these charges. This provision shall not apply if the resident, without the CCRC's consent, has impaired his and/or her ability to meet financial obligations required by the continuing care contract due to a transfer of assets, after signing the continuing care contract, other than to meet ordinary and customary living expenses, or by incurring unusual or unnecessary new financial obligations.

(b) A CCRC without Medicaid contracts for continuing care contract residents may not receive Medicaid funds from Washington state or the federal government during the term that the bonds are outstanding, except during the initial transition period as allowed by state law or if the regulatory agreement with the tax exempt bond financier exempts the CCRC from compliance with this requirement.

(c) CCRCs not receiving Medicaid funds (including CCRCs that are permitted to receive Medicaid funds during an initial transition period only) - construction or rehabilitation. If financing was obtained for the construction or rehabilitation of a CCRC without Medicaid contracts for continuing care contract residents, the following set-asides apply:

(i) Ten percent of the total dwelling units financed must be set-aside for residents with incomes at or below eighty percent of the local median income; and

(ii) Fifteen percent of the total dwelling units must be set-aside for residents at or below one hundred percent of the local median income.

(d) CCRCs not receiving Medicaid funds (including CCRCs that are permitted to receive Medicaid funds during an initial transition period only) - acquisition or refinancing. If financing was obtained to acquire a CCRC or to refinance a CCRC without Medicaid contracts for continuing care contract residents, the following set-asides apply:

(i) Twenty percent of the total dwelling units financed must be set-aside for residents with incomes at or below fifty percent of the local median income; or

(ii) Forty percent of the total dwelling units must be set-aside for residents at or below sixty percent of the local median income.

(e) CCRCs receiving Medicaid funds - construction or rehabilitation. If financing was obtained for the construction or rehabilitation of a CCRC with Medicaid contracts for continuing care contract residents, the following set-asides apply:

(i) Ten percent of the total dwelling units financed must be set-aside for residents with incomes at or below eighty percent of the local median income; and

(ii) Ten percent of the total dwelling units must be set-aside for residents at or below fifty percent of the local median income.

(f) CCRCs receiving Medicaid funds - acquisition or refinancing. If financing was obtained to acquire a CCRC or to refinance a CCRC with Medicaid contracts for continuing care contract residents, the following set-asides apply:

(i) Twenty percent of the total dwelling units financed must be set-aside for residents with incomes at or below fifty percent of the local median income; or

(ii) Forty percent of the total dwelling units must be set-aside for residents at or below sixty percent of the local median income.

(8) **Partial exemption.** If a home does not qualify for a total exemption from property tax, the home may receive a partial exemption for its real property on a unit by unit basis and a total exemption for its personal property.

(a) Real property exemption. If the real property of a home is used in the following ways, the portion of the real property so used will be exempt and the home may receive a partial exemption for:

(i) Each dwelling unit occupied by a resident requiring significant assistance with activities of daily living;

(ii) Each dwelling unit occupied by an eligible resident; and

(iii) Common or shared areas of the home that are jointly used for two or more purposes that are exempt from property tax under chapter 84.36 RCW.

(b) Assistance with activities of daily living. A home may receive a partial exemption for each dwelling unit that is occupied by a resident who requires significant assistance with the activities of daily living and the home provides, brokers, facilitates, or contracts for the provision of this assistance. A resident requiring assistance with the activities of daily living must be a resident who requires significant assistance with at least three of the nonexclusive list of activities set forth below and who, unless he or she receives the assistance, would be at risk of being placed in a nursing home. Activities of daily living include, but are not limited to:

(i) Shopping;

(ii) Meal and/or food preparation;

(iii) Housekeeping;

(iv) Transportation;

(v) Dressing;

(vi) Bathing;

(vii) General personal hygiene;

(viii) Monitoring of medication;

(ix) Ambulatory services;

(x) Laundry services;

(xi) Incontinence management; and

(xii) Cuing for the cognitively impaired.

(c) Examples of assistance with the activities of daily living:

(i) If the resident of a home requires someone to assist him or her with daily dressing, bathing, and personal hygiene, weekly housekeeping chores, and daily meal preparation, he or she is a resident requiring significant assistance with activities of daily living and the home may receive a partial exemption for the dwelling unit in which he or she resides.

(ii) If the resident of a CCRC only requires someone to clean his or her house weekly and to do the laundry weekly, the resident does not require significant assistance with activities of daily living and the CCRC may not receive a partial exemption for the dwelling unit.

(d) Common or shared areas. Areas of a home that are jointly used for two or more purposes exempt from property tax under chapter 84.36 RCW will be exempted under RCW 84.36.041.

(i) The joint use of the common or shared areas must be reasonably necessary for the purposes of the nonprofit organization, association, or corporation exempt from property tax under chapter 84.36 RCW. A kitchen, dining room, and laundry room are examples of the types of common or shared areas for which a partial property tax exemption may be granted.

(ii) Example. A nonprofit organization uses its facility as a home for the aging and a nursing home. The home and nursing home jointly use the kitchen and dining room. The home may receive a property tax exemption for the common or shared areas under RCW 84.36.041. The eligibility of the other areas of the facility will be determined by the appropriate statute. The home's eligibility will be determined by RCW 84.36.041 and the nursing home's eligibility will be determined by RCW 84.36.040.

(e) Amount of partial exemption. The amount of partial exemption will be calculated by multiplying the assessed value of the property reasonably necessary for the purposes of the home, minus/less the assessed value of any common or shared areas, by a fraction. The numerator of the fraction is the number of the dwelling units occupied on January 1st of the assessment year by eligible residents and by residents requiring assistance with activities of daily living. The denominator of the fraction is the total number of occupied dwelling units as of January 1st of the assessment year. Example:

Assessed value of home:	$500,000
Less assessed value of common area:	- 80,000
Total	$420,000
Number of units occupied on 1/1 by eligible residents and people requiring assistance with daily living activities =	6
Total of occupied units on 1/1	40 or .15

$420,000 x .15 = $63,000 Amount of partial exemption
$420,000 - $63,000 = $357,000 Taxable value of home

(f) Valuation of the home. The assessor will value a home that receives a partial exemption by considering only the current use of the property during the period in which the partial exemption is received and will not consider any potential use of the property.

(9) **Income verification required from some residents.** If a home seeks a total property tax exemption because at least fifty percent of the occupied dwelling units are occupied by eligible residents or seeks to receive a partial exemption based upon the number of units occupied by eligible residents, the residents must submit income verification forms. The department may request income verification forms from residents of homes receiving a total exemption because of tax exempt bond financing.

(a) The income verification forms must be submitted to the assessor of the county in which the home is located by July 1st of the assessment year in which the application for exemption is made.

(b) The income verification form will be prescribed and furnished by the department of revenue.

(c) If an eligible resident filed an income verification form for a previous year, he or she is not required to submit a new form unless there is a change in status affecting the resident's eligibility, such as a significant increase or decrease in disposable income, or the assessor or the department requests a new income verification form to be submitted.

(10) **Three-year phase in for a home with increased taxable value.** If the taxable value of a home is increased because of the change in the method of calculating the amount of partial exemption, the increased taxable value shall be phased in over a period of three years.

(a) Eligibility requirements for phase in. If the home meets the following conditions the increased taxable value may be phased in:

(i) The home was exempt or partially exempt for taxes levied in 1993 for collection in 1994;

(ii) The home is partially exempt for taxes levied in 1994 for collection in 1995; and

(iii) The taxable value of the home increased for taxes levied in 1994 for collection in 1995 due to the change prescribed by chapter 151, Laws of 1993 with respect to the numerator of the fraction used to determine the amount of partial exemption.

(b) Method of phase in. The increase in taxable value shall be phased in as follows:

(i) For taxes levied in 1994 for collection in 1995, the home will pay taxes based on the taxable value in 1993 plus one-third of the increase in the taxable value from 1993 to the taxable value calculated under subsection (8)(e) of this section.

(ii) For taxes levied in 1995 for collection in 1996, the home will pay taxes based on the taxable value in 1994 plus one-half of the increase in the taxable value from 1994 to the taxable value calculated under subsection (8)(e) of this section.

(iii) For taxes levied in 1996 for collection in 1997 and for taxes levied thereafter, this subsection does not apply and the home will pay taxes on the taxable value without reference to this subsection.

(c) Example: Assume, for the purposes of this example, in 1993 the assessed value of a home was $475,000, the value of the shared area was $80,000, and twenty-six percent of the units were exempt. Therefore, the assessed value minus the value of the shared area or $395,000 multiplied by .74 = a taxable value of $292,300.

Column 1 Year	Column 2 Value after partial exemption	Column 3 Increase in Value (Col. 2 minus TV from Prior Year)	Column 4 Annual % of Increase to be Paid	Column 5 Amount of Increase to be Paid (Col. 3 x Col 4)	Column 6 Taxable Value ("TV") (Col. 5 + TV from Prior Year)
1993	$292,300	—	—	—	$292,300
1994	$357,000*	$64,700	33.00%	$21,351	$313,651
1995	$336,000**	$22,349	50.00%	$11,175	$324,826
1996	$325,500	$674	100.00%	$674	$325,500
1997	$367,500	—	—	—	$367,500

* This value is a continuation of the example in subsection (8)(e) of this section.

** For the purposes of this example, we are assuming that the home is located in a county on a four year revaluation cycle and that value of this home after the partial exemption will fluctuate each year because the number of eligible residents and residents who require assistance with the activities of daily living will change each year. In this example, the number of units exempt from property tax within the home used in the example in subsection (8)(e) are as follows: Eight in 1995, nine in 1996, and five in 1997.

(11) **Additional requirements.** Any nonprofit home for the aging that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16A-020 and 458-16-165. WAC 458-16A-020 contains information regarding the initial application and renewal procedures relating to the exemption discussed in this section. WAC 458-16-165 sets forth additional requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.041.

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.36.041. 95-06-041, § 458-16A-010, filed 2/24/95, effective 3/27/95.]

WAC 458-16A-020 Nonprofit homes for the aging—Initial application and annual renewal. (1) **Introduction.** This section explains the initial application process that must be followed for a home for the aging wishes to obtain a property tax exemption under RCW 84.36.041. This section also describes the annual renewal requirements that a home must follow to retain its exempt status, as well as the role of the assessor's office and the department of revenue in administering this exemption. Throughout this section, all requirements will pertain to all types of homes for the aging including, but not limited to, adult care homes, assisted living facilities, continuing care retirement communities (CCRC), and independent housing.

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

(a) "Assessor" means the county assessor or any agency or person who is duly authorized to act on behalf of the assessor.

(b) "Combined disposable income" means the disposable income of the person submitting the income verification form, plus the disposable income of his or her spouse, and the disposable income of each cotenant occupying the dwelling unit for the preceding calendar year, less amounts paid by the person submitting the income verification form or his or her spouse or cotenant during the previous year for the treatment or care of either person received in the dwelling unit or in a nursing home.

(i) If the person submitting the income verification form was retired for two months or more of the preceding calendar year, the combined disposable income of the person will be calculated by multiplying the average monthly combined disposable income of the person during the months the person was retired by twelve.

(ii) If the income of the person submitting the income verification form is reduced for two or more months of the preceding calendar year by reason of the death of the person's spouse, the combined disposable income of the person will be calculated by multiplying the average monthly combined disposable income of the person after the death of the spouse by twelve.

(c) "Continuing care retirement community" or "CCRC" means an entity that provides shelter and services under continuing care contracts with its residents or includes a health care facility or health service.

(d) "Continuing care contract" means a contract to provide a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related or personal care services, that is conditioned upon the transfer of property, the payment of an entrance fee to the provider of the services, and/or the payment of periodic charges in consideration for the care and services provided. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

(e) "Cotenant" means a person who resides with an eligible resident and who shares personal financial resources with the eligible resident.

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

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

(i) Occupied the dwelling unit as his or her principal place of residence as of January 1st of the year in which the claim for exemption is filed. The exemption will continue if the eligible resident is confined to a hospital or nursing home and the dwelling unit is temporarily unoccupied or occupied by a spouse, a person financially dependent on the claimant for support, or both;

(ii) Is sixty-one years of age or older on December 31st of the year in which the claim for exemption is filed, or is, at the time of filing, retired from regular gainful employment by reason of physical disability. A surviving spouse of a person who was receiving an exemption at the time of the person's death will qualify for this exemption if the surviving spouse is fifty-seven years of age or older and otherwise meets the requirements of this subsection; and

(iii) Has a combined disposable income that is no more than the greater of twenty-two thousand dollars or eighty percent of the median income adjusted for family size as determined by federal Department of Housing and Urban Development (HUD) for the county in which the person resides.

(h) "Homes for the aging" or "home(s)" means a residential housing facility that:

(i) Provides a housing arrangement chosen voluntarily by the resident, the resident's guardian or conservator, or another responsible person;

(ii) Has only residents who are at least sixty-one years of age or who have needs for care generally compatible with persons who are at least sixty-one years of age; and

(iii) Provides varying levels of care and supervision, as agreed to at the time of admission or as determined necessary at subsequent times of reappraisal.

(i) "HUD" means the federal Department of Housing and Urban Development.

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

(k) "Property that is reasonably necessary" means all property that is:

(i) Operated and used by a home; and

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

(3) **Application for exemption.** The tax exemption authorized by RCW 84.36.041 is claimed by and benefits a nonprofit home for the aging, not the residents of a home. Therefore, the claim for this exemption is submitted by a home to the department.

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

(b) A listing of the varying levels of care and supervision provided or coordinated by the home must accompany all initial applications submitted for exemption. Examples of the varying levels of care and supervision include, but are not limited to, the following:

(i) Conducting routine room checks;

(ii) Arranging for or providing transportation;

(iii) Arranging for or providing meals;

(iv) On site medical personnel;

(v) Monitoring of medication; or

(vi) Housekeeping services.

(c) Homes having real property that is used for purposes other than as a home (for example, property used for a barber shop) must provide the department with a floor plan identifying the square footage devoted to each exempt and nonexempt use.

(d) At the time an application for exemption is submitted, the home must submit proof that it is recognized by the Internal Revenue Service as a 501(c) organization.

(e) Homes that apply for a total exemption because of tax exempt bond financing must submit a copy of the regulatory agreement between the home and the entity that issues the bonds. When only a portion of the home is financed by a program using tax exempt bonds, the home must submit a site plan of the home indicating the areas so financed.

(4) **Segregation.** A nonprofit organization that provides shelter and services to elderly and disabled individuals may use the facility for more than one purpose that is exempt from property tax under chapter 84.36 RCW. Property that is used for more than one exempt purpose and that qualifies for exemption under a statute other than RCW 84.36.041 will be segregated and exempted pursuant to the applicable statute.

(a) If a home includes a nursing home, the department will segregate the home and the part of the facility that is used as a nursing home. The department will separately determine the eligibility of the home under RCW 84.36.041 and the nursing home under RCW 84.36.040 for the property tax exemption available under each statute.

Exception: If the home does not receive Medicaid funds (including CCRCs that are permitted to receive Medicaid funds during an initial transition period only) and is seeking a total exemption because of tax exempt bond financing, the home and nursing home will be considered as a whole when the set-aside requirements are applied.

(b) Dwelling units that are occupied by residents who do not meet the age or disability requirements of RCW 84.36.041 will be segregated and taxed.

(c) Common or shared areas. Areas of a home that are jointly used for two or more purposes exempt from property tax under chapter 84.36 RCW will be exempted under RCW 84.36.041.

(i) The joint use of the common or shared areas must be reasonably necessary for the purposes of the nonprofit organization, association, or corporation exempt from property tax under chapter 84.36 RCW. A kitchen, dining room, and laundry room are examples of the types of common or shared areas for which a property tax exemption may be granted. (ii) Example. A nonprofit organization uses its facility as a home for the aging and a nursing home. The home and nursing home jointly use the kitchen and dining room. The home may receive a property tax exemption for the common or shared areas under RCW 84.36.041. The eligibility of the other areas of the facility will be determined by the appropriate statute. The home's eligibility will be determined by RCW 84.36.041 and the nursing home's eligibility will be determined by RCW 84.36.040.

(5) **Homes subsidized by HUD.** Homes subsidized by a HUD program must initially and each March 31st thereafter provide the department with a letter of certification from HUD of continued HUD subsidy and a list of the name, age, and/or disability of all residents.

(6) **Homes that are not subsidized by HUD.** If a home is not subsidized by HUD or does not meet the requirements to receive a total exemption because of tax exempt bond financing, it may receive a total or partial exemption from property tax. The extent of the exemption will be determined by the number of dwelling units occupied by eligible residents. If more than fifty percent of the dwelling units are occupied by eligible residents, the home may receive a total exemption. Alternatively, if less than fifty percent of the dwelling units are occupied by eligible residents, the home may receive partial exemption for its real property on a unit by unit basis and a total exemption for its personal property. An income verification form, Form REV 64-0043, will be used to determine if a resident of a home meets the criteria of "eligible resident."

(a) Between January 1st and July 1st of the year preceding the year in which the tax is due, residents must file Form REV 64-0043 with the assessor of the county in which the home is located.

(b) If two or more residents occupy one unit, only one cotenant is required to file verification of combined disposable income, as defined in subsection (2) of this section, with the assessor.

(c) Form REV 64-0043 will not be accepted by the assessor if it is submitted or postmarked after July 1st.

(d) At any time after the initial application for exemption is approved, assessors and/or the department may:

(i) Request residents to complete Form REV 64-0043, the verification of income form;

(ii) Conduct audits; and

(iii) Request other relevant information to ensure continued eligibility.

(e) If a home not subsidized by HUD wishes to retain its exempt property tax status, the home must by March 31st of each year file with the department a list of the total number of dwelling units in their complex, the number of occupied dwelling units in their complex as of January 1st, the number of previously qualified dwelling units in their complex that are no longer occupied by the same eligible residents, and a list of the name, age, and/or disability of all residents and the date upon which they moved into or occupied the home.

(7) **Homes financed by tax exempt bonds.** Homes that receive a total property tax exemption because of tax exempt bond financing must initially and each March 31st thereafter provide the department with a letter of certification from the agency or organization monitoring compliance with the bond requirements. The letter of certification must verify that the home is in full compliance with all requirements and set-asides of the underlying regulatory agreement.

(a) If the set-aside requirements contained in the regulatory agreement differ from the set-aside requirements established by the department and set forth in WAC 458-16A-010, the department may require the residents of the home to submit income verification forms (Form REV 64-0043) to the assessor of the county in which the home is located.

(b) The home must also annually submit a list of the name, age, and/or disability of all residents to the department.

(8) **Assessor's responsibilities.** Assessors will determine the age or disability and income eligibility of all residents who file Form REV 64-0043, the income verification form. By July 15th each year, the assessor will forward a copy of Form REV 64-0043 to the department for each resident who meets the eligibility requirements.

(9) **Department of revenue responsibilities.** The department will make its determination by August 31st, or within thirty days of the date all required information is submitted to the department, of the exempt status of a home that applies for this exemption.

(10) **Appeals.** An applicant who is determined not to be an "eligible resident" by the assessor and a home that is denied a property tax exemption by the department each have the right to appeal. Appeals must be filed within thirty days of the date the notice of ineligibility or denial was mailed by the assessor or the department.

(a) If the assessor determines that an applicant does not meet the criteria to be an "eligible resident" of a home, the resident may appeal this decision to the board of equalization of the county in which the home is located.

(b) If the department denies, in whole or in part, an application for exemption, the home may appeal this denial to the state board of tax appeals.

(11) **Additional requirements.** Any nonprofit home for the aging that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16A-010 and 458-16-165. WAC 458-16A-010 contains information regarding the basic eligibility requirements to receive a total or partial exemption under RCW 84.36.041. WAC 458-16-165 sets forth additional requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.041.

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.36.041. 95-06-042, § 458-16A-020, filed 2/24/95, effective 3/27/95.]

Chapter 458-17 WAC

ASSESSMENT AND TAXATION OF MOTOR VEHICLES, TRAVEL TRAILERS, CAMPERS, MOTOR HOMES, AND SHIPS AND VESSELS

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

458-17-100 Ships and vessels—Apportionment of value. [Statutory Authority: RCW 84.08.070. 85-22-083 (Order PT 85-4), § 458-17-100, filed 11/6/85, effective 1/1/86.] Repealed by 86-21-003 (Order PT 86-5), filed 10/2/86. Statutory Authority: RCW 82.01.060(2).

WAC 458-17-105 Ships and vessels—Definitions. For the purposes of WAC 458-17-105 through 458-17-120:

(1) "Apportionable vessel" means a ship or vessel, other than one operated by a steamboat company as defined in RCW 84.12.200, which is:

(a) Engaged in interstate commerce;

(b) Engaged in foreign commerce; and/or

(c) Engaged exclusively in fishing, tendering, harvesting, and/or processing seafood products on the high seas or waters under the jurisdiction of other states.

(2) "Interstate commerce" means a ship or vessel that is engaged in transporting persons or property from one state or territory of the United States to another.

(3) "Foreign commerce" means a ship or vessel that is engaged in transporting persons or property between a state or territory of the United States and a foreign country.

(4) "Limits of the state" shall mean the normal boundaries of the state of Washington abutting Canada, Oregon, and Idaho and three miles to the west of Washington's coast line.

(5) "State levy" means that portion of the property tax that is levied by the state for state purposes. The levy rate is that rate determined locally.

(6) "Exclusively" means for no other purpose.

(7) "Alteration" means to change, make different or modify.

(8) "Repair" means to mend, remedy, renovate, or restore to a sound or good state after decay, dilapidation, or partial destruction.

[Statutory Authority: RCW 82.01.060(2). 86-21-003 (Order PT 86-5), § 458-17-105, filed 10/2/86.]

WAC 458-17-110 Ships and vessels—Subject to property taxation. Ships and vessels which are not subject to the excise tax imposed by chapter 82.49 RCW are either subject to the state property tax levy or are completely exempt from both the property tax and the excise tax. This rule, however, covers only those ships and vessels subject to the property tax and not those subject to the excise tax.

(1) Pursuant to RCW 84.36.080, all ships and vessels which are (a) used exclusively for commercial fishing purposes or (b) primarily engaged in commerce and which also have or are required to have a valid marine document as a vessel of the United States, are exempt from all property taxes except those levied for any state purpose. Accordingly, such ships and vessels are subject to assessment by the department of revenue.

(2) However, this requirement to pay the state portion of the property tax does not apply to ships and vessels listed in the state or federal register of historical places. Such historic ships and vessels are completely exempt from property taxation.

(3) Also, all ships and vessels which are not within the scope of subsection (1) of this section are completely exempt from property taxation. See RCW 84.36.090.

[Statutory Authority: RCW 82.01.060(2). 86-21-003 (Order PT 86-5), § 458-17-110, filed 10/2/86.]

WAC 458-17-115 Ships and vessels—Listing. Pursuant to section 3, chapter 229, Laws of 1986, every individual, corporation, association, partnership, trust, and estate shall list with the department of revenue all ships and vessels which are subject to their ownership, possession or control and which are subject to property taxation in accordance with WAC 458-17-110, and such listing shall be subject to the same requirements, penalties and liens provided in chapters 84.40 and 84.60 RCW for all other personal property in the same manner as provided therein.

[Statutory Authority: RCW 82.01.060(2). 86-21-003 (Order PT 86-5), § 458-17-115, filed 10/2/86.]

WAC 458-17-120 Ships and vessels—Apportionment of value. (1) Apportioned vessels which are subject to assessment by the department of revenue under WAC 458-17-110 shall have their value apportioned to the state of Washington in accordance with the following:

(a) The value of each apportionable vessel shall be apportioned to this state based on the number of days or fractions of days that the vessel is within the limits of this state during the calendar year preceding the calendar year in which the vessel is to be listed: *Provided,* That if the total number of days the vessel is within the limits of the state does not exceed one hundred twenty days for the preceding calendar year, no value shall be apportioned to this state.

(b) Days during which an apportionable vessel is in the state exclusively for one or more of the following purposes shall not be considered as days within this state, if the length of time is reasonable for the purpose of:

(i) Undergoing repair or alteration;

(ii) Taking on or discharging cargo, passengers or supplies; and/or

(iii) Serving as a tug for a vessel under (i) or (ii) of this subsection.

(c) Any ship or vessel engaging in any other activity or use or merely being moored, will not be considered as being within the state exclusively for (b)(i), (ii), or (iii) of this subsection.

(2) Ships and vessels that do not meet the definition of "apportionable vessel" and is not operated by a steamboat company as defined in RCW 84.12.200, shall have their value apportioned to this state based on the number of days or fractions of days that the vessel is within the limits of this state during the calendar year preceding the calendar year in which the vessel is to be listed.

(3) Days during which any ship or vessel leaves this state only while navigating the high seas in order to travel between points in this state shall be considered as days within this state.

(4) Ships and vessels shall be subject to property taxation in accordance with these rules even though they are not within the state on January 1 of the year in which the vessel is to be listed.

[Statutory Authority: RCW 82.01.060(2). 86-21-003 (Order PT 86-5), § 458-17-120, filed 10/2/86.]

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

WAC 458-18-010 Deferral of special assessments and/or property taxes—Definitions. (1) "Claimant" means a person who either elects or is required under RCW 84.64.030 or 84.64.050 to defer payment of the special assessments and/or real property taxes on his or her residence. If two individuals of a household seek to defer, they must determine between them as to who the claimant shall be.

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

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

(4) "Special assessment" means the charge or obligation imposed by a city, town, county or other municipal 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. 92-15-057, § 458-18-010, filed 7/13/92, effective 8/13/92; 88-13-042 (Order PT 88-9), § 458-18-010, filed 6/9/88; 84-21-010 (Order PT 84-4), § 458-18-010, filed 10/5/84; 81-05-020 (Order PT 81-8), § 458-18-010, filed 2/11/81; Order PT 76-1, § 458-18-010, filed 4/7/76.]

WAC 458-18-020 Deferral of special assessments and/or property taxes—Qualifications for deferral. A person may defer payment of special assessments and/or real property taxes on up to eighty percent of the amount of his equity value in said property if the following conditions are met:

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

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

amount exceed the amount of the insured value of the improvement plus the land value.

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

(4) The claimant must meet all requirements for an exemption for the residence under RCW 84.36.381, other than the income requirements, and to the extent eligible, must have first applied for the exemptions under RCW 84.36.381 through 84.36.389 prior to filing a declaration to defer.

(5) The claimant must have a combined disposable income, as defined in RCW 84.36.383 and WAC 458-16-010 and 458-16-013, of thirty thousand dollars or less.

[Statutory Authority: RCW 84.38.180. 92-15-057, § 458-18-020, filed 7/13/92, effective 8/13/92; 88-13-042 (Order PT 88-9), § 458-18-020, filed 6/9/88; 84-21-010 (Order PT 84-4), § 458-18-020, filed 10/5/84; 81-05-020 (Order PT 81-8), § 458-18-020, filed 2/11/81; Order PT 76-1, § 458-18-020, filed 4/7/76.]

WAC 458-18-030 Deferral of special assessments and/or property taxes—Declarations to defer—Filing—Forms. (1) Declarations to defer special assessments and/or real property taxes for any year shall be filed no later than thirty days before the tax or assessment is due, or thirty days after receiving notice under RCW 84.64.030 or 84.64.050 whichever is later. For good cause shown the department may waive this requirement. All declarations to defer shall be made and signed by the claimant. If the claimant is unable to make his or her own declaration, it may be made and signed by a duly authorized agent or by a guardian or other person charged with care of the person or property of such claimant.

(2) The declaration to defer shall be made solely upon forms prescribed by the department of revenue and supplied by the county assessor. Such forms shall contain the following:

(a) Name and address of the claimant.

(b) If the property described upon the assessment rolls by the assessor contains more than one acre, the claimant must supply a complete and accurate legal description that encompasses the residence and that does not contain more than one acre.

(c) An affirmation that the claimant meets the conditions of WAC 458-18-020 including, but not limited to the name, address, policy number, and amount of fire and casualty insurance carried on the residence.

(c) A list of all members of the claimants household.

(d) The claimant's equity in his residence including all liens, obligations and encumbrances against the property.

(e) Information concerning any special assessments to be deferred.

(f) The names of other parties with an interest in the residence to which the deferral applies.

(g) Signatures of other parties in interest designating the claimant.

(h) Signature of any mortgagee, contract purchase holder and/or beneficiary under a deed of trust.

(i) An affirmation that the claimant is aware of the lien of the deferred special assessments and/or real property taxes and when the lien becomes payable.

(j) A numbering system approved by the department.

(k) Any other pertinent information the department deems relevant.

[Statutory Authority: RCW 84.38.180. 84-21-010 (Order PT 84-4), § 458-18-030, filed 10/5/84; 81-05-020 (Order PT 81-8), § 458-18-030, filed 2/11/81; Order PT 76-1, § 458-18-030, filed 4/7/76.]

WAC 458-18-040 Deferral of special assessments and/or property taxes—Lien of state—Mortgage—Purchase contract—Deed of trust. (1) Whenever any special assessments and/or real property taxes are deferred under the provisions of this chapter, the amount deferred, including interest, shall become a lien in favor of the state upon this property and shall have priority as provided in chapters 35.50 and 84.60 RCW except as provided in subsection (3) herein.

(2) If any residence is under mortgage, deed of trust or purchase contract whereby the explicit wording or terms of the mortgage, deed of trust or purchase contract requires the accumulation of reserves out of which the holder of the mortgage, deed of trust, or purchase contract is required to pay real property taxes, said holder or his authorized agent shall cosign the declaration to defer either before a notary public or the county assessor or his deputy in the county in which the real property is located.

(3) The interest of any party required to cosign a declaration to defer under subsection (2) of this section shall have priority to the lien established in subsection (1) of this section.

[Order PT 76-1, § 458-18-040, filed 4/7/76.]

WAC 458-18-050 Deferral of special assessments and/or property taxes—Declarations to renew deferral—Filing—Forms. (1) Declarations to defer assessments and/or real property taxes for all years following the first year shall be made by filing a "declaration to renew deferral" with the county assessor no later than thirty days before the tax or assessment is due. For good cause shown the department may waive this requirement. If the claimant is unable to make his or her renewal declaration, it may be made and signed by a duly authorized agent or by a guardian or other person charged with care of the person or property of such claimant.

(2) Such "declaration to renew deferral" will be made solely upon forms prescribed by the department and supplied by the county assessor. The "declaration to renew deferral" form shall include, but not be limited to, those requirements contained in WAC 458-18-030 (2)(a), (2)(b), (2)(d), (2)(e), (2)(i), (2)(j), and (2)(k).

[Statutory Authority: RCW 84.38.180. 84-21-010 (Order PT 84-4), § 458-18-050, filed 10/5/84; 81-05-020 (Order PT 81-8), § 458-18-050, filed 2/11/81; Order PT 76-1, § 458-18-050, filed 4/7/76.]

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

The liens shall include:

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

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

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

WAC 458-18-070 Deferral of special assessments and/or property taxes—Duties of the county assessor. The county assessor shall:

(1) Determine each year if each claimant filing a "declaration to defer" and/or a "declaration to renew deferral" shall be granted a deferral. If the assessor determines the claimant is not eligible, he shall notify the claimant as soon as possible;

(2) In January of each year mail renewal declarations to each claimant who had received a deferral the previous year;

(3) Immediately transmit one copy of each approved declaration to the department;

(4) Transmit one copy of each approved declaration to the local improvement district which imposed the assessment that is to be deferred. Such district shall verify the figures concerning said assessment supplied by the claimant and notify the assessor of the correct figures if those supplied are inaccurate;

(5) Compute the dollar tax rates under the provisions of chapter 84.52 RCW as if the deferrals did not exist;

(6) As soon as possible notify the department of the amount of special assessments and/or real property taxes deferred for each claimant for that year. Such notice shall contain any corrections brought about by subsection (4) of this section;

(7) As soon as possible notify the county treasurer and the respective treasurers of the local improvement districts of which claimants and properties have qualified for deferral and the amount that will be paid by the state treasurer on behalf of the claimant;

(8) Notify the county treasurer and the department immediately upon occurrence of any condition set forth in WAC 458-12-100(1).

[Statutory Authority: RCW 84.38.180. 84-21-010 (Order PT 84-4), § 458-18-070, filed 10/5/84; Order PT 76-1, § 458-18-070, filed 4/7/76.]

WAC 458-18-080 Deferral of special assessments and/or property taxes—Duties of the department of revenue—State treasurer. The department shall:

(1) Notify the county assessor as soon as possible of any declaration to defer, where any factor appears to disqualify the claimant;

(2) Certify to the state treasurer the amount due the respective treasurers for any special assessments and/or real property taxes deferred for that year;

(3) File a notice of the deferral with the county recorder or auditor;

(4) Notify the department of licensing to show the state's lien on the certificate of ownership of a mobile home.

The department may audit any "declaration to defer" and/or "declaration to renew deferral" it deems necessary.

The state treasurer shall pay, before delinquency, to the county treasurers and the treasurers of the respective local improvement districts the amounts certified by the department of revenue. The amount paid shall be distributed to the districts which levied the taxes.

[Statutory Authority: RCW 84.38.180. 84-21-010 (Order PT 84-4), § 458-18-080, filed 10/5/84; 81-05-020 (Order PT 81-8), § 458-18-080, filed 2/11/81; Order PT 76-1, § 458-18-080, filed 4/7/76.]

WAC 458-18-090 Deferral of special assessments and/or property taxes—Appeals. Any claimant whose "declaration to defer" or "declaration to renew deferral" is denied by the county assessor may appeal to the county board of equalization under the provisions of chapter 458-14 WAC. The decision of the county board of equalization shall be final for that year and no further appeal shall be allowed.

In any case where the claimant is notified of a denial subsequent to July 15 due to WAC 458-18-080(2), the department may reconvene the board of equalization if requested to do so by the assessor or claimant.

[Order PT 76-1, § 458-18-090, filed 4/7/76.]

WAC 458-18-100 Deferral of special assessments and/or property taxes—When payable—Collection—Partial payment. (1) Any special assessments and/or real property taxes deferred shall become payable together with interest:

(a) Upon the conveyance of property which has a deferred special assessment and/or real property tax lien upon it.

(b) Upon the death of the claimant except when the surviving spouse is qualified and elects to incur the lien and continue the deferment by (i) filing an original "declaration to defer" within ninety days of the claimant's death and (ii) continuing to meet the qualifications of WAC 458-18-010 through 458-18-100.

When a surviving spouse elects to continue the deferment, the spouse then becomes the claimant and is fully subject to the conditions of WAC 458-18-010 through 458-18-100.

(c) Upon condemnation of property with a deferred special assessment and/or real property tax lien upon it by a public or private body exercising the power of eminent domain: *Provided,* That if the assessed value of the property not condemned exceeds the amount of the liens, including interest, the claimant may elect to have the liens set over to the property retained: *Provided further,* That the amount of the lien allowed to be set over shall not exceed 80% of the claimant's equity in the retained property.

(d) At such time as the claimant ceases to reside permanently in the residence upon which the deferral has been granted. If the cessation occurs between filing the declaration and the date the taxes are payable, the deferral shall not be allowed.

(e) Upon the failure of the claimant to have or keep in force fire and casualty insurance in sufficient amount to protect the interest of the state of Washington or failure to keep the state listed as a loss payee upon said policy. Subsection (1)(b) shall take precedence over subsection (1)(d).

(2) Once a deferral has been granted, the various conditions contained within WAC 458-18-010 through 458-18-100 may prohibit the claimant from qualifying for further deferrals, but any obligations resulting from deferrals previously granted will become due and payable only upon occurrence of the conditions set forth in subsection (1) of this section.

(3) Upon occurrence of any condition requiring the payment of any deferred special assessments and/or real property taxes, the county treasurer shall proceed to collect the same in the manner provided for in chapter 84.56 RCW. For purposes of collection of the deferred taxes and interest, provisions of chapters 84.56, 84.60, and 84.64 RCW shall be applicable. When these moneys are collected, they shall be credited to a special account in the county treasury and shall then be remitted to the state treasurer within thirty days from collection with remittance advice to the department of revenue. The state treasurer shall deposit the moneys in the state general fund.

(4) Any person may at any time pay a part or all of the deferred assessments and/or taxes including the interest, but such payment shall not affect the deferred tax status of the property. Any payment made shall be credited to the oldest deferred amount and shall be prorated between interest and the deferred assessments and/or taxes.

[Statutory Authority: RCW 84.38.180. 84-21-010 (Order PT 84-4), § 458-18-100, filed 10/5/84; 81-05-020 (Order PT 81-8), § 458-18-100, filed 2/11/81; Order PT 76-1, § 458-18-100, filed 4/7/76.]

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

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

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

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

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

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

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

(3) For all refunds, the rate of interest shall be as contained in WAC 458-18-220. The rate of interest is based upon the date the taxes were paid or the claim for refund is filed, whichever is later.

(4) Except as provided in subsections (5) and (6) of this section, the interest shall accrue from the time the taxes were paid or the claim for refund was filed, whichever is later, until the refund is made.

(5) Refunds on a state, county or district-wide basis shall not commence to accrue interest until six months following the date of the final order of the court.

(6) Refunds may be made without interest within sixty days after the date of payment if:

(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 458-18-215 Refunds—Payment under protest requirements. (1) **Introduction.** This rule explains and implements the procedures to be followed to comply with RCW 84.68.020. This statute imposes the requirement that property taxes be paid under protest in order to preserve the taxpayer's right to bring an action in court for a refund. The intent of the rule is to clarify the rights and responsibilities of taxpayers with respect to paying taxes under protest. This rule does not explain nor apply to the provisions of chapter 84.69 RCW, which describe alternative procedures for obtaining property tax refunds in factual circumstances that do not require the tax to be paid under protest.

(2) **What constitutes a valid protest.** In order to preserve a right to bring an action in court for refund of any property tax paid, a taxpayer must at the time of payment of the tax, submit to the county treasurer a written protest setting forth all of the grounds upon which the tax, or any portion of the tax, is claimed to be unlawful or excessive. When the taxpayer pays the tax in two installments, the right to bring an action in court for refund of any property tax paid is preserved if a written protest, as provided in this section, accompanies each installment payment or if a written protest, as provided in this section, accompanies the first installment payment and indicates that the protest is a continuing protest with respect to the taxes payable for the entire year. No protest accompanying a tax payment shall be deemed to include protest of taxes due in succeeding years. A statement on a check or money order that the tax is being paid under protest is not sufficient to preserve the right to seek a refund in court. Any tax paid without a written protest, as provided in this section, is considered to be voluntarily paid and nonrefundable.

(3) **Sufficiency of protest.** The written protest is intended to provide the taxing authorities with notice that the taxpayer is disputing the right to collect the tax and also to provide notice to the taxing authorities of the grounds upon which the taxpayer bases the protest. Any written protest which clearly states that the taxpayer disputes liability for the tax or a part thereof, and states all the reasons for the dispute constitutes a sufficient notice and a sufficient written protest for the purposes of this section. When the taxpayer submits a written protest as provided in this section, the taxpayer is thereafter prohibited from raising other or additional grounds as the basis for the dispute.

(4) **Notice to taxpayers of protest requirement.** A prominent notice of the written protest requirement shall be included as part of, or enclosed with, property tax statements. One sample notice is as follows: To preserve your right to seek a court ordered refund, you must submit a separate written statement to the county treasurer at the time you pay the tax stating: You are paying the tax or a portion of the tax under protest; and all of the reasons why you believe the tax paid is unlawful or excessive. An alternative

sample notice is as follows: To preserve your right to seek a court ordered refund, you must comply with requirements of the law (RCW 84.68.020 and WAC 458-18-215). Copies are available from the county treasurer.

(5) **Effective date.** This rule is effective for 1994 tax statements and taxes due in 1994, and thereafter. This rule is not intended to impose additional administrative costs upon counties to the extent 1994 tax statements may have already been printed, as of the effective date of this rule, without containing the notice required in subsection (4) of this section.

[Statutory Authority: RCW 84.08.070. 93-24-087, § 458-18-215, filed 11/30/93, effective 12/31/93.]

WAC 458-18-220 Refunds—Rate of interest. The following rates of interest shall apply on refunds of taxes made pursuant to RCW 84.69.010 through 84.69.090 in accordance with RCW 84.69.100. The following rates shall also apply to judgments entered in favor of the plaintiff pursuant to RCW 84.68.030. The interest rate is derived from the equivalent coupon issue yield of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted after June 30th of the calendar year preceding the date the taxes were paid or the claim for refund is filed, whichever is later. The rate thus determined shall be applied to the amount of the judgment or the amount of the refund, until paid:

Year tax paid (chapter 84.68 RCW); Year tax paid or claim filed (whichever is later) (chapter 84.69 RCW)	Auction Year	Rate
1985	1984	11.27%
1986	1985	7.36%
1987	1986	6.11%
1988	1987	5.95%
1989	1988	7.04%
1990	1989	8.05%
1991	1990	8.01%
1992	1991	5.98%
1993	1992	3.42%
1994	1993	3.19%
1995	1994	4.92%
1996	1995	5.71%
1997	1996	5.22%

[Statutory Authority: RCW 84.69.100, 84.08.010 and 84.08.070. 97-02-068, § 458-18-220, filed 12/31/96, effective 1/1/97; 96-01-093, § 458-18-220, filed 12/19/95, effective 1/1/96; 95-06-044, § 458-18-220, filed 2/24/95, effective 3/27/95; 94-05-063, § 458-18-220, filed 2/11/94, effective 3/14/94. Statutory Authority: RCW 84.08.010 and 84.69.100. 93-06-096, § 458-18-220, filed 3/3/93, effective 4/3/93; 92-17-027, § 458-18-220, filed 8/11/92, effective 9/11/92; 91-15-024, § 458-18-220, filed 7/11/91, effective 8/11/91. Statutory Authority: RCW 84.69.100 and 84.08.010(2). 89-10-067 (Order PT 89-6), § 458-18-220, filed 5/3/89; 88-07-003 (Order PT 88-3), § 458-18-220, filed 3/3/88. Statutory Authority: RCW 84.69.100 as amended by 1987 c 319 and 84.08.010(2). 87-19-141 (Order PT 87-7), § 458-18-220, filed 9/23/87.]

WAC 458-18-500 Deposit of moneys, assessments or taxes—Purpose. RCW 35.21.650 and 36.32.120 provide that any taxpayer may deposit with the treasurer or other legal depository any moneys, assessments or taxes that may become due or be levied in the future.

WAC 458-18-500 through 458-18-550 are to establish guidelines to be used in all cases wherein a taxpayer desires to deposit any moneys, assessments or taxes levied or to be levied under Title 84 RCW.

These rules are adopted by the department of revenue pursuant to its general supervisory powers and control over the administration of the assessment and tax laws of the state (RCW 84.08.010(1)) and rule making authority (RCW 84.08.070).

[Statutory Authority: RCW 84.08.010 and 84.08.070. 81-22-037 (Order PT 81-16), § 458-18-500, filed 10/30/81.]

WAC 458-18-510 Definitions. For the purposes of WAC 458-18-500 through 458-18-550,

(1) "County legislative authority" shall mean the county commissioners, or in the case of a home rule charter county, the governmental authority empowered to so act.

(2) "City treasurer" shall mean the duly appointed or elected treasurer of any city or town.

(3) "Taxpayer" shall mean any individual, corporation, association, partnership, trust, or estate whose property has been or will be assessed for property tax purposes according to Title 84 RCW.

(4) "Agreement" shall mean a written document wherein the taxpayer and county legislative authority, city treasurer, or governing officers of any district have agreed to certain conditions concerning the deposit. The agreement shall be made in accordance with WAC 458-18-520.

(5) "District" shall mean any county, city, town, port district, school district, road district, water district, fire district, or other municipal corporation, now or hereafter existing, having the power or authorized by law to levy or have levied for it, burdens on property for the purposes of obtaining revenue for public purposes, but shall not include the state.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 81-22-037 (Order PT 81-16), § 458-18-510, filed 10/30/81.]

WAC 458-18-520 Agreement. The agreement shall be binding on all parties thereto: *Provided,* That the agreement may be amended from time to time if such is agreed to by all parties in writing. The agreement shall contain:

(1) The name and address of the taxpayer;

(2) The name of the district or districts which (is) (are) a party to the agreement;

(3) The total amount and the date of the deposit or deposits;

(4) The funds and the amount of the deposit which is to be applied to each fund;

(5) A schedule for repayment or credit against the future assessment or taxes which shall show:

(a) The year or date that each credit will be allowed, and

(b) The amount of the credit. The credit may be in specific amounts or by percentage, whichever the parties deem most beneficial.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 81-22-037 (Order PT 81-16), § 458-18-520, filed 10/30/81.]

WAC 458-18-530 Prohibition of deposit. No taxpayer shall, nor shall any city treasurer or county legislative authority allow, deposit of any moneys, assessments, or taxes as a credit against any future assessments or taxes except as provided for in the agreement made in accordance with WAC 458-18-500 through 458-18-550.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 81-22-037 (Order PT 81-16), § 458-18-530, filed 10/30/81.]

WAC 458-18-540 General provisions. The following shall apply to all deposits and agreements:

(1) There shall be no limit on the number of years in advance of the due date that assessments and taxes may be deposited for;

(2) The district shall establish an accounting system which will enable any party, at any time, to accurately determine the amount of deposits and future credit, to any and all funds, which system shall be subject to approval by the state auditor;

(3) No interest shall be charged between the parties to the agreement on any deposits which have been made or agreed to be made except as provided for in subsection 6 of this section;

(4) Any deposit which is to be applied to any funds of districts other than county funds, shall be agreed to by the governing officers of said district which shall be a party to the agreement;

(5) Any moneys deposited shall not have any effect whatsoever on the levy of any taxes on any property in accordance with the provisions of chapters 84.52 and 84.55 RCW;

(6) The agreement may provide for penalties when the taxpayer has agreed to make deposits which subsequently are not made or not timely made; and

(7) Any taxes paid in the year they are due shall not be considered deposits.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 81-22-037 (Order PT 81-16), § 458-18-540, filed 10/30/81.]

WAC 458-18-550 Expenditure of funds. The funds to which the deposits are applied may be expended in any manner or for any purpose for which the funds could be applied as if they were received in the manner and at the time that assessments and taxes are normally paid.

Any district which has received or anticipates to receive deposits to be applied to their funds may, in the budget process, show those deposits as revenue or anticipated revenue, and budget for the expenditure of those moneys in the year they are to be expended.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 81-22-037 (Order PT 81-16), § 458-18-550, filed 10/30/81.]

Chapter 458-19 WAC
PROPERTY TAX LEVIES, RATES, AND LIMITS

WAC

WAC 458-19-005 Definitions. Unless the context clearly requires otherwise, the following definitions apply throughout this chapter:

(1) "Annexation" is the act of one taxing district adding territory or another dissimilar taxing district from outside the annexing taxing district's boundary and includes a merger of a portion of a fire protection district under chapter 52.06 RCW.

(2) "Assessed value" is the value of taxable property placed on the assessment rolls. The term is often abbreviated with the initials "A.V."

(3) "Certified property tax levy" is the levy certified by a taxing district to the county assessor, either through the county legislative authority or to the assessor directly.

(4) "Certified property tax levy rate" is the tax rate calculated by the county assessor in accordance with law, to produce the lawful amount of the certified property tax levy.

(5) "Consolidated levy rate" means:

(a) For purposes of the statutory aggregate dollar rate levy limit ($5.90), the sum of all regular levy rates set for collection exclusive of rates set for port and public utility districts, emergency medical services under RCW 84.52.069, conservation futures under RCW 84.34.230, and levies to finance affordable housing under RCW 84.52.105;

(b) For purposes of the constitutional one percent levy limit, the sum of all regular levy rates set for collection exclusive of rates set for port and public utility districts.

(6) "Consolidation" is the act of combining two or more similar taxing districts into one taxing district; for example, the combination of two fire protection districts into one fire protection district.

(7) "Constitutional limit" or "Constitutional one percent levy limit" means the levy limit established by Article VII, section 2 of the state Constitution, which prohibits the aggregate of all tax levies on real and personal property from exceeding one percent ($10 per $1,000) of the true and fair value of property. This limit does not apply to excess levies, levies by port districts, and levies by public utility districts. This limit is also stated in RCW 84.52.050.

(8) "Department" means the department of revenue of the state of Washington.

(9) "Excess levy" means the lawfully authorized levy by a taxing district, other than a port or public utility district, of additional taxes in excess of the statutory aggregate dollar rate limit, the statutory dollar rate limit, or the constitutional one percent levy limit, when authorized so to do by the voters of the taxing district in the manner specified in the state Constitution (Article VII, section 2).

(10) "Improvement" means any valuable change in or addition to real property, including the subdivision or segregation of parcels of real property or the merger of parcels of real property.

(11) "Joint taxing district" means a taxing district that exists in two or more counties; the term does not include the state nor does it include an inter-county rural library district.

(12) "Junior taxing district" means a taxing district other than the state, a county, a county road district, a city, a town, a port district, or a public utility district.

(13) "Levy rate" means the dollar amount per thousand dollars of assessed value applied to property within a taxing district and is calculated by dividing the total amount of a statutorily authorized levy of a taxing district by the total assessed value of that district, divided by one thousand, and is expressed in dollars and cents per one thousand dollars of assessed value.

(14) "New construction" means the construction or alteration of any property for which a building permit was issued, or should have been issued, under chapter 19.27, 19.27A, or 19.28 RCW or other laws providing for building permits, which results in an increase in the value of the property.

(15) "One hundred six percent limit" is the statutorily established limit that prohibits a taxing district other than the state from levying regular property taxes in any year that exceed one hundred six percent of the highest amount of regular property taxes that could have been lawfully levied in that taxing district in any year since 1985, plus an additional dollar amount calculated by multiplying the increase during the current year of the assessed value in the taxing district due to new construction, improvements to property and the increase in the value of state assessed property by the levy rate of that district for the preceding year.

(a) For purposes of the one hundred six percent limit, the phrase "highest amount of regular property taxes that could have been lawfully levied" means the maximum levy amount that could have been produced by a taxing district under the one hundred six percent limit unless the highest levy amount that could have been produced was actually restricted by the taxing district's statutory dollar rate limit.

(b) The state is prohibited from levying regular property taxes in any year that exceed one hundred six percent of the amount of regular property taxes lawfully levied in the highest of the three most recent years, plus the additional dollar amount calculated in the same manner as for other taxing districts.

(16) "Regular property tax levy" means a property tax levy by or for a taxing district that is subject to the statutory aggregate dollar rate limit set forth in RCW 84.52.043 and the constitutional one percent levy limit set forth in RCW 84.52.050 or a levy imposed by or for a port district or a public utility district.

(17) "Regular property taxes" are those taxes resulting from regular property tax levies.

(18) "Senior taxing district" means the state (for support of common schools), a county, a county road district, a city, or a town.

(19) "Statutory aggregate dollar rate limit" means the maximum aggregate regular property tax levy rate within a county established by law for senior and junior taxing districts, other than the state.

(20) "Statutory dollar rate limit" means the maximum regular property tax levy rate established by law for a particular class of taxing district.

(21) "Super majority" means a majority of at least three-fifths of the registered voters of a taxing district approving a proposition authorizing a levy, at which election the number of persons voting "yes" on the proposition shall constitute three-fifths of a number equal to forty percent of the total votes cast in such taxing district in the last preceding general election; or by a majority of at least three-fifths of the registered voters of the taxing district voting on the proposition when the number of registered voters voting on the proposition exceeds forty percent of the total votes cast in such taxing district in the last preceding general election.

(22) "Tax code area" means a geographical area made up of a unique mix of one or more taxing districts, which is established for the purpose of properly calculating, collecting, and distributing taxes. Only one tax code area will have the same combination of taxing districts, with limited exceptions.

(23) "Taxing district" means the state and any county, city, town, township, port district, school district, road district, metropolitan park district, water district, or other municipal corporation, now or hereafter existing, having the power or authorized by law to impose burdens upon property within the district on an ad valorem basis, for the purpose of obtaining revenue for public purposes, as distinguished from municipal corporations authorized to impose burdens, or for which burdens may be imposed for public purposes, upon property in proportion to the benefits accruing thereto.

[Statutory Authority: RCW 84.55.060 and 84.08.070. 94-07-066, § 458-19-005, filed 3/14/94, effective 4/14/94.]

WAC 458-19-010 Levy rate calculations. (1) **Assessor sets levy rates.** The county assessor shall calculate the certified property tax levy rate necessary to collect the amount of taxes authorized in the certified property tax levy of each taxing district, within the limitations provided by law.

(2) **Joint taxing district.** For a joint taxing district, the assessor of the county in which is located the greatest amount of assessed value of the joint taxing district shall calculate the levy rate for the joint taxing district.

(3) **Intercounty rural library district.** The board of trustees of an intercounty rural library district shall calculate the levy rate for such district in consultation with the respective county assessors and certify that rate to the respective county legislative authorities.

[Statutory Authority: RCW 84.55.060 and 84.08.070. 94-07-066, § 458-19-010, filed 3/14/94, effective 4/14/94.]

WAC 458-19-015 Assessor to determine one hundred six percent levy limit—Exceptions. (1) The one hundred six percent levy limit for all taxing districts levying regular property tax levies shall be determined by the county assessor, except that for intercounty rural library districts and the state, the one hundred six percent levy limit shall be determined as follows:

(a) The one hundred six percent levy limit for an intercounty rural library district shall be determined by the board of trustees of the intercounty rural library district in consultation with the respective county assessors of the counties involved;

(b) The levy limit for the state levy shall be determined by the department.

[Statutory Authority: RCW 84.55.060 and 84.08.070. 94-07-066, § 458-19-015, filed 3/14/94, effective 4/14/94.]

WAC 458-19-020 One hundred six percent levy limit—Method of calculation. (RCW 84.55.010 and 84.55.092)

(1) The amount of regular property taxes that can be levied by a taxing district in any year shall be limited to an amount that will not exceed the amount resulting from the following calculation, except as otherwise provided in WAC 458-19-045 (Lid lift):

(a) Multiply the highest amount that could have been lawfully levied by the taxing district (other than the state) since 1985 for 1986 collection, by one hundred six percent; add

(b) A dollar component calculated by multiplying the increase in assessed value of the district from the previous year attributable to new construction, improvements to property, and any increase in the assessed value of state assessed property, by the actual regular property tax levy rate of that district for the preceding year.

(2) The one hundred six percent levy limit for the state shall be calculated in the same manner as for other taxing districts except that one hundred six percent is multiplied by the highest amount that was lawfully levied by the state in the three most recent years in which such taxes were levied.

[Statutory Authority: RCW 84.55.060 and 84.08.070. 94-07-066, § 458-19-020, filed 3/14/94, effective 4/14/94.]

WAC 458-19-025 One hundred six percent levy limit—Restoration of regular levy. (RCW 84.55.015)

(1) When a taxing district elects to impose a regular property tax levy, after not having imposed such a levy in any one of the three most recent years, the regular property tax payable as a result of the restored levy shall not exceed the lesser of:

(a) The combination of the following:

(i) the amount that could have been lawfully levied in 1973 plus,

(ii) a dollar component calculated by adding the increase in assessed value of property in the district attributable to new construction, improvements to property, and any increase in the assessed value of state assessed property, starting with 1974 through the current year. Multiply that total by the levy rate that is proposed to be restored. The levy rate that is proposed to be restored shall be determined by dividing the total dollar amount of the levy that could have been made in 1973 by the current year's assessed value after deducting the accumulated assessed value attributable to new construction, improvements to property, and any increase in the assessed value of state assessed property since 1974; or

(b) The maximum amount which could be lawfully levied by that district in the year such a restored levy is proposed, subject to the statutory aggregate dollar rate limit, the constitutional limit, and the statutory dollar rate limit contained in the taxing district's authorizing statute, without considering the calculation used in subsection (1)(a) of this section.

(c) **Example.** Taxing district "A" has not levied a regular levy in any of the three most recent years. Taxing district "A" could have levied $10,000 in 1973 based upon 1973 assessed value and all lawful limitations at that time. The total of increases in assessed value of property resulting from new construction, improvements to property, and increase in the assessed value of state assessed property beginning in 1974 through the current year is $3,000,000. The assessed value of taxing district "A" for the current year is $15,000,000. The calculation for (a) of this subsection is as follows:

Current year A.V. -	$15,000,000
Subtract increases in new construction, etc. since 1973 -	3,000,000
	$12,000,000
Levy amount allowable in 1973 -	$10,000
Current year A.V. less increases in new construction -	÷ $12,000,000
Levy rate proposed to be restored -	.000833
Increases in new construction, etc. -	x $3,000,000
Calculated dollar amount -	$ 2,500
Allowable 1973 levy -	+ 10,000
Allowable levy for current year (under (a)) -	$ 12,500

The amount calculated under (a) of this subsection must be compared to the amount determined under (b) of this subsection and the lesser of the two amounts is the maximum amount that can be levied under this section.

(2) **Assessor to maintain taxing district records.** Records of new construction, improvements to property, and increases in the value of state assessed property shall be maintained each year by the county assessor for each taxing district whether or not the district imposes a regular property tax levy.

[Statutory Authority: RCW 84.55.060 and 84.08.070. 94-07-066, § 458-19-025, filed 3/14/94, effective 4/14/94.]

WAC 458-19-030 One hundred six percent levy limit—Consolidation of districts. (RCW 84.55.020)

(1) The first regular property tax levy made by a taxing district, created by the consolidation of two or more districts, shall not exceed one hundred six percent of the following amount:

(a) The sum of the highest amount of regular property taxes that could have been lawfully levied by each of the component districts since 1985 for 1986 collection; plus

(b) The sum of each of the amounts calculated by multiplying the assessed value of property attributable to new construction, improvements to property, and increases in the assessed value of state assessed property in each of the component districts in the preceding year by the regular property tax rate of each component district in the preceding year.

(2) **Example.** Following is an example of the calculation prescribed in subsections (1)(a) and (1)(b) of this section. Taxing district "A" and taxing district "B" consolidate, becoming one taxing district. The highest amount of regular property taxes that could have been lawfully levied by district "A" since 1985 for 1986 collection is $100,000. The highest amount of regular property taxes that could have been lawfully levied by district "B" since 1985 for 1986 collection is $150,000. The increase in assessed value due to new construction, improvements to property, and increase in assessed value of state assessed property in district "A" in the year prior to consolidation was $600,000. The increase in assessed value due to new construction, improvements to property, and increase in assessed value of state assessed property in district "B" in the year prior to consolidation was $900,000. The regular property tax rate for district "A" in the year prior to consolidation was $.50 per $1,000 of assessed value. The regular property tax rate for district "B" in the year prior to consolidation was $.45 per $1,000 of assessed value. The maximum amount of regular property taxes that can be levied in the year of consolidation, for taxes payable the following year, by the new consolidated taxing district is calculated as follows:

	Highest regular levy	
District "A" -	$100,000	
District "B" -	150,000	
Total -	$250,000	x 1.06 = $265,000

Increases in assessed value multiplied by levy rate:

District "A" - $600,000 x $.50 ÷ $1,000 =	$300
District "B" - $900,000 x $.45 ÷ $1,000 =	$405
	$705

Maximum regular property taxes that can be levied in the year of consolidation, payable in the year following consolidation

$265,000 + $705 = $265,705

[Statutory Authority: RCW 84.55.060 and 84.08.070. 94-07-066, § 458-19-030, filed 3/14/94, effective 4/14/94.]

WAC 458-19-035 One hundred six percent levy limit—Annexation. (RCW 84.55.030 and 84.55.110)

(1) **Increase in territory due to annexation.** The first regular property tax levy of a taxing district after annexation by that district of other territory or a dissimilar taxing district shall not exceed the amount calculated as follows:

(a) Multiply the highest amount of regular property taxes that could have been lawfully levied since 1985 for 1986 collection, of the annexing district as though no annexation had occurred, by one hundred six percent.

(b) Multiply the increase in assessed value in the annexing district since the preceding year attributable to new construction, improvements to property, and increase in assessed value of state assessed property by the regular property tax levy rate of the annexing district for the preceding year.

(c) Multiply the current year assessed value of the annexed territory or district by the levy rate that would have been used for the current year by the annexing district had there been no annexation.

(d) Add the amounts calculated in subsections (1)(b) and (1)(c) of this section to the amount determined in subsection (1)(a) of this section.

(2) **Example.** Following is an example of the calculations prescribed in subsection (1) of this section. Taxing district "A" annexes a portion of taxing district "B" in 1993. The highest amount of regular property taxes that could have been levied by district "A" since 1985 for 1986 collection is $100,000. The increase in assessed value from 1992 to 1993 in district "A" due to new construction, improvements to property, and increase in the value of state assessed property is $700,000. The levy rate for district "A" for 1992 was $.50 per $1,000 of assessed value. The 1993 levy rate for district "A", had there been no annexation, would have been $.48 per $1,000 of assessed value. The 1993 assessed value of the portion of taxing district "B" that was annexed by taxing district "A" is $5,000,000. The first regular levy by taxing district "A" after annexation shall not exceed the amount calculated as follows (for purposes of this example, "new construction" includes improvements to property and increase in the value of state assessed property):

District "A" highest levy -	$100,000
	x 1.06
	$106,000
A.V. of new construction in district "A" -	$700,000
District "A" levy rate for 1992 -	x .50
	$350,000
Divide by $1,000 -	÷ 1,000
Levy amount for new construction -	$350
1993 A.V. of annexed portion of district "B" -	$5,000,000
District "A" levy rate that would have been used in 1993, absent annexation -	x .48
	$2,400,000
Divide by $1,000 -	÷ 1,000
Levy amount for annexed part of district "B" -	$2,400
	$106,000
	2,400
	+ 350
Maximum levy amount for district "A" after annexation -	$108,750

(3) **Loss of territory due to annexation.** When a taxing district loses a portion of its territory as a result of annexation to another district, the calculation of the one hundred six percent limit for the taxing district that loses part of its territory is calculated by multiplying the highest amount that could have been lawfully levied by that taxing district since 1985 for 1986 collection by one hundred six percent. However, only the increase in assessed value from the preceding year, attributable to new construction, improvements to property, and increase in assessed value of state assessed property that is actually situated in the remaining territory of the taxing district is added to the amount thus determined, to calculate the one hundred six

percent limit. The levy rate shall in no case exceed the statutory dollar rate limit for that class of taxing district.

[Statutory Authority: RCW 84.55.060 and 84.08.070. 94-07-066, § 458-19-035, filed 3/14/94, effective 4/14/94.]

WAC 458-19-040 One hundred six percent levy limit—Newly formed taxing district. (RCW 84.55.035)

The one hundred six percent levy limit does not apply to the first regular levy made by a newly formed taxing district created other than by consolidation or annexation. The newly formed taxing district may levy up to the statutory dollar rate limit for that class of district, subject to the statutory aggregate dollar rate limit and the constitutional limit. The second regular levy by the district and all subsequent regular levies are subject to the one hundred six percent limit or, if applicable, the limit described in WAC 458-19-025 regarding the restoration of a regular levy.

[Statutory Authority: RCW 84.55.060 and 84.08.070. 94-07-066, § 458-19-040, filed 3/14/94, effective 4/14/94.]

WAC 458-19-045 One hundred six percent levy limit—Removal of limit (lid lift). (RCW 84.55.050)

(1) **Introduction.** The one hundred six percent levy limit may be exceeded when authorized by a majority of the voters voting on a proposition to "lift the lid" of the one hundred six percent limit. This "lid lift" is intended to allow the one hundred six percent limit to be exceeded for the levy made immediately following the vote on the proposition. The purpose of the lid lift is to allow additional taxes to be collected at a time when the statutory aggregate dollar rate limit, the statutory dollar rate limit, and the constitutional limit are not the limitations restricting the raising of additional taxes; the lid lift vote is most effective at a time when the one hundred six percent limit is the limitation that is currently restricting the raising of additional property taxes. This rule explains the procedures for implementing a lid lift ballot proposition.

(2) **Ballot proposition election—when held.** The election to approve a lid lift proposition must be held within the taxing district and may be held at the time of a general election, or at a special election called by the governing body of the taxing district for that purpose. A simple majority vote is required for approval. The election must be held not more than twelve months prior to the date the proposed levy is to be made. For purposes of this rule, a levy is "made" when the taxing district's budget is certified.

(3) **Ballot contents.**

(a) The ballot of the proposition shall state the dollar rate of the proposed levy, which rate may be less than the maximum statutory dollar rate limit allowed for the particular class of taxing district.

(b) The ballot may contain the following conditions or a combination of them and shall clearly state the conditions that apply:

(i) The ballot may limit the number of years the increased levy will continue; however, if one of the purposes of the increased levy is to make redemption payments on bonds of the taxing district, the increased levy shall not exceed nine years;

(ii) The ballot may limit the purpose or purposes of the increased levy.

(c) The ballot of the proposition shall be prepared by the county prosecutor or city attorney, as applicable, in accordance with the provisions of RCW 29.27.060.

(4) **Permanent lid lift.**

(a) A permanent lid lift is one where the ballot of the proposition contains none of the conditions stated in subsection (3)(b) of this section.

(b) The first regular levy of a taxing district made after voter approval of a permanent lid lift proposition shall be calculated on the basis of the dollar rate stated in the ballot proposition, but that dollar rate shall be subject to the constitutional limit and the statutory aggregate dollar rate limit and any applicable prorationing.

(c) The one hundred six percent limit on regular levies of a taxing district made subsequent to the first regular levy made after voter approval of a permanent lid lift proposition shall be calculated as stated in WAC 458-19-020; however, instead of multiplying the highest amount that could have been lawfully levied since 1985 by one hundred six percent, the dollar amount of the regular levy calculated in accordance with (b) of this subsection is multiplied by one hundred six percent.

(5) **Temporary lid lift.**

(a) A temporary lid lift is one where the ballot of the proposition contains a time limit on the increased levy or contains a limited purpose or purposes for the increased levy, or both.

(b) The first regular levy of a taxing district made after voter approval of a temporary lid lift proposition shall be calculated on the basis of the dollar rate stated in the ballot proposition, but that dollar rate shall be subject to the constitutional limit and the statutory aggregate dollar rate limit and any applicable prorationing.

(c) The one hundred six percent limit on regular levies of a taxing district made subsequent to the first regular levy made after voter approval of a temporary lid lift proposition shall be calculated as stated in WAC 458-19-020; however, instead of multiplying one hundred six percent by the highest amount since 1985, the dollar amount of the regular levy calculated in accordance with (b) of this subsection is multiplied by one hundred six percent.

(d) After expiration of the time limit or satisfaction of the limited purpose, whichever comes first, the taxing district's subsequent regular levies shall be calculated using the maximum amount allowed under the one hundred six percent limit during the years the levies were made under the ballot proposition, as if there had been no lid lift proposition.

[Statutory Authority: RCW 84.55.060 and 84.08.070. 94-07-066, § 458-19-045, filed 3/14/94, effective 4/14/94.]

WAC 458-19-050 Port district levies. (1) **Introduction.** This rule describes the various port district levies and the limitations to which they are subject. Port district levies are not limited by the constitutional one percent limit nor by the statutory aggregate dollar rate limit. All port district levies are regular levies, by statutory definition (RCW 84.04.140), regardless of whether they are voted levies.

(2) **Levy for general port purposes.** Port districts may annually levy taxes for general port purposes, including the establishment of a capital improvement fund for future capital improvements. This levy shall not exceed forty-five

cents per thousand dollars of assessed value of the port district. This levy may be made without an authorizing vote of the voters of the district.

(3) **Levy for bond repayment.** Port districts may levy taxes for the purpose of payment of the principal and interest on any general bonded indebtedness of the port district. Even though this levy is not subject to any dollar rate limitation, the limitations on the amount of indebtedness that a port district may incur by contract or borrowing, and the one hundred six percent limit do apply.

(4) **Levy for dredging, canal construction, or land leveling or filling purposes.** Port districts may annually levy taxes for dredging, canal construction, or land leveling or filling purposes, and the proceeds of any such levy must be used exclusively for such purposes. This levy shall not exceed forty-five cents per thousand dollars of assessed value of the port district. This levy must first be authorized by a vote of a majority of the electors of the district voting on whether to make such a levy, submitted at an election held under the provisions of RCW 29.13.020.

(5) **Levy for industrial development district purposes.** Port districts that have adopted a comprehensive scheme of harbor improvements and industrial development may annually levy taxes to be used exclusively for purposes of industrial development districts as described in chapter 53.25 RCW; however, any excess revenue not required to complete projects under chapter 53.25 RCW shall be used solely for the retirement of general obligation bonded indebtedness of the district. This levy shall not exceed forty-five cents per thousand dollars of assessed value of the port district. This levy need not be authorized by a vote of the people of the district, except as provided in (b) of this subsection.

(a) **Levy for limited time period.** This levy is limited to a period of twelve years only.

(b) **Notice to be given if levy to last more than six years.** If this levy is intended to extend beyond the first six years authorized, the port commission shall publish notice of this intention, in one or more newspapers of general circulation in the district, after January 1 and not later than June 1 of the year in which the seventh annual levy is to be made. If a petition by the required number of registered voters in the port district in accordance with RCW 53.36.100 is filed within ninety days of the date of publication of the notice, levies during the seventh through twelfth years may only be made if approved by a majority of the voters of the port district voting on the proposition.

(6) **Calculation of the one hundred six percent limit for port districts.**

(a) The levies described in subsections (2), (3), and (4) of this section are subject to the one hundred six percent limit. For purposes of the calculation of that limit, the dollar amount of those levies are combined and the one hundred six percent limit is calculated as provided in WAC 458-19-020.

(b) For purposes of the one hundred six percent limit, the levy described in subsection (5) shall be treated in the same manner as though it were a separate regular property tax levy made by or for a separate taxing district. The first levy of a port district under subsection (5) shall not be subject to the one hundred six percent limit.

(7) **Limit of indebtedness.**

(a) **Without voter approval.** Port districts, other than those described in (a)(i) and (a)(ii) of this subsection, may contract indebtedness or borrow money in an amount not exceeding one-fourth of one percent of the actual value of the taxable property in the district plus the timber assessed value for the district, as "timber assessed value" is defined in RCW 84.33.035(8), without voter approval.

(i) Port districts having less than eight hundred million dollars in value of taxable property may not incur indebtedness, combined with existing indebtedness not authorized by the voters, in excess of three-eighths of one percent of the value of the taxable property of the district.

(ii) Port districts having less than two hundred million dollars in value of taxable property and operating a municipal airport, may contract indebtedness or borrow money not exceeding an additional one-eighth of one percent of the value of the taxable property of the district above that authorized in (a) and (a)(i) of this subsection, without authorization by the voters.

(b) **With voter approval.**

(i) Port districts may contract indebtedness or borrow money for district purposes in an amount not to exceed three-fourths of one percent of the taxable value in the district, with the assent of three-fifths of the voters voting at a general or special election called for that purpose.

(ii) Port districts described in (a)(ii) of this subsection may contract indebtedness or borrow money for airport capital improvement purposes up to an additional three-eighths of one percent of the taxable value in the district with the assent of three-fifths of the voters voting at a general or special election called for that purpose, provided the total indebtedness of the district shall not exceed one and one-fourth percent of the taxable property in the district.

[Statutory Authority: RCW 84.55.060 and 84.08.070. 94-07-066, § 458-19-050, filed 3/14/94, effective 4/14/94.]

WAC 458-19-055 One hundred six percent levy limit—Proration of earmarked funds. (1) **Introduction.** Certain levies may be "earmarked" for specific purposes even though they are part of, or in addition to, the general regular levy made by a taxing district. This rule describes when and how the levy rate of the earmarked levies may be reduced as a result of the operation of the one hundred six percent levy limit.

(2) **Firemen's pension fund.** The legislative authority of a city or town having a regularly organized full time, paid, fire department employing firefighters may reduce the levy rate of a levy made under the authority of RCW 41.16.060 allocated to the firemen's pension fund. The levy rate of this levy allocated to this purpose may be reduced in the same proportion as the regular property tax levy rate of such a city or town is reduced by the one hundred six percent limit.

(3) **Mental health services levy.** Under the authority of RCW 71.20.110, the county legislative authority shall annually levy a tax at a rate of two and one-half cents per thousand dollars of assessed value of the property in the county for the purposes of providing funds for the coordination of community mental retardation and other developmental disability services and to provide community mental retardation, other developmental disability, or mental health

services. The levy rate of this levy allocated to these purposes may be reduced in the same proportion as the regular property tax levy rate of the county is reduced by the one hundred six percent limit.

(4) **Veteran's assistance fund.** Under the authority of RCW 73.08.080, the county legislative authority shall annually levy a tax at a rate not less than one and one-eighth cents per thousand dollars of assessed value of the taxable property of the county, unless a lesser amount is levied as provided in that statute, and not to exceed twenty-seven cents per thousand dollars of assessed value for the purpose of providing revenue for a veteran's assistance fund. The levy rate of this levy allocated to this purpose may be reduced in the same proportion as the regular property tax levy of the county is reduced by the one hundred six percent limit.

(5) **Earmarked levies to be reduced only when regular levy affected.** The reduction of these earmarked levies, as described in this section, shall only be made when the general regular levy of the taxing district involved is affected by the one hundred six percent levy limit.

(6) **Affect of voluntary reduction below one hundred six percent levy limit by taxing district.** If a taxing district levying a tax for an earmarked fund voluntarily reduces its regular levy below the maximum levy allowed by the one hundred six percent limit, there shall be no resulting reduction in the levy rate for earmarked funds.

[Statutory Authority: RCW 84.55.060 and 84.08.070. 94-07-066, § 458-19-055, filed 3/14/94, effective 4/14/94.]

WAC 458-19-060 Emergency medical service levy. (RCW 84.52.069)

(1) **Introduction.** The emergency medical service (EMS) levy is a regular levy approved by a super majority of registered voters at a general or special election held in accordance with the provisions of RCW 84.52.069. The ballot proposition shall conform to the provisions of RCW 29.30.111. Only a county, emergency medical service district, city, town, public hospital district, or fire protection district is authorized to impose a regular levy for emergency medical care or emergency medical services. The EMS levy, in each year for six consecutive years, shall not exceed fifty cents per thousand dollars of assessed value of the property of the taxing district.

(2) **County-wide EMS levy.** A county-wide EMS levy shall not be placed on the ballot without first obtaining the approval of the legislative authority of any city within the county having a population exceeding fifty thousand. No other taxing district within the county may hold an election on a proposed EMS levy at the same time as the election on a proposed county-wide EMS levy. To the extent feasible, emergency medical care and services shall be provided throughout the county whenever the county levies an EMS levy. In addition, if a county levies an EMS levy, the following conditions apply:

(a) A taxing district within the county, authorized to levy an EMS levy may do so, but only if the taxing district's EMS levy rate does not exceed the difference between the county's EMS levy rate and fifty cents per thousand dollars of assessed value of the property of the taxing district; and

(b) When a taxing district within the county levies an EMS levy and the voters of the county subsequently approve an EMS levy, then the taxing district shall reduce its EMS levy rate to the extent the combined EMS levy rate of the county and the taxing district exceeds fifty cents per thousand dollars of assessed value in the taxing district; and

(c) An EMS levy of a taxing district within the county, authorized by the voters subsequent to an EMS levy by a county, shall expire concurrently with the county EMS levy.

(3) **EMS levy of taxing district other than county.** If a taxing district within the county, authorized to levy an EMS levy has done so, no other taxing district, other than the county, may concurrently levy an EMS levy within the boundaries of the taxing district.

(4) **EMS levy—constitutional one percent limit.** In the event that a reduction of the EMS levy rate is required under the constitutional one percent limit, it shall be reduced in accordance with the procedure specified in WAC 458-19-075.

(5) **EMS levy—one hundred six percent limit.** The one hundred six percent levy limit does not apply to the first EMS levy following authorization by the voters, but does apply to each EMS levy made in the next five years or until the EMS levy is reauthorized by the voters. The EMS levy shall be calculated separately from a taxing district's regular levy for purposes of calculating the one hundred six percent limit.

[Statutory Authority: RCW 84.55.060 and 84.08.070. 94-07-066, § 458-19-060, filed 3/14/94, effective 4/14/94.]

WAC 458-19-065 One hundred six percent levy limit—Protection of future levy capacity. (1) In any year when a taxing district other than the state levies taxes in an amount less than the maximum amount allowed by the one hundred six percent levy limit, whether voluntarily or as a result of the operation of the statutory aggregate dollar rate limit reducing or eliminating the taxing district's levy rate, the one hundred six percent levy limit for succeeding years after 1985 will be calculated as though the maximum lawful levy amount allowed by the one hundred six percent limit had been levied.

(2) **Example.**

(a) (These examples do not include any amounts for new construction, improvements to property, or increases in the value of state assessed property.) In 1993, the highest amount of regular property taxes that could have been lawfully levied by taxing district "A" as restricted by the one hundred six percent limit was $100,000. But in 1993 taxing district "A" is otherwise limited by the statutory aggregate dollar rate limit to a maximum levy of $95,000. The one hundred six percent limit for the 1994 levy will be calculated on the basis of what could have been the highest levy amount for 1994, that is $100,000 x 1.06 = $106,000; not $95,000 x 1.06 = $100,700. The amount actually levied in 1993 is not controlling.

(b) In this same example, if the levy amount of district "A" had been limited by the statutory dollar rate limit in 1993 to $95,000, and $95,000 was the highest amount of regular property taxes that could have been lawfully levied since 1985, then the one hundred six percent limit for 1994 would be calculated on the basis of $95,000, that is $95,000 x 1.06 = $100,700.

[Statutory Authority: RCW 84.55.060 and 84.08.070. 94-07-066, § 458-19-065, filed 3/14/94, effective 4/14/94.]

WAC 458-19-070 Procedure to adjust consolidated levy rate for taxing districts when limits exceeded. (RCW 84.52.010 and 84.52.050)

(1) **Introduction.** The aggregate of all regular levy rates of junior taxing districts and senior taxing districts other than the state, shall not exceed five dollars and ninety cents per thousand dollars of assessed value. The aggregate of all regular tax levies by the state and all taxing districts other than port districts or public utility districts shall not exceed one percent of the true and fair value of any taxable property. When the county assessor finds that either of these limits has been exceeded, the assessor shall recompute the levy rate and establish a new consolidated levy rate in the following manner:

(2) Beginning with the five dollar and ninety cents per thousand dollars of assessed value consolidated levy rate limit, subtract the levy rates of the county and the county road district if the tax code area includes the unincorporated portion of the county, or the levy rates of the county and the city or town if the tax code area includes an incorporated area, as applicable. The levy rate reductions or eliminations shall be made on a pro rata basis within each tier and, as necessary, proceeding until the consolidated levy rate no longer exceeds either of the two limits, beginning with:

(a) The levy rates, if any, by a park and recreation district under RCW 36.69.145, a park and recreation service area under RCW 36.68.525, and a cultural arts, stadium and convention district under RCW 67.38.130;

(b) The levy rate, if any, by a flood control zone district under RCW 86.15.160;

(c) The levy rates, if any, by all other junior taxing districts, except fire protection districts, library districts, and the first fifty cents per thousand dollars of assessed valuation levies for metropolitan park districts and public hospital districts;

(d) The levy rates, if any, by fire protection districts as authorized by RCW 52.16.140 and 52.16.160; and

(e) The levy rates, if any, by fire protection districts as authorized by RCW 52.16.130, library districts, and the first fifty cents per thousand dollars of assessed valuation levies for public hospital districts and metropolitan park districts.

(3) **Example.**

DISTRICT	ORIG LEVY RATE	PRO-RATE FACTOR	FINAL LEVY RATE
County	1.8000	NONE	1.8000
Road	2.2500	NONE	2.2500
Library	.5000	NONE	.5000
Fire	.7000	NONE	.7000
Hospital	.5000	NONE	.5000
Cemetery	.1125	.4138	.0466
Hospital	.2500	.4138	.1034
Totals	6.1125		5.9000

Beginning with the limit of $5.90, subtract the original levy rates for the county and county road taxing districts, leaving $1.85 available. Subtract $1.70 for the library's $.50, the fire district's $.70 and the hospital's $.50, leaving $.15 available to be shared by the cemetery's $.1125 and the hospital's $.25. The proration factor is arrived at by dividing the amount available ($.15) by the original amount ($.3625) within that tier ((c) of subsection (2) of this section) resulting in a proration factor of .4138. This factor is then applied to the original levy rates in this tier of $.1125 and $.25 for the cemetery and hospital respectively.

[Statutory Authority: RCW 84.55.060 and 84.08.070. 94-07-066, § 458-19-070, filed 3/14/94, effective 4/14/94.]

WAC 458-19-075 Constitutional one percent levy limit calculation. (1) The total amount of regular property tax levies that can be applied to taxable property is limited to no more than one percent of the true and fair value of such property in money. The one percent limit is stated in Article VII, section 2 of the state Constitution and the enabling statute, RCW 84.52.050. The one percent limit is based upon the amount of taxes actually levied on the value of such property, not the dollar rate used in computing those taxes. In order to determine whether the one percent limit is being exceeded, the following calculations are made:

(2) Add all the regular levy rates in the tax code area, including the state school levy at the local rate, any conservation futures levy imposed pursuant to RCW 84.34.230, any emergency medical service levy imposed pursuant to RCW 84.52.069, and any affordable housing levy imposed pursuant to RCW 84.52.105. The levy rate for a port or public utility district is not included.

(3) Multiply the sum obtained in subsection (2) of this section by the higher of the real or personal property ratio of the county for that levy year to determine the effective one percent levy rate. If the sum of the effective regular levy rates exceed ten dollars per thousand dollars of assessed value, the rates shall be reduced until the sum is equal to ten dollars per thousand dollars of assessed value, in the following sequence:

(a) The levy rates, if any, for conservation futures under RCW 84.34.230, for affordable housing under RCW 84.52.105, and any portion of a levy for emergency medical services under RCW 84.52.069 in excess of thirty cents shall be reduced on a pro rata basis or eliminated.

(b) The levy rates, if any, by a park and recreation district under RCW 36.69.145, a park and recreation service area under RCW 36.68.525, and a cultural arts, stadium and convention district under RCW 67.38.130 shall be reduced on a pro rata basis or eliminated.

(c) The levy rate, if any, by a flood control zone district under RCW 86.15.160 shall be reduced or eliminated.

(d) The levy rates, if any, by all other junior taxing districts, except fire protection districts, library districts, and the first fifty cents per thousand dollars of assessed valuation levies for metropolitan park districts and public hospital districts shall be reduced on a pro rata basis or eliminated.

(e) The levy rates, if any, by fire protection districts under RCW 52.16.140 and 52.16.160 shall be reduced on a pro rata basis or eliminated.

(f) The levy rates, if any, by fire protection districts under RCW 52.16.130, library districts under RCW 27.12.050 and 150, and the first fifty cents per thousand dollars of assessed valuation levies for public hospital districts under RCW 70.44.060(6) and metropolitan park districts under RCW 35.61.210 shall be reduced or eliminated.

(g) The remainder of the levy rate, if any, after the reduction pursuant to (a) of this subsection, for emergency medical services shall be reduced or eliminated.

(h) The levy rates, if any, by the county, county road, and a city or town shall be reduced or eliminated.

(i) The levy rate, if any, by the state, for the support of common schools shall be reduced.

[Statutory Authority: RCW 84.55.060 and 84.08.070. 94-07-066, § 458-19-075, filed 3/14/94, effective 4/14/94.]

WAC 458-19-080 City annexed by fire protection and/or library districts. (RCW 52.04.081 and 27.12.390)

(1) **Introduction.** When a city or town is annexed to a fire protection and/or a library district, the city or town is authorized to levy up to three dollars and sixty cents per thousand dollars of assessed value less the regular levy made by the fire protection and/or library district. The assessor shall calculate the first levy following annexation as follows:

(a) Calculate the levy and rate for the fire protection and/or library district, including the assessed value of the annexed city or town;

(b) Subtract the fire protection and/or library district levy rate from the statutory rate ($3.60 per $1,000 A.V.) of the city or town. The resulting rate is the maximum levy rate for the city or town even if the fire and/or library district rate is later reduced as a result of prorationing pursuant to RCW 84.52.010 to prevent the consolidated levy rate from exceeding the statutory aggregate dollar rate limit.

(2) Calculate the one hundred six percent levy limit for the city or town independently of the calculations performed in subsection (1) of this section.

(3) The fire protection and/or library district levy rate is subtracted from the city or town statutory levy rate before any prorated reduction under RCW 84.52.010.

[Statutory Authority: RCW 84.55.060 and 84.08.070. 94-07-066, § 458-19-080, filed 3/14/94, effective 4/14/94.]

WAC 458-19-550 State levy—Apportionment between counties. (1) The department of revenue is empowered by statute to formulate such rules and processes as will ensure the equalization of taxation and uniformity of administration of the property tax laws of this state. The department is further directed to apportion the amount of the state property tax levy among the counties in proportion to the equalized value of taxable property in each county in order that each county shall pay its due and just proportion of the state tax. The application of the 106 percent limit to the state levy necessitates reasonable measures by the department to achieve the statutory requirement of just apportionment. This rule provides for adjustment in the apportionment of the next following year state levy when changes in property values are effected, in the manner described below, after the certification of the state levy by the department for the previous year. This rule also provides for adjustment for errors as defined herein which are not otherwise correctable in a timely and orderly manner in the year of levy through the exercise or enforcement of the department's supervisory powers. This rule shall be applied in the manner provided below to preserve an equitable and uniform apportionment of the state levy and to ensure the collection of the proper portion of the state levy from within each county.

(2) The levy rate for the state property tax levy is the lesser of (a) $3.60 per thousand dollars of the full true and fair value of the taxable property in the state, or (b) that rate which, when applied to the valuation figures specified in (3) below, will produce a total amount equal to one hundred and six percent of the base amount, i.e., of the highest state tax levy of the most recent three annual state levies, plus an amount calculated by multiplying the value of a new construction, improvements to real property, and increases in the value of centrally assessed property as determined by the department of revenue, by the levy rate of the state tax applicable in the year prior to the current year for which the tax levy is being computed.

(3) When determining the amount of the state levy with reference to the calculations under (b) above, the dollar amount apportioned to each county shall be computed based upon those valuation figures made available to the department by each county by October 1 of the levy year. If the use of certification of the counties' assessed values for state levy purposes results in an erroneous apportionment among the counties by reason of changes or errors in valuation within a county, the department of revenue shall adjust the following year's levy apportionment to correct for such changes or errors. Such adjustment shall continue in effect until implemented by the appropriate county officials, and the department shall utilize the powers contained in chapter 84.08 RCW to assure such implementation. For purposes of this rule a change in valuation shall include any adjustment effected by a reviewing body (county board of equalization, state board of tax appeals, or court of competent jurisdiction) and may also include additions of omitted property and other additions to or deletions from the assessment and tax rolls. Errors for purposes of adjustments under this rule shall include errors corrected by a final reviewing body and such other errors which have come to the attention of the department and which would otherwise be a subject for correction in the exercise of its supervisory powers.

(4) Correction required by reason of changes or errors relating to that valuation used in apportioning the current levy shall be made by adjusting the apportionment of the next following year's levy. The department shall recompute the apportionment of the previous year's levy with reference to taxable values corrected for changes and errors and equalized to true and fair value for such previous year's levy. Each county's apportioned amount for the current year's state levy shall be adjusted by the difference between the dollar amounts of state levy due from each county as shown by the original and revised levy computations for the previous year.

(5) Nothing in this rule shall relieve a county from its obligation to correct any error immediately upon discovery, including the calculation of an erroneous rate or the levy of an incorrect amount of tax, when such correction may be timely made to avoid distortion in the true apportionment of the state levy between counties.

[Statutory Authority: RCW 84.48.080, 84.55.060 and 84.08.010. 82-06-006 (Order PT 82-2), § 458-19-550, filed 2/19/82. Statutory Authority: RCW

84.48.080 and 84.55.060. 81-04-055 (Order PT 81-4), § 458-19-550, filed 2/4/81.]

Chapter 458-20 WAC
EXCISE TAX RULES

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

458-20-114 Nonbusiness income—Bona fide initiation fees, dues, contributions, tuition fees and endowment funds. [Statutory Authority: RCW 82.32.300. 86-02-039 (Order ET 85-8), § 458-20-114, filed 12/31/85; 84-08-012 (Order 84-1), § 458-20-114, filed 3/27/84; Order ET 70-3, § 458-20-114 (Rule 114), filed 5/29/70, effective 7/1/70.] Repealed by 95-22-099, filed 11/1/95, effective 12/2/95. Statutory Authority: RCW 82.32.300.

458-20-123 Public and lending libraries. [Statutory Authority: RCW 82.32.300. 83-07-034 (Order ET 83-17), § 458-20-123, filed 3/15/83; Order ET 70-3, § 458-20-123 (Rule 123), filed 5/29/70, effective 7/1/70.] Repealed by 92-23-021, filed 11/10/92, effective 12/11/92. Statutory Authority: RCW 82.32.300. Later promulgation, see WAC 458-20-167 and 458-20-189.

458-20-125 Miscellaneous sales for farm use. [Statutory Authority: RCW 82.32.300. 83-07-034 (Order ET 83-17), § 458-20-125, filed 3/15/83; Order ET 70-3, § 458-20-125 (Rule 125), filed 5/29/70, effective 7/1/70.] Repealed by 94-07-051, filed 3/10/94, effective 4/10/94. Statutory Authority: RCW 82.32.300.

458-20-147 Public stenographers. [Order ET 73-1, § 458-20-147, filed 11/2/73; Order ET 70-3, § 458-20-147 (Rule 147), filed 5/29/70, effective 7/1/70.] Repealed by 92-23-021, filed 11/10/92, effective 12/11/92. Statutory Authority: RCW 82.32.300. Later promulgation, see WAC 458-20-138 and 458-20-224.

458-20-149 Jewelry repair shops. [Order ET 70-3, § 458-20-149 (Rule 149), filed 5/29/70, effective 7/1/70.] Repealed by 93-03-005, filed 1/8/93, effective 2/8/93. Statutory Authority: RCW 82.32.300.

458-20-152 Shoe repairmen and shoe shiners. [Order ET 70-3, § 458-20-152 (Rule 152), filed 5/29/70, effective 7/1/70.] Repealed by 92-23-021, filed 11/10/92, effective 12/11/92. Statutory Authority: RCW 82.32.300. Later promulgation, see WAC 458-20-173.

458-20-188 Slot machines, pinball machines and other mechanical devices wherein an element of skill or of chance involves a pay-out to the player. [Order ET 70-3, § 458-20-188 (Rule 188), filed 5/29/70, effective 7/1/70.] Repealed by Order ET 73-1, filed 11/2/73. See chapter 218, Laws of 1973 1st ex. sess. for taxability of persons operating the machines or devices previously covered by this rule. See WAC 458-20-187.

458-20-193A Sales of goods originating in Washington to persons in other states. [Statutory Authority: RCW 82.32.300. 83-07-033 (Order ET 83-16), § 458-20-193A, filed 3/15/83; Order ET 70-3, § 458-20-193A (Rule 193 Part A), filed 5/29/70, effective 7/1/70.] Repealed by 91-24-020, filed 11/22/91, effective 1/1/92. Statutory Authority: RCW 82.32.300. Later promulgation, see WAC 458-20-193.

458-20-193B Sales of goods originating in other states to persons in Washington. [Statutory Authority: RCW 82.32.300. 89-06-015 (Order 89-3), § 458-20-193B, filed 2/23/89; 83-07-033 (Order ET 83-16), § 458-20-193B, filed 3/15/83; Order ET 74-1, § 458-20-193B, filed 5/7/74; Order ET 70-3, § 458-20-193B (Rule 193 Part B), filed 5/29/70, effective 7/1/70.] Repealed by 91-24-020, filed 11/22/91, effective 1/1/92. Statutory Authority: RCW 82.32.300. Later promulgation, see WAC 458-20-193.

458-20-215 Auditing out-of-state business. [Statutory Authority: RCW 82.32.300. 83-08-026 (Order ET 83-1), § 458-20-215, filed 3/30/83; Order ET 70-3, § 458-20-215 (Rule 215), filed 5/29/70, effective 7/1/70.] Repealed by 92-23-021, filed 11/10/92, effective 12/11/92. Statutory Authority: RCW 82.32.300. Later promulgation, see WAC 458-20-254.

458-20-219 Patronage dividends of cooperative associations, not deductible. [Statutory Authority: RCW 82.32.300. 83-08-026 (Order ET 83-1), § 458-20-219, filed 3/30/83; Order ET 70-3, § 458-20-219 (Rule 219), filed 5/29/70, effective 7/1/70.] Repealed by 92-23-021, filed 11/10/92, effective 12/11/92. Statutory Authority: RCW 82.32.300.

458-20-220 Painting, paper hanging, and sign painting. [Order ET 70-3, § 458-20-220 (Rule 220), filed 5/29/70, effective 7/1/70.] Repealed by 92-23-021, filed 11/10/92, effective 12/11/92. Statutory Authority: RCW 82.32.300. Later promulgation, see WAC 458-20-170, 458-20-17001, 458-20-171 and 458-20-173.

458-20-232 Sales of intoxicating liquor. [Statutory Authority: RCW 82.32.300. 83-08-026 (Order ET 83-1), § 458-20-232, filed 3/30/83; Order ET 73-1, § 458-20-232, filed 11/2/73; Order ET 71-1, § 458-20-232, filed 7/22/71; Order ET 70-3, § 458-20-232 (Rule 232), filed 5/29/70, effective 7/1/70.] Repealed by 96-21-142, filed 10/23/96, effective 11/23/96. Statutory Authority: RCW 82.32.300 and 34.05.354.

458-20-242 Pollution control exemption and/or credits. (Rule 242) [Recodified as WAC 458-20-242A and 458-20-242B.]

WAC 458-20-100 Appeals, small claims and settlements. (1) **Introduction.** This section explains the procedure for a taxpayer to seek an administrative review of an action by the department of revenue. A taxpayer is encouraged to request a conference with a supervisor of the department where disagreement exists over a proposed action of the department. The request for the conference should be made to the division of the department that is proposing to issue an assessment or is taking some other action in dispute. Such conferences provide an opportunity to resolve any issue without a review as provided in this section. Any taxpayer who has been issued a notice of departmental action or having paid any tax administered by chapter 82.32 RCW may petition the department of revenue for the review of the action or for a determination of the taxpayer's liability for the tax paid. Departmental actions subject to review include but are not limited to:

(a) A notice of assessment of additional taxes, of use tax due, or of tax balances due;

(b) A notice of penalties or interest due;

(c) A notice of delinquent taxes, including a notice of tax collection activities; and

(d) An order revoking a certificate of registration.

(2) **Time for filing of petitions - extensions.** A review of a departmental action is started by the filing of a petition for review. A petition for review must be filed with the department within thirty days after the date the departmental action has occurred.

(a) A petition for review requesting a refund of taxes paid must be filed within four years after the close of the tax year in which the taxes were paid. Therefore, the department may not grant an extension of time to file a petition for review requesting a refund of taxes paid.

(b) An extension of time to file a petition may be granted if requested within the thirty-day filing period.

(c) A petition or request for extension is timely if it bears a United States Postal Service cancelled postmark on or before the thirty-day due date or is received by the department within the thirty-day filing period.

(3) **Contents of petitions.** A petition should be addressed: State of Washington, Department of Revenue, Interpretations and Appeals, Mailstop AX-02, Olympia, Washington 98504-0090. A petition must be in writing and contain the following information:

(a) Indicate which item or items are in question;

(b) Set forth the reasons why the correction, refund, or relief should be granted;

(c) State the amount of the tax, and/or interest, and/or penalty which the taxpayer believes to be in error or which the taxpayer seeks to be refunded;

(d) Indicate whether the petitioner elects to have the petition heard under the small claims procedure;

(e) Indicate whether the petitioner requests the petition to be heard as an executive level petition stating the specific reasons for the request;

(f) In the case of an appeal of an order revoking a certificate of registration, specifically identify the mistake of fact, error of law, or the date the warrant was paid; and

(g) Be signed by the taxpayer and/or authorized representative.

(h) The department has provided as an addendum to this section a form which when completed will provide the necessary information. A taxpayer wishing a review is encouraged to provide the information requested so that the appeal can be processed, heard, and decided as quickly as possible.

(4) **Hearing on the petition - issuance of determination.** A petition for review may be granted or denied. If a review is denied, the taxpayer shall be promptly notified by mail. The reason for the denial, e.g., the nontimely filing of the petition, shall be included in the notification.

(a) When a petition for review is granted, the department may grant a hearing or issue a determination without conducting a hearing. If a hearing is granted, the taxpayer is notified by mail of its time and place. Most hearings are conducted by telephone conference. If a taxpayer prefers and requests an in-person hearing at the department's Olympia office, the request will be granted. Hearings at offices of the department of revenue throughout the state may be granted upon special request of the taxpayer and at the discretion of the department.

(b) Hearings will be conducted by an administrative law judge of the department of revenue, an employee specially trained in interpretation of the Revenue Act and the precedents established by prior department rulings and by the courts. Other departmental employees may be in attendance at an in-person hearing and the department shall notify the taxpayer when other departmental employees are attending. The taxpayer may appear personally or may be represented by an attorney, accountant, or any other person.

(c) All hearings before an administrative law judge will be conducted informally in a nonadversary, uncontested manner.

(d) Following the hearing, the administrative law judge will make such determination as may appear to be just and lawful and in accordance with the rules, principles, and precedents established by the department. The department shall notify the taxpayer in writing of the decision.

(e) The determination of the administrative law judge is the official position of the department of revenue and is binding upon the taxpayer unless a petition for reconsideration is timely filed. See: Subsection (8) of this section for taxpayer appeals outside the department.

(5) **Request for reconsideration.** If a taxpayer believes that an error has been made in the determination of the administrative law judge, the taxpayer may, within thirty days of the issuance of the determination, request in writing a reconsideration of the decision. A petition for reconsideration may be made on the petition form provided as an addendum to this section. The request for reconsideration shall indicate specific mistakes in law or fact and provide legal authority that would necessitate the reconsideration of the decision. A taxpayer may request an executive level reconsideration when the determination decided an issue of first impression or an issue which has industry-wide impact or significance.

The department shall decide whether or not the decision is to be reconsidered and may grant or deny the petition. If the request for reconsideration is denied, the department shall mail to the taxpayer written notice of the denial and the reason for the denial, e.g., the petition is not timely filed, the authorities specified do not support a mistake of law, or the facts specified were considered in the determination. The denial is then the final action of the department. If the request is granted, a hearing on reconsideration may be conducted or a determination may be issued without a hearing. If a hearing is granted, it shall be conducted informally in a nonadversary, uncontested manner, and shall be held at the department offices in Olympia. A determination upon reconsideration shall be sent to the taxpayer in writing and shall represent the final action of the department of revenue.

(6) **Request for hearing at the executive level.** If a taxpayer appeal involves an issue of first impression (one for which no precedent has been established) or an issue which has industry-wide significance or impact, a taxpayer may request the petition be heard at the executive level by the director or the director's designee. The request must specify the reasons why this action is appropriate. The department may grant or deny the request. An executive level hearing shall be conducted informally in a nonadversary, uncontested manner. A determination from an executive level appeal is the final action of the department and a request for reconsideration will not be granted.

(7) **Small claims hearing.** Under certain conditions, a taxpayer may elect, by so indicating on the petition, to have the appeal heard under the expedited small claims hearing procedure.

(a) An appeal qualifies for a small claims hearing only if:

(i) The tax at issue in the appeal is five thousand dollars or less; or

(ii) Penalties and/or interest is the only issue and the amount of penalties and/or interest is ten thousand dollars or less.

(b) The department may decline to hear an appeal under the small claims procedure if the department finds it to be unsuitable for small claims resolution. Appeals with multiple or complex issues, issues of first impression, issues of industry-wide application, and constitutional issues are generally not suitable for small claims resolution.

(c) After the small claims hearing with the administrative law judge has been conducted, the taxpayer may no longer revoke the election for small claims resolution.

(d) The taxpayer will be notified of the time and place of the hearing. The hearing will be conducted informally in a nonadversary, uncontested manner by an administrative law judge and the taxpayer may personally, or through a representative, present oral and/or written testimony at that time. Upon conclusion of the hearing, the administrative law judge may render an oral decision at that time, but in no case will the decision be rendered more than five working days after the hearing. In all small claims hearings, either an abbreviated written decision (determination) containing the department's conclusions will be issued, or a closing agreement will be signed.

(e) The decision rendered in a small claims hearing is the final action of the department and a taxpayer request for reconsideration of the decision will not be granted.

(f) A decision rendered in a small claims hearing has no precedential value.

(8) **Appeals to board of tax appeals - Thurston County Superior Court.** A taxpayer may appeal a determination of the department of revenue to the board of tax appeals or may seek a refund of taxes paid in Thurston County Superior Court. See: Chapter 82.03 RCW, and RCW 82.32.180. A taxpayer filing an appeal with the board of tax appeals must pay the tax by the due date, unless arrangements are made with the department of revenue for a stay of collection pursuant to RCW 82.32.200. See: WAC 458-20-228.

(9) **Rulings of prior determination of tax liability.** Any taxpayer may make a written request to the department for a written opinion of future tax liability. Such a request shall contain all pertinent facts concerning the question presented and may contain a statement of the taxpayer's views concerning the correct application of the law. The department shall advise the taxpayer in writing of its opinion. The opinion shall be binding upon both the taxpayer and the department under the facts presented until the department changes the opinion by a determination or subsequent opinion issued to the taxpayer, or the legal basis of the opinion has been changed by legislative, court, or WAC rule action. When changes occur, a taxpayer may

contact the department to determine if a change in the legal basis of the opinion has occurred. Any future change in the opinion shall have prospective application only.

(10) **Settlement.** At any time during the appeal process, the taxpayer or the department may propose to compromise the matter by settlement.

(a) Settlement may be appropriate when:

(i) The issue is nonrecurring. An issue is nonrecurring when the law has changed so future periods are treated differently than the periods under appeal; or the taxpayer's position or business activity has changed so that in future periods the issue under consideration is changed or does not exist; or the taxpayer agrees to a prospective change; or

(ii) A conflict exists between precedents i.e., statutes, rules, excise tax bulletins, and correspondences to the taxpayer; or

(iii) A strict application of the law would have unduly harsh consequences which may be only relieved by an equitable doctrine; or

(iv) There is uncertainty of the outcome of the appeal if it were presented to a court. Factors to be considered include the relative degrees of certainty and the costs for both the taxpayer and the state. This category includes cases which involve factual issues that might require extensive expert testimony to resolve; or

(b) Settlement is not appropriate when:

(i) The same issue in the taxpayer's appeal is being litigated by the department; or

(ii) The taxpayer challenges a long-standing departmental policy or a WAC rule which the department will not change unless the policy or rule is declared invalid by a court of record; or

(iii) The taxpayer presents issues that have no basis upon which relief for the taxpayer can be granted or given. Settlement will not be considered if the taxpayer's offer of settlement is simply to eliminate the inconvenience or cost of further negotiation or litigation, and is not based upon the merits of the case; or

(iv) The taxpayer's only argument is that a statute is unconstitutional; or

(v) The taxpayer's only argument is financial hardship. Financial hardship issues are properly discussed with the department's compliance division.

(c) Each settlement is concluded by a closing agreement being signed by both the department and the taxpayer as provided by RCW 82.32.350 and is binding on both parties as provided in RCW 82.32.360. A closing agreement has no precedential value.

PETITION

STATE OF WASHINGTON
DEPARTMENT OF REVENUE
INTERPRETATION AND APPEALS
MAILSTOP AX-02
OLYMPIA, WA 98504-0090

Taxpayer Name . . . .
Address and . . . .
Telephone No. . . . .
. . . .
. . . .

Name, address and . . . .
Telephone No. . . . .
of Representative: . . . .
. . . .

Registration No.: . . . .

Amount At Issue: . . . .

Audit No.: . . . . Document No.: . . . .

Do you request this petition to be heard under the small claims procedure? The small claims procedures are limited to appeals of tax issues which do not exceed $5,000 or issues involving penalties and interest which do not exceed $10,000. You may not revoke your request to be heard under the small claims procedure after the conference with the administrative law judge has been held. Under the small claims procedures, the decision of the department is final and the department will not accept a petition for reconsideration.

. . . . . Yes . . . . . No

Do you request this petition to be heard as an executive level petition? A petition for executive level consideration may be granted if the issue is one of first impression or the issue has industry-wide impact or significance. The specific reasons for an executive level appeal must be specified in the petition. A decision of a petition heard at the executive level is the final decision of the department and a petition for reconsideration will not be accepted.

. . . . . Yes . . . . . No

Is this a petition for reconsideration?

. . . . . Yes . . . . . No

Is this a petition for executive level reconsideration? (Specific reasons must be specified.)

. . . . . Yes . . . . . No

Items Protested (attach additional information if necessary):
. . . .
. . . .
. . . .
. . . .

Time Period at Issue: . . . .

Relief Requested (attach additional information if necessary): . . . .
. . . .
. . . .
. . . .

Reason for relief (cite applicable rules, statutes, etc., and attach additional information if necessary): . . . .
. . . .
. . . .
. . . .

(Signature of Taxpayer or Authorized Representative - Date)

[Statutory Authority: RCW 82.32.300. 90-24-049, § 458-20-100, filed 11/30/90, effective 1/1/91; 83-07-032 (Order ET 83-15), § 458-20-100, filed 3/15/83; Order ET 75-1, § 458-20-100, filed 5/2/75; Order ET 70-3, § 458-20-100 (Rule 100), filed 5/29/70, effective 7/1/70.]

WAC 458-20-10001 Adjudicative proceedings—Brief adjudicative proceedings—Wholesale and retail

cigarette license revocation or suspension—Certificate of registration (tax registration endorsement) revocation. (1) **Introduction.** The department conducts adjudicative proceedings pursuant to chapter 34.05 RCW, the Administrative Procedure Act (APA). These adjudicative proceedings include, but are not limited to, wholesale and retail cigarette license revocation or suspension of RCW 82.24.550, certificate of registration (tax registration endorsement) revocation of RCW 82.32.215. The department adopts in this section the brief adjudicative procedures as provided in the APA for wholesale and retail cigarette license revocation or suspension of RCW 82.24.550, and certificate of registration (tax registration endorsement) revocation of RCW 82.32.215. This section explains the procedure and process pertaining to the adopted brief adjudicative proceedings. This section does not apply to log export enforcement actions pursuant to chapter 240-15 WAC, orders to county officials issued pursuant to RCW 84.08.120 and 84.41.120, brief adjudicative proceedings converted to formal adjudicative proceeding under subsection (5) of this section, and other formal adjudicative proceedings which are explained in WAC 458-20-10002. This section also does not apply to the nonadjudicative proceedings as provided in RCW 82.32.160, 82.32.170 and WAC 458-20-100.

(2) **Adoption of brief adjudicative proceedings.** As provided in RCW 34.05.482 (1)(c), this section adopts RCW 34.05.482 through 34.05.494 and the brief adjudicative procedure for APA adjudicative proceedings which the department of revenue conducts for wholesale and retail cigarette license revocation or suspension of RCW 82.24.550, and certificate of registration (tax registration endorsement) revocation of RCW 82.32.215.

(3) **Brief adjudicative proceedings - procedure.** The following procedure shall apply to the department's brief adjudicative proceeding.

(a) **Notice of hearing.** The department shall set the time and place of the hearing. The date of the hearing may not be not less than seven days after written notice is served upon the person(s) to whom the proceedings apply. With the concurrence of the presiding officer and all persons involved in the proceedings, the hearing may be conducted by telephone and the recorded conversation shall be made a part of the record of the hearing. The notice shall include:

(i) The names and addresses of each person to whom the proceedings apply and, if known, the names and addresses of their representative(s);

(ii) The mailing address and the telephone number of the person or office designated to represent the department in the proceeding;

(iii) The official file or other reference number and the name of the proceeding;

(iv) The name, official title, mailing address and telephone number of the presiding officer, if known;

(v) A statement of the time, place and nature of the proceeding;

(vi) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(vii) A reference to the particular sections of the statutes and/or rules involved;

(viii) A short and plain statement of the matters asserted by the department; and

(ix) A statement that if a person to whom the proceedings apply fails to attend or participate in a hearing, the hearing may/will proceed and that adverse action may be taken against such person.

(x) When the department is notified or otherwise made aware that a limited-English-speaking person is a person to whom the proceedings apply, all notices, including the notice of hearing, continuance and dismissal, shall either be in the primary language of such person or shall include a notice in the primary language of the person which describes the significance of the notice and how the person may receive assistance in understanding and responding to the notice. In addition, the notice shall state that if a limited-English-speaking or hearing impaired party or witness needs an interpreter, a qualified interpreter will be appointed at no cost to the person to whom the proceedings apply or witness. The notice shall include a form to be returned to the department for a person to whom the proceedings apply to indicate whether such person, or a witness, needs an interpreter and to identify the primary language or hearing impaired status of the person.

(b) **Presiding officer.**

(i) When the proceeding is a certificate of registration (tax registration endorsement) revocation pursuant to RCW 82.32.215, the presiding officer shall be the assistant director of the department's compliance division or designee, or such other person as the director of the department of revenue may designate.

(ii) When the proceeding is a wholesale and retail cigarette license revocation or suspension pursuant to RCW 82.24.550, the presiding officer shall be the assistant director of the department's special program's division or designee, or such other person as the director of the department of revenue may designate.

(iii) The presiding officer conducts the hearing and before taking action, the presiding officer shall give each person to whom the proceedings apply an opportunity to be informed of the department's view of the matter, and to explain the person's view of the matter.

(iv) The presiding officer shall have the authority granted by chapter 34.05 RCW including but not limited to:

(A) Determine the order of the hearing including the presentation of evidence; administer oaths and affirmations; issue subpoenas;

(B) Rule on procedural matters, objections and motions; rule on offers of proof and receive relevant evidence;

(C) Ask questions of the person to whom the proceedings apply or the person representing the department, or of the witnesses called by either, in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

(D) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by both the person to whom the proceedings apply and the department;

(E) Take any appropriate action to maintain order during the hearing; permit or require oral argument, briefs, or discovery and determine the time limits for their submission;

(F) Take any other action necessary and authorized by applicable statute or rule;

(G) Waive any requirement of this section not specifically required by law unless either the person to whom the proceedings apply or the department shows that it would be prejudiced by such a waiver;

(H) Convert the proceedings, at any time in the proceeding, from a brief adjudicative proceeding to a formal proceeding pursuant to RCW 34.05.413 through 34.05.479 and WAC 458-20-10002.

(c) **Appearance and practice at a brief adjudicative proceeding.**

(i) The right to practice before the department in a brief adjudicative proceeding is limited to:

(A) Persons who are natural persons representing themselves;

(B) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;

(C) Attorneys at law entitled to practice before the highest court of record of any other state, if attorneys licensed in Washington are permitted to appear before the courts of such other state in a representative capacity, and if not otherwise prohibited by state law;

(D) Public officials in their official capacity;

(E) Certified public accountants entitled to practice in the state of Washington;

(F) A duly authorized director, officer, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership or corporation;

(G) Partners, joint venturers or trustees representing their respective partnerships, joint ventures, or trusts; and

(H) Other persons designated by a person to whom the proceedings apply with the approval of the presiding officer.

(ii) In the event a proceeding is converted from a brief adjudicative proceeding to a formal proceeding, representation is limited to the provisions of law and RCW 34.05.428.

(d) **Rules of evidence - discovery - record of the proceeding - filing and service of papers.**

(i) All testimony of a person to whom the proceedings apply, the department and witnesses shall be made under oath or affirmation. Every interpreter shall, before beginning to interpret, take an oath that a true interpretation will be made to the person being examined of all the proceedings in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the presiding officer in the English language, to the best of the interpreter's skill and judgment.

(ii) Evidence, including hearsay, is admissible if in the judgment of the presiding officer, it is the kind of evidence on which reasonably prudent persons are accustomed to rely in conduct of their affairs. The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious and shall be guided in evidentiary rulings, where not inconsistent with this section, by RCW 34.05.452, WAC 10-08-140, and by the Washington Rules of Evidence.

(iii) Discovery (depositions, interrogatories, etc.,) may be conducted only by order of the presiding officer and if ordered, RCW 34.05.446 applies to the proceeding.

(iv) All hearings shall be recorded by manual, electronic, or other type of recording device. The agency record shall consist of the documents regarding the matter that were considered or prepared by the presiding officer, or by the reviewing officer in any review, and the recording of the hearing. These records shall be maintained by the department as its official record.

(v) All notices and other pleadings or papers filed with the presiding officer or reviewing officer shall be served on each person to whom the proceeding apply, the department or their representatives/agents of record. Service shall be made personally; by first-class, registered or certified mail; by telegraph; or electronic telefacsimile (FAX) and same-day mailing of copies; or by commercial parcel delivery company. Service by mail shall be regarded as completed upon deposit in the United States mail properly stamped and addressed. Service by telegraph shall be regarded as completed when deposited with a telegraph company with the charges prepaid. Service by electronic telefacsimile (FAX) shall be regarded as completed upon the production by the telefacsimile device of confirmation of transmission. Service by commercial parcel delivery shall be regarded as being completed upon delivery to the parcel delivery company charges prepaid. Service to a person to whom the proceedings apply and/or representative/agent, and, the department and/or presiding officer shall be to the address shown on the notice of subsection (2)(a) of this section. Service to the reviewing officer shall be to interpretation and appeals division at the address shown in subsection (4) of this section. Where proof of service is required, the proofs of service include:

(A) An acknowledgment of service;

(B) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon all or one or more of the parties of record in the proceeding by delivering a copy in person to (names).

(C) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon all or one or more of parties of record by a method of service as provided in this subsection (d)(v) of this section.

(e) **Impaired persons - interpreters.** When an impaired person is a person to whom the proceedings apply, or a witness, the presiding officer shall, in absence of a written waiver signed by the impaired person, appoint a qualified interpreter to assist the impaired person throughout the proceeding.

(i) An "impaired person" is any person involved in an adjudicative proceeding who is a hearing impaired person or a limited-English-speaking person.

(ii) A "hearing impaired person" is a person who, because of a hearing impairment or speech defects, cannot readily understand or communicate in spoken language; and includes persons who are deaf, deaf and blind, or hard of hearing.

(iii) A "limited-English-speaking person" is a person who because of a non-English-speaking cultural background cannot readily speak or understand the English language.

(iv) A "qualified interpreter" is one who is readily able to interpret spoken and translate written English to and for impaired persons into spoken English and who meets the requirements of (e)(ix) of this subsection: *Provided,* That for hearing impaired persons a qualified interpreter must be certified by the registry of interpreters for the deaf with a specialist certificate-legal, master's comprehensive skills certificate, or comprehensive skills certificate.

(v) An "intermediary interpreter" is one who is readily able to interpret spoken and translate written English and who meets the requirements of (e)(ix) of this subsection, and who is able to assist in providing an accurate interpretation between spoken and sign language or between variants of sign language by acting as an intermediary between a hearing impaired person and a qualified interpreter for the hearing impaired.

(vi) When an impaired person is a person to whom the proceedings apply, or a witness in such adjudicative proceeding, the presiding officer shall, in the absence of a written waiver signed by the impaired person, appoint a qualified interpreter to assist the impaired person throughout the proceedings. The right to a qualified interpreter may not be waived except when:

(A) The impaired person requests a waiver through the use of a qualified interpreter;

(B) The representative, if any, of the impaired person consents; and

(C) The presiding officer determines that the waiver has been made knowingly, voluntarily, and intelligently.

(vii) Waiver of a qualified interpreter shall not preclude the impaired person from claiming his or her right to a qualified interpreter at a later time during the proceeding.

(viii) Relatives of any participant in a proceeding and employees of the department shall not be appointed as interpreters in the proceeding without the consent of the presiding officer and the person(s) to whom the proceedings apply, in the case of an employee of the department, or the department in the case of a relative of the person(s) to whom the proceedings apply or of a witness for such person(s).

(ix) The presiding officer shall make a preliminary determination that an interpreter is able in the particular proceeding to interpret accurately all communication to and from the impaired person. This determination shall be based upon the testimony or stated needs of the impaired person, the interpreter's education, certifications, and experience, the interpreter's understanding of the basic vocabulary and procedure involved in the proceeding, and the interpreter's impartiality. A person to whom the proceedings apply or their representative(s), or the department may question the interpreter as to his or her qualifications or impartiality.

(x) If at any time during the proceeding, in the opinion of the impaired person, the presiding officer or a qualified observer, the interpreter does not provide accurate and effective communication with the impaired person, the presiding officer shall appoint another qualified interpreter.

(xi) If the communication mode or language or a hearing impaired person is not readily interpretable, the interpreter or hearing impaired person shall notify the presiding officer who shall appoint and pay an intermediary interpreter to assist the qualified interpreter.

(xii) Mode of interpretation.

(A) Interpreters for limited-English-speaking persons shall use simultaneous mode of interpretation where the presiding officer and interpreter agree that simultaneous interpretation will advance fairness and efficiency; otherwise, the consecutive mode of foreign language interpretation shall be used.

(B) Interpreters for hearing impaired persons shall use the simultaneous mode of interpretation unless an intermediary interpreter is needed. If an intermediary interpreter is needed, interpreters shall use the mode that the qualified interpreter considers to provide the most accurate and effective communication with the hearing impaired person.

(C) When an impaired person is the person to whom the proceedings apply, the interpreter shall translate all statements made by other hearing participants. The presiding officer shall ensure that sufficient extra time is provided to permit translation and the presiding officer shall ensure that the interpreter translates the entire proceeding to the person to whom the proceedings apply to the extent that the person has the same opportunity to understand all statements made during the proceedings as a nonimpaired party listening to uninterpreted statements would have.

(xiii) A qualified interpreter shall not, without the written consent of the parties to the communication, be examined as to any communication the interpreter interprets under circumstances where the communication is privileged by law. A qualified interpreter shall not, without the written consent of the parties to the communication, be examined as to any information the interpreter obtains while interpreting pertaining to any proceeding then pending.

(xiv) The presiding officer shall explain to the impaired party that a written decision or order will be issued in English, and that the party may contact the interpreter for a translation of the decision at no cost to the party. The presiding officer shall orally inform the party during the hearing of the right and of the time limits to request review.

(xv) At the hearing, the interpreter for a limited-English-speaking party shall provide to the presiding officer the interpreter's telephone number written in the primary language of the impaired party. A copy of such telephone number shall be attached to the decision or order mailed to the impaired party. A copy of the decision or order shall also be mailed to the interpreter for use in translation.

(xvi) In any proceeding involving a hearing impaired person, the presiding officer may order that the testimony of the hearing impaired person and the interpretation of the proceeding by the qualified interpreter be visually recorded for use as the official transcript of the proceeding. Where simultaneous translation is used for interpreting statements of limited-English-speaking persons, the foreign language statements shall be recorded simultaneously with the English language statements by means of a separate tape recorder.

(xvii) A qualified interpreter appointed under this section is entitled to a reasonable fee for services, including waiting time and reimbursement for actual necessary travel expenses. The department shall pay such interpreter fee and expenses. The fee for services for interpreters for hearing impaired persons shall be in accordance with standards established by the department of social and health services, office of deaf services.

(xviii) This subsection (e) shall apply to a review of the decision under subsection (4) of this section.

(f) **Informal settlements.**

(i) The department encourages informal settlement of issues which have resulted in a proceeding being commenced. At any time in the proceeding the person(s) to whom the proceeding applies and the department are encouraged to reach agreement. Settlement of a proceeding shall be concluded by:

(A) Stipulation of the person(s) to whom the proceedings apply and the department signed by each or their representative(s), and/or recited into the record of the proceedings. In the event the stipulation provides for a payment agreement, the order of the presiding officer may be a continuance of these proceedings and dismissal when all payments have been made, but in no case, may the order provide for the reconvening of the proceedings if the payment agreement is breached unless seven days notice of the reconvening is provided. Except as provided in this section, the presiding officer shall enter an order in conformity with the terms of the stipulation; or

(B) Withdrawal by the department in which case the presiding officer shall enter an order dismissing the proceedings.

(ii) In the case of revocation of certificate of registration (tax registration endorsement) under RCW 82.32.215, the presiding officer, or the reviewing officer, shall not hear or rule upon (other than the entry of an order as provided in (f)(i)(A) and (B) of this subsection) arguments, or motions, etc., for the settlement of the matter. Settlement of the controversy is totally between the person(s) to whom the proceedings apply and the department through its representative at the proceeding. Nothing in this section shall prevent a presiding officer or a reviewing officer from granting a continuance of a hearing, or such other motion as the presiding officer or reviewing officer deems appropriate for the purpose of settlement of the matter between the parties.

(g) **Entry of orders.**

(i) At the time any unfavorable action is taken, the presiding officer shall serve upon each person to whom the proceeding apply and the department a brief statement of the reasons for the decision. Within ten days of a decision, the presiding officer shall serve upon each person to whom the proceedings apply and the department a brief written statement of the reasons for the decision and the availability of the departmental review procedure as provided in this section.

(ii) The brief written statement provided the parties, which may include an order where a person to whom the proceedings apply fails to attend or participate in the hearing or other stage of the proceeding, is an initial order and if no review is requested as provided in subsection (4) of this section, the initial order shall become a final order.

(4) **Review of initial orders from brief adjudicative proceeding.** If a person to whom the proceedings apply wishes a review of the initial order, the brief written statement of the decision as provided in subsection (3)(g)(i) of this section, the person may request a review by the department by the filing of a petition for review, or the making of an oral request for review, with the department's interpretation and appeals division, within twenty-one days after the service of the initial order on the person to whom the proceedings apply. A request for review should state the reasons the review is sought. The address and telephone number of the interpretation and appeals division is:

Interpretation and Appeals Division
Department of Revenue
P.O. Box 47460
Olympia, Washington 98504-7460
Telephone Number - (360) 753-2310
FAX - (360) 664-2729

(a) The interpretation and appeals division shall appoint a reviewing officer who shall make such determination as may appear to be just and lawful. The reviewing officer shall give each person to whom the proceedings apply and the department an opportunity to explain each person's view of the matter and shall make any inquiries necessary to ascertain whether the proceeding should be converted to a formal adjudicative proceeding. The review by the interpretation and appeals division shall be governed by the brief adjudicative procedures of chapter 34.05 RCW and this section; or subsection (5) of this section in the event a brief adjudicative hearing is converted to a formal adjudicative proceeding, and not by the processes and procedures of WAC 458-20-100.

(b) The agency record need not constitute the exclusive basis for the reviewing officer's decision. The reviewing officer shall have the authority of a presiding officer as provided in this section.

(c) The order of the reviewing officer shall be in writing and shall include a brief statement of the reasons for the decision and must be entered within twenty days of the initial order or the petition for review, whichever is later. The order shall include a description of any further administrative review available, or if none, a notice that judicial review may be available.

(d) Unless otherwise provided in the order of the reviewing officer, the order of the reviewing officer represents the final position of the department. A reconsideration of the order of a reviewing officer may be sought only if the right to a reconsideration is contained in the final order.

(5) **Conversion of a brief adjudicative proceeding to a formal proceeding.** The presiding officer, or reviewing officer, may at any time, on motion of a person to whom the proceedings apply, or the department, or his/her own motion, convert the brief adjudicative proceeding to a formal proceeding.

(a) The presiding/reviewing officer shall convert the proceeding when it is found that the use of the brief adjudicative proceeding violates any provision of law, when the protection of the public interest requires the agency to give notice to and an opportunity to participate to persons other than the parties, and when the issues and interests involved warrant the use of the procedures of RCW 34.05.413 through 34.05.479.

(b) When a proceeding is converted from a brief adjudication to a formal proceeding, the director of the department of revenue, upon notice to the person(s) to whom the proceedings apply and the department, may become the presiding officer, or may designate a replacement presiding officer to conduct the formal proceedings.

(c) In the conduct of the formal proceedings, WAC 458-20-10002 shall apply to the proceedings. The converted proceeding is itself the independent administrative review by the department of revenue as provided in RCW 82.32A.020(6).

(6) **Court appeal.** Court appeal from the final order of the department is available under Part V, chapter 34.05 RCW. However, court appeal may be available only if a

review of the initial decision has been requested under subsection (4) of this section and all other administrative remedies have been exhausted. See RCW 34.05.534.

(7) **Posting of a final order of revoking a certificate of registration (tax registration endorsement) - revocation not a substitute for other collection methods or processes available to the department.** When an order revoking a certificate of registration (tax registration endorsement) is a final order of the department, the department shall post a copy of the order in a conspicuous place at the main entrance to the taxpayer's place of business and it shall remain posted until such time as the warrant amount has been paid.

(a) It is unlawful to engage in business after the revocation of a certificate of registration (tax registration endorsement). A person engaging in the business after a revocation may be subject to criminal sanctions as provided in RCW 82.32.290. RCW 82.32.290(2) provides that a person violating the prohibition against such engaging in business is guilty of a Class C felony in accordance with chapter 9A.20 RCW.

(b) Any certificate of registration (tax registration endorsement) revoked shall not be reinstated, nor a new certificate of registration issued until:

(i) The amount due on the warrant has been paid, or provisions for payment satisfactory to the department of revenue have been entered; and

(ii) The taxpayer has deposited with the department of revenue as security for taxes, increases and penalties due or which may become due under such terms and conditions as the department of revenue may require, but the amount of the security may not be greater than one-half the estimated average annual liability of the taxpayer.

(c) The revocation of a certificate of registration (tax registration endorsement), including any time during the revocation process, shall not be a substitute for, or in any way curtail, other collection methods or processes available to the department.

(8) **Computation of time.** In computing any period of time prescribed by this regulation or by the presiding officer, the day of the act or event after which the designated period is to run is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the next day which is not a Saturday, Sunday or legal holiday. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

[Statutory Authority: RCW 82.32.300 and 34.05.410. 95-07-070, § 458-20-10001, filed 3/14/95, effective 4/14/95.]

WAC 458-20-10002 Adjudicative proceedings—Formal adjudicative proceedings—Log export enforcement actions pursuant to chapter 240-15 WAC—Orders to county officials issued to pursuant to RCW 84.08.120 and 84.41.120—Converted brief adjudicative proceedings. (1) **Introduction.** The department conducts adjudicative proceedings pursuant to chapter 34.05 RCW, the Administrative Procedure Act (APA). This section explains the procedure and process for formal adjudicative proceedings conducted by the department. These formal proceedings include, but are not limited to, log export enforcement actions pursuant to chapter 240-15 WAC, orders to county officials issued pursuant to RCW 84.08.120 and 84.41.120, and converted brief adjudicative proceedings. This section does not apply to wholesale and retail cigarette license revocation/suspension of RCW 82.24.550, certificate of registration (tax registration endorsement) revocation of RCW 82.32.215, or other proceedings which are brief adjudicative proceedings and are explained in WAC 458-20-10001. This section also does not apply to the nonadjudicative proceedings as provided in RCW 82.32.160, 82.32.170 and WAC 458-20-100.

(2) **Formal adjudicative proceedings - procedure and process.** RCW 34.05.413 through 34.05.479 and chapter 10-08 WAC shall apply to formal adjudicative proceedings conducted by the department of revenue.

(a) **Presiding officer - final order - review.** The presiding officer of a formal adjudicative proceeding shall be the director, department of revenue, or such person as the director shall designate. The presiding officer, whether the director of the department of revenue, or such person as the director shall have designated, shall make the final decision and shall enter a final order as provided in RCW 34.05.461 (1)(b). No further administrative review is available from a decision of the presiding officer.

(b) **Petitions for reconsideration.** RCW 34.05.470 provides that petitions for reconsideration shall be filed within ten days of the final order. A petition for reconsideration shall be filed with the presiding officer at the address of the presiding officer provided in the notice of the proceedings, or at such other address as may be provided in the final order, and shall be in the form of other pleadings in the matter. As with all other pleadings, a copy of the petition shall be served upon all other parties to the proceeding.

[Statutory Authority: RCW 82.32.300 and 34.05.410. 95-07-069, § 458-20-10002, filed 3/14/95, effective 4/14/95.]

WAC 458-20-101 Tax registration. (1) **Introduction.** This section explains tax registration requirements for the Washington state department of revenue. It discusses who is required to be registered, changes in ownership requiring a new registration, the administrative closure of taxpayer accounts, and the revocation and reinstatement of a tax registration.

(2) **Persons required to obtain tax registration endorsements.** Except as provided in (a) of this subsection, every person who is engaged in any business activity for which the department of revenue is responsible for administrating and/or collecting a tax, shall apply for and obtain a tax registration endorsement with the department of revenue. (See RCW 82.32.030.) This endorsement shall be reflected on the face of the business person's registrations and licenses document. The tax registration endorsement is nontransferable, and valid for as long as that person continues in business.

(a) Registration under this section is not required if the following conditions are met:

(i) A person's value of products, gross proceeds of sales, or gross income of the business, from all business activities, is less than twelve thousand dollars per year;

(ii) The person is not required to collect or pay to the department of revenue any other tax which the department is authorized to collect; and

(iii) The person is not otherwise required to obtain a license or registration subject to the master application procedure provided in chapter 19.02 RCW. For the purposes of this section, the term "license or registration" means any agency permit, license, certificate, approval, registration, charter, or any form or permission required by law, including agency rule, to engage in any activity.

(b) Persons subject to the public utility tax (chapter 82.16 RCW) may be required to obtain a tax registration endorsement even if their gross income from business activities is less than twelve thousand dollars per year. RCW 82.16.040 provides a minimum tax reporting threshold of six thousand dollars per year for the public utility tax. (See also WAC 458-20-104 on minimum tax reporting thresholds.) Persons receiving taxable income in excess of this minimum threshold must pay public utility tax to the department. They do not satisfy (a)(ii) of this subsection, and therefore must obtain a tax registration endorsement.

(c) The term "tax registration endorsement," as used in this section, has the same meaning as the term "tax registration" or "certificate of registration" used in Title 82 RCW and other sections of chapter 458-20 WAC.

(d) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(i) Bob Brown is starting a bookkeeping service. The gross income of the business is expected to be less than twelve thousand dollars per year. Due to the nature of the business activities, Bob is not required to pay or collect any other tax which the department is authorized to collect.

Bob Brown is not required to apply for and obtain a tax registration endorsement with the department of revenue. The conditions under which a business person may engage in business activities without obtaining the tax registration endorsement have been met. However, if Bob Brown in some future period has gross income which exceeds twelve thousand dollars per year, he will be required to obtain a tax registration endorsement and remit the appropriate taxes.

(ii) Cindy Smith is opening a business to sell books written for children to local customers at retail. The gross proceeds of sales are expected to be less than twelve thousand dollars per year.

Cindy Smith must apply for and obtain a tax registration endorsement with the department of revenue. While gross income is expected to be less than twelve thousand dollars per year, Cindy Smith is required to collect and remit retail sales tax.

(iii) Jane Doe is starting a management consulting business. The gross income of the business is expected to exceed twelve thousand dollars per year. However, Jane is starting her business effective October 1, and expects to earn only ten thousand dollars prior to January 1 of the following year. Jane is not required to pay or collect any other tax which the department is authorized to collect.

Jane Doe must apply for and obtain a tax registration endorsement with the department of revenue. Jane Doe expects to earn more than twelve thousand dollars per year. Jane may not delay obtaining a tax registration endorsement merely because she does not anticipate earning more than twelve thousand dollars for the balance (October through December) of the calendar year.

(3) **Out-of-state businesses.** Out-of-state persons not satisfying the conditions expressed in subsection (2)(a) of this section must obtain a tax registration endorsement with this department if any of the following circumstances prevail:

(a) The person maintains a place of business in this state.

(b) The person has established sufficient nexus in Washington to incur a business and occupation or retail sales tax liability in this state. (Refer to WAC 458-20-193 and 458-20-194.)

(c) The seller has established sufficient nexus in Washington to be required to collect the use tax on sales made into this state. (See also WAC 458-20-193 and 458-20-221.)

(d) The out-of-state seller, while not statutorily required to do so, elects to collect the use tax from its retail customers in this state.

(4) **Registration procedure.** The state of Washington initiated the unified business identifier (UBI) program to simplify the registration and licensing requirements imposed on the state's business community. Completion of the master business application enables the business person to register or license with several state agencies, including the department of revenue, using a single form. The business person will be assigned one business identification number, which will be used for all state agencies participating in the UBI program.

(a) Business persons completing the master business application will be issued a registrations and licenses document. The face of this document will list the registrations and licenses (endorsements) which have been obtained.

(b) The department of revenue does not charge a registration fee for issuing a tax registration endorsement. Persons required to complete a master business application may, however, be subject to other fees.

(c) While the UBI program is administered by the department of licensing, master business applications are available at any participating UBI agency office. The following agencies of the state of Washington participate in the UBI program:

(i) The office of the secretary of state;

(ii) The department of licensing;

(iii) The department of employment security;

(iv) The department of labor and industries;

(v) The department of revenue.

(5) **Temporary revenue registration certificate.** A temporary revenue registration certificate may be issued to any person who operates a business of a temporary nature.

(a) Temporary businesses, for the purposes of registration, are those with:

(i) Definite, predetermined dates of operation for no more than two events each year with each event lasting no longer than one month; or

(ii) Seasonal dates of operation lasting no longer than three months. However, persons engaging in business activities on a seasonal basis every year should refer to subsection (6) of this section.

(b) Each temporary registration certificate is valid for a single event.

(c) Temporary revenue registration certificates may be obtained by making application at any participating UBI agency office, or by completing a seasonal registration form.

(6) **Seasonal revenue registration accounts.** Persons engaging in seasonal business activities which do not exceed two quarterly reporting periods each calendar year may be eligible for a seasonal revenue registration account. This is a permanent account until closed by the taxpayer. The taxpayer must specify in which quarterly reporting periods he or she will be engaging in taxable business activities. The quarterly reporting periods in which the taxpayer is engaging in taxable business activities may or may not be consecutive, but the same quarterly period or periods must apply each year. The taxpayer is not required to be engaging in taxable business activities during the entire period.

The department will provide and the taxpayer will be required to file tax returns only for the quarterly reporting periods specified by the taxpayer. Examples of persons which may be eligible for the seasonal revenue registration account include persons operating Christmas tree and/or fireworks stands. Persons engaging in taxable business activities in more than two quarterly reporting periods in a calendar year will not qualify for a seasonal revenue registration account.

(7) **Display of registrations and licenses document.** The taxpayer is required to display the registrations and licenses document in a conspicuous place at the business location for which it is issued.

(8) **Multiple locations.** A registrations and licenses document is required for each place of business at which a taxpayer engages in business activities for which the department of revenue is responsible for administrating and/or collecting a tax, and any main office or principal place of business from which excise tax returns are to be filed. This requirement applies to locations both within and without the state of Washington.

(a) For the purposes of this section, the term "place of business" means:

(i) Any separate establishment, office, stand, cigarette vending machine, or other fixed location; or

(ii) Any vessel, train, or the like, at any of which the taxpayer solicits or makes sales of tangible personal property, or contracts for or renders services in this state or otherwise transacts business with customers.

(b) A taxpayer wishing to report all tax liability on a single excise tax return may request a separate registrations and licenses document for each location. The original registrations and licenses document shall be retained for the main office or principal place of business from which the returns are to be filed, with additional documents obtained for all branch locations. All registrations and licenses documents will reflect the same registration number.

(c) A taxpayer desiring to file a separate excise tax return covering a branch location, or a specific construction contract, may apply for and receive a separate revenue registration number. A registrations and licenses document will be issued for each registration number and will represent a separate account.

(d) A master business application must be completed to obtain a separate registrations and licenses document, or revenue registration number, for a new location.

(9) **Change in ownership.** When a change in ownership of a business occurs, the new owner must apply for and obtain a new registrations and licenses document. The original document must be destroyed, and any further use of the registration number for tax purposes is prohibited.

(a) A "change in ownership," for purposes of registration, occurs upon:

(i) The sale of a business by one individual, firm or corporation to another individual, firm or corporation;

(ii) The dissolution of a partnership;

(iii) The withdrawal, substitution, or addition of one or more partners where the partnership continues as a business organization and the change in the number of partners is equal to or greater than fifty percent;

(iv) Incorporation of a business previously operated as a partnership or sole proprietorship; or

(v) Changing from a corporation to a partnership or sole proprietorship.

(b) For the purposes of registration, a "change in ownership" does not occur upon:

(i) The sale of all or part of the common stock of a corporation;

(ii) The transfer of assets to an assignee for the benefit of creditors or upon the appointment of a receiver or trustee in bankruptcy;

(iii) The death of a sole proprietor where there will be a continuous operation of the business by the executor, administrator, or trustee of the estate or, where the business was owned by a marital community, by the surviving spouse of the deceased owner;

(iv) The withdrawal, substitution, or addition of one or more partners where the partnership continues as a business organization and the change in the number of partners is less than fifty percent; or

(v) A change in the trade name under which the business is conducted.

(c) While changes in a business entity may not result in a "change in ownership," the completion of a master business application may be required to reflect the changes in the registered account.

(10) **Change in location.** Whenever the place of business is moved to a new location, the taxpayer must notify the department of the change. A new registrations and licenses document will be issued to reflect the change in location.

(11) **Lost registrations and licenses documents.** If any registrations and licenses document is lost, destroyed or defaced as a result of accident or of natural wear and tear, a new document will be issued upon request.

(12) **Administrative closure of taxpayer accounts.** The department may, upon written notification to the taxpayer, close the taxpayer's account and rescind its tax registration endorsement whenever the taxpayer has reported no gross income, and there is no indication of taxable activity for two consecutive years.

The taxpayer may request, within thirty days of notification of closure, that the account remain open. This request must be in writing and state the reasons why the account should remain active. The request shall be reviewed by the department and if found to be warranted, the department will immediately reopen the account. The following are acceptable reasons for continuing as an active account:

(a) The taxpayer is engaging in business activities in Washington which may result in tax liability.

(b) The taxpayer is required to collect or pay to the department of revenue a tax which the department is authorized to collect.

(c) The taxpayer has in fact been liable for excise taxes during the previous two years.

(13) **Reopening of taxpayer accounts.** A business person choosing to resume business activities for which the department of revenue is responsible for administrating and/or collecting a tax, may request a previously closed account be reopened. The business person must complete a new master business application. When an account is reopened a new registrations and licenses document, reflecting a current tax registration endorsement, shall be issued. Persons requesting the reopening of an account which had previously been closed due to a revocation action should refer to subsection (14) of this section.

(14) **Revocation and reinstatement of tax registration endorsements.** Actions to revoke tax registration endorsements must be conducted by the department pursuant to the provisions of chapter 34.05 RCW, the Administrative Procedure Act, and the taxpayers bill of rights of chapter 82.32A RCW. Persons should refer to WAC 458-20-10001, Adjudicative proceedings—Brief adjudicative proceedings—Wholesale and retail cigarette license revocation/suspension—Certificate of registration (tax registration endorsement) revocation, for an explanation of the procedures and processes pertaining to the revocation of tax registration endorsements.

(a) The department of revenue may, by order, revoke a tax registration endorsement if any tax warrant issued under the provisions of RCW 82.32.210 is not paid within thirty days after it has been filed with the clerk of the superior court, or for any other reason expressly provided by law.

(b) The revocation order will be posted in a conspicuous place at the main entrance to the taxpayer's place of business and must remain posted until the tax registration endorsement has been reinstated. A revoked endorsement will not be reinstated until:

(i) The amount due on the warrant has been paid, or satisfactory arrangements for payment have been approved by the department; and

(ii) The taxpayer has posted with the department a bond or other security in an amount not exceeding one-half the estimated average annual liability of the taxpayer.

(c) It is unlawful for any taxpayer to engage in business after its tax registration endorsement has been revoked.

(15) **Penalties for noncompliance.** The law provides that any person engaging in any business activity, for which registration with the department of revenue is required, shall obtain a tax registration endorsement.

(a) The failure to obtain a tax registration endorsement prior to engaging in any taxable business activity constitutes a gross misdemeanor.

(b) Engaging in business after a tax registration endorsement has been revoked by the department constitutes a Class C felony.

(c) Any tax found to have been due, but delinquent, and any tax unreported as a result of fraud or misrepresentation, may be subject to penalty as provided in WAC 458-20-228 and 458-20-230.

[Statutory Authority: RCW 82.32.300. 95-07-089, § 458-20-101, filed 3/17/95, effective 4/17/95; 93-13-126, § 458-20-101, filed 6/22/93, effective 7/23/93; 86-12-015 (Order ET 86-11), § 458-20-101, filed 5/27/86; 83-07-032 (Order ET 83-15), § 458-20-101, filed 3/15/83; Order ET 73-1, § 458-20-101, filed 11/2/73; Order ET 71-1, § 458-20-101, filed 7/22/71; Order ET 70-3, § 458-20-101 (Rule 101), filed 5/29/70, effective 7/1/70.]

WAC 458-20-102 Resale certificates. (1) **Introduction.** This section explains the conditions under which a buyer may furnish a resale certificate to a seller, and explains the information and language required on the resale certificate. This section also provides tax reporting information to persons who purchase articles or services for dual purposes (i.e., for both resale and consumption). Sellers and buyers should note that amendments to RCW 82.04.470 required changes to the information and language contained on the resale certificate. These changes became effective on July 1, 1993. (See chapter 25, Laws of Washington 1993 sp.s.)

(2) **Resale certificate use.** The resale certificate is a document or combination of documents which substantiates the wholesale nature of a sale. The resale certificate cannot be used for purchases which are not purchases at wholesale, or where more specific certificates, affidavits, or other documentary evidence is required by statute or other section of chapter 458-20 WAC. While the resale certificate may come in different forms, all resale certificates must satisfy the language and information requirements of RCW 82.04.470.

(a) Depending on the statements made on the resale certificate, the resale certificate may authorize the buyer to purchase at wholesale all products or services being purchased from a particular seller, or may authorize only selected products or services to be purchased at wholesale. The provisions of the resale certificate may be limited to a single sales transaction, or may apply to all sales transactions for a period not to exceed four years from the effective date. Whatever its form and/or purpose, the resale certificate must be completed in its entirety, and signed by a person who is authorized to make such a representation on behalf of the buyer.

(b) The buyer may authorize any person in its employ to issue and sign resale certificates on the buyer's behalf. The buyer is, however, responsible for the information contained on the resale certificate. A resale certificate is not required to be completed by every person ordering or making the actual purchase of articles or services on behalf of the buyer. For example, a construction company which authorizes only its bookkeeper to issue resale certificates on its behalf may authorize both the bookkeeper and a job foreman to purchase items under the provisions of the resale certificate. The construction company is not required to provide, nor is the seller required to obtain, a resale certificate signed by each person making purchases on behalf of the construction company.

(c) The buyer is responsible for educating all persons authorized to issue and/or use the resale certificate on the proper use of the buyer's resale certificate privileges.

(3) **Resale certificate renewal.** Resale certificates must be renewed at least every four years. The buyer must renew its resale certificate whenever a change in the ownership of the buyer's business requires a new "registrations and licenses document." (See WAC 458-20-101 on tax registration.) The buyer may not make purchases under the authority of a resale certificate bearing a registration number which has been cancelled or revoked.

Sellers who have resale certificates on file without the additional language and information required by the July 1, 1993, amendment to RCW 82.04.470 are required to obtain revised resale certificates for sales made after June 30, 1993. However, the old resale certificates must be retained to substantiate the wholesale nature of sales made prior to July 1, 1993. These "old" certificates must be retained for at least five years from their last effective date. For example, a seller making its last wholesale sale to a particular buyer on April 1, 1991, must retain the "old" resale certificate until March 31, 1996, five years from the last sale subject to the provisions of that resale certificate. (See also WAC 458-20-254 on recordkeeping requirements.)

(4) **Sales at wholesale.** All sales are treated as retail sales unless the seller takes from the buyer a properly executed resale certificate. Resale certificates may only be used for sales at wholesale and may not be used as proof of entitlement to other retail sales tax exemptions provided by law, such as certain sales to Indians (see WAC 458-20-192), interstate motor carriers (see WAC 458-20-174), artistic and cultural organizations (see WAC 458-20-249), etc. The buyer may only issue a resale certificate when the property or services purchased are:

(a) For resale in the regular course of the buyer's business without intervening use by the buyer; or

(b) To be used as an ingredient or component part of a new article of tangible personal property to be produced for sale; or

(c) A chemical to be used in processing an article to be produced for sale (see WAC 458-20-113 on chemicals used in processing); or

(d) To be used in processing ferrosilicon which is subsequently used in producing magnesium for sale; or

(e) Provided to consumers as a part of competitive telephone service, as defined in RCW 82.04.065; or

(f) Feed, seed, seedlings, fertilizer, spray materials, or agents for enhanced pollination including insects such as bees for use in the federal conservation reserve program or its successor administered by the United States Department of Agriculture; or

(g) Feed, seed, seedlings, fertilizer, spray materials, or agents for enhanced pollination including insects such as bees for use by a farmer for producing for sale any agricultural product. (See also WAC 458-20-122 on sales to farmers.)

(5) **Seller's responsibilities.** When a seller receives and accepts from the buyer a resale certificate at the time of the sale, or has a resale certificate on file at the time of the sale, or obtains a resale certificate from the buyer within a reasonable time after the sale, the seller is relieved of liability for retail sales tax with respect to the sale covered by the resale certificate. The seller may accept a legible FAX or duplicate copy of an original resale certificate. In all cases, the resale certificate must be accepted in good faith by the seller. The resale certificate will be considered to be obtained within a reasonable time of the sale if it is received within one hundred twenty days of the sale or sales in question. However, refer to (d) of this subsection in event of an audit situation.

(a) If a single order or contract will result in multiple billings to the buyer, and the appropriate resale certificate was not obtained or on file at the time the order was placed or the contract entered, the resale certificate must be received by the seller within one hundred twenty days after the first billing to be considered obtained within a reasonable time of the sale. For example, a subcontractor entering into a construction contract for which it has not received a resale certificate must obtain the certificate within one hundred twenty days of the initial construction draw request to consider the resale certificate obtained in a reasonable time after the sale, even though the construction project may not be completed at that time and additional draw requests will follow.

(b) If the resale certificate is obtained more than one hundred twenty days after the sale or sales in question, the resale certificate must be specific to the sale or sales. The certificate must specifically identify the sales in question on its face, or be accompanied by other documentation signed by the buyer specifically identifying the sales in question and stating that the provisions of the accompanying resale certificate apply. A nonspecific resale certificate which is not obtained within a reasonable period of time is generally not, in and of itself, acceptable proof of the wholesale nature of the sales in question. The resale certificate and/or required documentation must be obtained within the statutory time limitations provided by RCW 82.32.050.

The following examples explain the seller's documentary requirements in typical situations when obtaining a resale certificate more than one hundred twenty days after the sale. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(i) Beginning in January of 1994, MN Company regularly makes sales to ABC Inc. In June of 1994 MN discovers ABC has not provided a resale certificate. MN requests a resale certificate from ABC and, as the resale certificate will not be received within one hundred twenty days of many of the past sales transactions, requests that the resale certificate specifically identify those past sales subject to the provisions of the certificate. MN receives a legible FAX copy of an original resale certificate from ABC on July 1, 1994. Accompanying the resale certificate is a memo providing a list of the invoice numbers for all past sales transactions through May 15, 1994. This memo also states that the provisions of the resale certificate apply to all past and future sales, including those listed. MN Company has satisfied the requirement that it obtain a resale certificate specific to the sales in question. As the provisions of this resale certificate apply to both past and future sales transactions, the certificate must be renewed no later than December 31, 1997, four years from the date the resale certificate became effective.

(ii) XYZ Company makes three sales to MP Inc. in October of 1993 and does not charge retail sales tax. In the review of its resale certificate file in April of 1994, XYZ discovers it has not received a resale certificate from MP

Inc. and immediately requests a certificate. As the resale certificate will not be received within one hundred twenty days of the sales in question, XYZ requests that MP provide a resale certificate identifying the sales in question. MP provides XYZ with a resale certificate which does not identify the sales in question, but simply states "applies to all past purchases." XYZ Company has not satisfied its responsibility to obtain an appropriate resale certificate. As XYZ failed to secure a resale certificate within a reasonable period of time, XYZ must obtain a certificate specifically identifying the sales in question or prove through other facts and circumstances that these sales are wholesale sales. (Refer to (c) of this subsection.) It remains the seller's burden to prove the wholesale nature of the sales made to a buyer if the seller has not obtained a valid resale certificate within one hundred twenty days of the sale.

(c) If the seller has not obtained an appropriate resale certificate or other acceptable documentary evidence (see subsection (8) of this section), the seller is personally liable for the tax due unless it can sustain the burden of proving through facts and circumstances that the property was sold for one of the purposes set forth in subsection (4)(a) through (g) of this section. The department of revenue will consider all evidence presented by the seller, including the circumstances of the sales transaction itself, when determining whether the seller has met its burden of proof. This evidence must be presented within the statutory time limitations provided by RCW 82.32.060. It is the seller's responsibility to provide the information necessary to evaluate the facts and circumstances of all sales transactions for which resale certificates are not obtained. Facts and circumstances which should be considered include, but are not necessarily limited to, the following:

(i) The nature of the buyer's business. The items being purchased at wholesale must be consistent with the buyer's business. For example, a buyer having a business name of "Ace Used Cars" would generally not be expected to be in the business of selling furniture.

(ii) The nature of the items sold. The items sold must be of a type which would normally be purchased at wholesale by the buyer.

(iii) The quantity and frequency of items sold. The number of items sold and the frequency of sales must indicate that the buyer is purchasing such items at wholesale.

(iv) Additional documentation. Other available documents, such as purchase orders and shipping instructions, should be considered in determining whether they support a finding that the sales are sales at wholesale.

(d) If in event of an audit it is discovered that the seller has not secured the necessary resale certificates and/or documentation, the seller will generally be allowed thirty days in which to obtain and present appropriate resale certificates and/or documentation, or prove by facts and circumstances the sales in question are wholesale sales. The time allotted to the seller shall commence from the date the auditor initially provides the seller with the results of the auditor's wholesale sales review. The processing of the audit report will not be delayed as a result of the seller's failure within the allotted time to secure and present appropriate documentation, or its inability to prove by facts and circumstances that the sales in question were wholesale sales. The audit report will also not be delayed because the time allotted to the seller expires prior to one hundred twenty days from the date of the sale or sales in question.

(e) If the seller is unable to provide proper documentation, or unable to prove by facts and circumstances that the sales in question are wholesale sales, the seller becomes personally liable for the taxes in question. If the seller is required to make payment to the department, and later is able to present the department with proper documentation or prove by facts and circumstances that the sales in question are wholesale sales, the seller may in writing request a refund of the taxes paid along with the applicable interest. Both the request and the documentation or proof that the sales in question are wholesale sales must be submitted to the department within the statutory time limitations provided by RCW 82.32.060. (See also WAC 458-20-229.)

(6) **Penalty for improper use.** Any buyer who uses a resale certificate to purchase items or services without payment of sales tax and who is not entitled to use the certificate for the purchase shall be assessed a penalty of fifty percent of the tax due on the improperly purchased item or service, in addition to all other taxes, penalties, and interest due. The penalty shall be assessed by the department of revenue and will apply only to the buyer. The penalty applies to purchases made after June 30, 1993, and can apply even if there was no intent to evade the payment of the tax. However, see subsection (12) of this section for situations in which the department may waive the penalty.

Persons who purchase articles or services for dual purposes (i.e., some for their own consumption and some for resale) should refer to subsection (11) of this section to determine whether they may give a resale certificate to the seller.

(7) **Resale certificate - required information.** While there may be different forms of the resale certificate, all resale certificates must satisfy the language and information requirements provided by RCW 82.04.470. The resale certificate may be in the suggested form shown below, or may be in any other form which substantially contains the following information and language:

> The undersigned buyer hereby certifies that the tangible personal property or services specified below will be purchased (a) for resale in the regular course of business without intervening use by the buyer, or (b) for use as an ingredient or component part of a new article of tangible personal property to be produced for sale, or (c) is a chemical to be used in processing a new article of tangible personal property to be produced for sale, or (d) for use as feed, seed, fertilizer, or spray materials in its capacity as a farmer as defined in chapter 82.04 RCW. This certificate shall be considered a part of each order which I may hereafter give to you, unless otherwise specified, and shall be valid until revoked by me in writing. This certificate is given with full knowledge that the buyer is solely responsible for purchasing within the categories specified on the certificate, and that misuse of the resale privilege claimed on the certificate is subject to the legally prescribed penalty of fifty percent of the tax due, in addition

to the tax, interest, and any other penalties imposed by law.

Name of Seller ...... Effective Date ....
Name of Buyer ....
Address ....
UBI/Revenue Registration # ....
Type of Busines ....
Items or item categories purchased at wholesale ......
....
Authorized agent for buyer (printed) ....
Authorized Signature ....
Title ....

(a) The 1993 legislative changes to RCW 82.04.470 require the buyer making purchases at wholesale to specify the kinds of products or services subject to the provisions of the resale certificate. A buyer who will purchase some of the items at wholesale, and consume and pay tax on some other items being purchased from the same seller, must use terms specific enough to clearly indicate to the seller what kinds of products or services the buyer is authorized to purchase at wholesale.

(i) The buyer may list the particular products or services to be purchased at wholesale, or provide general category descriptions of these products or services. The terms used to describe these categories must be descriptive enough to restrict the application of the resale certificate provisions to those products or services which the buyer is authorized to purchase at wholesale. The following are examples of terms used to describe categories of products purchased at wholesale, and businesses which may be eligible to use such terms on their resale certificates:

(A) "Hardware" for use by a general merchandise or building material supply store, "computer hardware" for use by a computer retailer.

(B) "Paint" or "painting supplies" for use by a general merchandise or paint retailer, "automotive paint" for use by an automotive repair shop.

(C) "Building materials" or "subcontract work" for use by prime contractors performing residential home construction, "wiring" or "lighting fixtures" for use by an electrical contractor.

(ii) The buyer must remit retail sales tax on any taxable product or service not listed on the resale certificate provided to the seller. If the buyer gave a resale certificate to the seller and later used an item listed on the certificate, or if the seller failed to collect the sales tax on items not listed on the certificate, the buyer must remit the deferred sales or use tax due to the department.

(iii) RCW 82.08.050 provides that each seller shall collect from the buyer the full amount of retail sales tax due on each retail sale. If the department finds that the seller has engaged in a consistent pattern of failing to properly charge sales tax on items not purchased at wholesale (i.e., not listed on the resale certificate), it may hold the seller liable for such uncollected sales tax. However, a seller accepting a resale certificate in good faith is not required to verify that the buyer has properly listed only those items the buyer is authorized to purchase at wholesale.

(iv) Persons having specific questions regarding the use of terms to describe products or services purchased at wholesale may submit such questions to the department of revenue for ruling.

(b) A buyer who will purchase at wholesale all of the products or services being purchased from a particular seller will not be required to specifically describe the items or item categories on the resale certificate. If the certificate form provides for a description of the products or services being purchased at wholesale (as does the suggested form provided above), the buyer may specify "all products and/or services" (or make a similar designation). A resale certificate completed in this manner is often described as a blanket resale certificate.

The resale certificate used by the buyer must, in all cases, be completed in its entirety. A resale certificate in which the section for the description of the items being purchased at wholesale is left blank by the buyer will not be considered a properly executed resale certificate.

(c) If the resale certificate is used for a single transaction, the language and information required of a resale certificate may be written or stamped upon a purchase order or invoice. The language contained in a "single use" resale certificate should be modified to delete any reference to subsequent orders or purchases.

(d) **Examples.** The following examples explain the proper use of types of resale certificates in typical situations. These examples should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances.

(i) ABC is an automobile repair shop purchasing automobile parts for resale and tools for its own use from DE Supply. ABC must provide DE Supply with a resale certificate limiting the certificate's application to automobile part purchases. However, should ABC withdraw parts from inventory to install in its own tow truck, deferred retail sales tax or use tax must be remitted directly to the department of revenue. The buyer has the responsibility to report deferred retail sales tax or use tax upon any item put to its own use, including items for which it gave a resale certificate and later used for its own use.

(ii) X Company is a retailer selling lumber, hardware, tools, automotive parts, and household appliances. X Company regularly purchases lumber, hardware, and tools from Z Distributing. While these products are generally purchased for resale, X Company may occasionally withdraw some of these products from inventory for its own use. X Company may provide Z Distributing with a resale certificate specifying "all products purchased" are purchased at wholesale. However, whenever X Company removes any product from inventory to put to its own use, deferred retail sales or use tax must be remitted to the department of revenue.

(iii) TM Company is a manufacturer of electric motors. When making purchases from its suppliers, TM issues a purchase order. This purchase order contains substantially all the language and information required of a resale certificate and a signature of the person ordering the items on behalf of TM. This purchase order includes a box which, if marked, indicates to the supplier that all or certain designated items purchased are being purchased at wholesale.

When the box indicating the purchases are being made at wholesale is marked, the purchase order can be accepted as a resale certificate. A resale certificate is not required to be in any particular form, it must simply contain substantially all the required information and language contained in the suggested resale certificate form described above. As TM Company's purchase orders are being accepted as resale certificates, they must be retained by the seller for at least five years. (See also WAC 458-20-254 on recordkeeping requirements.)

(8) **Other documentary evidence.** Other documentary evidence may be used by the seller and buyer in lieu of the resale certificate form described above. However, this documentary evidence must collectively contain the information and language generally required of a resale certificate. The conditions and restrictions applicable to the use of resale certificates apply equally to other documentary evidence used in lieu of the above-mentioned resale certificate form. The following are examples of documentary evidence which will be accepted to show that sales were at wholesale:

(a) A combination of documentation kept on file, such as a membership card or application, and a sales invoice or "certificate" taken at the point of sale with the purchases listed, provided:

(i) The documentation kept on file contains all information generally required on a resale certificate, including the names and signatures of all persons authorized to make purchases at wholesale; and

(ii) The sales invoice or "certificate" taken at the point of sale must contain the following:

(A) Language certifying the purchase is made at wholesale, with acknowledgement of the penalties for the misuse of resale privileges, as generally required of a resale certificate; and

(B) The name and registration number of the buyer/business, and an authorized signature.

(b) A contract of sale which within the body of the contract provides the language and information generally required of a resale certificate. The contract of sale must specify the products or services subject to the resale certificate privileges.

(c) Any other documentary evidence which has been approved in advance and in writing by the department of revenue.

(9) **Sales to nonresident buyers.** If the buyer is a nonresident who is not engaged in business in this state, but buys articles here for the purpose of resale in the regular course of business outside this state, the seller must take from such a buyer a resale certificate as described above. The seller may accept a resale certificate from a nonresident buyer with the registration number information omitted, provided the balance of the resale certificate is completed in its entirety. The resale certificate should contain a statement that the items are being purchased for resale outside Washington.

(10) **Sales to farmers.** Farmers selling agricultural products only at wholesale are not required to register with the department of revenue. (See also WAC 458-20-101 on tax registration.) When making wholesale sales to farmers (including farmers operating in other states), the seller must take from the farmer a resale certificate as described above. Farmers not required to be registered with the department of revenue may provide, and the seller may accept, resale certificates with the registration number information omitted, provided the balance of the certificates are completed in full. Persons making sales to farmers should also refer to WAC 458-20-122.

(11) **Purchases for dual purposes.** A buyer normally engaged in both consuming and reselling certain types of tangible personal property, and not able to determine at the time of purchase whether the particular property purchased will be consumed or resold, must purchase according to the general nature of his or her business. RCW 82.08.130. If the buyer principally consumes the articles in question, the buyer should not give a resale certificate for any part of the purchase. If the buyer principally resells the articles, the buyer may issue a resale certificate for the entire purchase. For the purposes of this subsection, the term "principally" means greater than fifty percent.

(a) **Deferred sales tax liability.** If the buyer gives a resale certificate for all purchases and thereafter consumes some of the articles purchased, the buyer must set up in his or her books of account the value of the article used and remit to the department of revenue the applicable deferred sales tax. The deferred sales tax liability should be reported under the use tax classification on the buyer's excise tax return.

(i) Buyers making purchases for dual purposes under the provisions of a resale certificate must remit deferred sales tax on all products or services they consume. If the buyer fails to make a good faith effort to remit this tax liability, the penalty for the misuse of resale certificate privileges may be assessed. This penalty will apply to the unremitted portion of the deferred sales tax liability.

A buyer will generally be considered to be making a good faith effort to report its deferred sales tax liability if the buyer discovers a minimum of eighty percent of the tax liability within one hundred twenty days of purchase, and remits the full amount of the discovered tax liability upon the next excise tax return. However, if the buyer does not satisfy this eighty percent threshold and can show by other facts and circumstances that it made a good faith effort to report the tax liability, the penalty will not be assessed. Likewise, if the department can show by other facts and circumstances that the buyer did not make a good faith effort in remitting its tax liability the penalty will be assessed, even if the eighty percent threshold is satisfied.

(ii) Example. BC Contracting operates both as a prime contractor and speculative builder of residential homes. BC Contracting purchases building materials from Seller D which are principally incorporated into projects upon which BC acts as a prime contractor. BC provides Seller D with a resale certificate and purchases all building materials at wholesale. BC must remit deferred sales tax upon all building materials incorporated into the speculative projects to be considered to be properly using its resale certificate privileges. The failure to make a good faith effort to identify and remit this tax liability may result in the assessment of the fifty percent penalty for the misuse of resale certificate privileges.

(b) **Tax paid at source deduction.** If the buyer has not given a resale certificate, but has paid tax on all purchases of such articles and subsequently resells a portion thereof, the buyer must collect the retail sales tax from its retail customers as provided by law. When reporting these sales on the excise tax return, the buyer may then claim a deduction in the amount the buyer paid for the property thus resold.

(i) This deduction may be claimed under the retail sales tax classification only. It must be identified as a "taxable amount for tax paid at source" deduction on the deduction detail worksheet, which must be filed with the excise tax return. Failure to properly identify the deduction may result in the disallowance of the deduction. When completing the local sales tax portion of the tax return, the deduction must be computed at the local sales tax rate paid to the seller, and credited to the seller's tax location code.

(ii) Example. Seller A is located in Spokane, Washington and purchases equipment parts for dual purposes from a supplier located in Seattle, Washington. Seller A does not issue a resale certificate for the purchase, and remits retail sales tax to the supplier at the Seattle tax rate. A portion of these parts are sold to Customer B, with retail sales tax collected at the Spokane tax rate. Seller A must report the amount of the sale to Customer B on its excise tax return, compute the local sales tax liability at the Spokane rate, and code this liability to the location code for Spokane (3210). Seller A would claim the tax paid at source deduction for the cost of the parts resold to Customer B, compute the local sales tax credit at the Seattle rate, and code this deduction amount to the location code for Seattle (1726).

(iii) Claim for deduction will be allowed only if the taxpayer keeps and preserves records in support thereof which show the names of the persons from whom such articles were purchased, the date of the purchase, the type of articles, the amount of the purchase and the amount of tax which was paid.

(iv) Should the buyer resell the articles at wholesale, or under other situations where retail sales tax is not to be collected, the claim for the tax paid at source deduction on a particular excise tax return may result in a credit. In such cases, the department will issue a credit notice which may be used against future tax liabilities. However, a refund will be issued upon written request.

(12) **Waiver of penalty for resale certificate misuse.** The department may waive the penalty imposed for resale certificate misuse upon finding that the use of the certificate to purchase items or services by a person not entitled to use the certificate for that purpose was due to circumstances beyond the control of the buyer. However, the use of a resale certificate to purchase items or services for personal use outside of the business shall not qualify for the waiver or cancellation of the penalty. The penalty will not be waived merely because the buyer was not aware of either the proper use of the resale certificate or the penalty. In all cases the burden of proving the facts is upon the buyer.

(a) Situations under which a waiver of the penalty will be considered by the department include, but are not necessarily limited to, the following:

(i) The resale certificate was properly used to purchase products or services for dual purposes; or the buyer was eligible to issue the resale certificate; and the buyer made a good faith effort to discover all of its deferred sales tax liability within one hundred twenty days of purchase; and the buyer remitted the discovered tax liability upon the next excise tax return. (Refer to subsection (11)(a)(i) of this section for an explanation of what constitutes "good faith effort.")

(ii) The certificate was issued and/or purchases were made without the knowledge of the buyer, and had no connection with the buyer's business activities. However, the penalty for the misuse of resale certificate privileges may be applied to the person actually issuing and/or using the resale certificate without knowledge of the buyer.

(b) The penalty prescribed for the misuse of the resale certificate may be waived or cancelled on a one time only basis if such misuse was inadvertent or unintentional, and the item was purchased for use within the business. If the department of revenue does grant a one time waiver of the penalty, the buyer shall be provided written notification at that time.

(c) **Examples.** The following are examples of typical situations where the fifty percent penalty for the misuse of resale privileges will or will not be assessed. These examples should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances.

(i) ABC Manufacturing purchases electrical wiring and tools from X Supply. The electrical wiring is purchased for dual purposes, i.e., for resale and for consumption, with more than fifty percent of the wiring purchases becoming a component of items which ABC manufactures for sale. ABC Manufacturing issues a resale certificate to X Supply specifying "electrical wiring" as the category of items purchased for resale. ABC regularly reviews its purchases and remits deferred sales tax upon the consumed wiring.

ABC is subsequently audited by the department of revenue and it is discovered that ABC Manufacturing failed to remit deferred sales tax upon three purchases of wiring for consumption. The unreported tax liability attributable to these three purchases is less than five percent of the total deferred sales tax liability for wiring purchases made from X Supply. It is also determined that the failure to remit deferred sales tax upon these purchases was merely an oversight. The fifty percent penalty for the misuse of resale certificate privileges does not apply, even though ABC failed to remit deferred sales tax on these purchases. The resale certificate was properly issued, and ABC remitted to the department more than eighty percent of the deferred sales tax liability for wiring purchases from X Supply.

(ii) During a routine audit examination of a jewelry store, the department of revenue discovers that a dentist has provided a resale certificate for the purchase of a necklace. This resale certificate indicates that in addition to operating a dentistry practice, the dentist also sells jewelry. There is no indication that the jewelry store did not accept the resale certificate in good faith.

Upon further investigation, the department of revenue finds that the dentist is not engaged in selling jewelry. As the jewelry store accepted the resale certificate in good faith, the department will look to the dentist for payment of the applicable retail sales tax. In addition, the dentist will be assessed the fifty percent penalty for the misuse of resale certificate privileges. The penalty will not be waived or cancelled as the dentist misused the resale certificate privileges to purchase a necklace for personal use.

(iii) During a routine audit examination of a computer dealer, it is discovered that a resale certificate was obtained from a bookkeeping service. The resale certificate was completed in its entirety and accepted in good faith by the dealer. Upon further investigation it is discovered that the bookkeeping service had no knowledge of the resale certificate, and had made no payment to the computer dealer. The employee who signed the resale certificate had purchased the computer for personal use, and had personally made payment to the computer dealer.

The fifty percent penalty for the misuse of the resale certificate privileges will be waived for the bookkeeping service. The bookkeeping service had no knowledge of the purchase or unauthorized use of the resale certificate. However, the department of revenue will look to the employee for payment of the taxes and the fifty percent penalty for the misuse of resale certificate privileges.

(iv) During an audit examination it is discovered that XYZ Corporation, a duplicating company, purchased copying equipment for its own use. XYZ Corporation issued a resale certificate to the seller despite the fact that XYZ does not sell copying equipment. XYZ also failed to remit either the deferred sales or use tax to the department of revenue. As a result of a previous investigation by the department of revenue, XYZ had been informed in writing that retail sales and/or use tax applied to all such purchases. The fifty percent penalty for the misuse of resale certificate privileges will be assessed. XYZ was not eligible to provide a resale certificate for the purchase of copying equipment, and had previously been so informed. The penalty will apply to the unremitted deferred sales tax liability.

(v) AZ Construction issued a resale certificate to a building material supplier for the purchase of "pins" and "loads." The "pins" are fasteners which become a component part of the finished structure. The "load" is a powder charge which is used to drive the "pin" into the materials being fastened together. AZ Construction is informed during the course of an audit examination that AZ Construction is considered the consumer of the "loads" and may not issue a resale certificate for the purchase thereof. AZ Construction indicates that it was unaware that a resale certificate could not be issued for the purchase of "loads," and there is no indication that AZ Construction had previously been so informed.

The failure to be aware of the proper use of the resale certificate is not generally grounds for waiving the fifty percent penalty for the misuse of resale certificate privileges. However, AZ Construction does qualify for the "one time only" waiver of the penalty as the misuse of the resale certificate privilege was unintentional and the "loads" were purchased for use within the business.

[Statutory Authority: RCW 82.32.300. 94-13-031, § 458-20-102, filed 6/6/94, effective 7/7/94; 86-09-058 (Order ET 86-7), § 458-20-102, filed 4/17/86; 83-07-034 (Order ET 83-17), § 458-20-102, filed 3/15/83; Order ET 70-3, § 458-20-102 (Rule 102), filed 5/29/70, effective 7/1/70.]

WAC 458-20-103 Time and place of sale. Under the Revenue Act of 1935, as amended, the word "sale" means any transfer of the ownership of, title to, or possession of, property for a valuable consideration, and includes the sale or charge made for performing certain services.

For the purpose of determining tax liability of persons selling tangible personal property, a sale takes place in this state when the goods sold are delivered to the buyer in this state, irrespective of whether title to the goods passes to the buyer at a point within or without this state.

With respect to the charge made for performing services which constitute sales as defined in RCW 82.04.040 and 82.04.050, a sale takes place in this state when the services are performed herein. With respect to the charge made for renting or leasing tangible personal property, a sale takes place in this state when the property is used in this state by the lessee.

Where gift certificates are sold which will be redeemed in merchandise, or in services which are defined by the Revenue Act as retail sales, the sale is deemed to occur and the retail sales tax shall be collected at the time the certificate is actually redeemed for the merchandise or services. The measure of the tax is the total selling price of the merchandise or services at the time of the redemption, including the redemption value of the certificate, or any part thereof, which is applied toward the selling price. (See WAC 458-20-235 for effect of rate changes on prior contracts and sales agreements. See also WAC 458-20-131 which deals with merchandising games, and which covers the situation where certificates or trade checks are issued which may be redeemed for services which are not retail sales, such as barber services, admissions, etc.)
Revised March 2, 1982.

[Statutory Authority: RCW 82.32.300. 82-12-021 (Order ET 82-2), § 458-20-103, filed 5/25/82; Order ET 70-3, § 458-20-103 (Rule 103), filed 5/29/70, effective 7/1/70.]

WAC 458-20-104 Small business tax relief based on volume of business. (1) **Introduction.** The law provides a business and occupation (B&O) tax credit for small businesses under certain conditions. Chapter 2, Laws of 1994, sp. sess., changed the method for computing the volume of business exemption for B&O taxes from a minimum tax reporting threshold exemption to a B&O tax credit system. This change became effective July 1, 1994. This section explains the tax credit system for B&O tax, and the minimum tax reporting threshold exemption for the public utility tax. All persons required to obtain, or having obtained, a tax registration endorsement with the department of revenue must complete and file an excise tax return with the department to claim either a B&O small business tax credit, or a public utility income exemption. (See also WAC 458-20-101 on tax registration.)

(2) **Business and occupation tax.** Persons subject to the B&O tax may be eligible to claim a small business tax credit against the amount of B&O tax otherwise due. The B&O tax credit operates completely independent of the volume exemption which applies to the public utility tax. This tax credit should be computed after claiming any other B&O tax credits available under chapter 82.04 RCW, but prior to any credits provided under other chapters of Title 82 RCW. The maximum amount of small business tax credit available to a person is thirty-five dollars multiplied by the number of months in the reporting period assigned by the department of revenue under the provisions of RCW 82.32.045. The small business tax credit applies to the entire reporting period, even though the business may not have been operating during the entire period.

If the amount of B&O tax due from all activities engaged in by the taxpayer is equal to or less than the maximum credit, a small business tax credit equal to the amount of the B&O tax liability will be allowed. If the amount of B&O tax due from all activities is greater than the maximum credit, a reduced credit may be available. This reduced credit will be equal to twice the maximum credit minus the B&O tax otherwise due. RCW 82.04.4451.

(3) **Retail sales tax.** Persons making retail sales must collect and remit all applicable retail sales taxes. There is no retail sales tax exemption or tax credit system based upon the volume of sales.

(4) **Public utility tax.** Persons subject to the public utility tax are exempt from the payment of this tax for any reporting period in which the taxable amount reported under the combined total of all public utility tax classifications does not equal or exceed the minimum tax reporting threshold for the assigned reporting period. RCW 82.16.040. The minimum tax reporting thresholds for the public utility tax are:

Monthly reporting basis	$500 per month
Quarterly reporting basis	$1,500 per quarter
Annual reporting basis	$6,000 per annum

If the taxable amount for a reporting period equals or exceeds the minimum tax reporting threshold, tax must be remitted on the full taxable amount. The public utility tax reporting thresholds apply to the entire reporting period, even though the business may not have operated during the entire period.

(5) **Tax reporting frequencies.** Persons interested in knowing the thresholds used by the department when assigning tax reporting frequencies should refer to WAC 458-20-22801 (Tax reporting frequency—forms).

(6) **Examples.** The following examples illustrate how the small business B&O tax credit and public utility income exemption systems apply to typical situations. These examples should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances.

(a) JD Inc. has been assigned a quarterly reporting period by the department of revenue. JD Inc.'s B&O tax liability from all business activities for the third quarter is ninety dollars. This B&O tax liability is less than the one hundred five-dollar maximum small business B&O tax credit available for a quarterly reporting period (three times the monthly credit amount of thirty-five dollars). JD Inc. may claim a small business B&O tax credit for the entire ninety-dollar B&O tax liability.

Maximum Credit available for quarterly filers (3 x $35)	$105
B&O Tax due	$ 90
Credit Available	$ 90

(b) HM Corporation has been assigned a quarterly reporting period by the department of revenue. HM's B&O tax liability from all business activities for the fourth quarter is one hundred twenty dollars. This tax liability exceeds the one hundred five-dollar maximum small business B&O tax credit available for a quarterly period (three times the monthly credit amount of thirty-five dollars). However, a reduced small business tax credit is available. This credit is computed by subtracting HM's B&O tax liability of one hundred twenty dollars from the figure of two hundred ten dollars (twice the maximum credit available for a quarterly reporting period). HM Corporation may claim a small business tax credit of ninety dollars.

Twice the Maximum Credit available for quarterly filers (2 x $105)	$210
Less: B&O Tax due	$120
Credit Available	$ 90

(c) XY Inc. has been assigned a quarterly reporting period by the department of revenue. XY's B&O tax liability for the first quarter is two hundred fifty dollars. As XY's B&O tax liability exceeds the two hundred ten-dollar figure used to determine any reduced B&O tax credit (twice the maximum credit available for a quarterly reporting period), XY Inc. is not eligible for the small business B&O tax credit.

Twice the Maximum Credit available for quarterly filers (2 x $105)	$210
Less: B&O Tax due	$250
Credit Available	$ 0

(d) BG Manufacturing has been assigned a quarterly reporting period. BG has incurred a ninety-dollar tax liability under the wholesaling B&O tax classification, and a seventy-dollar tax liability under the manufacturing B&O tax classification, for a total B&O tax liability of one hundred sixty dollars during the first quarter. As BG manufactures much of what it sells at wholesale, BG qualifies for an internal multiple activities tax credit (MATC) of sixty dollars. (See WAC 458-20-19301 on multiple activities tax credits.) BG Manufacturing would claim its MATC prior to computing its small business B&O tax credit. BG's B&O tax liability net of the MATC is one hundred dollars, which is less than the one hundred five-dollar maximum credit available for the reporting period. BG may claim a one hundred-dollar small business B&O tax credit.

Wholesaling B&O Tax due	$ 90
Add: Manufacturing B&O Tax due	$ 70
Subtotal of B&O Tax due	$160
Less: MATC	$ 60
Total B&O Tax Liability	$100
Maximum Credit available for quarterly filers (3 x $35)	$105
B&O Tax due	$100
Credit Available	$100

(e) BB Corporation has been assigned a quarterly reporting period by the department of revenue. BB's total taxable public utility income for the third quarter is one thousand three hundred dollars. BB Corporation is exempt for the payment of public utility tax because BB's taxable public income does not exceed the one thousand five hundred-dollar minimum taxable amount for this reporting period.

[Statutory Authority: RCW 82.32.300. 95-07-088, § 458-20-104, filed 3/17/95, effective 4/17/95; 83-07-034 (Order ET 83-17), § 458-20-104, filed 3/15/83; Order ET 70-3, § 458-20-104 (Rule 104), filed 5/29/70, effective 7/1/70.]

WAC 458-20-105 Employees distinguished from persons engaging in business. (1) The Revenue Act imposes taxes upon persons engaged in business but not upon persons acting solely in the capacity of employees.

(2) While no one factor definitely determines employee status, the most important consideration is the employer's right to control the employee. The right to control is not limited to controlling the result of the work to be accomplished, but includes controlling the details and means by which the work is accomplished. In cases of doubt about employee status all the pertinent facts should be submitted to the department of revenue for a specific ruling.

(3) **Persons engaging in business.** The term "engaging in business" means the act of transferring, selling or otherwise dealing in real or personal property, or the rendition of services, for consideration except as an employee. The following conditions will serve to indicate that a person is engaging in business.

If a person is:

(a) Holding oneself out to the public as engaging in business with respect to dealings in real or personal property, or in respect to the rendition of services;

(b) Entitled to receive the gross income of the business or any part thereof;

(c) Liable for business losses or the expense of conducting a business, even though such expenses may ultimately be reimbursed by a principal;

(d) Controlling and supervising others, and being personally liable for their payroll, as a part of engaging in business;

(e) Employing others to carry out duties and responsibilities related to the engaging in business and being personally liable for their pay;

(f) Filing a statement of business income and expenses (Schedule C) for federal income tax purposes;

(g) A party to a written contract, the intent of which establishes the person to be an independent contractor;

(h) Paid a gross amount for the work without deductions for employment taxes (such as Federal Insurance Contributions Act, Federal Unemployment Tax Act, and similar state taxes).

(4) **Employees.** The following conditions indicate that a person is an employee.

If the person:

(a) Receives compensation, which is fixed at a certain rate per day, week, month or year, or at a certain percentage of business obtained, payable in all events;

(b) Is employed to perform services in the affairs of another, subject to the other's control or right to control;

(c) Has no liability for the expenses of maintaining an office or other place of business, or any other overhead expenses or for compensation of employees;

(d) Has no liability for losses or indebtedness incurred in the conduct of the business;

(e) Is generally entitled to fringe benefits normally associated with an employer-employee relationship, e.g., paid vacation, sick leave, insurance, and pension benefits;

(f) Is treated as an employee for federal tax purposes;

(g) Is paid a net amount after deductions for employment taxes, such as those identified in subsection (3)(h) of this section.

(5) **Full-time life insurance salespersons.** Chapter 275, Laws of 1991, effective July 1, 1991, provides that individuals performing services as full-time life insurance salespersons, as provided in section 3121 (d)(3)(B) of the Internal Revenue Code, will be considered employees. Treatment as an employee under this subsection (5) applies only to persons engaged in the full-time sale of life insurance. The status of other persons, including others listed in section 3121(d) of the Internal Revenue Code, will be determined according to the provisions of subsections (1) and (2) of this section (See WAC 458-20-164 for the proper tax treatment of insurance agents, brokers, and solicitors.)

(6) **Operators of rented or owned equipment.** Persons who furnish equipment on a rental or other basis for a charge and who also furnish the equipment operators, are engaging in business and are not employees of their customers. Likewise, persons who furnish materials and the labor necessary to install or apply the materials, or produce something from the materials, are presumed to be engaging in business and not to be employees of their customers.

(7) **Casual laborers.** Persons regularly performing odd job carpentry, painting or paperhanging, plumbing, bricklaying, electrical work, cleaning, yard work, etc., for the public generally are presumed to be engaging in business. The burden of proof is upon such persons to show otherwise. However, refer to WAC 458-20-101 and 458-20-104 for registration and reporting requirements for such activities.

(8) A corporation, joint venture, or any group of individuals acting as a unit, is not an employee.

(9) **Booth renters.** For purposes of the business and occupation tax a "booth renter," as defined in RCW 18.16.020(19), is considered engaged in business and not an employee. A "booth renter" is any person who:

(a) Performs cosmetology, barbering, esthetics, or manicuring services for which a license is required pursuant to chapter 18.16 RCW and

(b) Pays a fee for the use of salon or shop facilities and receives no compensation or other consideration from the owner of the salon or shop for the services performed.

(c) See WAC 458-20-118 for the proper treatment of amounts received for the rental or licensing of real estate and WAC 458-20-200 for the proper treatment of amounts received for leased departments.

[Statutory Authority: RCW 82.32.300. 92-06-082, § 458-20-105, filed 3/4/92, effective 4/4/92; 89-16-080 (Order 89-10), § 458-20-105, filed 8/1/89, effective 9/1/89; Order ET 70-3, § 458-20-105 (Rule 105), filed 5/29/70, effective 7/1/70.]

WAC 458-20-106 Casual or isolated sales—Business reorganizations. A casual or isolated sale is defined by RCW 82.04.040 as a sale made by a person who is not engaged in the business of selling the type of property involved. Any sales which are routine and continuous must be considered to be an integral part of the business operation and are not casual or isolated sales.

Furthermore, persons who hold themselves out to the public as making sales at retail or wholesale are deemed to be engaged in the business of selling, and sales made by them of the type of property which they hold themselves out as selling, are not casual or isolated sales even though such sales are not made frequently.

In addition the sale at retail by a manufacturer or wholesaler of an article of merchandise manufactured or wholesaled by him is not a casual or isolated sale, even though he may make but one such retail sale.

Business and Occupation Tax

The business and occupation tax does not apply to casual or isolated sales.

Retail Sales Tax

The retail sales tax applies to all casual or isolated retail sales made by a person who is engaged in the business activity; that is, a person required to be registered under WAC 458-20-101. Persons not engaged in any business activity, that is, persons not required to be registered under WAC 458-20-101, are not required to collect the retail sales tax upon casual or isolated sales.

However, persons in business as selling agents who are authorized, engaged or employed to sell or call for bids on tangible personal property belonging to another, and so selling or calling, are deemed to be sellers, and shall collect the retail sales tax upon all retail sales made by them. The tax applies to all such sales even though the sales would have been casual or isolated sales if made directly by the owner of the property sold.

A transfer of capital assets to or by a business is deemed not taxable to the extent the transfer is accomplished through an adjustment of the beneficial interest in the business. The following examples are instances when the tax will not apply.

(1) Transfers of capital assets between a corporation and a wholly-owned subsidiary, or between wholly-owned subsidiaries of the same corporation.

(2) Transfers of capital assets by an individual or by a partnership to a corporation, or by a corporation to another corporation in exchange for capital stock therein.

(3) Transfers of capital assets by a corporation to its stockholders in exchange for surrender of capital stock.

(4) Transfers of capital assets pursuant to a reorganization under 26 USC Section 368 of the Internal Revenue Code, when capital gain or ordinary income is not realized.

(5) Transfers of capital assets to a partnership or joint venture in exchange for an interest in the partnership or joint venture; or by a partnership or joint venture to its members in exchange for a proportional reduction of the transferee's interest in the partnership or joint venture.

(6) Transfer of an interest in a partnership by one partner to another; and transfers of interests in a partnership to third parties, when one or more of the original partners continues as a partner, or owner.

The burden is upon the taxpayer to establish the facts concerning the adjustment of the beneficial interest in the business when exemption is claimed.

Use Tax

The use tax applies upon the use of any property purchased at a casual retail sale without payment of the retail sales tax, unless exempt by law. Uses which are exempt from the use tax are set out in RCW 82.12.030.

Where there has been a transfer of the capital assets to or by a business, the use of such property is not deemed taxable to the extent the transfer was accomplished through an adjustment of the beneficial interest in the business, provided, the transferor previously paid sales or use tax on the property transferred. (See the exempt situations listed under the retail sales tax subdivision of this rule.)

[Statutory Authority: RCW 82.32.300. 83-07-034 (Order ET 83-17), § 458-20-106, filed 3/15/83; Order ET 75-1, § 458-20-106, filed 5/2/75; Order ET 74-1, § 458-20-106, filed 5/7/74; Order ET 70-3, § 458-20-106 (Rule 106), filed 5/29/70, effective 7/1/70.]

WAC 458-20-107 Selling price—Advertised prices including sales tax. (1) **Selling price.** Under the provisions of RCW 82.08.020 the retail sales tax is to be collected and paid upon retail sales, measured by the "selling price."

(a) The term "'Selling price' means the consideration, whether money, credits, rights, or other property except trade-in property of like kind, expressed in the terms of money paid or delivered by a buyer to a seller without any deduction on account of the cost of tangible personal property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes other than taxes imposed under this chapter if the seller advertises the price as including the tax or that the seller is paying the tax, or any other expenses whatsoever paid or accrued and without any deduction on account of losses; . . ." (See RCW 82.08.010(1).)

(b) Concerning the tax liabilities and benefits in connection with "trade-in" transactions, see WAC 458-20-247.

(c) RCW 82.08.050 specifically requires that the retail sales tax must be stated separately from the selling price on any sales invoice or other instrument of sale, i.e., contracts, sales slips, and/or customer billing receipts. (For an exception covering restaurant receipts of Class H liquor licensees, see WAC 458-20-119.) This is required even though the seller and buyer may know and agree that the price quoted is to include state and local taxes, including the retail sales tax. The law creates a "conclusive presumption" that, for purposes of collecting the tax and remitting it to the state, the selling price quoted does not include the retail sales tax. This presumption is not overcome or rebutted by any written or oral agreement between seller and buyer. However, selling prices may be advertised as including the tax or that the seller is paying the tax and, in such cases, the advertised price shall not be considered to be the taxable selling price under certain prescribed conditions explained in this section. Even when prices are advertised as including the sales tax, the actual sales invoices, receipts, contracts, or billing documents must list the retail sales tax as a separate charge. Failure to comply with this requirement may result in the retail sales tax due and payable to the state being computed on the gross amount charged even if it is claimed to already include all taxes due.

(2) **Advertising prices including tax.**

(a) The law provides that a seller may advertise prices as including the sales tax or that the seller is paying the sales tax under the following conditions:

(i) The words "tax included" are stated immediately following the advertised price in print size at least half as large as the advertised price print size, unless the advertised price is one in a listed series;

(ii) When advertised prices are listed in series, the words "tax included in all prices" are placed conspicuously at the head of the list in the same print size as the list;

(iii) If the price is advertised as including tax, the price listed on any price tag shall be shown in the same way; and

(iv) All advertised prices and the words "tax included" are stated in the same medium, whether oral or visual, and if oral, in substantially the same inflection and volume.

(b) If these conditions are satisfied, as applicable, then price lists, reader boards, menus, and other price information mediums need not reflect the item price and separately show the actual amount of sales tax being collected on any or all items.

(c) The scope and intent of the foregoing is that buyers have the right to know whether retail sales tax is being included in advertised prices or not and that the tax is not to be used for the competitive advantage or disadvantage of retail sellers.

(3) See: WAC 458-20-257 for warranties (guarantees) and maintenance agreements (service contracts).

[Statutory Authority: RCW 82.32.300. 90-10-080, § 458-20-107, filed 5/2/90, effective 6/2/90; 86-03-016 (Order ET 86-1), § 458-20-107, filed 1/7/86; 83-07-034 (Order ET 83-17), § 458-20-107, filed 3/15/83; Order ET 70-3, § 458-20-107 (Rule 107), filed 5/29/70, effective 7/1/70.]

WAC 458-20-108 Returned goods, allowances, cash discounts. (1) When a contract of sale is made subject to cancellation at the option of one of the parties or to revision in the event the goods sold are defective or if the sale is made subject to cash or trade discount, the gross proceeds actually derived from the contract and the selling price are determined by the transaction as finally completed.

(2) **Returned goods.** When sales are made either upon approval or upon a sale or return basis, and the purchaser returns the property purchased and the entire selling price is refunded or credited to the purchaser, the seller may deduct an amount equal to the selling price from gross proceeds of sales in computing tax liability, if the amount of sales tax previously collected from the buyer has been refunded by the seller to the buyer. If the property purchased is not returned within the guaranty period as established by contract or by customs of the trade, or if the full selling price is not refunded or credited to the purchaser, a presumption is raised that the property returned is not returned goods but is an exchange or a repurchase by the vendor.

To illustrate: S sells an article for $60.00 and credits his sales account therewith. The purchaser returns the article purchased within the guaranty period and the purchase price and the sales tax theretofore paid by the buyer is refunded or credited to him. S may deduct $60.00 from the gross amount reported on his tax return.

(3) **Defective goods.** When bona fide refunds, credits or allowances are given within the guarantee period by a seller to a purchaser on account of defects in goods sold, the amount of such refunds, credits or allowances may be deducted by the seller in computing tax liability, if the proportionate amount of the sales tax previously collected from the buyer has been refunded by the seller.

To illustrate: S sells an article to B for $60.00 and credits his sales account therewith. The article is later found to be defective.

(a) S gives B credit of $50.00 on account of the defect, and also a credit of sales tax collectible on that amount. S may deduct $50.00 from the gross amount reported in his tax returns. This is true whether or not B retains the defective article.

(b) B returns the article to S who gives B an allowance of $50.00 on a second article of the same kind which B purchases for an additional payment of $10.00, plus sales tax thereon. S may deduct $50.00 from the gross amount reported in his tax returns. The sale of the second article, however, must be reported for tax purposes as a $60.00 sale and included in the gross amount in his tax return.

(c) B returns the article to S who replaces it with a new article of the same kind free of charge, and without sales tax. S may deduct $60.00 from the gross amount reported in his tax returns, but the $60.00 selling price of the substituted article must be reported in the gross amount.

No deduction is allowed from the gross amount reported for tax if S in (b) and (c) of this subsection, does not credit his sales account with the selling price of the new article furnished to replace the defective one, but instead merely credits the sales account with an amount equal to the additional payment received, if any. In such case, the allowance for the defect is already shown in the sales account by the reduced sales price of the new article.

(4) **Motor vehicle warranties.** In the 1987 session, the Washington legislature enacted a "lemon law" creating enforcement provisions for new motor vehicle warranties. A manufacturer which repurchases a new motor vehicle under warranty because of a defective condition is required to refund to the consumer the "collateral charges" which include retail sales tax. The refund shall be made to the consumer by the manufacturer or by the dealer for the manufacturer. The department will then credit or refund the amount of the tax so refunded.

Evidence. To receive a credit or refund, the manufacturer or dealer must provide evidence that the retail sales tax was collected by the dealer and that it was refunded to the consumer. Acceptable proof will be:

(a) A copy of the dealer invoice showing the sales tax was paid by the consumer; and

(b) A signed statement from the consumer acknowledging receipt of the refunded tax. The statement should include the consumer's name, the date, the amount of the tax refunded, and the name of the dealer or the manufacturer making the refund.

(5) **Discounts.** The selling price of a service or of an article of tangible personal property does not include the amount of bona fide discounts actually taken by the buyer and the amount of such discount may be deducted from gross proceeds of sales providing such amount has been included in the gross amount reported.

(a) Discounts are not deductible under the retail sales tax when such tax is collected upon the selling price before the discount is taken and no portion of the tax is refunded to the buyer.

(b) Discount deductions will be allowed under the extracting or manufacturing classifications only when the value of the products is determined from the gross proceeds of sales.

(c) Patronage dividends which are granted in the form of discounts in the selling price of specific articles (for example, a rebate of one cent per gallon on purchases of gasoline) are deductible. (Some types of patronage dividends are not deductible. See WAC 458-20-219.)

[Statutory Authority: RCW 82.32.300. 88-01-050 (Order 87-9), § 458-20-108, filed 12/15/87; 83-07-034 (Order ET 83-17), § 458-20-108, filed 3/15/83; Order ET 70-3, § 458-20-108 (Rule 108), filed 5/29/70, effective 7/1/70.]

WAC 458-20-109 Finance charges, carrying charges, interest, penalties. (1) **Introduction.** This section explains the B&O and public utility taxation of finance charges, carrying charges, interest and/or penalties received by taxpayers in the regular course of business. This section also explains when these amounts are not part of the selling price for retail sales tax purposes.

(2) **Business and occupation tax.** Persons who receive finance charges, carrying charges, service charges, penalties and interest are taxable under the service and other business activities classification on the receipt of amounts from these sources.

(a) Amounts received from these sources include but are not limited to:

(i) Interest received by persons engaged in public utility activities; and

(ii) Interest received by persons regularly engaged in the business of selling real estate.

(b) Persons engaged in financial business activities should refer to WAC 458-20-146.

(c) Amounts categorized as "interest" in a lease payment are generally taxable in the retailing classification as part of the total lease payment and part of the selling price for retail sales tax purposes. See WAC 458-20-211.

(d) Interest or finance charges received from an installment sale are taxable under the service classification.

(3) **Retail sales tax.** Retail sales tax applies as follows.

(a) Finance charges, carrying charges, service charges, penalties and/or interest from installment sales are not considered a part of the selling price of such property and are not subject to the retail sales tax, when:

(i) The amount of such finance charges, carrying charges, service charges, penalty, or interest is in addition to the usual or established cash selling price; and

(ii) The amount is segregated on the taxpayers' accounts; and

(iii) The amount is billed separately to customers.

(b) Amounts designated as finance charges, carrying charges, service charges or interest in a lease of tangible personal property must be included in the measure of retail sales tax regardless of the fact that such charges may be billed separately to customers. However, a penalty or interest charge for failure of the customer to make a timely lease payment is taxable under the service and other business activities classification and not subject to retail sales tax.

(4) **Examples.** The following examples identify a number of facts and then state a conclusion as to whether the situation results in taxable interest or finance charges. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(a) ABC Electric Company, who sells electricity to consumers, receives $9,000.00 in late charges in the month of November. These fees are taxable under the service and other classification of the business and occupation tax. The public utility tax would not apply to this income.

(b) XYZ Furniture Company sells furniture and allows its customers to pay for the furniture over a twelve-month period. The seller charges interest at twelve percent per annum for allowing the customer to defer immediate payment. The interest charged the customer is a separate activity from the sale of the furniture and is taxable under the service and other business activities classification.

(c) Jane Doe is leasing a car from ABC Leasing, Inc. The lease contract provides that if the customer is more than fifteen days late in making the lease payment, a five percent penalty will be charged. Jane Doe was more than fifteen days late in making her March payment and was required to pay the five percent penalty. The penalty amount received by ABC Leasing is a separate activity from the lease of the vehicle and is taxable under the service and other activity business and occupation tax. Retail sales tax does not apply to this amount.

(d) John Doe sold his personal residence on contract. He receives monthly interest and principal payments. The interest is received in exchange for the seller's deferring receipt of immediate payment. The sale of the residence was not related to any other business activities and John Doe has sold no other real estate. The interest is not taxable under the B&O tax since the transaction was a casual and isolated sale.

(e) Judy Smith is engaged in business as a real estate broker and regularly sells real estate for others. Judy Smith sold her personal residence on contract. She receives monthly interest and principal payments. She receives no other interest from real estate contracts. The sale of her own residence can be distinguished from the sale of real estate for others. Since this was a single sale of her own residence, it is a casual and isolated sale and the interest is not subject to B&O tax.

(f) James Smith sold on contract seventeen of twenty-three apartment complexes which he owned during a four-year period. He receives payment of principal and interest every month from these sales. The only other income he receives is from the rental of apartment units to nontransients. The income which James Smith receives as interest from the sale of the real estate is subject to the service and other B&O tax. The rental of the apartment units is not taxable for the B&O tax. The courts have held that the selling and financing of sales of capital assets by means of real estate contracts does not constitute an investment within the meaning of RCW 82.04.4281. James Smith is engaged in a taxable business activity. A deduction is provided to sellers who are engaged in banking, loan, security, or other financial businesses if the sale is primarily secured by a first mortgage or trust deed on nontransient residential property. However, James Smith is not engaged in these types of business, nor was the loan secured in this manner. Persons in a financial business should refer to WAC 458-20-146.

(g) David Roe acquired four pieces of real property over a period of several years. This property has been held for residential rental to nontransients. David Roe sold all of the real estate in 1991 and is receiving payments of principal and interest pursuant to sales contracts. The determination of whether the interest received is subject to the business and occupation tax depends on all facts and circumstances and cannot be made based on the limited facts set forth in this example. Additional facts and circumstances would include, but not be limited to, the extent to which David Roe has purchased and sold real property in the past, the number of other sales contracts held by David Roe aside from the ones mentioned here, whether the property may have been acquired by inheritance, and the type of business in which David Roe regularly engages.

[Statutory Authority: RCW 82.32.300. 91-23-038, § 458-20-109, filed 11/13/91, effective 1/1/92; Order ET 70-3, § 458-20-109 (Rule 109), filed 5/29/70, effective 7/1/70.]

WAC 458-20-110 Freight and delivery charges. (1) **Introduction.** This rule explains that freight and delivery costs charged to the buyer are generally part of the selling price. Chapter 82.04 RCW in defining "gross proceeds of sales" and "gross income of the business" states that delivery costs may not be deducted from the measure of the B&O tax. Sellers who are making deliveries from an out-of-state location to customers in Washington should refer to WAC 458-20-193 to determine if they have sufficient nexus to require the payment of the B&O tax or collection of retail sales or use tax on the "gross proceeds of sales."

(2) Amounts received by a seller from a purchaser for freight and delivery costs incurred by the seller prior to completion of sale constitute recovery of costs of doing business and must be included in the selling price or gross proceeds of sales reported by the seller regardless of whether charges for such costs are billed separately or whether the seller is also the carrier. The sale is complete when the purchaser or the purchaser's agent has received the goods.

(a) "Purchasers agent" means a person authorized to receive goods for the purchaser with the power to inspect and accept or reject them.

(b) "Received" or "receipt" means the purchaser or its agent first either taking physical possession of the goods or having dominion and control over them.

(c) It is presumed that the person who is shown as the consignor (or other designation of the person from whom the goods are sent) on the bill of lading has control over the goods while the goods are in the hands of the carrier. It also will be presumed that the sale is not complete at the time of delivery to the carrier if the seller has personal liability to pay or has paid the carrier.

(3) Freight and delivery costs incurred by a lessor, regardless of whether billed separately to a lessee or not, are costs of doing business to the lessor in every case and must be included in the selling price or gross proceeds of sales reported by the lessor.

(4) Delivery costs incurred after the buyer has taken receipt of the goods are not part of the selling price when the seller is not liable to pay or has not paid the carrier. It must be clearly shown that the buyer alone is responsible to pay the carrier for the delivery costs to be excluded from the taxable value of the selling price. See WAC 458-20-112 for the deduction of out-of-state freight and delivery charges from "value of products." Also see WAC 458-20-111 for a further discussion of "advances and reimbursements."

(5) Examples. The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(a) XYZ Corporation in Seattle orders a repair part for its machine from ABC Distributors located in Spokane. XYZ Corporation requests that the part be shipped by next day air and agrees to pay the additional shipping costs. The seller bills the buyer the exact amount of shipping costs. ABC Distributors is subject to the business and occupation tax and also is required to collect and report the retail sales tax on the amounts billed as shipping charges. The seller was liable to pay the air carrier and the buyer had not taken receipt at the time the part was given to the carrier.

(b) Jane Doe orders a life vest from Marine Sales in Seattle and she requests that the vest be shipped by United States mail to her home in Bellingham. The seller places the correct postage on the package using a postage meter and charges the buyer the exact amount of postage. The reimbursement of the postage is taxable to the seller. The seller had liability for payment of the postage to the postal service and was required to effect delivery to the buyer.

(c) L&M Machinery of Spokane ordered a large piece of equipment from ACE Equipment in Renton. L&M specified that the equipment was to be shipped by prepaid freight and free on board (FOB) the seller's dock. L&M requested that the seller use M&T Trucking as the carrier. The transportation charge billed to the buyer is taxable to the seller. The FOB point or other shipping terms are not controlling. The seller was required to deliver the equipment to the buyer. Delivery was not completed until the equipment arrived in Spokane.

(d) ABC Construction in Seattle ordered replacement parts for a saw from XYZ Parts, Inc., an unregistered business located in Chicago. ABC Construction requested that the parts be shipped freight collect from Chicago and that ABC be shown as the shipper/consignor and also as the consignee on the bill of lading. The seller had no liability to pay the carrier. ABC Construction is subject to use tax on the purchase price of the parts. ABC Construction may exclude the cost of the transportation from the value on which use tax is due.

(e) Jones Computer Supply, a distributor located in Seattle, sells computer products primarily by mail order. It is the practice of Jones Computer Supply to make a three-dollar handling charge for each order. No separate charge is made for the transportation. The handling charge is part of the measure of the selling price of the product and fully subject to the wholesaling or retailing and retail sales tax.

[Statutory Authority: RCW 82.32.300. 91-23-037, § 458-20-110, filed 11/13/91, effective 12/14/91; Order ET 70-3, § 458-20-110 (Rule 110), filed 5/29/70, effective 7/1/70.]

WAC 458-20-111 Advances and reimbursements. The word "advance" as used herein, means money or credits received by a taxpayer from a customer or client with which the taxpayer is to pay costs or fees for the customer or client.

The word "reimbursement" as used herein, means money or credits received from a customer or client to repay the taxpayer for money or credits expended by the taxpayer in payment of costs or fees for the client.

The words "advance" and "reimbursement" apply only when the customer or client alone is liable for the payment of the fees or costs and when the taxpayer making the payment has no personal liability therefor, either primarily or secondarily, other than as agent for the customer or client.

There may be excluded from the measure of tax amounts representing money or credit received by a taxpayer as reimbursement of an advance in accordance with the regular and usual custom of his business or profession.

The foregoing is limited to cases wherein the taxpayer, as an incident to the business, undertakes, on behalf of the customer, guest or client, the payment of money, either upon an obligation owing by the customer, guest or client to a third person, or in procuring a service for the customer, guest or client which the taxpayer does not or cannot render and for which no liability attaches to the taxpayer. It does not apply to cases where the customer, guest or client makes advances to the taxpayer upon services to be rendered by the taxpayer or upon goods to be purchased by the taxpayer in carrying on the business in which the taxpayer engages.

For example, where a taxpayer engaging in the business of selling automobiles at retail collects from a customer, in addition to the purchase price, an amount sufficient to pay the fees for automobile license, tax and registration of title, the amount so collected is not properly a part of the gross sales of the taxpayer but is merely an advance and should be excluded from gross proceeds of sales. Likewise, where an attorney pays filing fees or court costs in any litigation, such fees and costs are paid as agent for the client and should be excluded from the gross income of the attorney.

On the other hand, no charge which represents an advance payment on the purchase price of an article or a cost of doing or obtaining business, even though such charge is made as a separate item, will be construed as an advance or reimbursement. Money so received constitutes a part of gross sales or gross income of the business, as the case may be. For example, no exclusion is allowed with respect to amounts received by (1) a doctor for furnishing medicine or drugs as a part of his treatment; (2) a dentist for furnishing gold, silver or other property in conjunction with his services; (3) a garage for furnishing parts in connection with repairs; (4) a manufacturer or contractor for materials purchased in his own name or in the name of his customer if the manufacturer or contractor is obligated to the vendor for the payment of the purchase price, regardless of whether the customer may also be so obligated; (5) any person engaging in a service business or in the business of installing or repairing tangible personal property for charges made separately for transportation or traveling expense.

Revised May 1, 1947.

[Order ET 70-3, § 458-20-111 (Rule 111), filed 5/29/70, effective 7/1/70.]

WAC 458-20-112 Value of products. The term "value of products" includes the value of by-products, and except as provided herein, shall be determined by "gross proceeds of sales" whether such sales are at wholesale or at retail, to which shall be added all subsidies and bonuses received with respect to the extraction, manufacture, or sale thereof.

"The term 'gross proceeds of sales' means the value proceeding or accruing from the sale of tangible personal property . . . without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses." (RCW 82.04.070.)

In the case of bona fide sales of products. The law provides (RCW 82.04.450), that under the extracting and manufacturing classifications of the business and occupation tax the value of products extracted or manufactured shall be determined by the gross proceeds of sales in every instance in which a bona fide sale of such products is made, and whether sold at wholesale or at retail.

Sales to points outside the state. In determining the value of products delivered to points outside the state there may be deducted from the gross proceeds of sales so much thereof as the taxpayer can show to be actual transportation costs from the point at which the shipment originates in this state to the point of delivery outside the state.

All other cases. The law provides that where products extracted or manufactured are

(1) For commercial or industrial use (by the extractor or manufacturer—see WAC 458-20-134); or

(2) Transported out of the state, or to another person without prior sale; or

(3) Sold under circumstances such that the stated gross proceeds from the sale are not indicative of the true value of the subject matter of the sale; the value shall correspond as nearly as possible to the gross proceeds from other sales at comparable locations in this state of similar products of like quality and character, in similar quantities, under comparable conditions of sale, to comparable purchasers, and shall include subsidies and bonuses.

In the absence of sales of similar products as a guide to value, such value may be determined upon a cost basis. In such cases, there shall be included every item of cost attributable to the particular article or article extracted or manufactured, including direct and indirect overhead costs.

Revised June 1, 1970.

[Order ET 70-3, § 458-20-112 (Rule 112), filed 5/29/70, effective 7/1/70.]

WAC 458-20-113 Ingredients or components, chemicals used in processing new articles for sale. (1) The term "retail sale" means "every sale of tangible personal property . . . other than a sale to one who purchases for the purpose of resale . . . or for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale . . . (RCW 82.04.050.)

(2) Ingredients or components. The sale of articles of tangible personal property which physically enter into and form a part of a new article or substance produced for sale does not constitute a retail sale. This does not exempt from the retail sales tax the sale of articles consumed in a manufacturing process which do not enter into and become a physical part of the new article produced for sale, such as fuel used for heating purposes, oil for machinery, sandpaper, etc.

(3) Also, the definition of retail sale does not exclude consumables purchased for use in manufacturing, refining, or processing new articles for sale merely because some constituents of the consumables may also be traceable in the finished product, which are impurities or undesirable or unnecessary constituents of the finished product.

(4) For articles to qualify for sales and use tax exemption as ingredients or components of products produced for sale, such articles or their constituents must be traceable in the finished product and identifiable as having been directly provided by the article claimed for exemption.

(5) Chemicals used in processing. Sales of chemicals to a person for use in processing articles produced for sale are not retail sales, and therefore are not subject to the retail sales tax.

(6) "Chemicals used in processing" carries its common restricted meaning in commercial usage. It includes only chemical substances which are used by the purchaser to unite with other chemical substances, present as ingredients or components of the articles or substances being processed, to produce a chemical reaction therewith, as contrasted with merely a physical change therein. A chemical reaction is one in which there takes place a permanent change of certain properties, with the formation of new substances which differ in chemical composition and properties from the substances originally present, and usually differ from them in appearance as well. It is not necessary that all of the new substances which are formed be present in the final completed article or substance which is sold; one or more of such new substances resulting from the chemical reaction may be removed or drawn off in the processing.

(7) To illustrate: Sales of chemicals to a pulp mill for use in the digesting and bleaching of pulp are not subject to the retail sales tax because such chemicals react chemically with the cellulose in the pulp fiber which, in turn, becomes a major ingredient of the final product, paper. Similarly, sales of carbon to an aluminum reduction plant for the primary purpose of forming a chemical reaction with alumina to remove its oxygen content are not retail sales.

(8) Conversely, sales of water purifiers and wetting agents to a pulp mill are taxable sales. The treated water acts primarily as a conveyor or carrier of the pulp fibers and only an insignificant part of the water becomes an ingredient of the final product. Similarly, sales of caustic soda to potato processors to remove peelings from potatoes are retail sales because the chemical reacts only with the peelings which are removed as waste, and not with the potatoes which are sold as the final product.

(9) Sales of diesel or fuel oil to a steel mill or foundry, for use or consumption primarily in generating heat, are retail sales and subject to the retail sales tax, notwithstanding the fact that some portion of the oil may cause a chemical reaction and to some extent alter the character of the article being manufactured or processed.

(10) Effective April 3, 1986, (chapter 231, Laws of 1986), purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose is to create a chemical reaction directly through contact with an ingredient of ferrosilicon, are not subject to retail sales tax or use tax.

(11) In special cases where doubt exists, a special ruling will be made by the department of revenue upon submission of all the pertinent facts relative to the nature of the chemical substances concerned and the use made thereof by the purchaser.

Revised June 1, 1970.

[Statutory Authority: RCW 82.32.300. 86-20-027 (Order 86-17), § 458-20-113, filed 9/23/86; Order ET 70-3, § 458-20-113 (Rule 113), filed 5/29/70, effective 7/1/70.]

WAC 458-20-115 Sales of packing materials and containers. (1) **Introduction.** This section explains the B&O, retail sales, and use taxes which apply to persons who sell packing materials and to those who use packing materials.

(2) **Definitions.** The term "packing materials" means and includes all boxes, crates, bottles, cans, bags, drums, cartons, wrapping papers, cellophane, twines, gummed tapes, wire, bands, excelsior, waste paper, and all other materials in which tangible personal property may be contained or protected within a container, for transportation or delivery to a purchaser.

(3) **Business and occupation tax.**

(a) Sales of packing materials to persons who sell tangible personal property contained therein or protected thereby are sales for resale and subject to tax under the wholesaling classification. Sellers must obtain resale certificates from the purchaser to support that these sales are for resale. Refer to WAC 458-20-102.

(b) Sales of containers to persons who sell tangible personal property therein, but who retain title to such containers which are to be returned, are sales for consumption and 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. However, refer to the comments below for sales of containers for beverages and foods.

(c) Title to containers, whether designated as returnable or nonreturnable, for beverages and food sold at retail, including beer, milk, soft drinks, mixers and the like, will be deemed to pass to the customer along with the contents. In such cases, amounts charged for the containers are part of the selling price of the food or beverage and subject to retailing tax when sold to consumers. Sales to persons who will resell the food or beverages are wholesale sales.

(d) Persons who perform custom or commercial packing for others are generally taxable under the service B&O tax classification on the income from the packing activity.

(i) Under RCW 82.04.190, persons taxable under the service B&O tax classification are consumers of any materials used in performing the service. Sales of packing materials to persons engaged in the business of custom or commercial packing are sales for consumption and are subject to the retail sales tax. However, there is a specific statutory exemption from the B&O tax for persons who perform packing of fresh perishable horticultural products for the grower. These persons are also exempt from retail sales tax on the purchase of any materials and supplies used in performing the packing service.

(ii) Persons who perform custom or commercial packing for others and who also manufacture the boxes, containers, or other packaging materials used by them in the packing are subject to the manufacturing tax and use tax on the value of the packing materials which they manufacture. Refer to WAC 458-20-136.

(e) Persons who operate cold storage warehouses or who perform processing for hire for others, which includes packaging the processed items, are not the consumers of the containers or other packaging materials. Sales of boxes, cartons, and packaging materials to these persons are taxable under the wholesaling tax classification. Refer to WAC 458-20-136 and 458-20-133.

(f) Persons who manufacture packing materials for delivery outside Washington or for their own commercial or industrial use are manufacturers and should refer to WAC 458-20-136, 458-20-134, and 458-20-112.

(4) **Retail sales tax.**

(a) All sales taxable under the retailing classification of the business and occupation tax as indicated above are also subject to retail sales tax except those specifically distinguished hereafter in this subsection.

(b) Retail sales tax does not apply to sales of returnable food and beverage containers, and vendors may take a deduction from gross retail sales for the amount of such sales in reporting sales tax due, providing (i) the seller separately states the charge for the container and (ii) the separately stated charge is the amount the vendor will pay for a repurchase of the container. Return of the containers is a repurchase by the vendor, and sales tax is not due on amounts paid to the customer on such repurchases, since the vendor will resell the containers in the regular course of business. (RCW 82.08.0282.)

(c) No deduction is allowed in computing tax under the retail sales tax classification where the retail sales tax is collected from the customer upon the charge for the container.

(d) Sales of packing materials to cooperative marketing associations, agents, or independent contractors for the purpose of packing fresh perishable horticultural products for the growers thereof, are not subject to retail sales tax. See also WAC 458-20-214.

(5) **Use tax.**

(a) The use tax applies to uses of packing materials and containers to which retail sales tax would apply but, for any reason, was not paid at the time such materials and containers were acquired.

(b) The use tax applies to the use of packing materials, such as boxes, cartons, and strapping materials, by a manufacturer in Washington where the packing materials are used to protect materials while being transported to another site of the manufacturer for further processing.

(c) The use tax applies to the use of pallets by a manufacturer or seller where the pallets will not be sold with the product, but are for use in the manufacturing plant or warehouse.

(6) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(a) ABC Packing Co. does custom packing of small parts for a Washington manufacturer. The parts are sent by truck to ABC who then places the parts into plastic bags and seals the bags through a heat fusion process. ABC is the consumer of the bags and must pay either retail sales tax or use tax on the use of the bags. This is true even though the bags will remain with the parts until delivered to the ultimate user of the parts.

(b) XY manufactures paper products in Washington. The paper is placed on large rolls. These large rolls are shipped to another of its own plants where the paper goes through a slitter for conversion into reams of paper. These large rolls involve the use of "cores" made of heavy fiber board on which the paper is rolled. "Plugs" are placed in the ends to give additional support. The rolls are also wrapped and banded with steel banding. The cores, plugs, wrapping materials, and banding are all eventually removed during the additional processing. XY is the consumer of the plugs, cores, and other packing materials and must pay retail sales or use tax on these items.

(c) XY uses three types of pallets in its manufacturing operation. One type of pallet is used strictly for storing paper which is in the manufacturing process. A second type of pallet is returnable and the customer is charged a deposit which is refunded at the time the pallet is returned. The third type of pallet is nonreturnable and is sold with the product. XY is required to pay retail sales or use tax on the first two types of pallets. The third type of pallets may be purchased by XY without the payment of retail sales or use tax since these pallets are sold with the paper products.

(d) Cold Storage Co. does custom fish processing for various customers. The processing involves cutting whole fish into fillets or steaks, vacuum packaging the pieces, and freezing the packages. The packing activity is considered to be part of a processing for hire activity. As a processor for hire, Cold Storage Co. is not the consumer of the packing materials.

[Statutory Authority: RCW 82.32.300. 93-19-017, § 458-20-115, filed 9/2/93, effective 10/3/93; 88-20-014 (Order 88-6), § 458-20-115, filed 9/27/88; Order 74-2, § 458-20-115, filed 6/24/74; Order ET 70-3, § 458-20-115 (Rule 115), filed 5/29/70, effective 7/1/70.]

WAC 458-20-116 Sales and/or use of labels, name plates, tags, premiums, and advertising material. (1) **Introduction.** This section explains Washington's B&O and retail sales tax applications to the sale of labels, name plates, tags, and advertising material. It also gives tax reporting information to persons offering premiums at reduced or no cost to customers.

(2) **Definitions.** For the purposes of this section, the following definitions apply:

(a) "Labels," "name plates," and "tags" are slips, generally made of paper or cloth, which are affixed to articles or containers for identification or description.

(b) A "premium" is an item offered free of charge or at a reduced price to prospective customers as an inducement to buy.

(3) **Sales for resale.** Sales of labels, name plates, tags, premiums, and advertising material to persons for use in the following manner are sales for resale (wholesale sales) and not subject to retail sales tax:

(a) Sales of labels, name plates, and tags to persons who will attach these items to articles or containers sold by them, or enclose these items with articles sold by them. However, the labels, name plates, or tags may not be purchased for resale if they will be put to intervening use by such persons.

(b) Sales of premiums to persons who pass title to the premium along with other articles which are sold by them, when the passing of title to the premiums is not contingent upon the returning of coupons or other evidence of prior purchase.

(c) Sales of premiums to persons who in turn sell the same to customers at a reduced price.

(d) Sales of advertising material to persons who enclose the advertising material with articles sold by them, when such advertising material relates primarily to the articles with which it is enclosed. Persons who enclose advertising material with articles being sold for the purpose of promoting sales of other products are consumers and may not purchase this advertising material for resale. (See RCW 82.12.010(5).)

(4) **Retail sales tax.** Sales of labels, name plates, tags, premiums, and advertising material to consumers are retail sales. The retail sales tax applies to the following:

(a) Sales of labels, name plates, and tags to persons who attach the same to containers enclosing articles sold by them, when such persons retain title to the containers which are to be returned. Such sales are sales for consumption and subject to the retail sales tax. Since the container is not being resold, any labels, name plates, tags, or similar items attached to the container are also not being resold.

(b) Sales of labels, name plates, and tags to persons who use them for inventory, statistical, or other business purposes. Such sales are sales for consumption and the retail sales tax applies, notwithstanding the labels, name plates, or tags remain attached to the articles or containers delivered to the customer.

(c) Sales of premiums to persons who do not pass title thereto with other articles which are sold by them, but which are given as an inducement to perform a service, or are given upon the returning of coupons or other evidence of prior purchase. Such sales are sales for consumption and are subject to the retail sales tax.

(d) Sales of premiums to persons who offer them as an inducement to potential customers at no charge and with no requirement that the customer purchase any other article or service as a condition to receive the premium. Such sales are sales for consumption and subject to the retail sales tax.

(5) **Business and occupation tax.** The B&O tax applies to the sale of labels, name plates, tags, premiums, and advertising material as follows:

(a) **Wholesaling.** Persons who sell labels, name plates, tags, premiums, and advertising material to persons who will resell these items as described in subsection (3) of this section are subject to the wholesaling B&O tax on the gross proceeds of these sales. Sellers must obtain resale certificates from their customers to support the resale nature of these transactions. (Refer to WAC 458-20-102.)

(b) **Retailing.** Persons who sell labels, name plates, tags, premiums, and advertising material to consumers are subject to the retailing B&O tax on such sales.

(6) **Deferred sales or use tax.** If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred sales or use tax directly to the department.

(7) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(a) ABC Timber purchases log tags which are attached to logs as they are received in ABC's yard. These tags are used by ABC to keep track of the logs for inventory purposes. These tags remain on the logs after sale, and are also used by ABC's customers to verify receipt of the logs. ABC must remit retail sales or use tax upon the purchase of the log tags, notwithstanding they remain attached to the logs after sale to ABC's customers. The use of these tags for inventory purposes by ABC prior to actual sale is intervening use as a consumer.

(b) MT Gas, a gasoline and service station, offers customers a free set of stemware with any gasoline purchase of ten gallons or more. Customer purchasing seven to nine gallons of gasoline may purchase the same set of stemware for a nominal amount. MT Gas may purchase the stemware without paying retail sales tax. The stemware is offered as a premium, and is considered to be resold along with the gasoline. It is immaterial that the sale of gasoline is exempt from the retail sales tax. MT Gas must report the retailing B&O tax and collect and remit retail sales tax on the price charged for the stemware sold to those customers purchasing seven to nine gallons of gasoline.

(c) KMP Company is a camping club which purchases gift items which are used as premiums. These gift items are offered free of charge to potential customers on condition that the potential customer attend a sales presentation. No purchase of a membership or anything else is required to receive the premium. KMP must remit retail sales or use tax upon the purchase of the premiums. KMP is the consumer of premiums given away free of charge where the recipient has no requirement to purchase any service or article as a condition of receiving the premium.

(d) BC Bank offers a choice of various premiums to customers opening new savings accounts. In some cases, a charge may be made to the customer for the premium, with the amount of the charge based on the amount of deposit the customer makes in the new savings account. BC Bank may give a resale certificate to its suppliers for those premiums which will be resold to its new customers. For those premiums which will be given to customers without charge, BC Bank must pay either the retail sales tax to its suppliers or use tax to the department on the cost of the premiums. (Refer to WAC 458-20-102.) It also must report the retailing B&O tax and collect and remit retail sales tax on any amounts charged to its customers.

[Statutory Authority: RCW 82.32.300. 93-19-018, § 458-20-116, filed 9/2/93, effective 10/3/93; 83-07-034 (Order ET 83-17), § 458-20-116, filed 3/15/83; Order ET 70-3, § 458-20-116 (Rule 116), filed 5/29/70, effective 7/1/70.]

WAC 458-20-117 Sales and/or use of dunnage. (1) **Introduction.** This section explains Washington's B&O tax, retail sales tax, and use tax to the sale or use of dunnage.

(a) The term "dunnage" means any material used for the purpose of protecting or holding in place cargo or freight during transportation by any carrier of property, and which is not an integral part of the carrier itself. Dunnage includes, but is not limited to, wood blocks, stakes, separating strips, timber, double decks, false floors, door shields, bulkheads, and other bracing. Dunnage generally does not remain with the cargo that is being transported and will not be delivered to the person who will ultimately receive the cargo. On the other hand, packing materials are generally part of the total package containing the cargo and are ultimately delivered to the customer as part of the cargo or merchandise.

(b) Persons selling dunnage to air, rail, or water carriers operating in interstate or foreign commerce should also refer to WAC 458-20-175. Persons selling or purchasing packing materials should refer to WAC 458-20-115 (Sales of packing materials and containers).

(2) **Business and occupation tax.** The B&O tax applies as follows to sales of dunnage.

(a) **Wholesaling—Other.** The wholesaling—other tax applies to the gross proceeds derived from sales of dunnage to persons who resell the dunnage, without intervening use.

(b) **Retailing of interstate transportation equipment.** This B&O tax classification applies to sales of dunnage to air, rail, and water carriers. These sales are exempt from retail sales tax because of the provisions of RCW 82.08.0261.

(c) **Retailing.** The retailing tax applies to sales of dunnage to motor carriers and all other consumers.

(3) **Retail sales tax.** The retail sales tax generally applies to the sale of dunnage to consumers. This includes situations in which the purchaser may initially use the materials for dunnage and then resell the materials after they have served that purpose. RCW 82.08.0261 does provide a retail sales tax exemption for sales of tangible personal property, including dunnage, to air, rail, and water carriers operating in interstate or foreign commerce. To substantiate a claim for this exemption, the seller must retain as part of its records the completed exemption certificate(s) prescribed by WAC 458-20-175. However, air, rail, and water carriers are subject to use tax on dunnage used in Washington. (See below.)

(4) **Deferred sales or use tax.** If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred sales or use tax directly to the department.

(a) Air, rail, and water carriers engaged in interstate or foreign commerce should note that while the purchase of dunnage may qualify for the retail sales tax exemption provided by RCW 82.08.0261, the subsequent use in Washington of that dunnage is subject to use tax. These carriers should refer to WAC 458-20-175 to determine any potential use tax liability.

(b) Persons who manufacture the materials which they will use for dunnage, such as lumber manufacturers, are subject to use tax on the value of the dunnage and are also subject to the manufacturing B&O tax. These persons should refer to WAC 458-20-136 and WAC 458-20-112.

(5) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances. Unless stated otherwise, these examples presume both seller and purchaser are located in Washington.

(a) BCD, Inc. provides stevedoring services within the State of Washington. BCD routinely purchases lumber for use in securing cargo within the holds of ships during transport. While this lumber may be bolted or nailed to the ship, it is removed at the destination port when the cargo is off-loaded. BCD provides the lumber as a part of its overall stevedoring services, and does not make retail sales of the lumber to its customers.

BCD Inc. must pay retail sales tax when purchasing all such lumber. The lumber is used as dunnage and does not become an integral part of the ship, despite being bolted or nailed to the ship. If BCD has not paid retail sales tax on the acquisition of the lumber, it must remit the deferred sales or use tax directly to the department.

(b) D Company sells lumber and wood blocks to FG Engineering. FG is a manufacturer of equipment parts and uses the lumber and wood blocks as dunnage for the transportation of parts by rail to Montana. The lumber and wood blocks are salvaged and sold by FG after the transportation of the parts is completed.

The sale of the lumber and wood blocks to FG Engineering is a sale at retail, notwithstanding FG resells the dunnage materials in Montana. The use of the lumber and wood blocks as dunnage by FG Engineering is considered use as a consumer. D Company must collect and remit the retail sales tax, and report the gross proceeds of the sale under the retailing B&O tax classification.

(c) RB Lumber manufactures lumber in Washington which it ships by rail to customers in other states. RB Lumber takes irregular sized and other low quality lumber and uses it as dunnage in loading rail cars. Arrangements have been made with the rail carrier for the dunnage to be given away as firewood at the destination.

RB Lumber is subject to manufacturing B&O tax and also use tax on the value of the dunnage. If there is a comparable retail selling price for these materials, the value will be determined on that basis. If there is no comparable selling price, the value may be determined on the basis of cost of production as provided in WAC 458-20-112.

(d) KMB, Inc. sells lumber for use as dunnage to Western Rail, a common carrier operating by rail in multiple states. Some of the lumber will be first used in Washington and some will be transported to other states without intervening use for use in those states as dunnage. Western Rail may purchase the dunnage without payment of retail sales tax by giving the seller an exemption certificate as explained in WAC 458-20-175.

KMB, Inc. must report this sale under the retailing of interstate equipment B&O tax classification since Western Rail has claimed exemption for payment of the retail sales tax under RCW 82.12.0261. The seller must retain copies of the exemption certificates for five years. Western Rail must report use tax on the dunnage which is used in Washington.

[Statutory Authority: RCW 82.32.300. 93-19-019, § 458-20-117, filed 9/2/93, effective 10/3/93; Order ET 70-3, § 458-20-117 (Rule 117), filed 5/29/70, effective 7/1/70.]

WAC 458-20-118 Sale or rental of real estate, license to use real estate. (1) Amounts derived from the sale and rental of real estate are exempt from taxation under the business and occupation tax. However, there is no exemption of amounts derived from engaging in any business wherein a mere license to use or enjoy real property is granted. Amounts derived from the granting of a license to use real property are taxable under the service B&O tax classification unless otherwise taxed under another classification by specific statute, e.g., sale of lodging taxed under retailing. (See RCW 82.04.050 and 82.04.290.) Further, no exemption is allowed for amounts received as commissions for the sale or rental of real estate (RCW 82.04.390) nor for interest received by persons engaged in the business of selling real estate on time or installment contracts. For purposes of distinguishing the lease or rental of real estate from the granting of a license to use real estate the department of revenue will be guided by the following principles.

(2) **Lease or rental of real estate.** A lease or rental of real property conveys an estate or interest in a certain designated area of real property with an exclusive right in the lessee of continuous possession against the world, including the owner, and grants to the lessee the absolute right of control and occupancy during the term of the lease or rental agreement. An agreement will not be construed as a lease of real estate unless a relationship of "landlord and tenant" is created thereby. It is presumed that the sale of lodging by a hotel, motel, tourist court, etc., for a continuous period of thirty days or more is a rental of real estate. It is further presumed that all rentals of mini-storage facilities, apartments and leased departments constitute rentals of real estate. The rental of a boat moorage slip or an airplane hangar/tie down site is presumed to be a rental of real estate only if a specific space, slip, or site is assigned and the rental is for a period of thirty days or longer.

(3) **License to use real estate.** A license grants merely a right to use the real property of another but does not confer exclusive control or dominion over the same. Usually, where the grant conveys only a license to use, the owner controls such things as lighting, heating, cleaning, repairing, and opening and closing the premises.

(a) Persons who are involved in more than one kind of business activity are required to segregate their income and report under the appropriate tax classification based on the nature of the specific activity (see RCW 82.04.440).

(b) It will be presumed that a taxable license to use or enjoy real property is granted in the rental of the following:

(i) Hotel rooms (for periods of less than 30 continuous days; see WAC 458-20-166).

(ii) Motels, tourist courts and trailer parks (for periods of less than 30 continuous days; see WAC 458-20-166).

(iii) Cold storage lockers (see WAC 458-20-133).

(iv) Safety deposit boxes and private mail boxes.

(v) Storage space (see WAC 458-20-182).

(vi) Space within park or fair grounds to a concessionaire.

(vii) Hairdressers, barbers, or manicurists who lease space within another business (see WAC 458-20-200 Leased departments).

(viii) Use of boat launch facilities for recreational purposes.

(ix) Space on a building for the attachment of advertising signs, including for periods in excess of 30 continuous days.

(c) RCW 82.04.050 (2)(f) specifically defines all services of a hotel, motel, or similar businesses as being retail sales. Thus, the rentals of meeting rooms, display rooms, or ball rooms are retail sales when rented out by such businesses. Persons who are not in the business of selling lodging are taxable under the service B&O tax classification on income from the rental of meeting rooms.

[Statutory Authority: RCW 82.32.300. 91-02-056, § 458-20-118, filed 12/28/90, effective 1/28/91; 83-07-034 (Order ET 83-17), § 458-20-118, filed 3/15/83; Order ET 70-3, § 458-20-118 (Rule 118), filed 5/29/70, effective 7/1/70.]

WAC 458-20-119 Sales of meals. (1) **Introduction.** This section explains Washington's B&O and retail sales tax applications to the sales of meals. This section also gives tax reporting information to persons who provide meals without a specific charge. It explains how meals furnished to employees are taxed. Persons in the business of operating restaurants should also refer to WAC 458-20-124 and persons operating hotels, motels, boarding houses, or similar businesses should refer to WAC 458-20-166.

(2) **Business and occupation tax.** The sales of meals and the providing of meals as a part of services rendered are subject to tax as follows:

(a) **Retailing.** The retailing B&O tax applies as follows.

(i) **Restaurants, cafeterias and other eating places.** Sales of meals to consumers by restaurants, cafeterias, clubs, and other eating places are subject to the retailing tax. (See WAC 458-20-124-Restaurants, etc.)

(ii) **Caterers.** Sales of meals and prepared food by caterers are subject to the retailing tax when sold to consumers. "Caterer" means a person who provides, prepares and serves meals for immediate consumption at a location selected by the customer. The tax liability is the same whether the meals are prepared at the customer's site or the caterer's site. The retailing tax also applies when caterers prepare and serve meals using ingredients provided by the customer. Persons providing a food service for others should refer to the subsection below entitled "Food service contractors".

(iii) **Hotels, motels, bed and breakfast facilities, resort lodges and other establishments offering meals and transient lodging.** Sales of meals by hotels, motels and other persons who provide transient lodging are subject to the retailing tax.

(iv) **Boarding houses, American plan hotels, and other establishments offering meals and nontransient lodging.** Sales of meals by boarding houses and other such places are subject to retailing tax.

(A) Except for guest ranches and summer camps, when a lump sum is charged to non-transients for providing both lodging and meals, the fair selling price of the meals is subject to the retailing tax. Unless accounts are kept showing the fair selling price, the tax will be computed upon double the cost of the meals served. This cost includes the price paid for food and drinks served, the cost of preparing and serving meals, and all other incidental costs, including an appropriate portion of overhead expenses.

(B) It will be presumed that guest ranches and summer camps are not making sales of meals when a lump sum is charged for the furnishing of lodging, and meals are included.

(v) **Railroad, Pullman car, ship, airplane, or other transportation company diners.** Sales of meals by a railroad, Pullman car, ship, airplane, or other transportation company served at fixed locations in this state, or served upon the carrier itself while within this state, are subject to the retailing tax.

Where no specific charge is made for meals separate and apart from the transportation charge, the entire amount charged is deemed a charge for transportation and the retailing tax does not apply to any part of the charge.

(vi) **Hospitals, nursing homes, and other similar institutions.** The serving of meals by hospitals, nursing homes, sanitariums and similar institutions to patients as a part of the service rendered in the course of business by such institutions is not a sale at retail. However, many hospitals and similar institutions have cafeterias or restaurants through which meals are sold for cash or credit to doctors, visitors, nurses and other employees. Some of these institutions have agreements where the employees are paid a fixed wage in payment for services rendered and are provided meals at no charge. Under those circumstances, all sales of meals to such persons are subject to the retailing tax, including the value of meals provided at no charge to employees. Refer to the subsection below entitled "Meals furnished to employees."

(vii) **School, college, or university dining rooms.** Public schools, high schools, colleges, universities or private schools operating lunch rooms, cafeterias, dining rooms, or snack bars for the exclusive purpose of providing students and faculty with meals or prepared foods are not considered to be engaged in the business of making retail sales of meals. However, if guests are permitted to dine with students or faculty in such areas, the sales of meals to the quests are retail sales.

(A) Unless the eating area is situated so that it is available only to students and faculty, the lunch room, cafeteria, dining room, or snack bar must have a posted sign stating that the area is only open to students and faculty. In the absence of such a sign, there will be a presumption that the facility is not exclusively for the use of students and faculty. The actual policy in practice in these areas must be consistent with the posted policy.

(B) If the cafeteria, lunch room, dining room, or snack bar is generally open to the public, all sales of meals, including meals sold to students, are considered retail sales.

(C) For some educational institutions, the meals provided to students is considered to be part of the charge for tuition and may not be subject to the B&O tax. Public schools, high schools, colleges, universities, and private schools should refer to WAC 458-20-167 to determine whether the retailing B&O tax applies to the sales of meals described above. (See also WAC 458-20-189 for a discussion of B&O tax for schools operated by the state.)

(viii) **Fraternities and sororities.** Fraternities, sororities and other groups of individuals who reside in one place and jointly share the expenses of the household including expense of meals are not considered to be making sales when meals are furnished to members.

(b) **Wholesaling-other.** Persons making sales of prepared meals to persons who will be reselling the meals are subject to the wholesaling-other tax classification. Sellers must obtain resale certificates from their customers to support the resale nature of any transaction. (See WAC 458-20-102.)

(c) **Service and other business activities.** Private schools, which do not meet the definition of "educational institutions", operating lunch rooms, cafeterias, or dining rooms for the exclusive purpose of providing meals to students and faculty are subject to the service and other business activities B&O tax on the charges to students and faculty for meals. (See WAC 458-20-167 for definitions of the terms "private school" and "educational institution".) Persons managing a food service operation for a private school should refer to the subsection below entitled "Food service contractors."

(3) **Retail sales tax.** The sales of meals, upon which the retailing tax applies under the provisions set forth above, are generally subject to tax under the retail sales tax classification. However, a retail sales tax exemption is available for the following sales of meals:

(a) Prepared meals sold under a state-administered nutrition program for the aged as provided for in the Older Americans Act (Public Law 95-478 Title III) and RCW 74.38.040(6).

(b) Prepared meals sold to or for senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW. However, this exemption does not apply to purchases of prepared meals by not-for-profit organizations, such as hospitals, which provide the meals to patients as a part of the services they render.

(c) Prepared meals sold to the federal government. (See WAC 458-20-190.) However, meals sold to federal employees are taxable, even if the federal employee will be reimbursed for the cost of the meals by the federal government.

(4) **Deferred sales or use tax.** If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred sales or use tax directly to the department.

(a) Purchases of dishes, kitchen utensils, linens, and items which do not become an ingredient of the meal, are subject to retail sales tax.

(b) Retail sales tax or use tax applies to purchases of equipment, repairs, appliances, and construction.

(c) The retail sales or use tax does not apply to purchases of food or beverage products which are ingredients of meals being sold at retail or wholesale.

(d) Purchases of food products and prepared meals by persons who are not in the business of selling meals at retail or wholesale are subject to the retail sales tax. However, certain food products are statutorily exempt of retail sales or use tax. (See WAC 458-20-244.)

(e) Private schools, educational institutions, nursing homes, and similar institutions who are not making sales of meals at retail or wholesale are required to pay retail sales tax on all purchases of paper plates, paper cups, paper napkins, toothpicks, or any other articles which are furnished to customers, the first actual use of which renders such articles unfit for further use. However, purchases of such items by restaurants and similar businesses which are making retail or wholesale sales of meals are not subject to the retail sales or use tax.

(f) Transportation companies not segregating their charges for meals, and transporting persons for hire in interstate commerce, generally will be liable to their vendors for retail sales tax upon the purchase of the food supplies or prepared meals to the extent that the meals will be served to passengers in Washington. Certain food items are statutorily exempt of retail sales or use tax. (See WAC 458-20-244.)

(5) **Sales by persons having a food and beverage worker's permit.** Retail vendors who are required by law to have a food and beverage service worker's permit under RCW 69.06.010 are subject to the retailing and retail sales taxes on sales of prepared food products. (See RCW 82.08.0293.) This includes, but is not limited to, sales of sandwiches prepared or chicken cooked on the premises, deli trays, home delivered pizzas, etc. However, sales of the following food products are exempt of sales tax even though sold by a person required to have a food and beverage service worker's permit:

(a) Raw meat prepared by persons who slaughter animals, including fish and fowl, or dress or wrap slaughtered raw meat such as fish dealers, butchers, or meat wrappers;

(b) 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;

(c) Baked goods sold by bakeries which sell no food products other than baked goods, including bakeries located in grocery stores; and

(d) Bulk food products sold from bins or barrels, including but not limited to, flour, fruits, vegetables, sugar, salt, candy, chips and cocoa.

(6) **Food service contractors.** The term "food service contractor" means a person who operates a food service at a kitchen, cafeteria, dining room, or similar facility owned by an institution or business. Food service contractors may manage the food service operation on behalf of the institution or business, or may actually make sales of meals or prepared foods.

(a) Sales of meals. Food service contractors who sell meals or prepared foods to consumers are subject to the retailing B&O and retail sales taxes upon their gross proceeds of sales. For example, the operation of a cafeteria which provides meals to employees of a manufacturing or financial business is generally a retail activity. The food service contractor is considered to be making retail sales of meals, whether payment for the meal is made by the employees or the business, unless the business itself is reselling the meals to the employees.

In all cases where the meals are prepared at off-site facilities not owned by the institution or business, the food service contractor is considered to be making sales of meals and the retailing B&O and retail sales taxes apply to the gross proceeds of sale, or gross income for sales to consumers.

(b) Food service management. For periods prior to July 1, 1993, the gross proceeds derived from the management of a food service operation are subject to the service and other business activities B&O tax. On and after July 1, 1993, these proceeds are subject to the selected business services classification of the B&O tax. (Chapter 25, Laws of Washington 1993, 1st Special Session.) These tax reporting provisions apply whether the staff actually preparing the meals or prepared foods are employed by the institution or business hiring the food service contractor, or by the food service contractor itself. If the food service contractor merely manages the food service operation on behalf of an institution or business, that institution or business is considered to be selling meals or providing the meals as a part of the services the institution or business renders to its customers. These institutions and businesses should refer to the subsections (2) and (3) above to determine their B&O and retail sales tax liabilities.

Food service management includes, but is not limited to, the following activities:

(i) Food service contractors operating a cafeteria or similar facility which provides meals and prepared food for employees and/or guests of a business, but only where the business owning the facility is the one actually selling the meals to its employees.

(ii) Food service contractors managing and/or operating a cafeteria, lunch room, or similar facility for the exclusive use of students or faculty at an educational institution or private school. The educational institution or private school provides these meals to the students and faculty as a part of its educational services. The food service contractor is managing a food service operation on behalf of the institution, and is not making retail sales of meals to the students, faculty, or institution. Sales of meals or prepared foods to quests in such areas are, however, subject to the retailing B&O and retail sales taxes. (Refer also to the subsection above entitled "School, college, or university dining rooms.")

(iii) Food service contractors managing and/or operating the dietary facilities of a hospital, nursing home, or similar institution, for the purpose of providing meals or prepared foods to patients or residents thereof. These meals are provided to the patients or residents by the hospital, nursing home, or similar institution as a part of the services rendered by the institution. The food service contractor is managing a food service operation on behalf of the institution, and is not considered to be making retail sales of meals to the patients, residents, or institution. Meals sold to doctors, nurses, visitors, and other employees through a cafeteria or similar facility are, however, subject to the retailing B&O and retail sales taxes. (Refer also to the subsection above entitled "Hospitals, nursing homes, and other similar institutions.")

(c) The following examples explain the application of the B&O and retail sales taxes to typical situations involving food service contractors managing a food service operation. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(i) GC Inc. is a food service contractor managing and operating an on-site cafeteria for B College. This cafeteria is operated for the exclusive use of students and faculty. However, guests of students or faculty members are allowed to use the facilities. All monies collected in the cafeteria are retained by B College. College B pays GC's direct costs for managing and operating the cafeteria, including the costs of the unprepared food products, employee salaries, and overhead expenses. GC also receives a management fee.

GC Inc. is managing a food service operation. The measure of tax is the gross proceeds received from B College. GC Inc. may not claim a deduction on account of cost of materials, salaries, or any other expense. For periods prior to July 1, 1993, the gross proceeds are subject to the service and other business activities B&O tax. On and after July 1, 1993, these proceeds are subject to the selected business activities B&O tax classification. B College is considered to be making retail sales of meals to the guests. B College must collect and remit retail sales taxes on the gross proceeds of sales derived therefrom. B College should refer to WAC 458-20-167 to determine whether the retailing B&O tax applies.

(ii) DF Food Service contracts with Hospital A to manage and operate Hospital A's dietary and cafeteria facilities. DF is to receive a per meal fee for meals provided to Hospital A's patients. DF Food Service retains all proceeds for sales of meals to physicians, nurses, and visitors in the cafeteria.

The gross proceeds received from Hospital A in regards to the meals provided to the patients is derived from the management of a food service operation. For periods prior to July 1, 1993, these proceeds are subject to the service and other business activities B&O tax. On and after July 1, 1993, these proceeds are subject to the selected business activities B&O tax classification. However, DF is making retail sales of meals to physicians, nurses, and visitors in the cafeteria. DF Food Service must pay retailing B&O, and collect and remit retail sales tax, on the gross proceeds derived from the cafeteria sales.

(7) **Meals furnished to employees.** Sales of meals to employees are sales at retail and subject to the retailing B&O and retail sales taxes. This is true whether individual meals are sold, whether a flat charge is made, or whether meals are furnished as a part of the compensation for services rendered.

(a) Where a specific and reasonable charge is made to the employee, the measure of the tax is the selling price.

(b) Where no specific charge is made, the measure of the tax will be the average cost per meal served to each employee, based upon the actual cost of the food.

(c) It is often impracticable to collect the retail sales tax from employees on such sales. The employer may, in lieu of collecting such tax from employees, pay the tax directly to the department of revenue.

(d) Where meals furnished to employees are not recorded as sales, the tax due shall be presumed to apply according to the following formula for determining meal count:

(i) Those employees working shifts up to five hours, one meal; and

(ii) employees working shifts of more than five hours, two meals.

(8) **Sales of meals, beverages, and food at prices including sales tax.** Persons who advertise and/or sell meals, alcoholic or other beverages, or any kind of food products upon which retail sales tax is due should refer to WAC 458-20-244 (Food products), WAC 458-20-124 (Restaurants, etc.), and WAC 458-20-107 (Advertised prices including sales tax). The taxability of persons operating class H licensed restaurants is specifically addressed in WAC 458-20-124.

(9) **Gratuities.** Tips or gratuities representing donations or gifts by customers under circumstances which are clearly voluntary are not part of the selling price subject to tax. However, mandatory additions to the price by the seller, whether labeled service charges, tips, gratuities or otherwise must be included in the selling price and are subject to both the retailing classification of the B&O tax and the retail sales tax.

(10) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(a) ABC Hospital operates a cafeteria and sells meals to physicians and to persons who are visiting patients in the hospital. Meals are also provided to its employees at no charge. However, there is no accounting for the number of meals consumed by the employees. Payroll records do record the number of hours worked. On average, employees working shifts of up to five hours consume one meal while those working shifts of more than five hours consume two meals.

ABC Hospital is subject to retailing and retail sales taxes on the gross proceeds derived from the sales of meals to physicians and visitors. The retailing and retail sales taxes also apply to value of the meals consumed by ABC's employees. The value subject to tax is determined by the average cost of meals consumed by the employees, based upon the actual cost of the food items, multiplied by the number of meals as determined through a review of the payroll records. While the presumption is that employees working shifts of up to five hours consume one meal with those working shifts of five to eight hours consuming two, this presumption may be rebutted under particular circumstances.

(b) X operates a boarding house and provides lodging and meals to ten non-transient residents. Each resident is charged a lump sum to cover both lodging and meals with no accounting for a fair selling price for the meals. X is making retail sales of meals to its residents. Retailing and retail sales taxes are due on the value of the meals served. This value must be computed as double the cost of the meal, including the cost of the food and drink ingredients, costs of meal preparation, and other costs associated with the meal preparation such as overhead expenses.

(c) Y Motor Inn contracts with Z Company to provide catering services for a function to be held at the motor inn. During discussions concerning the services to be provided, Z Company is informed that a 15% gratuity is generally recommended. Z Company negotiates the gratuity percentage to 10% and signs a catering contract stating that the agreed gratuity will be added. The gratuity charged to Z Company is subject to both the retailing and retail sales taxes. This is not a voluntary gratuity since it is required to be paid as a condition of the contract. Gratuities are not part of the selling price only when they are strictly voluntary.

[Statutory Authority: RCW 82.32.300. 93-23-019, § 458-20-119, filed 11/8/93, effective 12/9/93; 86-03-016 (Order ET 86-1), § 458-20-119, filed 1/7/86; 82-16-061 (Order ET 82-7), § 458-20-119, filed 7/30/82. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-119, filed 6/27/78; Order ET 74-1, § 458-20-119, filed 5/7/74; Order ET 70-3, § 458-20-119 (Rule 119), filed 5/29/70, effective 7/1/70.]

WAC 458-20-120 Sales of ice. Sales of ice to fishermen for the purpose of packing and preserving their fish during the trip from the fishing banks to their port of discharge are sales for consumption and are taxable under the retail sales tax.

Sales of ice to persons, other than railroad companies, for use in icing refrigerator cars are sales for consumption and are taxable under the retail sales tax.

The use of ice purchased or manufactured by interstate railroad companies for the purpose of icing within this state perishables or refrigerator cars or car cooling systems, is subject to use tax. (See WAC 458-20-175.)

Sales of ice to persons who sell fish, fruit, vegetables and other commodities are sales for resale and not subject to the retail sales tax when such ice is used for packing during shipment and title thereto passes to the purchaser along with the property sold.

Sales of ice to persons operating restaurants, soda fountains and the like are sales for resale and are not subject to the retail sales tax when such ice is used exclusively as crushed ice in drinks sold by such persons.

Sales of ice to persons operating creameries, beer parlors, restaurants, soda fountains and the like are sales for consumption and are taxable under the retail sales tax when such ice is used primarily for the purpose of cooling food products and is not for resale to customers.

Revised May 1, 1949.

[Order ET 70-3, § 458-20-120 (Rule 120), filed 5/29/70, effective 7/1/70.]

WAC 458-20-121 Sales of heat or steam—Including production by cogeneration. (1) **Introduction.** This section provides tax reporting information to persons who sell heat and/or steam. Because heat and steam are often the product of a cogeneration facility, this section also provides tax information for persons operating cogeneration facilities. Persons generating electrical power should also refer to WAC 458-20-179 and 458-20-17901.

(2) **Sale of heat or steam - business and occupation (B&O) tax.** Persons engaging in the business of operating a plant for the production, extraction, or storage of heat or steam for distribution, for hire or sale, are taxable under the service and other business activities classification. This includes heat or steam produced by a biomass system, cogeneration, geothermal sources, fossil fuels, or any other method.

(3) **Sale or production of electricity - cogeneration.** The production of steam, heat, or electricity is not a manufacturing activity within the definition of RCW 82.04.120. Persons who operate a plant or system for the generation, production or distribution of electrical energy for hire or sale are subject to the provisions of the public utility tax under the light and power tax classification. Persons who generate electrical energy should refer to WAC 458-20-179. A deduction may be taken for:

(a) Power generated in Washington and delivered out-of-state. (See RCW 82.16.050(6).)

(b) Amounts derived from the sale of electricity to persons who are in the business of selling electricity and are purchasing the electricity for resale. (See RCW 82.16.050(2).)

(4) **Tax incentive programs - cogeneration.** There were tax incentive programs available for cogeneration projects begun before January 1, 1990. See WAC 458-20-17901 for the requirements which applied. Sales and use tax deferrals may apply under certain conditions for power generation facilities, even though the production of power is not specifically subject to a manufacturing tax. For example, if the cogeneration facilities are part of a manufacturing plant for the production of new articles of tangible personal property and the requirements for tax deferral are met, the business may apply for tax deferral programs. These incentive programs are discussed in WAC 458-20-240, 458-20-24001, and 458-20-24002.

(5) **Fuel.** Persons who produce their own fuel to generate heat, steam, or electricity are subject to the manufacturing B&O tax on the value of the fuel. This includes the value of fuel which is created at the same site as a by-product of another manufacturing process, such as production of hog fuel. The taxable value should be determined based on comparable sales, or on the basis of all costs in the absence of comparable sales. Refer to WAC 458-20-112.

The fuel does not become an ingredient or component of power, steam, or electricity. The purchase of fuel is subject to payment of retail sales tax to the supplier. In the event retail sales tax is not paid to the supplier, deferred sales or use tax must be paid. However, the law provides a specific exemption from the use tax for fuel which is used in the same manufacturing plant which produced the fuel. For example, if a lumber manufacturer produces wood waste which is used in the same plant to produce heat for drying lumber and also electricity which is sold to a public utility district, the wood waste is not subject to use tax even though the manufacturing tax will apply. (See RCW 82.12.0263.)

(6) **Equipment and supplies.** Persons who are in the business of producing heat, steam, or electricity are required to pay retail sales tax to suppliers of all equipment and supplies. If the supplier fails to collect retail sales tax, deferred sales or use tax must be paid.

[Statutory Authority: RCW 82.32.300. 94-13-033, § 458-20-121, filed 6/6/94, effective 7/7/94; 83-07-034 (Order ET 83-17), § 458-20-121, filed 3/15/83; Order ET 70-3, § 458-20-121 (Rule 121), filed 5/29/70, effective 7/1/70.]

WAC 458-20-122 Sales of feed, seed, fertilizer, spray materials, and other tangible personal property for farm use. (1) **Introduction.** This section explains the application of Washington's B&O and retail sales taxes to sales of feed, seed, fertilizer, spray materials, and other tangible personal property for farm use. Farmers and persons making sales to farmers may also want to refer to the following sections of chapter 458-20 WAC:

(a) WAC 458-20-209 (Farming for hire and horticultural services performed for farmers);

(b) WAC 458-20-210 (Sales of agricultural products by farmers); and

(c) WAC 458-20-239 (Sales to nonresidents of farm machinery or implements).

(2) **Definitions.** For the purposes of this section, the following definitions apply:

(a) "Feed" means any substance used as food to sustain or improve animals, birds, fish, or insects, and includes whole and processed grains or mixtures thereof, hay and forages or meals made therefrom, mill feeds and feeding concentrates, stock salt, hay salt, bone meal, cod liver oil, double purpose limestone grit, oyster shell, and other similar substances. "Feed" includes food additives which are given for their beneficial growth or weight effects. However, "feed" does not include hormones or similar products which do not make a direct nutritional or energy contribution to the body, nor does it include products which are used as medicines.

(b) "Seed" means propagative portions of plants, commonly used for seeding or planting whether true seeds, bulbs, plants, seedlike fruits, seedlings, or tubers.

(c) "Fertilizer" means any substance containing one or more recognized plant nutrients and which is used for its plant nutrient content and/or which is designated for use in promoting plant growth. "Fertilizer" includes limes, gypsum, and manipulated animal and vegetable manures.

(d) "Spray materials" means any substance or mixture of substances in liquid, powder, granular, dry flowable, or gaseous form, which is intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mollusk, fungus, weed, and any other form of plant or animal life which is normally considered to be a pest. The term includes treated materials, such as grains, which are intended to destroy, control, or repel such pests. "Spray materials" also includes substances which act as plant regulators, defoliants, desiccants, or spray adjuvants.

(e) "Farmer" means any person engaged in the business of growing or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product whatsoever for sale. "Farmer" does not include a person using such products as ingredients in a manufacturing process, or a person growing or producing such products for the person's own consumption. The term does not include a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard, slaughter or packing house. "Farmer" does not include any person in respect to the business of taking, cultivating, or raising timber. RCW 82.04.213.

(f) "Agricultural product" means any product of plant cultivation or animal husbandry including, but not limited to a product of horticulture, grain cultivation, vermiculture, or viticulture. "Agricultural product" includes plantation Christmas trees, animals, birds, insects, or the substances obtained from such animals. RCW 82.04.213. On and after July 1, 1993, "agricultural product" includes products of "aquaculture" and animals that are "cultured aquatic products," as those terms are defined by RCW 15.85.020. Also effective July 1, 1993, "turf" was added to the definition of "agricultural product," and "animals intended to be pets" were specifically excluded. (See chapter 25, Laws of 1993 sp.s.)

(3) **Business and occupation tax.** Persons making sales of tangible personal property or services to farmers are generally subject to the business and occupation tax thereon. The B&O tax applies as follows:

(a) **Wholesaling.** Persons who make sales at wholesale are subject to the wholesaling B&O tax upon the gross proceeds from such sales. Sellers must obtain resale certificates from their customers to support the resale nature of any transaction. (Refer to WAC 458-20-102.) The following are examples of sales at wholesale:

(i) Sales of tangible personal property to farmers when such property is purchased for resale or is a container or will become part of a container to be resold with products produced for sale. Thus, sales of grain sacks which are resold with grain produced, sack twine used in binding such sacks, wire or twine for binding bales of hay and alfalfa which are sold, fruit and vegetable wrappers, and similar items are wholesale sales. (See also WAC 458-20-115, Sales of packing materials and containers.)

(ii) Sales to farmers of feed, seed, fertilizer, spray materials, and agents for enhanced pollination, including insects such as bees, for the purpose of producing an agricultural product for wholesale or retail sale. However, wholesale sales of certain unprocessed grain and legumes to farmers for use as feed may be taxable at a lower rate under the wholesaling wheat, oats, corn, barley, dry peas, dry beans, lentils, triticale B&O tax classification. (Refer to WAC 458-20-161.)

(iii) Sales of feed, seed, fertilizer, spray materials, and agents for enhanced pollination, including insects such as bees, to persons who will resell the same without intervening use.

(iv) Sales of chemical sprays or washes to persons for the purpose of post-harvest treatment of fruit for the prevention of scald, fungus, mold, or decay.

(v) Sales to farmers of fertilizer or spray materials by persons spraying crops for hire, provided the charge for the fertilizer or spray materials is made separate and apart from the charge for the application of the spray. (See also WAC 458-20-209.)

(b) **Retailing.** Sales of tangible personal property to farmers are generally retail sales and subject to the retailing tax. The following are examples of retail sales:

(i) Sales of tangible personal property when the property is not a packing material or container which is resold with products produced for sale. For example, sales to farmers of binder twine or wire are retail sales when the hay, alfalfa, or similar item will not be resold, but will be used to feed the farmer's cattle.

(ii) Sales to farmers of tangible personal property which will be resold by the farmer, but which is put to intervening use prior to resale. For example, sales of litter, and the ingredients thereof, are sales for consumption and subject to the retailing tax even though the litter after use is resold or used as fertilizer.

(iii) Sales to farmers of machinery, machinery parts and repair, tools, and cleaning materials.

(iv) Sales of feed, seed, fertilizer, and spray materials to consumers for purposes other than producing agricultural products for sale. The following sales of feed, seed, fertilizer, and spray materials are retail sales:

(A) Sales of feed to riding clubs, race track operators, boarders, or similar persons who do not resell the feed at a specific charge.

(B) Sales of feed for feeding pets and work animals, or for raising poultry, eggs, or other products for personal consumption.

(C) Sales of seed, fertilizer, and spray materials for use on lawns, gardens, or any other personal use.

(D) Sales of fertilizers and spray materials to persons who spray agricultural crops and other real property for hire, unless these items will be resold for a charge separate and apart from charges for the actual spreading of the fertilizer or spray materials, in which case the sale is a wholesale sale. (See also WAC 458-20-209.)

(4) **Retail sales tax.** The retail sales tax generally applies to those sales identified above as being subject to the retailing B&O tax. However, a retail sales tax exemption is available for the following:

(a) Sales of feed for feeding livestock at public livestock markets. RCW 82.08.0296.

(b) Sales of pollen. RCW 82.08.0277.

(c) Sales of semen for use in the artificial insemination of livestock. RCW 82.08.0272.

(d) Sales of purebred livestock for breeding purposes where the animals are registered in a nationally recognized breed association. RCW 82.08.0259. Sellers claiming this exemption should refer to subsection (6) of this section for a description of the required documentation which must be retained by the seller.

(e) Sales of beef and/or dairy cattle for use by a farmer in producing an agricultural product. RCW 82.08.0259.

(f) Sales of poultry for use in the production for sale of poultry or poultry products. RCW 82.08.0267.

(g) Auction sales made by or through auctioneers of tangible personal property (including household goods) which has been used in conducting a farm activity, when the seller thereof is a farmer and the sale is held or conducted upon a farm. RCW 82.08.0257.

(h) Lease of irrigation equipment, provided:

(i) The irrigation equipment was purchased by the lessor for the purpose of irrigating land the lessor controlled;

(ii) The lessor has paid retail sales or use tax upon the irrigation equipment;

(iii) The irrigation equipment is attached to the land in whole or in part; and

(iv) The irrigation equipment is leased to the lessee as an incidental part of the lease of the underlying land, and is used solely on such land. RCW 82.08.0288.

(5) **Deferred sales or use tax.** If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred sales or use tax directly to the department. If a deferred sales or use tax liability is incurred by a farmer who is not required to obtain a tax registration endorsement with the department of revenue (see WAC 458-20-101), the farmer must remit the appropriate tax upon a return to be filed with the department of revenue. This return must be filed on or before the twenty-fifth day of the month succeeding the end of the period in which the tax accrued. Forms and instructions for making returns will be furnished upon request made to the department at Olympia or to any of its branch offices.

(6) **Purebred livestock exemption certificate.** RCW 82.08.0259 provides a retail sales tax exemption for sales of purebred livestock for breeding purposes. To perfect a claim for this exemption, the seller must retain as a part of its records a copy of an exemption certificate, which is to be completed at the time of sale. This certificate must be substantially in the following form, and completed in its entirety:

Date of sale: ____________________
Seller's name: ____________________
Buyer's name: ____________________
Address of buyer: ____________________
Registered name of animal: ____________________
Registering breed association: ____________________
Purebred type: ____________________

I certify that the purebred animal named on this certificate is being purchased by me for breeding purposes.

Buyer's signature, Title: ____________________

(7) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(a) B Orchards is a commercial tree fruit grower which purchases substances which qualify as fertilizers. These substances are sprayed directly onto the tree leaves. B Orchards may purchase these fertilizers at wholesale, provided it gives the seller a resale certificate. There is no requirement that fertilizers be applied directly to the soil.

(b) AC Timber uses various pesticides to control weeds and pests in its stands of timber. These pesticides qualify as spray materials. AC must pay retail sales tax upon the purchase of these spray materials. AC Timber does not satisfy the statutory definition of "farmer."

(c) Bob Smith grows vegetables for retail sale at a local market. Bob purchases fertilizers and spray materials which he applies to the vegetable plants. Bob also purchases feed for poultry which he raises to produce eggs for his personal consumption. As the vegetables are an agricultural product produced for sale, retail sales tax does not apply to his purchase of the fertilizers and spray materials. Retail sales tax does apply to Bob's purchase of poultry feed, as the poultry is raised to produce eggs for Bob's personal consumption.

(d) DG Vineyards grows grapes which it uses to manufacture wine for sale. DG purchases pesticides and fertilizers which it applies to its vineyards. DG Vineyards must remit retail sales tax upon the purchase of the pesticides and fertilizers. The statutory definition of "farmer" excludes persons raising agricultural products which they use as ingredients in a manufacturing process.

(e) John Doe operates a farm where he raises cattle for sale. John Doe raises his own hay which he bales and later uses as feed for his cattle. He is required to pay retail sales or use tax on the wire or twine he uses in baling the hay since he is the consumer of the wire or twine. If he were to sell the bailed hay, he could give a resale certificate for these purchases.

[Statutory Authority: RCW 82.32.300. 94-07-049, § 458-20-122, filed 3/10/94, effective 4/10/94; 86-21-085 (Order ET 86-18), § 458-20-122, filed 10/17/86; 86-09-058 (Order ET 86-7), § 458-20-122, filed 4/17/86; Order ET 70-3, § 458-20-122 (Rule 122), filed 5/29/70, effective 7/1/70.]

WAC 458-20-124 Restaurants, cocktail bars, taverns and similar businesses. (1) **Introduction.** This section explains Washington's B&O and retail sales tax applications to sales by restaurants and similar businesses. It discusses the sales of meals, beverages and foods at prices inclusive of the retail sales tax. This section also explains how discounted and promotional meals are taxed. Persons operating restaurants and similar businesses should also refer to WAC 458-20-119 and 458-20-244. Persons who merely manage the operations of a restaurant or similar business should refer to WAC 458-20-119 to determine their tax liability. The term "restaurants, cocktail bars, taverns, and similar businesses" means every place where prepared foods and beverages are sold and served to individuals, generally for consumption on the premises where sold.

(2) **Business and occupation tax.** The tax liability of restaurants, cocktail bars, taverns and similar businesses is as follows:

(a) **Retailing.** Sales to consumers of meals and prepared foods by restaurants, cocktail bars, taverns and similar businesses are subject to the retailing tax classification. Meals provided to employees are presumed to be in exchange for services received from the employee and are retail sales and also subject to the retailing tax. (See WAC 458-20-119, Sales of meals.)

(b) **Wholesaling.** Persons making sales of prepared meals to persons who will be reselling the meals are subject to the wholesaling-other tax classification. Sellers must obtain resale certificates from their customers to support the resale nature of any transaction. (See WAC 458-20-102.)

(c) **Service.** Compensation received from owners of coin-operated machines for allowing the placement of those machines at the restaurant, cocktail bar, tavern, or similar business is subject to the service and other business activities tax. Persons operating games of chance should refer to WAC 458-20-131.

(3) **Retail sales tax.** Sales to consumers of meals and prepared foods by restaurants, cocktail bars, taverns and similar businesses are generally subject to retail sales tax. This includes the meals sold or furnished to the employees of the business. A retail sales tax exemption is available for the following sales of meals:

(a) Prepared meals sold under a state-administered nutrition program for the aged as provided for in the Older Americans Act (Public Law 95-478 Title III) and RCW 74.38.040(6);

(b) Prepared meals sold to or for senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW;

(c) Prepared meals sold to the federal government. (See WAC 458-20-190). However, meals sold to federal employees are taxable, even if the federal employee will be reimbursed for the cost of the meals by the federal government.

(4) **Deferred sales or use tax.** If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred sales or use tax directly to the department.

(a) Purchases of dishes, kitchen utensils, linens, and items which do not become an ingredient of the meal, are subject to retail sales tax.

(b) Retail sales tax or use tax applies to purchases of equipment, repairs, appliances, and construction.

(c) The retail sales or use tax does not apply to purchases of food or beverage products which are ingredients of the meals being sold.

(d) Purchases of paper plates, paper cups, paper napkins, toothpicks, or any other articles which are furnished to customers, the first actual use of which renders such articles unfit for further use, are not subject to retail sales tax when purchased by restaurants and similar businesses making actual sales of meals.

(5) **Combination businesses.** Persons operating a combination of two kinds of food sales businesses, of which one is the sale of food for immediate consumption (i.e., a bakery selling food products ready for consumption and in bulk quantities), are required to keep their accounting records and sales receipts segregated between taxable and tax exempt sales. Persons operating a combination business should refer to WAC 458-20-244.

(6) **Discounted meals, promotional meals, and meals given away.** Persons who sell meals on a "two for one" or similar basis are not giving away a free meal, but rather are selling two meals at a discounted price. Both the retailing B&O and retail sales taxes should be calculated on the reduced price actually received by the seller.

(a) Persons who provide meals free of charge to persons other than employees are consumers of those meals. However, certain food products are statutorily exempt of retail sales or use tax unless sold by a retail vendor where the food product must be handled by a person required to have a food handler's permit. For tax reporting periods beginning with December 1, 1993, persons operating restaurants or similar businesses, where a food handler's permit is required, will not be required to report use tax on food products given away, even if the food products are part of prepared meals. For example, a restaurant providing meals to the homeless or hot dogs free of charge to a little league team will not incur a retail sales or use tax liability with respect to these items given away. A sale has not occurred, and the food products exemption applies. Should the restaurant provide the little league team with carbonated beverages free of charge, the restaurant will incur a deferred retail sales or use tax liability with respect to those carbonated beverages. Carbonated beverages are not considered food products for the purposes of the food products exemption. (See also WAC 458-20-244 for a list of exempt food products.)

(b) Meals provided to employees are presumed to be in exchange for services received from the employee and are not considered to be given away. These meals are retail sales. (See WAC 458-20-119 on employee meals.)

(7) **Sales of meals, beverages and food at prices including sales tax.** Persons may advertise and/or sell meals, beverages, or any kind of food product at prices including sales tax. Any person electing to advertise and/or make sales in this manner must clearly indicate this pricing method on the menus and other price information.

If sales slips, sales invoices, or dinner checks are given to the customer, the sales tax must be separately stated on all such sales slips, sales invoices, or dinner checks. If not separately stated on the sales slips, sales invoices, or dinner checks, it will be presumed that retail sales tax was not collected. In such cases the measure of tax will be gross receipts. (Refer also to WAC 458-20-107.)

(8) **Class H restaurants.** Restaurants operating under the authority of a class H liquor license generally have both dining and cocktail lounge areas. Customers purchasing beverages or food in lounge areas are generally not given sales invoices, sales slips, or dinner checks, nor are they generally provided with menus.

(a) Many class H restaurants elect to sell beverages or food at prices inclusive of the sales tax in the cocktail lounge area. If this pricing method is used, notification that retail sales tax is included in the price of the beverages or foods must be posted in the lounge area in a manner and location so that customers can see the notice without entering employee work areas. It will be presumed that no retail sales tax has been collected or is included in the gross receipts when a notice is not posted and the customer does not receive a sales slip or sales invoice separately stating the retail sales tax.

(b) The election to include retail sales tax in the selling price in one area of a location does not preclude the restaurant operator from selling beverages or food at a price exclusive of sales tax in another. For example, an operator of a class H restaurant may elect to include the retail sales tax in the price charged for beverages in the lounge area, while the price charged in the dining area is exclusive of the sales tax.

(c) Class H restaurants are not required to post actual drink prices in the cocktail lounge areas. However, if actual prices are posted, the advertising requirements expressed in WAC 458-20-107 must be met.

(9) **Gratuities.** Tips or gratuities representing donations or gifts by customers under circumstances which are clearly voluntary are not part of the selling price subject to tax. However, mandatory additions to the price by the seller, whether labeled service charges, tips, gratuities or otherwise must be included in the selling price and are subject to both the retailing B&O and retail sales taxes. (Refer also to WAC 458-20-119.)

(10) **Vending machines and amusement devices.** Persons owning and operating vending machines and amusement devices should refer to WAC 458-20-187 (Coin operated vending machines, amusement devices and service machines).

(11) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(a) ABC Coffee Shop has its own bakery and also a counter and tables where it sells pastries and coffee for immediate consumption. ABC also sells donuts and other bakery items for consumption off the premises. No beverages are sold in unsealed containers except for consumption on the premises. ABC accounts separately for its sales of products which are not intended for immediate consumption through a coding maintained by the cash register. ABC is operating a combination business. It is required to collect retail sales tax on items sold for consumption on the premises, but is not required to collect retail sales tax on baked goods intended for consumption off the premises.

(b) XYZ Restaurant operates both a cocktail bar and a dining area. XYZ has elected to sell drinks and appetizers in the bar at prices including the retail sales tax while selling drinks and meals served in the dining area at prices exclusive of the sales tax. There is a sign posted in the bar area advising customers that all prices include retail sales tax. Customers in the dining area are given sales invoices which separately state the retail sales tax. As an example, a typical well drink purchased in the bar for $2.50 inclusive of the sales tax, is sold for $2.50 plus sales tax in the dining area. The pricing requirements have been satisfied and the drink and food totals are correctly reflected on the customers' dinner checks. XYZ may factor the retail sales tax out of the cocktail bar gross receipts when determining its retailing and retail sales tax liability.

(c) RBS Restaurant operates both a cocktail bar and a dining area. RBS has elected to sell drinks at prices inclusive of retail sales tax for all areas where drinks are served. It has a sign posted to inform customers in the bar area of this fact and a statement is also on the dinner menu indicating that any charges for drinks includes retail sales tax. Dinner checks are given to customers served in the dining area which state the price of the meal exclusive of sales tax, sales tax on the meal, and the drink price including retail sales tax. Because the business has met the sign posting requirement in the bar area and has indicated on the menu that sales tax is included in the price of the drinks, RBS may factor the sales tax out of the gross receipts received from its drink sales when determining its taxable retail sales.

(d) Z Tavern sells all foods and drinks at a price inclusive of the retail sales tax. However, there is no mention of this pricing structure on its menus or reader boards. The gross receipts from Z Tavern's food and drink sales are subject to the retailing and retail sales taxes. Z Tavern has failed to meet the conditions for selling foods and drinks at prices including tax. Z Tavern may not assume that the gross receipts include any sales tax and may not factor the retail sales tax out of the gross receipts.

[Statutory Authority: RCW 82.32.300. 93-23-018, § 458-20-124, filed 11/8/93, effective 12/9/93; 83-07-034 (Order ET 83-17), § 458-20-124, filed 3/15/83; Order ET 70-3, § 458-20-124 (Rule 124), filed 5/29/70, effective 7/1/70.]

WAC 458-20-12401 Special stadium sales and use tax. (1) **Introduction.** RCW 82.14.360 was amended in the third special session in 1995. (See chapter 1, 1995 3rd sp.s.) Effective January 1, 1996, a special stadium sales and use tax applies to sales of food and beverages by restaurants, taverns, and bars in counties with a population of one million or more. Currently, the special stadium tax applies only in King County. The tax applies only to those food and beverage sales that are already subject to the retail sales tax. Grocery stores, mini-markets, and convenience stores were specifically excluded from the definition of a restaurant and are not required to collect the tax. However, a restaurant located within a grocery store, mini-market, or convenience store is subject to this tax if the restaurant is owned or operated by a different legal entity from the store or market. This section explains when the tax will apply.

(2) **Definitions.** The following definitions apply to this section.

(a) "Restaurant" means any establishment having special space and accommodation where food and beverages are regularly sold to the public for immediate, but not necessarily on-site, consumption, but excluding grocery stores, mini-markets, and convenience stores. Restaurant includes, but is not limited to, lunch counters, diners, coffee shops, espresso shops or bars, concession stands or counters, delicatessens, and cafeterias. It also includes space and accommodations where food and beverages are sold to the public for immediate consumption that are located within hotels, motels, lodges, boarding houses, bed-and-breakfast facilities, hospitals, office buildings, and schools, colleges, or universities, if a separate charge is made for such food or beverages. Mobile sales units that sell food or beverages for immediate consumption within a place, the entrance to which is subject to an admission charge, are "restaurants" for purposes of this tax. So too are public and private carriers, such as trains and vessels, that sell food or beverages for immediate consumption on trips that both originate and terminate within the county imposing the special stadium tax if a separate charge for the food and/or beverages is made. A restaurant is open to the public for purposes of this section if members of the public can be served as guests. "Restaurant" does not include businesses making sales through vending machines or through mobile sales units such as catering trucks or sidewalk vendors of food or beverage items.

(b) "Tavern" has the same meaning here as in RCW 66.04.010 and means any establishment with special space and accommodation for the sale of beer by the glass and for consumption on the premises.

(c) "Bar" means any establishment selling liquor by the glass or other open container and includes, but is not limited to, establishments that have been issued a class H license by the liquor control board.

(d) "Grocery stores, mini-markets, and convenience stores," have their ordinary and common meaning.

(3) **Tax application.** This special stadium sales and use tax currently applies only to food and beverages sold by restaurants, bars, and taverns in King County. The tax is in addition to any other sales or use tax that applies to these sales. This special tax only applies if the regular sales or use tax imposed by chapters 82.08 or 82.12 RCW applies.

(a) The tax applies to the total charge made by the restaurant, tavern, or bar, for food and beverages. If a mandatory gratuity is included in the charge that, too, is subject to the tax.

(b) Catering provided by a restaurant, tavern or bar is also subject to the tax. However, when catering is done by a business that does not meet the definition of restaurant in subsection (2) of this section, has no facilities for preparing food, and all food is prepared at the customer's location, the charge is not subject to the tax.

(c) In the case of catering subject to the tax, if a separate charge is made for linens, glassware, tables, tents, or other items of tangible personal property that are not required for the catering, those separate charges are not subject to the tax. However, separately stated charges for items that are required as a part of the catering service, such as waitpersons or mandatory gratuities, are subject to the tax.

(4) **Examples.** The following examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances. For these examples, assume the transactions occur in King County.

(a) XYZ Bakery operates a coffee shop where customers may purchase baked goods and coffee for consumption on the premises or may purchase bakery products for consumption elsewhere. The sales of bakery goods and beverages for consumption on the premises are subject to the special stadium tax. The special stadium tax does not apply to the bakery goods sold "to go" because under the provisions of RCW 82.08.0293 and WAC 458-20-244(6) these bakery goods are not subject to the state retail sales tax. Since the state retail sales tax does not apply to these sales, neither does the special stadium sales tax.

(b) XYZ operates a "fast food" business. Customers may consume the food and beverages on the premises or may take the food "to go" for consumption elsewhere. All sales of food and beverages by this business are subject to the special stadium tax, including the food and beverages sold "to go."

(c) XYZ operates carts that may be set up on a sidewalk or within parks from which customers may purchase hot dogs and beverages. The cart includes heating facilities for preparation of hot dogs at the cart site. No seating is provided by the business. The site location is not owned or leased by the business. These sales are not subject to the special stadium sales tax because the business does not have a designated space for the preparation of the food it sells. This business does not fit the definition of "restaurant." However, if XYZ operates a mobile food service unit selling food or beverages for immediate consumption at fixed locations within the grounds of a stadium, arena, fairgrounds, or other place, admission to which is subject to an admission charge, then the special stadium tax applies.

(d) XYZ operates a combination gas station and convenience store. The convenience store sells some groceries and also some prepared foods such as hot dogs and hamburgers. Customers may also purchase soft drinks or coffee by the cup. None of these sales are subject to the special stadium sales tax because of the specific language in the statute exempting convenience stores from the tax.

(e) XYZ operates a business that sells prepared pizza. The business prepares and bakes the pizza at its premises. The business has no seating. Customers may order the pizzas by either entering the seller's place of business or by telephone. Customers may either take delivery at the seller's site or the business will deliver the pizza to the customer's residence or other site. These sales are subject to the special stadium sales tax because the business does have a designated site and facilities for the preparation of food for sale for immediate consumption, even though no seating is available. The regular retail sales tax applies to these sales since these sales are not exempt food products under RCW 82.08.0293 (2)(c).

(f) XYZ has the exclusive concession rights to prepare and sell hot dogs within a sports facility. Customers place their orders and take delivery of the prepared food and beverages at the seller's site in the sports facility. XYZ provides no seating that it controls. Customers generally take the food and beverage to their seats and consume the items while watching the sports event. XYZ will also prepare hot dogs and soft drinks at its food bar and use its employees or agents to sell these products to customers in the stands while the sports event is in progress. All of the sales of food and beverages by XYZ are subject to the special tax. XYZ's business operation meets the definition of "restaurant." XYZ has set aside space that it controls for the purpose of preparing food and beverages for immediate consumption for sale to the public.

(g) DEF operates a cafe within ABC's grocery store, for the sale of food or beverages for immediate consumption. ABC is a separate entity from DEF, and it leases the space for the cafe to DEF. Sales of food and beverages by ABC are exempt from the special stadium tax, but sales from the cafe by DEF are subject to that tax.

[Statutory Authority: RCW 82.32.300 and 82.14.080. 96-16-086, § 458-20-12401, filed 8/7/96, effective 9/7/96.]

WAC 458-20-126 Sales of motor vehicle fuel, special fuels, and nonpollutant fuel. (1) Motor vehicle fuel and special fuels. "Motor vehicle fuel" as used in this section means gasoline or any other inflammable gas or liquid the chief use of which is as fuel for the propulsion of motor vehicles. (See RCW 82.36.010.) "Special fuels" as used in this section means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles, except that it does not include motor vehicle fuel as defined above. (See RCW 82.38.020.) Diesel fuel is an example of a special fuel.

(a) The retail sales tax does not apply to the following:

(i) Sales of motor vehicle fuel on which the tax of chapter 82.36 RCW is paid.

(ii) Sales of special fuel when sold for use as fuel in propelling motor vehicles upon the public highways in this state and on which the special fuel tax of chapter 82.38 RCW is paid. Payment of the annual fee in lieu of the special fuel tax on natural gas and propane, RCW 82.38.075, constitutes payment of the special fuel tax imposed by chapter 82.38 RCW.

(b) The retail sales tax or use tax applies to sales and uses of motor vehicle fuel or special fuel when the taxes of chapter 82.36 or 82.38 RCW have not been paid or have been refunded.

(c) By reason of special exemptions contained in RCW 82.08.0255 the retail sales tax does not apply to sales of special fuel delivered in this state which is later transported and used outside this state by persons engaged in interstate commerce. This exemption also applies to persons hauling their own goods in interstate commerce.

Exemption certificate. Persons selling special fuel to interstate carriers which comes within the foregoing exemption may obtain an exemption certificate from the purchaser in substantially the following form in order to document the entitlement to the exemption.

Certificate of Special Fuel Sales
to Interstate Carriers

The undersigned hereby certifies that all the special fuel purchased from the listed dealer will be purchased for transportation and use outside of Washington by them as an interstate carrier and is entitled to the exemption of RCW 82.08.0255 or will be used on highways in Washington and the special fuel tax of chapter 82.38 RCW will be paid.

Dealer: . . . .
Carrier: . . . .
Authorized Carrier Signature: . . . .
Title or office: . . . .
Date: . . . .

The above certificate must be renewed at intervals not to exceed four years.

(d) Neither the retail sales tax nor use tax applies to sales or uses of motor vehicle fuel or special fuel purchased by private, nonprofit transportation providers certified under chapter 81.66 RCW, who are entitled to fuel tax refund or exemption under chapter 82.36 or 82.38 RCW.

(e) Persons selling special fuels on which the tax of chapter 82.38 RCW is not collected, except special fuel sold for use outside this state by persons engaged in interstate commerce, or fuel sold to exempt certified transportation providers, are required to collect the retail sales tax on retail sales thereof.

It is the intent of the law that all vehicle fuels, except special fuel purchased in this state for use outside this state by interstate commerce carriers, or fuels sold to exempt certified transportation providers will be subject to either the vehicle fuel taxes (chapter 82.36 or 82.38 RCW) or else the sales or use taxes of the Revenue Act (chapter 82.08 or 82.12 RCW). The fuel taxes apply to sales of fuel for on-highway consumption. The sales or use tax applies to fuel sold for consumption off the highways (e.g., boat fuel, or fuel for farm machinery, construction equipment, etc.).

(f) When persons purchase motor vehicle fuel or special fuel upon which either the fuel taxes of chapter 82.36 or 82.38 RCW have been paid, but the fuel is consumed off the highways, such persons are entitled to a refund of these taxes under the procedures of chapter 82.36 or 82.38 RCW. However, persons receiving refund of vehicle fuel taxes because of their off-highway consumption of the fuel in this state are subject to payment of the use tax of chapter 82.12 RCW on the value of the fuel. The director of the department of licensing administers the fuel tax refund provisions and will deduct from the amount of any such refunds the amount of use tax due.

(2) **Nonpollutant fuel.** RCW 82.38.075 provides for payment of an annual fee by users of nonpollutant fuel (natural gas and liquified petroleum gas, commonly called propane) in lieu of motor vehicle fuel tax which would otherwise be due. This fee is paid at the time of original and annual renewals of vehicle license registrations. Sales or use tax applies to sales of nonpollutant fuel and any other motor fuel only if the taxes of chapter 82.36 or 82.38 RCW are not paid. The "in lieu of" tax is merely an alternative method of paying tax due under chapter 82.38 RCW. Thus, when it is paid by a user, the user has no liability for sales or use tax on purchases of nonpollutant fuel for use in the motor vehicle.

(a) Fuel dealers should not collect sales or use tax on any nonpollutant fuel sold to Washington licensed vehicle owners for "on-highway" use when the vehicle displays a currently valid decal or other identifying device issued by the department of licensing.

(b) Nonpollutant fuels purchased for "off-highway" use, however, are not subject to the taxes of chapter 82.36 or 82.38 RCW and therefore the sales tax applies to dealer sales of fuel for "off-highway" use. If the nonpollutant fuel is pumped into the vehicle fuel tank, then the special fuel tax applies. However, this tax should have already been paid by Washington state licensed vehicle owners directly under the "in lieu of" provisions of RCW 82.38.075.

(c) The department recognizes that certain licensed special fuel users may find it more practical to accept deliveries of nonpollutant fuels into a bulk storage facility rather than into the fuel tanks of motor vehicles. Persons selling nonpollutant fuels to such bulk purchasers may obtain from the purchaser an exemption certificate in order to document entitlement to the exemption. The certificate will certify the amount of fuel which will be consumed by the buyer in propelling motor vehicles upon the highways of this state. This procedure is limited, however, to persons duly registered with the department. The registration number given on the certificate ordinarily will be sufficient evidence that the purchaser is properly registered. The certificate shall be in substantially the following form:

Certificate for Purchase of Nonpollutant Special Fuels

Seller: . . . .
Buyer: . . . .
Buyer's DOR reporting No.: . . . .
Buyer's Special Fuel User's License No.: . . . .

The undersigned hereby certifies that on this date he purchased (gallons/cubic feet) of nonpollutant fuel from the above named seller, and that delivery of the products so purchased was not made into the fuel tanks of a motor vehicle. The undersigned further certifies that of the purchase herein described:

1. (gallons/cubic feet) will be used to propel motor vehicles upon the highways of the state of Washington and that the "in lieu of" special fuel taxes of chapter 82.38 RCW have been paid.

2. (gallons/cubic feet) will be used in some other manner and that the retail sales tax is applicable to the purchaser of this quantity.

Date . . . .
Name

. . . .
Office or Title

(d) Where it is not possible for a special fuel user licensee to determine at the time of purchase the exact proportion of the products purchased which will be consumed in propelling motor vehicles upon the highways of this state, the amount of such off-highway use special fuel may be estimated. In the event such an estimate is used, the purchaser must make an adjustment on a following excise tax return and pay use tax upon any portion of the fuel used for off-highway purposes upon which the retail sales tax was not paid.

(e) Certificates should be retained by the seller, as a part of his permanent records, and will be acceptable evidence of sales tax exemption upon sales of nonpollutant special fuel delivered in the manner described. When nonpollutant fuel is delivered by the seller into the bulk storage facilities of a special fuel user licensee or is otherwise sold to such buyers under conditions whereby it is not delivered into the fuel tanks of motor vehicles, it will be presumed that the entire amount of the products so sold will be subject to the retail sales tax unless the seller has obtained the certificate.

(f) Owners of out-of-state licensed vehicles who purchase propane and other nonpollutant fuel normally will not have paid the motor vehicle fuel tax or the special fuel tax. Thus, where the taxes of chapters 82.36 and 82.38 RCW have not been paid they owe sales tax on their purchases of this fuel for both on-highway or off-highway use.

(g) Accordingly, the following guidelines will prevail:

(i) All sales of nonpollutant fuel not placed in vehicle fuel tanks by the seller are subject to sales tax which the seller must collect and remit unless a certificate as described above is obtained from the purchaser.

(ii) All sales of motor vehicle fuel, special fuel, or nonpollutant fuel of any kind for "on-highway" use are subject to the fuel taxes of chapter 82.36 or 82.38 RCW.

(iii) The tax due on nonpollutant fuel for "on-highway" use (including propane) under chapter 82.38 RCW will already have been paid by Washington licensed vehicle owners so the seller need not collect additional state tax of any kind.

(iv) Non-Washington licensed vehicle owners who have not paid tax under either chapter 82.36 or 82.38 RCW must pay sales tax on all purchases of nonpollutant fuel (including propane) whether for on-highway or off-highway use.

[Statutory Authority: RCW 82.32.300. 91-15-022, § 458-20-126, filed 7/11/91, effective 8/11/91; 83-17-099 (Order ET 83-6), § 458-20-126, filed 8/23/83; 83-07-034 (Order ET 83-17), § 458-20-126, filed 3/15/83; Order ET 73-1, § 458-20-126, filed 11/2/73; Order ET 70-3, § 458-20-126 (Rule 126), filed 5/29/70, effective 7/1/70.]

WAC 458-20-127 Magazines and periodicals. (1) **Retail sales tax.** Sales of magazines and periodicals to the reading public by persons operating news stands, book stores, cigar stores, drug stores and the like are sales at retail and are subject to the retail sales tax. Sales to newsstands or stores which are sales for resale are not subject to the retail sales tax.

When magazines or periodicals are distributed to the final purchaser by a distributor who effects such distribution through organizers, captains, or others selling from house to house or upon the streets, the news company or distributor is the one responsible for the collection and payment of the retail sales tax.

Such news companies or distributors shall collect from those selling the magazines or periodicals the retail sales tax upon the gross retail selling price of all magazines and periodicals taken by such persons.

Registration certificates are not required for organizers, captains, or other persons selling magazines or other periodicals under such circumstances. Branch certificates will be issued to the news company or magazine distributor for each of the local stations operated by such company.

(2) Where subscriptions or renewals of subscriptions are mailed directly by purchasers to publishers outside the state, the guidelines contained in WAC 458-20-193B and 458-20-221 apply to the obligation of publishers to collect sales or use tax.

This rule does not apply to the sale of newspapers. The law expressly exempts the sale of newspapers from the retail sales tax. (RCW 82.08.0253.) See WAC 458-20-143 for the definition of "newspaper."

(3) **Use tax.** Where no retail sales tax is paid upon the purchase of, or subscription to, a magazine or periodical, the use tax is subsequently payable upon the use of the magazine or periodical in this state by the purchaser or subscriber.

[Statutory Authority: RCW 82.32.300. 89-21-001, § 458-20-127, filed 10/5/89, effective 11/5/89; 83-07-034 (Order ET 83-17), § 458-20-127, filed 3/15/83; Order ET 70-3, § 458-20-127 (Rule 127), filed 5/29/70, effective 7/1/70.]

WAC 458-20-128 Real estate brokers and salesmen.

Definitions

As used herein:

The terms "real estate broker" and "real estate salesman" mean, respectively, a person licensed as such under the provisions of chapter 18.85 RCW.

Business and Occupation Tax

A real estate broker is engaged in business as an independent contractor and is taxable under the service and other activities classification upon the gross income of the business.

The measure of the tax on real estate commissions earned by the real estate broker shall be the gross commission earned by the particular real estate brokerage office including that portion of the commission paid to salesmen or associate brokers in the same office on a particular transaction: *Provided, however,* That where a real estate commission is divided between an originating brokerage office and a cooperating brokerage office on a particular transaction, each brokerage office shall pay the tax only upon their respective shares of said commission; and provided further, that where the brokerage office has paid the tax as provided herein, salesmen or associated brokers within the same brokerage office shall not be required to pay a similar tax upon the same transaction. RCW 82.04.255.

Thus, with the exception of cooperating brokerage offices, no deduction is allowed for commissions, fees or salaries paid by a broker to another broker or salesman, nor for other expenses of doing business.

The term "gross income of the business" includes gross income from commissions, fees and other emoluments however designated which the agent receives or becomes entitled to receive, but does not include amounts held in trust for others. (See also WAC 458-20-111, advances and reimbursements.) No deductions are allowed for dues, charges, and fees paid to multiple listing associations.

Real estate salesmen are presumed to be independent contractors. They are subject to the service and other activities classification of the business and occupation tax on gross income from real estate commissions and fees earned where the brokerage office at which the real estate salesman's license is posted has not paid the tax on the gross commission.

[Statutory Authority: RCW 82.32.300. 83-07-034 (Order ET 83-17), § 458-20-128, filed 3/15/83; Order ET 70-3, § 458-20-128 (Rule 128), filed 5/29/70, effective 7/1/70.]

WAC 458-20-129 Gasoline service stations.

Gasoline Service Stations
Business and Occupation Tax

Retailing. Persons operating gasoline service stations are taxable under the retailing classification upon the gross proceeds of sales of tangible personal property, from services rendered with respect to the cleaning or repair of such property, gross income from towing and gross income from automobile parking and storage. On computing tax there may be deducted from gross proceeds of sales the amount of state and federal gallonage tax on motor vehicle fuel included therein.

Retail Sales Tax

The retail sales tax applies upon the sale of tangible personal property (except vehicle fuel) on which the tax of either chapters 82.36 or 82.38 RCW is paid and upon charges for towing, automobile parking and storage and the sale of services rendered with respect to the cleaning or repairing of tangible personal property.

Thus the tax applies upon the sale of tires, accessories, etc., upon sales of labor and materials in respect to lubricating, greasing, tire changing, etc., and also upon washing, battery charging and repair work. (See also WAC 458-20-126.)

[Order ET 73-1, § 458-20-129, filed 11/2/73; Order ET 70-3, § 458-20-129 (Rule 129), filed 5/29/70, effective 7/1/70.]

WAC 458-20-130 Sales of real property, standing timber, minerals, natural resources. (1) **Business and occupation tax-retail sales tax.**

(a) Amounts derived from the sale of real estate are not subject to tax under the business and occupation tax or the retail sales tax. However, no exemption is allowed where a mere license to use real estate is granted (see WAC 458-20-118). Further, no exemption is allowed for commissions received in connection with sales of real estate nor for interest received by persons engaged in the business of selling real estate on time or installments contracts. RCW 82.04.390.

(b) Sales of standing timber, minerals in place, and other natural resources in place are sales of real estate, and are not subject to tax under the business and occupation tax or the retail sales tax.

(c) Timber, minerals, and other natural resources, after being severed from the real estate, lose their identity as real property, and sales thereof after severance are subject to the provisions of the business and occupation tax and the retail sales tax.

(d) Any person who cuts timber, or who mines or quarries minerals, or who takes other natural resources is subject to tax as an extractor under the business and occupation tax. (See WAC 458-20-135.)

(2) **Real estate excise tax.**

(a) Sales of real property for a valuable consideration are subject to the real estate excise tax. See chapter 82.45 RCW and chapter 458-61 WAC.

(b) Effective May 18, 1987, the conveyance tax was repealed and the real estate excise tax was increased proportionately.

[Statutory Authority: RCW 82.32.300. 87-19-007 (Order ET 87-5), § 458-20-130, filed 9/8/87; 83-07-034 (Order ET 83-17), § 458-20-130, filed 3/15/83; Order ET 70-3, § 458-20-130 (Rule 130), filed 5/29/70, effective 7/1/70.]

WAC 458-20-131 Merchandising games, games of chance and concessionaires.

Business and Occupation Tax-Retail Sales Tax

Merchandising games for stimulating trade. Persons conducting dice games and other games of chance which determine the amount the customer will pay for merchandise that he desires to purchase are taxable as follows: Under the retailing classification with respect to the retail selling price of all merchandise sold to or won by customers, and under the service and other business activities classification upon the "increases" arising from the conduct of such games. As used herein the word "increases" means the winnings, gains or accumulations accruing daily over and above the retail selling price of all merchandise sold or won in any one day through such games. This method of reporting tax liability will be allowed only in those cases where the operator of the games, by proper accounting methods, accurately segregates the receipts accruing from such games. Where no such segregation is made, such persons are taxable under the retailing classification with respect to the entire gross receipts from such games.

Punchboards which offer prizes of merchandise are considered as merchandising games, with the prizes being sold for the gross proceeds from the boards, and the gross income from such boards should therefore be reported under the retailing classification. When such punchboards are consigned to a location under an arrangement for a split of the gross income between the owner of the boards and the person operating the location, the owner of the boards shall be responsible for reporting gross receipts therefrom under the retailing classification. Where the owner of the boards has not paid the tax due, however, the department of revenue may proceed directly against the operator of the location for payment of the tax due.

Games of chance other than merchandising games. Persons conducting dice games, card games, bingo or keno games, "pools," or similar games of chance wherein players participate in such games with the opportunity of winning a certain sum of money, scrip or trade checks or a pool which accumulates, are taxable under the service and other business activities classification upon all "increases" arising from the conduct of such games. The word "increases" as used herein means the winnings, gains, or accumulations accruing from any one game over and above the amount put into the game by the operator; and, where redeemable scrip, trade checks, or hickies are issued to winning players, the word "increases" means the excess of the operator's cash income from the game over the amount of redeemable scrip, trade checks, or hickies issued.

It is essential to the classification of such revenues as income from service and other business activities that they be segregated properly from income derived from merchandising games. When the income from games of chance and amusement is not segregated properly from income from merchandising games, the income derived from both types of games will be taxable as income derived from sales at retail.

Punchboards which offer cash prizes are games of chance rather than merchandising games, and the "increases" (as defined above) therefrom should be reported under the service and other business activities classification. When such punchboards are consigned to a location under an arrangement for a split of the gross increases between the owner of the boards and the person operating the location, the owner of the boards shall be responsible for reporting gross increases therefrom under the service and other business activities classification. Where the owner of the boards has not paid the tax due, however, the department may proceed directly against the operator of the location for payment of the tax due.

Each type of game is considered as a separate, taxable transaction. Thus, losses on one type of game may not be deducted from winnings on another type of game.

Betting. "Increases" from bets on events of public interest, such as sporting events, election results, etc., are taxable under the service and other business activities classification, and should be reported as income of the taxing period in which the winner is determined.

Concessionaires. Persons conducting games of chance at fairs, carnivals, expositions, bazaars, picnics and other similar places in which merchandise is delivered to players in the form of prizes and awards under certain conditions are taxable under the service and other business activities classification upon the gross income received from the operation of such games. The predominant characteristics of the business in such cases is chance and amusement, and the transfers of merchandise in the form of prizes and awards is relatively small and does not constitute sales of such merchandise.

Raffles. Persons regularly conducting raffles are subject to the business and occupation tax under the classification service and other activities on gross income from the sale of chances.

Redemption of scrip or trade checks. When scrip or trade checks are redeemed in exchange for merchandise or for services which are defined by the law as retail sales, the value of the scrip, etc., so redeemed should be reported as income under the retailing classification. When scrip or trade checks are redeemed in exchange for services which are not defined by law as retail sales, e.g., haircuts, manicures, etc., the value of the scrip, etc., so redeemed should be reported as income under the service and other business activities classification.

Miscellaneous. Revenues of card rooms, etc., from all activities other than those which are reportable under the retailing classification, must be reported under the service and other business activities classification. Such revenues include income from the furnishing of playing facilities to card players, etc.

Retail Sales Tax

Persons making retail sales of tangible personal property through merchandising games are liable for the payment of the retail sales tax upon the full retail selling price of the merchandise sold to or won by the customer and whether the tax was actually collected from the customer or not. The retail sales tax does not apply to income from games of chance or amusement which are not merchandising games if that income is properly segregated upon the taxpayer's books and records from the income from merchandise sales or merchandising games. Where the income is not so segregated, it is subject to the retail sales tax.

Merchandising games for stimulating trade. Persons conducting dice games and other games of chance which determine the amount that the customer will pay for merchandise that he desires to purchase should collect the retail sales tax from the customer, measured by the amount that the customer actually pays for the merchandise as a result of the outcome of the game.

Punchboards which offer prizes of merchandise are considered as merchandising games, with the prizes being sold for the gross proceeds from the boards, and the retail sales tax is therefore payable on those gross proceeds. For practical reasons, the retail sales tax may be absorbed by the operator, at his option, but the latter will be liable nevertheless to the department of revenue for the full tax on the gross income from each punchboard. When such punchboards are consigned to a location under an arrangement for a split of the gross income between the owner of the boards and the person operating the location, the owner of the boards shall be responsible for collecting and reporting to the department the retail sales tax measured by the gross receipts from such boards. Where the owner of the boards has not paid the tax due, however, the department may proceed directly against the operator of the location for the full amount of sales tax measured by the gross receipts from such boards.

When scrip or trade checks are given, the sales tax should be collected when the scrip or trade checks are exchanged for merchandise or for services that are defined by the law as retail sales.

For example:

(a) **Merchandising games.** Dice are rolled for a 15¢ cigar. In the event that the player wins, a cigar is given to the player free of charge; in the event that the house wins, the player receives a cigar but pays 30¢.

When the player wins, no tax is payable. When the player loses and pays 30¢ for a single cigar, the retail sales tax applies to the latter amount.

(b) **Punchboards.** The price of each punch is 25¢. The operator may collect the sales tax on each punch, or at his option, may absorb the tax, but he will be required in either event to remit to the department the retail sales tax measured by the gross income from each board.

Sales to persons who conduct merchandising games of the merchandise delivered to persons, such as confections, tobacco, jewelry, radios, etc., are sales for resale, and, accordingly, the retail sales tax should not be collected thereon by the seller. When merchandise punchboards are sold outright to an operator, together with merchandise that will be offered as prizes, such sales are considered sales for resale of the boards and of the merchandise by the dealer to the operator. The sale of the board is considered incidental to the sale of the merchandise. When merchandise punchboards are sold outright without the merchandise that will be offered as prizes, such sales are sales at retail and are taxable as such. When money punchboards are sold outright, such sales are sales at retail and are taxable as such.

(c) **Card games.** Persons conducting card games in card rooms, cigar stores, etc., wherein the players participating receive scrip or trade checks which entitle them to the value thereof in merchandise or services shall collect the retail sales tax when such scrip, trade checks, or hickies are exchanged for merchandise or for services defined by the law as retail sales.

Concessionaires at fairs, carnivals, etc. Persons conducting games of chance at fairs, carnivals, expositions, bazaars, picnics, or other similar places and delivering merchandise to players in the form of prizes and awards under certain conditions are not making sales of tangible personal property at retail upon which they are required to collect the retail sales tax. The predominant characteristic of the business in such cases is chance and amusement, and the transfers of merchandise in the form of prizes and awards are relatively small and do not constitute sales of such merchandise. Sales to such persons of the merchandise delivered to the players in the form of prizes and awards are sales at retail upon which the retail sales tax must be collected by the seller. Sales to such persons of devices and other equipment used in the conduct of such games are also retail sales upon which the tax must be collected by the seller.

Raffles. Persons conducting raffles are not deemed to be making retail sales of the merchandise given away. Retail sales tax or use tax must be paid by the operator upon the acquisition of such property. Until the tax has been paid by one party, however, the department may hold both the operator and the winner liable for the tax.

[Statutory Authority: RCW 82.32.300. 83-07-034 (Order ET 83-17), § 458-20-131, filed 3/15/83; Order ET 70-3, § 458-20-131 (Rule 131), filed 5/29/70, effective 7/1/70.]

WAC 458-20-132 Automobile dealers/demonstrator and executive vehicles. (1) Introduction. This section accounts for the unique practices of the retail automobile dealer's industry and reflects administrative notice of the customs of this trade. The tax reporting formulas explained in this rule represent a compromise of tax liabilities and offsetting deductions. It recognizes that demonstrators and vehicles used by executives or persons associated with a dealer are actually used for limited periods of time without significantly affecting their marketability or retail selling value, and that such used vehicles have a high trade-in value when returned to inventory for sale.

(2) Definitions. The following definitions apply to this section.

(a) The terms "demonstration" and "demonstrator" mean the use of automobiles provided by dealers to their sales staff, without charge, for any personal or business reason other than (or in addition to) the mere display of such vehicles to prospective purchasers.

(b) The term "display" means the showing for sale of vehicles to prospective purchasers, at or near the dealer's premises, including the short term test driving, operating, and examining by prospective purchasers.

(c) The term "executive use vehicle" means any vehicle from sales inventory, used by any person associated with the automobile dealership for personal driving, other than for demonstration or display purposes as defined above, when such person does not have a recent model vehicle registered and licensed in that person's own name on which retail sales tax was paid.

(d) The term "recent model vehicle" refers to a car of the current model year or either of the two preceding model years.

(e) The terms "purchase price" and "total cost" mean the amount charged to the dealer for the purchase of a vehicle and includes any additional charges for accessories installed on the vehicle. If the vehicle was acquired through a trade-in by a customer, these terms then mean the trade-in value given to the customer by the dealer (with consideration of underallowances and overallowances) as well as any costs of refurbishing and repairs in preparing the vehicle for resale or use. These values will generally be the amounts shown as the vehicle cost within the dealer's inventory records.

(f) The phrase "pickup truck" refers only to trucks having a commercial pickup body rated at three-quarter ton capacity or less.

(3) Business and occupation tax. Automobile dealers are taxable under the retailing classification upon the sale or lease of automobiles to their employees or other representatives for personal use, including demonstration. The business and occupation tax does not apply upon the transfer of vehicles to employees or other representatives for their personal use, including demonstration where no sale occurs.

(4) Retail sales tax. The retail sales tax applies upon the sale or lease of automobiles, parts, and accessories by dealers to their employees or other representatives for the personal use by such persons. The retail sales tax does not apply to the display of automobiles where no sale takes place.

(5) Use tax. The use tax does not apply to the display of new or used automobiles by dealers, their employees or other representatives. Neither does use tax apply upon the personal use or demonstration of automobiles which have been sold or leased to dealers' employees or other representatives and upon which the retail sales tax has been paid. Also, use tax does not apply upon demonstrator vehicles if no such vehicles are actually used. However, where an automobile dealer purchases a passenger car or pickup truck without paying a retail sales tax and uses such car or truck for personal use or demonstration purposes, the use tax applies even if such personal car or demonstrator may later be sold by the dealer.

(6) Computation of use tax. For practical purposes, automobile dealers may elect to compute the use tax upon the use of demonstrators by sales staff on either a "one per one hundred vehicles sold" basis or on an "actual number of demonstrators used" basis. Use of the one per one hundred vehicles sold method will satisfy the use tax liability for personal or business use of demonstrators by sales staff employed by a new car dealer. However, the one per one hundred vehicles sold method will not satisfy the use tax liability for the personal or business use of vehicles by persons other than sales staff employed by the dealership.

(a) One per one hundred demonstrator reporting basis. The use of demonstrators is subject to the use tax on the basis of one demonstrator for each one hundred new automobiles and pickup trucks, or fractional part of such number, of all makes or models sold at retail including lease transactions during a calendar year. The use tax on each such demonstrator is measured by twenty-five percent of the average selling price, including dealer preparation, transportation, and factory or dealer installed accessories, of all makes and models of new passenger cars and new pickup trucks sold during the preceding calendar year divided by the number of such units sold: *Provided,* That the first such vehicle reported during any calendar year shall be subject to use tax measured by the full average retail selling price.

(i) The average retail selling price is computed by dividing the total retail sales of new passenger cars and trucks in the preceding year by the total units sold in the preceding year. Thus, for example, a dealer with $3,000,000.00 in gross sales for the previous year, who sold 250 units that year derives an average selling price of $12,000.00. The very first demonstrator use in the current year will be $12,000.00 multiplied by the prevailing use tax rate. All subsequent demonstrators reported in the current year, based upon the formula of one demonstrator for each one hundred units sold, will be $3,000.00 multiplied by the prevailing use tax rate.

(ii) The use tax is paid as of the date of the first sale in any calendar year and subsequently upon the sale of the one hundred and first automobile or pickup truck. If a dealer sold 340 units in the current year, use tax would be due on four units (the first at one hundred percent of the average retail selling price of all new vehicles sold in the preceding year and the remaining three at twenty-five percent of the previous year's average selling price of new vehicles).

(b) Actual demonstrator reporting basis. Dealers who decide to report use tax on demonstrators on an actual basis are required to report use tax on each vehicle assigned to demonstrator use. The value is computed in the same manner as under the one per one hundred basis. The first vehicle in the current year which is used for demonstrator use is taxable on the full average selling price of all new vehicles sold in the preceding year. Additional vehicles during the year which are put to use as demonstrators are taxable at twenty-five percent of the average selling price of new vehicles sold in the preceding year.

(c) The above method of computation applies only in respect to use by sales staff of demonstrator vehicles operated under dealer plates issued to the dealership. Vehicles which are required to be licensed other than to the dealership are presumed to be used substantially for purposes other than demonstration and are subject to the use tax measured by the actual value (purchase price) of such vehicles.

(d) Change in reporting method. When an automobile dealer has elected to report the use tax under the "one per one hundred basis," or upon the actual number of demonstrators used, it will not be permitted to change the manner of reporting without the written consent of the department of revenue.

Dealers are required to provide reasonably accurate records reflecting the use of dealer plates.

(7) Executive vehicles - personal use of vehicles by executives and persons associated with a dealer. When a dealer or a person associated with a dealer (firm executive, corporate officer, partner, or manager) does not have a recent model car registered and licensed in its own name and regularly uses either one or various new cars from inventory for personal driving (whether or not such cars are also used for demonstration purposes) the use tax applies to the value

of one such car for each two calendar years in addition to the tax which applies to demonstrator use by sales staff. The measure of the use tax is the same as the measure for the computation of use tax on subsequently used demonstrator vehicles, that is, twenty-five percent of the average selling price of all makes and models of new passenger cars and pickup trucks sold at retail during the preceding year.

(a) The dealer may not include within the executive car reporting method the use of a new vehicle which is not of the type or model of new vehicles authorized to be sold by the dealer's franchise agreement. The executive car reporting method applies only to vehicles removed from inventory for use by the executives. Vehicles purchased specifically for use by the executives are taxable on the purchase price of each vehicle.

(b) No use tax in addition to that outlined above will be due if members of the immediate family of the executive also use a vehicle from inventory which is not otherwise licensed or required to be licensed. "Immediate family" includes only the spouse and children of the executive who live in the same household as the executive.

(8) Vehicles used by automobile manufacturers or distributors. Automobile manufacturers or distributors will often assign vehicles to their employee representatives for demonstration purposes, sales solicitation and personal use in the state. It is common practice to replace these vehicles frequently so that several vehicles may be used by a company representative during the course of the year. Under these circumstances, the department of revenue will allow computation of the use tax based on the average selling price of all new cars sold in the preceding year multiplied by the maximum complement of cars of each model year in use at any time during the year. The tax is due at the start of the model year. No use tax is due on the usual turnover or replacement of cars within the model year.

(9) Vehicles loaned to nonprofit or other organizations. The use tax applies to the value of vehicles that are required to be licensed and are loaned or donated to civic, religious, nonprofit or other organizations. The use tax may be computed for loaned vehicles on a value of two percent per month multiplied by the purchase price of the vehicle. Such tax is in addition to the tax on the use of demonstrators as provided in this rule. Vehicles that are not required to be licensed which are used for the purpose of promoting or participating in an event such as a parade, pageant, convention, or other community activity are not subject to the use tax provided the dealer obtains a temporary letter of authority or a special plate in accordance with RCW 46.16.048.

(10) Service department vehicles. Vehicles removed from inventory and committed to use as service vehicles, parts trucks, or service department loaner cars are subject to use tax. Dealers will often use vehicles for this purpose for only short periods of time. In recognition of this, dealers may elect to report use tax on either the purchase price of the vehicle or on two percent per month of the purchase price for each month or any fraction thereof that the vehicle is being used as a service vehicle or loaner. If use tax is reported based on total purchase price rather than on the two percent method, a trade-in deduction is allowed if the vehicle is returned to inventory and concurrently another vehicle replaces this vehicle for use as a loaner or service vehicle. The trade-in value is the wholesale value and generally will be the value recorded by the dealer in the inventory records exclusive of any refurbishing costs at the time the vehicle is returned to inventory.

(11) Personal use of used vehicles. Used vehicle dealers who provide used cars for personal use to their sales staff or managers without charge are subject to use tax on one vehicle per year for each sales person or manager to whom a used vehicle is provided. The value for use tax reporting is the average selling price of all used vehicles sold in the preceding year multiplied by twenty-five percent. The use tax is due in the month in which the vehicle is first used for personal use. New vehicle dealers will also be taxable in this manner for used cars furnished to sales staff or managers, but only if no new cars are provided during the course of the year to the manager or sales person. If both new and used cars are provided by a new vehicle dealer to a manager or sales person, use tax liability is as provided in subsections (6) and (7) of this section.

Where used car dealers satisfy the criteria for executive car use (no current model vehicle registered in the user's name) they are deemed to be using one executive or personal use vehicle per calendar year. In such cases use tax must be reported under the same formula as for subsequently used new demonstrator cars, that is, measured by twenty-five percent of the average selling price of all used cars sold during the preceding calendar year. Use tax also is due on all vehicles that are capitalized for accounting purposes or removed from inventory and used for personal use. In such cases, the use tax measure is the purchase price of the vehicle. If the vehicle was acquired through a trade-in by a customer, the value will generally be that recorded by the dealer in the inventory records including any costs incurred in repairing or refurbishing the vehicle. Purchase of a new car by a used car dealer and used personally by the dealer or person associated with the dealer is subject to use tax measured by the purchase price of the vehicle.

(12) Examples. The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(a) Dealer A makes a specific charge each month to its sales person for the use of a vehicle. The sales person uses the vehicle for personal use as well as displaying the vehicle to potential customers. The dealer is required to report the gross charges under the retailing and retail sales tax classifications. No use tax is due on this vehicle.

(b) Dealer A assigns a vehicle from its new vehicle inventory for personal and business use to each of its new vehicle sales staff. No charge is made to the sales staff for the use of the vehicle. Dealer A is subject to use tax and may elect to report the tax on each vehicle assigned to the sales staff or may report on the "one per one hundred" method discussed above. Once a method is elected, the dealer may not change methods without approval from the department.

(c) Dealer A assigns a vehicle from its new vehicle inventory for personal use to its service manager. The service manager will use the vehicle for approximately 90 days when it will be replaced with another new vehicle. The service manager does not have a recent model car registered and licensed in his/her name. The dealer is subject to use tax on the vehicles assigned to the service manager. The tax will apply on only one vehicle every second year and will be measured by twenty-five percent of the average selling price of all new passenger cars and trucks sold in the previous year.

(d) Dealer A has the franchise to sell Chevrolets. Dealer A purchases a new Mercedes Benz for its personal use. The dealer attaches a "dealer plate" to this vehicle. Dealer A is subject to use tax on the purchase price of this vehicle. The dealer may not report use tax on the method authorized for reporting executive cars for this vehicle since the dealer is not an authorized dealer for this make of vehicle and the vehicle was not removed from the dealer's new vehicle inventory.

(e) Vehicle Manufacturer A has five employees who live and work from their homes in Washington. These employees call on dealers in Washington to resolve warranty disputes. Each employee is given a new vehicle at the start of the model year. The vehicle will be replaced every sixty days. Manufacturer A owes use tax on five vehicles at the start of the model year. No additional use tax will be due when these vehicles are replaced during the same model year. However, should a sixth employee be added during the course of the year, an additional vehicle will be subject to use tax.

(f) Dealer A uses a vehicle from inventory as a service truck. This vehicle is used to pick up parts from local suppliers, transportation for making emergency repairs on customer's vehicles, and similar activities. The dealer is liable for use tax on this vehicle. At its option, the dealer may report use tax on two percent per month of the purchase price of the vehicle or may report use tax on the full value of the vehicle at the time it is put to use.

(g) Dealer A uses a new vehicle from inventory for his /her own personal use. Dealer A's spouse also uses a new vehicle. Dealer A's son who lives in the same household will occasionally use a new vehicle. All of these vehicles are operated with dealer plates attached. Dealer A does not have a recent model car licensed in Washington. Dealer A is subject to use tax on one vehicle as an "executive" car every second year as provided above.

(h) Dealer A loans a vehicle to a civic organization for a thirty-day period. The dealer is unable to obtain a temporary letter of authority for use of the vehicle under RCW 46.16.048. The dealer is liable for use tax, but the dealer may report the use tax based on two percent of the purchase price of the vehicle per month as the measure of the tax. No use tax would be due if the dealer had obtained a letter of authority under RCW 46.16.048 for the use of the vehicle.

(i) Dealer A, who sells new and used vehicles, assigns a used vehicle to the used car sales manager for personal use. However, if the sales manager exceeds the sales goals for the preceding quarter, the manager will be assigned a new vehicle for personal use for the following quarter. The manager will generally exceed the sales goal at least once during the year. Since the manager uses both a new and used car from inventory during the course of a year, use tax will be computed based on twenty-five percent of the average selling price of all new cars and trucks sold in the preceding year. The use tax will be due on one such vehicle every second year.

(j) Dealer A, who sells new and used vehicles, regularly assigns a used vehicle from inventory to its service manager for personal use. This vehicle is replaced approximately every sixty days. Use tax is due on one vehicle every year measured by twenty-five percent of the average selling price of all used vehicles sold in the preceding year.

[Statutory Authority: RCW 82.32.300. 92-05-066, § 458-20-132, filed 2/18/92, effective 3/20/92; 86-09-002 (Order ET 86-5), § 458-20-132, filed 4/3/86; 83-07-034 (Order ET 83-17), § 458-20-132, filed 3/15/83; Order ET 70-3, § 458-20-132 (Rule 132), filed 5/29/70, effective 7/1/70.]

WAC 458-20-133 Frozen food lockers.

Business and Occupation Tax

Persons engaged in the business of renting frozen food lockers are taxable under the service and other business activities classification upon the gross income from rentals thereof.

When such persons also engage in the activities of curing, smoking, cutting or wrapping meat of and for consumers, or do any other act through which such meat is altered or improved, they become taxable under the retailing classification upon the gross charges made therefor.

Retail Sales Tax

The retail sales tax applies upon the charges made for curing, smoking, cutting or wrapping meat of and for consumers, or for any act through which such meat is altered or improved, and sellers are required to collect such tax from their customers.

The retail sales tax does not apply upon the charges made for the rental of frozen food lockers.

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[Order ET 70-3, § 458-20-133 (Rule 133), filed 5/29/70, effective 7/1/70.]

WAC 458-20-134 Commercial or industrial use. (1) "The term 'commercial or industrial use' means the following uses of products, including by-products, by the extractor or manufacturer thereof:

(a) Any use as a consumer; and

(b) The manufacturing of articles, substances or commodities." (RCW 82.04.130.)

(2) Following are examples of commercial or industrial use:

(a) The use of lumber by the manufacturer thereof to build a shed for its own use.

(b) The use of a motor truck by the manufacturer thereof as a service truck for itself.

(c) The use by a boat manufacturer of patterns, jigs and dies which it has manufactured.

(d) The use by a contractor building or improving a publicly owned road of crushed rock or pit run gravel which it has extracted.

(3) Business and occupation tax. Persons manufacturing or extracting tangible personal property for commercial or industrial use are subject to tax under the classifications manufacturing or extracting, as the case may be. The tax is measured by the value of the product manufactured or extracted and used. (See WAC 458-20-112 for definition and explanation of value of products.)

(4) Use tax. Persons manufacturing or extracting tangible personal property for commercial or industrial use are subject to use tax on the value of the articles used. (See WAC 458-20-178 for further explanation of the use tax and definition of value of the article used.)

(5) Exemptions. The following uses of articles produced for commercial or industrial use are expressly exempt of use tax.

(a) RCW 82.12.0263 exempts from the use tax the use of fuel by the extractor or manufacturer thereof when used directly in the operation of the particular extractive operation or manufacturing plant which produced or manufactured the same. (Example: The use of hog fuel to produce heat or power in the same plant which produced it.)

(b) Effective April 3, 1986, (chapter 231, Laws of 1986) property produced for use in manufacturing ferrosilicon which is subsequently used to make magnesium for sale is exempt of use tax if the primary purpose is to create a chemical reaction directly through contact with an ingredient of ferrosilicon.

(6) RCW 82.12.010 provides that in the case of articles manufactured for commercial or industrial use by manufacturers selling to the United States Department of Defense, the value of the articles used shall be determined according to the value of the ingredients of such articles, rather than the full value of the manufactured articles as is normally the case.

[Statutory Authority: RCW 82.32.300. 86-20-027 (Order 86-17), § 458-20-134, filed 9/23/86; 83-07-032 (Order ET 83-15), § 458-20-134, filed 3/15/83; Order ET 70-3, § 458-20-134 (Rule 134), filed 5/29/70, effective 7/1/70.]

WAC 458-20-135 Extracting natural products. The word "'extractor' means every person who, from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or for commercial or industrial use mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral or other natural resource product, or fells, cuts or takes timber, Christmas trees or other natural products, or takes fish, or takes, cultivates, or raises shellfish, or other sea or inland water foods or products. 'Extractor' does not include persons performing under contract the necessary labor or mechanical services for others or persons cultivating or raising fish entirely within confined rearing areas on the person's own land or on land in which the person has a present right of possession." (RCW 82.04.100.)

The following examples are illustrative of operations which are included within the extractive activity:

(1) Logging operations, including the bucking, yarding, and loading of timber or logs after felling, as well as the actual cutting or severance of trees. It includes other activities necessary and incidental to logging, such as logging road construction, slash burning, slashing, scarification, stream cleaning, miscellaneous cleaning, and trail work, where such activities are performed pursuant to a timber harvest operation: *Provided,* That persons performing such activities must identify in their business records the timber harvest operation of which their work is a part.

(2) Mining and quarrying operations, including the activities incidental to the preparation of the products for market, such as screening, sorting, washing, crushing, etc.

(3) Fishing operations, including the taking of any fish, or the taking, cultivating, or raising of shellfish, or other sea or inland water foods or products (whether on publicly or privately owned beds, and whether planted and cultivated or not) for sale or commercial use. It includes the removal of the meat from the shell, and the cleaning and icing of fish or sea products by the person catching or taking them. It does not include cultivating or raising fish entirely within confined rearing areas under RCW 82.04.100.

Business and Occupation Tax

Extracting-local sales. Persons who extract products in this state and sell the same at retail in this state are subject to the business and occupation tax under the classification retailing and those who sell such products at wholesale in this state are taxable under the classification wholesaling-all others. Persons taxable under the classification retailing and wholesaling-all others are not taxable under the classification extracting with respect to the extracting of products so sold within this state.

Extracting-interstate or foreign sales. Persons who extract products in this state and sell the same in interstate or foreign commerce are taxable under the classification extracting upon the value of the products so sold, and are not taxable under retailing or wholesaling-all others in respect to such sales. (See also WAC 458-20-193.)

Extracting-for commercial use. Persons who extract products in this state and use the same as raw materials or ingredients of articles which they manufacture for sale are not taxable under extracting. (For tax liability of such persons on the sale of manufactured products see WAC 458-20-136, manufacturing, processing for hire, fabricating.)

Persons who extract products in this state for any other commercial or industrial use are taxable under extracting on the value of products extracted and so used. (See WAC 458-20-134 for definition of commercial or industrial use.)

Extracting for others. Persons performing under contract, either as prime or subcontractors, the necessary labor or mechanical services for others who are engaged in the business as extractors, are taxable under the extracting for hire classification of the business and occupation tax upon their gross income from such service. If the contract includes the hauling of the products extracted over public roads, such persons are also taxable under the motor transportation classification of the public utility tax upon that portion of their gross income properly attributable to such hauling. However, the hauling for hire of logs or other forest products exclusively upon private roads is taxable under the service classification of the business and occupation tax upon the gross income received from such hauling. (See WAC 458-20-180.)

Forest Excise Tax

In addition to all other taxes, a person engaged in business as a harvester of timber is subject to the forest excise tax levied by chapter 84.33 RCW. The word "harvester" means every person who from the persons own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use. It does not include persons performing under contract the necessary labor or mechanical services for a harvester.

See chapter 458-40 WAC for detailed provisions, procedures, and other definitions.

Retail Sales Tax

The retail sales tax applies upon all sales of extracted products made at retail by the extractor thereof, except as provided by WAC 458-20-244, Food products.

Use Tax

Persons constructing logging roads pursuant to timber harvest operations are subject to use tax on all materials used in such construction, except for materials on which sales tax was paid at the time of purchase.

[Statutory Authority: RCW 82.32.300. 86-09-058 (Order ET 86-7), § 458-20-135, filed 4/17/86; 83-07-034 (Order ET 83-17), § 458-20-135, filed 3/15/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-135, filed 6/27/78; Order ET 70-3, § 458-20-135 (Rule 135), filed 5/29/70, effective 7/1/70.]

WAC 458-20-136 Manufacturing, processing for hire, fabricating. (1) Definitions. "The term 'to manufacture' embraces all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different or useful substance or article of tangible personal property is produced for sale or commercial or industrial use, and shall include the production or fabrication of special made or custom made articles." (RCW 82.04.120.) It means the business of producing articles for sale, or for commercial or industrial use from raw materials or prepared materials by giving these matters new forms, qualities, properties, or combinations. It includes such activities as making, fabricating, processing, refining, mixing, slaughtering, packing, curing, aging, canning, etc. It includes also the preparing, packaging and freezing of fresh fruits, vegetables, fish, meats and other food products, the making of custom made suits, dresses, coats, awnings, blinds, boats, curtains, draperies, rugs, and tanks, and other articles constructed or made to order, and the curing of animal hides and food products.

(2) The word "manufacturer" means every person who, from the person's own materials or ingredients manufactures for sale, or for commercial or industrial use any articles, substance or commodity either directly, or by contracting with others for the necessary labor or mechanical services.

(3) However, a nonresident of the state of Washington who owns materials processed for hire in this state is not deemed to be a manufacturer because of such processing. Further, any owner of materials from which a nuclear fuel assembly is fabricated in this state by a processor for hire is also not deemed to be a manufacturer because of such processing.

(4) The term "to manufacture" does not include conditioning of seed for use in planting or activities which consist of cutting, grading, or ice glazing of seafood which has been cooked, frozen, or canned outside this state; the mere cleaning and freezing of whole fish; or the repairing and reconditioning of tangible personal property for others.

(5) The term "processing for hire" means the performance of labor and mechanical services upon materials belonging to others so that as a result a new, different or useful article of tangible personal property is produced for sale or commercial or industrial use. Thus, a processor for hire is any person who would be a manufacturer if that person were performing the labor and mechanical services upon that person's own materials.

(6) Persons who both manufacture and sell those products in this state must report their gross receipts under both the manufacturing and retailing or wholesaling classifications. A credit may then be taken against the selling tax in the amount of the manufacturing tax reported. (See also WAC 458-20-19301.)

(7) Manufacturing—interstate or foreign sales. Persons who manufacture products in this state and sell the same in interstate or foreign commerce are taxable under the classification manufacturing upon the value of the products so sold, and are not taxable under retailing or wholesaling-all others in respect to such sales. (See also WAC 458-20-193A.) A credit may be applicable if a gross receipts tax is paid on the selling activity to another state. (See also WAC 458-20-19301.)

(8) Business and occupation tax—hops. The business and occupation tax shall not apply to amounts received by hop growers or dealers for hops which are shipped outside the state of Washington for first use, if those hops have been processed into extract, pellets, or powder in this state. Amounts charged by a processor or 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 manufac-

turing on the value of the products so manufactured and used. (See WAC 458-20-134 for definition of commercial or industrial use.)

(12) Processing for hire. Persons processing for hire for consumers or for persons other than consumers are taxable under the processing for hire classification upon the total charge made therefor.

(13) Materials furnished in part by customer. In some instances, the persons furnishing the labor and mechanical services undertakes to produce a new article, substance, or commodity from materials or ingredients furnished in part by them and in part by the customer. In such instances, tax liability is as follows:

(a) The persons furnishing the labor and mechanical services will be presumed to be the manufacturer if the value of the materials or ingredients furnished by them is equal to or exceeds 20% of the total value of all materials or ingredients which become a part of the finished product.

(b) If the person furnishing the labor and mechanical services furnishes materials constituting less than 20% of the value of all of the materials which become a part of the finished product, such person will be presumed to be processing for hire. The person for whom the work is performed is the manufacturer in that situation, and will be taxable as such.

(c) In cases where the person furnishing the labor and mechanical services supplies, sells, or furnishes to the customer, before processing, 20% or more in value of the materials from which the finished product is made, the person furnishing the labor and mechanical services will be deemed to be the owner of the materials and taxable as a manufacturer.

(14) Retail sales tax. Persons taxable as engaging in the business of manufacturing and selling at retail any of the products manufactured and persons manufacturing, fabricating, or processing for hire tangible personal property for consumers shall collect the retail sales tax upon the total charge made to their customers.

(15) Sales to processors for hire and to manufacturers of articles of tangible personal property which do not become an ingredient or component part of a new article produced, or are not chemicals used in processing the same, are retail sales, and the retail sales tax must be collected thereon. (However, see WAC 458-20-113 and 458-20-134 for certain express exemptions.)

(16) Use tax. Manufacturers are taxable under the use tax upon the use of articles manufactured by them for their own use in this state. (See WAC 458-20-113 and 458-20-134 for certain express exemptions.)

(17) See WAC 458-20-244 for sales and use tax on food products.

[Statutory Authority: RCW 82.32.300. 88-21-014 (Order 88-7), § 458-20-136, filed 10/7/88; 86-20-027 (Order 86-17), § 458-20-136, filed 9/23/86; 83-07-032 (Order ET 83-15), § 458-20-136, filed 3/15/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-136, filed 6/27/78; Order ET 71-1, § 458-20-136, filed 7/22/71; Order ET 70-3, § 458-20-136 (Rule 136), filed 5/29/70, effective 7/1/70.]

WAC 458-20-137 Articles manufactured and installed. Persons engaged in the business of manufacturing in this state boilers, cabinets and mill work, cement blocks and pipes, conduits, heating equipment, lighting fixtures, sheet metal articles, venetian blinds, window drapes and shades, or other articles, and who also sell and install such articles after manufacture, are taxable as follows:

Business and Occupation Tax

Taxable under the retailing classification in respect to the total charge for selling and installing when for consumers.

Taxable under the wholesaling classification in respect to the total charge for selling and installing when for persons other than consumers.

Persons who manufacture articles in this state and install the same for customers in other states are taxable under the manufacturing classification on the value (at the place of manufacture) of the article so installed.

Persons who manufacture articles outside this state and install the same for consumers in this state are taxable under the retailing classification upon the total charge made therefor, irrespective of whether or not a segregation is made between the charge for the article manufactured and the charge for installing the same.

Retail Sales Tax

The retail sales tax applies upon both the sale and installation of such articles when made to or for consumers.

It is immaterial whether such articles remain personal property after installation or whether the same become a part of real property. In either event, the retail sales tax applies.

[Statutory Authority: RCW 82.32.300. 83-07-034 (Order ET 83-17), § 458-20-137, filed 3/15/83; Order ET 70-3, § 458-20-137 (Rule 137), filed 5/29/70, effective 7/1/70.]

WAC 458-20-138 Personal services rendered to others. The term "personal services," as used herein, refers generally to the activity of rendering services as distinct from making sales of tangible personal property or of services which have been defined in the law as "sales" or "sales at retail." (See RCW 82.04.040 and 82.04.050.)

The following are illustrative of persons performing personal services which are within the scope of this rule: Attorneys, doctors, dentists, architects, engineers, public accountants, public stenographers, barbers, beauty shop operators. (See also WAC 458-20-224.)

Business and Occupation Tax

Persons engaged in the business of rendering personal services to others are taxable under the service and other activities classification upon the gross income of such business.

There must be included within gross amounts reported for tax all fees for services rendered and all charges recovered for expenses incurred in connection therewith, such as transportation costs, hotel, restaurant, telephone and telegraph charges, etc.

Retail Sales Tax

The retail sales tax does not apply to the amount charged or received for the rendition of personal services to others, even though some tangible personal property in the form of materials and supplies is furnished or used in connection with such services.

Persons performing such services are consumers of all materials and supplies used in connection therewith and must pay the retail sales tax upon the purchase of such material and supplies.

If persons engaged in a personal service business sell articles of tangible personal property apart from the rendition of personal services, the retail sales tax must be collected upon the sale of such articles.

Revised June 1, 1970.

[Order ET 70-3, § 458-20-138 (Rule 138), filed 5/29/70, effective 7/1/70.]

WAC 458-20-139 Trade shops—Printing plate makers, typesetters, and trade binderies. (Note: This rule covers all the material previously included in WAC 458-20-139 and 458-20-146.)

The term "printing plate makers" includes, among others, photoengravers, electrotypers, stereotypers, and lithographic plate makers.

Business and Occupation Tax

Printing plate makers, typesetters and trade binderies (referred to in the trade as "trade shops") are primarily engaged in the business of altering or improving tangible personal property owned by them for sale or altering or improving tangible personal property owned by their customers. In either case the gross proceeds (including the value of any property exchanged by the customer in kind) from sales of, or services rendered to, plates, mats, engravings, type, etc., which are delivered in this state are taxable under retailing if the sale is to a "consumer" or wholesaling-all others if the sale is to one who will resell the property in the regular course of business without intervening "use." (See WAC 458-20-102.) Neither of these classifications is applicable however, if the article sold is delivered to an out-of-state customer at an out-of-state point or if an article is produced for commercial or industrial use (see WAC 458-20-134). In these cases tax is due under the manufacturing classification on the "value of products."

Retail Sales Tax

Sales to the printing industry and others of tangible personal property, or of services of altering or improving tangible personal property, by printing plate makers, typesetters, and trade binderies are sales at retail and subject to the retail sales tax unless the purchaser resells the article in the regular course of business without any intervening "use." For example, a trade shop must collect and account for the retail sales tax where a printing plate is sold to a printer who uses the plate to produce copy for a customer, even though he subsequently sells and delivers both the plate and the copy to the customer. In this situation the printer has made "intervening use" of the plate as a printing tool and is a "consumer" liable for payment of the retail sales tax to the trade shop.

Sales of plates, engravings, etc., to advertising agencies are retail sales and subject to the retail sales tax.

Sales by supply houses to trade shops of metal or other materials becoming a component part of an article produced for sale are not subject to the retail sales tax. As evidence of this, trade shops are required to furnish their vendors resale certificates in the usual form. On the other hand, sales to trade shops of items for use such as machinery, equipment, tools, and other articles or materials, including chemicals which are used in the production of plates, mats, engravings, type, etc., are retail sales subject to the retail sales tax.

Revised June 1, 1970.

[Order ET 70-3, § 458-20-139 (Rule 139), filed 5/29/70, effective 7/1/70.]

WAC 458-20-140 Photofinishers and photographers.

Business and Occupation Tax

Retailing. The gross proceeds of all sales taxable under the retail sales tax are taxable under the retailing classification.

Wholesaling. Taxable under the wholesaling classification upon the gross proceeds from sales for resale.

Manufacturing. Photofinishers who produce negatives, prints, or slides in Washington and who transfer or deliver such articles to points outside this state are subject to business tax under the manufacturing classification upon the value of products (see Rule 112) [WAC 458-20-112] and are not subject to tax under the retailing or wholesaling classification.

Processing for hire. Photofinishers who develop film for others and who make delivery of the film to points outside the state are subject to business tax under the processing for hire classification upon the total charge for the work done. It is immaterial that the customers are located outside the state or that the film was sent in from outside the state for processing.

Service. Taxable under the service and other activities classification upon gross income from sales to publishers of newspapers, magazines and other publications of the right to publish photographs.

Retail Sales Tax

Photofinishers. Photofinishers developing films and selling to consumers the prints made therefrom are making taxable retail sales, and the retail sales tax must be collected upon the full charge made to the customer. Photofinishers developing films and selling to other than consumers the prints made therefrom are sales for resale and not subject to the retail sales tax.

Sales by supply houses to photofinishers of paper upon which prints are made and of chemicals which are to be used in making the prints are sales for resale and are not taxable under the retail sales tax. Sales by supply houses to photofinishers of equipment and materials which do not become a component part of the prints are taxable under the retail sales tax.

Portrait and commercial photographers. Photographers who make negatives on special order and sell photographs to customers (other than dealers for resale) must collect the retail sales tax upon such sales.

Sales by supply houses to a portrait or commercial photographer of the paper upon which such photographs are printed are not taxable because such material becomes an ingredient of the final product sold for consumption. Sales of chemicals, such as developing agents, fixing solutions, etc., for use in such process are also nontaxable. However, sales to a photographer of materials and equipment used in processing, whenever such materials do not become a component part of the final photograph or are not chemicals used in processing are taxable under the retail sales tax.

Sales to consumers by photographers of pictures, frames, camera films and other articles are subject to the retail sales tax.

Sales by photographers of the right to publish photographs are primarily licenses to use and not sales of tangible personal property. Such sales are not subject to the retail sales tax.

Photographers tinting and coloring pictures or prints belonging to customers are making retail sales upon which the retail sales tax applies to the total charge made therefor. Sales of oil and water colors to a photographer for use in tinting and coloring pictures or prints belonging to a customer are sales for resale and are not subject to the retail sales tax.

[Statutory Authority: RCW 82.32.300. 83-07-034 (Order ET 83-17), § 458-20-140, filed 3/15/83; Order ET 70-3, § 458-20-140 (Rule 140), filed 5/29/70, effective 7/1/70.]

WAC 458-20-141 Duplicating industry and mailing bureaus. The phrase "duplicating industry" includes activities involving photostating, blueprinting, xeroxing, and other reproduction processes.

Business and Occupation Tax

Duplicators are taxable under the retailing classification upon the gross proceeds received from sales of photostats, blueprints, copies, etc., to consumers, whether the tangible personal property on which the work is recorded is owned by the duplicator or customer.

The wholesaling-all other classification applies to sales for resale in the regular course of the purchaser's business. The duplicator must secure a resale certificate in the usual form.

Neither of these classifications is applicable, however, if the article sold is delivered to an out-of-state customer at an out-of-state point or if an article is produced for commercial or industrial use (see WAC 458-20-134.) In these cases tax is due under the manufacturing classification on the "value of products."

Mailing bureaus mail material for the publishing industry and also mail folders, bulletins, form letters, advertising publications, flyers, and similar material for other customers. As part of these services, the bureaus also label, fold, enclose and seal. All of these activities come within the definition of "sale at retail" (RCW 82.04.050) as constituting "labor and services rendered in respect to . . . the . . . altering, imprinting or improving of tangible personal property of or for consumers."

The gross proceeds received by mailing bureaus from charges made to consumers, whether such charges are itemized or lump sum, are taxable under the retailing classification. The gross proceeds are taxable under the wholesaling-all other classification where charges (lump sum or itemized) are for tangible personal property resold as such to the purchaser or for services rendered to tangible personal property which becomes a component of an article for resale in the regular course of the purchaser's business. In either case mailing bureaus must secure resale certificates in the usual form.

Where a mailing bureau purchases stamps, government postals or stamped envelopes for a customer and the customer is charged therefor, the amount of the postage may be deducted from the measure of the business and occupation tax.

Retail Sales Tax

Sales by duplicators and mailing bureaus of tangible personal property (for example, photostats, blueprints, copies, mailing lists, "Dick" strips, etc.) and/or services rendered to tangible personal property of or for consumers are subject to the retail sales tax. Examples of persons purchasing as "consumers" are, among others, architects, engineers, and advertising agencies.

Where a mailing bureau purchases stamps, government postals or stamped envelopes for a customer and the customer is charged therefor, the amount of the postage may be deducted from the measure of the retail sales tax due.

Vendors selling tangible personal property to duplicators and mailing bureaus which will be resold, without any intervening use, are not required to collect the retail sales tax upon taking a resale certificate in the usual form.

On the other hand, vendors selling to duplicators and mailing bureaus, equipment, supplies or materials which do not become a component part of an article produced for sale, or selling items which are subjected to intervening use before resale, are making retail sales and must collect the retail sales tax.

[Statutory Authority: RCW 82.32.300. 83-07-034 (Order ET 83-17), § 458-20-141, filed 3/15/83; Order ET 70-3, § 458-20-141 (Rule 141), filed 5/29/70, effective 7/1/70.]

WAC 458-20-142 Photographic equipment and supplies. Sales of tangible personal property by a photographic supply house to persons who purchase such property for personal consumption or use are subject to the retail sales tax. Illustrative of such sales are the following:

Photographic films, paper, chemicals, frames, repair parts for cameras and other equipment sold to customers for personal use.

X-ray materials and equipment sold to doctors, dentists, hospitals, dental and x-ray laboratories.

Equipment sold to photofinishers, portrait and commercial photographers and photoengravers such as cameras, lenses, backgrounds, graduates, trays, utensils, lamps, retouching dope, leads, pencils and sundry materials which do not become an ingredient or component part of the pictures produced for sale.

Photographic films, chemicals and equipment sold to a newspaper publisher.

Photographic films sold to portrait and commercial photographers for use in their business.

Sales of tangible personal property by a photographic supply house to persons who resell such property in the regular course of business or consume the same in producing for sale a new article of which such property is an ingredient or component, or a chemical used in processing the same, are not subject to the retail sales tax. Illustrative of such sales are the following:

Photographic films, photo mailers, cameras, art-corners, etc., sold to a dealer or photographer for the purpose of resale;

Photographic paper, mounts, frames, adhesives, card board, oil and water colors, India ink sold to a photofinisher, portrait or commercial photographer or photoengraver to be used in producing photographic prints for sale.

Envelopes, paper and twine sold to a photographer or photofinisher for use in delivering photographic prints sold.

Chemicals, such as developing agents, fixing agents, etc., sold to a photofinisher, portrait or commercial photographer or photoengraver, which chemicals are used in producing pictures for sale.

The retail sales tax applies upon the charge made for repairing cameras and other equipment, the retouching or alteration of photographs or films, when done for consumers.

[Statutory Authority: RCW 82.32.300. 83-07-034 (Order ET 83-17), § 458-20-142, filed 3/15/83; Order ET 70-3, § 458-20-142 (Rule 142), filed 5/29/70, effective 7/1/70.]

WAC 458-20-143 Publishers of newspapers, magazines, periodicals.

Business and Occupation Tax

Printing and publishing. Publishers of newspapers, magazines and periodicals are taxable under the printing and publishing classification upon the gross income derived from the publishing business.

Persons who both print and publish books, music, circulars, etc., or any other item, are likewise taxable under the printing and publishing classification. However, persons, other than publishers of newspapers, magazines or periodicals, who publish such things and do not print the same, are taxable under either the wholesaling or retailing classification, measured by gross sales, and taxable under the service classification, measured by the gross income received from advertising.

Retail Sales Tax

Sales of newspapers, whether by publishers or others, are specifically exempt from the retail sales tax.

However, sales of magazines, periodicals, and all publications other than newspapers are subject to the retail sales tax when made to consumers.

"Newspaper" defined. The word "newspaper" means a publication of general circulation bearing a title, issued regularly at stated intervals of at least once every two weeks, and formed of printed paper sheets without substantial binding. It must be of general interest, containing information of current events. The word does not include publications devoted solely to a specialized field. It shall include school newspapers, regardless of the frequency of publication, where such newspapers are distributed regularly to a paid subscription list.

Sales to newspapers, magazine and periodical publishers of paper and printers ink which become a part of the publications sold, and sales by printers of printed publications to publishers for sale, are sales for resale and are not subject to the retail sales tax.

With respect to community newspapers which are distributed free of charge, where the publisher has a contract with his advertisers to distribute the newspaper to the subscriber in consideration for the payments made by the advertisers, it will be construed that the publisher sells the newspaper to the advertiser, and, therefore, the retail sales tax will not apply with respect to the charge made by the printer to the publisher for printing the newspaper or with respect to the purchase of ink and paper when the publisher prints his own newspaper.

Sales to newspaper, magazine or periodical publishers of equipment and of supplies and materials which do not become a part of the finished publication which is sold are subject to the retail sales tax. This includes, among others, sales of engravings, fuel, furniture, lubricants, machinery, negatives and plates used in offset printing, photographs, stationery and writing ink. Sales of engravings to publishers are subject to the retail sales tax unless the publisher resells such engravings without intervening use.

Sales to newspaper, magazine or periodical publishers of baseball bats, bicycles, dolls and other articles of tangible personal property which are to be distributed by the publisher as gifts, premiums or prizes are sales for consumption and subject to the retail sales tax.

So-called "sales" by authors and artists to publishers of the right to publish scripts, paintings, illustrations and cartoons are mere licenses to use, not sales of tangible personal property and, therefore, are not subject to the retail sales tax.

Use Tax

Publishers of newspapers, magazines and periodicals are subject to tax upon the value of articles printed or produced for use in conducting such business.

[Statutory Authority: RCW 82.32.300. 83-16-053 (Order ET 83-5), § 458-20-143, filed 8/1/83; 83-07-034 (Order ET 83-17), § 458-20-143, filed 3/15/83; Order ET 70-4, § 458-20-143 (Rule 143), filed 6/12/70, effective 7/12/70.]

WAC 458-20-144 Printing industry.

(Note: This rule contains the material previously included in WAC 458-20-145 which is not currently incorporated in WAC 458-20-141.)

Definition

The phrase "printing industry" includes letterpress, offset-lithography, and gravure processes as well as multigraph, mimeograph, autotyping, addressographing and similar activities.

Business and Occupation Tax

Printers are subject to the business and occupation tax under the printing and publishing classification upon the gross income of the business.

Retail Sales Tax

The printing or imprinting of advertising circulars, books, briefs, envelopes, folders, posters, racing forms, tickets, and other printed matter, whether upon special order or upon materials furnished either directly or indirectly by the customer is a retail sale and subject to the retail sales tax, providing the customer either consumes, or distributes such articles free of charge, and does not resell such articles in the regular course of business. The retail sales tax is computed upon the total charge for printing, and the printer may not deduct the cost of labor, author's alterations, or other service charges in performing the printing, even though such charges may be stated or shown separately on invoices.

Where stamped envelopes or government postals are purchased and printed for customers or where stamps are provided, the amount of the postage may be deducted from the total charge to the customer in determining the selling price for business tax and sales tax.

Sales of printed matter to advertising agencies who purchase for their own use or for the use of their clients, and not for resale in the regular course of business, are sales for consumption and subject to the retail sales tax.

Sales of tickets to theater owners, amusement operators, transportation companies and others are sales for consumption and subject to the retail sales tax. Such tickets are not resold by the theater owners or amusement proprietors as tangible personal property but are used merely as a receipt to the patrons for payment and as evidence of the right to admission or transportation.

Sales of school annuals and similar publications by printers to school districts, private schools or student organizations therein are subject to the retail sales tax.

Sales by printers of books, envelopes, folders, posters, racing forms, stationery, tickets and other printed matter to dealers for resale in the regular course of business are wholesale sales and are not subject to the retail sales tax.

Charges made by bookbinders or printers for imprinting, binding or rebinding of materials for consumers are subject to the retail sales tax.

Sales to printers of equipment, supplies and materials which do not become a component part or ingredient of the finished printed matter sold or which are put to "intervening use" before being resold are subject to the retail sales tax. This includes, among others, sales of fuel, furniture, lubricants, machinery, type, lead, slugs and mats.

Sales to printers of paper stock and ink which become a part of the printed matter sold are sales for resale and are not subject to retail sales tax.

Commissions and discounts. There is a general trade practice in the printing industry of making allowances to advertising agencies of a certain percentage of the gross charge made for printed matter ordered by the agency either in its own name or in the name of the advertiser. This allowance may be a "commission" or may be a "discount."

A "commission" paid by a seller constitutes an expense of doing business and is not deductible from the measure of tax under either business and occupation tax or retail sales tax. On the other hand, a "discount" is a deduction from an established selling price allowed to buyers, and a bona fide discount is deductible under both these classifications.

In order that there may be a definite understanding, printers, advertising agencies and advertisers are advised that tax liability in such cases is as follows:

(1) The allowance taken by an advertising agency will be deductible as a discount in the computation of the printer's liability only in the event that the printer bills the charge on a net basis; i.e., less the discount.

(2) Where the printer bills the gross charge to the agency, and the advertiser pays the sales tax measured by the gross charge, no deduction will be allowed, irrespective of the fact that in payment of the account the printer actually receives from the agency the net amount only; i.e., the gross billing, less the commission retained by the agency. In all cases the commission received is taxable to the agency.

Revised June 1, 1970.

[Order ET 70-4, § 458-20-144 (Rule 144), filed 6/12/70, effective 7/12/70.]

WAC 458-20-145 Local sales and use tax. RCW 82.14.030 authorizes counties and cities to levy local sales and use taxes, such local taxes to be collected along with the state tax. By RCW 82.14.045 cities and counties, after voter approval, are authorized to levy an additional tax to finance public transportation, which tax is also to be collected along with the state tax. (See WAC 458-20-237.)

As used herein the term "local tax" shall include either or both the local taxes and transportation sales and/or use taxes. The rule and examples in this administrative rule apply equally to all locally imposed sales and use taxes.

The total tax is to be reported and paid to the state. The local tax portion will be rebated to local governments according to information which retailers show on tax returns. If a business is such that a local tax will be collected for more than one taxing jurisdiction, it is necessary to keep a record of retail sales taxable to each such county or city. Vendors are responsible for determining the appropriate tax rate for each locality in which sales are made and for collecting from their purchasers the correct amount of tax due upon each sale.

"Place of sale" for purposes of local sales tax:

Rule I. Retailers of goods and merchandise: The sale occurs at the retail outlet at which or from which delivery is made to the consumer.

Rule II. Retailers of labor and services (e.g., construction contractors, repairmen, painters, plumbers, laundries, earth movers, fumigators, house wreckers or movers, tow truck operators, hotels, motels, tourist courts, trailer camps, amusement and recreation businesses listed in WAC 458-20-183; abstract, title insurance, escrow, credit bureau, auto parking, and storage garage businesses): The retail sales occurs where the labor and services are primarily performed.

Rule III. Retailers leasing or renting tangible personal property: The sale occurs at the place of first use by the lessee or renter. For practical purposes the place of business of the lessor will be deemed the place of first use for ordinary, short term rentals. If the rental or lease calls for periodic rental payments, then the place of sale is the primary place of use by the lessee or renter for each period covered by each payment.

"Place of use" for purposes of the use tax:

Rule IV. Whenever the state use tax is due, the local use tax will also apply where the property is first used in a county or city levying the local tax.

The following illustrates the application of these rules in various situations:

Rule I.

(A) This rule applies to retail sales consisting solely of tangible personal property (i.e., goods or merchandise). If retail labor and services are also involved Rule II applies to the entire sale. Secondly, the total tax is determined by the place at which or from which delivery is made. For most retailers the location of his place of business governs the local tax application. He collects the tax if his place of business is in a jurisdiction levying the local tax, even though he may deliver the goods sold to his customer to a location in the state not levying the tax. On the other hand a merchant whose place of business is in a jurisdiction not levying the local tax collects only the state tax, irrespective of whether delivery is made into a jurisdiction levying the local tax.

To sum up this part of the rule: The origin of the goods determines the local tax and destination or fact of delivery elsewhere in the state are immaterial.

(B) Special applications of the rules for goods located outside the state:

(1) When the state business and occupation tax applies to a sale in which the goods are delivered into Washington from a point outside the state this means a local in-state facility, office, outlet, agent or other representative even though not formally characterized as a "salesman" of the seller participated in the transaction in some way, such as by taking the order, then the location of the local facility, etc., will determine the place of sale for purposes of the local sales tax. However, if the seller, his agent or representative maintains no local in-state facility, office, outlet or residence from which business in some manner is conducted, the local tax shall be determined by the location of the customer.

(2) If the state business and occupation tax does not apply because there was no in-state activity in connection with the sale (e.g., an order was sent by a Washington consumer directly to a seller's out-of-state branch) the state tax due is use tax and the destination-address of the consumer-determines the applicable local use tax.

Rule I examples:

(1) A resident of Everett purchases a sofa from a furniture dealer in Seattle. The dealer delivers the sofa to the customer's home in Everett. The Seattle local sales tax applies, being the place from which the goods were delivered.

(2) A resident of Olympia purchases a refrigerator from a merchant in Tekoa. If Tekoa has not levied the local sales tax, the merchant will collect only the state sales tax. Olympia's use tax is not due even though the property will be used there. Reason: The law makes the local tax collectible at time of the taxable event for the state tax.

Rule II.

This rule applies to retail sales of labor or services and also applies to sales of tangible personal property when labor and services are rendered in conjunction therewith. The local tax is governed by the place where the labor and services are primarily performed.

(A) Retailers who primarily render their services at their place of business will collect the local sales tax if they are located in a jurisdiction which levies the tax. Examples of retailers normally falling in this class: Auto repair shops, hotels, motels, amusement or recreation businesses, title insurance, credit bureau, escrow businesses, auto parking, storage garages, laundries.

(B) Retailers primarily performing their services at the location of their customers will collect the local sales tax for the jurisdiction in which the customer is located. Examples of this class of retailers are: Construction contractors, painters, plumbers, carpet layers (retailers who install what they sell, as carpet layers often do, fall under Rule II-place where work is done governs the local tax to be applied-if the installation would normally call for an extra charge) earthmovers, house-wreckers.

Examples:

(1) A dealer sells a TV set, delivers it and puts it in working order in his customer's home. This falls under Rule I, not Rule II, because there is normally no extra charge for "installing" a TV set.

(2) A hardware store sells yard fencing at $5.00 per running foot including installation. This falls under Rule II because fence installation normally would involve an extra charge.

(3) A home furnishings dealer sells carpeting at $12.00 per yard and agrees to install it for $2.00 per yard additional. The entire transaction falls under Rule II and the $14.00 per yard will be subject to the local tax levied by the jurisdiction in which the customer resides. Rule I is limited to retail transactions consisting **Solely** of sales of goods or merchandise.

(C) The primary place of performance for retailers whose services consist largely of moving or transporting is deemed to be the destination (place where the service is completed). Typical of this class are: Tow truck operators and house movers.

Examples:

(1) A towing service is called to pick up a stalled vehicle just outside the city of Reardan and deliver the vehicle to an automotive repair shop in Spokane. Spokane's local tax applies.

(2) A housemover is hired to move a home from inside the Olympia city limits to a location 4 miles out of town in Thurston County. The housemover will collect only the state tax if Thurston County, the destination, does not levy the local tax.

Rule III.

This covers rentals or leases and has two parts, and it is important to distinguish "periodic rentals" from other rentals to know which part of the rule applies.

Definition. A periodic rental (or lease) is one in which the lessee or renter has contracted to make regular rental payments at specified intervals. These are normally longer term rentals calling for a rental payment monthly on or before a certain date.

(A) The place of sale for the ordinary, nonperiodic rental is the place of first use (the place where the lessee normally takes possession). In the interest of uniformity and simplicity this will be presumed to be the place of business of the lessor.

(B) The place of sale for the periodic rental is the primary place of use during each period covered by each periodic payment.

(1) In the case of business lessees this will be presumed to be the place of business of the lessee. Where the lessee has several places of business, the place of primary use will be deemed to be the place to which assigned or regularly returned.

(2) In the case of rentals to private individuals the place of use will be presumed to be the residence of the lessee or renter.

Examples:

(1) Acme Rent-all Co., located in Walla Walla, rents small tools, garden equipment, scaffolding, and many other kinds of tangible personal property. It charges $2.00 per day for rental of a rototiller. This is not a periodic rental because the lessee merely makes a deposit and pays the full balance of the rent due upon returning the equipment. The lessor will collect the Walla Walla tax on all such rentals, irrespective of where the lessee lives or where the property will be used.

(2) An automobile dealer in Tacoma leases an automobile to a Seattle resident. The agreement calls for $50.00 per month rental, payable by the 10th of each month. This is a periodic rental, so the place of primary use by the lessee governs collection of the local tax. The Tacoma dealer will collect the Seattle local tax.

Rule IV.

This rule applies only to transactions which are not subject to sales tax under Rule I, and intends that the local use tax shall be payable at the time and place the state use tax is due.

Examples:

(1) A Spokane resident purchases an automobile from a private individual in Seattle. He transfers title at the King County auditor's office and makes payment of the state use tax. The King County auditor will collect Spokane's local use tax at the same time.

(2) A Sumner resident places an order with a catalog mail order outlet in Tacoma. The Tacoma local sales tax is due since the transaction falls under Rule I, not Rule IV.

(3) Same as example 2 except the Sumner resident sends a catalog mail order directly to the Portland warehouse rather than going through the Tacoma catalog store. The vendor will collect Sumner's local use tax along with the state use tax.

The above explanation is intended to cover only the most frequently encountered situations. For more intricate or complicated transactions, call the nearest district office of the department of revenue for assistance.

[Statutory Authority: RCW 82.32.300. 83-07-032 (Order ET 83-15), § 458-20-145, filed 3/15/83; Order ET 75-1, § 458-20-145, filed 5/2/75; Order ET 70-3, § 458-20-145 (Rule 145), filed 5/29/70, effective 7/1/70.]

WAC 458-20-146 National and state banks, mutual savings banks, savings and loan associations and other financial institutions.

Business and Occupation Tax

Effective March 1, 1970, the legislature repealed RCW 82.04.400 which exempted from the business and occupation tax the gross income of national banks, states banks, mutual savings banks, savings and loan associations and certain other financial institutions. Accordingly, the gross income or gross sales of such institutions will become subject to the business and occupation tax according to the following general principles.

Services and other activities. Generally, the gross income from engaging in financial businesses is subject to the business and occupation tax under the classification service and other activities. Following are examples of the types of income taxable under this classification: Interest earned (including interest on loans made to nonresidents unless the financial institution has a business location in the state of the borrower's residence which rendered the banking service), commissions earned, dividends earned, fees and carrying charges, charges for bookkeeping or data processing, safety deposit box rentals.

The term "gross income" is defined in the law as follows:

"Gross income of the business" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

The law allows certain deductions from gross income to arrive at the taxable amount (the amount upon which the business and occupation tax is computed). Deductible gross income should be included in the gross amount reported and should then be shown as a deduction and explained on the deduction schedules provided on the reverse side of the reporting form. The deductions generally applicable to financial businesses include the following:

(1) Dividends received by a parent from its subsidiary corporations (RCW 82.04.4281).

(2) Interest received on investments or loans primarily secured by first mortgages or trust deeds on nontransient residential properties. (See WAC 458-20-166 for definition of "transient.") (RCW 82.04.4291.)

(3) Interest received on obligations of the state of Washington, its political subdivisions, and municipal corporations organized pursuant to the laws thereof. (RCW 82.04.4292). A deduction may also be taken for interest received on direct obligations of the federal government, but not for interest attributable to loans or other financial obligations on which the federal government is merely a guarantor or insurer.

(4) Gross proceeds from sales or rentals of real estate (RCW 82.04.390). These amounts may be entirely excluded from the gross income reported and need not be shown on the return as a deduction.

Retailing. Sales of tangible personal property and certain services are defined as "retail sales" and are subject to the business and occupation tax under the classification retailing. Such sales are also subject to the retail sales tax which the seller must collect and remit to the department of revenue. Transactions taxable as sales at retail are not subject to tax under service and other activities.

Following are examples of transactions subject to the retailing classification of the business and occupation tax and to the retail sales tax: Sales of meals or confections, sales of repossessed merchandise, sales of promotional material, leases of tangible personal property, sales of check registers, coin banks, personalized checks. (Note: When the financial institution is not the seller of these items but simply takes orders as agent for the supplier, the supplier is responsible for reporting as the retail seller. The financial institution has liability for reporting the retail sales tax on sales made as an agent only if the supplier is an out-of-state firm not registered with the department of revenue), escrow fees, casual sales (occasional sales of depreciated assets such as used furniture and office equipment—subject to retail sales tax but deductible from the business and occupation tax; see WAC 458-20-106).

Resale certificates. When a financial institution buys tangible personal property for resale to its customers without intervening use, the sales tax is not applicable. In this case the financial institution should give the vendor a resale certificate containing the number of its certificate of registration and its statement that the articles purchased are for resale in the course of its business activities. Resale certificates can be given in blanket form covering all future purchases. (See also WAC 458-20-102.)

Use Tax

The use tax complements the retail sales tax by imposing a tax of like amount on the use of tangible personal property purchased or acquired without payment of the retail sales tax. Thus, when office equipment or supplies are purchased or leased from an unregistered out-of-state vendor who does not collect the Washington state retail sales tax, the use tax must be paid directly to the department of revenue. Space for the reporting of this tax will be found on the regular excise tax return. (For more information, see WAC 458-20-178.)

When tax liability arises. Tax should be reported during the reporting period in which the financial institution receives, becomes legally entitled to receive, or in accord with the system of accounting regularly employed enters the consideration as a charge against the client, purchaser or borrower. Financial institutions may prepare returns to the department of revenue reporting income in periods which correspond to accounting methods employed by each institution for its normal accounting purposes in reporting to its supervisory authority.

Reporting procedures. Financial institutions subject to the business and occupation tax, retail sales tax, or use tax must secure a certificate of registration from the department of revenue and pay a registration fee of $15.00. Form 2401, application for certificate of registration, is available at all district offices of the department of revenue or may be obtained by writing directly to the Department of Revenue, Olympia, Washington, 98504.

Reporting periods will be assigned by the department on the basis of total tax liability incurred. Most financial institutions will be required to report on a monthly basis, although some smaller institutions may qualify for quarterly reporting. Forms for reporting will be mailed shortly before the close of each reporting period and will be due and payable on or before the 15th day of the month following. No penalties will be charged if the return is postmarked on or before the last day of the month in which the due date falls.

[Statutory Authority: RCW 82.32.300. 83-07-032 (Order ET 83-15), § 458-20-146, filed 3/15/83; Order ET 70-3, § 458-20-146 (Rule 146), filed 5/29/70, effective 7/1/70.]

WAC 458-20-148 Barber and beauty shops.

Business and Occupation Tax

Barber and beauty shops are subject to the business and occupation tax as follows:

Retailing. Taxable under the retailing classification upon charges for styling of wigs or hairpieces and upon the gross proceeds of sales of shoe shines and of packaged cosmetics, etc., sold apart from the rendition of personal services.

Service and other business activities. Taxable under the service and other business activities classification upon the gross income from charges for the rendition of personal services, such as hair cutting, shaving, shampooing, tinting, bleaching, setting and the like.

Retail Sales Tax

Barber and beauty shops primarily render personal services as to hair cutting, shaving, shampooing, tinting, bleaching, setting and the like and, therefore are not required to collect the retail sales tax from the customers paying for such services. Sales by supply houses to barber and beauty shops of such articles of equipment as clippers, razors, barber chairs, hair waving machines, etc., and of such supplies as soaps, hair tonics, lotions, cosmetics, dyes, etc., which are used incidentally in the rendering of such personal services are taxable retail sales upon which the retail sales tax must be collected. Shops must collect retail sales tax upon sales and charges shown as taxable under retailing above.

Sales by barber and beauty shops of packaged cosmetics, hair tonics, lotions and like articles are taxable retail sales when sold apart from the rendition of personal services and are subject to the retail sales tax. Sales of such articles by supply houses to barber and beauty shops are sales for resale and are not taxable under the retail sales tax.

Barber shops operating shoe shine stands are required to collect the retail sales tax upon the charges made for shoe shines rendered to customers. Sales by supply houses of shoe polish, dyes, cleaners, etc., which are resold in rendering a shoe shine service are sales for resale and not taxable under the retail sales tax. However, sales to shoe shine stands of brushes, chairs and other equipment which are not resold in rendering such services are taxable retail sales and the retail sales tax must be collected thereon.

[Statutory Authority: RCW 82.32.300. 83-07-034 (Order ET 83-17), § 458-20-148, filed 3/15/83; Order ET 70-3, § 458-20-148 (Rule 148), filed 5/29/70, effective 7/1/70.]

WAC 458-20-150 Optometrists, ophthalmologists, and opticians. (1) **Introduction.** This section explains Washington's B&O and retail sales tax applications to sales and services provided by optometrists, ophthalmologists, and opticians. It explains the tax liability resulting from the rendering of professional services and the sale of prescription lenses, frames, and other optical merchandise. It also discusses the retail sales tax exemption provided by RCW 82.08.0281 to the sale of prescription lenses.

(2) **Definitions.** The following definitions apply to this section.

(a) The term "professional services" is defined as the examination of the human eye, the examination and identification of any defects of the human vision system and the analysis of the process of vision. It includes the use of any diagnostic instruments or devices for the measurement of the powers or range of vision, or the determination of the refractive powers of the eye or its functions. It does not include the preparation or dispensing of lenses or eye glasses.

(b) "Prescription lens" means any lens, including contact lenses, with power or prism correction for human vision, which has been prescribed in writing by a physician or optometrist. The term "prescription lens" includes all ingredients and component parts of the lens itself, including color, scratch resistant or ultra violet coating, and fashion tints. It does not include miscellaneous service or repair charges other than the replacement or repair of the prescription lens itself.

(c) The term "optical merchandise" includes frames, springs, bows, cases, and sundry items or accessories to be worn or used with lenses. It also includes nonprescription lenses or eyeglasses. "Optical merchandise" does not include prescription lens as defined above.

(3) **Business and occupation tax.** Persons providing or selling any combination of professional services, prescription lenses, and/or optical merchandise are required to segregate and separately account for the income derived from each source. For example, persons performing eye examinations and selling prescription eyeglasses must segregate and separately account for the income attributable to eye examinations, sales of prescription lenses, and sales of frames.

(a) **Service and other business activities.** The service B&O tax applies to the gross proceeds received for providing professional services.

(b) **Retailing.** Sales of prescription lenses and optical merchandise are subject to the retailing tax, when made to consumers.

(4) **Retail sales tax.** Sales to consumers of optical merchandise, as that term is herein defined, are subject to the retail sales tax. The retail sales tax does not, however, apply to income received for providing professional services.

A retail sales tax exemption for the sale of prescription lenses is available under RCW 82.08.0281, provided the lenses are dispensed by an optician licensed under the provisions of chapter 18.34 RCW or by a physician or optometrist pursuant to a prescription written by a physician or optometrist. To claim a retail sales tax exemption under RCW 82.08.0281, persons providing or selling any combination of professional services, prescription lenses, and/or optical merchandise must segregate and separately account for the income derived from each source. (Also see WAC 458-20-18801.)

(5) **Deferred sales or use tax.** If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred sales or use tax directly to the department.

(a) The purchase of eyeglasses, lenses, frames, springs, bows, and other articles which are resold to customers or patients are purchases for resale and not subject to the retail sales tax.

(b) The retail sales or use tax applies to the purchase of office supplies and equipment. This includes subscriptions to magazines and technical publications.

(c) Purchases of supplies which are consumed in rendering a professional service are subject to the retail sales tax.

(d) Prescription drugs may be purchased without payment of retail sales or use tax by optometrists, ophthalmologists, and opticians when those drugs will be used for the diagnosis, cure, mitigation, treatment, or prevention of disease or other ailment in humans. Refer to WAC 458-20-18801.

(e) Optometrists, ophthalmologists, and opticians are required to pay use tax on any samples, with the exception of prescription drug samples, which they acquire or give away unless retail sales or use tax has been previously paid on these samples. However, these taxpayers are not required to pay retail sales or use tax on items which will be given to customers as part of a sale of eyeglasses or contact lenses, such as cleaning supplies, carrying cases, etc. These items are considered to be sold along with the eyeglasses or contact lenses.

(6) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(a) DM is an optometrist who performs eye examinations and sells prescription eyeglasses and contact lenses. All sales of prescription lenses are made pursuant to written prescription. DM segregates the income attributable to the eye examinations, the sale of prescription lenses, and the sale of optical merchandise in its books of account. Retail sales tax is collected on the sale of the optical merchandise.

The income derived from the eye examinations is subject to the service B&O tax. Retailing B&O tax is due on the gross proceeds of sales of the prescription lenses and the optical merchandise. When reporting the retail sales tax liability, DM may claim a deduction for the sales of prescription lenses, but must remit the retail sales tax collected on the sales of optical merchandise.

(b) DM purchases nonprescription saline and cleaning solutions for contact lenses, and carrying cases for eyeglasses and contact lenses. The saline and cleaning solutions are consumed when DM performs eye examinations. The eyeglass and contact lens carrying cases are provided to customers at the time they purchase a pair of eyeglasses or contact lenses.

DM incurs no retail sales or use tax liability on the purchase of the eyeglass and contact lens carrying cases. These cases are considered to be purchased for resale, and sold to the customer along with the eyeglasses or contact lenses. The purchase of the saline and cleaning solutions is, however, subject to the retail sales tax. These solutions are consumed while providing professional services, and cannot be considered to be purchased for resale. They also do not qualify for sales tax exemption as prescription drugs. If DM has not paid retail sales tax at the time of purchase, it must remit use tax directly to the department.

(c) AB Inc. is a retail drugstore which includes preassembled "off the shelf" reading glasses in its sales inventory. These eyeglasses have lenses with power or prism correction. These glasses are sold without a written prescription.

Sales of such "off the shelf" reading glasses are subject to the retail sales tax, measured by the gross proceeds of sale. Even had AB segregated the charge between the frame and lenses, the gross proceeds of sales would be subject to the retail sales tax. The conditions and requirements necessary to qualify for exemption under RCW 82.08.0281 have not been satisfied.

[Statutory Authority: RCW 82.32.300. 93-19-020, § 458-20-150, filed 9/2/93, effective 10/3/93; 83-07-034 (Order ET 83-17), § 458-20-150, filed 3/15/83; Order 74-2, § 458-20-150, filed 6/24/74; Order ET 70-3, § 458-20-150 (Rule 150), filed 5/29/70, effective 7/1/70.]

WAC 458-20-151 Dentists, dental laboratories and physicians. (1) **Business and occupation tax.** Dentists, dental laboratories, and physicians are subject to the business and occupation tax as follows:

(a) **Service and other business activities.** These persons are taxable under the service and other business activities classification on the gross income from charges for performing professional services.

(i) This includes any separate charge to the patient for drugs, medicines, and other substances used by a dentist, or physician, or administered to a patient as part of the dental or medical services to the patient.

(ii) Dental laboratories provide professional services. The product which results from those services is merely evidence of those services. Dental laboratories are taxable under the service and other business activities classification on income from providing their services.

(b) **Retailing.** A physician or a medical clinic may occasionally make sales of drugs as a convenience to a customer with the sale not being part of the medical services to the patient. These sales are taxable under the retailing classification. The retailing classification applies only when the physician or medical staff do not administer the drug or other medicine to the patient. Adequate records must be kept by the business to distinguish drugs which are administered as part of a medical service from those which are sold outright.

(2) **Retail sales tax.** Dentists, dental laboratories, and physicians primarily perform professional services and are not required to collect the retail sales tax from clients and others paying for such services.

(a) Sales by supply houses to such persons of materials, supplies, and equipment which are used incidentally in performing professional services are retail sales and the retail sales tax must be collected. Such sales include, among others, sales of dental chairs, instruments, x-ray machines, office equipment, stationery; and sales of supplies, such as dressings, bandages, nonprescription drugs and similar articles. Certain specific items may be purchased without the payment of retail sales tax as discussed below.

(b) Dentists and dental laboratories are required to pay retail sales tax to their suppliers for purchases of orthotic devices or components of such devices which they use or prescribe to their patients as part of the services provided to the patient. Orthotic devices may be purchased exempt of retail sales tax only when prescribed by physicians, osteopaths, or chiropractors for an individual. For example, dentists specializing in the prevention and correction of irregularities in the position of the teeth are required to pay retail sales tax to their suppliers for braces, collars, wires, screws, bands, splints, night guards, etc. See RCW 82.08.0283.

(c) Orthotic devices which are prescribed by physicians, osteopaths, and chiropractors for an individual are not subject to retail sales tax. Orthotic devices are apparatus designed to activate or supplement a weakened or atrophied limb or function. They include braces, collars, casts, splints, and other similar apparatus, as well as parts thereof. Orthotic devices do not include durable medical equipment such as wheelchairs, crutches, walkers, and canes nor consumable supplies such as elastic stockings, arch pads, belts, supports, bandages, and the like, whether prescribed or not.

(d) The sales tax does not apply to sales of ostomic items, insulin, medically prescribed oxygen, and prosthetic devices. Prosthetic devices are artificial substitutes which replace missing parts of the human body such as a limb, bone, joint, eye, tooth, or other organ or part thereof, and materials which become ingredients or components of prostheses. These materials include plastic, wood, hinges, screws, denture acrylic, porcelain, gold, silver, including any alloys of gold or silver. The following is a list of prosthetic devices or components of prosthetic devices that may be purchased or sold by dentists and/or dental laboratories without retail sales tax applying:

(i) Alloy and mercury - used together to form an amalgam to fill existing teeth;

(ii) Casting alloy;

(iii) Cement - to cement crowns or teeth to bridges or dentures;

(iv) Cavity liner;

(v) Composites - filling material used in the place of alloy;

(vi) Filling material;

(vii) Temporary crowns;

(viii) Acrylics - dentures, crown, and bridge replacement of teeth;

(ix) Reline material - to reline dentures;

(x) Pins - used for retention;

(xi) Endo post - used in restoring teeth without any surface on tooth to support restoration;

(e) The retail sales tax does not apply to sales of prescription drugs to dentists, physicians, or other medical practitioners when sold for the diagnosis, cure, mitigation, treatment, or prevention of disease or other ailment in humans. See WAC 458-20-18801.

(3) **Use tax.** Use tax is due when retail sales tax has not been paid on the purchases of supplies and equipment used by a dentist, dental laboratory, or physician in the providing of professional services. This includes orthotic devices used or prescribed by dentists, or dental laboratories when retail sales tax was not paid to the supplier. Refer to subsection (2) of this section (Retail sales tax) for a further discussion of taxable items.

(a) The use tax does not apply to the purchase or use of ostomic items, insulin, medically prescribed oxygen, prosthetic devices or ingredients/components of prostheses.

(b) The use tax also does not apply to purchases of prescription drugs when purchased for the diagnosis, cure, mitigation, treatment, or prevention of disease or other ailment in humans. See WAC 458-20-18801.

[Statutory Authority: RCW 82.32.300. 91-15-023, § 458-20-151, filed 7/11/91, effective 8/11/91; 83-07-032 (Order ET 83-15), § 458-20-151, filed

3/15/83; Order 74-2, § 458-20-151, filed 6/24/74; Order ET 70-3, § 458-20-151 (Rule 151), filed 5/19/70, effective 7/1/70.]

WAC 458-20-153 Funeral directors. Funeral directors commonly quote a lump sum price for a standard funeral service, which includes the furnishing of a casket, professional services, care of remains, funeral coach, floral car and the securing of permits.

Business and Occupation Tax

Retailing. The gross amount subject to the retail sales tax as outlined below, is taxable under the retailing classification of the business and occupation tax except that there may be deducted, for purposes of the business tax only, amounts received as reimbursement for expenditures for goods or services supplied by others who are not persons employed by, affiliated, or associated with the funeral home, when such amounts were advanced by the funeral home as an accommodation to the person paying for a funeral; but this deduction is allowed only if such expenditures advanced are billed to the person paying for the funeral at the exact amount of the expenditure advanced and such amounts are separately itemized in the billing statement to such person.

Service and other business activities. That portion of the gross income derived from engaging in business as a funeral director which is not taxable under the retailing classification is taxable as service and other business activities.

Retail Sales Tax

Where the funeral director quotes a lump sum price for a standard funeral service, which includes both the sale of tangible personal property and a charge for the rendering of service, the retail sales tax is collected upon one-half of such lump sum price. Clothing, outside case (a concrete or metal box into which the casket is placed) and other tangible personal property furnished in addition to the casket must be billed separately and the retail sales tax collected thereon.

The retail sales tax is not applicable to sales made to funeral directors of tangible personal property which is resold separate and apart from the rendition of professional services, provided the vendor receives from the funeral director a resale certificate in the usual form. The property so purchased includes the casket, clothing, outside case and acknowledgment cards.

The retail sales tax is applicable to sales to funeral directors of tangible personal property which is consumed in the rendition of professional services. The property so purchased includes all preparation room supplies (embalming fluid and other chemicals, solvents, waxes, cosmetics, eye caps, gauze, cotton, etc.). The sales tax is also applicable to sales to such persons of tools and equipment.

Use Tax

The use tax applies upon the use within this state of all articles of tangible personal property used in the performance of professional services when such articles have been purchased or acquired under conditions whereby the Washington retail sales tax has not been paid.

[Statutory Authority: RCW 82.32.300. 83-07-033 (Order ET 83-16), § 458-20-153, filed 3/15/83; Order ET 70-3, § 458-20-153 (Rule 153), filed 5/29/70, effective 7/1/70.]

WAC 458-20-154 Cemeteries, crematories, columbaria.

Business and Occupation Tax

Retailing. The gross proceeds derived from the sale of tangible personal property taxable under the retail sales tax are also taxable under the retailing classification.

Service and other business activities. Income derived from rendition of interment services is taxable under the service and other business activities classification. Sales or transfers of plots, crypts, and niches for interment of human remains, irrespective of whether the document of transfer is called a deed or certificate of ownership, are charges for the right of interment, an interest similar to a license to use real estate, and the entire gross income therefrom is taxable under the service and other activities classification without any deduction for amounts set aside to funds for perpetual care.

Retail Sales Tax

Cemeteries, crematories and columbaria are subject to the provisions of the retail sales tax with respect to retail sales of boxes, urns, markers, vases, plants, shrubs, flowers, and other tangible personal property.

Revised June 1, 1978.

Effective July 1, 1978.

[Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-06-083 (Order 78-3), § 458-20-154, filed 6/1/78; Order ET 70-3, § 458-20-154 (Rule 154), filed 5/29/70, effective 7/1/70.]

WAC 458-20-155 Information and computer services. Persons rendering information or computer services and persons who manufacture, develop, process, or sell information or computer programs are subject to business and occupation taxes and retail sales or use taxes as explained in this rule.

Definitions

As used herein:

The term "information services" means every business activity, process, or function by which a person transfers, transmits, or conveys data, facts, knowledge, procedures, and the like to any user of such information through any tangible or intangible medium. The term does not include transfers of tangible personal property such as computer hardware or standard prewritten software programs. Neither does the term include telephone service defined under RCW 82.04.065 and WAC 458-20-245.

The term "computer services" means every method of providing information services through the use of computer hardware and/or software.

*The term "computer system" means a functional unit, consisting of one or more computers and associated software, that uses common storage for all or part of the data necessary for execution of the program; executes user-written or user-designated programs; performs user-designated data manipulation; including arithmetic operations and logic operations; and that can execute programs that modify themselves during their execution.

*The term "hardware" means physical equipment used in data processing, as opposed to programs, procedures, rules, and associated documentation.

*The term "software" means programs, procedures, rules, and any associated documentation pertaining to the operation of a computer system.

The term "custom program" means software which is developed and produced by a provider exclusively for a specific user, and which is of an original, one-of-a-kind nature.

The term "standard, prewritten program," sometimes referred to as "canned" or "off-the-shelf" software, means software which is not originally developed and produced for the user.

The term "provider" means the person who makes available information and computer services to a user.

The term "user" means a person for whom information and/or computer services are provided as a consumer.

Distinction Between Sales and Services

Liability for sales tax or use tax depends upon whether the subject of the sale is a product or a service. If information services, computer services or data processing services are performed, such that the only tangible personal property in the transaction is the paper or medium on which the information is printed or carried, the activity constitutes the rendering of professional services, similar to those rendered by a public accountant, architect, lawyer, etc., and the retail sales tax or use tax is not applicable to such charges. This includes the sales of software in connection with custom programs written to meet a particular customer's specific needs. The programs are considered to be the tangible evidence of a professional service rendered to a client and not subject to retail sales tax or use tax.

If, on the other hand, the sale, lease, or licensing of the computer program is a sale or lease of a product, even though produced through a computer system or process, it is taxable as a retail sale. Standard, prewritten software programs do not constitute professional services rendered to meet the particular needs of specific customers, but rather, are essentially sales of articles of tangible personal property. Articles of this type are no different from a usual inventory of tangible personal property held for sale or lease and, irrespective of any incidental modifications to the program medium or its environment (e.g., adaptation to computer room configuration) to meet a particular customer's needs, the sale or lease of such standard software is a sale at retail subject to retail sales tax or use tax.

Business and Occupation Tax

The terms "sale" (RCW 82.04.040) and "retail sale" (RCW 82.04.050) include any transfer of possession of tangible personal property for a consideration. This includes transfers of computer hardware and standard, prewritten software for a charge, regardless that outright ownership or title may not pass to the user, and regardless of any express or implied restrictions upon the user.

Retailing: All sales, leases, rentals, and licenses to use tangible personal property, including computer systems and all hardware and standard, prewritten software, to users, are subject to the retailing classification of business and occupation tax measured by the gross proceeds of sales derived therefrom. (See RCW 82.04.070.)

Wholesaling: When such transfers of tangible personal property as described in the previous paragraph, are for resale by the customer or client in the regular course of business, without intervening use by such persons, they are subject to wholesaling business and occupation tax measured by gross proceeds of sales.

Service: Persons who charge for providing information services or computer services (other than retailing or wholesaling as defined above) are subject to the service and other activities classification of business and occupation tax measured by the gross income of such business. This includes charges for custom program development, charges for on-line information and data, and charges in the nature of royalties for the reproduction, use, and reuse of patented systems and technological components of hardware or software, whether tangible or intangible.

The tax classifications and distinctions explained above will prevail regardless of how the federal government or other tax jurisdictions may classify these transactions for other tax purposes.

Retail Sales Tax

The retail sales tax applies to all amounts taxable under the retailing classification of business and occupation tax explained earlier. Providers must collect the sales tax from users of computer systems, hardware, equipment, and/or standard, prewritten software and materials delivered in this state. This includes outright sales, leases, rentals, licenses to use, and any other transfer of possession and the right to use such things, however physically packaged, represented, or conveyed.

The retail sales tax also applies to all charges to users for the repair, maintenance, alteration, or modification of hardware, equipment, and/or standard, prewritten software or materials.

Use Tax

The use tax applies upon the full value of computer systems, hardware, equipment, standard, prewritten software, and materials which are used by consumers in this state and upon which the retail sales tax has not been paid. The person liable for the tax is the user. However, see WAC 458-20-193B for circumstances under which the seller may be required to collect and report the use tax.

Also, the use tax applies upon the full value of such things which are made available to a user without a charge by a provider in the course of rendering any information or computer service. The person liable for the tax is the provider, as a bailor, or the user, as a bailee. See WAC 458-20-178.

Interstate Sales and Services

Persons who produce computer systems, hardware, equipment, standard, prewritten software, and materials in this state and who sell, lease, license, or otherwise transfer such things to buyers outside this state and deliver such things outside this state are not subject to either retailing or wholesaling business tax. Such persons are subject to the Manufacturing classification of business and occupation tax. See WAC 458-20-136. The measure of tax is the full value of the product manufactured. See WAC 458-20-112. Retail sales tax does not apply to such interstate deliveries. However, see WAC 458-20-193A for the criteria for perfecting interstate tax exempt sales. Persons who do not themselves produce such things in this state but merely sell such things and deliver outside this state are exempt of business tax and retail sales tax.

Providers of information or computer services in interstate commerce who are taxable under the service business tax classification are governed by the provisions of WAC 458-20-194 (doing business inside and outside the state).

*Definitions marked with an asterisk are taken from *Vocabulary for Data Processing, Telecommunications, and Office Systems, IBM,* seventh edition (July, 1981).

[Statutory Authority: RCW 82.32.300. 85-20-012 (Order ET 85-4), § 458-20-155, filed 9/20/85; Order ET 70-3, § 458-20-155 (Rule 155), filed 5/29/70, effective 7/1/70.]

WAC 458-20-156 Abstract, title insurance and escrow businesses. The gross receipts of "abstract," "title insurance" and "escrow" businesses include all service charges representing an abstract fee, a charge for a title insurance fee or premium, or an escrow fee or service charge received by "escrow agents."

The term "escrow" means any transaction wherein any person or persons, for the purpose of effecting and closing the sale, purchase, exchange, transfer, encumbrance, or lease of real or personal property to another person or persons, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by such third person until the happening of a specified event or the performance of a prescribed condition or conditions, when it is then to be delivered by such third person, in compliance with instructions under which he is to act, to a grantee, grantor, promisee, promisor, obligee, obligor, lessee, lessor, bailee, bailor, or any agent or employee thereof.

"Escrow agent" means any sole proprietorship, firm, association, partnership, or corporation engaged in the business of performing for compensation the duties of the third person referred to in the foregoing definition.

Business and Occupation Tax

Abstract, title insurance and escrow businesses are taxable under the classification retailing on gross receipts from fees or premiums charged to consumers for abstract, title insurance or escrow services.

The gross income from collection contracts which do not involve an escrow as above defined is subject to tax under the classification service and other activities.

Retail Sales Tax

The retail sales tax must be collected and reported by abstract, title insurance and escrow businesses on fees or premiums charged for such services. The retail sales tax is applicable to sales to such businesses of forms, office supplies and equipment for use in the conduct of such businesses.

[Statutory Authority: RCW 82.32.300. 83-07-033 (Order ET 83-16), § 458-20-156, filed 3/15/83; Order ET 70-3, § 458-20-156 (Rule 156), filed 5/29/70, effective 7/1/70.]

WAC 458-20-157 Producers of poultry and hatching eggs. (1) Business and occupation tax. Persons engaged in the production and sale of hatching eggs or poultry for use in the production for sale of poultry or poultry products are not subject to the business and occupation tax upon the gross proceeds from such sales (RCW 82.04.410). Persons engaged in the production and sale for resale of hatching eggs or poultry are also exempt from the business and occupation tax in respect to such sales (RCW 82.04.330). The business and occupation tax is applicable to all sales of poultry or poultry products by persons other than the producer thereof.

(2) Retail sales tax. The retail sales tax is not applicable to sales of poultry for use in the production for sale of poultry or poultry products (RCW 82.08.030(16)).

(3) Sales of equipment and feed. Sales of incubators, brooders, and other equipment or supplies to hatcheries or producers of poultry or poultry products are sales for use or consumption upon which the retail sales tax must be collected by the seller. Sales of poultry feed for use by the purchaser in producing poultry and poultry products are not subject to the retail sales tax. (See also WAC 458-20-122.)

(4) Also, the retail sales tax does not apply to sales of feed for feeding poultry at a public livestock market.

(5) Use tax. The use tax applies to all tangible personal property used as consumers by persons engaged in the production and sale of hatching eggs or poultry under conditions where retail sales tax has not been paid thereon, except poultry feed used by such poultry producers or used to feed poultry at public livestock markets.

Effective July 1, 1978.

[Statutory Authority: RCW 82.32.300. 86-21-085 (Order ET 86-18), § 458-20-157, filed 10/17/86. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-157, filed 6/27/78; Order ET 70-3, § 458-20-157 (Rule 157), filed 5/29/70, effective 7/1/70.]

WAC 458-20-158 Florists and nurserymen. The word "florist" means a person engaged in the business of selling flowers and ornamental trees, shrubs or vines from an established business location, or one who peddles the same.

The word "nurseryman" means a person who grows, propagates or produces for sale upon his own lands or upon land in which he has a present right of possession, any flowers, trees, shrubs or vines.

Business and Occupation Tax

Retailing. Florists and nurserymen are taxable under the retailing classification upon gross sales made by them to consumers.

Wholesaling. Florists are taxable under the wholesaling classification upon gross sales for resale of articles which were not produced by them as nurserymen. Nurserymen are exempt from business tax with respect to sales at wholesale of articles produced by them in this state, but this exemption does not extend to the taking, cultivating, or raising of Christmas trees or timber.

Retail Sales Tax

Florists and nurserymen must collect the retail sales tax on sales of cut flowers, bulbs, corsages, bouquets, wreaths, floral designs, displays, potted plants, young trees, shrubs, bushes and other such items of tangible personal property to purchasers for use or consumption. However, sales by nurserymen of fruit and nut trees and berry slips or vines to farmers who use the same for producing fruit, nuts or berries for sale are wholesale sales and are not subject to the retail sales tax.

Telegraphic delivery. Where, through the Florist's Telegraphic Delivery Association, one florist takes an order pursuant to which he gives telegraphic instructions to a second florist for delivery of flowers, the sending florist is a retailer of flowers and must collect the retail sales tax from the customer who placed the order on the basis of the total charge. The receiving florist is selling the flowers which he delivers, to the sending florist for resale and is not required to collect the retail sales tax. Thus:

(1) On all orders taken by a Washington florist and telegraphed to a second florist, either in Washington or at a point outside the state of Washington, the florist taking the order will be responsible for the collection of the retail sales tax from the customer placing the order.

(2) In cases where a Washington florist receives telegraphic instructions from a second florist located either within or without Washington for the delivery of flowers, the Washington florist receiving the telegraphic instructions is making a sale for resale to the sending florist on which no tax is to be collected.

Telephone and telegraph charges. The income derived by a florist from telephone and telegraph charges is construed to be an advance for the customer when such charges are paid by the florist and the amount thereof is billed to the customer as a separate item.

Purchase or supplies, materials, equipment, etc. Sales by supply houses to florists and nurserymen of the following articles are sales for resale upon which the retail sales tax should not be collected:

(1) Sales of paper boxes, wrapping paper, bags, twine, gummed tape or other containers sold to customers along with the flowers, shrubs, etc., sold and contained therein;

(2) Sales of labels, stickers, cards which are permanently affixed to the containers referred to above;

(3) Sales of wire, tin foil, ribbon and other items which are attached to or become a component part of, wreaths, floral displays, bouquets or corsages.

Furthermore, sales to nurserymen of seeds, fertilizers and spray materials for use by them in producing for sale flowers, trees, shrubs or vines, are not subject to the retail sales tax. (See WAC 458-20-122.)

However, sales by supply houses to florists and nurserymen of fuel for heating green houses or for other purposes, and sales of equipment and supplies for use or consumption by them are taxable under the retail sales tax.

Revised June 1, 1965.

[Order ET 70-3, § 458-20-158 (Rule 158), filed 5/29/70, effective 7/1/70.]

WAC 458-20-159 Consignees, bailees, factors, agents and auctioneers. A consignee, bailee, factor, agent or auctioneer, as used in this ruling, refers to one who has either actual or constructive possession of tangible personal property, the actual ownership of such property being in another, or one calling for bids on such property. The term "constructive possession" means possession of the power to pass title to tangible personal property of others.

Business and Occupation Tax

Retailing and wholesaling. Every consignee, bailee, factor, agent or auctioneer having either actual or constructive possession of tangible personal property, or having possession of the documents of title thereto, with power to sell such tangible personal property in his or its own name and, actually so selling, shall be deemed the seller of such tangible personal property and taxable under the retailing or wholesaling classification of the business and occupation tax, depending upon the nature of the transactions. In such case the consignor, bailor, principal or owner shall be deemed a seller of such property to the consignee, bailee, factor or auctioneer and taxable as a wholesaler with respect to such sales.

The mere fact that consignee, bailee or factor makes a sale raises a presumption that such consignee, bailee or factor actually sold in his or its own name. This presumption is controlling unless rebutted by proof satisfactory to the department of revenue.

Agents and brokers. Any person who claims to be acting merely as agent or broker in promoting sales for a principal or in making purchases for a buyer, will have such claim recognized only when the contract or agreement between such persons clearly establishes the relationship of principal and agent and when the following conditions are complied with:

(1) The books and records of the broker or agent show the transactions were made in the name and for the account of the principal, and show the name of the actual owner of the property for whom the sale was made, or the actual buyer for whom the purchase was made.

(2) The books and records show the amount of gross sales, the amount of commissions and any other incidental income derived by the broker or agent from such sales.

Service and other business activities. Every consignee, bailee, factor, agent or auctioneer who makes a sale in the name of the actual owner, as agent of the actual owner, or who purchases as agent of the actual buyer, is taxable under the service and other business activities classification upon the gross income derived from such business.

Retail Sales Tax

Consignees, bailees, factors, agents or auctioneers. Every consignee, bailee, factor, agent or auctioneer authorized, engaged or employed to sell or call for bids on tangible personal property belonging to another, and, so selling or calling, is deemed a seller, and shall collect the retail sales tax upon all retail sales made by him, except sales of certain farm property as hereinafter provided. The tax applies to all such sales even though the sales would have been exempt if made directly by the owner of the property sold.

It shall be the duty of every consignee, bailee, factor, agent or auctioneer to collect and remit the retail sales tax directly to the department with respect to all retail sales made or called by them: *Provided, however,* That if the owner of the property sold is engaged in the business of selling tangible property and the sale by the consignee, bailee, factor, agent or auctioneer has been made in the owner's name and the owner continues to engage in business, the owner may report and pay the tax collected directly to the department.

If the owner of the property sold discontinues business either before or at the time of the sale, the owner and the consignee, bailee, factor, agent or auctioneer will be held jointly responsible for payment of the tax.

The foregoing does not apply to auction sales made by or through auctioneers of tangible personal property (including household goods) which have been used in conducting a farm activity when the seller thereof is a farmer and the sale is held or conducted upon a farm, since such sales are specifically exempted from the retail sales tax.

Bailees will be relieved from liability for the collection of the sales tax from buyers in those cases where they merely receive a commission on the sale and the entire transaction is closed directly between the owner and the buyer, if such sales are reported to the department by such bailees, within ten days after receipt of the sales commission and such report shows the following:

(1) Name and address of seller;
(2) Name and address of buyer;
(3) Amount for which sold;
(4) Approximate date of sale;
(5) Description of property sold.

Those failing to submit such report to the department within the time stated will be held responsible for payment of the sales tax to the state.

Note: For tax liability of certain independent selling agents for the collection of the use tax, see WAC 458-20-221.

[Statutory Authority: RCW 82.32.300. 83-07-033 (Order ET 83-16), § 458-20-159, filed 3/15/83; Order ET 70-3, § 458-20-159 (Rule 159), filed 5/29/70, effective 7/1/70.]

WAC 458-20-160 Agricultural commission agents. Any person whose business consists in selling agricultural products both as a dealer and upon a commission-consignment basis is presumed to be conducting business as a seller of tangible personal property either at wholesale or at retail, unless such person segregates upon his books and records between sales of products purchased and sold as a dealer and those handled strictly upon a commission basis.

Business and Occupation Tax

Retailing. Dealers are taxable under the retailing classification upon gross proceeds derived from retail sales. Persons selling upon a commission-consignment basis who do not segregate upon their books and records between sales made as a dealer and those handled upon a commission basis are taxable as sellers upon gross proceeds of all sales.

Wholesaling. Dealers are taxable under the wholesaling classification upon gross proceeds derived from wholesale sales. Persons selling upon a commission-consignment basis who do not segregate upon their books and records between wholesale sales made as a dealer and those handled on a commission basis are taxable as sellers upon gross proceeds of all sales.

Service and other business activities. A person may be classified as engaging in service and other business activities with respect to bona fide commission-consignment sales, even though such consigned sales are credited to the "sales" account, providing he has complied with the Commission Merchants' Law of the state of Washington and has prepared and kept the following records supplementary to the regular books of account:

(1) Lot sheets, cards or similar subsidiary records upon which consigned sales are regularly recorded;

(2) An analysis sheet showing the date, lot number, gross proceeds of sales of consigned goods, remittances to consignor, advances, commissions, other charges and taxable amount with respect to consigned accounts. This sheet shall contain a complete analysis of all consigned sales showing the distribution made from lot sheets, cards or similar subsidiary records. Entries in the consigned sales analysis record shall be made as of the date that final distribution is made on lot sheet, card or similar record;

(3) A detailed record of deductions claimed with respect to sales of products purchased. Such records shall show the date of sale, the lot number and the nature of the deductions claimed.

The subsidiary analysis of consigned accounts and record of deductions shall be kept substantially in the following form:

Principal accounts

Date	Lot Number	Interstate Sales	Other Deductions	Total Deductions

Commission accounts

Date	Lot No.	Gross Proceeds of Sales	Remit-tances	Advances	Commis-sion Charged	Other Charges	Taxable Amount

Retail Sales Tax

Persons engaged in the business of selling agricultural products at retail either as dealers or upon a commission-consignment basis are required to collect the retail sales tax upon all retail sales made by them.

Revised May 1, 1939.

[Order ET 70-3, § 458-20-160 (Rule 160), filed 5/29/70, effective 7/1/70.]

WAC 458-20-161 Persons buying or producing wheat, oats, dry peas, corn, barley, dry beans, lentils and triticale and making sales thereof.

Business and Occupation Tax

Retailing. Taxable under the retailing classification upon the gross proceeds from all retail sales of such products.

Wholesaling. Persons buying manufactured or processed wheat, oats, dry peas, dry beans, lentils, triticale, corn and barley, and selling the same at wholesale, are taxable under the wholesaling classification upon their gross proceeds of sales. The tax imposed under this classification does not apply to persons producing wheat, oats, dry peas, corn, barley, dry beans, lentils and triticale and selling the same at wholesale.

Wheat, oats, dry peas, corn, barley, dry beans, lentils and triticale. Persons buying wheat, oats, dry peas, dry beans, lentils, triticale, corn and barley, and selling the same at wholesale as such and not as a manufactured or processed product thereof, are taxable under the wheat, oats, corn, barley, dry peas, dry beans, lentils, and triticale classification upon their gross proceeds of sales.

[Statutory Authority: RCW 82.32.300. 83-07-033 (Order ET 83-16), § 458-20-161, filed 3/15/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-161, filed 6/27/78; Order ET 70-3, § 458-20-161 (Rule 161), filed 5/29/70, effective 7/1/70.]

WAC 458-20-162 Stockbrokers and security houses. With respect to stockbrokers and security houses, "gross income of the business" means the total of gross income from interest, gross income from commissions, gross income from trading and gross income from all other sources: *Provided,* That:

(1) Gross income from each account is to be computed separately and on a monthly basis;

(2) Loss sustained upon any earnings account may not be deducted from or offset against gross income upon any other account, nor may a loss sustained upon any earnings account during any month be deducted from the gross income upon any account for any other month;

(3) No deductions are allowed on account of salaries or commissions paid to employees or salesmen, rent, or any other overhead or operating expenses paid or incurred, or on account of losses other than under "2" above;

(4) No deductions are allowed from commissions received from sales of securities which are delivered to buyers outside the state of Washington.

Gross income from interest. Gross income from interest includes all interest received upon bonds or other securities held for sale or otherwise, excepting only direct obligations of the federal government and of the state of Washington. No deduction is allowed for interest paid out even though such interest may have been paid to banks, clearing houses or others upon amounts borrowed to carry debit balances of customers' margin accounts.

Interest accrued upon bonds or other securities sold shall be included in gross income where such interest is carried in an interest account and not as part of the selling price. Conversely, interest accrued upon bonds or other securities at the time of purchase may be deducted from gross income where such interest is carried in an interest account and not as a part of the purchase price.

Gross income from commissions. Gross income from commissions is the amount received as commissions upon transactions for the accounts of customers over and above the amount paid to other established security houses associated in such transactions: *Provided, however,* That no deduction or offset is allowed on account of salaries or commissions paid to salesmen or other employees.

Gross income from trading. Gross income from trading is the amount received from the sale of stocks, bonds and other securities over and above the cost or purchase price of such stocks, bonds and other securities. In the case of short sales gross earnings shall be reported in the month during which the transaction is closed, that is, when the purchase is made to cover such sales or the short sale contract is forfeited.

Gross income from all other sources. Gross income from all other sources includes all income received by the taxpayer, other than from interest, commissions and trading, such as dividends upon stocks, fees for examinations, fees for reorganizations, etc.

Services inside and outside the state-apportionment. Stockbrokers and security houses rendering services and maintaining places of business both inside and outside the state may, in computing tax, apportion to this state that portion of the gross income which is derived from services rendered or activities conducted inside this state. Where such apportionment cannot be made accurately by separate accounting methods, the taxpayer shall apportion to this state that portion of his total income which the cost of doing business inside the state bears to the total cost of doing business both inside and outside the state.

[Statutory Authority: RCW 82.32.300. 83-07-033 (Order ET 83-16), § 458-20-162, filed 3/15/83; Order ET 70-3, § 458-20-162 (Rule 162), filed 5/29/70, effective 7/1/70.]

WAC 458-20-163 Insurance companies, including surety companies, fraternal benefit societies, fraternal fire insurance associations, beneficiary corporations or societies and Washington state health insurance pool. (1) **Exemptions.** The business and occupation tax does not apply to:

(a) Any person with respect to insurance business upon which a tax based on gross premiums is paid to the state of Washington. (RCW 82.04.320.) It should be noted, however, that the law provides expressly that this exemption does not extend to "any person engaging in the business of representing any insurance company, whether as general or local agent, or acting as broker for such companies" or to "any bonding company . . . with respect to gross income derived from the completion of any contract as to which it is a surety, or as to any liability as successor to the liability of the defaulting contractor." The exemption also does not apply to any business engaged in by an insurance company other than its insurance business. An insurance company is subject to the retailing or wholesaling business and occupation tax on sales of salvaged property unless the sales are casual or isolated sales as described in WAC 458-20-106. Also see WAC 458-20-102 for resale certificate requirements for wholesale sales.

(b) Fraternal benefit societies or fraternal fire insurance associations organized or licensed pursuant to Title 48 RCW and as defined in RCW 48.36A.010.

(c) Beneficiary corporations or societies organized under and existing by virtue of Title 24 RCW, if such beneficiary corporations or societies provide in their bylaws for the payment of death benefits. This exemption, however, is limited to gross income from premiums, fees, assessments, dues or other charges directly attributable to the insurance or death benefits provided by such persons. It is not intended that all the varied, regular business activities (e.g., sales of food, liquor, admissions, and amusement devices receipts) of these societies or organizations be exempted from the business and occupation tax. Only that portion of income which can be demonstrated as directly attributable to charges made for providing death benefits is exempt.

(2) **Deductions.** Effective May 18, 1987, a member of the Washington state health insurance pool may take a deduction from the measure of the business and occupation tax for assessments paid by that member to the pool. (See RCW 82.04.4329). The deduction amount should be shown in the deduction column of the business and occupation tax section on the combined excise tax return, where it will be subtracted from the gross amounts, to arrive at a net taxable amount upon which the actual business and occupation tax is computed. If the deduction cannot be fully used because the assessment total exceeds the gross receipts reported in the business and occupation tax section of the tax return, the member may carry forward the unused portion of the deduction to future reporting periods until the deduction is fully taken. The explanation of the deduction should be "Amount paid to Washington state health insurance pool, per RCW 82.04.4329 and WAC 458-20-163." This deduction does not apply to a member who has deducted such assessments from the insurance premiums tax, RCW 48.14.020.

(3) **Retail sales and use tax.** Insurance companies are subject to the retail sales tax or use tax upon retail purchases or articles acquired for their own use.

When insurance companies make sales to consumers of salvaged property (e.g., from automobile collisions, fire loss, burglary or theft recoveries) or any other tangible personal property, they must collect and report retail sales tax on those sales.

[Statutory Authority: RCW 82.32.300. 91-05-040, § 458-20-163, filed 2/13/91, effective 3/16/91; 87-19-007 (Order ET 87-5), § 458-20-163, filed 9/8/87; 83-07-033 (Order ET 83-16), § 458-20-163, filed 3/15/83; Order ET 70-3, § 458-20-163 (Rule 163), filed 5/29/70, effective 7/1/70.]

WAC 458-20-164 Insurance agents, brokers and solicitors. (1) **Introduction.** This section explains the taxability of amounts received by insurance agents, brokers, or solicitors.

(2) **Definition.** The words "agent," "broker," and "solicitor" mean a person licensed as such under the provisions of chapter 48.17 RCW.

(3) **Business and occupation tax.** Every person engaging in business as an insurance agent, broker, or solicitor is taxable under the insurance agents and brokers classification upon the gross income of the business .

(a) The gross income of the business is determined by the amount of gross commissions received, not by the gross premiums paid by the insured. The term "gross income of the business" includes gross receipts from commissions, fees or other amounts which the agent, broker, or solicitor receives or becomes entitled to receive. The gross income of the business does not include amounts held in trust for the insurer or the client. (See also WAC 458-20-111, Advances and reimbursements.)

(b) No deduction is allowed for commissions, fees, or salaries paid to other agents, brokers, or solicitors nor for other expenses of doing business.

(c) Every person acting in the capacity of agent, broker, or solicitor is presumed to be engaging in business and subject to the business and occupation tax unless such person can demonstrate he or she is a bona fide employee. The burden is upon such person to establish the fact of his or her status as an employee. (See WAC 458-20-105, Employees.)

(4) **Full-time life insurance salespersons.** After June 30, 1991, persons who sell life insurance on a full-time basis, as provided in section 3121 (d)(3)(B) of the Internal Revenue Code (statutory employee), will be considered employees. Such persons will not be subject to the business and occupation tax on amounts received in their capacity as statutory employees.

(a) For purposes of this subsection (4), a full-time life insurance salesperson is an individual who meets all of the following criteria:

(i) The person's principal business activity is devoted to the solicitation of life insurance or annuity contracts, or both, primarily for one insurance company;

(ii) The contract between the individual and the primary life insurance company contemplates that substantially all of such services are to be performed personally by such individual;

(iii) The individual does not have a substantial investment in facilities used in connection with the sale of life insurance or annuity contracts (other than in facilities for transportation); and

(iv) The sale of life insurance by such individual occurs in the course of a continuing relationship with the primary life insurance company.

(b) A person's principal business activity is the activity from which he or she generally receives the greatest remuneration. All business activities, including acting as an employee, will be considered in determining a person's principal business activity.

(c) The facilities referred to in (a)(ii) of this subsection include such things as office space, office equipment, and secretarial services. The term facilities does not include such tools, instruments, or clothing as are commonly furnished by employees. An investment is substantial if a deduction for the item is taken in calculating the person's federal income tax liability.

(d) Failure to satisfy any one of the criteria listed in (a) of this subsection will disqualify a person from treatment as an employee under this subsection.

(e) A person will be considered an employee under this subsection (4) only as to amounts received as compensation for the sale of life insurance or annuity contracts, or both, from one life insurance company, regardless of whether the person sells life insurance on behalf of other companies.

(f) A person will be presumed to be a full-time life insurance salesperson within the meaning of section 3121 (d)(3)(B) of the Internal Revenue Code if they receive a Form W-2 (federal income tax wage and tax statement) indicating that they are a statutory employee. A person receiving a W-2 as a statutory employee will be presumed to be an employee under this subsection only as to amounts reported on the W-2 as compensation for the sale of life insurance.

(g) A person who does not receive a properly marked W-2 has the burden of establishing that they are a full-time life insurance salesperson as provided in (a) of this subsection.

(h) Examples.

(i) A person sells life insurance on a full-time basis on behalf of one company. The company issues a Form W-2 which indicates that the person is a statutory employee. Under these circumstances, the person will be presumed an employee as to amounts reported on the Form W-2 as compensation for the sale of life insurance and will not be taxable under the business and occupation tax on such amounts.

(ii) A person sells insurance on behalf of several insurance companies two of which are life insurance companies and the others are casualty insurance companies. The person sells both life insurance and casualty insurance. One of the life insurance companies issues a Form W-2 indicating that the person is a statutory employee. The person will be presumed an employee as to amounts reported on the Form W-2 as compensation for the sale of life insurance and will not be taxable under the business and occupation tax on such amounts.

(iii) A person sells life insurance on behalf of several life insurance companies and does not engage in any other business activity. Most of the policies sold by the person are written with one company. The person does not receive a Form W-2 from any of the companies for which life insurance is sold. The person's sales activities are conducted from an office which he or she leases. The office lease payments are deducted by the salesperson in computing his or her federal income tax liability. In addition, the salesperson has an employee whose salary is also deducted for federal income tax purposes. Because the person does not receive a Form W-2, he or she will not be presumed to be an employee. Instead, the person has the burden of proving the existence of each of the criteria listed in subsection (4)(a) of this section. In this example, the salesperson will not be considered an employee under this subsection (4) of this section because they have a substantial investment in facilities.

(5) **Special classification for certain managing general agents.** Under RCW 82.04.280(5) persons representing and performing services for fire or casualty insurance companies as independent resident managing general agents are subject to tax at the prevailing rate upon the gross income of the business.

(a) In view of the small number of persons falling in this special category, no separate classification line on the combined excise tax return has been provided for reporting this income; it should be shown on line 1 of the combined excise tax return with the explanatory note: "Income for insurance managing general agent taxable under RCW 82.04.280(5)."

(b) Any person claiming to fall within this tax classification must demonstrate:

(i) That he is licensed as a resident general agent by the insurance commissioner; and

(ii) That he performs the following independent manager functions:

(A) Pays all sales and/or production expense; including salaries of special field representatives, underwriters, and inspectors as well as all office expenses of rent, supplies, secretarial help, etc.

(B) Bills all premiums for the company so represented.

(C) Directly contracts for or hires all selling agents.

(D) Exercises final responsibility with respect to selecting risks and underwriting matters.

(E) Makes all arrangements for reinsurance.

(F) Handles all claims adjustments directly with the insured (by his own staff or through hiring an independent adjuster).

(c) Persons wishing to claim qualification for this special insurance agent classification should request application forms from the department of revenue.

[Statutory Authority: RCW 82.32.300. 92-19-004, § 458-20-164, filed 9/3/92, effective 10/4/92; 83-17-099 (Order ET 83-6), § 458-20-164, filed 8/23/83; Order 70-5, § 458-20-164 (Rule 164), filed 6/22/70.]

WAC 458-20-165 Laundries, dry cleaners, self-service laundries and dry cleaners. (1) **Introduction.** This section discusses the business and occupation (B&O) tax and retail sales tax liability of laundries, dry cleaners, pickup and delivery services, and self-service laundries and dry cleaners. RCW 82.04.050 includes within the definition of "retail sale" repairing, cleaning, and altering tangible personal property for consumers, except sales of laundry services by nonprofit hospital associations to their members.

(2) **Terms.**

(a) A "laundry or dry cleaning business" includes operating a plant or establishment, or contracting with others, for laundering, cleaning, dyeing, pressing and incidentally repairing such articles as clothing, linens, bedding, towels, curtains, drapes, and rugs. Laundry or dry cleaning businesses include self-service businesses which provide coin and noncoin operated laundry or dry cleaning facilities and pickup and delivery laundry services performed by persons operating in their own name and not as commissioned agent for another laundry business.

(b) A "laundry or linen supply service" is the business of providing customers with a supply of clean linen, uniforms, towels, etc., whether ownership of such property is in the person operating the laundry or linen supply service or in the customer. The term includes supply services which operate their own cleaning establishments as well as those which contract with other laundry or dry cleaning businesses.

(3) **Business and Occupation Tax.**

(a) **Retailing.** Persons operating laundry or dry cleaning businesses, including self-service or coin operated businesses, are taxable under the retailing classification upon the gross proceeds of sales, without any deduction on account of commissions allowed or amounts paid to another for the performance of all or part of the laundry or dry cleaning service rendered.

(i) The gross proceeds of sales includes charges for cleaning and for sales of starch, soap, blueing or any other article sold to customers.

(ii) Laundries in Washington which provide linen supply services are making retail sales in this state even though their customers may be located outside this state. Gross income from such services is subject to tax because the charge is for laundering which takes place in this state, rather than being a true rental of property (uniforms, linen, etc.) to nonresidents.

(b) **Wholesaling.** Tax is due under the wholesaling classification upon the gross proceeds of sales derived from laundry or dry cleaning services rendered for other laundry and dry cleaning businesses.

(c) **Service and other activities.** Nonprofit associations composed exclusively of nonprofit hospitals are taxable under the service and other activities classification on gross income received for providing laundry services to their members. Persons who collect and distribute laundry or dry cleaning as a commissioned agent for one or more laundry or dry cleaning businesses, and who act as an independent contractor rather than as an employee, are liable for service B&O tax on their gross commissions. See WAC 458-20-159 for the recordkeeping requirements for showing agency status.

(4) **Retail Sales Tax.**

(a) Laundry and dry cleaning businesses, including self-service or coin operated laundries or dry cleaners, and laundry or linen supply services are required to collect the retail sales tax upon the total charge made to the customer for laundry and dry cleaning service or laundry supply service. RCW 82.04.050 was amended by chapter 25, Laws of 1993 sp.s. to include as a retail sale the income from coin operated laundry facilities situated in an apartment house, hotel, motel, rooming house or trailer camp for the exclusive use of the tenants. This change became effective July 1, 1993. Previously such charges were taxed under the service and other business activities classification.

(b) Laundry and dry cleaning businesses which provide their services through commissioned agents should collect and remit the retail sales tax to the department.

(i) If the agent is a hotel or an apartment which bills guests or tenants for laundry or dry cleaning services, the hotel or apartment should collect the retail sales tax on the total charge for the laundry or dry cleaning and remit the payment to the laundry or dry cleaning business. The laundry or dry cleaning business is responsible for remitting the tax to the department.

(ii) If the agent is a commissioned driver, the laundry or dry cleaning business can bill the customer directly for the services or the driver can collect the payment from the customer and remit the payment to the laundry or dry cleaning business. In either case, the retail sales tax must be collected on the total charge made to the customer and the laundry or dry cleaning business is responsible for remitting the tax to the department.

(c) Sales by supply houses to laundries, dry cleaners and persons operating laundry or linen supply services of soaps, cleaning solvents and other articles or substances which are used in rendering a laundry, laundry supply or cleaning service are retail sales and are subject to the retail sales tax. Sales to such persons of dyes, fabric softeners, starches and similar articles or substances, which become ingredients of the articles cleaned, are sales at wholesale and are not subject to the retail sales tax. Similarly, sales to persons operating laundry or linen supply services of linen, uniforms, towels, cabinets, hand soap and similar property rented or supplied to customers as a part of the service rendered are wholesale sales. Sales by supply houses to laundries, dry cleaners and operators of laundry or linen supply services of equipment and supplies such as machinery, hand tools, sewing notions, scissors, spotting brushes, stationery, etc., are retail sales and the retail sales tax must be collected thereon.

(d) Sales by supply houses to self-service or coin operated laundries of any items which the laundries give to their customers are retail sales. Sales of soap, bleach, fabric softener or other supplies to self-service or coin operated laundries for resale to their customers are wholesale sales. The laundry or dry cleaning business should provide a resale certificate to the supply house as provided in WAC 458-20-102. A sale is for resale if the self-service business sells the supplies to customers separate from the charge for the use of the laundry appliances.

(e) Sales to all operators of laundry or dry cleaning establishments of equipment such as washing machines, ironers, furniture, etc., are retail sales subject to the sales tax.

(f) In most cases the retail sales tax must be stated separately from the selling price or collected separately from the buyer. (See RCW 82.08.050.) An exception is made for coin operated sales. The seller may deduct the tax from the total amount received in coin operated machines to arrive at the net amount which becomes the measure of the tax.

(g) In general, the place of sale for purposes of local sales tax is the place the laundry services are performed. See WAC 458-20-103 and 458-20-145.

(i) If a laundry or dry cleaning business contracts with another laundry or dry cleaning business to do the cleaning, the place of sale is the location of the laundry or dry cleaning business used by the customer to drop off and pickup the laundry.

(ii) If a laundry or dry cleaning business uses a commissioned agent such as a hotel, an apartment, or a commissioned driver for pickup and delivery of the articles to be cleaned, the place of sale is the location of the laundry or dry cleaning business which does the cleaning.

[Statutory Authority: RCW 82.32.300 and 82.04.050. 94-09-016, § 458-20-165, filed 4/13/94, effective 5/14/94. Statutory Authority: RCW 82.32.300. 83-07-033 (Order ET 83-16), § 458-20-165, filed 3/15/83; Order ET 73-1, § 458-20-165, filed 11/2/73; Order ET 70-3, § 458-20-165 (Rule 165), filed 5/29/70, effective 7/1/70.]

WAC 458-20-166 Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc. (1) **Introduction.** This section explains the taxation of persons operating establishments such as hotels, motels, and bed and breakfast facilities, which provide lodging and related services to transients for a charge. In addition to retail sales tax and B&O tax, this section explains the special hotel/motel tax, the convention and trade center tax, and the taxation of emergency housing furnished to the homeless.

(a) In addition to persons operating hotels or motels, this section applies to persons operating the following establishments:

(i) Trailer camps and recreational vehicle parks which charge for the rental of space to transients for locating or parking house trailers, campers, recreational vehicles, mobile homes, tents, etc.

(ii) Educational institutions which sell overnight lodging to persons other than students. See WAC 458-20-167.

(iii) Private lodging houses, dormitories, bunkhouses, etc., operated by or on behalf of business and industrial firms or schools solely for the accommodation of employees of such firms or students which are not held out to the public as a place where sleeping accommodations may be obtained. As will be discussed more fully below, in some circumstances these businesses may not be making retail sales of lodging.

(iv) Guest ranches or summer camps which, in addition to supplying meals and lodging, offer special recreation facilities and instruction in sports, boating, riding, outdoor living, etc. In some cases these businesses may not be making retail sales, as discussed below.

(b) This section does not apply to persons operating the following establishments:

(i) Hospitals, sanitariums, nursing homes, rest homes, and similar institutions. Persons operating these establishments should refer to WAC 458-20-168.

(ii) Establishments such as apartments or condominiums where the rental is for longer than one month. See WAC 458-20-118 for the distinction between a rental of real estate and the license to use real estate.

(2) **Transient defined.** The term "transient" as used in this section means any guest, resident, or other occupant to whom lodging and other services are furnished under a license to use real property for less than one month, or less than thirty continuous days if the rental period does not begin on the first day of the month. An occupant remaining in continuous occupancy for thirty days or more is considered a nontransient upon the thirtieth day. An occupant who contracts in advance and does remain in continuous occupancy for the initial thirty days will be considered a nontransient from the start of the occupancy.

(3) **Business and occupation tax (B&O).** Where lodging is sold to a nontransient, the transaction is a rental of real estate and exempt from B&O tax. (See RCW 82.04.390.) Sales of lodging and related services to transients are subject to B&O tax, including transactions which may have been identified or characterized as membership fees or dues. (See WAC 458-20-114.) The B&O tax applies as follows:

(a) **Retailing.** Amounts derived from the following charges to transients are retail sales and subject to the retailing B&O tax: Rental of rooms for lodging, rental of radio and television sets, coin operated laundries, rental of rooms, space and facilities not for lodging, such as ballrooms, display rooms, meeting rooms, etc., automobile parking or storage, and the sale or rental of tangible personal property at retail. See "retail sales tax" below for a more detailed explanation of the charges included in the retailing classification.

(b) **Service and other business activities.** Commissions, amounts derived from accommodations not available to the public, and certain unsegregated charges are taxable under this classification.

(i) Hotels, motels, and similar businesses may receive commissions from various sources which are generally taxable under the service and other business activities classification. The following are examples of such commissions:

(A) Commissions received from acting as a laundry agent for guests when someone other than the hotel provides the laundry service (see WAC 458-20-165).

(B) Commissions received from telephone companies for long distance telephone calls where the hotel or motel is merely acting as an agent (WAC 458-20-159) and commissions received from coin-operated telephones (WAC 458-20-245). Refer to the retail sales tax subsection below for a further discussion of telephone charges.

(C) Commissions or license fees for permitting a satellite antenna to be installed on the premises or as a commission for permitting a broadcaster or cable operator to make sales to the guest of the hotel or motel.

(D) Commissions from the rental of videos for use by guests of the hotel or motel when the hotel or motel operator is clearly making such sales as an agent for a seller.

(E) Commissions received from the operation of amusement devices. (WAC 458-20-187.)

(ii) Taxable under this classification are amounts derived from the rental of sleeping accommodations by private lodging houses, and by dormitories, bunkhouses, etc., operated by or on behalf of business and industrial firms and which are not held out to the public as a place where sleeping accommodations may be obtained.

(iii) Summer camps, guest ranches and similar establishments making an unsegregated charge for meals, lodging, instruction and the use of recreational facilities must report the gross income from such charges under the service and other business activities classification.

(iv) Deposits retained by the business as a penalty charged to a customer for failure to timely cancel a reservation is taxable under the service and other business activities classification.

(4) **Retail sales tax.** Persons providing lodging and other services generally must collect retail sales tax on their charges for lodging and other services as discussed below. They must pay retail sales or use tax on all of the items they purchase for use in providing their services.

(a) **Lodging.** All charges for lodging and related services to transients are retail sales. Included are charges for vehicle parking and storage and for space and other facilities, including charges for utility services, in a trailer camp.

(i) An occupant who does not contract in advance to stay at least thirty days does not become entitled to a refund of retail sales tax where the rental period extended beyond thirty days. For example, a tenant rents the same motel room on a weekly basis. The tenant is considered a transient for the first twenty-nine days of occupancy and must pay retail sales tax on the rental charges. The rental charges become exempt of retail sales tax beginning on the thirtieth day. The tenant is not entitled to a refund of retail sales taxes paid on the rental charges for the first twenty-nine days.

(ii) A business providing transient lodging must complete the "transient rental income" information section of the combined excise tax return. The four digit location code must be listed along with the income received from transient lodging subject to retail sales tax for each facility located within a participating city or county.

(b) **Meals and entertainment.** All charges for food, beverages, and entertainment are retail sales.

(i) Charges for related services such as room service, banquet room services, and service charges and gratuities which are agreed to in advance by customers or added to their bills by the service provider are also retail sales.

(ii) In the case of meals sold under a "two meals for the price of one" promotion, the taxable selling price is the actual amount received as payment for the meals.

(iii) Meals sold to employees are also subject to retail sales tax. See WAC 458-20-119 for retail sales tax applicability on meals furnished to employees.

(iv) Sale of food and other items sold through vending machines are retail sales. See WAC 458-20-187 for reporting income from vending machine sales and WAC 458-20-244 for the distinction between taxable and nontaxable sales of food products.

(v) Except for guest ranches and summer camps, when a lump sum is charged for lodging to nontransients and for meals furnished, the retail sales tax must be collected upon the fair selling price of such meals. Unless accounts are kept showing the fair selling price, the tax will be computed upon double the cost of the meals served. The cost includes the price paid for food and drinks served, the cost of preparing and serving meals, and all other costs incidental thereto, including an appropriate portion of overhead expenses.

(vi) Cover charges for dancing and entertainment are retail sales.

(vii) Charges for providing extended television reception to guests are retail sales.

(c) **Laundry services.** Charges for laundry services provided by a hotel/motel in the hotel's name are retail sales. RCW 82.04.050, which defines retail sales, was amended by chapter 25, Laws of 1993 sp.s. to include charges for the use of coin-operated laundry facilities located in hotels, motels, rooming houses, and trailer camps for the exclusive use of the tenants. This change became effective July 1, 1993. Prior to that date income from charges to tenants for coin-operated laundry facilities was subject to service B&O tax.

(d) **Telephone charges.** Telephone charges to guests, except those subject to service B&O tax as discussed above and in WAC 458-20-245, are retail sales. "Message service" charges are also retail sales.

If the hotel/motel is acting as an agent for a telephone service provider who provides long distance telephone service to the guest, the actual telephone charges are not taxable income to the hotel/motel. These amounts are advances and reimbursements (see WAC 458-20-111 and 458-20-159). Any additional handling or other charge which the hotel/motel may add to the actual long distance telephone charge is a retail sale.

(e) **Telephone lines.** If the hotel/motel leases telephone lines and then provides telephone services for a charge to its guests, these charges are taxable as retail sales. In this case the hotel/motel is in the telephone business. (See WAC 458-20-245.) The hotel/motel may give a resale certificate to the provider of the leased lines and is not subject to the payment of retail sales tax to the provider of the leased lines.

(f) **Rentals.** Rentals of tangible personal property such as movies and sports equipment are retail sales.

(g) **Purchases of tangible personal property for use in providing lodging and related services.** All purchases of tangible personal property for use in providing lodging and related services are retail sales. The charge for lodging and related services is for services rendered and not for the resale of any tangible property.

(i) Included are such items as beds and other furnishings, restaurant equipment, soap, towels, linens, and laundry supply services. Purchases, such as small toiletry items, are included even though they may be provided for guests to take home if not used.

(ii) The retail sales tax does not apply to sales of food products to persons operating guest ranches and summer camps for use in preparing meals served to guests. Sales of prepared meals or other items which require a food handler's permit to persons operating guest ranches and summer camps are subject to retail sales tax. See WAC 458-20-244 for sales of food products.

(h) **Sales to the United States government.** Sales made directly to the United States government are not subject to retail sales tax. Sales to employees of the federal government are fully taxable notwithstanding that the employee ultimately will be reimbursed for the cost of lodging. The department of revenue has identified the following methods of billing or payment which are presumed to be sales directly to the federal government:

(i) The lodging is paid by government voucher or government check payable directly to the hotel/motel.

(ii) Charges made through the use of a VISA I.M.P.A.C. card (International merchant purchase authorization card). The VISA I.M.P.A.C. cards include the embossed legend "U.S. Government Tax Exempt." The account number on each card begins with the prefix "4716."

(iii) For periods prior to November 30, 1993, charges made through Diner's Club Corporate Charge Card (the card contains the statement "for official use only"). There were two Diner's Club Corporate Charge Cards available to federal employees. Only one was sales tax exempt. The card providing the exemption was embossed with the name of the employee followed by the statement "for official use only." This card was used by federal agencies to pay for group lodging. The Diner's Club card program for federal employees ended November 29, 1993.

(iv) Beginning November 30, 1993, charges made through the use of certain American Express charge cards issued for the use of federal government travelers. Only those cards directly charging a government travel account (central bill account) qualify for the exemption. These cards begin with an account number prefix of "3783-9."

(v) A cash purchase made on behalf of the federal government by a federal employee who gives the seller a federal standard form SF 1165. A cash purchase by a federal employee made on behalf of the federal government qualifies for a sales tax exemption provided that the federal employee presents a federal standard form SF 1165 to document the fact that the purchase is made on behalf of the federal agency out of petty cash funds. The vendor (hotel/motel) is required to sign form SF 1165 to signify receipt of cash for the purchase. The vendor must retain a photocopy of SF 1165, describing the item purchased, to document the sales tax exemption.

(5) **Special hotel/motel tax.** Beginning in October 1987, some locations in the state have been authorized to charge a special hotel/motel tax. (See chapters 67.28 and 36.100 RCW.) If a business is in one of these locations, an

additional tax is charged and reported under the special hotel/motel portion of the tax return. The four digit location code, the amount received for the lodging, and the tax rate must be completed for each location in which the lodging is provided. The tax applies without regard to the number of lodging units except that the tax of chapter 36.100 RCW applies only if there are forty or more lodging units. The tax only applies to the charge for the rooms to be used for lodging by transients. Additional charges for telephone services, laundry, or other incidental charges are not subject to the special hotel/motel tax. Neither is the charge for use of meeting rooms, banquet rooms, or other special use rooms subject to this tax. However, the tax does apply to charges for use of camping and recreational vehicle sites.

(6) **Convention and trade center tax.** Businesses selling lodging to transients, having sixty or more units located in King County, must charge their customers the convention and trade center tax and report the tax under the "convention and trade center" portion of the tax return. See RCW 67.40.090.

(a) A business having more than sixty units which are rented to transients and nontransients will be subject to the convention and trade center tax only if the business has at least sixty rooms which are available or being used for transient lodging. For example, a business with one hundred forty total rooms of which ninety-five are rented to nontransients is not subject to the convention and trade center tax.

(b) The tax only applies to the charge for the rooms to be used for lodging by transients. Additional charges for telephone services, laundry, or other incidental charges are not subject to the convention and trade center tax. Neither is the charge for use of meeting rooms, banquet rooms, or other special use rooms subject to the convention and trade center tax.

(c) The four digit location code, amount received for the lodging, and the tax rate must be completed for each location in which the lodging is provided. However, the tax does apply to charges for camping or recreational vehicle sites. Each camp site is considered a single unit.

(7) **Furnishing emergency lodging to homeless.** The charge made for the furnishing of emergency lodging to homeless persons purchased via a shelter voucher program administered by cities, towns, and counties or private organizations that provide emergency food and shelter services is exempt from the retail sales tax, the convention and trade center tax, and the special hotel/motel tax. This exemption became effective July 1, 1988. This form of payment does not influence the required minimum of transient rooms available for use as transient lodging under the "convention and trade center tax" or under the "special hotel/motel tax."

[Statutory Authority: RCW 82.32.300. 94-05-001, § 458-20-166, filed 2/2/94, effective 3/5/94; 92-05-064, § 458-20-166, filed 2/18/92, effective 3/20/92; 88-20-014 (Order 88-6), § 458-20-166, filed 9/27/88; 83-07-033 (Order ET 83-16), § 458-20-166, filed 3/15/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-166, filed 6/27/78; Order ET 70-3, § 458-20-166 (Rule 166), filed 5/29/70, effective 7/1/70.]

WAC 458-20-167 Educational institutions, school districts, student organizations, and private schools. (1) **Introduction.** This section explains the application of Washington's B&O, retail sales, and use taxes to educational institutions, school districts, student organizations, and private schools. It also gives tax reporting information to persons operating nursery school, preschool, and day care. Educational institutions which are institutions of the state of Washington should also refer to WAC 458-20-189 (Sales to and by the state of Washington, etc.).

(2) **Definitions.** For the purposes of this section, the following definitions apply:

(a) The term "tuition fees" includes fees for instruction, library, laboratory, and health services. The term also includes special fees and amounts charged for room and board when the property or service for which such charges are made is furnished exclusively to the students or faculty of the institution.

(b) "Educational institutions" means the following:

(i) Institutions which are established, operated, and governed by this state or its political subdivisions under Title 28A, 28B, or 28C RCW.

(ii) Nonpublic schools, including parochial or independent schools or school districts, carrying out a program for any or all of the grades one through twelve, which have been approved by the Washington state board of education. (See also chapter 180-90 WAC.)

(iii) Degree-granting institutions offering educational credentials, instruction, or services prerequisite to or indicative of an academic or professional degree or certificate beyond the secondary level, provided the institution is accredited by an accrediting association recognized by the United States Secretary of Education and offers to students an educational program of a general academic nature. Degree-granting institutions should refer to chapter 28B.85 RCW for information about the requirement for authorization by the Washington higher education coordinating board.

(iv) Institutions which are not operated for profit, and which are privately endowed under a deed of trust to offer instruction in trade, industry, and agriculture.

(v) On and after July 1, 1993, the term includes educational programs that an educational institution cosponsors with a nonprofit organization, as defined by the Internal Revenue Code Sec. 501 (c)(3), provided that educational institution grants college credit for course work successfully completed through the educational program. (See chapter 18, Laws of 1993 sp.s.)

(vi) On and after July 25, 1993, "educational institutions" includes certain branch campuses of foreign degree-granting institutions, provided the following requirements, among others, are satisfied:

(A) The branch campus must be owned and operated directly by a foreign degree-granting institution or indirectly through a Washington profit or nonprofit corporation in which the foreign degree-granting institution is the sole or controlling shareholder or member;

(B) Courses must be provided solely and exclusively to students enrolled in a degree-granting program offered by the institution;

(C) The branch campus must be approved by the Washington higher education coordinating board to operate in this state; and

(D) The branch campus must be recognized to be exempt from income taxes pursuant to 26 U.S.C. Sec. 501(c). (See chapter 181, Laws of 1993.)

(vii) "Educational institutions" does not include any entity defined as a "private vocational school" under chapter 28C.10 RCW and/or any entity defined as a "degree-granting private vocational school" under chapters 28C.10 and 28B.85 RCW (other than those described in (b)(iv) of this subsection).

(c) "Private schools" means all schools and institutions which are excluded from the above definition of "educational institutions." For example, an elementary school operated by a church organization is a "private school" if the school is not approved. It will be given the tax treatment of an "educational institution" for purposes of this section only if it has obtained approval from the Washington state board of education.

(3) **Business and occupation tax.** Departments and institutions of the state of Washington are not subject to the B&O tax. (See WAC 458-20-189.) School districts are also not subject to the B&O tax, except as to income derived from a public utility or enterprise activity. RCW 82.04.419. Private schools, student organizations, school districts engaging in utility or enterprise activities, and educational institutions which are not departments or institutions of the state of Washington are subject to the B&O tax as follows:

(a) **Service and other business activities.** The service B&O tax applies to the following activities or sources of income:

(i) Tuition fees received by private schools. However, educational institutions, as defined above, may deduct amounts derived from tuition fees. (Refer to RCW 82.04.4282.)

(ii) Rental of conference facilities to various organizations or groups.

(iii) Rental by private schools of dormitories or other student lodging facilities which are not generally available to the public and where the student does not have an absolute right of control and occupancy. (See WAC 458-20-118.) However, educational institutions may deduct the income from charges for lodging made to students. These amounts are defined by law as being tuition.

(iv) Amounts received by private schools for providing meals to students where the meals are provided exclusively for students, teachers, staff, and their guests. However, refer to the comments under retailing for the taxability of meals sold to guests of students. Income from providing meals to students by educational institutions is deductible.

(v) Amounts received from owners of coin operated vending machines or amusement devices for allowing the placement of those machines on the premises of the school. (Refer also to WAC 458-20-187.)

(b) **Retailing.** The retailing B&O tax applies to the following activities or sources of income:

(i) Sales of tangible personal property or services classified as retail sales. This includes sales of books and supplies to students where these materials are not supplied as part of the tuition charge.

(ii) Charges for making copies of public records or documents, such as transcripts.

(iii) Sales of meals to guests of students.

(iv) Sales of meals or prepared foods in facilities which are generally open to the public, including those sold to students. (See also WAC 458-20-119.)

(4) **Retail sales tax.** The retail sales tax applies to all sales of the type identified under retailing. Educational institutions, school districts, student organizations, and private schools, including departments or institutions of the state of Washington, are required to collect the retail sales tax on sales of tangible personal property and retail services to consumers, notwithstanding such sales may be exempt from the retailing B&O tax. Amounts derived from charges between departments or institutions of the state of Washington, or between departments of the same entity, constitute interdepartmental charges and are not subject to the retailing or retail sales tax. (See WAC 458-20-201.) Sales of certain food products are exempt from the retail sales tax. (See WAC 458-20-244.) Persons selling merchandise through vending machines should refer to WAC 458-20-187.

(5) **Deferred sales or use tax.** Educational institutions, school districts, student organizations, and private schools are required to report the deferred sales or use tax upon the use of all tangible personal property purchased or acquired under conditions whereby the Washington retail sales tax has not been paid. These organizations are the consumers of food or beverage products which are ingredients of meals that are furnished to students and faculty. However, certain food products are exempt from the retail sales and/or use tax. (Refer to WAC 458-20-244.) If items are purchased for dual purposes (i.e., for both consumption and resale), these organizations may claim a tax paid at source deduction for the cost of the articles resold upon which retail sales tax was paid. (See WAC 458-20-102.)

(6) **Nursery schools, preschools, day care providers, and privately operated kindergartens.** Income received by nursery schools, preschools, day care providers, and privately operated kindergartens for the care or education of children who are under eight years of age and not enrolled in or above the first grade is exempt from the B&O tax. (Refer to RCW 82.04.4282.) Such persons are, however, subject to the service B&O tax upon the gross proceeds derived from providing child care to children who are eight years of age or older or enrolled in or above the first grade. Nursery schools, preschools, and day care providers receiving both taxable and exempt income must properly segregate such income in their books of account.

Effective June 11, 1992, the B&O tax does not apply to income derived by a church for the care of children of any age for periods of less than twenty-four hours, provided the church is exempt from property tax under RCW 84.36.020. (See chapter 81, Laws of 1992.)

(7) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(a) MN University is an educational institution created by the state of Washington. MN University operates a book store at which it sells text books, school supplies, and apparel to students and nonstudents. As an institution of the state of Washington, MN University is exempt from the B&O tax with respect to all sales, irrespective that sales are made to nonstudents. However, MN is required to collect and remit retail sales tax on its gross proceeds of sales made through its book store.

(b) DMG College is a degree-granting institution accredited by an accrediting association recognized by the United States Secretary of Education. DMG College is an educational institution operated by a church. DMG makes charges to its students for tuition, meals, and lodging. It also receives income for occasionally providing lodging and meals to guests of its students during the year. DMG also rents its conference and dormitory facilities to various groups during the summer, providing cafeteria services when needed. The income from tuition, meals, and lodging received from the students is exempt of B&O and retail sales tax because this entity comes within the definition of an educational institution. DMG must report the retailing B&O tax and collect and remit retail sales tax upon the gross proceeds derived from the sales of meals and prepared foods to the conference attendees and guests. The income derived from the rental of the conference and dormitory facilities to various groups and student guests is subject to the service B&O tax. The college is not considered as holding itself out for the sale of lodging to the general public.

(c) JB College is an educational institution which is not a department or institution of the state of Washington. JB College has converted five housing units from student use for use by nonstudents. Guests of the administration use these units for stays of two or three days, and are charged a specific amount per night. The college provides linen, towels, etc., to the users. These units are always rented for periods under thirty days. JB College must report this rental income under the retailing B&O tax and collect and remit retail sales tax. This income is not derived from the occasional rental of student lodging facilities, but is derived from the rental of accommodations specifically maintained for public use.

(d) Jane Doe operates a private preschool and kindergarten, providing care and elementary education for children. She also provides after hours child care. Jane Doe may claim a deduction for the income received for the care and education of children under eight years old and not enrolled in or above the first grade, provided this income is properly segregated in her books of account. The income attributable to the care of children at or above the first grade level, i.e., eight years old or enrolled in or above the first grade, is subject to the service B&O tax. However, no service B&O tax will be due if the measure of taxable income is less than the amount for which the B&O tax is required to be paid. (See WAC 458-20-104.)

[Statutory Authority: RCW 82.32.300. 94-07-047, § 458-20-167, filed 3/10/94, effective 4/10/94; 83-07-032 (Order ET 83-15), § 458-20-167, filed 3/15/83; Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-167, filed 6/27/78; Order ET 70-3, § 458-20-167 (Rule 167), filed 5/29/70, effective 7/1/70.]

WAC 458-20-168 Hospitals, medical care facilities, and adult family homes. (1) **Introduction.** This section provides tax reporting information to persons operating hospitals, medical care facilities, and adult family homes. It includes tax reporting changes resulting from the passage of chapter 25, Laws of 1993 sp.s. which affected nonprofit hospitals and hospitals operated by political subdivisions of the state.

(2) **Definitions.**

(a) The term "hospital" means only institutions defined as hospitals in chapter 70.41 RCW. The term includes privately owned and operated hospitals, hospitals operated as nonprofit corporations, hospitals operated by political subdivisions of the state, and hospitals operated by the state but not owned by the state.

(b) The term "nursing home" means only institutions defined as nursing homes in chapter 18.51 RCW.

(c) The term "adult family home" means private homes licensed by the department of social and health services as adult family homes (see WAC 388-76-030(2)), and those which are specifically exempt from licensing under the rules of the department of social and health services. (See WAC 388-76-140.)

(3) **Business and occupation (B&O) tax.** The sale of tangible personal property which is not part of the medical service being provided to a patient is taxable under the retailing B&O tax classification. There are two B&O tax classifications which can apply to persons providing medical services through the operation of a hospital, with the tax classification dependent on the organizational structure of the hospital. The B&O tax classifications are:

(a) Public or nonprofit hospitals. This B&O tax classification applies to gross income derived from personal and professional services to patients by hospitals that are operated as nonprofit corporations, operated by political subdivisions of the state, or operated but not owned by the state. These hospitals became taxable for hospital services under this B&O tax classification on July 1, 1993. These hospitals were required to report under the service B&O tax classification prior to July 1, 1993, but were entitled to a deduction for services rendered to patients.

(b) Service. The gross income derived from personal and professional services of hospitals (other than hospitals operated as nonprofit corporations or by political subdivisions of the state), nursing homes, convalescent homes, clinics, rest homes, health resorts, and similar health care institutions is subject to business and occupation tax under the service and other activities classification. This classification also applies to nonprofit hospitals for personal or professional services which are performed for persons other than patients and not otherwise tax classified.

(c) Retailing. The retailing business and occupation tax applies to sales by such persons of tangible personal property sold and billed separately from services rendered. However, this does not include charges to patients for tangible personal property which is used in providing medical services to a patient, even if separately billed. Tangible personal property which is used in providing medical services is not considered to have been sold separately from the medical services simply because those items are separately invoiced. These charges, even if separately itemized, are for providing medical services and are taxable under either the "public or nonprofit hospital" classification or the "service and other business activities" classification, depending on the type of organization making the sale. However, making copies of medical records is considered to be a separate activity from that of providing medical services and any income from this activity is subject to the retailing tax and the retail sales tax.

(d) Research and development. There is a separate tax classification which applies to nonprofit corporations and nonprofit associations for income received in performing research and development. See RCW 82.04.260(6).

(4) **Exemptions and deductions.** The following exemptions and deductions apply:

(a) Adult family homes. The gross income derived from personal and professional services of adult family homes which are licensed as such, or which are specifically exempt from licensing under the rules of the department of social and health services, is exempt from the business and occupation tax effective June 9, 1987.

(b) State-owned hospitals. The gross income from a hospital owned by the state of Washington is not subject to B&O tax. (Refer to WAC 458-20-189.) This exemption does not include hospital districts or hospitals which are operated by or for political subdivisions of the state, such as a county government.

(c) Kidney dialysis facilities, certain nursing homes, certain homes for unwed mothers. Nonprofit organizations operating kidney dialysis facilities, homes for unwed mothers where the operating organization is also a religious or charitable organization, and nonprofit nursing homes are exempt from B&O tax on the services they provide to patients or from the sales of prescription drugs. (See WAC 458-20-18801.) However, the exemption applies only if no part of the net earnings received by such an institution inures, directly or indirectly, to any person other than the institution entitled to deduction hereunder. The deduction for income from the operation of kidney dialysis facilities is available to nonprofit hospitals if the hospital accurately identifies and accounts for the income from this activity.

(d) Contributions, donations and endowment funds. Amounts received as contributions, donations and endowment funds may be excluded from gross income, provided that no specific service is performed as a condition for receiving the funds. Amounts received as grants are taxable if specific services are performed as a condition for receiving the grant. (See WAC 458-20-114.)

(e) Health and social welfare services. Refer to WAC 458-20-169 for health and welfare services which may be deductible.

(5) **Adjustments to revenues.** Many hospitals will perform charity care where medical care is given without charge or some portion of a charge will be cancelled. In other cases, medical care is billed to patients at "standard" rates, but later adjusted to reduce the charges to the rates established by contract with Medicare, Medicaid, or with private insurers. In these situations the hospital must initially include the total charges as billed to the patient as gross income unless the hospital's records clearly indicate the amount of income to which it will be entitled under its contracts with insurance carriers. Where tax returns are initially filed based on gross charges, an adjustment may be taken at the time of filing future tax returns after the hospital has adjusted its records to reflect the actual amounts collected. In no event may the hospital reduce its current revenue by amounts which were not previously included in the taxable base. If the tax rate changes from the time the B&O tax was first paid on the gross charges and the time of the adjustment, the hospital must file amended tax returns to report the B&O tax on the transaction as finally completed at the rate in effect at the time the service was performed.

(6) **Retail sales tax.** Retail sales which are subject to retailing business tax, as provided earlier, are also subject to retail sales tax. These businesses are required to pay retail sales tax on purchases of medical supplies, durable equipment, and consumables. (For tax liability of hospitals on sales of meals, see WAC 458-20-119 and 458-20-244.)

(7) **Retail sales and use tax exemptions.** The following exemptions from the retail sales and use tax apply:

(a) Effective on May 6, 1993, all items which are reasonably necessary for the operation of free hospitals may be purchased without payment of retail sales or use tax. This includes all supplies and equipment. It also includes any items which are used in providing health care. "Free hospitals" means a hospital that does not charge patients for health care provided by the hospital. (Refer to chapter 205, Laws of 1993.)

(b) Sales of drugs, medicines, prescription lenses, orthotic devices, medical oxygen, or other substances, prescribed by medical practitioners are exempt of retail sales tax where the written prescription bearing the signature of the issuing medical practitioner and the name of the patient for whom prescribed is retained. Sales of prosthetic devices, hearing aids as defined in RCW 18.35.010(3), and ostomic items whether or not prescribed are also exempt of sales tax. See WAC 458-20-18801.

[Statutory Authority: RCW 82.32.300 and 82.04.260(15). 94-11-097, § 458-20-168, filed 5/17/94, effective 6/17/94. Statutory Authority: RCW 82.32.300. 88-01-050 (Order 87-9), § 458-20-168, filed 12/15/87; 87-05-042 (Order 87-1), § 458-20-168, filed 2/18/87; 83-07-033 (Order ET 83-16), § 458-20-168, filed 3/15/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-168, filed 6/27/78; Order ET 74-2, § 458-20-168, filed 6/24/74; Order ET 70-3, § 458-20-168 (Rule 168), filed 5/29/70, effective 7/1/70.]

WAC 458-20-169 Religious, charitable, benevolent, nonprofit service organizations, and sheltered workshops. (1) Introduction. Religious, charitable, benevolent, and nonprofit service organizations are subject to business and occupation tax, retail sales tax, and use tax, unless otherwise provided by this section.

(2) Definitions.

(a) "Sheltered workshops" is defined by the law to mean the performance of business activities of any kind on or off the premises of such nonprofit organizations which are performed for the primary purpose of:

(i) Providing gainful employment or rehabilitation services to the handicapped as an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market or during such time as employment opportunities for them in the competitive labor market do not exist; or

(ii) Providing evaluation and work adjustment services for handicapped individuals.

(b) "Health or social welfare organization" means an organization which renders health or social welfare services as defined below, which is a not-for-profit corporation under chapter 24.03 RCW and which is managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or which is a corporation solely under chapter 24.12 RCW. In addition, in order to be exempt of business and occupation tax under RCW

82.04.4297, a corporation shall satisfy the following conditions:

(i) No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;

(ii) Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the public service of the state;

(iii) Assets of the corporation must be irrevocably dedicated to the activities for which the exemption is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation which also would be entitled to the exemption;

(iv) The corporation must be duly licensed or certified where licensing or certification is required by law or regulation;

(v) The amounts received qualifying for exemption must be used for the activities for which the exemption is granted;

(vi) Services must be available regardless of race, color, national origin, or ancestry; and

(vii) The director of revenue shall have access to its books in order to determine whether the corporation is entitled to this exemption.

(c) "Health or social welfare services" include and are limited to:

(i) Mental health, drug, or alcoholism counseling or treatment;

(ii) Family counseling;

(iii) Health care services;

(iv) Therapeutic, diagnostic, rehabilitative, or restorative services for the care of the sick, aged, or physically-disabled, developmentally-disabled, or emotionally-disabled individuals;

(v) Activities which are for the purpose of preventing or ameliorating juvenile delinquency or child abuse, including recreational activities for those purposes;

(vi) Care of orphans or foster children;

(vii) Day care of children;

(viii) Employment development, training, and placement; and

(ix) Legal services to the indigent;

(x) Weatherization assistance or minor home repairs for low-income homeowners or renters;

(xi) Assistance to low-income homeowners and renters to offset the cost of home heating energy, through direct benefits to eligible households or to fuel vendors on behalf of eligible households; and

(xii) Community services to low-income individuals, families and groups which are designed to have a measurable and potentially major impact on the poverty in the communities of the state.

(d) A "public benefit organization" means an organization exempt from federal income tax under section 501 (c)(3) of the Internal Revenue Code of 1986 as in effect on January 1, 1991.

(i) An organization qualifies as a public benefit organization when the organization has received from the Internal Revenue Service a ruling of tax exemption under section 501 (c)(3) of the Internal Revenue Code.

(ii) An organization qualifies as a public benefit organization if the organization is one chapter or unit in a larger organization, like a church or the boy scouts, and the larger organization has been issued a group section 501 (c)(3) exemption ruling by the Internal Revenue Service.

(iii) An organization qualifies as a public benefit organization if, prior to the auction, the organization has made application to the Internal Revenue Service for section 501 (c)(3) exemption and the effective date of the exemption, when granted, is prior to the auction.

(e) An "auction" means the sale of property and/or services to the highest bidder.

(f) The phrase "more than one auction per year" means more than one auction in any calendar year.

(g) The phrase "conduct or participate in" means actively holding a fund-raising auction. The mere attendance, purchase of items, or the donation of articles to be sold at an auction conducted by others, is not active participation in an auction.

(h) The phrase "not extend over a period of more than two days" means that an auction is not conducted on more than two consecutive or nonconsecutive calendar days in any seven calendar day period.

(3) Fund raising. The following applies to the fund-raising activities of religious, charitable, benevolent, and nonprofit service organizations:

(a) Public benefit organization auctions. Chapter 51, Laws of 1991, effective April 26, 1991, provides to public benefit organizations an exemption from B&O tax and retail sales tax when conducting or participating in an auction.

(i) **B&O tax.** Amounts received from sales by a public benefit organization conducting or participating in an auction are exempt from B&O tax, if:

(A) The organization does not conduct or participate in more than one auction per year; and

(B) The auction does not extend over a period of more than two days.

(ii) **Retail sales tax.** Retail sales tax does not apply to sales by a public benefit organization conducting or participating in an auction, if:

(A) The organization does not conduct or participate in more than one auction per year; and

(B) The auction does not extend over a period of more than two days.

(iii) **Use tax.** An article sold at an auction conducted or participated in by a public benefit organization is subject to use tax. The use tax on the article purchased at the auction is paid by the buyer. The use tax due from the buyer is collected at time of registration or licensing in the case of an auto, boats, etc., purchased at the auction. The use tax due on other items purchased at an auction is remitted by the buyer to the department. Because the use tax is a complementary tax to the retail sales tax and the legislature intended to exempt an auctioning organization from the collection responsibilities of retail sales tax, the auctioning organization also need not collect the use tax. See: WAC 458-20-178.

(iv) **Examples.**

(A) An organization which has been ruled tax exempt under section 501 (c)(3) by the Internal Revenue Service conducts an auction for fund raising. This is the only auction conducted by the organization in the calendar year and it is conducted over a two-day period. The proceeds of the auction are exempt from B&O tax and the sales at the auction are exempt from retail sales tax.

(B) At the auction in example (a)(iv)(A) of this subsection, an automobile has been donated to the organization and is sold. The buyer of the automobile is liable for use tax on the vehicle purchased.

(C) At the auction in example (a)(iv)(A) of this subsection, tickets for a dinner before the auction and a dance after the auction are sold by the organization. The exemption from tax only applies to the auction activities. The dinner-dance activities are taxable when the proceeds, as measured by the lesser of the selling price or the fair market value, exceeds one thousand dollars. See (d) of this subsection.

(D) A public benefit organization has as part of its structure various suborganizations that have no separate identity or purpose, like a hospital guild. Both the larger organization and the suborganizations might conduct various fund-raising activities, including auctions. When the Internal Revenue Service does not consider the suborganizations as separate entities in a single 501 (c)(3) exemption, both the larger organization and the suborganizations are collectively entitled to one exempt auction. If a second auction is conducted within a calendar year by either the larger organization or suborganizations both auctions are taxable as provided in (d) of this subsection. However, if a suborganization is considered a separate 501 (c)(3) entity, as evidenced by a group exemption issued by the Internal Revenue Service, then the larger organization and each suborganization included as part of a group section 501 (c)(3) exemption are each entitled to conduct one exempt auction per calendar year.

(b) Meals. Organizations serving meals for fund-raising purposes are not engaged in the business of making sales at retail and are not required to collect the retail sales tax upon such sales, nor pay the business and occupation tax, if such meals are served no more frequently than once every two weeks and the gross receipts are one thousand dollars or less.

(c) Bazaars/rummage sales. Organizations conducting bazaars or rummage sales who are not generally engaged in the business of making sales at retail are not required to collect the retail sales tax nor pay the business and occupation tax if such bazaars or rummage sales are conducted no more than twice per year and do not extend over a period of more than two days each, and if the gross receipts from each such bazaar or rummage sale are one thousand dollars or less.

(d) Fund-raising drives/concessions. When organizations make retail sales in the course of annual fund-raising drives, other than a public benefit organization auction as provided above, or make such sales through concessions operated no more than twice a year which do not extend over a period of more than two days each, for the support of various benevolent, athletic, recreational, or cultural programs, the retail sales tax and business and occupation tax need not be accounted for if the gross receipts from each such annual fund-raising drive or concession are one thousand dollars or less.

(i) Persons who serve fund-raising meals, conduct bazaars/rummage sales, or fund-raising drives/concessions more frequently than provided in (a), (b), or (c) of this subsection, or receive more than the amounts allowed therein, are required to report and pay tax upon their gross receipts from all such activities.

(ii) When an organization conducts a taxable fund-raising event, the measure of the tax for all purposes is the lesser of the selling price or the fair market value of the item sold. The excess of the selling price over the fair market value is a nontaxable donation. The department will accept an organization's reasonable allocation of the fair market value and donation portions of the sales proceeds. When a merchant or professional donates an item to be sold, the fair market value is its ordinary retail selling price. Donors of items to be sold are not liable for use tax on the items donated. The fair market value of homemade items, items which are not commercially sold (e.g., art work or pottery) is the value of materials used. Some items may have no fair market value. For example, the right to conduct a school band at a concert, the right to serve as honorary mayor for a day, or the right to be the dinner guest at someone's home each has no fair market value. Receipts from items sold which have no fair market value are considered nontaxable donations to the organization. An organization may advertise that the selling price includes retail sales tax. An organization may "advertise" by posting a sign that applicable retail sales tax is included in the listed price, or, the organization may add a statement in its written advertising that applicable sales tax will be included in the price.

Fund raising - Proceeds from a nonauction sale

Item	**Donor**	**FMV**	**Sales Price**	**Donation**	**Retail**	**Service B&O**
Golf clubs	ABC Golf	$300	$250	0	$250	0
Dinner for 6-Browns'	Mrs. Brown	0	$60	$60	0	0
Simple will	Jane Smith	$75	$50	0	0	$50
Principal for the day	School	0	$100	$100	0	0
Boat & Motor	Goe Estate	$750	$825	$75	$750	0
Pottery	Art Student	$5	$25	$20	$5	0
Weekend use of cabin	Mr. Jones	$200	$250	$50	$200	0
TOTAL		$1,330	$1,560	$305	$1,205	$50

In this example, retail sales tax is due on $1,205. If the selling price had included sales tax and the sales tax rate is 7.8%, sales tax due of $87.19 is computed as follows: $1,205 divided by 1.078 = $1,117.81, the new tax measure. $1,117.81 x .078 = $87.19. Retailing and service B&O receipts in the amounts of $1,205 and $50 respectively, must be reported. If the organization's total gross receipts, other than dues and donations, exceeds $12,000 in the calendar year, B&O tax is due.

(4) Prepared meals for certain persons. Neither the retail sales tax nor the use tax applies to prepared meals provided to senior citizens, disabled persons, or low-income persons by not-for-profit organizations organized under chapter 24.03 or 24.12 RCW.

(5) Sheltered workshops. The gross income received by nonprofit organizations from the business activities of "sheltered workshops" is exempt from the business and occupation tax.

(6) Health or social welfare services. In computing business tax there may be deducted amounts received from

the United States or any instrumentality thereof or from the state of Washington or any municipal corporation or political subdivision thereof as compensation for, or to support, health or social welfare services rendered by a health or social welfare organization or by a municipal corporation or political subdivision, except deductions are not allowed for amounts that are received under an employee benefit plan.

(7) Other activities. In every case where such organizations conduct business activities other than as outlined above, the retail sales tax and business and occupation tax are fully applicable to the gross sales made and merchandise may be purchased for resale without paying the retail sales tax by furnishing vendors with resale certificates as prescribed in WAC 458-20-102.

[Statutory Authority: RCW 82.32.300. 91-21-001, § 458-20-169, filed 10/3/91, effective 11/3/91; 88-21-014 (Order 88-7), § 458-20-169, filed 10/7/88; 86-02-039 (Order ET 85-8), § 458-20-169, filed 12/31/85; 83-07-033 (Order ET 83-16), § 458-20-169, filed 3/15/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-169, filed 6/27/78; Order ET 70-3, § 458-20-169 (Rule 169), filed 5/29/70, effective 7/1/70.]

WAC 458-20-170 Constructing and repairing of new or existing buildings or other structures upon real property. (1) **Definitions**. As used herein:

(a) The term "prime contractor" means a person engaged in the business of performing for consumers, the constructing, repairing, decorating or improving of new or existing buildings or other structures under, upon or above real property, either for the entire work or for a specific portion thereof. The term includes persons who rent or lease equipment to property owners for use in respect to constructing, repairing, etc., buildings or structures upon such property, when the equipment is operated by the lessor.

(b) The word "subcontractor" means a person engaged in the business of performing a similar service for persons other than consumers, either for the entire work or for a specific portion thereof. The term includes persons who rent or lease equipment to prime contractors or subcontractors for use in respect to constructing, repairing, etc., when such equipment is operated by the lessor. When equipment or other tangible personal property is rented without an operator to contractors, subcontractors or others, the transaction is a sale at retail (see RCW 82.04.040 and 82.04.050).

(c) The terms "prime contractor" and "subcontractor" include persons performing labor and services in respect to the moving of earth or clearing of land, cleaning, fumigating, razing, or moving of existing buildings or structures even though such services may not be done in connection with a contract involving the constructing, repairing, or altering of a new or existing building or structure. The terms also include persons constructing streets, roads, highways, etc., owned by the state of Washington.

(d) The term "buildings or other structures" means everything artificially built up or composed of parts joined together in some definite manner and attached to real property. It includes not only buildings in the general and ordinary sense, but also tanks, fences, conduits, culverts, railroad tracks, tunnels, overhead and underground transmission systems, monuments, retaining walls, piling and privately owned bridges, trestles, parking lots, and pavements for foot or vehicular traffic, etc.

(e) The term "constructing, repairing, decorating or improving of new or existing buildings or other structures," in addition to its ordinary meaning, includes: The installing or attaching of any article of tangible personal property in or to real property, whether or not such personal property becomes a part of the realty by virtue of installation; the clearing of land and the moving of earth; and the construction of streets, roads, highways, etc., owned by the state of Washington. The term includes the sale of or charge made for all service activities rendered in respect to such constructing, repairing, etc., regardless of whether or not such services are otherwise defined as "sale" by RCW 82.04.040 or "sales at retail" by RCW 82.04.050. Hence, for example, such service charges as engineering fees, architectural fees or supervisory fees are within the term when the services are included within a contract for the construction of a building or structure. The fact that the charge for such services may be shown separately in bid, contract or specifications does not establish the charge as a separate item in computing tax liability.

(2) **Speculative builders**.

(a) As used herein the term "speculative builder" means one who constructs buildings for sale or rental upon real estate owned by him. The attributes of ownership of real estate for purposes of this rule include but are not limited to the following: (i) The intentions of the parties in the transaction under which the land was acquired; (ii) the person who paid for the land; (iii) the person who paid for improvements to the land; (iv) the manner in which all parties, including financiers, dealt with the land. The terms "sells" or "contracts to sell" include any agreement whereby an immediate right to possession or title to the property vests in the purchaser.

(b) Where an owner of real estate sells it to a builder who constructs, repairs, decorates, or improves new or existing buildings or other structures thereon, and the builder thereafter resells the improved property back to the owner, the builder will not be considered a speculative builder. In such a case that portion of the resale attributable to the construction, repairs, decorations, or improvements by the builder, shall not be considered a sale of real estate and shall be fully subject to retailing business and occupation tax and retail sales tax. It is intended by this provision to prevent the avoidance of tax liability on construction labor and services by utilizing the mechanism of real property transfers. (RCW 82.04.050 (2)(c).)

(c) Amounts derived from the sale of real estate are exempt from the business and occupation tax. (RCW 82.04.390.) Consequently, the proceeds of sales by legitimate speculative builders of completed buildings are not subject to such tax. Neither does the sales tax apply to such sales, since such a sale involves no charge made for construction for a consumer, but the price paid is for the sale of real estate.

(d) However, when a speculative builder sells or contracts to sell property upon which he is presently constructing a building, all construction done subsequent to the date of such sale or contract constitutes a retail sale and that portion of the sales price allocable to construction done after the agreement shall be taxed accordingly. Consequently, the builder must pay business and occupation tax under the retailing classification on that part of the sales price attributable to construction done subsequent to the agreement, and shall also collect sales tax from the buyer on such allocable part of the sales price.

(e) Speculative builders must pay sales tax upon all materials purchased by them and on all charges made by their subcontractors. Deductions for such tax paid with respect to materials used or charges made for that part of the construction done after the contract to sell the building should be claimed by the speculative builder on his tax returns in accordance with WAC 458-20-102, under the subheading PURCHASES FOR DUAL PURPOSES.

(f) Persons, including corporations, partnerships, sole proprietorships, and joint ventures, among others, who perform construction upon land owned by their corporate officers, shareholders, partners, owners, co-venturers, etc., are constructing upon land owned by others and are taxable as sellers under this rule, not as "speculative builders."

(3) **Business and occupation tax.**

(a) Prime contractors are taxable under the retailing classification, and subcontractors under the wholesaling classification upon the gross contract price.

(b) Where no gross contract price is stated in any contract or agreement between the builder and the property owner, then the measure of business and occupation tax is the total amount of construction costs, including any charges for licenses, fees, permits, etc., required for the construction and paid by the builder.

(4) **Retail sales tax.**

(a) Prime contractors are required to collect from consumers the retail sales tax measured by the full contract price. Where no gross contract price is stated, the measure of sales tax is the total amount of construction costs including any charges for licenses, fees, permits, etc., required for construction and paid by the builder.

(b) The retail sales tax does not apply to charges made for janitorial services nor for the mere leveling of land used in commercial farming or agriculture. The tax does apply, however, in respect to contracts for cleaning septic tanks or the exterior walls of buildings, as well as to earth moving, land clearing and the razing or moving of structures, whether or not such services are performed as incidents of a contract to construct, repair, decorate, or improve buildings or structures.

(c) Sales to prime contractors and subcontractors of materials such as concrete, tie rods, lumber, finish hardware, etc., which become part of the structure being built or improved are sales for resale and are not subject to the retail sales tax. Sales of form lumber to such contractors are sales for resale provided that such lumber is used or to be used first by such persons for the molding of concrete in a single contract, project or job and the form lumber is thereafter incorporated into the product of that same contract project or job as an ingredient or component thereof. Sales of form lumber not so incorporated as an ingredient or component are sales at retail.

(d) The retail sales tax applies upon sales and rentals to prime contractors and subcontractors of tools, machinery and equipment, and consumable supplies, such as hand and machine tools, cranes, air compressors, bulldozers, lubricating oil, sandpaper and form lumber which are primarily for use by the contractor rather than for resale as a component part of the finished structure.

(e) The retail sales tax applies upon sales to speculative builders of all tangible personal property, including building materials, tools, equipment and consumable supplies and upon sales of labor, services and materials to speculative builders by independent contractors.

(5) **Use tax.**

The use tax applies generally to the use by prime contractors and subcontractors of tools, machinery, equipment and consumable supplies acquired by them primarily for their own use and upon which the retail sales tax has not been paid. This includes equipment and supplies purchased in a foreign state for use or consumption in performing contracts in this state. The use tax applies generally to the use by speculative builders of all tangible personal property, including building materials, purchased or acquired by them without payment of the retail sales tax (see also WAC 458-20-178).

[Statutory Authority: RCW 82.32.300. 87-19-007 (Order ET 87-5), § 458-20-170, filed 9/8/87; 83-07-033 (Order ET 83-16), § 458-20-170, filed 3/15/83; Order ET 71-1, § 458-20-170, filed 7/22/71; Order ET 70-3, § 458-20-170 (Rule 170), filed 5/29/70, effective 7/1/70.]

WAC 458-20-17001 Government contracting—Construction, installations, or improvements to government real property. (1) Special business and occupation tax applications and special sales/use tax applications pertain for prime and subcontractors who perform certain construction, installation, and improvements to real property of or for the United States, its instrumentalities, or a county or city housing authority created pursuant to chapter 35.82 RCW. These specific construction activities are excluded from the definition of "sale at retail" under RCW 82.04.050. All other sales to the United States, its agencies or instrumentalities are taxable as retail sales or wholesale sales, as appropriate. See WAC 458-20-190.

(2) The definitions of terms and general provisions contained in WAC 458-20-170 apply equally for this rule, as appropriate. In addition, the terms, "clearing land" and "moving earth" include well drilling, core drilling, and hole digging, whether or not casing materials are installed and any grading or clearing of land, including the razing of buildings or other structures.

Business and Occupation Tax

(3) Amounts derived from constructing, repairing, decorating, or improving new or existing buildings or other structures, including installing or attaching tangible personal property therein or thereto, and clearing land or moving earth, of or for the United States, its instrumentalities, or county or city housing authorities of chapter 35.82 RCW are taxable under the government contracting classification of business and occupation tax. The measure of the tax is the gross contract price.

(4) Government contractors who manufacture or produce any tangible personal property for their own commercial or industrial use as consumers in performing government contracting activities are subject to the manufacturing classification of business and occupation tax measured by the value of the property manufactured or produced. See also, WAC 458-20-134. The manufacturing tax applies even though the property manufactured or produced for commer-

cial use may be subsequently incorporated into buildings or other structures under the government contract and may thereby enhance the gross contract price.

Retail Sales Tax

(5) The retail sales tax does not apply to the gross contract price, or any part thereof, for any business activities taxable under the government contracting classification. Prime and subcontractors who perform such activities are themselves included within the statutory definition of "consumer" under RCW 82.04.190 and are required to pay retail sales tax upon all purchases of materials, including prefabricated and precast items, equipment, and other tangible personal property which is installed, applied, attached, or otherwise incorporated in their government contracting work. This applies for all such purchases of tangible personal property for installation, etc., even though the full purchase price of such property will be reimbursed by the government or housing authority in the gross contract price. It also applies notwithstanding that the contract may contain an immediate title vesting clause which provides that the title to the property vests in the government or housing authority immediately upon its acquisition by the contractor.

(6) Also, the retail sales tax must be paid by government contractors upon their purchases and leases or rentals of tools, consumables, and other tangible personal property used by them as consumers in performing government contracting.

Use Tax

(7) The use tax applies upon the value of all materials, equipment, and other tangible personal property purchased at retail, acquired as a bailee or donee, or manufactured or produced by the contractor for commercial or industrial use in performing government contracting and upon which no retail sales tax has been paid by the contractor, its bailor or donor.

(8) Thus the use tax applies to all property provided by the federal government to the contractor for installation or inclusion in the contract work as well as to all government provided tooling.

(9) The use tax is to be reported and paid by the government contractor who actually installs or applies the property to the contract. Where the actual installing contractor pays the tax, no further use tax is due upon such property by any other contractor.

(10) Note to contractors: The United States Supreme Court has sustained the government contracting tax applications for this state, even though the ultimate economic burden of the tax is borne by the United States Government (Washington v. US, 75 L.Ed 2d 264, 1983).

(11) This rule does not apply to public road construction. See WAC 458-20-171.

[Statutory Authority: RCW 82.32.300. 86-10-016 (Order ET 86-9), § 458-20-17001, filed 5/1/86.]

WAC 458-20-171 Building, repairing or improving streets, roads, etc., which are owned by a municipal corporation or political subdivision of the state or by the United States and which are used primarily for foot or vehicular traffic.

Definitions

As used herein:

The word "contractor" means a person engaged in the business of building, repairing or improving any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic, either as a prime contractor or as a subcontractor. It does not include persons who merely sell or deliver road materials to such contractors or to the public authority whose property is being improved. It also does not include persons who construct streets, roads, etc. *owned by the state of Washington.* (See WAC 458-20-170 for the tax liability of such persons.)

The term "street, place, road, highway, etc." is used in the ordinary sense that the combination of such words implies. It includes docks used primarily by ferry boats operated in connection with a street, road or highway, but does not include railroads, wharves, moorings, hallways, catwalks, or runways, aprons or taxiways for the landing, take-off or movement of airplanes within airports or landing fields; nor does it include ferry boats, even though the ferry be operated in connection with a street, road or highway. It includes roads and walks which are not open to the public generally, but which may be restricted to use by the military or by employees of a department or instrumentality of the United States.

The word "place" means only an area similar to a street or pedestrian walk, such as thoroughfares in various cities designated "places" for the purpose of preserving the continuity of street names or house numbers; generally, a street of shorter length than others.

The term "building, repairing or improving of a publicly owned street, place, road, etc.," includes clearing, grading, graveling, oiling, paving and the cleaning thereof; the constructing of tunnels, guard rails, fences, walks and drainage facilities, the planting of trees, shrubs and flowers therein, the placing of street and road signs, the striping of roadways, and the painting of bridges and trestles; it also includes the mining, sorting, crushing, screening, washing and hauling of sand, gravel, and rock taken from a public pit or quarry. It also includes the constructing of road and street lighting systems, even though portions of such systems also are used for purposes other than street and road lighting; also the constructing of a drainage system in streets and roads, even though such system is also used for the carrying of sewage: *Provided,* That the drainage facilities are sufficient for disposal of the normal runoff of surface waters from the particular streets and roads in which the system is constructed or an ordinance authorizing the construction of a combined sewer system is incorporated by reference in the contract and the contract or specifications clearly indicate that the system is designed and intended for the disposal of the normal runoff of surface waters from the streets and roads in which the system is constructed.

The term includes any contract for the readjustment, reconstruction or relocation of the facilities of any public, private or cooperatively owned utility or railroad in the course of building, repairing or improving a street, place, road, etc., which is owned by a municipal corporation or political subdivision of the state or by the United States, the cost of which readjustment, reconstruction, or relocation is the responsibility of the public authority whose street, place, road, etc., is being built, repaired or improved. It also includes building or repairing mass transportation facilities owned by a municipal corporation or political subdivision of the state or by the United States.

Except as provided above, the term does not include the constructing of water mains, telephone, telegraph, electrical power, or other conduits or lines in or above streets or roads, unless such power lines become a part of a street or road lighting system as aforesaid; nor does it include the constructing of sewage disposal facilities, nor the installing of sewer pipes for sanitation, unless the installation thereof is within, and a part of, a street or road drainage system.

Business and Occupation Tax

Such contractors are taxable under the public road construction classification upon their total contract price.

The business and occupation tax does not apply to the cost of or charge made for labor and services performed in respect to the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, and rock, when such sand, gravel, or rock is taken from a pit or quarry which is owned by or leased to a county or city and such sand, gravel or rock is

(a) Stockpiled in said pit or quarry for placement on the street, road, or highway by the county or city itself using its own employees, or

(b) Placed on the street, road, or highway by the county or city itself using its own employees, or

(c) Sold by the county or city at actual cost to another county or city for road use.

Retail Sales Tax

The retail sales tax applies upon the sale to such contractors of all materials including prefabricated and precast items, equipment and supplies used or consumed in the performance of such contracts.

The retail sales tax does not apply upon any portion of the charge made by such contractors.

The sales tax does not apply to charges made for labor and services which are exempt from business tax as indicated above.

Use Tax

The use tax applies to the use by all contractors of all materials including prefabricated and precast items, equipment and supplies upon which the retail sales tax has not been paid. This tax also applies in respect to articles produced or manufactured by them for commercial use. (See WAC 458-20-134.)

The use tax does not apply in respect to the use of any sand, gravel, or rock to the extent of the cost of or charges made for labor and services performed in respect to the mining, sorting, crushing, screening, washing, hauling, and stockpiling such sand, gravel, or rock, when such sand, gravel, or rock is taken from a pit or quarry which is owned by or leased to a county or a city, and such sand, gravel, or rock is either (1) stockpiled in said pit or quarry for placement or is placed on the street, road, place, or highway of the county or city by the county or city itself (i.e., by its own employees), or (2) sold by the county or city to a county or a city at actual cost for placement on a street, road, place, or highway owned by the county or city. This exemption shall not apply to the use of such material to the extent of the cost of or charge made for such labor and services, if the material is used for other than public road purposes or is sold otherwise than as here indicated.

(For lien of unpaid taxes on the retained percentage withheld on public improvement contract, see WAC 458-20-217.)

[Order ET 71-1, § 458-20-171, filed 7/22/71; Order ET 70-3, § 458-20-171 (Rule 171), filed 5/29/70, effective 7/1/70.]

WAC 458-20-172 Clearing land, moving earth, cleaning, fumigating, razing or moving existing buildings, and janitorial services. Persons engaged in performing well drilling, contracts for the grading or clearing of land or the moving of earth, and which do not involve the building, repairing or improving of any streets, roads, etc. which are owned by a municipal corporation or political subdivision of the state or by the United States (see WAC 458-20-171); and persons engaged in performing contracts which involve the cleaning, fumigating, razing or moving of existing buildings or structures and persons performing janitorial services are taxable as follows:

Business and Occupation Tax

Taxable under the classification retailing upon gross income from contracts to perform such services for consumers, but excluding gross income from contracts providing solely for the performance of janitorial services the mere core drilling of or testing of soil samples, or the mere leveling of land for agricultural purposes.

Taxable under the classification wholesaling—all others upon gross income from subcontracts to perform such services for resale.

Taxable under the classification service and other activities upon gross income from contracts to perform janitorial services the mere core drilling of or testing of soil samples, or the mere leveling of land for agricultural purposes.

The term "janitorial services" includes activities performed regularly and normally by commercial janitor service businesses. Generally, these activities include the washing of interior and exterior window surfaces, floor cleaning and waxing, the cleaning of interior walls and woodwork, the cleaning in place of rugs, drapes and upholstery, dusting, disposal of trash, and cleaning and sanitizing bathroom fixtures. The term "janitorial services" does not include, among others, cleaning the exterior walls of buildings, the cleaning of septic tanks, special clean up jobs required by construction, fires, floods, etc., painting, papering, repairing, furnace or chimney cleaning, snow removal, sandblasting, or the cleaning of plant or industrial machinery or fixtures.

Retail Sales Tax

Persons engaged in performing contracts for the grading or clearing of land, the moving of earth or the cleaning, fumigating, razing or moving of existing buildings or structures must collect the retail sales tax upon the full contract price when the work is performed for consumers. The retail sales tax is not applicable to charges for janitorial services or the mere leveling of land for agricultural purposes.

The retail sales tax applies upon the sales to such contractors of equipment and supplies used or consumed in the performance of such contracts and which are not resold as a component part of the work.

Use Tax

The use tax applies to the use by such contractors of equipment and supplies upon which the retail sales tax has not been paid.

[Statutory Authority: RCW 82.32.300. 83-07-033 (Order ET 83-16), § 458-20-172, filed 3/15/83; Order ET 71-1, § 458-20-172, filed 7/22/71; Order ET 70-3, § 458-20-172 (Rule 172), filed 5/29/70, effective 7/1/70.]

WAC 458-20-173 Installing, cleaning, repairing or otherwise altering or improving personal property of consumers.

Business and Occupation Tax

Retailing. Persons installing, cleaning, decorating, beautifying, repairing or otherwise altering or improving tangible personal property of consumers or for consumers are taxable under the retailing classification upon the gross proceeds received from sales of tangible personal property and the rendition of services.

Wholesaling. Persons who sell tangible personal property to, or render any of the above services for others than consumers, are taxable under the wholesaling classification upon the gross proceeds of sales received therefrom.

There must be included within gross amounts reported for tax all fees for services rendered and all charges recovered for expenses incurred in connection therewith, such as transportation costs, hotel, restaurant, telephone and telegraph charges, etc.

Retail Sales Tax

Persons engaged in the business of installing, cleaning, decorating, beautifying, repairing or otherwise altering or improving tangible personal property of consumers or for consumers are required to collect the retail sales tax upon the total charge made for the rendition of such services, even though no tangible personal property in the form of materials or supplies is sold or used in connection with such services. Where tangible personal property in the form of materials and supplies is sold or used in connection with such services, the retail sales tax applies to the total charges made for the sale of the materials and supplies and the services rendered in connection therewith.

The following are illustrative of services upon which the retail sales tax applies to the total charge made to consumers:

Laundering, dyeing and cleaning;

Automobile repairing, washing and painting;

Boat repairing (see WAC 458-20-175 and 458-20-176 for certain exemptions); shoe repairing and shining;

Altering or repairing wearing apparel.

In general, the repairing of any personal property, such as radios, refrigerators, machines, watches and jewelry and other articles.

The retail sales tax does not apply to sales to such persons of materials which are resold as a part of the articles of tangible personal property being repaired, altered or improved. Therefore, upon giving a resale certificate the retail sales tax will not apply to purchases such as:

(1) Parts or paint by an automotive repairman;

(2) Lumber, chandlery, etc., by a boat repairman;

(3) Shoe findings, thread, nails, polish and dyes by a shoe repairman;

(4) Solder, wire, condensers, etc., by a radio or television repairman.

On the other hand the retail sales tax does apply to the purchase of all other supplies which may be consumed and utilized by such persons in the rendition of such services, such as fuel, lubricant, machines, hand tools, stationery and other supplies and equipment.

REPAIRS FOR OUT-OF-STATE PERSONS. Persons residing outside this state may ship into this state articles of tangible personal property for the purpose of having the same repaired, cleaned or otherwise altered, and thereafter returned to them. The retail sales tax is not applicable to the charge made for labor and/or materials, provided the seller, as a requirement of the agreement, delivers the property to the purchaser at a point outside this state or delivers the property to a common or bona fide private carrier consigned to the purchaser at a point outside this state. Proof of exempt sales will be the same as that required for sales of tangible personal property in interstate commerce. WAC 458-20-193, Part A. No deduction is allowed, however, under the business and occupation tax.

For taxability of warranty, service, or maintenance contracts, see WAC 458-20-107.

[Statutory Authority: RCW 82.32.300. 83-07-033 (Order ET 83-16), § 458-20-173, filed 3/15/83; Order ET 70-3, § 458-20-173 (Rule 173), filed 5/29/70, effective 7/1/70.]

WAC 458-20-174 Sales to motor carriers operating in interstate or foreign commerce of motor vehicles, trailers, parts, etc. (1) **Introduction.** This section explains the retail sales tax exemptions provided by RCW 82.08.0262 and 82.08.0263 for sales to motor carriers operating in interstate or foreign commerce. Addressed are the requirements which must be met and the documents which must be preserved to substantiate a claim of retail sales tax exemption. Motor carriers should refer to WAC 458-20-17401 for a discussion of the use tax and use tax exemptions available to motor carriers for the purchase or use of vehicles and parts under RCW 82.12.0254.

(2) **Business and occupation tax.** Business and occupation (B&O) tax is due on all sales to motor carriers when delivery is made in Washington, notwithstanding that the retail sales tax may not apply because of the specific statutory exemptions provided by RCW 82.08.0262 and 82.08.0263.

(a) **Retailing of interstate transportation equipment.** This B&O tax classification, with respect to sales to motor carriers, applies to retail sales which are exempt from retail sales tax because of the provisions of RCW 82.08.0262 or 82.08.0263. (See RCW 82.04.250.) The retailing of interstate transportation B&O tax applies to the following, but only when the retail sales tax exemption requirements for RCW 82.08.0262 or 82.08.0263 are met:

(i) Sales of motor vehicles, trailers, and component parts thereof;

(ii) The lease of motor vehicles and trailers without operator; and

(iii) Charges for labor and services rendered in respect to constructing, cleaning, repairing, altering or improving vehicles and trailers or component parts thereof. The term "component parts" means any tangible personal property which is attached to and becomes an integral part of the motor vehicle or trailer. It includes such items as motors, motor and body parts, batteries, and tires. "Component parts" includes the axle and wheels, referred to as "converter gear" or "dollies," which is used to connect a trailer behind a tractor and trailer. "Component parts" can include tangible personal property which is attached to the vehicle and used as an integral part of the motor carrier's operation of the vehicle, even if the item is not required mechanically for the operation of the vehicle. It would include cellular telephones, communication equipment, fire extinguishers, and other such items, whether themselves permanently attached to the vehicle or held by brackets which are permanently attached. If held by brackets, the brackets must be permanently attached to the vehicle in a definite and secure manner with these items attached to the bracket when not in use and intended to remain with that vehicle. It does not include antifreeze, oil, grease, and other lubricants which are considered as consumed at the time they are placed into the vehicle, even though required for operation of the vehicle. It does include items such as spark plugs, oil filters, air filters, hoses and belts.

(b) **Retailing.** The retailing tax applies to the following:

(i) Sales and services as described in (a)(i) through (iii) of this subsection, which do not meet the exemption requirements provided in RCW 82.08.0262 or 82.08.0263;

(ii) Sales of equipment, tools, parts and accessories which do not become a component part of a motor vehicle or trailer used in transporting persons or property therein;

(iii) Sales of consumable supplies, such as oil, antifreeze, grease, other lubricants, cleaning solvents and ice; and

(iv) Towing charges.

(c) **Interstate sales deduction for lease income.** Persons who lease motor vehicles and trailers to motor carriers at retail (without operator) may claim an interstate sales deduction for the amount of the lease income attributable to the actual out-of-state use of the vehicles and trailers. Documentation substantiating such a claim must be retained by the lessor. This deduction may be taken even if the vehicle is not used substantially in interstate hauls for hire. The B&O tax applies to that portion of use of the vehicle while the vehicle is being used in Washington, even if the usage is in connection with interstate hauls and the vehicle is used substantially in hauling for hire in interstate commerce. See also WAC 458-20-193.

(3) **Retail sales tax.** RCW 82.08.0262 and 82.08.0263 provide exemption from the retail sales tax for certain sales to motor carriers when delivery is made in Washington.

(a) **Sales of motor vehicles and trailers.** RCW 82.08.0263 provides an exemption from the retail sales tax for sales of motor vehicles and trailers to be used for transporting therein persons or property for hire in interstate or foreign commerce. This exemption is available whether such use is by a for hire motor carrier, or by persons operating the vehicles and trailers under contract with a for hire motor carrier. The following requirements must be met to perfect any claim for exemption:

(i) The for hire carrier must hold a carrier permit issued by the Interstate Commerce Commission; and

(ii) The vehicle will move upon the highways of this state from the point of delivery in this state to a point outside the state under the authority of a trip permit, also known as a one-transit permit, issued under the provisions of RCW 46.16.160.

In some cases the vehicle may require servicing or alterations to prepare it for use as carrier property. This may include such things as installing signs, adding accessories, changing tires, custom painting, etc. Movement of the vehicle to a Washington site where the servicing or alterations will take place will not result in a loss of the exemption when all conditions for exemption are met. Nor shall the exemption be lost simply because the motor carrier first moves the vehicle to a Washington site for the purposes of obtaining a payload which is immediately hauled to an out-of-state destination by the same vehicle.

(iii) The seller, at the time of the sale, must retain as a part of its records a copy of the trip permit, or other satisfactory evidence that a trip permit was obtained, and an exemption certificate, both of which must be completed in their entirety. The exemption certificate must be in substantially the following form:

Exemption Certificate

The undersigned hereby certifies that it is, or has contracted to operate for, the holder of carrier permit No. . . . ., issued by the Interstate Commerce Commission; that the vehicle this date purchased from you being a <u>(specify truck or trailer and make)</u>, Motor No. . . . . . ., Serial No. . . . . . ., will move on the highways of this state from <u>(point of origin in state)</u> to <u>(out-of-state destination)</u> or to <u>(location)</u> for servicing or alteration in preparation for use as carrier property, under the authority of a trip permit dated . . . . . ., issued under the provisions of RCW 46.16.160; and that the sale of this vehicle is entitled to exemption from the Retail Sales Tax under the provisions of RCW 82.08.0263.

Dated . . . .

. . . .
(name of carrier-purchaser)

By . . . .
(title)

. . . .
(address)

Certificate of Dealer

I hereby certify that upon the delivery of the above described vehicle to said purchaser there was affixed thereto trip permit No. . . . ., and that the same authorized the transit of this vehicle between the points of origin and destination as hereinabove set forth.

. . . .
(name of dealer)

. . . .
(title)

(iv) The lease of motor vehicles and trailers to motor carriers, without operator, must satisfy all conditions and requirements provided by RCW 82.08.0263 to qualify for the retail sales tax exemption. Failure to meet these requirements will require the lessor to collect the retail sales tax on the lease. However, where the exemption from retail sales tax has not been met, a retail sales tax exemption may continue to apply to that portion of the lease while the vehicle is being used outside Washington, provided the lessor can substantiate the usage outside Washington. (See WAC 458-20-193.)

(b) **Sales of component parts of motor vehicles and trailers and charges for repairs, etc.** RCW 82.08.0262 provides an exemption from the retail sales tax for sales of component parts and repairs of motor vehicles and trailers. This exemption is available only if the user of the motor vehicle or trailer is the holder of a carrier permit issued by the Interstate Commerce Commission which authorizes transportation by motor vehicle across the boundaries of Washington. Since the Interstate Commerce Commission requires carriers to obtain permits only when the carrier is hauling for hire, the exemption applies only to parts and repairs purchased for vehicles which are used in hauling for hire. The exemption includes labor and services rendered in constructing, repairing, cleaning, altering, or improving such motor vehicles and trailers.

(i) This exemption is available whether the motor vehicles or trailers are owned by, or operated under contract with, persons holding the carrier permit. This exemption applies even if the motor vehicle or trailer to which the parts are attached will not be used substantially in interstate hauls, provided the vehicles are used in hauling for hire.

(ii) The seller must retain as a part of its records a completed exemption certificate. This certificate may be:

(A) Issued for each purchase;

(B) Incorporated in or stamped upon the purchase order; or

(C) In blanket form certifying all future purchases as being exempt from sales tax. Blanket forms must be renewed every four years.

(iii) This certificate should be in substantially the following form:

Exemption Certificate

The undersigned hereby certifies that it is, or has contracted to operate for, the holder of a carrier permit, No.. . . . . ., issued by the Interstate Commerce Commission authorizing transportation by motor vehicle across the boundaries of this state. The undersigned further certifies that the motor truck or trailer to be constructed, repaired, cleaned, altered, or improved by you, or to which the subject matter of this purchase is to become a component part, will be used in direct connection with the business of transporting therein persons or property for hire; and that such sale and/or charges are exempt from the Retail Sales Tax under the provisions of RCW 82.08.0262.

Dated . . . .

. . . .
(name of carrier-purchaser)

. . . .
(address)

By . . . .
(title)

(c) **Taxable sales.** The following sales do not qualify for exemption under the provisions of RCW 82.08.0262 or 82.08.0263, and are subject to the retail sales tax when delivery is made in Washington.

(i) Sales of equipment, tools, parts and accessories which do not become a component part of a motor vehicle or trailer used in transporting persons or property for hire. This includes items such as tire chains and tarps which are not custom made for a specific vehicle.

(ii) Sales of consumable supplies, such as oil, antifreeze, grease, other lubricants, cleaning solvents and ice.

(iii) Towing charges.

[Statutory Authority: RCW 82.32.300. 94-18-003, § 458-20-174, filed 8/24/94, effective 9/24/94; 83-07-033 (Order ET 83-16), § 458-20-174, filed 3/15/83; Order ET 71-1, § 458-20-174, filed 7/22/71; Order 70-3, § 458-20-174 (Rule 174), filed 5/29/70, effective 7/1/70.]

WAC 458-20-17401 Use tax of motor carriers operating in interstate or foreign commerce for motor vehicles, trailers, parts, etc. (1) **Introduction.** This section explains the use tax and the use tax exemptions provided by RCW 82.12.0254 which apply to motor carriers operating in interstate or foreign commerce. Motor carriers should refer to WAC 458-20-174 for a discussion of the retail sales tax and retail sales tax exemptions which apply to motor carriers for the purchase of vehicles and parts under RCW 82.08.0262 and 82.08.0263.

(2) **Use tax.** The use tax supplements the retail sales tax by imposing a tax of like amount upon the use within this state as a consumer of any tangible personal property purchased at retail, where the user has not paid retail sales tax with respect to the purchase of the property used. (See also WAC 458-20-178.) If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred retail sales or use tax directly to the department unless the purchase and/or use is exempt from the use tax.

(3) **Motor vehicles and trailers.** Purchasers of motor vehicles and trailers should note the differences in the conditions and requirements for the retail sales and use tax exemptions provided by RCW 82.08.0263 and 82.12.0254, respectively. The purchaser of a motor vehicle or trailer may qualify for the retail sales tax exemption at the time of purchase, yet incur a use tax liability for the subsequent use of the same vehicle or trailer.

(a) For vehicles purchased in Washington, RCW 82.12.0254 provides a use tax exemption for the use of any motor vehicle or trailer while being operated under the authority of a trip permit and moving from the point of delivery in this state to a point outside this state. However, any subsequent use in Washington of the vehicle by a

Washington based carrier could be subject to use tax unless the first use was in actual transportation for hire across the state boundaries. Carriers who purchase a vehicle outside of Washington are not required to obtain a trip permit on the first trip into Washington as a condition for use tax exemption, but the first use must be in an interstate haul for hire.

(b) RCW 82.12.0254 provides a use tax exemption for the use of any motor vehicle or trailer owned by, or operated under contract with, a for hire motor carrier engaged in the business of transporting persons or property in interstate or foreign commerce. All of the following conditions must be met for the exemption to apply:

(i) The user is, or operates under contract with, a holder of an ICC permit;

(ii) The vehicle is used in substantial part in the normal and ordinary course of the user's business for transporting therein persons or property for hire across the boundaries of the state; and

(iii) The first use in Washington is actual use in conducting interstate or foreign commerce. Notwithstanding this requirement, the use tax exemption will not be lost simply because a motor carrier holding an ICC permit moves the vehicle to a Washington site for servicing or modification in preparation for use as a carrier vehicle. Nor shall the exemption be lost simply because the motor carrier first moves the vehicle to a Washington site for the purposes of obtaining a payload which is immediately hauled to an out-of-state destination by the same vehicle.

(iv) "In substantial part" means that the motor vehicle or trailer for which exemption is claimed actually crosses Washington boundaries and is used a minimum of twenty-five percent in interstate hauling for hire.

(c) The following examples show how the exemption from use tax on motor vehicles and trailers would apply to specific situations. These examples should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances.

(i) ABC Trucking, a carrier with ICC authority, purchased a used truck from XYZ Truck Sales. The required exemption certificate was completed and a trip permit was obtained. ABC Trucking moved the vehicle from the seller's lot in Washington to its maintenance shop located at its terminal in Seattle where ICC identification numbers were painted on the doors and new tires were installed by the purchaser's employees. Ten days later the truck was placed in service with the first haul being a laden haul destined for an out-of-state location with movement under the authority of a second trip permit.

This purchase and first use is exempt of retail sales and use tax. Since the first movement of the truck to the purchaser's maintenance shop was solely for the purpose of preparing the truck for use, the exemption was not lost. All other requirements for exemption were met. A reasonable interruption in the direct out-of-state movement of the vehicle will be allowed to permit such activities as the painting of belt lines and bumpers, the installation of signs, the inspection of the vehicle, the installation of tires, and installation of accessory items. The purchase of the vehicle was exempt from retail sales tax by meeting the trip permit requirements. However, any subsequent use of the vehicle in Washington would have been subject to use tax if the vehicle's first use in Washington had not been in hauling for hire in interstate or foreign commerce. Since that requirement was met, the use of this vehicle will continue to be exempt of use tax as long as it continues to be used substantially in interstate hauls for hire.

(ii) HB Company is a for hire carrier which maintains tractor/trailer fleets at terminals located in Montana and Washington. HB Company holds a carrier permit issued by the Interstate Commerce Commission. HB reassigned a truck to its Washington terminal which previously had been used at HB's Montana terminal. This truck had been used exclusively in Montana and previously had never been brought into Washington. The truck is brought into Washington unladen, but immediately picks up a load for delivery outside Washington.

The movement of the truck into Washington is treated as being part of the subsequent haul outside Washington and the requirement that the first use be in a laden interstate haul has been met. Use tax would have been due on the truck if the first use was in transporting goods from a Washington location to a Washington location.

(d) The motor carrier must continue to substantially use the motor vehicle or trailer in interstate hauls for hire during each calendar year to retain the exemption from use tax. This requires that at the start of each calendar year the carrier review the usage of each vehicle and trailer for a "view period" consisting of the previous calendar year. If a particular vehicle was purchased or sold during the year so that the vehicle was not available for use during the entire calendar year, the taxpayer at its option may elect to review the usage during the portion of the year during which the vehicle was owned or may use a twelve-month period beginning with the date of purchase of a vehicle or ending with the date of sale of a vehicle. For example, if a vehicle is traded-in on May 30, 1994, the taxpayer must meet the substantial use test for this vehicle for either the period January through May 1994 or for the period June 1, 1993, through May 30, 1994. Use tax is due for those vehicles which have not been used substantially in interstate commerce and on which retail sales or use tax has not been paid.

(e) Carriers who maintain their records on a fiscal year basis may, at their option, elect to review the usage of their vehicles using their fiscal year rather than the calendar year. If a fiscal year is used, it must be used for the entire fleet of vehicles. These carriers may not change to a calendar year basis without first obtaining prior approval from the department.

(f) Usage will be reviewed on a calendar or fiscal year basis and not on a "moving" twelve-month period. For example, a tractor purchased on August 1, 1992, will need to have met the substantial use test for the period August 1, 1992, through December 31, 1992, or for the period August 1, 1992, through July 31, 1993, (the period selected being at the taxpayer's option) and for the calendar year 1993 and each calendar year thereafter in order to retain the use tax exemption.

(g) The motor carrier may select one of the methods from those listed below to determine if its motor vehicles and trailers satisfy the substantial use threshold for exemption under RCW 82.12.0254. The particular method must be applied to all trucks, tractors, and trailers within the fleet. Regardless of the method selected, a vehicle will not be considered as used in interstate hauls unless the vehicle actually crosses the boundaries of the state and is used in part outside Washington. The motor carrier may change the method with the prior written consent of the department of revenue. The methods are:

(i) Line crossing. The line crossing method compares the number of interstate for hire hauls made by a particular motor vehicle or trailer to the total number of for hire hauls. The motor vehicle or trailer must actually cross the boundaries of this state or be used for hauls which begin and end outside this state, for the haul to be considered an interstate haul.

(ii) Mileage. The mileage method compares the interstate mileage associated with the for hire hauls made by a particular motor vehicle or trailer, to the total mileage associated with its for hire hauls. All mileage associated with a specific haul which requires the motor vehicle or trailer to actually cross the boundaries of this state, or haul exclusively outside this state, is considered to be interstate mileage. Where a vehicle is returning empty after having delivered an interstate load or is empty on its way to pickup an interstate load, the empty mileage will be considered to be part of the mileage from an interstate haul.

(iii) Revenue. The revenue method compares the interstate for hire revenue generated by the particular motor vehicle or trailer to the total for hire revenue generated. The revenue generated by the motor vehicle or trailer actually crossing the boundaries of this state, or hauling exclusively outside this state, is considered to be interstate revenue for the purposes of determining use tax liability. If the motor carrier uses more than one motor vehicle or trailer to transport the cargo, the revenue generated from hauling this cargo must be allocated between the motor vehicles and/or trailers used. For the purposes of determining use tax liability, a vehicle will not be considered as having interstate revenue even if the haul originates or ends outside Washington unless the vehicle actually crosses the boundaries of the state.

(iv) Other. Any other method may be used when approved in advance and in writing by the department of revenue.

(h) The following examples show how the methods of determining substantial interstate use would be applied to various situations. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(i) ARC Trucking picks up a load of cargo in Spokane, Washington and delivers it to the dock in Seattle, Washington, for subsequent shipment to Japan. While ARC may claim an interstate and foreign sales deduction on its excise tax return for the income attributable to this haul if all of the requirements of RCW 82.16.050(8) are met, the haul itself is considered to be intrastate for the purposes of determining whether the tractor/trailer rig meets the substantial use threshold discussed in RCW 82.12.0254. Both the pickup and delivery points are within the state of Washington.

(ii) DMG Express picks up a load of cargo in Yakima, Washington for ultimate delivery in Billings, Montana. The cargo is initially hauled from the Yakima location to DMG's hub terminal in Spokane, Washington by truck A. It is unloaded from truck A at the hub terminal, reloaded on truck B, and delivered to Billings. For the purposes of determining qualification for the use tax exemption provided by RCW 82.12.0254, two hauls have taken place. The haul performed by truck A is considered to be an intrastate haul since truck A did not cross the borders of Washington, while the haul performed by truck B is considered interstate for purposes of determining continued exemption from use tax on the trucks, even though the entire hauling income may be deductible from the motor transportation tax.

(iii) AA Express operates one tractor/trailer rig, which has previously met the retail sales and use tax exemption requirements. AA verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis, using the line crossing method. AA makes one hundred for hire hauls within the calendar year of 1992. Of these hauls, seventy-one are entirely in Washington, ten are performed entirely outside Washington, and nineteen require AA to cross the borders of Washington. AA Express has not incurred a use tax liability on the tractor/trailer rig as twenty-nine percent of the for hire hauls were interstate in nature.

(iv) BDC Hauling operates one tractor/trailer rig which has previously met the retail sales and use tax exemption requirements. BDC verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis, using the mileage method. BDC makes one hundred for hire hauls within the calendar year of 1992, for a total of one hundred thousand miles. Included in this mileage figure are the unladen or "empty" miles BDC incurs from delivery points to its terminal. Fifteen of these hauls were interstate in nature and involved laden travel of twenty thousand miles, including the Washington miles of the interstate hauls where the rig made border crossings. BDC's rig also incurred an additional eight thousand miles as a result of having to drive unladen from the delivery point of an interstate haul to its Washington terminal. BDC Hauling has not incurred a use tax liability for its use of the tractor/trailer rig. Under the mileage method, twenty-eight percent of the tractor/trailer's usage was in interstate hauling.

(v) GV Trucking operates one tractor/trailer rig which has previously met the retail sales and use tax exemption requirements. GV verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis, using the revenue method. GV makes one hundred for hire hauls within the calendar year of 1992, for which GV earns eighty thousand dollars. Fifteen of these hauls were interstate in nature, for which GV earned twenty thousand dollars. GV Trucking has not incurred a use tax liability for its use of the tractor/trailer rig. Under the revenue method, twenty-five percent of GV's usage of the tractor/trailer rig was in interstate hauling.

(vi) XYZ Trucking operates a single tractor/trailer rig which has previously met the retail sales and use tax exemption requirements. XYZ picks up two loads of cargo in Seattle, one load for delivery to Kent, Washington and another for delivery to Portland, Oregon. Upon delivery of the cargo to Kent, XYZ picks up another load for delivery to Portland, Oregon. XYZ has performed three separate hauls, even if the loads are combined on the same rig. The Seattle to Portland and Kent to Portland hauls are considered interstate hauls, the Seattle to Kent haul intrastate. If using the mileage method the mileage associated with the Seattle to Portland and Kent to Portland hauls would be combined to determine total interstate miles, even though the rig made only one trip to Portland. If using the revenue method, the revenue generated by the Seattle to Portland and Kent to Portland hauls would be considered interstate. The mileage and/or revenue associated with the Seattle to Kent haul would be considered intrastate.

(4) **Special application to trailers.** Motor carriers must keep appropriate records and determine qualification for the use tax exemption provided by RCW 82.12.0254 for each individual truck and tractor. Motor carriers are encouraged to keep similar records for each individual trailer. Where records are maintained to document the use of individual trailers, use tax liability for trailers must be determined on the basis of those records. However, it is recognized that some motor carriers have no system of tracking or documenting the travel of their trailers and it would be an undue burden to require such recordkeeping, particularly where a tractor may be used to pull multiple trailers and the trailers are not assigned to a specific tractor. These motor carriers may elect to determine the use tax liability attributable to their use of trailers on the basis of their actual use of the tractors.

(a) Under this method, it is assumed that there is a direct correlation between the use of tractors and the use of trailers. Whenever use tax is incurred on a tractor because of the failure to maintain the twenty-five percent interstate usage, use tax will also be due on one or more trailers. The number of trailers subject to the use tax under this method shall correspond to the fleetwide trailer to tractor ratio. Any trailer to tractor ratio resulting in a fraction shall be rounded up when determining the number of trailers subject to the use tax. For example, if the fleetwide ratio of trailers to tractors is two and one quarter to one, and one tractor fails to maintain the substantial use threshold in a given year, the motor carrier shall incur a use tax liability on three trailers. However, if two tractors fail to maintain the substantial use threshold in a given year, the motor carrier shall incur a use tax liability on five trailers.

(b) The trailer or trailers subject to use tax under this method shall be those acquired nearest to the purchase date of the tractor triggering the use tax liability for those trailers meeting the following conditions:

(i) The trailer or trailers are compatible for towing with the tractor upon which use tax is incurred; and

(ii) The trailer or trailers have not previously incurred a retail sales or use tax liability; and

(iii) The trailer or trailers have been actively used in hauling for hire in the year tax liability is incurred.

(c) Under this method of reporting, use tax liability is generally incurred on one or more trailers whenever a tractor is subject to the use tax. If a tractor is purchased with the intent that less than twenty-five percent of the hauls will be across state borders, it will be presumed the tractor will also be pulling a trailer or trailers on which use tax is also due. However, the motor carrier will not incur use tax on a trailer simply because the initial use of the tractor was not a laden for hire haul across the borders of this state, provided the tractor would meet the substantial interstate use for future hauls under RCW 82.12.0254.

(d) In any event and irrespective of the method of reporting, carriers must document that the first use of each trailer was in interstate hauling for the use tax exemption to apply to the first use. If the trailer was purchased in Washington, the carrier must retain evidence of having obtained a trip permit to document that retail sales tax was not due at the time of purchase. (See also WAC 458-20-174.)

(e) The following examples show how this method would be applied to typical situations. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(i) ABC Trucking has eight tractors and fifteen trailers in its fleet. The tractors and trailers met the exemption from retail sales tax and use tax at the time they were purchased and it was determined during previous annual reviews that the tractors continued to be substantially used on interstate hauls. However, at the time of the annual review which was made in January 1993, it was determined that a Kenworth tractor which had been purchased in June 1985 was not used at least twenty-five percent in interstate hauls during 1992. Use tax is due on this tractor. Under this method, use tax is also due on two trailers. The two trailers on which use tax must be reported are the two purchased most nearly to June 1985, the date of the Kenworth purchase.

(ii) DC Hauling has no system of tracking or documenting the travel of its trailers and has elected to determine its trailer use tax liability on the basis of its actual use of tractors. DC Hauling has a fleetwide ratio of two trailers to one tractor. DC purchases a tractor, the initial use of which is a laden for hire haul entirely within the borders of this state. DC Hauling must pay retail sales tax upon the purchase of the tractor or, if retail sales tax is not paid, use tax upon the first use within this state. Unless DC Hauling elects to document that the tractor otherwise continues to satisfy the substantial interstate use provision of RCW 82.12.0254 for future hauls, use tax is also due on two trailers.

(5) **Valuation.** The value of the motor vehicle or trailer subject to the use tax is its fair market value at the time of first use within the review period for which the exemption cannot be maintained. However, because the taxpayer will not know until the close of the period whether the usage met the exemption requirements, the use tax is due and should be reported on the last excise tax return for that review period. For example, a motor carrier who has previously met the exemption requirements for a particular truck determines this truck no longer was substantially used in interstate hauls during calendar year 1992. Use tax should be reported on the last tax return filed for 1992 with the taxable value based on the value of the truck at January 1, 1992.

(a) The department of revenue will accept independent publications containing values of comparable vehicles if those values are generally accepted in the industry as accurately reflecting the value of used vehicles. The department will also consider notarized valuation opinions signed by qualified appraisers and/or dealers as evidence of the fair market value. In the absence of a readily available fair market value, the department will accept a value based on depreciation schedules used by the department of licensing to determine the value of vehicles for licensing purposes.

(b) The following examples show how use tax liability would be determined in typical situations. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(i) ABC Trucking purchased five trailers for use in both interstate and intrastate for hire hauls on January 1, 1990. All the necessary conditions for exemption under RCW 82.08.0263 were met; delivery was made in Washington, and the trailers were purchased without payment of the retail sales tax. The taxpayer uses the "line crossing" method for determining interstate use.

ABC Trucking keeps a journal showing the origin and destination for each haul which identifies each truck/tractor and trailer used on a per unit basis. This journal is reviewed at the end of each calendar year to verify compliance with the statutory provision that motor vehicles and trailers be substantially used for transporting therein persons or property for hire across the boundaries of the state. During the first year of use, all five of the trailers met the "substantial use" threshold. However, in reviewing this journal for the period of January 1991 through December 1991, ABC Trucking determines that two of the trailers purchased on January 1, 1990, failed to meet the twenty-five percent "substantial use" threshold during 1991. ABC Trucking must remit use tax directly to the department on its December 1991 excise tax return, based on the fair market values of the two trailers as of January 1, 1991. Since the taxpayer maintained specific usage records for each trailer, the "substantial use" in interstate hauling must be met by each trailer for which exemption is claimed. If detailed records for usage of trailers had not been kept, use tax liability of the trailers would have been based on the tractors. In any event, use tax liability may not be determined based on the overall experience of a fleet of vehicles. If a vehicle is used both in hauling for hire and in hauling the carrier's own products, the "substantial use" is determined solely on the usage in hauling for hire.

(ii) DB Carriers is a motor carrier which is engaged in both intrastate and interstate for hire hauls. DB purchases and first uses a truck in Washington on January 1, 1992. All the necessary conditions for exemption under RCW 82.08.0263 were met; delivery was made in Washington, and the truck was purchased without payment of the retail sales tax. DB Carriers uses the "line crossing" method for determining interstate use.

DB Carriers keeps a journal showing the origin and destination for each haul which identifies each truck used on a per unit basis. This journal is reviewed at the end of the 1992 calendar year, and DB determines that the truck failed to meet the twenty-five percent "substantial use" threshold. DB Carriers must remit use tax directly to the department on its December 1992 excise tax return, based on the fair market value of the truck as of January 1, 1992. DB Carriers may not compute the use tax liability based upon the December 31, 1992, fair market value as the vehicle never satisfied the substantial interstate use provision of RCW 82.12.0254.

(6) **Leased vehicles.** Motor vehicles and trailers, leased without operator are exempt from the use tax when all the conditions and requirements expressed in subsection (3)(b) of this section are satisfied. This includes meeting the requirement that first use be in hauling across the boundaries of the state. As a condition for retail sales tax exemption, a trip permit must be obtained if the vehicle is first used in Washington. For continued use tax exemption, the vehicle must also meet the twenty-five percent "substantial use" threshold. For leased vehicles, the taxpayer may elect to use either the fiscal year of the business or a calendar year to determine if the leased vehicle was used substantially in interstate hauls for hire. Where the vehicle lease does not begin or end at the start of the calendar year (or fiscal year if the business uses a fiscal year view period), the same requirements apply to leased vehicles as to purchased vehicles (see subsection (3)(d) of this section). The carrier will be required to obtain a trip permit and have a laden interstate haul on only the first haul at the start of the lease and not each month, each year, or the start of each lease period, provided there is no change in the vehicle being leased.

(a) If the leased vehicle does not meet the substantial use requirement during the "view period," the use tax applies only to the portion of the lease payment which is for use in Washington during the "view period." See the examples in subsection (6)(b) of this section. Mileage is an acceptable basis for determining instate and out-of-state use. For the purposes of determining instate and out-of-state use of leased vehicles or trailers where use tax is determined to be due, all miles traveled in Washington by the leased vehicle are instate miles, notwithstanding that they may be associated with an interstate haul. The motor carrier must maintain accurate records of actual instate and out-of-state use to substantiate any claim that a portion of any lease payment was exempt of use tax because of out-of-state use. Use tax will be determined for each "view period." For example, if a truck was leased for the years 1992 and 1993 and failed to meet the substantial use requirement in 1992, but met the requirement in 1993, use tax would only be due for the usage in Washington which occurred in 1992.

(b) The following examples show how this method would be applied to typical situations. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(i) BG Hauling is a for hire carrier which on January 1, 1991, enters into a lease agreement for a truck without operator. All the necessary conditions for the retail sales and use tax exemptions for the first year of the lease were met. BG Hauling verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis.

BG determines that this truck failed to meet the twenty-five percent substantial use threshold for calendar year 1992. Use tax will be due beginning with the period for which the exemption was not met, in this case beginning with January 1992. However, BG Hauling may report use tax only on that portion of each lease payment attributable to actual instate use, provided it maintains accurate records substantiating the truck's instate and out-of-state activity. Only mileage incurred while actually outside Washington will be considered out-of-state mileage. If BG Hauling continues to lease this truck in 1993, usage will again be reviewed for that period and use tax may or may not be due for the 1993 lease payments, depending on whether the vehicle was used substantially in interstate hauls during that year.

(ii) MG Inc. is an equipment distributor which, in addition to hauling its own product to customers, is engaged in hauling for hire activities. MG is a holder of an ICC permit. MG enters into a lease agreement for a truck without operator on January 1, 1992. All conditions for retail sales and use tax exemption are satisfied for the first year of the lease.

Based upon the truck's for hire hauling activities during the 1993 calendar year, MG determines that the use of the truck failed to satisfy the twenty-five percent substantial use threshold. MG must remit use tax upon the amount of lease payments made during 1993 at the time it files its last tax return in 1993. Provided accurate records are maintained to substantiate instate and of out-of-state use, MG may remit use tax only upon that portion of each lease payment attributable to actual instate use. While only the hauling for hire activities are reviewed when determining whether the truck satisfies the substantial interstate use threshold, once it is established the exemption cannot be maintained, the use tax liability is based upon all instate activity, including the motor carrier's hauling of its own product.

(7) **Component parts.** RCW 82.12.0254 also provides a use tax exemption for the use of tangible personal property which becomes a component part of any motor vehicle or trailer used for transporting therein persons or property for hire. This exemption is available whether the motor vehicle or trailer is owned by, or operated under contract with, a person holding a carrier permit issued by the Interstate Commerce Commission authorizing transportation by motor vehicle across the boundaries of this state. Since the Interstate Commerce Commission requires carriers to obtain permits only when the carrier is hauling for hire, the exemption applies only to tangible personal property purchased for vehicles which are used in hauling for hire. The exemption for component parts will apply even if the parts are for use on a motor vehicle or trailer which is used less than twenty-five percent in interstate hauls for hire, provided the vehicle is used in hauling for hire.

(a) For the purposes of this section, the term "component parts" means any tangible personal property which is attached to and becomes an integral part of the motor vehicle or trailer. It includes such items as motors, motor and body parts, batteries, and tires. "Component parts" includes the axle and wheels, referred to as "converter gear" or "dollies," which is used to connect a trailer behind a tractor and trailer. "Component parts" can include tangible personal property which is attached to the vehicle and used as an integral part of the motor carrier's operation of the vehicle, even if the item is not required mechanically for the operation of the vehicle. It would include cellular telephones, communication equipment, fire extinguishers, and other such items, whether themselves permanently attached to the vehicle or held by brackets which are permanently attached. If held by brackets, the brackets must be permanently attached to the vehicle in a definite and secure manner with these items attached to the bracket when not in use and intended to remain with that vehicle. It does not include antifreeze, oil, grease, and other lubricants which are considered as consumed at the time they are placed into the vehicle, even though required for operation of the vehicle. It does include items such as spark plugs, oil filters, air filters, hoses and belts.

(b) The following items do not qualify for exemption from the use tax under the provisions of RCW 82.12.0254:

(i) Equipment, tools, parts and accessories which do not become a component part of a motor vehicle or trailer used in transporting persons or property for hire; and

(ii) Consumable supplies, such as oil, grease, other lubricants, cleaning solvents and ice.

[Statutory Authority: RCW 82.32.300. 94-18-004, § 458-20-17401, filed 8/24/94, effective 9/24/94.]

WAC 458-20-175 Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce. The term "private carrier" means every carrier, other than a common carrier, engaged in the business of transporting persons or property for hire.

The term "watercraft" includes every type of floating equipment which is designed for the purpose of carrying therein or therewith persons or cargo. It includes tow boats, but it does not include floating dry docks, dredges or pile drivers, or any other similar equipment.

The term "carrier property" means airplanes, locomotives, railroad cars or water craft, and component parts of the same.

The term "component part" includes all tangible personal property which is attached to and a part of carrier property. It also includes spare parts which are designed for ultimate attachment to carrier property. The said term does not include furnishings of any kind which are not attached to the carrier property nor does it include consumable supplies. For example, it does not include, among other things, bedding, linen, table and kitchen ware, tables, chairs, ice for icing perishables or refrigerator cars or cooling systems, fuel or lubricants.

"Such persons," and "such businesses" mean the persons and businesses described in the title of this rule.

Business and Occupation Tax, Public Utility Tax

Persons engaged in such businesses are not subject to business tax or utility tax with respect to operating income received for transporting persons or property in interstate or foreign commerce. (See WAC 458-20-193.)

When such persons also engage in intrastate business activities they become taxable at the rates and in the manner stated in WAC 458-20-179, 458-20-181 and 458-20-193. For example, such persons are taxable under the retailing business tax classification upon the gross proceeds of sales of tangible personal property, including sales of meals, when such sales are made within this state.

Persons selling tangible personal property to, or performing services for, others engaged in such businesses, are taxable to the same extent as they are taxable with respect to sales of property or services made to other persons in this state. However, on July 1, 1985, a statutory business and occupation tax deduction became effective for sales of fuel for consumption outside the territorial waters of the United States by vessels used primarily in foreign commerce. In order to qualify for this deduction sellers must take a certificate signed by the buyer or the buyer's agent stating: The name of the vessel for which the fuel is purchased; that the vessel is primarily used in foreign commerce; and, the amount of fuel purchased which will be consumed outside of the territorial waters of the United States. Sellers must exercise good faith in accepting such certificates and are required to add their own signed statement to the certificate to the effect that to the best of their knowledge the information contained in the certificate is correct. The following is an acceptable certificate form:

Foreign Fuel Exemption Certificate

SELLER: . . . . VESSEL: . . . .

WE HEREBY CERTIFY that this purchase of (kind and amount of product) from (seller) will be consumed as fuel outside the territorial waters of the United States by the above-named vessel. We further certify that said vessel is used primarily in foreign commerce and that none of the fuel purchased will be consumed within the territorial boundaries of the State of Washington.

DATED . . . . , 19 . . . .
Purchaser

. . . .
Purchaser's Agent

By: . . . .

. . . .
Title or Office

When a completed certification such as this is taken in good faith by the seller, the sale is exempt of business and occupation tax, whether made at wholesale or retail, and even though the fuel is delivered to the buyer in this state.

Retail Sales Tax

Sales of meals (including those sold to employees, see WAC 458-20-119) and retail sales of other tangible personal property, made by such persons, are subject to the retail sales tax when such sales are made within this state.

By reason of specific exemptions contained in RCW 82.08.0261 and 82.08.0262 the retail sales tax does not apply upon the following sales:

(1) Sales of airplanes, locomotives, railroad cars, or watercraft for use in conducting interstate or foreign commerce by transporting therein or therewith property and persons for hire;

(2) Sales of tangible personal property which becomes a component part of such carrier property in the course of constructing, repairing, cleaning, altering or improving the same;

(3) Sales of or charges made for labor or services rendered with respect to the constructing, repairing, cleaning, altering or improving of such carrier property;

(4) Sales of any tangible personal property other than the type referred to in 1 and 2 above, for use by the purchaser in connection with such businesses, provided that any actual use thereof in this state shall, at the time of actual use, be subject to the use tax.

Except as to sales of or charges made for labor or services rendered with respect to the constructing, repairing, cleaning, altering or improving of carrier property, the foregoing exemptions are limited to sales of tangible personal property. Hence the retail sales tax applies upon the sales of or charges made for labor or services rendered in respect to (1) the installing, repairing, cleaning, altering, imprinting or improving of any other type of tangible personal property; and in respect to (2) the constructing, repairing, decorating or improving of new or existing buildings or other structures. Thus the retail sales tax applies upon the charge made for repairing within this state of such things as switches, frogs, office equipment, or any other property which is not carrier property. It also applies upon the charge made for laundering linen and bedding. The tax also applies upon the charge made for constructing buildings, such as depots, wharves and hangars, or for repairing, decorating or improving the same.

However, the cost of installing, repairing, cleaning, altering, imprinting or improving of tangible personal property prior to its initial use by the carrier is considered as part of the initial cost of the property involved and therefore exempt from the sales tax. Thus, for example, the treating of railroad ties prior to their initial use is considered as part of the original cost of the ties and therefore exempt from the sales tax under RCW 82.08.0261.

Exemption certificates required. Persons selling tangible personal property or performing services which come within any of the foregoing exemptions are required to obtain from the purchaser, or his authorized agent, a certificate evidencing the exempt nature of the transaction. This certificate must identify the operator of the carrier by name and by its department of revenue registration number, if registered, and if not registered, by address.

The certificate may be in blanket form—that is, may certify as to all future purchases, or individual certificates may be made for each purchase. Also the certificate may be incorporated in or stamped upon the purchase order.

The certificate should be in substantially the following form:

Exemption Certificate

WE HEREBY CERTIFY that all the tangible personal property to be purchased from you will be for use in connection with our business of operating as a (private or common) carrier by (air, rail or water) in (interstate or foreign) commerce; that all (airplanes, locomotives, railroad cars or water craft) or component parts thereof, to be constructed, repaired, cleaned, altered or improved by you, will be used in conducting (interstate or foreign) commerce; and that all such sales are entitled to exemption from the Retail Sales Tax under the provisions of RCW 82.08.0261 and 82.08.0262.

Dated . . . ., 19. . .

. . . .
(Purchaser)

By . . . .
(Title-Officer or Agent)

Address . . . .
. . . .

Department of Revenue Registration No.
. . . .

Use Tax

The use tax does not apply upon the use of airplanes, locomotives, railroad cars or watercraft, including component parts thereof, which are used primarily in conducting such businesses.

"Actual use within this state," as used in RCW 82.08.0261 does not include use of durable goods aboard carrier property while engaged in interstate or foreign commerce. Thus the use tax does not apply upon the use of furnishings and equipment (whether attached to the carrier or not) intended for use aboard carrier property while operating partly within and partly without this state. Included herein are such items as bedding, table linen and wares, kitchen equipment, tables and chairs, hand tools, hawsers, life preservers, parachutes, and other durable goods which are necessary, convenient or desirable for the proper operation of such carrier property.

The use tax does apply upon the actual use within this state of all other types of tangible personal property purchased at retail and upon which the sales tax has not been paid. Included herein are all consumable goods for use on and placed aboard carrier property while within this state, but only to the extent of that portion consumed herein. Thus the tax applies upon the use of the amount consumed in this state of ice, fuel and lubricants which are placed aboard in this state, and upon food supplies or catered meals placed aboard carrier property in this state and served to customers in this state by transportation companies when the meals so served are included in the charge for transportation. (The retail sales tax must be collected upon separate sales within this state of meals or other tangible personal property.) The tax does not apply upon the use within this state of any part of consumable goods for use on carrier property and placed aboard outside this state.

Liability for the use tax arises at the time of actual use thereof in this state.

Due to the difficulty in many cases of determining at the time of purchase whether or not the property purchased or a part thereof will be put to use in this state and due to the resulting accounting problems involved, persons engaged in the business of operating as private or common carriers by air, rail or water in interstate or foreign commerce will be permitted to pay the use tax directly to the department of revenue rather than to the seller, and such sellers are relieved of the liability for the collection of such tax. This permission is limited, however, to persons duly registered with the department. The registration number given on the certificate which will be furnished to the seller ordinarily will be sufficient evidence that the purchaser is properly registered.

As to persons operating in interstate or foreign commerce as carriers by air, rail or water who are not registered with the department and who, therefore, are not regularly filing tax returns with the department, sellers of durable goods must either collect the use tax at the time of the sale or require from such purchasers a further certificate to the effect that no part of the subject matter of the sale is for actual use in this state.

Similarly, where consumable goods, such as ice, bunker fuel, or lubricants are purchased by or for carriers not registered with the department, and delivered on board a carrier regularly engaged in interstate or foreign commerce for consumption while both within and without the territorial boundaries of the state of Washington, the seller is required to collect from the buyer the amount of use tax applicable to that portion of the products sold which will be consumed within this state.

It will be presumed that the entire amount of the goods purchased will be consumed within this state unless the seller obtains from the buyer a certificate certifying as to the amount thereof which will be consumed while within the territorial boundaries hereof.

The certificate shall be made by the master or chief engineer of the carrier, or by some other person known by the seller to be competent to make the same, and shall be substantially in the following form:

Certificate

. . . .	. . . .
Seller	Purchaser
. . . .	. . . .
Name of Carrier	Name of Owner or Agent

The undersigned does hereby certify as follows:

(1) The purchaser has this day purchased from the seller in the State of Washington certain amounts of <u>(type of goods purchased)</u> and has taken delivery thereof aboard said carrier for its exclusive use while regularly engaged in transporting persons or property for profit in interstate or foreign commerce.

(2) While the said carrier is within the territorial boundaries of the state of Washington, it will consume the following amounts of the commodities purchased:

. . . . barrels of fuel oil
. . . . gallons of lubricants
. . . . pounds of grease
. . . . other consumable goods

Dated . . . ., 19. . .

. . . .
Name

. . . .
Office or Title

[Statutory Authority: RCW 82.32.300. 86-07-005 (Order ET 86-3), § 458-20-175, filed 3/6/86; 83-07-033 (Order ET 83-16), § 458-20-175, filed 3/15/83; Order ET 70-3, § 458-20-175 (Rule 175), filed 5/29/70, effective 7/1/70.]

WAC 458-20-176 Commercial deep sea fishing—Commercial passenger fishing—Diesel fuel. (1) **Definitions**. As used herein:

(a) "Commercial deep sea fishing" means fishing done for profit outside the territorial waters of the state of Washington. It does not include sport fishing or the operation of charter boats for sport fishing. (See WAC 458-20-183 for tax liability of such persons.) Nor does the phrase include the operation or purchase of watercraft for kelping, purse seining, or gill netting, because such fishing methods can be legally performed in Washington only within the territorial waters of the state (the three-mile limit). Therefore, watercraft rigged for fishing by any of these methods will be deemed for use in other than commercial deep sea fishing unless proof, including documentation to be retained by sellers, is furnished that said watercraft will be used for these purposes exclusively outside the Washington territorial limit.

(b) "Watercraft" means every type of floating equipment which is designed for the purpose of carrying therein or therewith fishing gear, fish catch or fishing crews, and used primarily in commercial deep sea fishing operations.

(c) "Component part" includes all tangible personal property which is attached to and a part of a watercraft. It includes dories, gurdies and accessories, bait tanks, baiting tables and turntables. It also includes spare parts which are designed for ultimate attachment to a watercraft. The said term does not include equipment or furnishings of any kind which are not attached to a watercraft, nor does it include consumable supplies. Thus it does not include, among other things, bedding, table and kitchen wares, fishing nets, hooks, lines, floats, hand tools, ice, fuel or lubricants.

(d) "Commercial passenger fishing" means that done from charter boats for sport outside the territorial waters of the state of Washington.

(2) **Business and occupation tax.**

(a) Persons engaged in commercial deep sea fishing are not taxable under the extracting classification with respect to catches obtained outside the territorial waters of this state.

(b) Such persons are taxable under either the retailing or the wholesaling classification with respect to sales made within this state, unless entitled to exemption by reason of the commerce clauses of the federal constitution. (See WAC 458-20-193.)

(3) **Retail sales tax.**

(a) By reason of the exemption contained in RCW 82.08.0262, the retail sales tax does not apply upon sales of watercraft (including component parts thereof) which are primarily for use in conducting commercial deep sea fishing operations, nor does said tax apply to sales of or charges made for labor and services rendered in respect to the constructing, repairing, cleaning, altering or improving of such property.

(b) The retail sales tax applies upon sales made to persons engaged in commercial deep sea fishing of every other type of tangible personal property and upon sales of or charges made for labor and services rendered in respect to the construction, repairing, cleaning, altering or improving of such other types of property. Thus, the retail sales tax applies upon sales to such persons of such things as fishing nets, hooks, lines, floats and bait; table and kitchen wares; hand tools, ice, fuel except diesel fuel as noted below, and lubricants for use or consumption, except only sales of watercraft and component parts thereof. For sales of food products see WAC 458-20-119 and 458-20-244.

(4) **Exemption certificates required.**

(a) Persons selling watercraft or component parts thereof to persons engaged in commercial deep sea fishing or performing services with respect to such craft or parts, are required to obtain from the purchaser a certificate evidencing the exempt nature of the transaction. This certificate must identify the purchaser by name and address, and by name of the watercraft with respect to which the purchase is made, and must contain a statement to the effect that the property purchased or repaired is for use primarily in commercial deep sea fishing operations.

(b) The certificate should be in substantially the following form:

Exemption Certificate

I HEREBY CERTIFY that the . . . . this day ordered from or purchased from you, will be used primarily in commercial deep sea fishing operations outside the territorial waters of the State of Washington; that the vessel is not for fishing inside such territorial waters, and is not rigged or equipped for such fishing; that the registered name of the watercraft to which said purchase applies is <u>(name of fishing boat)</u>; and that said sale is entitled to exemption under the provisions of RCW 82.08.0262.

Dated . . . ., 19. . .

. . . .
(Name of Purchaser)

By . . . .
(Name of officer or agent)

Address . . . .

(c) Incidental use within the waters of this state of fishing boats which are used primarily in deep sea fishing operations, will not deprive the owners thereof of the statutory exemption from the retail sales tax.

(d) In the event the fishing boat with respect to which an exemption is claimed is of a type used in the waters of Puget Sound or the Columbia River and the tributaries thereof, and is not practical for use in deep sea fishing, sellers should collect the retail sales tax upon all sales of such boats and component parts thereof and upon charges made for the repair of the same.

(e) It is a gross misdemeanor for a buyer to make a false certificate of exemption for the purpose of avoiding the tax.

(5) **Use tax.**

(a) The use tax does not apply upon the use of watercraft or component parts thereof.

(b) The use tax does apply upon the actual use within this state of all other types of tangible personal property purchased at retail and upon which the sales tax has not been paid (see WAC 458-20-178) except on diesel fuel as noted below.

(6) **Diesel fuel.**

(a) The law provides for sales and use tax exemptions on diesel fuel for both commercial passenger fishing (charter boats for sport fishing) and commercial deep sea fishing operations.

(b) Neither retail sales nor use tax applies with respect to sales or use of diesel fuel in the operation of watercraft in commercial deep sea fishing operations or commercial passenger fishing operations by persons who are regularly engaged in the business of such operations outside the territorial waters (three-mile limit) of this state. For purposes of this exemption a person is not regularly engaged in either business if the person has gross receipts from the extra territorial operations of less than five thousand dollars a year. For persons involved in both commercial deep sea fishing operations and commercial passenger fishing operations, the receipts from both shall be added together to determine eligibility for this exemption.

(c) This exemption is plenary in scope and it is not required that all of the diesel fuel purchased be used outside of the territorial waters of this state. If a person qualifies for the exemptions by virtue of operating a deep sea fishing vessel, and has the requisite amount of gross receipts from that activity, all diesel fuel purchases and uses by such person for such vessel are tax exempt.

(d) **Diesel fuel exemption certificates required.** Persons selling diesel fuel to such persons are required to obtain from the purchaser a certificate evidencing the exempt nature of the transaction. This certificate must identify the purchaser by name and address, and by the registered name and number of the watercraft with respect to which the purchase is made. It must contain a statement to the effect that the diesel fuel is for use by a person who is engaged in commercial deep sea fishing and/or commercial passenger fishing operations who has annual gross receipts therefrom of at least five thousand dollars. Blanket certificates covering all diesel fuel purchases for specified watercraft may be used, where appropriate. A seller of diesel fuel who accepts such a certificate in good faith shall not be liable for sales tax on the diesel fuel sold. Certificates must be retained by the sellers in their permanent records as evidence of the exempt nature of diesel sales to eligible buyers. It is a gross misdemeanor for a buyer to make a false certificate of exemption for the purpose of avoiding the tax.

(e) The certificate should be in substantially the following form:

Diesel Fuel Exemption Certificate

I HEREBY CERTIFY that diesel fuel which I will purchase from (name of dealer) will be used in the operation of a watercraft which is used in commercial deep sea or commercial passenger fishing operations outside the territorial waters of the state of Washington; that the registered name and number of the watercraft to which said purchase applies is (registered vessel name and number) ; that the owner(s) of said vessel has gross income, based on federal income tax returns, of not less than five thousand dollars a year from such extra territorial fishing operations; and that said sales are entitled to exemption under the provisions of chapter 494, Laws of 1987.

Dated . . . ., 19. . .

. . . .
(Name of Purchaser)

By . . . .
(Name of officer or agent)

Address . . . .

[Statutory Authority: RCW 82.32.300. 88-03-055 (Order 88-1), § 458-20-176, filed 1/19/88; 83-07-033 (Order ET 83-16), § 458-20-176, filed 3/15/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-176, filed 6/27/78; Order ET 70-3, § 458-20-176 (Rule 176), filed 5/29/70, effective 7/1/70.]

WAC 458-20-177 Sales of motor vehicles, campers, and trailers to nonresidents. The scope of this rule is limited to sales by dealers in this state of motor vehicles, campers, and trailers to nonresidents of the state for use outside the state.

For the purposes of this rule, members of the armed services (but not including civilian military employees) who are temporarily stationed in the State of Washington pursuant to military orders will be presumed to be nonresidents unless such persons were residents of this state at the time of their induction; the term "vehicle" as used herein refers to motor vehicles, campers, and trailers.

Business and Occupation Tax

In computing the tax liability of persons engaged in the business of selling vehicles no deduction is allowed by reason of sales made to nonresidents for use outside this state but who take delivery in Washington, and irrespective of the fact that such buyers may be entitled to a statutory exemption from the retail sales tax.

A deduction from gross proceeds of sales will be allowed when, as a necessary incident of the contract of sale, the seller agrees to, and does, deliver the vehicle to the buyer at a point outside the state, or delivers the same to a common carrier consigned to the purchaser outside the state.

The foregoing deduction, however, will be allowed only when the seller has secured and retains in his files satisfactory proof:

(a) That under the terms of the sales agreement the seller was required to deliver the vehicle to the buyer at a point outside this state; and

(b) That such out-of-state delivery was actually made by the seller or by a common carrier acting as his agent.

For forms of proof acceptable to the department of revenue see below under retail sales tax-out-of-state delivery. For "interstate commerce" deductions, generally, refer to WAC 458-20-193A.

Retail Sales Tax

(1) Sales to nonresidents. Under RCW 82.08.0264 the retail sales tax does not apply to sales of vehicles to nonresidents of Washington for use outside this state, even though delivery be made within this state, but only when either one of the following conditions is met:

(a) Said vehicle will be taken from the point of delivery in this state directly to a point outside this state under the authority of a trip permit issued by the department of licensing pursuant to the provisions of RCW 46.16.160; or

(b) Said vehicle will be registered and licensed immediately (at the time of delivery) under the laws of the state of the purchaser's residence, will not be used in this state more than three months, and will not be required to be registered and licensed under the laws of this state.

Thus, in determining whether or not this particular exemption from the retail sales tax is applicable the dealer must establish the facts, first, that the purchaser is a bona fide nonresident of Washington and that the vehicle is for use outside this state and, second, that the vehicle is to be driven from his premises under the authority of either (a) a trip permit, or (b) valid license plates issued to that vehicle by the state of the purchaser's residence, with such plates actually affixed to the vehicle at the time of final delivery.

As evidence of the exempt nature of the sales transaction the seller, at the time of sale, is required to take an affidavit from the buyer giving his name, the state of his residence, his address in that state, the name, year and motor or serial number of the vehicle purchased, the date of sale, his declaration that the described vehicle is being purchased for use outside this state and, finally, that the vehicle will be driven from the premises of the dealer under the authority of a trip permit (giving the number) or that the vehicle has been registered and licensed by the state of his residence and will be driven from the premises of the dealer with valid license plates (giving the number) issued by that state affixed thereto. If the vehicle being sold is already licensed with valid Washington plates and the nonresident purchaser wishes to qualify for exemption by transporting the vehicle out of state under authority of a trip permit, the dealer is required to remove the Washington plates prior to delivery of the vehicle and retain evidence of such removal to avoid liability for collection and payment of the retail sales tax. The seller must himself certify by appending a certification to the affidavit, to the fact that the vehicle left his premises under the authority of a trip permit or with valid license plates issued by the state of the buyer's residence affixed thereto. The buyer's affidavit and the dealer's certificate must be in the following form:

Affidavit

For use by a NONRESIDENT buyer of a vehicle transporting the same outside this state under the authority of

(a) ☐ Trip permit
(b) ☐ Nonresident license plates (check appropriate box)

STATE of WASHINGTON }
COUNTY of . . . . } ss.

(Purchaser) , being first duly sworn on oath, deposes and says:
That he is a *bona fide* resident of the State of . . . . and that his address is (street and number or rural route) , (city, town or post office) , (state) ; That on this date he has purchased from (dealer) the following described vehicle, to-wit:

Make	Model . . . .
Year	(Motor Number)
	(Serial No.) . . . .

and that said vehicle is being purchased for use outside this state and that the same will be driven from the premises of the dealer under the authority of (a) a trip permit numbered . . . . . . which has been issued to him authorizing the transit of said vehicle, or, (b) that said vehicle is being purchased for use outside this state and will not be used in the State of Washington for more than three months; and
That the affiant has licensed said vehicle in the state of . . . . . . and has had issued to him by that state license plates numbered . . . . . . which are valid until (expiration date of license) and that said plates have been affixed to said vehicle prior to the time it has left the premises of the dealer.

Dated at . . . ., Washington, this . . . . day of . . . . . ., 19. . .

. . . .
(Signature)

. . . .
Service No. if Member of Armed Services

Subscribed and sworn to before me this . . . . day of . . . . . ., 19. . .

. . . .
Notary Public in and for the State of Washington, residing at . . . .

Certificate of Dealer

I hereby certify that before final delivery of the vehicle described in the foregoing affidavit (a) I have examined trip permit No. . . . . . . which authorizes transit of the vehicle described, or (b) that license plates numbered . . . . . ., issued to said vehicle by the state of . . . . and expiring . . . ., were affixed thereto. I further certify that I have personally examined two or more of the following items of documentary evidence showing the purchaser's residency in the state of . . . .:

. . . . Driver's license
. . . . Voter's registration
. . . . Fishing or hunting license
. . . . Income tax returns
. . . . Other (specify) . . . .

I further certify that if the vehicle sold was already licensed with valid Washington plates, they were physically removed by . . . . . ., agent of the seller.

. . . .
(Signature of dealer or representative)

. . . .
(Title-
Officer or Agent)

Failure to take this affidavit and to complete the dealer's certification, in full, at the time of delivery of the vehicle will negate any exemption from the buyer's duty to pay and the dealer's duty to collect the retail sales tax under RCW 82.08.0264. Furthermore, a copy of the completed affidavit and certification must be attached to the dealer's excise tax report submitted for the reporting period in which any such vehicles were sold. Such filing is a procedural requirement and does not conclusively establish the buyer's or seller's right to exemption.

The foregoing affidavit will be prima facie evidence that sales of vehicles to nonresidents have qualified for the sales tax exemption provided in RCW 82.08.0264 when there are no contrary facts which would negate the presumption that the seller relied thereon in complete good faith. The burden rests upon the seller to exercise a reasonable degree of prudence in accepting statements relative to the nonresidence of buyers. Lack of good faith on the part of the seller or lack of the exercise of the degree of care required would be indicated, for example, if the seller has knowledge that the buyer is living or is employed in Washington, if for the purpose of financing the purchase of the vehicle the buyer gives a local address, if at the time of sale arrangements are made for future servicing of the vehicle in the seller's shop and a local address is shown for the shop customer, or if the seller has ready access to any other information which discloses that the buyer may not be in fact a resident of the state which he claims. A nonresident permit issued by the department of revenue may be accepted as prima facie evidence of the out of state residence of the buyer, but does not relieve the seller from obtaining the affidavit and completing the certificate required by this rule.

Members of the armed services who are temporarily stationed in Washington pursuant to military orders will be presumed to be nonresidents unless such persons were residents of this state at the time of their induction. This presumption is not applicable in respect to civilian employees of the armed services.

In all other cases where delivery of the vehicle is made to the buyer in this state, the retail sales tax applies and must be collected at the time of sale. The mere fact that the buyer may be or claims to be a nonresident or that he intends to, and actually does, use the vehicle in some other state are not in themselves sufficient to entitle him to the benefit of this exemption. In every instance where the vehicle is licensed or titled in Washington by the purchaser the retail sales tax is applicable.

(2) Out-of-state deliveries. Out-of-state deliveries to buyers who are bona fide nonresidents are exempt from the retail sales tax when the seller, as a necessary incident to the contract of sale, delivers possession of vehicles to such buyers at points outside Washington and such vehicles are not licensed or titled in this state. If the vehicle being sold bears valid Washington plates and the nonresident wishes to qualify for exemption by taking delivery from the dealer at a point outside the state, the dealer is required to remove the Washington plates prior to delivery and retain evidence of such removal to avoid liability for collection and payment of the retail sales tax.

In such cases, as evidence of the exempt nature of the transaction, the seller must take from the buyer a certificate of out-of-state delivery which shall give the purchaser's name and address, the name, model, year and motor number of the vehicle purchased, and contain the buyer's statement that he is a bona fide resident of the named state, that the vehicle was purchased for use outside Washington state and that under the terms of the sales agreement the dealer was required to and did deliver the vehicle to a named point outside the state of Washington. The certificate shall be signed by the buyer at the place of delivery. Attached to this certificate and made a part thereof shall be a certification by the seller that he delivered the vehicle to the purchaser named at the named place of delivery.

These certificates shall be substantially in the following form:

Certificate of Out-of-State Delivery

(To be obtained from the purchaser at the time delivery is made to him at a point outside Washington)

The undersigned hereby certifies that he is a *bona fide* resident of the State of . . . . and that his address is (street and number or rural route) , (city, town or post office) , (state) ; That on the . . . . . . day of . . . . . ., 19. . ., he purchased from (Dealer) the following described vehicle to-wit:

Make . . . . Model . . . .
Year . . . . (Motor Number)
(Serial No.) . . . .

and that said vehicle was purchased for use outside Washington state;
That under the terms of the sales agreement the dealer was required to, and did on this day, deliver said vehicle to him at (Place of delivery) .

Dated at . . . . . ., ..., this . . . . day of . . . . . ., 19. . .

. . . .
(Signature)

. . . .
Service No. if Member of Armed Services

Certification of Dealer

I hereby certify that I have this day delivered the vehicle hereinabove described to (Name of purchaser) , at (Place of delivery) .
Dated . . . .

. . . .
(Signature of dealer or representative)

. . . .
(Title- Officer or Agent)

When such out-of-state delivery is made by a common carrier acting as agent of the seller then, as evidence of the exempt nature of the transaction, the seller shall retain in his files a signed copy of the bill of lading issued by the carrier in which the seller is shown as the consignor and by which the carrier agrees to transport the vehicle to a point outside the state.

The retail sales tax applies upon sales at retail made by local dealers to local residents for use by them in this state, even though delivery may be taken by the purchaser at the factory or other point outside this state, or that shipment may be made direct from outside this state to the purchaser in this state. However, where delivery is taken by local residents in foreign countries the vehicles will be deemed not to be for use in this state and local dealers will not be required to collect the retail sales tax.

(3) Records to be retained by seller. The affidavits and certificates referred to in this rule must be retained by the seller in his files as a part of his permanent records subject to audit by the department of revenue. In the absence of such proof, claims that transactions were exempt from tax will be disallowed.

[Statutory Authority: RCW 82.32.300. 83-08-026 (Order ET 83-1), § 458-20-177, filed 3/30/83; Order ET 70-3, § 458-20-177 (Rule 177), filed 5/29/70, effective 7/1/70.]

WAC 458-20-178 Use tax. (1) Nature of the tax. The use tax supplements the retail sales tax by imposing a tax of like amount upon the use within this state as a consumer of any article of tangible personal property purchased at retail or acquired by lease, gift, repossession, or bailment, or extracted, produced or manufactured by the person so using the same, where the user, donor or bailor has not paid retail sales tax under chapter 82.08 RCW with respect to the property used.

(2) In general, the use tax applies upon the use of any tangible personal property, the sale or acquisition of which has not been subjected to the Washington retail sales tax. Conversely, it does not apply upon the use of any property if the sale to the present user or to the present user's donor or bailor has been subjected to the Washington retail sales tax, and such tax has been paid thereon. Thus, these two methods of taxation stand as complements to each other in

the state revenue plan, and taken together, provide a uniform tax upon the sale or use of all tangible personal property, irrespective of where it may have been purchased or how acquired.

(3) When tax liability arises. Tax liability imposed under the use tax arises at the time the property purchased, received as a gift, acquired by bailment, or extracted or produced or manufactured by the person using the same is first put to use in this state. The terms "use," "used," "using," or "put to use" include any act by which a person takes or assumes dominion or control over the article and shall include installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within the state. Tax liability arises as to that use only which first occurs within the state and no additional liability arises with respect to any subsequent use of the same article by the same person. As to lessees of tangible personal property who have not paid the retail sales tax to their lessors, liability for use tax arises as of the time rental payments fall due and is measured by the amount of such rental payments.

(4) Persons liable for the tax. The person liable for the tax is the purchaser, the extractor or manufacturer who commercially uses the articles extracted or manufactured, the bailor or donor and the bailee or donee if the tax is not paid by the bailor or donor, and the lessee (to the extent of the amount of rental payments to a lessor who has not collected the retail sales tax). A lessor who leases equipment with an operator is deemed a user and is liable for the tax on the full value of the equipment.

(5) The law provides that the term "sale at retail" means, among other things, every sale of tangible personal property to persons taxable under the classifications of public road construction, government contracting, and service and other business activities of the business and occupation tax. Hence, persons engaged in such businesses are liable for the payment of the use tax with respect to the use of materials purchased by them for the performance of those activities, when the Washington retail sales tax has not been paid on the purchase thereof, even though title to such property may be transferred to another either as personal or as real property. Persons engaged in the types of businesses referred to in this paragraph are expressly included within the statutory definition of the word "consumer." (See RCW 82.04.190.) Also liable for tax is any person who distributes or displays or causes to be distributed or displayed any article of tangible personal property, the primary purpose of which is to promote the sale of products and services except newspapers and except printed materials over which the person has taken no direct dominion and control. (See RCW 82.12.010(5).)

(6) Lessors and lessees. Any use tax liability with respect to leased tangible personal property will be that of the lessee and is limited to the amount of rental payments paid or due the lessor. However, when boats, motor vehicles, equipment and similar property are rented under conditions whereby the lessor itself supplies an operator or crew, the lessor itself is the user and the use tax is applicable to the value of the property so used.

(7) Exemptions. Persons who purchase, produce, manufacture, or acquire by lease or gift tangible personal property for their own use or consumption in this state, are liable for the payment of the use tax, except as to the following uses which are exempt under RCW 82.12.0251 through 82.12.034 of the law:

(a) The use of tangible personal property brought into the state of Washington by a nonresident thereof for use or enjoyment while temporarily within the state, unless such property is used in conducting a nontransitory business activity within the state; or

(b) The use by a nonresident of a motor vehicle or trailer which is currently registered or licensed under the laws of the state of the nonresident's residence and which is not required to be registered or licensed under the laws of this state, including motor vehicles or trailers exempt pursuant to a declaration issued by the department of licensing under RCW 46.85.060; or

(c) The use of household goods, personal effects, and private automobiles by a bona fide resident of this state or nonresident members of the armed forces who are stationed in this state pursuant to military orders, if such articles were acquired and used by such person in another state while a bona fide resident thereof and such acquisition and use occurred more than ninety days prior to the time such person entered this state.

(i) Use by a nonresident. The exemptions set forth in (a) and (b) of this subsection, do not extend to the use of articles by a person residing in this state irrespective of whether or not such person claims a legal domicile elsewhere or intends to leave this state at some future time, nor do they extend to the use of property brought into this state by a nonresident for the purpose of conducting herein a nontransitory business activity.

(ii) The term "nontransitory business activity" means and includes the business of extracting, manufacturing, selling tangible and intangible property, printing, publishing, and performing contracts for the constructing or improving of real or personal property. It does not include the business of conducting a circus or other form of amusement when the personnel and property of such business regularly moves from one state into another, nor does it include casual or incidental business done by a nonresident lawyer, doctor or accountant.

(d) The use of any article of tangible personal property purchased at retail or acquired by lease, by bailment or by gift if the sale thereof to or the use thereof by the present user or its bailor or donor has already been subjected to retail sales tax or use tax and such tax has been paid by the present user or by its bailor or donor; or in respect to the use of property acquired by bailment when tax has been paid by the bailee or any previous bailee, based on reasonable rental value as provided by RCW 82.12.060, equal to the amount of tax multiplied by the value of the article used at the time of first use, at the tax rate then applicable, or in respect to the use by a bailee of property acquired prior to June 9, 1961, by a previous bailee from the same bailor for use in the same general activity.

(e) The use of any article of tangible personal property the sale of which is specifically taxable under the public utility tax.

(f) In respect to the use of any airplane, locomotive, railroad car, or water craft used primarily in conducting interstate or foreign commerce by transporting therein or therewith property and persons for hire or used primarily in commercial deep sea fishing operations outside the territorial waters of the state, and;

(g) In respect to the use of tangible personal property which becomes a component part of any such airplane, locomotive, railroad car, or water craft, and in respect to the use by a nonresident of this state of any motor vehicle or trailer used exclusively in transporting persons or property across the boundaries of this state and in intrastate operations incidental thereto when such motor vehicle or trailer is registered and licensed in a foreign state; also in respect to the use by a nonresident of this state of any motor vehicle or trailer so registered and licensed and used within this state for a period not exceeding fifteen consecutive days when the user has furnished the department of revenue with a written statement containing the following information:

(i) Name of registered owner.

(ii) Name of the foreign state in which motor vehicle or trailer is registered.

(iii) License number.

(iv) Make and model.

(v) Purpose of use in Washington.

(vi) Date of first use in Washington.

(vii) Date last used in Washington.

(h) For reasons approved by the department of revenue, fifteen additional days may be granted consecutive to the original period of use. Application for such additional use must be made in writing in advance of the expiration of the original period of use and must set out the justification for and the reason why such additional time should be allowed.

(i) This exemption is not available to persons performing construction or service contracts in this state but is limited to casual or isolated use by a nonresident for servicing of its own facilities.

(j) For the purpose of this exemption the term "nonresident" shall include a user who has one or more places of business in this state as well as in one or more other states, but the exemption for nonresidents shall apply only to those vehicles which are most frequently dispatched, garaged, serviced, maintained, and operated from the user's place of business in another state, and;

(k) In respect to the use by the holder of a carrier permit issued by the Interstate Commerce Commission of any motor vehicle or trailer used in substantial part in the normal and ordinary course of the user's business for transporting therein persons or property for hire across the boundaries of this state if the first use of which within this state is actual use in conducting interstate or foreign commerce. Also in respect to use by subcontractors to such interstate carriers, (i.e., persons operating their own vehicles under leases with operator) and;

(l) In respect to the use of any motor vehicle or trailer while being operated under the authority of a trip permit issued by the department of motor vehicles pursuant to RCW 46.16.160 and moving upon the highways from the point of delivery in this state to a point outside this state, and;

(m) In respect to the use of tangible personal property which becomes a component part of any motor vehicle or trailer used by the holder of a carrier permit issued by the Interstate Commerce Commission authorizing transportation by motor vehicle across the boundaries of this state. Also in respect to use by subcontractors to such interstate carriers (i.e., persons operating their own vehicles under leases with operator).

(n) The use of any article of tangible personal property which the state is prohibited from taxing under the constitution of the state or under the constitution or laws of the United States;

(o) The use of motor vehicle fuel used in aircraft by the manufacturer thereof for research, development, and testing purposes, and special fuel purchased in this state upon which a refund is obtained as provided in RCW 82.38.180(2), and motor vehicle and special fuel if:

(i) The fuel is used for the purpose of public transportation and the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080(9); or

(ii) The fuel is purchased by a private, nonprofit transportation provider certified under chapter 81.66 RCW and the purchaser is entitled to a refund or an exemption under RCW 82.36.285 or 82.38.080(8); or

(iii) The fuel is taxable under chapter 82.36 or 82.38 RCW: *Provided,* That the use of motor vehicle and special fuel upon which a refund of the applicable fuel tax is obtained shall not be exempt under this subsection, and the director of licensing shall deduct from the amount of such tax to be refunded the amount of use tax due and remit the same each month to the department of revenue.

(p) In respect to the use of any article of tangible personal property included within the transfer of the title to the entire operating property of a publicly or privately owned public utility, or a complete operating integral section thereof by the state or a political subdivision thereof in conducting any business defined in RCW 82.16.010 (1) through (11).

(q) The use of tangible personal property (including household goods) which has been used in conducting a farm activity, but only when that property was purchased from a farmer at an auction sale held or conducted by an auctioneer upon a farm and not otherwise.

(r) The use of tangible personal property by corporations which have been incorporated under any act of the Congress of the United States of America and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities, and to devise and carry on measures for preventing the same. (The Red Cross is the only existing organization that qualifies for this exemption.)

(s) The use of purebred livestock for breeding purposes where said animals are registered in a nationally recognized breed association, and in respect to the use of cattle and milk cows used on the farm.

(t) The use of poultry in the production for sale of poultry or poultry products.

(u) The use of fuel by the extractor or manufacturer thereof when used directly in the operation of the particular extractive operation or manufacturing plant which produced or manufactured the same.

(v) The use of motor vehicles, equipped with dual controls, which are loaned to accredited schools and used in connection with their driver training programs.

(w) The use by a bailee of any article of tangible personal property which is entirely consumed in the course of research, development, experimental and testing activities conducted by the user, provided the acquisition or use of such articles by the bailor was not subject to sales or use tax.

(x) The use by residents of this state of motor vehicles and trailers acquired outside this state and used while such persons are members of the armed services and are stationed outside this state pursuant to military orders, but this exemption does not apply to the use of motor vehicles or trailers acquired less than thirty days prior to the discharge or release from active duty of such person from the armed services. This exemption is not permitted to persons called to active duty for training periods of less than six months.

(y) The use of sand, gravel, or rock to the extent of the cost of or charges made for labor and services performed in respect to the mining, sorting, crushing, screening, washing, hauling, and stockpiling such sand, gravel, or rock, when such sand, gravel, or rock is taken from a pit or quarry which is owned by or leased to a county or a city, and such sand, gravel, or rock is (a) either stockpiled in said pit or quarry for placement or is placed on the street, road, place or highway of the county or city by the county or city itself (i.e., by its own employees), or (b) sold by the county or city to a county or a city at actual cost for placement on a publicly owned street, road, place, or highway. This exemption shall not apply to the use of such material to the extent of the cost of or charge made for such labor and services, if the material is used for other than public road purposes or is sold otherwise than as here indicated.

(z) The use of form lumber by any person engaged in the construction, repairing, decorating or improving of new or existing buildings or other structures under, upon or above real property of or for consumers: *Provided,* That such lumber is used or to be used first by such person for the molding of concrete in a single such contract, project or job and is thereafter incorporated into the product of that same contract, project or job as an ingredient or component thereof.

(aa) The use of wearing apparel only as a sample for display for the purpose of effecting sales of goods represented by such sample.

(bb) The use of tangible personal property held for sale and displayed in single trade shows for a period not in excess of thirty days, the primary purpose of which is to promote the sale of products or services.

(cc) The use of pollen.

(dd) The use of the personal property of one political subdivision by another political subdivision directly or indirectly arising out of or resulting from the annexation or incorporation of any part of the territory of one political subdivision by another.

(ee) The use of prescription drugs, including the use by the state or a political subdivision or municipal corporation thereof of drugs to be dispensed to patients by prescription without charge.

(ff) The use of returnable containers for beverages and foods, including but not limited to soft drinks, milk, beer, and mixers.

(gg) The use of insulin, prosthetic devices, or orthotic devices prescribed for an individual by a chiropractor, osteopath, or physician, ostomic items, medically prescribed oxygen, and hearing aids which are prescribed or are dispensed and fitted by a licensee under chapter 18.35 RCW.

(hh) The use of food products for human consumption (see WAC 458-20-244), including the use of livestock for personal consumption as food.

(ii) The use of ferry vessels of the state of Washington or of local governmental units in the state of Washington in transporting pedestrian or vehicular traffic within and outside the territorial waters of the state. Also, the use of tangible personal property which becomes a component part of any such ferry vessel.

(jj) Alcohol that is sold in this state for use solely as fuel in motor vehicles, farm implements and machines, or implements of husbandry. This exemption expires December 31, 1986.

(kk) The use of vans used regularly as ride sharing vehicles, as defined in RCW 46.74.010(3), by not less than seven persons, including passengers and driver, if the vans are exempt under the motor vehicle excise tax for thirty-six consecutive months beginning within thirty days of application for exemption under the use tax. This exemption expires January 1, 1988.

(ll) The use of used mobile homes as defined in RCW 82.45.032 and the use of mobile homes acquired by renting or leasing for more than thirty days, except for short term transient lodging.

(mm) The use of special fuel purchased in this state upon which a refund of special fuel tax is obtained as provided in RCW 82.38.180(2), by reason of such fuel having been purchased for use by interstate commerce carriers outside this state. Also, the use of motor vehicle fuel or special fuel by private, nonprofit transportation providers who are entitled to fuel tax refund or exemption under chapter 82.36 or 82.38 RCW.

(nn) The lease of irrigation equipment if:

(i) The irrigation equipment was purchased by the lessor for the purpose of irrigating land controlled by the lessor;

(ii) The lessor has paid tax under RCW 82.08.020 or 82.12.020 in respect to irrigation equipment;

(iii) The irrigation equipment is attached to the land in whole or in part; and

(iv) The irrigation equipment is leased to the lessee as an incidental part of the lease of the underlying land to the lessee and is used solely on such land.

(oo) The use of computers, computer components, computer accessories, or computer software irrevocably donated to any public or private school or college, as defined in chapter 84.36 RCW, in this state.

(pp) The use of semen in the artificial insemination of livestock.

(qq) The use of feed by persons for the cultivating or raising for sale of fish entirely within confined rearing areas on the persons own land or on land in which the person has a present right of possession.

(rr) The use by artistic or cultural organizations of:

(i) Objects of art;

(ii) Objects of cultural value;

(iii) Objects to be used in the creation of a work of art, other than tools; or

(iv) Objects to be used in displaying art objects or presenting artistic or cultural exhibitions or performances.

(ss) The use of used floating homes as defined in RCW 82.45.032 upon which sales tax or use tax has once been paid.

(tt) The use of feed, seed, fertilizer, and spray materials by persons raising agricultural or horticultural products for sale at wholesale including the use of feed in feeding animals at public livestock markets.

(uu) The use of prepared meals or food products used in prepared meals provided to senior citizens, disabled persons, or low income persons by not-for-profit organizations organized under chapter 24.03 or 24.12 RCW.

(vv) The use of property to produce ferrosilicon for further use in the production of magnesium for sale, where such property directly reacts chemically, with ingredients of the ferrosilicon.

(ww) In respect to lease payments by a seller/lessee to a purchaser/lessor after April 3, 1986, under a sale/leaseback agreement covering property used by the seller/lessee primarily in the business of canning, preserving, freezing, or dehydrating fresh fruits, vegetables, and fish; nor in respect to the purchase amount paid by the lessee pursuant to an option to purchase such property at the end of the lease term: *Provided,* That the seller/lessee paid the retail sales tax or use tax at the time of its original acquisition of the property.

(8) In addition to the exemptions listed earlier, the use tax does not apply to the value of tangible personal property traded in on the purchase of tangible personal property of like kind used in this state. (See WAC 458-20-247.) Also, the use tax does not apply to the use of precious metal bullion or monetized bullion acquired under such conditions that the retail sales tax would not apply to such things in this state. (See WAC 458-20-248.)

(9) See WAC 458-20-24001 and 458-20-24002 for provisions for certain use tax deferrals on materials, labor, and services rendered in the construction of qualified buildings, machinery, and equipment used in new manufacturing and research/development facilities.

(10) RCW 82.08.0251 provides expressly that the exemption therein with respect to casual sales shall not be construed as exempting from the use tax the use of any article of tangible personal property acquired through a casual sale. Thus, while casual sales made by persons who are not registered with the department of revenue are exempt from the retail sales tax (for the obvious reason that the procedure for collection of that tax is impractical in those cases), the use of property acquired through such sales is not exempt from the use tax, except as provided in RCW 82.12.0251 through 82.12.034.

(11) See also WAC 458-20-106 regarding the use tax on the use of articles purchased at a casual sale.

(12) Credit. When property purchased elsewhere is brought into this state for use or consumption the use tax will apply upon the use thereof, but a credit is allowed for the amount of sales or use tax paid by the user or its bailor or donor on such property to any other state or political subdivision thereof, the District of Columbia, or any foreign country, prior to the use of the property in this state.

(13) Value of the article used. The tax is levied and collected on an amount equal to the value of the article used by the taxpayer. The term "value of the article used" is defined by the law as being the total of the consideration paid or given by the purchaser to the seller for the article used plus any additional amounts paid by the purchaser as tariff or duty with respect to the importation of the article used. In case the article used was extracted or produced or manufactured by the person using the same or was acquired by gift or was sold under conditions where the purchase price did not represent the true value thereof, the value of the article used must be determined as nearly as possible according to the retail selling price, at the place of use, of similar products of like quality, quantity and character. In case the articles used are acquired by bailment, the value of the use of the articles so used shall be in an amount representing a reasonable rental for the use of the articles so bailed, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character. In case the articles used are acquired by lease or rental, use tax liability is measured by the amount of rental payments to a lessor who has not collected the retail sales tax.

(14) In the case of an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product, the value of the article used shall be determined by: (a) The retail selling price of such new or improved product when first offered for sale; or (b) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale. See: RCW 82.04.450, WAC 458-20-112.

(15) In the case of articles owned by a user engaged in business outside the state which are brought into the state for no more than ninety days in any period of three hundred sixty-five consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used shall be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under this chapter or chapter 82.08 RCW upon the full value of the article used.

(16) Returns and registration. Persons subject to the payment of the use tax, and who are not required to register or report under the provisions of chapters 82.04, 82.08, 82.16, or 82.28 RCW, are not required to secure a certificate of registration as provided under WAC 458-20-101. As to such persons, returns must be filed with the department of revenue on or before the fifteenth day of the month succeeding the end of the period in which the tax accrued. Forms and instructions for making returns will be furnished upon request made to the department at Olympia or to any of its branch offices.

(17) See WAC 458-20-221 for liability of certain selling agents for collection of use tax.

[Statutory Authority: RCW 82.32.300. 87-01-050 (Order ET 86-19), § 458-20-178, filed 12/16/86; Order ET 71-1, § 458-20-178, filed 7/22/71; Order ET 70-3, § 458-20-178 (Rule 178), filed 5/29/70, effective 7/1/70.]

WAC 458-20-179 Public utility tax. (1) Introduction. Persons engaged in certain public service businesses are taxable under the public utility tax. (See chapter 82.16 RCW.) These businesses are exempt from the business and occupation tax on the gross receipts which are subject to the public utility tax. (See RCW 82.04.310.) However, many persons taxable under the public utility tax are also engaged in some other business activity which is taxable under the business and occupation (B&O) tax. For example, a gas distribution company engaged in operating a plant or system for distribution of natural gas for sale, may also be engaged in selling at retail various gas appliances. Such a company would be taxable under the public utility tax with respect to its distribution of natural gas to consumers, and also taxable under the business and occupation tax with respect to its sale of gas appliances. It should also be noted that some services which generally are taxable under the public utility tax are taxable under the B&O tax if the service is performed for a new customer, prior to receipt of regular utility services by the customer.

(2) **Definitions.** The following definitions apply to this section:

(a) The term "gross income" means the value proceeding or accruing from the performance of the particular public service or transportation businesses involved. It includes operations incidental to the public utility activity, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(b) The term "service charge" means those specific charges made to a customer for providing a specific service. The term includes the actual charge to a customer for the sale or distribution of water, gas, or electricity. This term does not include utility local improvement district assessments (ULID) or local improvement district assessments (LID).

(c) The term "subject to control by the state" means control by the utilities and transportation commission or any other state department required by law to exercise control of a business of a public service nature as to rates charged or services rendered.

(3) **Persons taxable under the public utility tax.** The term "public service businesses" includes any of the businesses defined in RCW 82.16.010 (1) through (9), and (11). It also includes any business subject to control by the state, or having the powers of eminent domain, or any business declared by the legislature to be of a public service nature, irrespective of whether the business has the powers of eminent domain or the state exercises its control over the business. It includes, among others, without limiting the scope thereof: Railroad, express, railroad car, water distribution, sewerage collection, light and power, telegraph, gas distribution, urban transportation and common carrier vessels under sixty-five feet in length, motor transportation, tugboat businesses, certain airplane transportation, boom, dock, ferry, pipe line, toll bridge, toll logging road, and wharf businesses. (See WAC 458-20-251 for sewerage collection.) Persons engaged in these business activities are subject to the public utility tax even if they are not publicly recognized as providing that type of service or the amount of income from these activities is not substantial.

(a) "Light and power business" includes charges made for the "wheeling" of electricity for others. "Wheeling" is the activity of delivering or distributing electricity owned by others using power lines and equipment of the person doing the wheeling.

(b) Persons engaged in hauling for hire by motor vehicle should also refer to WAC 458-20-180.

(c) Persons hauling property, other than U.S. mail, by air transportation equipment are taxable under the other public service public utility tax. Income from the hauling of U.S. mail or passengers is not subject to the public utility tax because of specific federal law. (See 49 U.S.C. section 1301 and section 1513(a).)

(d) Persons engaged in hauling persons or property for hire by watercraft between points in Washington are taxable under the public utility tax. Income from operating tugboats of any size and income from the sale of transportation services by vessels over sixty-five feet is taxable under the public service utility tax classification. Income from the sale of transportation services using vessels under sixty-five feet, other than tugboats, is taxable under "vessels under sixty-five feet" public utility tax classification. These classifications include businesses engaged in chartering or transporting persons by water from one location in Washington to another location within this state. This does not include sightseeing tours or activities which are in the nature of guided tours where the tour may include some water transportation. Persons engaged in providing tours should refer to WAC 458-20-258.

(e) Income from activities which are incidental to a public utility activity are generally taxable under the public utility tax when performed for an existing customer. This includes charges for line extensions, connection fees, line drop charges, start-up fees, pole replacements, testing, replacing meters, line repairs, line raisings, pole contact charges, load factor charges, meter reading fees, etc. However, if any of these services are performed for a customer prior to sale of a public utility service to the customer, the income is taxable under the business and occupation tax. (See subsection (4) of this section.)

(4) **Business and occupation tax.** As indicated above, services which are incidental to a public utility activity are generally subject to the public utility tax. However, these types of charges are taxable under the service and other business activities B&O tax classification if performed for a customer prior to receipt of the utility services (gas, water, electricity) by a new customer. A "new customer" is a customer who previously has not received utility services, such as water, gas, or electricity, at the location where the charge for a specific service was provided. For example, a customer of a water supplier who currently receives water at a residence constructs a new residence a short distance from the first location. This customer will be considered a "new customer" with respect to any charges for services performed at the new location until the customer actually receives water at the new location, even though this customer may be receiving services at a different location. The charge for installing a meter or a connection charge for this customer at the new location would be taxable under the service and other activities B&O tax classification.

Amounts charged to customers as interest or penalties are generally taxable under the service and other business activities B&O tax classification. This includes interest charged for failure to timely pay for utility services or for special services which were performed prior to the customer receiving services, such as connection charges. However, any interest and/or penalty charged because of the failure to timely pay a LID or ULID assessment will not be taxable for the public utility tax or the B&O tax.

(5) **Tax rates.** The rates of tax for each business activity are imposed under RCW 82.16.020 and set forth on appropriate lines of the combined excise tax return forms.

(6) **Uniform system of accounts.** In distinguishing gross income taxable under the public utility tax from gross income taxable under the business and occupation tax, the department of revenue will be guided by the uniform system of accounts established for the specific type of utility concerned. However, because of differences in the uniform systems of accounts established for various types of utility businesses, such guides will not be deemed controlling for the purposes of classifying revenue under the Revenue Act.

(7) **Volume exemption.** Persons subject to the public utility tax are exempt from the payment of this tax if the taxable income from utility activities does not meet a minimum threshold. Prior to July 1, 1994, there was a similar exemption for the business and occupation tax with different threshold amounts. Beginning July 1, 1994, the law provides for a B&O tax credit for taxpayers who have a minimal B&O tax liability. (See WAC 458-20-104.) The volume exemption for the public utility tax applies independently of the business and occupation tax credit or exemption. The volume exemption for the public utility tax applies for any reporting period in which taxable income reported under the combined total of all public utility tax classifications does not equal or exceed the minimum taxable amount for the reporting periods assigned to such persons according to the following schedule:

Monthly reporting basis	$500 per month
Quarterly reporting basis	$1500 per quarter
Annual reporting basis	$6000 per annum

(8) **Exemption of amounts or value paid or contributed to any county, city, town, political subdivision, or municipal corporation for capital facilities.** RCW 82.04.417 previously provided an exemption from the public utility tax and the business and occupation tax for amounts received by cities, counties, towns, political subdivisions, or municipal corporations representing contributions for capital facilities. These contributions are often referred to as "contributions in aid of construction." This law was repealed effective July 1, 1993, and this exemption is no longer available after that date. (See chapter 25, Laws of 1993 sp.s.) However, contributions in the form of equipment or facilities will not be considered as taxable income. For example, if an industrial customer purchases and installs transformers which it donates to a public utility district as a condition of receiving future service, the public utility district will not be subject to the public utility tax or B&O tax on the receipt of the donated transformers. For a water or sewerage collection business, the value of pipe, valves, pumps, or similar items donated by a developer to the utility business would not be taxable income to the utility business. Monetary payments are considered to be payments for installation of facilities so that a customer may receive the public utility commodity or service. When the facilities are installed or constructed by the customer and subsequently given to the utility business, there is no payment for installation of the facilities.

(9) **Specific deductions.** Amounts derived from the following sources may be deducted from the gross income under the public utility tax if included in the gross amounts reported:

(a) Amounts derived by municipally owned or operated public services businesses directly from taxes levied for the support thereof, but not including service charges which are spread on the property tax rolls and collected as taxes. LID and ULID assessments, including interest and penalties on such assessments, will not be considered part of the taxable income because they are exercises of the jurisdiction's taxing authority. These assessments may be composed of a share of the costs of capital facilities, installation labor, connection fees, etc. A deduction may be taken for these amounts if they are included in the LID or ULID assessments.

(b) Amounts derived from the sale of commodities to persons in the same public service business as the seller, for resale as such within this state. This deduction is allowed only with respect to water distribution, light and power, gas distribution or other public service businesses which furnish water, electrical energy, gas or any other commodity in the performance of a public service business.

(c) Amounts actually paid by a taxpayer to another person taxable under chapter 82.16 RCW as the latter's portion of the consideration due for services jointly furnished by both. This includes the amount paid to a ferry company for the transportation of a vehicle and its contents (but not amounts paid to state owned or operated ferries) when such vehicle is carrying freight or passengers for hire and is being operated by a person engaged in the business of urban transportation or motor transportation. It does not include amounts paid for the privilege of moving such vehicles over toll bridges. However, this deduction applies only to the purchases of services and does not include the purchase of commodities. The following examples show how this deduction and the deduction for sales of commodities would apply:

(i) CITY Water Department purchases water from Neighboring City Water Department. CITY sells the water to its customers. Neighboring City Water Department may take a deduction for its sales of water to CITY since this is a sale of water (commodities) to a person in the same public service business. CITY may not take a deduction for its payment to Neighboring City Water as "services jointly furnished." The service or sale of water to the end consumers was made solely by CITY and was not a jointly furnished service.

(ii) Customer A hires ABC Transport to haul goods from Tacoma, Washington to a manufacturing facility at Bellingham. ABC Transport subcontracts part of the haul to XYZ Transport and has XYZ haul the goods from Tacoma to Everett where the goods are loaded into ABC's truck. ABC may deduct the payments it makes to XYZ as a "jointly furnished service."

(d) Amounts derived from the distribution of water through an irrigation system, solely for irrigation purposes.

(e) Amounts derived from the transportation of commodities from points of origin in this state to final destination outside this state, or from points of origin outside this state to final destination in this state with respect to which the carrier grants to the shipper the privilege of stopping the shipment in transit at some point in this state for the purpose of storing, manufacturing, milling, or other processing, and thereafter forwards the same commodity, or its equivalent, in the same or converted form, under a through freight rate from point of origin to final destination.

(f) Amounts derived from the transportation of commodities from points of origin in the state to an export elevator, wharf, dock or shipside on tidewater or navigable tributaries thereto from which such commodities are forwarded, without intervening transportation, by vessel, in their original form, to an interstate or foreign destination: *Provided,* That no deduction will be allowed when the point of origin and the point of delivery to such export elevator, wharf, dock, or shipside are located within the corporate limits of the same city or town. The following examples show how this deduction applies:

(i) ABC Trucking delivers logs to a storage area which is adjacent to the dock from where shipments are made by vessel to a foreign country. The logs go through a peeling process at the storage area prior to being placed on the vessel. The peeling process changes the form of the original log. Because the form of the log is changed, ABC Trucking may not take a deduction for the haul to the storage area. It is immaterial that the trucker may be paid based on an "export" rate.

(ii) ABC Trucking hauls logs from the woods to a log storage area which is adjacent to the dock. The logs will be sorted prior to being placed in the hold of the vessel, but no further processing will be performed. The storage area is quite large and the logs will be moved by log stacker and will be placed alongside the ship. The logs are loaded using the ship's tackle and then transported to a foreign country. ABC Trucking may take a deduction for the amounts received for transporting the logs from the woods to the log storage area. The movement of the logs within the log storage area is not considered to be "intervening transportation," but is part of the stevedoring activity.

(iii) ABC Trucking hauls logs from the woods to a "staging area" where the logs are sorted. After sorting, XY Hauling will transport some of the logs from the staging area to local mills for lumber manufacturing and other logs to the dock which is located approximately five miles from the staging area where the logs immediately are loaded on a vessel for shipment to Japan. The dock and staging area are not within the corporate city limits of the same city. ABC Trucking may not take a deduction for amounts received for hauling logs to the staging area. Even though some of these logs ultimately will be exported, ABC Trucking is not delivering the logs directly to the dock where the logs will be loaded on a vessel.

However, XY Hauling may take a deduction for the income from hauls to the dock. Its haul was the final transportation prior to the logs being placed on the vessel for shipment to Japan. The logs remained in their original form with no additional processing. The haul also did not originate or terminate within the corporate city limits of the same city or town. All the conditions were met for XY Hauling to claim the deduction.

(g) Amounts derived from the distribution of water by a nonprofit water association which are used for capital improvements by that association.

(h) Amounts received from sales of power which is delivered by the seller out-of-state. A deduction may also be taken for the sale of power to a person who will resell the power outside Washington where the power is delivered in Washington. These sales of power are also not subject to the manufacturing B&O tax.

(i) Amounts received for providing commuter share riding or ride sharing for the elderly and the handicapped in accordance with RCW 46.74.010.

(j) Amounts expended to improve consumers' efficiency of energy end use or to otherwise reduce the use of electrical energy or gas by the consumer. (For details see WAC 458-20-17901.)

(k) Income from transporting persons or property by air, rail, water, or by motor transportation equipment where either the origin or destination of the haul is outside the state of Washington.

(10) **Other deductions.** In addition to the deductions discussed above there also may be deducted from the reported gross income (if included within the gross), the following:

(a) The amount of cash discount actually taken by the purchaser or customer.

(b) The amount of credit losses actually sustained.

(c) Amounts received from insurance companies in payment of losses.

(d) Amounts received from individuals and others in payment of damages caused by them to the utility's plant or equipment.

(11) **Exchanges by light and power businesses.** There is no specific exemption which applies to an "exchange" of electrical energy or the rights thereto. However, exchanges of electrical energy between light and power businesses do qualify for deduction in computing the public utility tax as being sales of power to another light and power business for resale. An exchange is a transaction which is considered to be a sale and involves a delivery or transfer of energy or the rights thereto by one party to another for which the second party agrees, subject to the terms and conditions of the agreement, to deliver electrical energy at the same or another time. Examples of deductible exchange transactions include, but are not limited to, the following:

(a) The exchange of electric power for electric power between one light and power business and another light and power business;

(b) The transmission or transfer of electric power by one light and power business to another light and power business pursuant to the agreement for coordination of operations among power systems of the pacific northwest executed as of September 15, 1964;

(c) The Bonneville Power Administration's acquisition of electric power for resale to its Washington customers in the light and power business;

(d) The residential exchange of electric power entered into between a light and power business and the administrator of the Bonneville Power Administration (BPA) pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501, Sec. 5(c), 16 U.S.C. 839(c) (Supp. 1982). In some cases, power is not physically transferred, but the purpose of the residential exchange is for BPA to pay a "subsidy" to the exchanging utilities. For public utility tax reporting purposes, these subsidies will be treated as a nontaxable adjustment (rebate or discount) for purchases of power from BPA.

(12) **Customer billing information.** RCW 82.16.090 requires that customer billings issued by light or power businesses or gas distribution businesses serving more than

twenty thousand customers shall include the following information:

(a) The rates and amounts of taxes paid directly by the customer upon products or services rendered by such businesses; and

(b) The rate, origin and approximate amount of each tax levied upon the revenue of such businesses which has been added as a component of the amount charged to the customer. This does not include taxes levied by the federal government or taxes levied under chapter 54.28, 80.24, or 82.04 RCW.

(13) **Motor or urban transportation.** For specific rules pertaining to the classifications of "urban transportation" and "motor transportation," see WAC 458-20-180.

[Statutory Authority: RCW 82.32.300. 94-13-034, § 458-20-179, filed 6/6/94, effective 7/7/94; 86-18-069 (Order 86-16), § 458-20-179, filed 9/3/86; 85-22-041 (Order 85-6), § 458-20-179, filed 11/1/85; 83-01-059 (Order ET 82-13), § 458-20-179, filed 12/15/82; Order ET 71-1, § 458-20-179, filed 7/22/71; Order ET 70-3, § 458-20-179 (Rule 179), filed 5/29/70, effective 7/1/70.]

WAC 458-20-17901 Public utility tax—Energy conservation and cogeneration deductions. (1) Introduction. This section explains certain deductions from the public utility tax which are intended to be an incentive to promote conservation and efficiency of energy. The question of the deductibility of any expenditures not expressly covered in this rule must be submitted to the department in writing for a ruling before the deduction may be taken. The incentive programs for energy efficiency are discussed in RCW 82.16.052 and 82.16.055. Most of the provisions in RCW 82.16.055 expired on December 31, 1989, and were replaced by RCW 82.16.052 which became effective on March 1, 1990. These incentive programs are discussed below.

(2) Deductions under RCW 82.16.055. In chapter 149, Laws of 1980 (RCW 80.28.024, 80.28.025, and 82.16.055), the legislature finds and declares that the potential for meeting future energy needs through conservation measures, including energy conservation loans, energy audits, and the use of renewable resources, such as solar energy, wind energy, wood, wood waste, municipal waste, agricultural products and wastes, hydroelectric energy, geothermal energy, and end-use waste heat, may not be realized without incentives to public and private utilities. The deductions under this law apply only to new facilities for the production or generation of energy from cogeneration or renewable energy resources on which construction was begun after June 12, 1980, and before January 1, 1990, and for measures to improve the efficiency of energy end-use which were begun after June 12, 1980, and before January 1, 1990.

(a) The legislature has implemented its intent by adding a new section to chapter 82.16 RCW, codified as RCW 82.16.055, for deductions relating to energy conservation or production from renewable resources. The law states that in computing tax under this chapter there shall be deducted from the gross income:

(i) An amount equal to the cost of production at the plant for consumption within the state of Washington of electrical energy produced or generated from cogeneration as defined in RCW 82.35.020; and

(ii) An amount equal to the cost of production at the plant for consumption within the state of Washington of electrical energy or gas produced or generated from renewable energy resources such as solar energy, wind energy, hydroelectric energy, geothermal energy, wood, wood wastes, municipal wastes, agricultural products and wastes, and end-use waste heat.

(b) The law also contained a deduction for those amounts expended to improve consumers' efficiency of energy end-use or to otherwise reduce the use of electrical energy or gas by the consumer, provided the installation of the measures to improve the efficiency was begun prior to January 1, 1990.

(c) Deductions under subsection (2)(a) of this section shall be allowed for a period not to exceed thirty years after the project is placed in operation.

(d) Measures or projects encouraged under subsection (2) of this section shall at the time they are placed in service be reasonably expected to save, produce, or generate energy at a total incremental system cost per unit of energy delivered to end-use which is less than or equal to the incremental system cost per unit of energy delivered to end-use from similarly available conventional energy resources which utilize nuclear energy or fossil fuels and which the gas or electric utility could acquire to meet energy demand in the same time period.

(e) The provisions of subsection (2)(a)(i) through (ii) of this section, deal with new facilities designed and intended for the production of energy. The department will rule upon eligibility of such facilities and the attendant cost of energy production for purposes of determining deductibility from the public utility tax upon an individual project basis using the cost figures reported on the appropriate Federal Energy Regulatory Commission (FERC) schedules that are required to be filed by public and private electric utilities and by private gas utilities. The allowable deductions consist of production expenses, eligible fuel costs and book depreciation of capital costs. Eligible fuel costs are all fuels if used for cogeneration or nonfossil fuel costs if not a cogeneration facility. Plans for the construction of such facilities and pertinent details, including energy production and production costs projections relative to the planned facility or construction details and energy production costs for facilities already in service must be submitted to the department for determination of eligibility for tax deductions.

(3) Deductions under RCW 82.16.052. This law provides a deduction from the public utility tax for certain energy efficiency programs. The law took effect on March 1, 1990, and expires on January 1, 1996.

(a) The law provides for a deduction from the gross income in computing tax under the public utility tax for payments made under RCW 19.27A.035. RCW 19.27A.035 requires that electric utilities make payments to owners at the time of construction of residential buildings if certain energy code requirements are met.

(b) Until July 1, 1992, utilities could deduct from the amount of tax paid under the public utility tax fifty percent of the payments made under RCW 19.27A.055, excluding any federal funds that are passed through to a utility for the purpose of retraining local code officials. RCW 19.27A.055 provides a training account for the purpose of providing training for the enforcement by local governments of the Washington state energy code.

(c) RCW 82.16.052 provides a deduction for amounts expended on additional programs that improve the efficiency of energy end-use if priority is given to senior citizens and low-income citizens in the course of carrying out such programs. The department of revenue has determined the eligibility of individual measures to improve consumers' efficiency of energy end-use or otherwise reduce the use of electrical energy or gas by the consumer. Such measures include residential and commercial buildings weatherization programs as well as energy end-user conservation programs, however designated and however funded or financed.

(i) "Senior citizens" means those persons who are sixty-two years of age or older.

(ii) "Low-income citizens" means a single person, family or unrelated persons living together whose adjusted income is less than eighty percent of the median family income of those families within the area served by the utility service provider. (See RCW 43.185A.010.)

(iii) Utility businesses may show that priority is given to senior citizens or low-income citizens by various means. For example, it will be presumed that priority has been given these citizens when the utility business can show that it spends disproportionate larger amounts for energy conservation and efficiency measures for these citizens. Priority is also considered given to senior and low-income citizens when the utility can show that these citizens are given preference for participation in programs that improve the efficiency of energy end-use when program resources are limited and all applicants are not able to receive assistance in a timely manner and the utility communicates to senior and low-income citizens the availability of energy efficiency programs through fliers, brochures, posters, newspaper announcements, and billing inserts.

(d) Under the general rules of statutory construction, tax exemption provisions must be strictly construed against the person claiming the exemption and in favor of imposing tax. Also, under such general rules the words and terms used in statutes must be given their common and ordinary meaning. By the terms of RCW 82.16.052 (1)(b) deductions are restricted to amounts expended for programs and measures which have as their purpose some reduction of energy use by utilities' customers. Some incidental and generally related costs which may be incurred in the development and implementation of energy conservation measures may be too remote from the purpose of improving energy efficiency or reducing consumers' energy consumption. For these reasons and pursuant to RCW 82.16.052(2) the department has consulted with publicly and privately operated utilities to determine the kinds of costs which will satisfy the statutory intent by achieving the purpose of reducing energy consumption.

(e) Accordingly, the term "amounts expended to improve consumers' efficiency of energy end-use" means the costs incurred by public and private utilities which are exclusively attributable to the development and implementation of energy end-use conservation projects and measures. This term does not include the costs attributable to the operation of a public or private utility business which were incurred before, or are incurred separate from the development and implementation of energy conservation programs. A portion of expenditures for personnel and facilities serving both energy conservation purposes and other utility purposes may be deducted if the portion attributable to energy conservation is supported by direct cost accounting records prepared during the tax reporting period for which such energy conservation expenditures are claimed for deduction. However, merely estimating an allocable portion of costs or apportioning some percentage of total overhead expense claimed to be related to energy conservation projects or measures will not support a deduction. The accounting should be based on actual experience. For example, expenditures for personnel or such facilities as computers could be accounted for on a time-use basis. However the expenses are accounted for, the burden rests upon the utility company to clearly show the direct relationship between any costs claimed for deduction and the energy conservation projects or measures claimed to have generated such costs.

(f) **Eligible costs.** Under the remoteness test, the department has determined the following specific costs to be eligible for tax deduction:

(i) **Construction and installation**. All costs actually incurred by a utility representing the value of materials and labor applied or installed in any facility of or for an energy end-user, whether provided by the utility itself or by third party prime or subcontractors. Such eligible costs include, but are not limited to:

(A) Insulation for floors, ceilings, walls, water pipes and the complete installation thereof.

(B) Weatherstripping, caulking, batting, and any similar materials applied for weatherization of facilities and the complete installation thereof.

(C) Storm windows, insulated and other weather resistant glass or similar materials and installation.

(D) Electric or gas thermostatic controls and installation.

(E) Water heater wraps, shower head restrictors, and all similar devices installed to reduce heat loss or reduce the actual units of energy consumed, and the installation thereof.

(F) Energy efficient lighting, lighting controls, and installation.

(G) Energy efficient motors and adjustable speed drives.

(H) Improved energy efficient heating, ventilation, and air conditioning systems.

(ii) **Energy audits and post installation inspection.** All direct costs actually incurred for providing:

(A) Energy audit training.

(B) Auditor payroll.

(C) Auditor uniforms.

(D) Special tools and equipment specifically needed for carrying out audit programs.

(E) Auditor and inspector private vehicle mileage allowance.

(F) Post installation inspection, labor, and materials costs.

(iii) **Administration**. All administrative, clerical, professional, and technical salary and payroll costs actually and directly incurred for:

(A) Conservation program management and supervision including but not limited to audit, BPA buy-back, commercial, solar, and loan programs.

(B) Secretarial and clerical expense.

(C) Data entry and information processing operators.

(D) Engineering.

(E) Outside legal expense and inhouse legal expense which is directly cost accounted.

(F) General energy conservation employee training.

(G) Conservation programs accounting and auditing.

(H) Separate telephone and third party provided services separately billed.

(iv) **Consumable supplies and equipment**. The cost of consumable materials and equipment utilized in energy conservation programs and directly cost accounted or separately billed, including but not limited to:

(A) Equipment rental.

(B) Custom software programs.

(C) Computer lease time.

(D) Computer print-out paper.

(E) Special conservation program stationery, program instruction and installation manuals and office clerical supplies.

(F) Periodic costs of capital equipment and rolling stock if such equipment and rolling stock are attributable to an energy end-user conservation program; and such costs are incurred during the duration of such program.

(G) Direct costs of repair and maintenance of the above items.

(v) **Financing**. Deduction is allowed for all direct financing and loan expenses relative to:

(A) Loan manager, supervisor, inspectors, secretaries, and clerks payroll which is directly cost accounted.

(B) Net interest differential (loans to consumers at lower than the utilities' interest rates on such acquired funds).

(vi) **Advertising and education**.

(A) Information, dissemination, and advertising charges for radio, television, newspaper services, bill stuffers, brochures, handouts, displays, and related costs of producing and presenting such advertising materials, which are exclusively dedicated to promoting energy conservation projects and measures.

(B) Community education and outreach efforts conducted for the exclusive purpose of promoting energy conservation and achieving reduction of end-user energy consumption.

(g) **Ineligible costs**. The department has determined the following specific costs as being ineligible for tax deduction for the reason that they are too remote from the purpose of improving energy efficiency and reducing end-user's consumption:

(i) Legislative services.

(ii) Dues, memberships and subscriptions.

(iii) Information, dissemination, and advertising charges for radio, television, newspaper services, bill stuffers, brochures, handouts, displays, and related costs of producing advertising materials which are not exclusively for the purpose of encouraging or promoting energy conservation.

(iv) Experimental programs. Caveat: If and when experimental programs and the facilities, projects, or measures developed through such experimentation, research, and development are actually placed in service or placed in the rate base, and upon written approval of eligibility by the department, the total of expenditures for such facilities, projects, or measures including experimental stage costs may be allowed for deduction.

(v) Community education and outreach efforts which are not exclusively dedicated to energy conservation projects and measures.

(vi) Allocated facility costs which are not directly cost accounted.

(vii) Allocated vehicle rolling stock costs which are not directly cost accounted.

(viii) Convention, meals, and entertainment expense.

(ix) Out-of-state travel expenses, except that the percentage of such expenses allocable to miles traveled within this state will be allowed for deduction.

(4) Timing of the deduction. Utilities may deduct from the measure of public utility tax deductible expenses as set forth in this rule at the time such costs are actually incurred and may include such deductions on excise tax returns covering the period during which the costs were actually incurred. For purposes of reporting public utility tax liability, utilities must include and report Bonneville Power Administration (BPA) and other providers' cash grants, reimbursements, and buy-back payments attributable to energy conservation programs as gross income of the business when it is received. "Gross income of the business" shall also include the value of electrical energy units from BPA for performing approved energy conservation services. Any recurring costs determined to be eligible for deduction under this rule shall cease to be eligible in whole or in part at time of termination of any energy conservation measure or project which originally authorized the deduction under RCW 82.16.052.

[Statutory Authority: RCW 82.32.300. 93-07-066, § 458-20-17901, filed 3/17/93, effective 4/17/93; 86-01-077 (Order 85-7), § 458-20-17901, filed 12/18/85.]

WAC 458-20-17902 Brokered natural gas—Use tax. (1) **Definitions**.

(a) "Brokered natural gas" as used in this section is natural gas purchased by a consumer from a source out of the state and delivered to the consumer in this state.

(b) "Value of gas consumed or used" as used in this section shall be the purchasing price of the gas to the consumer and generally shall include all or part of the transportation charges as explained later.

(2) **Applicability of use tax**. The distribution and sale of natural gas in this state is generally taxed under the state and city public utility taxes. With changing conditions and federal regulations, it is now possible to have natural gas brokered from out of the state and sold directly to the consumer. If this occurs and the public utility taxes have not been paid, RCW 82.12.022 (state) and RCW 82.14.230 (city) impose a use tax on the brokered natural gas at the same rate as the state and city public utility taxes.

(3) **State tax**. When the use tax applies, the rate of tax imposed is equal to the public utility tax on gas distribution business under RCW 82.16.020 (1)(c). The rate of tax applies to the value of the gas consumed or used and is imposed upon the consumer.

(4) **City tax**. Cities are given the authority to impose a use tax on brokered natural gas. When imposed and applicable, the rate of tax is equal to the tax on natural gas business under RCW 35.21.870 on the value of gas consumed or used and is imposed on the consumer.

(5) **Transportation charges.**

(a) If all or part of the transportation charges for the delivery of the brokered natural gas are separately subject to the state's and cities' public utility taxes (RCW 82.16.020 (1)(c) and RCW 35.21.870), those transportation charges are excluded from measure of the use tax. The transportation charges not subject to the public utility taxes are included in the value of the gas consumed or used.

(b) **Examples.**

(i) Public university purchases natural gas from an out of the state source through a broker. The natural gas is delivered by interstate pipeline to the local gas distribution system who delivers it to the university. The university pays the supplier for the gas, the pipeline for the interstate transportation charge, and the gas distribution system for its local transportation charge. The transportation charge by the pipeline is not subject to public utility tax because it is an interstate transportation charge. The transportation charge paid to the local gas distribution system is subject to the public utility taxes as an intrastate delivery. The value of the gas consumed or used is the purchase price paid to the supplier plus the transportation charge paid to pipeline company.

(ii) The above factual situation applies except that the natural gas is delivered directly by the interstate pipeline to the university. The university pays the supplier for the gas and the pipeline for the transportation charge. As the transportation charge is not subject to the public utility tax, it will be included in the measure of the tax. The value of the gas consumed or used is the purchase price plus the transportation charge paid to the pipeline.

(6) **Credits against the taxes.**

(a) A credit is allowed against the use taxes described in this section for any use tax paid by the consumer to another state which is similar to this use tax and is applicable to the gas subject to this tax. Any other state's use tax allowed as a credit shall be prorated to the state's and cities' portion of the tax based on the relative rates of the two taxes.

(b) A credit is also allowed against the use tax imposed by the state for any gross receipts tax similar that imposed pursuant to RCW 82.16.020 (1)(c) by another state on the seller of the gas with respect to the gas consumed or used.

(c) A credit is allowed against the use tax imposed by the cities for any gross receipts tax similar to that imposed pursuant to RCW 35.21.870 by another state or political subdivision of the state on the seller of the gas with respect to the gas consumed or used.

(7) **Reporting requirements.** The person who delivers the gas to the consumer shall make a report to the miscellaneous tax division of the department by the fifteenth day of the month following a calendar quarter. The report shall contain the following information:

(a) The name and address of the consumer to whom gas was delivered,

(b) The volume of gas delivered to each consumer during the calendar quarter, and,

(c) Service address of consumer if different from mailing address.

(8) **Collection and administration.** A separate quarterly return for use tax on brokered natural gas shall be filed with the department by the consumer on or before the last day of the month following a calendar quarter accompanied by the remittance of the tax. The collection and administration for the cities of the use tax described in this section shall be done by the department under RCW 82.14.050.

[Statutory Authority: RCW 82.32.300. 90-17-068, § 458-20-17902, filed 8/16/90, effective 9/16/90.]

WAC 458-20-180 Motor transportation, urban transportation. The term "motor transportation business" means the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, and includes, but is not limited to the operation of any motor propelled vehicle as an auto transportation company (except urban transportation business), common carrier or contract carrier as defined by RCW 81.68.010 and 81.80.010.

It includes the business of hauling for hire any extracted or manufactured material, over the highways of the state and over private roads but does not include the transportation of logs or other forest products exclusively upon private roads.

It does not include the hauling of any earth or other substance excavated or extracted from or taken to the right of way of a publicly owned street, place, road or highway, by a person taxable under the classification of public road construction of the business and occupation tax. (See WAC 458-20-171.)

The term "urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, insofar as (A) operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof, or (B) operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope thereof, is the business of operating passenger vehicles of every type and also the business of operating cartage, pickup or delivery services, including in such services the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property.

It does not include the business of operating any vehicle for the conveyance of persons or property for hire when such operating extends more than five miles beyond the corporate limits of any city (or contiguous cities) through which it passes. Thus an operation extending from a city to a point which is more than five miles beyond its corporate limits does not constitute urban transportation, even though the route be through intermediate cities which enables the vehicle, at all times to be within five miles of the corporate limits of some city.

The terms "motor transportation" and "urban transportation" include the business of renting or leasing trucks, trailers, busses, automobiles and similar motor vehicles to others for use in the conveyance of persons or property when as an incident of the rental contract such motor vehicles are operated by the lessor or by an employee of the lessor. These terms include the business of operating taxicabs, armored cars, and contract mail delivery vehicles, but do not include the businesses of operating auto wreckers or towing vehicles (taxable as sales at retail or wholesale under RCW 82.04.050), school busses, ambulances, nor the collection and disposal of refuse and garbage (taxable under the business and occupation tax classification, service and other activities). Amounts received for providing commuter share riding or ride sharing for the elderly and the handicapped in accordance with RCW 46.74.010 are not subject to tax.

Retail Sales Tax

Persons engaged in the business of motor transportation or urban transportation are required to collect the retail sales tax upon gross retail sales of tangible personal property sold by them. The retail sales tax must also be collected upon retail sales of services defined as "sales" in RCW 82.04.040 and "sales at retail" in RCW 82.04.050, including charges for the rental of motor vehicles or other equipment without an operator.

Persons engaged in the business of motor transportation or urban transportation must pay the retail sales tax to their vendors when purchasing motor vehicles, trailers, equipment, tools, supplies and other tangible personal property for use in the conduct of such businesses. (See WAC 458-20-174 for limited exemptions allowed in the act for motor carriers operating in interstate or foreign commerce.) Persons buying motor vehicles, trailers and similar equipment solely for the purpose of renting or leasing the same without an operator are making purchases for resale and are not required to pay the retail sales tax to their vendors.

Business and Occupation Tax

Retailing. Persons engaged in either of said businesses are taxable under the retailing classification upon gross retail sales of tangible personal property sold by them and upon retail sales of services defined as "sales" in RCW 82.04.040 or "sales at retail" in RCW 82.04.050.

Service and other business activities. Persons engaged in either of said businesses are taxable under the service and other activities classification upon gross income received from checking service, packing and crating, the mere loading or unloading for others, commissions on sales of tickets for other lines, travelers' checks and insurance, etc. and the transportation of logs and other forest products exclusively over private roads.

Public Utility Tax

Persons engaged in the business of urban transportation are taxable under the urban transportation classification upon the gross income from such business.

Persons engaged in the business of motor transportation are taxable under the motor transportation classification upon the gross income from such business.

Persons engaged in the business of both urban and motor transportation are taxable under the motor transportation classification upon gross income, unless a proper segregation of such revenue is shown by the books of account of such persons. (See WAC 458-20-193 for interstate and foreign commerce.)

[Statutory Authority: RCW 82.32.300. 83-07-033 (Order ET 83-16), § 458-20-180, filed 3/15/83; Order ET 70-3, § 458-20-180 (Rule 180), filed 5/29/70, effective 7/1/70.]

WAC 458-20-181 Vessels, including log patrols, tugs and barges, operating upon waters in the state of Washington.

Business and Occupation Tax

Retailing. Persons engaged in the business of operating such vessels and tugs are taxable under the retailing classification upon the gross sales of meals (including meals to employees) and other tangible personal property taxable under the retail sales tax.

Service and other business activities. The business of operating lighters is a service business taxable under the service and other business activities classification upon the gross income from such service. Also taxable under this classification is gross income from operation of vessels to provide scenic cruises.

Retail Sales Tax

Sales of meals and other tangible personal property by persons operating such vessels and tugs are sales at retail and the retail sales tax must be collected thereon. For applicability of retail sales tax where meals are furnished to members of the crew or to other employees as a part of their compensation for services rendered, see WAC 458-20-119.

Sales of foodstuff and other articles to such operators for resale aboard ship are not subject to retail sales tax.

Sales to all such operators of fuel, lubricants, machinery, equipment and supplies which are not resold are sales at retail and the retail sales tax must be paid thereon, unless exempt by law.

Charges made by others for the repair of any boat or barge are also sales at retail and the retail sales tax must be paid upon the total charge made for both labor and materials.

Charges made for drydocking are not subject to the retail sales tax provided such charges are shown as an item separate from charges made for repairing.

Use Tax

The use tax applies upon the use within this state of all articles of tangible personal property purchased at retail and upon which the retail sales tax has not been paid, unless exempt by law.

Public Utility Tax

The business of operating upon waters wholly within the state of Washington vessels which are common carriers regulated by the utilities and transportation commission is taxable under the public utility tax as follows:

(1) Vessels under sixty-five feet in length, taxable under the classification vessels under sixty-five feet upon gross income.

(2) Vessels sixty-five feet or more in length, taxable under the classification other public service business upon gross income.

The other public service classification of the public utility tax applies to the business of operating tugs, barges, and log patrols.

[Statutory Authority: RCW 82.32.300. 83-07-033 (Order ET 83-16), § 458-20-181, filed 3/15/83; Order ET 70-3, § 458-20-181 (Rule 181), filed 5/29/70, effective 7/1/70.]

WAC 458-20-182 Warehouse businesses. (1) **Definitions**. For purposes of this section the following terms and meanings will apply:

(a) "Warehouse" means every structure wherein facilities are offered for the storage of tangible personal property.

(b) "Storage warehouse" means a building or structure, or any part thereof, in which goods, wares, or merchandise are received for storage for compensation, except field warehouses, fruit warehouses, fruit packing plants, warehouses licensed under chapter 22.09 RCW (which are agricultural commodities warehouses), public garages storing automobiles, railroad freight sheds, docks and wharves, and "self-storage" or "mini-storage" facilities whereby customers have direct access to individual storage areas by separate access.

(c) "Cold storage warehouse" means a storage warehouse used to store fresh and/or frozen perishable fruits or vegetables, meat, seafood, dairy products, or fowl, or any combination thereof, at a desired temperature to maintain the quality of the product for orderly marketing. This term does not include freezer space or frozen food lockers.

(d) "Automobile storage garage" means any off-street building, structure, or area where vehicles are parked or stored, for any period of time, for a charge.

(2) **Business and occupation tax**. Warehouse businesses are taxable according to the nature of their operations and the specific kinds of goods stored, as follows:

(a) Persons engaged in operating any "storage warehouse" or "cold storage warehouse," as defined herein, are subject to tax under the warehousing classification, measured by the gross income of the business. (See RCW 82.04.280.)

(b) Persons engaged in operating any automobile storage garage are subject to tax under the retailing classification, measured by gross proceeds of such operations. (See RCW 82.04.050 (3)(d).)

(c) Persons engaged in operating any warehouse business, other than those of (a) and (b) of this subsection, are subject to tax under the service classification, measured by the gross income of the business. (See RCW 82.04.290.) This includes cold storage and frozen food lockers, field warehouses, fruit warehouses, agricultural commodities warehouses, and freight storage warehouses.

(d) Effective July 1, 1986, no warehouse business or operation of any kind is subject to tax under the public utility tax of chapter 82.16 RCW.

(3) **Tax measure**. The gross income of the business of operating a warehouse includes all income from the storing, handling, sorting, weighing, measuring, and loading or unloading for storage of tangible personal property.

(4) Where a grain warehouseman purchases or owns grain stored in such warehouse, there shall be included in taxable gross income:

(a) An amount equal to the charges at the customary rate for all services rendered in connection with such grains up to the time of purchase by the warehouseman; and

(b) The amount of any charges for services that are rendered during the period of the warehouseman's ownership thereof billed and stated, as such, separately from the price of the grains on the invoice to the purchaser at the time of the sale by the warehouseman.

(5) **Retail sales tax**. Persons operating automobile garage storage businesses must collect and report retail sales tax upon the gross selling price of such parking/storage services.

(6) **Consumables**. Persons engaged in operating any of the business activities covered by this section must pay retail sales tax upon their purchases of consumable supplies, equipment, and materials for their own use as consumers in operating such businesses.

(7) **Use tax**. The use tax is due upon the value of all tangible personal property used as consumers by persons operating warehouse businesses, upon which the retail sales tax has not been paid.

For specific provisions covering temporary holding of goods in foreign or interstate movement by water, see WAC 458-20-193D respecting stevedoring and associated activities.

[Statutory Authority: RCW 82.32.300. 87-05-042 (Order 87-1), § 458-20-182, filed 2/18/87; Order ET 74-1, § 458-20-182, filed 5/7/74; Order ET 70-3, § 458-20-182 (Rule 182), filed 5/29/70, effective 7/1/70.]

WAC 458-20-183 Amusement, recreation, and physical fitness services. (1) **Introduction.** This section provides tax reporting instructions for persons who provide amusement, recreation, and physical fitness services, including persons who receive their income in the form of dues and initiation fees. Section 301, chapter 25, Laws of 1993 sp. sess., amended RCW 82.04.050 to include as a retail sale "physical fitness services." This change became effective July 1, 1993. Physical fitness services were previously taxed under the service and other business activities classification. Amusement and recreation services were retail sales prior to the 1993 law amendment and the tax classification remains unchanged for these activities.

(a) Local governmental agencies that provide amusement, recreation, and physical fitness services should also refer to WAC 458-20-189 (Sales to and by the state of Washington, counties, cities, school districts, and other municipal subdivisions).

(b) Persons engaged in operating coin operated amusement devices should refer to WAC 458-20-187 (Coin operated vending machines, amusement devices and service machines).

(c) Persons engaged in providing camping and outdoor living facilities should refer to WAC 458-20-118 (Sale or rental of real estate, license to use real estate) and WAC 458-20-166 (Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc.).

(2) **Definitions.** The following definitions apply throughout this section:

(a) "Amounts derived" means gross income from whatever source and however designated. It includes "gross proceeds of sales" and "gross income of the business" as those terms are defined by RCW 82.04.070 and 82.04.080, respectively. It shall also include income attributable to bona fide "initiation fees" and bona fide "dues."

(b) "Amusement and recreation services" include, but are not limited to: Golf, pool, billiards, skating, bowling, swimming, bungee jumping, ski lifts and tows, basketball, racquet ball, handball, squash, tennis, and all batting cages. "Amusement and recreation services" also include the provision of related facilities such as basketball courts, tennis courts, handball courts, swimming pools, and charges made for providing the opportunity to dance. The term "amusement and recreation services" does not include instructional lessons to learn a particular activity such as tennis lessons, swimming lessons, or archery lessons.

(c) "Any additional charge" means a price or payment other than bona fide initiation fees or dues, paid by persons for particular goods and services received. The additional charge must be reasonable and any business and/or sales taxes must be paid upon such charges in order to qualify other income denominated as "bona fide dues" or "fees" to be deductible. The reasonableness of any additional charge will be based on one of the following two criteria:

(i) It must cover all costs reasonably related to furnishing the goods or services; or

(ii) It must be comparable with charges made for similar goods or services by other comparable businesses.

(d) "Direct overhead costs" include all items of expense immediately associated with the specific goods or services for which the costs of production method is used. For example, the salary of a swimming pool lifeguard or the salary of a golf club's greenskeeper are both direct overhead costs in providing swimming and golfing respectively.

(e) "Dues" are those amounts periodically paid by members solely for the purpose of entitling those persons to continued membership in the club or similar organization. It shall not include any amounts paid for goods or services rendered to the member by the club or similar organization.

(f) "Entry fees" means those amounts paid solely to allow a person the privilege of entering a tournament or other type of competition. The term does not include any amounts charged for the underlying activity.

(g) "Goods or services rendered" shall include those amusement, recreation, and physical fitness services defined to be retail sales in (m) of this subsection. Also see, WAC 458-20-166 (Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc.) and WAC 458-20-244 (Food products). The term shall include the totality or aggregate of goods or services available to members. It is not determinative that some members actually receive more goods or actually enjoy more services than others so long as the totality of the goods or services offered are made available to members in general.

(h) "Indirect overhead costs" means overhead costs incurred by the service provider that are not immediately associated with the specific goods and services. These costs include a pro rata share of total operating costs, including all executive salaries and employee salaries that are not "direct overhead costs" as that term is defined in (d) of this subsection, as well as a pro rata share of administrative expenses and the cost of depreciable capital assets.

(i) "Initiation fees" means those amounts paid solely to initially admit a person as a member to a club or organization. "Bona fide initiation fees" within the context of this rule shall include only those one-time amounts paid which genuinely represent the value of membership in a club or similar organization. It shall not include any amount paid for or attributable to the privilege of receiving any goods or services other than mere nominal membership.

(j) "League fees" means those amounts paid solely for the privilege of allowing a person or a person's team to join an association of sports teams or clubs that compete chiefly amongst themselves. The term does not include any amounts charged for the underlying activity.

(k) "Nonprofit youth organization" means a nonprofit organization engaged in character building of youth which is exempt from property tax under RCW 84.36.030.

(l) "Physical fitness services" include, but are not limited to: All exercise classes, whether aerobic, dance, water, jazzercise, etc., providing running tracks, weight lifting, weight training, use of exercise equipment, such as treadmills, bicycles, stair-masters and rowing machines, and providing personal trainers (i.e., a person who assesses an individual's workout needs and tailors a physical fitness workout program to meet those individual needs). "Physical fitness services" do not include instructional lessons such as those for self-defense, martial arts, yoga, and stress-management. Nor do these services include instructional lessons for activities such as tennis, golf, swimming, etc. "Instructional lessons" can be distinguished from "exercise classes" in that instruction in the activity is the primary focus in the former and exercise is the primary focus in the latter.

(m) "Sale at retail" or "retail sale" include the sale or charge made by persons engaged in providing "amusement and recreation services" and "physical fitness services" as those terms are defined in (b) and (l) of this subsection. The term "sale at retail" or "retail sale" does not include: The sale of or charge made for providing facilities where a person is merely a spectator, such as movies, concerts, sporting events, and the like; the sale of or charge made for instructional lessons, or league fees and/or entry fees; charges made for carnival rides where the customer purchases tickets at a central ticket distribution point and then the customer is subsequently able to use the purchased tickets to gain admission to an assortment of rides or attractions; or, the charge made for entry to an amusement park or theme park where the predominant activities in the area are similar to those found at carnivals.

(n) "Significant amount" relates to the quantity or degree of goods or services rendered and made available to members by the organization. "Significant" is defined as having great value or the state of being important.

(o) "Value of such goods or services" means the market value of similar goods or services or computed value based on costs of production.

(3) **Business and occupation tax.**

(a) **Retailing classification.** Gross receipts from the kind of amusement, recreation, and physical fitness services defined to be retail sales in subsection (2)(m) of this section are taxable under the retailing classification. Persons engaged in providing these activities are also taxable under the retailing classification upon gross receipts from sales of meals, drinks, articles of clothing, or other property sold by them.

(b) **Service and other activities classification.** Gross receipts from activities not defined to be retail sales, such as tennis lessons, golf lessons, and other types of instructional lessons, are taxable under the service and other activities classification. Persons providing licenses to use real estate, such as separately itemized billings for locker rentals, are also taxable under this classification. See WAC 458-20-118 (Sale or rental of real estate, license to use real estate).

(4) **Receiving income in the form of dues and/or initiation fees.**

(a) **General principles.** For the purposes of the business and occupation tax, all amounts derived from initiation fees and dues must be reported as gross income which then must be apportioned between taxable and deductible income. The following general principles apply to providing amusement, recreation, and physical fitness services when income is received in the form of dues and/or initiation fees:

(i) RCW 82.04.4282 provides for a business and occupation tax deduction for amounts derived from activities and charges of essentially a nonbusiness nature. The scope of this statutory deduction is limited to situations where no business or proprietary activity (including the rendering of goods or services) is engaged in which directly generates the income claimed for deduction. Many for-profit or nonprofit entities may receive "amounts derived," as defined in this section, which consist of a mixture of tax deductible amounts (bona fide initiation fees and dues) and taxable amounts (payment for significant goods and services rendered). To distinguish between these kinds of income, the law requires that tax exemption provisions be strictly construed against the person claiming exemption. Also, RCW 82.32.070 requires the maintenance of suitable records as may be necessary to determine the amount of any tax due. The result of these statutory requirements is that all persons must keep adequate records sufficient to establish their entitlement to any claimed tax exemption or deduction.

(ii) The law does not contemplate that the deduction provided for by RCW 82.04.4282 should be granted merely because the payments required to be made by members or customers are designated as "initiation fees" or "dues." The statutory deduction is not available for outright sales of tangible personal property or for providing facilities or services for a specific charge. Neither is it available if dues are in exchange for any significant amounts of goods or services rendered by the recipient thereof to members without any additional charge to the member, or if the dues are graduated upon the amount of goods or services rendered. Thus, it is only those initiation fees and dues which are paid solely and exclusively for the express privilege of belonging as a member of a club, organization, or society, which are deductible.

(iii) In applying RCW 82.04.4282, no distinction is made between the kinds of clubs, organizations, associations, or other entities which may be eligible for this deduction. They may be operated for profit or nonprofit. They may be owned by the members, incorporated, or operating as a partnership, limited liability company, joint venture, sole proprietorship, or cooperative group. They may be of a charitable, fraternal, social, political, benevolent, commercial, or other nature. The availability of the deduction is determined solely by the nature of the activity or charge which generates the "amounts derived" as that term is defined in subsection (2)(a) of this section.

(iv) Nonprofit youth organizations, as defined in subsection (2)(k) of this section, may deduct fees or dues received from members even though the members are entitled to use the organization's facilities, including camping and recreational facilities, in return for such payments. (See RCW 82.04.4271.)

(b) **Allocation of income.** Persons who derive income from initiation fees and dues may find that they have incurred business and occupation tax liability under both the retailing and service and other activities classifications. For example, an organization may furnish exercise equipment as well as provide lessons in martial arts to its members in return for payment of dues. The former is a retailing taxable activity while the latter is taxable under the service business tax. These taxes are at different rates. Once the income has been allocated between taxable and deductible amounts, the parts of taxable income attributable to either retailing activities or service activities must be reported on the combined excise tax return under the appropriate classification and under the prevailing tax rates. In addition, state and local retail sales taxes measured by the retailing portions must be separately collected from dues paying members, reported, and remitted with the same excise tax return.

(c) **Alternative methods of reporting.** Persons who receive any "amounts derived" from initiations fees and/or dues may report their tax liabilities and determine the amount of tax reportable under different classifications (retailing or service) by use of two alternative allocation methods. The taxpayer may only change its selected allocation method annually and all changes are prospective only. These mutually exclusive methods are:

(i) **Actual records of facilities usage.**

(A) Persons may allocate their income based upon such actual records of facilities usage as are maintained. This method is accomplished by either: The allocation of a reasonable charge for the specific goods or services rendered; or, the average comparable charges for such goods or services made by other comparable businesses. In no case shall any charges under either method be calculated to be less than the actual cost of providing the respective good or service. When using the average comparable charges method the term "comparable businesses" shall not include subsidized public facilities when used by a private facility.

(B) The actual records of facilities usage method must reflect the nature of the goods or services and the frequency of use by the membership, either from an actual tally of times used or a periodic study of the average membership use of facilities. Actual usage reporting may also be based upon a graduated or sliding fees and dues structure. For example, an organization may charge different initiation fees or dues rates for a social membership than for a playing membership. The difference between such rates is attributable to the value of the goods or services rendered. It constitutes the taxable portion of the "amounts derived" allocable to that particular activity. Because of the broad diversification of methods by which "amounts derived" may be assessed or charged to members, the actual records of usage method of reporting may vary from organization to organization.

(C) Organizations which provide more than one kind of "goods or services" as defined in subsection (2)(g) of this section, may provide such actual records for each separate kind of goods or services rendered. Based upon this method, the total of apportioned "taxable" income may be subtracted from total gross income to derive the amount of gross income which is entitled to deduction as "bona fide initiation fees and dues" under RCW 82.04.4282; or

(ii) **Cost of production method.**

(A) The cost of production allocation method is based upon the cost of production of goods or services rendered. Persons using this method are advised to seek the department's review of the cost accounting methods applied, in order to avoid possible tax deficiency assessment if records are audited. In such cases, the cost of production shall include all items of expense attributable to the particular facility (goods or services) made available to members, including direct and indirect overhead costs.

(B) No portion of assets which have been fully depreciated will be included in computing overhead costs, nor will there be included any costs attributable to membership recruitment and advertising, or providing members with the indicia of membership (membership cards, certificates, contracts of rights, etc.).

(C) The cost of production method is performed by multiplying gross income (all "amounts derived") by a fraction, the numerator of which is the direct and indirect costs associated with providing any specific goods or service, and the denominator of which is the organization's total operating costs. The result is the portion of "amounts derived" that is allocable to the taxable facility (goods or services rendered). If more than one kind of facility (goods or services) is made available to members, this formula must be applied for each facility in order to determine the total of taxable and deductible amounts and to determine the amount of taxable income to report as either retailing taxable or service taxable. The balance of gross amounts derived is deductible as bona fide initiation fees or dues.

(D) Under very unique circumstances and only upon advance written request and approval, the department will consider variations of the foregoing accounting methods as well as unique factors.

(E) Unless income accounting and reporting are accomplished by one or a combination of methods outlined in this section, or under a unique reporting method authorized in advance by the department, it will be presumed that all "amounts derived" by any person who provides "goods or services" as defined herein, constitute taxable, nondeductible amounts.

(5) **Retail sales tax.**

(a) The retail sales tax must be collected upon charges for admissions, the use of facilities, equipment, and exercise classes by all persons engaged in the amusement, recreation, and physical fitness services that are defined to be retail sales in subsection (2)(m) of this section. The retail sales tax must also be collected upon sales of food, drinks and other merchandise by persons engaging in such businesses. See WAC 458-20-244 (Food products). In the case of persons who receive their income in the form of dues and/or initiation fees, the amount of gross receipts determined to be taxable under the retailing business and occupation classification shall be used to determine the person's retail sales tax liability under this subsection.

(b) When the charge for merchandise is included within a charge for admission which is not a "sale at retail" as defined herein, the retail sales tax applies to the charge made for both merchandise and admission, unless a proper segregation of such charge is made in the billing to the customer and upon the books of account of the seller.

(c) The retail sales tax applies upon the purchase or rental of all equipment and supplies by persons providing amusement, recreation, and physical fitness services, other than merchandise that is actually resold by them. For example, the retail sales tax applies to purchases of such things as soap or shampoo provided at no additional charge to members of a health club.

(6) **Transitory provisions for nonprofit youth organizations.** The 1993 amendment of RCW 82.04.050 resulted in "physical fitness services" provided by nonprofit youth organizations being classified as retail sales. However, section 1, chapter 85, Laws of 1994, amended RCW 82.08.0291 and thereby exempted from the definition of retail sale, the sale of such services by a nonprofit youth organization to members of the organization. This change became effective July 1, 1994. Therefore, nonprofit youth organizations are only liable for retail sales tax on the sale or charge made for "physical fitness services" from July 1, 1993, to June 30, 1994. Nonprofit youth organizations were previously exempt from the collection of retail sales tax on "amusement and recreation services" (RCW 82.08.0291) and were previously not subject to retailing business and occupation tax on both the provision of "physical fitness services" and "amusement and recreation services" (RCW 82.04.4271). Nonprofit youth organizations, however, may have tax liabilities for other types of activities, such as retail sales of food, retail sales of tangible personal property, or the license to use real estate, as discussed above.

[Statutory Authority: RCW 82.32.300. 95-22-100, § 458-20-183, filed 11/1/95, effective 12/2/95; 84-12-046 (Order ET 84-2), § 458-20-183, filed 6/1/84. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-183, filed 6/27/78; Order ET 70-3, § 458-20-183 (Rule 183), filed 5/29/70, effective 7/1/70.]

WAC 458-20-184 Tax on conveyances repealed. (1) Effective May 18, 1987, the tax on conveyances, (deeds or other written instrument) by which lands, tenements, or other realty sold was conveyed, was repealed. The rate of real estate excise tax upon such transactions was increased proportionately.

(2) See chapter 82.45 RCW and chapter 458-61 WAC for provisions governing real estate excise tax upon sales and transfers of real property.

[Statutory Authority: RCW 82.32.300. 87-19-007 (Order ET 87-5), § 458-20-184, filed 9/8/87; 83-07-033 (Order ET 83-16), § 458-20-184, filed 3/15/83; Order ET 70-3, § 458-20-184 (Rule 184), filed 5/29/70, effective 7/1/70.]

WAC 458-20-185 Tax on tobacco products. (1) **Introduction.** This section explains the tax liabilities of persons engaged in business as a distributor or subjobber of tobacco products. It addresses only those taxes which apply exclusively to tobacco products. See WAC 458-20-186 for tax liabilities associated with taxes which apply exclusively to cigarettes.

(2) **Definitions.**

(a) "Tobacco products" means all tobacco products except cigarettes. The term includes cigars, cheroots, stogies, periques; granulated, plug cut, crimp cut, ready rubbed or other smoking tobacco; snuff, snuff flour, cavendish, plug, twist, fine cut, or other chewing tobacco; shorts, refuse scraps, clippings, cuttings, sweepings, or other kinds or forms of tobacco.

(b) "Distributor" means

(i) Any person engaged in the business of selling tobacco products in this state who brings or causes to be brought into this state from without the state any tobacco products for sale, or

(ii) Any person who makes, manufactures, or fabricates tobacco products in state for sale in this state, or

(iii) Any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state.

(c) "Subjobber" means any person, other than a tobacco manufacturer or distributor, who buys tobacco products from a distributor and sells them to persons other than the ultimate consumers.

(d) "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever by any person for a consideration. It includes all gifts by persons selling tobacco products.

(e) "Wholesale sales price" means the established manufacturer's price to the distributor, exclusive of any discount or other reduction.

(f) "Business" means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state.

(3) **Nature of tax.** The Washington state tobacco products tax is an excise tax levied on the value of the wholesale sales price on all tobacco products sold, used, consumed, handled, or distributed within the state[.] The rate of tax is a combination of statutory percentage rates found in RCW 82.26.020 and 82.26.025. Charts with current rates are available from the special programs division at the department of revenue. The tax is to be paid by the distributor at the time the distributor brings or causes to be brought into this state from without the state tobacco products for sale.

(4) **Books and records**. Since the tobacco products tax is paid on returns as computed by the taxpayer rather than by affixing of stamps or decals, the law contains stringent provisions requiring that accurate and complete records be maintained and preserved for five years for examination by the department of revenue.

(a) The records to be kept by distributors include itemized invoices of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state or shipped or transported to retailers in this state, and of all sales (including customers' names and addresses) of tobacco products except retail sales. All other pertinent papers and documents relating to purchase, sale, or disposition of tobacco products must be retained.

(b) Retailers and subjobbers must secure and retain legible and itemized invoices of all tobacco products purchased, showing name and address of the seller and the date of purchase.

(c) Records of all deliveries or shipments (including ownership, quantities) of tobacco products from any public warehouse of first destination in this state must be kept by the warehouse.

(5) **Reports and returns.** The tax is reported on the combined excise tax return, Form REV 40 2406, to be filed according to the reporting frequency assigned by the department. Detailed instructions for preparation of these returns may be secured from the department.

Out-of-state wholesalers or distributors selling directly to retailers in Washington should apply for a certificate of registration, and the department will furnish returns for reporting the tax.

(6) **Interstate and sales to U.S.** The tax does not apply to tobacco products sold to federal government agencies, nor to deliveries to retailers or wholesalers outside the state for resale by such retailers or wholesalers, and a credit may be taken for the amount of tobacco products tax previously paid on such products.

(7) **Returned or destroyed goods.** A credit may also be taken for tobacco products destroyed or returned to the manufacturer on which tax was previously paid, but returns on which such credits are claimed must be accompanied by appropriate affidavits or certificates conforming to those illustrated below:

(a) **Certificate of taxpayer.**

Claim for Credit on Tobacco Products
Tax Merchandise Destroyed

The undersigned certifies under penalty of perjury under the laws of the state of Washington that the following is true and correct to the best of his/her knowledge:

That he/she is (Title) of the (Business Name), a dealer in tobacco products; that the dealer has destroyed merchandise unfit for sale, said tobacco products having a wholesale sales price of $ . . . . . .; that tobacco tax had been paid on such tobacco products; that the tobacco products were destroyed in the following manner and in the presence of an authorized agent of the department of revenue:

. . . .
(State date and manner of destruction)
. . . .
. . . .

Attested to:
Date . . . . By . . . .
Signature of Taxpayer or
Authorized Representative.
. . . .
Position with Dealer
. . . .
Dealer
. . . .
Address of Dealer

APPROVED:

. . . .
Authorized Agent of
Department of Revenue of the
State of Washington.

(b) **Certificate of manufacturer.**

Claim for Credit on Tobacco Products
Tax Merchandise Returned:

The undersigned certifies under penalty of perjury under the laws of the state of Washington that the following is true and correct to the best of his/her knowledge:

That he/she is (Title) of the (Business Name), a manufacturer of tobacco products; that the manufacturer has received from (Dealer), (Address), a dealer in tobacco products within the State of Washington, certain tobacco products which were unfit for sale, the tobacco products having a wholesale sales price of $ . . . .; that the tobacco products were destroyed in the following manner:

. . . .
(Indicate date and manner of destruction)

Credit issued on Memo No.	. . . .
credit approved by:	Signature of Taxpayer or Authorized Representative
. . . .	. . . .
on behalf of the Department of Revenue - State of Washington	Name of Manufacturer . . . . Address

[Statutory Authority: RCW 82.32.300. 94-10-061, § 458-20-185, filed 5/3/94, effective 6/3/94; 90-04-038, § 458-20-185, filed 1/31/90, effective 3/3/90; 83-07-032 (Order ET 83-15), § 458-20-185, filed 3/15/83; Order ET 71-1, § 458-20-185, filed 7/22/71; Order ET 70-3, § 458-20-185 (Rule 185), filed 5/29/70, effective 7/1/70.]

WAC 458-20-186 Tax on cigarettes. (1) **Introduction.** This section explains the tax liabilities of persons who sell, use, consume, handle, possess or distribute cigarettes in this state. It addresses only those taxes which apply exclusively to cigarettes. See WAC 458-20-185 for tax liabilities associated with tobacco products other than cigarettes.

(2) **In general.** The Washington state cigarette tax is due and payable by the first person who sells, uses, consumes, handles, possesses or distributes the cigarettes in this state.

(a) For purposes of this rule, a possessor is anyone who personally or through an agent, employee, or designee has possession of cigarettes in this state.

(b) Payment is made through the purchase of stamps from banks authorized by the department of revenue to sell the stamps.

(3) **Rates.** The Washington state cigarette tax is imposed on a per cigarette basis. The rate of tax is a combination of statutory rates found in RCW 82.24.020 and 82.24.027. Charts with current rates are available from the special programs division at the department of revenue.

(4) **Exemptions.** To qualify for exemptions from the tax, certain procedures must be followed. Exemptions and their procedures are as follows:

(a) The cigarette tax does not apply to cigarettes sold to persons licensed as cigarette distributors in other states when, as a condition of the sale, the seller either delivers the cigarettes to 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 458-20-193 and 458-20-193C) or in making sales to the federal government must furnish a surety bond in a sum equal to twice the amount of tax which would be affixed to the cigarettes that are set aside for the conduct of such business without affixing cigarette tax stamps. Such unstamped stock must be kept separate and apart from any stamped stock.

(b) The cigarette tax does not apply to cigarettes in the possession of a person authorized to purchase cigarettes at a military facility when purchased for their own consumption.

(c) The cigarette tax does not apply to cigarettes sold at an outlet on an enrolled Native American tribal member's tribal reservation to an enrolled Native American tribal member for personal consumption. Cigarettes sold to an enrolled tribal member must be stamped, but are untaxed due to the exempt nature of the sale. However, sales made by a Native American cigarette outlet to nontribal members are subject to the tax. These cigarettes are both stamped and taxed.

(5) **Liability, collection and stamps.** Every person unlawfully in possession of unstamped cigarettes in this state shall be liable for the cigarette tax provided for herein.

(a) Ordinarily, the tax obligation is imposed and collected on the first possessor of such unstamped cigarettes. However, failure by the first possessor to pay such tax does not excuse any subsequent possessor of unstamped cigarettes.

(b) Stamps indicating the payment of the cigarette tax must be affixed prior to any sale, use, consumption, handling, possession or distribution for all cigarettes other than those mentioned in (4)(a) of this section. The stamp must be applied to the smallest container or package, unless the department determines that it is impractical to do so.

(c) Every licensed stamping wholesaler shall stamp those cigarettes that require stamping within 72 hours after receipt, but in any event, on or before sale or transfer to another party. Stamps shall be of the type authorized by the department which at present is 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.

(d) Persons other than licensed stamping wholesalers must file with the department of revenue, prior to receipt, a notice of intent to possess unstamped cigarettes in the state of Washington. A copy of this notice, validated by an agent of the department of revenue, must be in the possession of any such person who is in possession of unstamped cigarettes in this state.

(e) Persons who have filed the notice must bring the cigarettes to a department office for payment of the tax within 72 hours of receipt, but in any event, on or before sale or transfer to another party. Failure to file this notice will subject the person in possession of such cigarettes to criminal sanctions as set forth in subsections (9) and (10) of this section.

(f) Any unstamped or untaxed cigarettes in the possession of persons (other than licensed stamping wholesalers) who have failed to file a notice of intent to possess unstamped cigarettes in the state of Washington or who have failed to affix stamps and/or who have failed to pay the tax as required herein, will be deemed contraband and subject to seizure and forfeiture under the provisions of RCW 82.24.130.

(g) State approved cigarette stamps are available from authorized banks. Payment for stamps may be made either at the time of purchase of the stamps from the banks, 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 or by an agent authorized by the cigarette seller to do so. This authorization may be in the form of a signature card, filed with the bank, from which stamps are usually obtained, and kept current by the vendor. Payments under a deferred plan are due within 30 days following the purchase, and are to be paid at the outlet from which the stamps were obtained, and may be paid by check payable to the department of revenue. Cigarette wholesalers who purchase stamps under either plan are allowed a discount of $4.00 per thousand stamps affixed, which is offset against the purchase price.

(h) When the rate of tax increases, the first person who sells, uses, consumes, handles, possesses, or distributes previously taxed cigarettes after the rate increase is liable for the additional tax. Failure by the first person to pay the additional tax arising from the first taxable event does not relieve subsequent individuals of tax liability arising from a subsequent taxable event.

(6) **Books and records.** An accurate set of records showing all transactions had with reference to the purchase, sale or distribution of cigarettes must be retained.

(a) These records may be combined with those required in connection with the tobacco products tax, by WAC 458-20-185, provided there is a segregation therein of the amount involved. All such records must be preserved for five years from the date of the transaction.

(b) Persons shipping or delivering any cigarettes to a point outside of this state shall transmit to the special programs division, not later than the 15th of the following calendar month, a true duplicate invoice showing full and complete details of the interstate sale or delivery.

(7) **Reports and returns.** The department of revenue may require any person dealing with cigarettes, in this state, to complete and return forms, as furnished, setting forth sales, inventory and other data required by the department to maintain control over trade in cigarettes.

Manufacturers and wholesalers selling stamped, unstamped or untaxed cigarettes shall, before the 15th day of each month, transmit to the special programs division a complete record of sales of cigarettes in this state during the preceding month.

(8) **Refunds.** Any person may request a refund of the face value of the stamps when the tax is not applicable and the stamps are returned to the department. Documentation supporting the claim must be provided at the time the claim for refund is made.

(a) Refunds for stamped untaxed cigarettes sold to Native American individuals or tribes (see subsection (4)(c) of this section will include the stamping allowance and will be approved by an agent of the department.

(b) Refunds for stamped cigarettes will not include the stamping allowance if the stamps are:

(i) Damaged, or unfit for sale, and as a result are destroyed or returned to the manufacturer or distributor.

(ii) Improperly or partially affixed through burns, jams, double stamps, stamped on carton flaps, or improper removal from the stamp roll.

(c) The claim for refund must be filed on a form which is provided by the department, Form REV 37-2063. An affidavit or a certificate from the manufacturer claiming refund, or by the agent of the department verifying the voiding of stamps and authorizing the refund, shall accompany the form.

(9) **Criminal provisions.** RCW 82.24.110(1) prohibits certain specified criminal activities with respect to cigarettes and makes such activities gross misdemeanors. Also, RCW 82.24.100 and 82.24.110(2) prohibit alteration or fabrication of stamps and transportation and/or possession of 300 or more cartons of unstamped cigarettes and makes those activities felonies. Persons commercially handling cigarettes in this state must refer to these statutes.

(10) **Search, seizure and forfeiture.** The department of revenue may search for, seize and subsequently dispose of unstamped cigarette packages and containers, vehicles of all kinds utilized for the transportation thereof, and vending machines utilized for the sale thereof. Persons handling unstamped cigarettes in this state must refer to RCW 82.24.130 and subsequent sections for provisions relating to search, seizure and forfeiture of such property, for possible redemption thereof, and for treatment of such property in the absence of redemption.

(11) **Penalties.** RCW 82.24.120 provides a penalty for failure to affix the cigarette stamps or to cause such stamps to be affixed as required, or to pay any tax due under chapter 82.24 RCW. In addition to the tax found to be due, a penalty equal to the greater of ten dollars per package of unstamped cigarettes or two hundred fifty dollars shall be assessed. Interest shall also be added at the rate of one percent for each thirty days or portions thereof from the date the tax became due. The department may cancel all or part of the penalty for good reason.

[Statutory Authority: RCW 82.32.300. 94-10-062, § 458-20-186, filed 5/3/94, effective 6/3/94; 90-24-036, § 458-20-186, filed 11/30/90, effective 1/1/91; 90-04-039, § 458-20-186, filed 1/31/90, effective 3/3/90; 87-19-007 (Order ET 87-5), § 458-20-186, filed 9/8/87; 83-07-032 (Order ET 83-15), § 458-20-186, filed 3/15/83; Order ET 75-1, § 458-20-186, filed 5/2/75; Order ET 73-2, § 458-20-186, filed 11/9/73; Order ET 71-1, § 458-20-186, filed 7/22/71; Order ET 70-3, § 458-20-186 (Rule 186), filed 5/29/70, effective 7/1/70.]

WAC 458-20-18601 Wholesale and retail cigarette vendor licenses. (1) Definitions. For purposes of this section, the following terms mean:

(a) "Wholesaler" is any person who purchases, sells, or distributes cigarettes to retailers for the purpose of resale only.

(b) "Retailer" is any person, other than a wholesaler, who purchases, sells, offers for sale or distributes cigarettes at retail and all persons operating under a retailer's registration certificate.

(c) "Place of business" is any location where business is transacted with, or sales are made to, customers. The term also includes any vehicle, truck, vessel, or the like at which sales are made.

(d) "Department" is the department of revenue.

(2) Wholesale license. Prior to the sale or distribution of cigarettes at wholesale, each wholesaler must first be issued a wholesale cigarette license from the department of licensing.

(a) Applications for license or renewal of license shall be made on forms supplied by the department of licensing and shall be accompanied by the annual license fee of $650. A wholesale cigarette license shall be valid for one year from the date of issuance.

(b) If the wholesaler sells, or intends to sell, cigarettes at more than one place of business, whether temporary or established, a separate license with a license fee of $115 shall be required for each additional place of business. Each license shall be exhibited in the place of business for which it is issued.

(c) Each licensed wholesaler shall file a bond with the department in an amount determined by the department, which amount shall not be less than $5,000. The bond shall be executed by the wholesaler as principal, and by a corporation approved by the department of licensing and authorized to engage in business as a surety company in this state, as surety. The bond shall run concurrently with the wholesaler's license.

(3) Retail license. Prior to the retail sale or distribution of cigarettes, each retailer must first be issued a retail cigarette license from the department of licensing.

(a) Applications for license or renewal of license shall be made on forms supplied by the department of licensing and shall be accompanied by the annual license fee of $10. A retail cigarette license shall be valid for one year from the date of issuance.

(b) Retailers operating cigarette vending machines are required to pay an additional fee of $1 for each such vending machine.

(4) Persons acting as wholesalers and retailers. Persons may sell cigarettes both as retailers and wholesalers only if appropriate licenses are first secured for sales in both capacities. The sale of cigarettes by any person who does not possess a valid license authorizing such sale shall be considered a violation of this section.

(5) Revocation or suspension of license. The department shall revoke or suspend the license of any wholesale or retail cigarette dealer found to have violated the provisions of chapter 82.24 RCW, WAC 458-20-186, or this section. Upon a finding by the department of a failure to comply with the provisions of chapter 82.24 RCW, WAC 458-20-186, or this section, it shall:

(a) For the first offense, suspend the license or licenses of the offender for a period of not less than thirty consecutive business days;

(b) In the case of a second or multiple offense, suspend the license or licenses of the offender for not less than ninety consecutive business days nor more than twelve months;

(c) In the case of a finding that the offender is guilty of wilful and persistent violations, revoke the offender's license or licenses.

(6) Revocation or suspension hearing.

(a) If the department determines that a license holder has violated the provisions of chapter 82.24 RCW, WAC 458-20-186, or this section, a hearing will be scheduled to consider the license revocation or suspension of such license holder.

(b) The provisions of WAC 458-20-10001, Adjudicative proceedings—Brief adjudicative proceedings—Wholesale and retail cigarette license revocation or suspension—Certificate of registration (tax registration endorsement) revocation, applies to a revocation or suspension hearing.

(7) Reinstatement of license.

(a) Any person whose license or licenses have been revoked may apply to the department at the expiration of one year for a reinstatement of the license or licenses. The license or licenses may be reinstated by the department if it appears to the satisfaction of the department that the license holder will comply with the provisions of chapter 82.24 RCW, WAC 458-20-186, and this section.

(b) Application for reinstatement is to be made to the special programs division of the department. Upon receipt of an application for reinstatement of license, the department shall schedule a hearing for consideration of the application. Such hearing shall be held pursuant to WAC 458-20-10001.

[Statutory Authority: RCW 82.32.300. 95-07-068, § 458-20-18601, filed 3/14/95, effective 4/14/95; 92-06-081, § 458-20-18601, filed 3/4/92, effective 4/4/92.]

WAC 458-20-187 Coin operated vending machines, amusement devices and service machines. (1) Definitions. As used herein the term "vending machines" means machines which, through the insertion of a coin will return to the patron a predetermined specific article of merchandise or provide facilities for installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers. It includes machines which vend photographs, toilet articles, cigarettes and confections as well as machines which provide laundry and cleaning services.

(2) The term "amusement devices" means those devices and machines which, through the insertion of a coin, will permit the patron to play a game. It includes slot and pinball machines and those machines or devices which permit the patron to see, hear or read something of interest.

(3) The term "service machines" means any coin operated machines other than those defined as "vending machines" or "amusement devices." It includes, for example, scales and luggage lockers, but does not include coin operated machines used in the conduct of a public utility business, such as telephones and gas meters; also excluded are shuffleboards and pool games.

(4) Business and occupation tax. Persons operating vending machines are engaged in a retailing business and must report and pay tax under the retailing classification with respect to the gross proceeds of sales.

(5) Persons operating amusement devices, except shuffleboard, pool, and billiard games, are taxable under the service and other business activities classification on the gross receipts therefrom.

(6) Persons engaged in operating shuffleboards or games of pool or billiards are taxable under the retailing classification on the gross receipts therefrom and are responsible for collecting and reporting to the department the retail sales tax measured by the gross receipts therefrom.

(7) Persons operating service machines are taxable under the service and other business activities classification upon the gross income received from the operation of such machines.

(8) When coin operated machines are placed at a location owned or operated by a person other than the owner of the machines, under any arrangement for compensation to the operator of the location, the person operating the location has granted a license to use real property and will be

responsible for reporting and paying tax upon his gross compensation therefor under the service classification.

(9) Where the owner of amusement devices which are placed at the location of another has failed to pay the gross receipts tax and/or retail sales tax due, the department may proceed directly against the operator of the location for full payment of all tax due.

(10) Retail sales tax. The retail sales tax applies to the sale of merchandise through vending machines and persons owning and operating such machines are liable for the payment of such tax. (However, see WAC 458-20-244 for vending machine sales of food.) For practical purposes such persons are authorized to absorb the amount of the tax on the individual sales and to pay directly to the department the retail sales tax on the total amount received from such machines.

(11) Effective March 11, 1986, on all retail sales through vending machines the tax need not be stated separately from the selling price or collected separately from the buyer. (See RCW 82.08.050.) The seller may deduct the tax from the total amount received in the machines to arrive at the net amount which becomes the measure of the tax.

(12) Where a vending machine is designed or adjusted so that single sales are made exclusively in amounts less than the minimum sale on which a 1¢ tax may be collected from the purchaser, and the kind of merchandise sold through such machines is not sold by the operator over the counter or other than through vending machines at that location, the selling price for purposes of the retail sales tax shall be 60% of the gross receipts of the vending machine through which such sales are made. This 60% basis of reporting is available only to persons selling tangible personal property through vending machines.

(13) In order to qualify for the foregoing reduction in the measure of the retail sales tax, the books and records of the operator must show for each vending machine for which such reduction is claimed: (a) The location of the machine, (b) the selling price of sales made through the machine, (c) the type and brands of merchandise vended through the machine and (d) the gross receipts from that machine. The foregoing records may be maintained for each location, rather than for each machine, in cases where several machines are maintained by the same operator at the same location, provided that all of such machines make sales exclusively in amounts less than the minimum sale on which a 1¢ tax may be collected. The reduction will be disallowed in any instance where sales made through vending machines in such amounts are not clearly and accurately segregated from other sales by the operator and the burden is on the operator to make sales under such conditions and to maintain such records as to demonstrate absolute compliance with this requirement.

(14) Every operator or owner of a vending machine, before taking a deduction from gross sales through certain vending machines, shall file with the department annually an addendum to his application for registration with the department, on a form provided by the department, which form shall contain the following information:

(a) Number of vending machines in his ownership making sales under the above minimum.

(b) Value of such sales in the most recent calendar year.

(c) A statement that no sales are made by the owner or operator at any machine location of articles or products sold through such machines, except by vending machines and no provision is made either through the machine or otherwise, for multiple sales under circumstances where the tax may legally be collected from the buyer.

(15) The department will require a bond sufficient to assure recovery of any disallowed discount of tax due in any instance of registration where the department has reason to feel such recovery could be in jeopardy.

(16) Sales of vending machines, service machines and amusement devices to persons who will operate the same are sales at retail and the retail sales tax is applicable to all such sales.

(17) Use tax. The use tax applies to all tangible personal property used by persons making sales through vending machines, upon which the retail sales tax has not been paid, except inventory items resold through such machines.

Revised April 28, 1978.

Effective July 1, 1978.

[Statutory Authority: RCW 82.32.300. 86-18-022 (Order ET 86-15), § 458-20-187, filed 8/26/86. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-187, filed 6/27/78; Order ET 73-1, § 458-20-187, filed 11/2/73; Order ET 71-1, § 458-20-187, filed 7/22/71; Order ET 70-3, § 458-20-187 (Rule 187), filed 5/29/70, effective 7/1/70.]

WAC 458-20-18801 Prescription drugs, prosthetic and orthotic devices, ostomic items, and medically prescribed oxygen. (1) **Definitions.** As used in this section:

(a) "Prescription drugs" are medicines, drugs, prescription lenses, or other substances, other than food for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or other ailment in humans ordered by (i) the written prescription to a pharmacist by a practitioner authorized by the laws of this state or laws of another jurisdiction to issue prescriptions, or (ii) an oral prescription of such practitioner which is reduced promptly to writing and filled by a duly licensed pharmacist, or (iii) by refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is promptly reduced to writing and filled by the pharmacist, or (iv) physicians or optometrists by way of written directions and specifications for the preparation, grinding, and fabrication of lenses intended to aid or correct visual defects or anomalies of humans.

(b) "Prescription" means a formula or recipe or an order written by a medical practitioner for the composition, preparation and use of a healing, curative or diagnostic substance, and also includes written directions and specifications by physicians or optometrists for the preparation, grinding, and fabrication of lenses intended to aid or correct visual defects or anomalies of humans.

(c) "Other substances" means products such as catalytics, hormones, vitamins, and steroids, but the term generally does not include devices, instruments, equipment, and similar articles. However, "other substances" does include the needles, tubing, and the bag which are part of an intravenous set for delivery of prescription drugs. It also includes infusion pumps and catheters when used to deliver prescription drugs to a specific patient. These items are not conceptually distinct from the prescription drug solution. This same rationale applies to tubing and needles which are used in placing prescribed nutritional products in the patient's system. The stand which holds the intravenous set is not included nor are plain glass slides, plain specimen collection devices, and similar items which are used in the laboratory. This term does include diagnostic substances and reagents, including prepared slides, tubes and collection specimens devices which contain diagnostic substances and reagents at the time of purchase by a laboratory.

(d) "Medical practitioner" means a person within the scope of RCW 18.64.011(9) who is authorized to prescribe drugs, but excluding veterinarians, and for the purposes of this rule includes also persons licensed by chapter 18.53 RCW to issue prescriptions for lenses.

(e) "Licensed dispensary" means a drug store, pharmacy, or dispensary licensed by chapter 18.64 RCW or a dispensing optician licensed by chapter 18.34 RCW.

(f) "Prosthetic devices" are artificial substitutes which generally replace missing parts of the human body, such as a limb, bone, joint, eye, tooth, or other organ or part thereof, and materials which become ingredients or components of prostheses.

(g) "Orthotic devices" are apparatus designed to activate or supplement a weakened or atrophied limb or function. They include braces, collars, casts, splints, and other similar apparatus as well as parts thereof. Orthotic devices do not include durable medical equipment such as wheelchairs, crutches, walkers, and canes nor consumable supplies such as embolism stockings, arch pads, belts, supports, bandages, and the like, whether prescribed or not.

(h) "Ostomic items" are medical supplies used by colostomy, ileostomy, and urostomy patients. These include bags, tapes, tubes, adhesives, deodorants, soaps, jellies, creams, germicides, and sundry related supplies.

(i) "Medically prescribed oxygen" means oxygen prescribed for the use in the treatment of a medical condition. For periods after July 27, 1991, this term shall include, but is not limited to, the sale or rental of oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems for use by an individual under a prescription. (See RCW 82.08.0283.)

(j) "Legend drugs" are those drugs which may not be legally dispensed without a prescription. These drugs are listed in the official United States pharmacopeia or similar source. (See RCW 69.41.010(8).) WAC 246-865-010(5) requires legend drugs to have a label stating that federal law prohibits dispensing without a prescription. Also refer to RCW 69.41.010(9).

(k) "Nutrition products" are prescribed dietary substances formulated to provide balanced nutrition as a sole source of nourishment.

(2) **Business and occupation tax.** The business and occupation tax applies to the gross proceeds from sales of drugs, medicines, prescription lenses, or other substances used for diagnosis, cure, mitigation, treatment, or prevention of disease or other ailments in humans. Sales of these items to persons for resale are taxable under the wholesaling classification. Sales to consumers are taxable under the retailing classification. Persons who provide medical services to patients are taxable under the service and other business activities classification on the gross charge to the patient, notwithstanding that some prescription drugs may be separately charged to the patient. Persons who provide medical services should refer to WAC 458-20-151 and 458-20-168 for additional tax reporting information.

(3) **Deductions.** The following may be deducted from gross proceeds for computing business and occupation tax:

(a) Sales of prescription drugs and other medical and healing supplies furnished as an integral part of services rendered by a publicly operated or nonprofit hospital, nonprofit kidney dialysis facility, nursing home, or home for unwed mothers operated as a religious or charitable organization which meets all the conditions for exemption for services generally under RCW 82.04.4288 or 82.04.4289 (see WAC 458-20-168).

(4) **Retail sales tax.** The retail sales tax applies upon all retail sales of tangible personal property unless expressly exempted by law.

(5) **Exemptions.** The following exemptions apply from the retail sales tax and use tax.

(a) Legend drugs are exempt from retail sales tax or use tax when sold for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or other ailments of humans. This exemption applies to all levels of sales and distribution of legend drugs, including legend drugs given away as samples. Legend drugs are exempt from sales tax when sold to hospitals, doctors, dentists, or any other medical practitioner, as well as to patients. Sellers of legend drugs are not required to retain a resale certificate or other exemption documentation from the legend drug purchaser. The exemption applies at the time of purchase even if the hospital or medical practitioner who makes such purchases will not resell the legend drug as a separate line item charge to its patient.

(b) The retail sales tax does not apply to sales of nonlegend drugs, nutrition products including dietary supplements or dietary adjuncts, medicines, prescription lenses, or other substances, but only when

(i) Dispensed by a licensed dispensary

(ii) Pursuant to a written prescription

(iii) Issued by a medical practitioner

(iv) For diagnosis, cure, mitigation, treatment, or prevention of disease or other ailment in humans. (See RCW 82.08.0281.)

(c) Laboratory reagents and other diagnostic substances are exempt from retail sales tax when used as part of a test prescribed to diagnose disease in humans. These items include, among others, reagents, calibrators, chemicals, gases, vacutainers with heparin or other chemicals or medicines, and prepared media. Control reagents are exempt, but only when the control reagents are used in performing tests prescribed for a patient. Reagents which are used to merely calibrate equipment and are not related to a test prescribed for a specific patient are not exempt.

(d) The retail sales tax exemption applies also to intravenous sets, including the needles and tubing, when used for the administration of drugs prescribed to a patient. This also includes catheters, infusion pumps, syringes, and similar items when used for the delivery of prescription drugs. Medical gas delivery system components, including tubes, nebulizers, ventilators, masks, cannulae and similar items, are not conceptually distinct from the prescribed gases they deliver and are exempt from retail sales or use tax. The medical delivery system includes airway devices (tubes) which are prescribed to keep a patient's airways open and to deliver medical gases.

(e) The retail sales tax does not apply to sales of prosthetic devices, orthotic devices prescribed by physicians, osteopaths, or chiropractors, nor to sales of ostomic items. (See RCW 82.08.0283.) Sutures, pacemakers, hearing aids, and kidney dialysis machines are examples of prosthetic devices. Drainage devices which are particularly prescribed for use on or in a specific patient are exempt from sales or use taxes as prostheses because they either replace missing body parts or assist dysfunctional ones, either on a temporary or permanent basis. A prosthetic device can include a device that is implanted for cosmetic reasons. Hearing aids are also exempt when dispensed or fitted by a person licensed under chapter 18.35 RCW. A heart-lung machine used by a hospital in its surgical department is not an exempt prosthetic device.

(f) The sale of medically prescribed oxygen is not subject to retail sales or use tax when sold to an individual having a prescription issued by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual.

(g) The retail sales tax does not apply to the purchase of anesthesia gases, medical gases, contrast media, or irrigation solutions when these items are used under a physician's order as part of a medical treatment for a specific patient.

(6) **Proof of exemption.** Persons selling legend drugs need only to substantiate that the drugs meet the definition of legend drugs and are for use in the diagnosis, cure, mitigation, treatment, prevention of disease or other ailments in humans. Resale certificates or other exemption certificates are not required for these sales. For sales to consumers of nonlegend drugs, sellers must retain in their files the written prescription bearing the signature of the medical practitioner who issued the prescription and the name of the patient for whom prescribed. See also WAC 458-20-150 Optometrists, ophthalmologists, and oculists; 458-20-151 Dentists, dental laboratories and physicians; and 458-20-168 Hospitals.

(a) Hospitals and physicians who purchase drugs for use in providing medical services to patients may purchase the drugs without payment of retail sales tax if the drugs will only be dispensed under a physician's order. It is not required that the hospital or physician make a specific charge to the patient for drugs dispensed under a physician's order for the drug purchase to be exempt from retail sales or use tax. This also includes the purchases of intravenous sets, catheters, infusion pumps, syringes, and similar items which will be used for delivery of prescription drugs. The hospital or physician may give the nonlegend drug supplier an exemption certificate. The certificate should be retained by the seller for a period of five years after the last sale covered by the certificate. Certificates should not be sent to the department of revenue. The certificate should be in the following form:

Prescription drug exemption certificate

. . . .
(name of purchaser)

. . . .
(address of purchaser)

I hereby certify: That I am a registered Washington taxpayer. I may legally prescribe or dispense drugs or other substances. I further certify that the drugs and other substances listed below purchased from . . . . (name of vendor) will be prescribed and used for the treatment of illness or ailments of human beings. I shall maintain invoices and prescriptions or such other records as are necessary to account for the disposition of the drugs or other substances for which I have not paid retail sales tax. In the event that any such drug or substance is used without a prescription being issued, it is understood that I am required to report and pay use tax measured by its purchase price. If I have indicated that this is a blanket certificate, this certificate shall be considered part of each order which I may hereafter give to you, unless otherwise specified, and shall be valid for a period of four years or until revoked by me in writing. Description of drugs and other substances to be purchased:

. . . .

. . . .

. . . .

Dated: . . . .

Single Purchase . . . . . . Blanket Certificate . . . .

(indicate by check mark if certificate is for a single purchase or continuing purchases)

. . . .
(signature of purchaser or authorized agent)
(title)

. . . .
(Revenue registration number of buyer)

(b) A blanket exemption certificate may be given if there will be continuing purchases from a particular supplier. Blanket exemption certificates should be renewed at intervals not to exceed four years. The purchaser should indicate by an appropriate check mark on the certificate whether the certificate is being used for a single purchase or will be for continuing purchases. It is unnecessary to list each and every drug on the exemption certificate if all drugs purchased from a particular supplier are exempt.

(7) **Use tax.** The use tax does not apply to the use of articles and products which are exempt from sales tax as specified herein. (See RCW 82.12.0277.) This includes legend drugs which are given away as samples.

(8) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(a) ABC Hospital purchases both legend and nonlegend drugs. These drugs are held in inventory and dispensed to patients only under the written order of the patient's physician. These drugs are not billed specifically to the patient, but the cost is recovered through a general floor charge to the patient. ABC Hospital may purchase these drugs without payment of sales or use tax.

(b) ABC Hospital purchases reagents for use in its laboratory which are nonlegend drugs. Laboratory reagents are chemical compounds used to promote reactions in the laboratory to aid in determining disease pathology and are not administered directly to the patient. These reagents are used for three purposes consisting of tests on the tissue from a specific patient, a control reagent which is not applied to the tissue from the patient but is used to measure or control the reaction, and a reagent used to calibrate equipment. The reagents used for the first two purposes may be purchased without payment of sales or use tax. The reagents for the calibration of equipment are also exempt if the equipment is calibrated as part of tests for a specific patient. Reagents used to calibrate equipment that is not part of a prescribed test for a patient are taxable.

(c) XY Blood Bank purchases reagents which are nonlegend drugs. These reagents are used in determining the blood type and presence of disease. The blood is sold to local hospitals. The purchase of these reagents is taxable since they are not used to provide treatment for a specific patient.

[Statutory Authority: RCW 82.32.300. 92-05-065, § 458-20-18801, filed 2/18/92, effective 3/20/92; 87-05-042 (Order 87-1), § 458-20-18801, filed 2/18/87; 83-07-032 (Order ET 83-15), § 458-20-18801, filed 3/15/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-18801 (Rule 188), filed 6/27/78; Order 74-2, § 458-20-188 (codified as WAC 458-20-18801), filed 6/24/74.]

WAC 458-20-189 Sales to and by the state of Washington, counties, cities, towns, school districts, and fire districts. (1) **Introduction.** This section discusses the business and occupation (B&O), retail sales, use, and public utility tax applications to sales made to and by the state of Washington, counties, cities, towns, school districts, and fire districts. Hospitals or similar institutions operated by the state of Washington, or a municipal corporation thereof, should refer to WAC 458-20-168. School districts should also refer to WAC 458-20-167. Persons providing physical fitness activities and amusement and recreation activities should also refer to WAC 458-20-183.

Persons providing public utility services may also want to refer to the following sections of chapter 458-20 WAC:

(a) WAC 458-20-179 (Public utility tax);

(b) WAC 458-20-180 (Motor transportation, urban transportation);

(c) WAC 458-20-250 (Refuse-solid waste collection business—Core deposits and credits, battery core charges, and tires); and

(d) WAC 458-20-251 (Sewerage collection business).

(2) **Definitions.** For the purposes of this section, the following definitions apply:

(a) "Municipal corporations" means counties, cities, towns, school districts, and fire districts of the state of Washington.

(b) "Public service business" means any business subject to control by the state, or having the powers of eminent domain, or any business declared by the legislature to be of a public service nature, irrespective of whether the business has the powers of eminent domain or the state exercises its control over the business. It includes, among others and without limiting the scope hereof, water distribution, light and power, public transportation, and sewer collection.

(c) "Subject to control by the state," as used in (b) of this subsection, means control by the utilities and transportation commission or any other state department required by law to exercise control of a business of a public service nature as to rates charged or services rendered.

(d) "Enterprise activity" means an activity financed and operated in a manner similar to a private business enterprise. The term includes those activities which are generally in competition with private business enterprises and which are over fifty percent funded by user fees. The term does not include activities which are exclusively governmental.

(3) **Persons taxable under the business and occupation tax.**

(a) Sellers are subject to the B&O tax upon sales to the state of Washington, its departments and institutions, or to municipal corporations of the state.

(b) The state of Washington, its departments and institutions, as distinct from its corporate agencies or instrumentalities, are not subject to the provisions of the B&O tax. RCW 82.04.030.

(c) Municipal corporations are not subject to the B&O tax upon amounts derived from activities which are exclusively governmental. RCW 82.04.419. Thus, the B&O tax does not apply to license and permit fees, inspection fees, fees for copies of public records, reports, and studies, pet adoption and license fees, processing fees involving fingerprinting and environmental impact statements, and taxes, fines, or penalties, and interest thereon. Also exempt are fees for on-street metered parking and on-street parking permits.

Municipal corporations are also exempt from the B&O tax on grants received from the state of Washington, or the United States government. RCW 82.04.418.

(d) Municipal corporations deriving income, however designated, from any enterprise or public service business activity for which a specific charge is made are subject to the provisions of the B&O or public utility tax. Charges between departments of a particular municipal corporation are interdepartmental charges and not subject to tax. (See also WAC 458-20-201 on interdepartmental charges.)

(i) When determining whether an activity is an enterprise activity, user fees derived from the activity must be measured against total costs attributable to providing the activity, including direct and indirect overhead. This review should be performed on the fiscal or calendar year basis used by the entity in maintaining its books of account.

For example, a city operating an athletic and recreational facility determines that the facility generated two hundred fifty thousand dollars in user fees for the fiscal year. The total costs for operating the facility were four hundred thousand dollars. This figure includes direct operating costs and direct and indirect overhead, including asset depreciation and interest payments for the retirement of bonds issued to fund the facility's construction. The principal payments for the retirement of the bonds are not included because these costs are a part of the asset depreciation costs. The facility's operation is an enterprise activity because it is more than fifty percent funded by user fees.

(ii) An enterprise activity which is operated as a part of a governmental or nonenterprise activity is subject to the B&O tax. For example, City operates Community Center, a large athletic and recreational facility, and three smaller neighborhood centers. Community Center operates with its own budget, and the three neighborhood centers are lumped together and operated under a single separate budget. Community Center and the neighborhood centers are operated as a part of an overall parks and recreation system, which is not more than fifty percent funded by user fees.

Each budget must be independently reviewed to determine whether these facilities are operated as enterprise activities. The operation of Community Center would be an enterprise activity only if the user fees account for more than fifty percent of Community Center's operating budget. The total user fees generated by the three neighborhood centers would be compared to the total costs of operating the three centers to determine whether they, as a whole, were operated as enterprise activity. Had each neighborhood center operated under an individual budget, the user fees generated by each neighborhood center would have been compared to the costs of operating that center.

(4) **Business and occupation tax.**

(a) Municipal corporations engaging in public service business activities should refer to the sections of chapter 458-20 WAC mentioned in subsection (1)(a) through (d) of this section to determine their B&O tax liability. Municipal corporations engaging in enterprise activities are subject to the B&O tax as follows:

(i) **Service and other business activities tax.** Amounts derived from, but not limited to, special event admission fees for concerts and exhibits, user fees for lockers and checkrooms, charges for moorage (less than thirty days), and the granting of a license to use real property are subject to the service and other business activities tax if these activities are considered enterprise activities. (See also WAC 458-20-118 on the sale or rental of real estate.) The service tax applies to fees charged for instruction in amusement and recreation activities, such as tennis or swimming lessons.

Prior to July 1, 1993, fees charged for physical fitness activities and saunas were subject to the service tax. These activities are a retail sale beginning July 1, 1993. Physical fitness activities include weight lifting, exercise facilities, aerobic classes, etc. (See also WAC 458-20-183 on amusement and recreation activities, etc.)

(ii) **Extracting tax.** The extracting of natural products for sale or for commercial use is subject to the extracting B&O tax. The measure of tax is the value of products. (See WAC 458-20-135 on extracting.) Counties and cities are not, however, subject to the extracting tax upon the cost of labor and services performed in the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, or rock taken from a pit or quarry owned by or leased to the county or city when these products are either stockpiled for placement or are placed on a street, road, place, or highway of the county or city by the county or city itself. Nor does the extracting tax apply to the cost of or charges for such labor and services if the sand, gravel, or rock is sold by the county or city to another county or city at actual cost for placement on a publicly owned street, road, place, or highway. RCW 82.04.415.

(iii) **Manufacturing tax.** The manufacturing of products for sale or for commercial use is subject to the manufacturing B&O tax. The measure of tax is the value of products. (See WAC 458-20-136 on manufacturing.) The manufacturing tax does not apply to the value of materials printed by counties, cities, towns, or school districts solely for their own use. RCW 82.04.397.

(iv) **Wholesaling tax.** The wholesaling tax applies to the gross proceeds derived from sales or rentals of tangible personal property to persons who resell the same without intervening use. The wholesaling tax does not, however, apply to casual sales. (See WAC 458-20-106 on casual sales.) Sellers must obtain resale certificates from their customers to support the wholesale nature of any transaction. (Refer to WAC 458-20-102 on resale certificates.)

(v) **Retailing tax.** User fees for off-street parking and garages, and charges for the sale or rental of tangible personal property to consumers are taxable under the retailing B&O tax. The retailing tax does not, however, apply to casual sales. (See WAC 458-20-106.) Fees for amusement and recreation activities, such as golf, swimming, racquetball, and tennis, are retail sales and subject to the retailing tax if the activities are considered enterprise activities. Charges for instruction in amusement and recreation activities are subject to the service tax. (See also WAC 458-20-183 and (a)(i) of this subsection.)

On and after July 1, 1993, charges for physical fitness and sauna services are classified as retail sales and subject to the retailing tax. (See chapter 25, Laws of 1993 sp. sess.) While a retail sales tax exemption for physical fitness classes provided by local governments is available on and after July 1, 1994, (see subsection (6)(h) of this section), the retailing B&O tax continues to apply.

(b) Persons selling products which they have extracted or manufactured must report, unless exempt by law, under both the "production" (extracting and/or manufacturing) and "selling" (wholesaling or retailing) classifications of the B&O tax, and claim a tax credit under the multiple activities tax credit system. (See WAC 458-20-19301 on multiple activities tax credits.)

(5) **Retail sales tax.**

(a) The retail sales tax generally applies to all retail sales made to the state of Washington, its departments and institutions, and to municipal corporations of the state.

(b) The state of Washington, its departments and institutions, and all municipal corporations are required to collect retail sales tax on all retail sales of tangible personal property or services classified as retail services unless specific exemptions apply. Retail sales tax must be collected and remitted even though the sale may be exempt from the retailing B&O tax. For example, a city police department must collect retail sales tax on casual sales of unclaimed property to consumers, even though this activity is not subject to the B&O tax because these sales are considered casual sales. (See also WAC 458-20-106.)

(c) Sales between a department or institution of the state and a municipal corporation, or between municipal corporations are retail sales. For example, State Agency sells office supplies to County. State Agency is making a retail sale. State Agency must collect and remit retail sales tax upon the amount charged, even though the B&O tax does not apply to this sale. The amount of retail sales tax must be separately itemized on the sales invoice. RCW 82.08.050. State Agency may claim a tax paid at source deduction for any retail sales or use tax previously paid on the acquisition of the office supplies. (See WAC 458-20-102 on purchases for dual purposes.)

(d) Departments or institutions of the state of Washington are not considered sellers when making sales to other departments or institutions of the state because the state is considered to be a single entity. RCW 82.08.010(2). Therefore, the "selling" department or institution is not required by statute to collect the retail sales tax on these sales.

All departments or institutions of the state of Washington are, however, considered "consumers." RCW 82.08.010(3). A department or institution of the state purchasing tangible personal property from another department or institution is required to remit to the department of revenue the retail sales or use tax upon that purchase, unless it can document that the "selling" institution previously paid the appropriate retail sales or use tax on that item.

(6) **Retail sales tax exemptions.** The retail sales tax does not apply to the following:

(a) Sales to city or county housing authorities which were created under the provisions of the Washington housing authorities law, chapter 35.82 RCW. However, prime contractors and subcontractors for city or county housing authorities should refer to WAC 458-20-17001 (Government contracting—Construction, installations, or improvements to government real property) to determine their tax liability.

(b) Charges to municipal corporations and the state of Washington for that portion of the selling price of contracts for watershed protection or flood control which is reimbursed by the United States government according to the provisions of the Watershed Protection and Flood Prevention Act, Public Law 566, as amended. RCW 82.08.0271.

(c) Sales of the entire operating property of a publicly or privately owned public utility, or of a complete operating integral section thereof, to the state or a municipal corporation thereof for use in conducting any public service business except a tugboat business. RCW 82.08.0256.

(d) Sales of or charges made for labor and services in the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, or rock taken from a pit or quarry owned or leased to a county or city, when the materials are either stockpiled in the pit or quarry, placed on the public road by the county or city itself, or sold at cost to another county or city for use on public roads. RCW 82.08.0275.

(e) Sales to one municipal corporation by another municipal corporation directly or indirectly arising out of, or resulting from, the annexation or incorporation of any part of the territory of one municipal corporation by another. RCW 82.08.0278.

(f) Sales to the state of Washington, or a municipal corporation in the state, of ferry vessels and component parts thereof, and charges for labor and services in respect to construction or improvement of such vessels. RCW 82.08.0285.

(g) Sales to the United States. However, sales to federal employees are subject to the retail sales tax, even if the federal employee will be reimbursed for the cost by the federal government. (See WAC 458-20-190 on sales to the United States.)

(h) On and after July 1, 1994, charges for physical fitness classes, such as aerobics classes, provided by local governments. RCW 82.08.0291. (See also chapter 85, Laws of 1994.) Local governments must collect retail sales tax on charges for other physical fitness activities such as weight lifting, exercise equipment, and running tracks.

This exemption does not apply if a person other than a local government provides the physical fitness class, even if the class is conducted at a local government facility.

(7) **Deferred sales or use tax.**

(a) If the seller fails to collect the appropriate retail sales tax, the state of Washington, its departments and institutions, and all municipal corporations are required to pay the deferred sales or use tax directly to the department.

(b) Purchases of cigarette stamps, vehicle license plates, license plate tabs, disability decals, or other items to evidence payment of a license, tax, or fee are purchases for consumption by the state or municipal corporation, and subject to the retail sales or use tax.

(c) Where tangible personal property or taxable services are purchased by the state of Washington, its departments and institutions, for the purpose of resale to any other department or institution of the state of Washington, or for the purpose of consuming the property purchased in manufacturing or producing for use or for resale to any other department or institution of the state of Washington a new article of which such property is an ingredient or component part, the transaction is deemed a purchase at retail and the retail sales tax applies.

(d) Persons producing or manufacturing products for commercial or industrial use are required to remit use tax upon the value of those products, unless a specific use tax exemption applies. RCW 82.12.020. This value must correspond as nearly as possible to the gross proceeds from retail sales of similar products. (See WAC 458-20-112 and 458-20-134 on value of products and commercial or industrial use, respectively.)

For example, a municipal corporation operating a print shop and producing forms or other documents for its own use must remit use tax upon the value of those products, even though a B&O tax exemption is provided by RCW 82.04.397. The municipal corporation may claim a credit for retail sales tax previously paid on materials, such as paper or ink, which are incorporated into the manufactured product. The process of putting an internal communication, such as a memorandum to employees, on a blank form or document is not considered a manufacturing activity, even when multiple copies of the resulting internal communication are reproduced for wide distribution to employees.

(i) Counties and cities are not subject to use tax upon the cost of labor and services in the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, and rock taken from a pit or quarry owned or leased to a county or city when the materials are for use on public roads. RCW 82.12.0269.

(ii) If a department or institution of the state of Washington manufactures or produces tangible personal property for use or resale to any other department or institution of the state, use tax must be remitted upon the value of that article even though the state is not subject to the B&O tax.

For example, State Agency manufactures office furniture for resale to other departments or institutions of the state of Washington. State Agency will also on occasion use office furniture it has manufactured for its own offices. Use tax is due on the office furniture sold to the other departments or institutions of this state, and on the office furniture State Agency puts to its own use. The taxable value of the office furniture sold to the other departments or institutions of this state is the selling price. The taxable value for the office furniture State Agency puts to its own use is the selling price at which State Agency sells comparable furniture to other departments or institutions of the state. When computing and remitting use tax upon the value of manufactured furniture, State Agency may claim a credit for retail sales or use taxes previously remitted on materials incorporated into that furniture. A department or institution of this state purchasing office furniture from State Agency must remit use tax upon the value of that furniture, unless it can document that State Agency paid use tax upon the appropriate value of the furniture. (See also subsection (5)(d) of this section.)

(e) A donee is generally subject to use tax upon the use of any donated item of tangible personal property, if the appropriate retail sales or use tax was not paid by the donor. Effective May 1, 1995, a use tax exemption is available to state or local governmental entities using tangible personal property donated to them. (See chapter 201, Laws of 1995.) The donor, however, remains liable for the retail sales or use tax on the donated property, even though the state or local governmental entity's use of the property is exempt of tax.

(8) **Persons subject to the public utility tax.**

(a) Persons deriving income subject to the provisions of the public utility tax may not claim a deduction for amounts received as compensation for services rendered to the state of Washington, its departments and institutions, or to municipal corporations thereof.

(b) The public utility tax does not apply to income received by the state of Washington, or its departments and institutions from providing public utility services.

(c) Municipal corporations operating public service businesses should refer to WAC 458-20-179 (Public utility tax), WAC 458-20-180 (Motor transportation, urban transportation), WAC 458-20-250 (Refuse-solid waste collection business—Core deposits and credits, battery core charges, and tires) and WAC 458-20-251 (Sewerage collection business) to determine their public utility tax liability.

(9) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should only be used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(a) City operates a community center which provides a number of activities and services. The center charges fees for court activities including tennis and racquetball, general admission to the swimming pool, swimming lessons, aerobics classes, and the use of weight equipment. The community center also provides programs targeted at youth and senior populations. These programs include arts and craft classes, dance instruction classes, and day camps providing a wide variety of activities such as picnics, nature walks, volleyball, and other games. The center provides banquet and meeting rooms to civic groups for a fee, but does not provide a meal service with the banquet facilities. The community center's operation is an enterprise activity, because it is more than fifty percent funded by user fees.

City's tax liability for the fees charged by the community center are as follows:

(i) Retailing B&O and retail sales taxes apply to all charges for the court activities, general admission to the swimming pool, and the use of weight equipment;

(ii) The retailing B&O tax applies to fees charged for aerobics classes. Retail sales tax does not apply because of the sales tax exemption for physical fitness classes provided by local governments;

(iii) Service and other business activities B&O tax applies to all fees for swimming lessons, the arts and crafts classes, dance instruction classes, day camps, and the rental of the banquet and meeting rooms. Retail sales tax does not apply to any part of the charge for the day camp because the portion of the day camp activities considered to be retail is minimal.

(b) City operates a swimming pool located at a high school. This swimming pool is open to the public in the evenings. City charges user fees for swimming lessons, water exercise classes, and general admission to the pool. City will occasionally "rent" the pool to a private organization for the organization's own use. In these cases, the private organization controls the overall operation and admission to the facility. City has no authority to control access and/or use when "renting" the pool to these organizations. City compares the user fees generated by the swimming pool to the total costs associated with the operation of the pool on an annual basis. The user fees never total "more than fifty percent" of the cost of pool operation, therefore the operation of the pool is not an enterprise activity.

City must collect and remit retail sales tax on all retail sales for which a retail sales tax exemption is not available, even though the B&O tax does not apply. Retail sales tax must be charged and collected on all general admission charges. Retail sales tax does not apply to the water exercise classes because of the retail sales tax exemption provided for physical fitness classes provided by local governments. City would not collect retail sales tax on the charges for the swimming lessons or the "rental" of the pool to private businesses (license to use real estate) because these charges are not retail sales.

(c) City sponsors various baseball leagues as a part of City's efforts to provide recreational activities to its citizens. Teams joining a league are charged a "league fee." Individual participants are charged a "participation fee." The league fee entitles a team to join the league, and reserve the use of the ball fields for league games. The participation fee entitles an individual team member to participate in the baseball activity. City does not account for the operation of the ball fields under a single specific budget. The user fees generated from the baseball fields, as well as the costs of operating and maintaining these fields, are accounted for in City's overall parks and recreation system budget, which is not an enterprise activity.

The participation fees are retail sales and subject to the retail sales tax, because the team members pay these fees for the right to actually engage in an amusement and recreation activity. The league fees are not retail sales, because they simply entitle the teams to join an association of baseball teams that compete amongst themselves. (Refer also to WAC 458-20-183 on amusement and recreational activities.) The participation fees and league fees are not subject to the B&O tax, because these baseball fields are not operated as an enterprise activity. Had these fields been operated as an enterprise activity, the participation fees and league fees would also have been subject to the retailing and service and other business activities B&O tax classifications, respectively.

(d) Jane Doe enters into a contract with City to provide an aerobics class at City's community center. Jane is responsible for providing the aerobics class. City merely "rents" a room to Jane under a license to use agreement.

Jane Doe must collect and remit retail sales tax upon the charges for the aerobics classes. The charges for the aerobics classes do not qualify for the retail sales tax exemption provided by RCW 82.08.0291 merely because the classes are held at a local government facility. Jane Doe is not entitled to the retail sales tax exemption available to local governments.

[Statutory Authority: RCW 82.32.300. 95-24-104, § 458-20-189, filed 12/6/95, effective 1/6/96; 86-18-069 (Order 86-16), § 458-20-189, filed 9/3/86; 85-22-041 (Order 85-6), § 458-20-189, filed 11/1/85; 85-04-016 (Order 85-1), § 458-20-189, filed 1/29/85; 83-07-033 (Order ET 83-16), § 458-20-189, filed 3/15/83; Order ET 70-3, § 458-20-189 (Rule 189), filed 5/29/70, effective 7/1/70.]

WAC 458-20-190 Sales to and by the United States, its departments, institutions and instrumentalities—Sales to foreign governments.

Business and Occupation Tax

The United States, its departments, institutions and instrumentalities, including corporate instrumentalities, are not subject to tax under chapter 82.04 RCW.

In computing business tax liability of others, no deduction from value of products, gross sales or gross income is allowed in respect to business transacted with the United States, its departments, institutions or instrumentalities.

Retail Sales Tax

The retail sales tax does not apply to sales to the United States, its departments, institutions and instrumentalities, except sales to such institutions as have been chartered or created under federal authority, but which are not directly operated and controlled by the government for the benefit of the public generally.

Departments, instrumentalities or agencies which are directly operated and controlled by the federal government for the benefit of the public generally include, among others, the departments of Agriculture, Commerce, Interior (including the Bonneville Power Administration and the Tennessee Valley Authority), Justice, Labor, Post Office, State, and Treasury, also the National Military Establishment which includes the departments of the Army, the Navy and the Air Force. Also, the following federal agencies are exempt from payment of sales tax either by reason of congressional exemption in the course of their establishment or by reason of specific federal statutory exemption: The Civil Service Commission, Farm Credit Administration, Federal Housing Administration (including Housing and Urban Development), Federal Land Banks, Federal Reserve Banks, Home Owner's Loan Corporation, Interstate Commerce Commission, Rural Electrification Administration, Social Security Board, United States Maritime Commission, Veterans' Administration, and federally chartered credit unions, federal home loan banks, farm credit banks, export-import bank, Federal Savings and Loan Insurance Corporation, Federal Deposit Insurance Corporation, Federal Home Loan Mortgage Corporation, Government National Mortgage Association, Federal National Mortgage Association, Farm Loan Associations, and Central Banks for Cooperatives, the stock of which is owned by the United States.

The retail sales tax does not apply to sales made by the United States, or any instrumentality thereof, or by voluntary unincorporated organizations of Army or Navy personnel to authorized purchasers within a federal area. The term "authorized purchasers" means civil employees and members of the armed forces of the United States who are permitted to purchase from such organizations under regulation by the secretaries of Navy, Army, Air Force, or Defense.

Sales to persons in the Army or Navy service of the United States, including civilian employees in such service, are not exempt from the retail sales tax, except where such sales are made to them as authorized purchasers by an instrumentality of the United States operating exclusively within a federal area. Furthermore, no exemption is permitted with respect to sales to or by voluntary unincorporated organizations of Army or Navy personnel which are not instrumentalities of the United States, national banking associations, persons licensed to engage in private businesses under federal statutes, or contractors engaged in performing contracts for the United States government. Likewise, the retail sales tax applies upon the sales made to the department of employment security of the state of Washington, irrespective of whether or not such department is reimbursed therefor with federal funds.

Sales to federal employees or representatives of the federal government are subject to sales tax, even though the federal government may reimburse them for all or a part of such expenses. Direct purchases by the federal government are sales tax exempt, but purchases by others whether with federal funds or through a reimbursement arrangement are fully subject to the retail sales tax.

Foreign governments. The retail sales tax does not apply to sales to a foreign government or to any department thereof.

Use Tax

The use tax does not apply upon the use of any article by the United States, its departments, institutions and instrumentalities, except institutions chartered or created under federal authority, but which are not directly operated and controlled by the government for the benefit of the public generally, nor does said tax apply upon the use of any article by a foreign government.

Public Utility Tax

In computing the public utility tax no deduction is allowed with respect to gross operating revenue derived from services supplied or furnished to the United States, its departments, institutions or instrumentalities.

[Statutory Authority: RCW 82.32.300. 83-07-033 (Order ET 83-16), § 458-20-190, filed 3/15/83; Order ET 75-1, § 458-20-190, filed 5/2/75; Order ET 70-3, § 458-20-190 (Rule 190), filed 5/29/70, effective 7/1/70.]

WAC 458-20-191 Federal reservations. The state of Washington has jurisdiction and authority to levy and collect taxes under the provisions of the Revenue Act of 1935, as amended, upon persons residing within, or with respect to business transactions conducted upon federal reservations: *Provided however,* That no tax may be levied upon or collected from the United States, its departments, institutions and instrumentalities or from any authorized purchaser therefrom. (See WAC 458-20-190.)

A concessionaire, operating within a federal area under a grant or permit issued by the United States or by a department or instrumentality thereof, is not exempt from state excise taxes, but is taxable to the same extent as any private operator engaging in a similar business outside a federal area and without specific authority from the United States.

The term "federal reservation," as used herein, means any land or premises within the exterior boundaries of the state of Washington which are held or acquired by and for the use of the United States, its departments, institutions or instrumentalities.

Business and Occupation Tax

Retailing and wholesaling. Persons making retail or wholesale sales to persons residing within or conducting business upon federal reservations are taxable upon gross proceeds of sales under the retailing or wholesaling classification.

With respect to the tax liability of sales to the United States, its departments, institutions or instrumentalities under these classifications, see WAC 458-20-190.

Service and other business activities. Persons performing services within federal reservations are taxable under the service and other business activities classification upon the gross income derived therefrom, irrespective of the fact that such services are rendered for the United States, its departments, institutions or instrumentalities, or for military personnel.

Retail Sales Tax

The retail sales tax applies to all retail sales made to or by persons residing within or conducting business upon federal reservations, excepting sales made to the United States, and also excepting sales made by the United States or an instrumentality thereof to authorized purchasers.

The retail sales tax applies upon retail sales made by concessionaires to military personnel and others.

Use Tax

Persons residing within or conducting business upon federal reservations who produce or manufacture tangible personal property for commercial use or who purchase tangible personal property under conditions wherein the Washington retail sales tax has not been paid are subject to the provisions of the use tax.

The use tax does not apply to the use of property by the United States or any instrumentality thereof nor to the use of property sold by the United States or any instrumentality thereof to any authorized purchaser for use in such reservation. The term "authorized purchaser," as used herein, means and includes those persons who are permitted to purchase from voluntary unincorporated organizations of military personnel operating exclusively within federal reservations and authorized by the Secretary of Defense.

Cigarette Tax

Washington cigarette tax stamps must be affixed to all cigarettes sold to persons residing within or conducting business upon federal reservations: *Provided however,* That such stamps need not be affixed to cigarettes sold to the United States or any instrumentality thereof including voluntary organizations of military personnel authorized by the Secretary of Defense or the Secretary of the Navy or by the United States or any instrumentality thereof to authorized purchasers, for use in such reservation.

[Statutory Authority: RCW 82.32.300. 83-07-033 (Order ET 83-16), § 458-20-191, filed 3/15/83; Order ET 75-1, § 458-20-191, filed 5/2/75; Order ET 70-3, § 458-20-191 (Rule 191), filed 5/29/70, effective 7/1/70.]

WAC 458-20-192 Indians—Indian reservations.

Definitions

The term "Indian reservation," as used herein, means all lands, notwithstanding the issuance of any patent, within the exterior boundaries of areas set aside by the United States for the exclusive use and occupancy of Indian tribes by treaty, law, or executive order and which are areas currently recognized as "Indian reservations" by the United States Department of the Interior.

The following Washington reservations are the only "Indian reservations" currently recognized as such by the United States Department of Interior: Chehalis, Colville, Hoh, Kalispell, Lower Elwha, Lummi, Makah, Muckleshoot, Nisqually, Nooksack, Ozette, Port Gamble, Port Madison, Puyallup, Quileute, Quinault, Shoalwater, Skokomish, Spokane, Squaxin Island, Swinomish, Tulalip, and Yakima.

The term "Indian tribe," as used herein, means any organized Indian nation, tribe, band, or community recognized as an "Indian tribe" by the United States Department of the Interior.

The term "Indian," as used herein, means a person duly registered on the tribal rolls of the Indian tribe occupying an Indian reservation.

Note: For purposes of this rule, with respect to determining tax liability regarding any economic transaction or activity, the term "Indian tribe" includes only an Indian tribe upon and within whose Indian reservation such transaction or activity occurs, and the term "Indian" includes only a person duly registered on the tribal rolls of the Indian tribe upon and within whose Indian reservation such transaction or activity occurs.

Under the revenue laws of the state of Washington, the tax liability of Indians and of persons conducting business with Indians is as follows:

Business and Occupation Tax

Indians and Indian tribes are not taxable with respect to business conducted by them within an Indian reservation.

No deduction is allowed to others by reason of business conducted with Indians or Indian tribes within an Indian reservation.

[Statutory Authority: RCW 82.32.300. 83-07-033 (Order ET 83-16), § 458-20-190, filed 3/15/83; Order ET 75-1, § 458-20-190, filed 5/2/75; Order ET 70-3, § 458-20-190 (Rule 190), filed 5/29/70, effective 7/1/70.]

WAC 458-20-191 Federal reservations. The state of Washington has jurisdiction and authority to levy and collect taxes under the provisions of the Revenue Act of 1935, as amended, upon persons residing within, or with respect to business transactions conducted upon federal reservations: *Provided however,* That no tax may be levied upon or collected from the United States, its departments, institutions and instrumentalities or from any authorized purchaser therefrom. (See WAC 458-20-190.)

A concessionaire, operating within a federal area under a grant or permit issued by the United States or by a department or instrumentality thereof, is not exempt from state excise taxes, but is taxable to the same extent as any private operator engaging in a similar business outside a federal area and without specific authority from the United States.

The term "federal reservation," as used herein, means any land or premises within the exterior boundaries of the state of Washington which are held or acquired by and for the use of the United States, its departments, institutions or instrumentalities.

Business and Occupation Tax

Retailing and wholesaling. Persons making retail or wholesale sales to persons residing within or conducting business upon federal reservations are taxable upon gross proceeds of sales under the retailing or wholesaling classification.

With respect to the tax liability of sales to the United States, its departments, institutions or instrumentalities under these classifications, see WAC 458-20-190.

Service and other business activities. Persons performing services within federal reservations are taxable under the service and other business activities classification upon the gross income derived therefrom, irrespective of the fact that such services are rendered for the United States, its departments, institutions or instrumentalities, or for military personnel.

Retail Sales Tax

The retail sales tax applies to all retail sales made to or by persons residing within or conducting business upon federal reservations, excepting sales made to the United States, and also excepting sales made by the United States or an instrumentality thereof to authorized purchasers.

The retail sales tax applies upon retail sales made by concessionaires to military personnel and others.

Use Tax

Persons residing within or conducting business upon federal reservations who produce or manufacture tangible personal property for commercial use or who purchase tangible personal property under conditions wherein the Washington retail sales tax has not been paid are subject to the provisions of the use tax.

The use tax does not apply to the use of property by the United States or any instrumentality thereof nor to the use of property sold by the United States or any instrumentality thereof to any authorized purchaser for use in such reservation. The term "authorized purchaser," as used herein, means and includes those persons who are permitted to purchase from voluntary unincorporated organizations of military personnel operating exclusively within federal reservations and authorized by the Secretary of Defense.

Cigarette Tax

Washington cigarette tax stamps must be affixed to all cigarettes sold to persons residing within or conducting business upon federal reservations: *Provided however,* That such stamps need not be affixed to cigarettes sold to the United States or any instrumentality thereof including voluntary organizations of military personnel authorized by the Secretary of Defense or the Secretary of the Navy or by the United States or any instrumentality thereof to authorized purchasers, for use in such reservation.

[Statutory Authority: RCW 82.32.300. 83-07-033 (Order ET 83-16), § 458-20-191, filed 3/15/83; Order ET 75-1, § 458-20-191, filed 5/2/75; Order ET 70-3, § 458-20-191 (Rule 191), filed 5/29/70, effective 7/1/70.]

WAC 458-20-192 Indians—Indian reservations.

Definitions

The term "Indian reservation," as used herein, means all lands, notwithstanding the issuance of any patent, within the exterior boundaries of areas set aside by the United States for the exclusive use and occupancy of Indian tribes by treaty, law, or executive order and which are areas currently recognized as "Indian reservations" by the United States Department of the Interior.

The following Washington reservations are the only "Indian reservations" currently recognized as such by the United States Department of Interior: Chehalis, Colville, Hoh, Kalispell, Lower Elwha, Lummi, Makah, Muckleshoot, Nisqually, Nooksack, Ozette, Port Gamble, Port Madison, Puyallup, Quileute, Quinault, Shoalwater, Skokomish, Spokane, Squaxin Island, Swinomish, Tulalip, and Yakima.

The term "Indian tribe," as used herein, means any organized Indian nation, tribe, band, or community recognized as an "Indian tribe" by the United States Department of the Interior.

The term "Indian," as used herein, means a person duly registered on the tribal rolls of the Indian tribe occupying an Indian reservation.

Note: For purposes of this rule, with respect to determining tax liability regarding any economic transaction or activity, the term "Indian tribe" includes only an Indian tribe upon and within whose Indian reservation such transaction or activity occurs, and the term "Indian" includes only a person duly registered on the tribal rolls of the Indian tribe upon and within whose Indian reservation such transaction or activity occurs.

Under the revenue laws of the state of Washington, the tax liability of Indians and of persons conducting business with Indians is as follows:

Business and Occupation Tax

Indians and Indian tribes are not taxable with respect to business conducted by them within an Indian reservation.

No deduction is allowed to others by reason of business conducted with Indians or Indian tribes within an Indian reservation.

Retail Sales Tax

Indians and Indian tribes are not subject to the sales tax upon sales to them of tangible personal property made, or otherwise taxable services rendered, within an Indian reservation.

Sales of tangible personal property to Indians or Indian tribes by off-reservation persons are subject to the retail sales tax except where the seller makes actual delivery of the property sold to a point within an Indian reservation.

Sales of taxable services to Indians or Indian tribes are subject to the retail sales tax except where the services are rendered within an Indian reservation.

Sales to persons other than Indians are subject to the retail sales tax irrespective of where delivery or rendition of services takes place. Thus, Indian and Indian tribal retailers are required to collect and remit to the state the retail sales tax upon each taxable sale made by them within an Indian reservation to persons other than Indians.

In order to substantiate the tax-exempt status of a retail sale made within an Indian reservation to an Indian purchaser, unless the purchaser is personally known to the retailer as an enrolled Indian, the retailer shall require presentation of a tribal membership card identifying the purchaser as duly registered on the tribal rolls of an Indian tribe under such lawful criteria as the tribal organization has established. A record shall be retained by the retailer of all tax-exempt sales to support the sales tax deduction on returns filed with the department, identifying the dollar amount of the sale and indicating the name of the purchaser, tribal affiliation of the purchaser, the Indian reservation to which or within which delivery or rendition of services was made, and the date of sale.

Use Tax

Indians and Indian tribes are not subject to the use tax upon the use of tangible personal property within an Indian reservation. However, Indians and Indian tribes will become liable for the use tax when any such property is placed into actual use outside the Indian reservation, irrespective of the fact that the first use of the property may have been within the reservation.

Special application of retail sales tax and use tax with respect to sales of motor vehicles or trailers to Indians and Indian tribes. When motor vehicles or trailers sold to Indians or Indian tribes are licensed by the state of Washington at the time of sale, or at any time thereafter, a presumption is raised that such motor vehicles or trailers are for use on the highways of the state of Washington outside the reservation. When motor vehicles or trailers are licensed prior to delivery, dealers are required to collect the retail sales tax in every instance when valid plates remain on the vehicle or trailer, regardless of delivery point. County auditors must collect the use tax when Indians or Indian tribes apply for a license or transfer of registration unless the applicant can show that retail sales tax or use tax has previously been paid on the sale or use of the vehicle or trailer by the applicant.

Cigarette Tax

Sales of cigarettes to non-Indians by Indians or Indian tribes are subject to the cigarette tax, since the tax is levied upon the non-Indian purchaser and the vendor is obligated to make precollection of the tax. Therefore, Indian or tribal vendors making, or intending to make, sales to non-Indian customers must purchase a stock of cigarettes with Washington state cigarette tax stamps affixed for the purpose of making such sales. However, Indians and Indian tribes may make purchases of unstamped cigarettes from licensed cigarette distributors for resale to qualified purchasers. For purposes of this rule, "qualified purchaser" means (1) an Indian purchasing for resale within the reservation to other Indians, and (2) an Indian purchasing solely for his or her use other than for resale.

Delivery or sale and delivery by any person of unstamped cigarettes to Indians or tribal vendors for sale to qualified purchasers may be made only in such quantity as is approved in advance by the department of revenue. Approval for delivery will be based upon evidence of a valid purchase order of a quantity reasonably related to the probable demand of qualified purchasers in the trade territory of the vendor. Evidence submitted may also consist of verified record of previous sales to qualified purchasers, the probable demand as indicated by average cigarette consumption for the number of qualified purchasers within a reasonable distance of the vendor's place of business, records indicating the percentage of such trade that has historically been realized by the vendor, or such other statistical evidence submitted in support of the proposed transaction. In the absence of such evidence the department may restrict total deliveries of unstamped cigarettes to any reservation or to any Indian or tribal vendor thereon to a quantity reasonably equal to the national average cigarette consumption per capita, as compiled for the most recently completed calendar or fiscal year by the Tobacco Tax Institute, multiplied by the resident enrolled membership of the affected tribe. Any delivery, or attempted delivery, of unstamped cigarettes to an Indian or tribal vendor without advance approval by the department will result in the treatment of those cigarettes as contraband and subject to seizure and in addition the person making or attempting such delivery will be held liable for payment of the cigarette tax and penalties. Approval for sale or delivery to Indian or tribal vendors of unstamped cigarettes will be denied where the department finds that such Indian or tribal vendors are or have been making sales in violation of this rule.

Delivery of unstamped cigarettes by a licensed distributor to Indians or Indian tribes must be by bonded carrier or the distributor's own vehicle to the Indian reservation. Delivery of unstamped cigarettes at the distributor's dock or place of business or any other off-reservation location is prohibited.

Revised November 14, 1980.

[Statutory Authority: RCW 82.32.300. 80-17-026 (Order ET 80-3), § 458-20-192, filed 11/14/80; Order ET 76-4, § 458-20-192, filed 11/12/76; Order ET 74-5, § 458-20-192, filed 12/16/74; Order ET 70-3, § 458-20-192 (Rule 192), filed 5/29/70, effective 7/1/70.]

WAC 458-20-193 Inbound and outbound interstate sales of tangible personal property. (1) Introduction.

This section explains Washington's B&O tax and retail sales tax applications to interstate sales of tangible personal property. It covers the outbound sales of goods originating in this state to persons outside this state and of inbound sales of goods originating outside this state to persons in this state. This section does not include import and export transactions.

(2) **Definitions:** For purposes of this section the following terms mean:

(a) "State of origin" means the state or place where a shipment of tangible personal property (goods) originates.

(b) "State of destination" means the state or place where the purchaser/consignee or its agent receives a shipment of goods.

(c) "Delivery" means the act of transferring possession of tangible personal property. It includes among others the transfer of goods from consignor to freight forwarder or for-hire carrier, from freight forwarder to for-hire carrier, one for-hire carrier to another, or for-hire carrier to consignee.

(d) "Receipt" or "received" means the purchaser or its agent first either taking physical possession of the goods or having dominion and control over them.

(e) "Agent" means a person authorized to receive goods with the power to inspect and accept or reject them.

(f) "Nexus" means the activity carried on by the seller in Washington which is significantly associated with the seller's ability to establish or maintain a market for its products in Washington.

(3) **Outbound sales.** Washington state does not assess its taxes on sales of goods which originate in Washington if receipt of the goods occurs outside Washington.

(a) Where tangible personal property is located in Washington at the time of sale and is received by the purchaser or its agent in this state, or the purchaser or its agent exercises ownership over the goods inconsistent with the seller's continued dominion over the goods, the sale is subject to tax under the retailing or wholesaling classification. The tax applies even though the purchaser or its agent intends to and thereafter does transport or send the property out-of-state for use or resale there, or for use in conducting interstate or foreign commerce. It is immaterial that the contract of sale or contract to sell is negotiated and executed outside the state or that the purchaser resides outside the state.

(b) Where the seller delivers the goods to the purchaser who receives them at a point outside Washington neither retailing nor wholesaling business tax is applicable. This exemption applies even in cases where the shipment is arranged through a for-hire carrier or freight consolidator or freight forwarder acting on behalf of either the seller or purchaser. It also applies whether the shipment is arranged on a "freight prepaid" or a "freight collect" basis. The shipment may be made by the seller's own transportation equipment or by a carrier for-hire. For purposes of this section, a for-hire carrier's signature does not constitute receipt upon obtaining the goods for shipment unless the carrier is acting as the purchaser's agent and has express written authority from the purchaser to accept or reject the goods with the right of inspection.

(4) **Proof of exempt outbound sales.**

(a) If either a for-hire carrier or the seller itself carries the goods for receipt at a point outside Washington, the seller is required to retain in its records documentary proof of the sales and delivery transaction and that the purchaser in fact received the goods outside the state in order to prove the sale is tax exempt. Acceptable proofs, among others, will be:

(i) The contract or agreement of sale, if any, **And**

(ii) If shipped by a for-hire carrier, a waybill, bill of lading or other contract of carriage indicating the seller has delivered the goods to the for-hire carrier for transport to the purchaser or the purchaser's agent at a point outside the state with the seller shown on the contract of carriage as the consignor (or other designation of the person sending the goods) and the purchaser or its agent as consignee (or other designation of the person to whom the goods are being sent); or

(iii) If sent by the seller's own transportation equipment, a trip-sheet signed by the person making delivery for the seller and showing:

The seller's name and address,

The purchaser's name and address,

The place of delivery, if different from purchaser's address,

The time of delivery to the purchaser together with the signature of the purchaser or its agent acknowledging receipt of the goods at the place designated outside the state of Washington.

(b) Delivery of the goods to a freight consolidator, freight forwarder or for-hire carrier merely utilized to arrange for and/or transport the goods is not receipt of the goods by the purchaser or its agent unless the consolidator, forwarder or for-hire carrier has express written authority to accept or reject the goods for the purchaser with the right of inspection. See also WAC 458-20-174, 458-20-175, 458-20-176, 458-20-177, 458-20-238 and 458-20-239 for certain statutory exemptions.

(5) **Other B&O taxes - outbound and inbound sales.**

(a) **Extracting, manufacturing.** Persons engaged in these activities in Washington and who transfer or make delivery of such produced articles for receipt at points outside the state are subject to business tax under the extracting or manufacturing classification and are not subject to tax under the retailing or wholesaling classification. See also WAC 458-20-135 and 458-20-136. The activities taxed occur entirely within the state, are inherently local, and are conducted prior to the commercial journey. The tax is measured by the value of products as determined by the selling price in the case of articles on which the seller performs no further manufacturing after transfer out of Washington. It is immaterial that the value so determined includes an additional increment of value because the sale occurs outside the state. If the seller performs additional manufacturing on the article after transferring the article out of state, the value should be measured under the principles contained in WAC 458-20-112.

(b) **Extracting or processing for hire, printing and publishing, repair or alteration of property for others.** These activities when performed in Washington are also inherently local and the gross income or total charge for work performed is subject to business tax, since the operating incidence of the tax is upon the business activity performed in this state. No deduction is permitted even though the articles produced, imprinted, repaired or altered are delivered to persons outside the state. It is immaterial that the customers are located outside the state, that the work was negotiated or contracted for outside the state, or that the property was shipped in from outside the state for such work.

(c) **Construction, repair.** Construction or repair of buildings or other structures, public road construction and similar contracts performed in this state are inherently local business activities subject to B&O tax in this state. This is so even though materials involved may have been delivered from outside this state or the contracts may have been negotiated outside this state. It is immaterial that the work may be performed in this state by foreign sellers who performed preliminary services outside this state.

(d) **Renting or leasing of tangible personal property.** Lessors who rent or lease tangible personal property for use in this state are subject to B&O tax upon their gross proceeds from such rentals for periods of use in this state. Proration of tax liability based on the degree of use in Washington of leased property is required.

It is immaterial that possession of the property leased may have passed to the lessee outside the state or that the lease agreement may have been consummated outside the state. Lessors will not be subject to B&O tax if all of the following conditions are present:

(i) The equipment is not located in Washington at the time the lessee first takes possession of the leased property; and

(ii) The lessor has no reason to know that the equipment will be used by the lessee in Washington; and

(iii) The lease agreement does not require the lessee to notify the lessor of subsequent movement of the property into Washington and the lessor has no reason to know that the equipment may have been moved to Washington.

(6) **Retail sales tax - outbound sales.** The retail sales tax generally applies to all retail sales made within this state. The legal incidence of the tax is upon the purchaser, but the seller is obligated to collect and remit the tax to the state. The retail sales tax applies to all sales to consumers of goods located in the state when goods are received in Washington by the purchaser or its agent, irrespective of the fact that the purchaser may use the property elsewhere. However, as indicated in subsection (4)(b), delivery of the goods to a freight consolidator, freight forwarder or for-hire carrier arranged either by the seller or the purchaser, merely utilized to arrange for and/or transport the goods out-of-state is not receipt of the goods by the purchaser or its agent in this state, unless the consolidator, forwarder or for-hire carrier has express written authority to accept or reject the goods for the purchaser with the right of inspection.

(a) The retail sales tax does not apply when the seller delivers the goods to the purchaser who receives them at a point outside the state, or delivers the same to a for-hire carrier consigned to the purchaser outside the state. This exemption applies even in cases where the shipment is arranged through a for-hire carrier or freight consolidator or freight forwarder acting on behalf of either the seller or the purchaser. It also applies regardless of whether the shipment is arranged on a "freight prepaid" or a "freight collect" basis and regardless of who bears the risk of loss. The seller must retain proof of exemption as outlined in subsection (4), above.

(b) RCW 82.08.0273 provides an exemption from the retail sales tax to certain nonresidents of Washington for purchases of tangible personal property for use outside this state when the nonresident purchaser provides proper documentation to the seller. This statutory exemption is available only to residents of states and possessions or Province of Canada other than Washington when the jurisdiction does not impose a retail sales tax of three percent or more. These sales are subject to B&O tax.

(c) A statutory exemption (RCW 82.08.0269) is allowed for sales of goods for use in states, territories and possessions of the United States which are not contiguous to any other state (Alaska, Hawaii, etc.), but only when, as a necessary incident to the contract of sale, the seller delivers the property to the purchaser or its designated agent at the usual receiving terminal of the for-hire carrier selected to transport the goods, under such circumstance that it is reasonably certain that the goods will be transported directly to a destination in such noncontiguous states, territories and possessions. As proof of exemption, the seller must retain the following as part of its sales records:

(i) A certification of the purchaser that the goods will not be used in the state of Washington and are intended for use in the specified noncontiguous state, territory or possession.

(ii) Written instructions signed by the purchaser directing delivery of the goods to a dock, depot, warehouse, airport or other receiving terminal for transportation of the goods to their place of ultimate use. Where the purchaser is also the carrier, delivery may be to a warehouse receiving terminal or other facility maintained by the purchaser when the circumstances are such that it is reasonably certain that the goods will be transported directly to their place of ultimate use.

(iii) A dock receipt, memorandum bill of lading, trip sheet, cargo manifest or other document evidencing actual delivery to such dock, depot, warehouse, freight consolidator or forwarder, or receiving terminal.

(iv) The requirements of (i) and (ii) above may be complied with through the use of a blanket exemption certificate as follows:

Exemption Certificate

We hereby certify that all of the goods which we have purchased and which we will purchase from you will not be used in the State of Washington but are for use in the state, territory or possession of . . . .

You are hereby directed to deliver all such goods to the following dock, depot, warehouse, freight consolidator, freight forwarder, transportation agency or other receiving terminal:

. . . .

. . . .

for the transportation of those goods to their place of ultimate use.

This certificate shall be considered a part of each order that we have given you and which we may hereafter give to you, unless otherwise specified, and shall be valid until revoked by us in writing.

DATED . . . .

. . . .
(Purchaser)

By . . . .
(Officer or Purchaser's Representative)

Address . . . .

(v) There is no business and occupation tax deduction of the gross proceeds of sales of goods for use in noncontiguous states unless the goods are received outside Washington.

(d) See WAC 458-20-173 for explanation of sales tax exemption in respect to charges for labor and materials in the repair, cleaning or altering of tangible personal property for nonresidents when the repaired property is delivered to the purchaser at an out-of-state point.

(7) **Inbound sales.** Washington does not assert B&O tax on sales of goods which originate outside this state unless the goods are received by the purchaser in this state and the seller has nexus. There must be both the receipt of the goods in Washington by the purchaser and the seller must have nexus for the B&O tax to apply to a particular sale. The B&O tax will not apply if one of these elements is missing.

(a) Delivery of the goods to a freight consolidator, freight forwarder or for-hire carrier located outside this state merely utilized to arrange for and/or transport the goods into this state is not receipt of the goods by the purchaser or its agent unless the consolidator, forwarder or for-hire carrier has express written authority to accept or reject the goods for the purchaser with the right of inspection.

(b) When the sales documents indicate the goods are to be shipped to a buyer in Washington, but the seller delivers the goods to the buyer at a location outside this state, the seller may use the proofs of exempt sales contained in subsection 4 to establish the fact of delivery outside Washington.

(c) If a seller carries on significant activity in this state and conducts no other business in the state except the business of making sales, this person has the distinct burden of establishing that the instate activities are not significantly associated in any way with the sales into this state. Once nexus has been established, it will continue throughout the statutory period of RCW 82.32.050 (up to five years), notwithstanding that the instate activity which created the nexus ceased. Persons taxable under the service B&O tax classification should refer to WAC 458-20-194. The following activities are examples of sufficient nexus in Washington for the B&O tax to apply:

(i) The goods are located in Washington at the time of sale and the goods are received by the customer or its agent in this state.

(ii) The seller has a branch office, local outlet or other place of business in this state which is utilized in any way, such as in receiving the order, franchise or credit investigation, or distribution of the goods.

(iii) The order for the goods is solicited in this state by an agent or other representative of the seller.

(iv) The delivery of the goods is made by a local outlet or from a local stock of goods of the seller in this state.

(v) The out-of-state seller, either directly or by an agent or other representative, performs significant services in relation to establishment or maintenance of sales into the state, even though the seller may not have formal sales offices in Washington or the agent or representative may not be formally characterized as a "salesperson".

(vi) The out-of-state seller, either directly or by an agent or other representative in this state, installs its products in this state as a condition of the sale.

(8) **Retail sales tax - inbound sales.** Persons engaged in selling activities in this state are required to be registered with the department of revenue. Sellers who are not required to be registered may voluntarily register for the collection and reporting of the use tax. The retail sales tax must be collected and reported in every case where the retailing B&O tax is due as outlined in subsection 7. If the seller is not required to collect retail sales tax on a particular sale because the transaction is disassociated from the instate activity, it must collect the use tax from the buyer.

(9) **Use tax - inbound sales.** The following sets forth the conditions under which out-of-state sellers are required to collect and remit the use tax on goods received by customers in this state. A seller is required to pay or collect and remit the tax imposed by chapter 82.12 RCW if within this state it directly or by any agent or other representative:

(i) Has or utilizes any office, distribution house, sales house, warehouse, service enterprise or other place of business; or

(ii) Maintains any inventory or stock of goods for sale; or

(iii) Regularly solicits orders whether or not such orders are accepted in this state; or

(iv) Regularly engages in the delivery of property in this state other than by for-hire carrier or U.S. mail; or

(v) Regularly engages in any activity in connection with the leasing or servicing of property located within this state.

(a) The use tax is imposed upon the use, including storage preparatory to use in this state, of all tangible personal property acquired for any use or consumption in this state unless specifically exempt by statute. The out-of-state seller may have nexus to require the collection of use tax without personal contact with the customer if the seller has an extensive, continuous, and intentional solicitation and exploitation of Washington's consumer market. (See WAC 458-20-221).

(b) Every person who engages in this state in the business of acting as an independent selling agent for unregistered principals, and who receives compensation by reason of sales of tangible personal property of such principals for use in this state, is required to collect the use tax from purchasers, and remit the same to the department of revenue, in the manner and to the extent set forth in WAC 458-20-221.

(10) **Examples - outbound sales.** The following examples show how the provisions of this section relating to interstate sales of tangible personal property will apply when the goods originate in Washington (outbound sales). The examples presume the seller has retained the proper proof documents and that the seller did not manufacture the items being sold.

(a) Company A is located in Washington. It sells machine parts at retail and wholesale. Company B is located in California and it purchases machine parts from Company A. Company A carries the parts to California in its own vehicle to make delivery. It is immaterial whether the goods are received at either the purchaser's out-of-state location or at any other place outside Washington state. The sale is not subject to Washington's B&O tax or its retail sales tax because the buyer did not receive the goods in Washington. Washington treats the transaction as a tax exempt interstate sale. California may impose its taxing jurisdiction on this sale.

(b) Company A, above, ships the parts by a for-hire carrier to Company B in California. Company B has not previously received the parts in Washington directly or through a receiving agent. It is immaterial whether the goods are received at either Company B's out-of-state location or any other place outside Washington state. It is immaterial whether the shipment is freight prepaid or freight collect. Again, Washington treats the transaction as an exempt interstate sale.

(c) Company B, above, has its employees or agents pick up the parts at Company A's Washington plant and transports them out of Washington. The sale is fully taxable under Washington's B&O tax and, if the parts are not purchased for resale by Company B, Washington's retail sales tax also applies.

(d) Company B, above, hires a carrier to transport the parts from Washington. Company B authorizes the carrier, or another agent, to inspect and accept the parts and, if necessary, to hold them temporarily for consolidation with other goods being shipped out of Washington. This sale is taxable under Washington's B&O tax and, if the parts are not purchased for resale by Company B, Washington's retail sales tax also applies. (e) Washington will not tax the transactions in the above examples (a) and (b) if Company A mails the parts to Company B rather than using its own vehicles or a for-hire carrier for out-of-state receipt. By contrast, Washington will tax the transactions in the above examples (c) and (d) if for some reason Company B or its agent mails the parts to an out-of-state location after receiving them in Washington. The B&O tax applies to the latter two examples and if the parts are not purchased for resale by Company B then retail sales tax will also apply.

(f) Buyer C who is located in Alaska purchases parts for its own use in Alaska from Seller D who is located in Washington. Buyer C specifies to the seller that the parts are to be delivered to the water carrier at a dock in Seattle. The buyer has entered into a written contract for the carrier to inspect the parts at the Seattle dock. The sale is subject to the B&O tax because receipt took place in Washington. The retail sales tax does not apply because of the specific exemption at RCW 82.08.0269. This transaction would have been exempt of the B&O tax if the buyer had taken no action to receive the goods in Washington.

(11) **Examples - inbound sales.** The following examples show how the provisions of this section relating to interstate sales of tangible personal property will apply when the goods originate outside Washington (inbound sales). The examples presume the seller has retained the proper proof documents.

(a) Company A is located in California. It sells machine parts at retail and wholesale. Company B is located in Washington and it purchases machine parts for its own use from Company A. Company A uses its own vehicles to deliver the machine parts to its customers in Washington for receipt in this state. The sale is subject to the retail sales and B&O tax if the seller has nexus, or use tax if nexus is not present.

(b) Company A, above, ships the parts by a for-hire carrier to Company B in Washington. The goods are not accepted by Company B until the goods arrive in Washington. The sale is subject to the retail sales or use tax and is also subject to the B&O tax if the seller has nexus in Washington. It is immaterial whether the shipment is freight prepaid or freight collect.

(c) Company B, above, has its employees or agents pick up the parts at Company A's California plant and transports them into Washington. Company A is not required to collect sales or use tax and is not liable for B&O tax on the sale of these parts. Company B is liable for payment of use tax at the time of first use of the parts in Washington.

(d) Company B, above, hires a carrier to transport the parts from California. Company B authorizes the carrier, or an agent, to inspect and accept the parts and, if necessary, to hold them temporarily for consolidation with other goods being shipped to Washington. The seller is not required to collect retail sales or use tax and is not liable for the B&O tax on these sales. Company B is subject to use tax on the first use of the parts in Washington.

(e) Company B, above, instructs Company A to deliver the machine parts to a freight consolidator selected by Company B. The freight consolidator does not have authority to receive the goods as agent for Company B. Receipt will not occur until the parts are received by Company B in Washington. Company A is required to collect retail sales or use tax and is liable for B&O tax if Company A has nexus for this sale. The mere delivery to a consolidator or for-hire carrier who is not acting as the buyer's receiving agent is not receipt by the buyer.

(f) Transactions in examples (11)(a) and (11)(b) will also be taxable if Company A mails the parts to Company B for receipt in Washington, rather than using its own vehicles or a for-hire carrier. The tax will continue to apply even if Company B for some reason sends the parts to a location outside Washington after the parts were accepted in Washington.

(g) Company W with its main office in Ohio has one employee working from the employee's home located in Washington. The taxpayer has no offices, inventory, or other employees in Washington. The employee calls on potential customers to promote the company's products and to solicit sales. On June 30, 1990 the employee is terminated. After this date the company no longer has an employee or agent calling on customers in Washington or carries on any activities in Washington which is significantly associated with the seller's ability to establish or maintain a market for its products in Washington. Washington customers who had previously been contacted by the former employee continue to purchase the products by placing orders by mail or telephone directly with the out-of-state seller. The nexus which was established by the employee's presence in Washington will be presumed to continue through December 31, 1994 and subject to B&O tax. Nexus will cease on December 31, 1994 if the seller has not established any new nexus during this period. Company W may disassociate and exclude from B&O tax sales to new customers who had no contact with the former employee. The burden of proof to disassociate is on the seller.

(h) Company X is located in Ohio and has no office, employees, or other agents located in Washington or any other contact which would create nexus. Company X receives by mail an order from Company Y for parts which are to be shipped to a Washington location. Company X purchases the parts from Company Z who is located in Washington and requests that the parts be drop shipped to Company Y. Since Company X has no nexus in Washington, Company X is not subject to B&O tax or required to collect retail sales tax. Company X has not taken possession or dominion or control over the parts in Washington. Company Z may accept a resale certificate from Company X which will bear the registration number issued by the state of Ohio. Company Y is required to pay use tax on the value of the parts.

(i) Company ABC is located in Washington and purchases goods from Company XYZ located in Ohio. Upon receiving the order, Company XYZ ships the goods by a for-hire carrier to a public warehouse in Washington. The goods will be considered as having been received by Company ABC at the time Company ABC is entitled to receive a warehouse receipt for the goods. Company XYZ will be subject to the B&O tax at that time if it had nexus for this sale.

(j) P&S Department Stores has retail stores located in Washington, Oregon, and in several other states. John Doe goes to a P&S store in Portland, Oregon to purchase luggage. John Doe takes physical possession of the luggage at the store and elects to finance the purchase using a credit card issued to him by P&S. John Doe is a Washington resident and the credit card billings are sent to him at his Washington address. P&S does not have any responsibility for collection of retail sales or use tax on this transaction because receipt of the luggage by the customer occurred outside Washington.

(k) JET Company is located in the state of Kansas where it manufactures specialty parts. One of JET's customers is AIR who purchases these parts as components of the product which AIR assembles in Washington. AIR has an employee at the JET manufacturing site who reviews quality control of the product during fabrication. He also inspects the product and gives his approval for shipment to Washington. JET is not subject to B&O tax on the sales to AIR. AIR receives the parts in Kansas irrespective that JET may be shown as the shipper on bills of lading or that some parts eventually may be returned after shipment to Washington because of hidden defects.

[Statutory Authority: RCW 82.32.300. 91-24-020, § 458-20-193, filed 11/22/91, effective 1/1/92. Formerly WAC 458-20-193A and 458-20-193B.]

WAC 458-20-193C Imports and exports—Sales of goods from or to persons in foreign countries.

WAC 458-20-193 deals with interstate and foreign commerce and is published in four separate parts:

Part A. Sales of goods originating in Washington to persons in other states.

Part B. Sales of goods originating in other states to persons in Washington.

Part C. Imports and exports: Sales of goods from or to persons in foreign countries.

Part D. Transportation, communication, public utility activities, or other services in interstate or foreign commerce.

Part C.

Foreign Commerce

Foreign commerce means that commerce which involves the purchase, sale or exchange of property and its transportation from a state or territory of the United States to a foreign country, or from a foreign country to a state or territory of the United States.

Imports. An import is an article which comes from a foreign country (not from a state, territory or possession of the United States) for the first time into the taxing jurisdiction of a state.

Taxation of such goods is impermissible while the goods are still in the process of importation, i.e., while they are still in import transportation. Further, such goods are not subject to taxation if the imports are merely flowing through this state on their way to a destination in some other state.

Exports. An export is an article which originates within the taxing jurisdiction of the state destined for a purchaser in a foreign country. Thus ships stores and supplies are not exports.

Business and Occupation Tax

Wholesaling and Retailing.

Imports. Sales of imports by an importer or his agent are not taxable and a deduction will be allowed with respect to the sales of such goods, if at the time of sale such goods are still in the process of import transportation. Immunity from tax does not extend: (1) To the sale of imports to Washington customers by the importer thereof or by any person after completion of importation whether or not the goods are in the original unbroken package or container; nor (2) to the sale of imports subsequent to the time they have been placed in use in this state for the purpose for which they were imported; nor (3) to sales of products which, although imports, have been processed or handled within this state or its territorial waters.

Exports. A deduction is allowed with respect to export sales when as a necessary incident to the contract of sale the seller agrees to, and does deliver the goods (1) to the buyer at a foreign destination; or (2) to a carrier consigned to and for transportation to a foreign destination; or (3) to the buyer at shipside or aboard the buyer's vessel or other vehicle of transportation under circumstances where it is clear that the process of exportation of the goods has begun, and such exportation will not necessarily be deemed to have begun if the goods are merely in storage awaiting shipment, even though there is reasonable certainty that the goods will be exported. The intention to export, as evidenced for example, by financial and contractual relationships does not indicate "certainty of export" if the goods have not commenced their journey abroad; there must be an actual entrance of the goods into the export stream.

In all circumstances there must be (a) a certainty of export and (b) the process of export must have started.

It is of no importance that title and/or possession of the goods pass in this state so long as delivery is made directly into the export channel. To be tax exempt upon export sales, the seller must document the fact that he placed the goods into the export process. That may be shown by the seller obtaining and keeping in his files any one of the following documentary evidence:

(1) A bona fide bill of lading in which the seller is shipper/consignor and by which the carrier agrees to transport the goods sold to the foreign buyer/consignee at a foreign destination; or

(2) A copy of the shipper's export declaration, showing that the seller was the exporter of the goods sold; or

(3) Documents consisting of:

(a) Purchase orders or contracts of sale which show that the seller is required to get the goods into the export stream, e.g., "f.a.s. vessel;" and

(b) Local delivery receipts, tripsheets, waybills, warehouse releases, etc., reflecting how and when the goods were delivered into the export stream; and

(c) When available, United States export or customs clearance documents showing that the goods were actually exported; and

(d) When available, records showing that the goods were packaged, numbered, or otherwise handled in a way which is exclusively attributable to goods for export.

Thus, where the seller actually delivers the goods into the export stream and retains such records as above set forth, the tax does not apply. It is not sufficient to show that the goods ultimately reached a foreign destination; but rather, the seller must show that he was required to, and did put the goods into the export process.

Sales of tangible personal property, of ships stores, and supplies to operators of steamships, etc., are not deductible irrespective of the fact that the property will be consumed on the high seas, or outside the territorial jurisdiction of this state, or by a vessel engaged in conducting foreign commerce. However, on July 1, 1985, a statutory business and occupation tax deduction became effective for sales of fuel for consumption outside the territorial waters of the United States by vessels used primarily in foreign commerce. In order to qualify for this deduction sellers must take a certificate signed by the buyer or the buyer's agent stating: The name of the vessel for which the fuel is purchased; that the vessel is primarily used in foreign commerce; and, the amount of fuel purchased which will be consumed outside of the territorial waters of the United States. Sellers must exercise good faith in accepting such certificates and are required to add their own signed statement to the certificate to the effect that to best of their knowledge the information contained in the certificate is correct. The following is an acceptable certificate form:

Foreign Fuel Exemption Certificate

SELLER: . . . . VESSEL: . . . .

WE HEREBY CERTIFY that this purchase of <u>(kind and amount of product)</u> from <u>(seller)</u> will be consumed as fuel outside the territorial waters of the United States by the above-named vessel. We further certify that said vessel is used primarily in foreign commerce and that none of the fuel purchased will be consumed within the territorial boundaries of the State of Washington.

DATED . . . . . . , 19. . . . .
Purchaser

. . . .
Purchaser's Agent

By: . . . .

. . . .
Title or Office

When a completed certification such as this is taken in good faith by the seller, the sale is exempt of business and occupation tax, whether made at wholesale or retail, and even though the fuel is delivered to the buyer in this state.

Extracting, manufacturing. Persons engaged in these activities in Washington and who transfer or make delivery of articles produced to points outside the state are subject to business tax under the extracting or manufacturing classification and are not subject to business tax under the retailing or wholesaling classification. See also WAC 458-20-135 and 458-20-136. The activities taxed occur entirely within the state, are inherently local, and are conducted prior to the commercial journey. The tax is measured by the value of products as determined by the selling price. See WAC 458-20-112. It is immaterial that the value so determined includes an additional increment of value because the sale occurs outside the state.

Retail Sales Tax

The same principles apply to the retail sales tax as are set forth for business and occupation tax above, except that certain statutory exemptions may apply. (See WAC 458-20-174, 458-20-175, 458-20-176, 458-20-177, 458-20-238 and 458-20-239.)

Use Tax

The use tax is imposed upon the use, including storage, of all tangible personal property acquired for any use or consumption in this state unless specifically exempt by statute.

[Statutory Authority: RCW 82.32.300. 86-07-005 (Order ET 86-3), § 458-20-193C, filed 3/6/86; 83-07-033 (Order ET 83-16), § 458-20-193C, filed 3/15/83; Order ET 76-3, § 458-20-193C, filed 8/31/76; Order ET 70-3, § 458-20-193C (Rule 193 Part C), filed 5/29/70, effective 7/1/70.]

WAC 458-20-193D Transportation, communication, public utility activities, or other services in interstate or foreign commerce.

WAC 458-20-193 deals with interstate and foreign commerce and is published in four separate parts:

Part A. Sales of goods originating in Washington to persons in other states.

Part B. Sales of goods originating in other states to persons in Washington.

Part C. Imports and Exports: Sales of goods from or to persons in foreign countries.

Part D. Transportation, communication, public utility activities, or other services in interstate or foreign commerce.

Part D.

Business and Occupation Tax, Public Utility Tax

In computing tax there may be deducted from gross income the amount thereof derived as compensation for performance of services which in themselves constitute interstate or foreign commerce to the extent that a tax measured thereby constitutes an impermissible burden upon such commerce. A tax does not constitute an impermissible burden upon interstate or foreign commerce unless the tax discriminates against that commerce by placing a burden thereon that is not borne by intrastate commerce, or unless the tax subjects the activity to the risk of repeated exactions of the same nature from other states. Transporting across the state's boundaries is exempt, whereas supplying such transporters with facilities, arranging accommodations, providing funds and the like, by which they engage in such commerce is taxable.

Examples of Exempt Income:

(1) Income from those activities which consist of the actual transportation of persons or property across the state's boundaries is exempt.

(2) That portion of commissions received by local brokers or commission merchants for interstate or foreign sales which was paid to out-of-state independent agents is exempt.

(3) Income from services rendered by an out-of-state branch or office of the taxpayer regularly maintained outside the state is exempt. (See WAC 458-20-194.)

Examples of Taxable Income:

(1) Compensation received by persons engaged in business within this state for performance of business activities which are only ancillary to transportation across the state's boundaries is taxable.

(2) Compensation received by merchandise brokers or commission merchants for services rendered within this state to principals engaged in interstate or foreign commerce is taxable.

(3) Compensation received by contracting, stevedoring or loading companies for services performed within this state is taxable.

Persons engaged in stevedoring and associated activities involving the movement of goods and commodities in waterborne interstate or foreign commerce are subject to business tax at the rate .0033 upon the gross proceeds from such activities. Stevedoring and associated activities means all activities of a labor, service, or transportation nature whereby cargo is loaded or unloaded to or from vessels or barges, passing over, onto, or under a wharf, pier, or similar structure, including also the moving of cargo to a warehouse or similar holding or storage yard or area to await further movement in import or export; also the movement to a consolidation freight station to be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loading on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

Persons engaging in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, or international air cargo agent are subject to business tax at the rate .0033 upon gross income with respect to such international activities.

In computing public utility tax, there may be deducted from gross income so much thereof as is derived from actually transporting persons or property or transmitting communications or electrical energy, from this state to another state or territory or to a foreign country and vice versa.

Persons, including dock companies or wharfage companies, are permitted no deduction from gross income of amounts received for services performed in this state consisting of the handling of cargo or freight even though such cargo or freight has moved or will move across the state's boundaries.

No deduction is permitted with respect to gross income derived from activities which are ancillary to transportation across the state's boundaries, such as income received by a wharf company or warehouse company for the storage of goods. The mere ownership or operation of facilities by means of which others engage in foreign or interstate commerce is an activity ancillary to such commerce and any income received therefrom is taxable.

Insofar as the transportation of goods is concerned, the interstate movement of cargo or freight ceases when the goods have arrived at the destination to which it was billed by the out-of-state shipper, and no deduction is permitted of the gross income derived from transporting the same from such point of destination in this state to another point within this state. Thus, freight is billed from San Francisco, or a foreign point, to Seattle. After arrival in Seattle it is transported to Spokane. No deduction is permitted of the gross income received for the transportation from Seattle to Spokane. Again, freight is billed from San Francisco, or a foreign point, to a line carrier's terminal, or a public warehouse in Seattle. After arrival in Seattle it is transported from the line carrier's terminal or public warehouse to the buyer's place of business in Seattle. No deduction is permitted of the gross income received as transportation charges from the line carrier's terminal or public warehouse to the buyer's place of business in Seattle.

The interstate movement of cargo or freight begins when the goods are committed to a carrier for transportation out of the state, which carrier will start the transportation to a point outside the state.

[Statutory Authority: RCW 82.32.300. 83-07-033 (Order ET 83-16), § 458-20-193D, filed 3/15/83; Order ET 74-1, § 458-20-193D, filed 5/7/74; Emergency Order ET 74-6, filed 9/30/74 and Emergency Order ET 74-7, filed 10/3/74, effective 1/1/75; Order ET 70-3, § 458-20-193D (Rule 193 Part D), filed 5/29/70, effective 7/1/70.]

WAC 458-20-19301 Multiple activities tax credits. (1) Introduction. Under the provisions of RCW 82.04.440 as amended effective August 12, 1987, Washington state's business and occupation taxes imposed under chapter 82.04 RCW were adjusted to achieve constitutional equality in the tax treatment of persons engaged in intrastate commerce (within this state only) and interstate commerce (between Washington and other states). The business and occupation tax system taxes the privilege of engaging in specified business activities based upon "gross proceeds of sales" (RCW 82.04.070) and the "value of products" (RCW 82.04.450) produced in this state. In order to maintain the integrity of this taxing system, to eliminate the possibility of discrimination between taxpayers, and to provide equal and uniform treatment of persons engaged in extracting, manufacturing, and/or selling activities regardless of where performed, a statutory system of internal and external tax credits was adopted, effective August 12, 1987. This tax credits system replaces the multiple activities exemption which, formerly, assured that the gross receipts tax would be paid only once by persons engaged in more than one taxable activity in this state in connection with the same end products. Unlike the multiple activities exemption which only prevented multiple taxation from within this state, the credits of the new system apply for gross receipts taxes paid to other taxing jurisdictions outside this state as well.

(2) Definitions. For purposes of this section the following terms will apply.

(a) "Credits" means the multiple activities tax credit(s) authorized under this statutory system also referred to as MATC.

(b) "Gross receipts tax" means a tax:

(i) Which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax; and

(ii) Which is not, pursuant to law or custom, separately stated from the selling price.

(c) "Extracting tax" means a gross receipts tax imposed on the act or privilege of engaging in business as an extractor, and includes the tax imposed by RCW 82.04.230 (tax on extractors) and similar gross receipts taxes paid to other states.

(d) "Manufacturing tax" means a gross receipts tax imposed on the act or privilege of engaging in business as a manufacturer, and includes:

(i) The taxes imposed in RCW 82.04.240 (tax on manufacturers) and subsections (2) through (5) and (7) of RCW 82.04.260 (tax on special manufacturing activities) and

(ii) Similar gross receipts taxes paid to other states.

The term "manufacturing tax," by nature, includes a gross receipts tax upon the combination of printing and publishing activities when performed by the same person.

(e) "Selling tax" means a gross receipts tax imposed on the act or privilege of engaging in business as a wholesaler or retailer of tangible personal property in this state or any other state. The term "selling" has its common and ordinary meaning and includes the acts of making either wholesale sales or retail sales or both.

(f) "State" means:

(i) The state of Washington,

(ii) A state of the United States other than Washington or any political subdivision of such other state,

(iii) The District of Columbia,

(iv) Territories and possessions of the United States, and

(v) Any foreign country or political subdivision thereof.

(g) "Taxes paid" means taxes legally imposed and actually paid in terms of money, credits, or other emoluments to a taxing authority of any "state." The term does not include taxes for which liability for payment has accrued but for which payment has not actually been made. This term also includes business and occupation taxes being paid to Washington state together with the same combined excise tax return upon which MATC are taken.

(h) "Business," "manufacturer," "extractor," and other terms expressly defined in RCW 82.04.020 through 82.04.212 have the meanings given in those statutory sections regardless of how the terms may be used for other states' taxing purposes.

(3) Scope of credits. This integrated tax credits system is intended to assure that gross receipts from sales or the value of products determined by such gross receipts are taxed only one time, whether the activities occur entirely within this state or both within and outside this state. External tax credits arise when activities are taxed in this state and similar activities with respect to the same products produced and sold are also subject to similar taxes outside this state. There are five ways in which external tax credits may arise because of taxes paid in other states.

(a) Products or ingredients are extracted (taken from the ground) in this state and are manufactured or sold and delivered in another state which imposes a gross receipts tax on the latter activity(s). The credit created by payment of the other state's tax may be used to offset the Washington extracting tax liability.

(b) Products are manufactured, in whole or in part, in this state and sold and delivered in another state which imposes a gross receipts tax on the selling activity. Again, payment of the other state's tax may be taken as a credit against the Washington manufacturing tax liability.

(c) Conversely, products or ingredients are extracted outside this state upon which a gross receipts tax is paid in the state of extracting, and which are sold and delivered to buyers here. The other state tax payment may be taken as a credit against Washington's selling taxes.

(d) Similarly, products are manufactured, in whole or in part, outside this state and sold and delivered to buyers here. Any other state's gross receipts tax on manufacturing may be taken as a credit against Washington's selling tax.

(e) Products are partly manufactured in this state and partly in another state and are sold and delivered here or in another state. The combination of all other states' gross receipts taxes paid may be taken as credits against Washington's manufacturing and/or selling taxes.

Thus, the external tax credits may arise in the flow of commerce, either upstream or downstream from the taxable activity in this state, or both. Products extracted in another state, manufactured in Washington state, and sold and delivered in a third state may derive credits for taxes paid on both of the out of state activities.

Internal tax credits arise from multiple business activities performed entirely within this state, all of which are now subject to tax, but with the integrated credits offsetting the liabilities so that tax is only paid once on gross receipts. Under this system Washington extractors and manufacturers who sell their products in this state at wholesale and/or retail must report the value of products or gross receipts under each applicable tax classification. Credits may then be taken in the amount of the extracting and/or manufacturing tax paid to offset the selling taxes due. There are three ways in which credits may arise because of taxes paid exclusively in this state.

(f) Products are extracted in Washington and directly sold in Washington. Extracting business and occupation tax and selling business and occupation tax must both be reported but the payment of the former is a credit against the latter.

(g) Similarly, ingredients are extracted in Washington and manufactured into new products in this state. The extracting business and occupation tax reported and paid may be taken as a credit against manufacturing tax reported.

(h) Products manufactured in Washington are sold in Washington. Again, the payment of the manufacturing tax reported may be credited against the selling tax (wholesaling and/or retailing business and occupation tax) reported.

All of the external and internal tax credits derived from any flow of commerce may be used, repeatedly if necessary, to offset other tax liabilities related to the production and sale of the same products.

(4) Eligibility for taking credits. Statutory law places the following eligibility requirements and limitations upon the MATC system.

(a) The amount of the credit(s), however derived, may not exceed the Washington tax liability against which the credit(s) may be used. Any excess of credit(s) over liability may not be carried over or used for any purpose.

(b) The person claiming the credit(s) must be the same person who is legally obligated to pay both the taxes which give rise to the credit(s) and the taxes against which the credit is claimed. The MATC is not assignable.

(c) The taxes which give rise to the credit(s) must be actually paid before credit may be claimed against any other tax liability. Tax liability merely accrued is not creditable.

(d) The business activity subject to tax, and against which credit(s) is claimed, must involve the same ingredients or product upon which the tax giving rise to the credit(s) was paid. The credits must be product-specific.

(e) The effective date for developing and claiming credit(s) for products manufactured in Washington state and sold and delivered in other states which impose gross receipts selling taxes is June 1, 1987.

(f) The effective date for developing and claiming all credits other than those explained in subsection (e) above, is August 12, 1987.

(g) Persons who are engaged only in making wholesale or retail sales of tangible personal property which they have not extracted or manufactured are not entitled to claim MATC. Also, persons engaged in rendering services in this state are not so entitled, even if such services have been defined as "retail sales" under RCW 82.04.050. (See WAC 458-20-194 for rules governing apportionment of gross receipts from interstate services.)

(5) Other states' qualifying taxes. The law defines "gross receipts tax" paid to other states to exclude income taxes, value added taxes, retail sales taxes, use taxes, or other taxes which are generally stated separately from the selling price of products sold. Only those taxes imposed by other states which include gross receipts of a business activity within their measure or base are qualified for these credit(s). The burden rests with the person claiming any MATC for other states' taxes paid to show that the other states' tax was a tax on gross receipts as defined herein. Gross receipts taxes generally include:

(a) Business and occupation privileges taxes upon extracting, manufacturing, and selling activities which are similar to those imposed in Washington state in that the tax measure or base is not reduced by any allocation, apportionment, or other formulary method resulting in a downward adjustment of the tax base. If costs of doing business may be generally or routinely deducted from the tax base, the tax is not one which is similar to Washington state's gross receipts tax.

(b) Severance taxes measured by the selling price of the ingredients or products severed (oil, logs, minerals, natural products, etc.) rather than measured by costs of production, stumpage values, the volume or number of units produced, or some other formulary tax base.

(c) Business franchise or licensing taxes measured by the gross volume of business in terms of gross receipts or other financial terms rather than units of production or the volume of units sold.

Other states' tax payments claimed for MATC must be identifiable with the same ingredients or products which incurred tax liability in Washington state, i.e., they must be product specific.

(d) The department will periodically publish an excise tax bulletin listing current taxes in other jurisdictions which are either qualified or disqualified for credit under the MATC system.

(6) Deductions in combination with MATC. Effective August 12, 1987, with the enactment of the MATC system, the liability for actual payment of tax by persons who extract, manufacture, and sell products in this state was shifted from the selling activity (wholesaling or retailing) to the production activity (extracting and/or manufacturing). As explained, the payment of the production taxes may now be credited against the liability for selling taxes on the same products. However, the deductions from tax provided by chapter 82.04 RCW (business and occupation tax deductions) may still be taken before tax credits are computed and used, with noted exceptions. In order for the MATC system to result in the correct computation of tax liabilities and credit applications, the tax deductions which may apply for any reporting period must be taken equally against both levels of tax liability reported, i.e., at both the production and selling levels. Failure to report tax deductions in this manner will result in overreporting tax due and may result in overpayment of tax. Thus, with the exceptions noted below, tax deductions formerly reported only against selling activities should now be reported against production activities as well. All such deductions, the result of which is to reduce the

measure of tax reported, should be taken against both the production taxes (extracting or manufacturing) and the selling taxes (wholesaling and/or retailing) equally.

(a) Example:

(i) A company manufactures products in Washington which it also sells at wholesale for $5,000 and delivers to a buyer in this state. The buyer defaults on part of the payment and the seller incurs a $2,000 credit loss which it writes off as a bad debt during the tax reporting period. The bad debt deduction provided by RCW 82.04.4284 must be shown on both the manufacturing-other line and the wholesaling-other line of the combined excise tax return. Taking the deduction on only one of those activities results in overreported tax liability on the $2,000 loss.

(b) Exceptions. The deductions generally provided by RCW 82.04.4286, for interstate or foreign sales (where goods are sold and delivered outside this state) may not be taken against tax reported at the production level (extracting or manufacturing). This is because the MATC system itself provides for tax credits instead of tax deductions on gross receipts from transactions involving goods produced in this state and sold in interstate or foreign commerce. Thus, deductions which eliminate transactions from tax reporting may be taken only against selling taxes.

(c) Applicable deductions should be shown on the front of the combined excise tax return (Column #3) on each applicable tax classification line and detailed on the back side of the return, as usual, before MATC is taken.

(d) It is not the intent of the MATC law to invalidate or nullify the business and occupation tax exemption for taxable amounts below minimum (see WAC 458-20-104). Thus any person whose gross receipts or value of products reported under any single tax classification with respect to the production and sale of any product is less than the minimum taxable amount will not incur tax liability merely because of the requirement to report those gross receipts or value of products on the same product under other tax classifications as well.

(i) Example: A person both manufactures and sells at wholesale $2,000 worth of widgets in the first quarter of a tax year. The requirement to report the $2,000 tax measure under both the manufacturing-other classification and the wholesaling-other classification gives the false appearance of $4,000 in gross receipts during this quarter. However, only the amount reported under the manufacturing-other classification need be considered to determine eligibility for the amount-below-minimum exemption.

(7) How and when to take MATC. The credits available under the MATC system are all to be taken on the combined excise tax return beginning in August, 1987 and thereafter. The return form has been modified to accommodate these credits. Each tax return upon which MATC has been taken must be accompanied by a completed Schedule C. This schedule details the business activities and credits computations. The line by line instructions insure that no more or no less credits are claimed than are authorized under the law.

(8) Consolidation of tax liabilities and credits. Under the MATC system a person's Washington tax liability for all activities involved in that person's production and sale of the same ingredients or products (extracting, and/or manufacturing, and/or selling) is to be reported only at the time of the sale of such products or at the time of that person's own use of such products for commercial or industrial consumption. All of the taxable activities are to be reported on that same periodic excise tax return. Also, all external and internal tax credits derived from the payment of any gross receipts taxes on any of these activities are to be taken at that time. Thus, the taxable activities and the tax credits are procedurally consolidated for reporting. This consolidation generally overcomes any need to track ingredients or products from their extraction to their sale. It also overcomes any need to report and pay Washington tax liability during one reporting period and to take credits against that tax liability in a different reporting period. Thus, except as noted below, there can be no credit carryovers or carrybacks under this system.

(a) Exception. Where different tax reporting periods are assigned by Washington state and another state to a company doing business both within and outside Washington state, the other state's gross receipts tax on the same products may not yet have been paid when the Washington tax is due for reporting and payment. In such cases the Washington tax due must be timely reported and paid during the period in which the sale is made. The external credit arising later, when the other state's tax is paid, may be taken as a credit against any Washington business and occupation tax reported during that later period. Thus, the limitation that the MATC must be product-specific by being limited to the amount of Washington tax paid on the same products does not mean that the credit(s) can only be used against precisely those same Washington taxes paid.

(i) In the situation described in subsection (a) above, if there is not sufficient Washington business and occupation tax due for payment in the later period, when the external tax credit arises, to allow for utilization of the entire credit, the amount of any overage may be carried forward and taken against Washington taxes reported in subsequent reporting periods until fully used.

When filing such exception returns, the full amount of any credits should be claimed, even though that credit amount will exceed the amount of tax liability reported for that period. The department of revenue itself will make the necessary adjustments and will perform the carrying over of any excess credits into future reporting periods.

(ii) In the same situation, if the person entitled to claim such credit overage is no longer engaged in taxable business in this state or for any other reason does not incur sufficient Washington business and occupation tax liability to fully utilize the perfected credit overage, a tax refund will be issued.

(iii) No tax refunds, MATC carryovers, or MATC carrybacks will be allowed under any circumstances other than those explained above.

(b) Special circumstances may arise where it is not possible to specifically identify ingredients or products as they move from production to sale (e.g., fungible commodities from various sources stored in a common warehouse). In such cases the taxpayer should seek advance approval from the department, in writing, for tax reporting and credit taking on a test period, formulary, or volume percentage basis, subject to audit verification.

(9) Recordkeeping requirements. Persons claiming the MATC must keep and preserve such records and documents

as may be necessary to prove their entitlement to any credits taken under this system (RCW 82.32.070). It is not required to submit copies of such proofs when credits are claimed or together with the Schedule C detail. Rather, such records must be kept for a period no less than five years from the date of the tax return upon which the related tax credits are claimed. Such records are fully subject to audit for confirmation of the validity and amounts of credits taken. Records which must be preserved by persons claiming external tax credits include:

(a) Copies of sales contracts, or other written or memorialized evidence of any sales agreements, including purchase and billing invoices showing the origin state and destination state of products sold.

(b) Copies of shipping or other delivery documents identifying the products sold and delivered, reconcilable with the selling documents of subsection (a) above, if appropriate.

(c) Copies of production reports, transfer orders, and similar such documents which will reflect the intercompany or interdepartmental movement of extracted ingredients or manufactured products where no sale has occurred.

(d) Copies of tax returns or reports filed with other states' taxing authorities showing the kinds and amounts of taxes paid to such other states for which MATC is claimed.

(e) Copies of cancelled checks or other proofs of actual tax payment to the other state(s) giving rise to the MATC claimed.

(f) Copies of any other state(s) taxing statutes, laws, ordinances, and other appropriate legal authorities necessary to establish the nature of the other states' tax as a gross receipts tax, as defined in this section.

(g) Failure to keep and preserve proofs of entitlement to the MATC will result in the denial of credits claimed and the assessment of all taxes offset or reduced by such credits as well as the additional assessment of interest and penalties as required by law. (See RCW 82.32.050.)

(10) MATC in combination with other credits. The tax credits authorized under this system may be taken in combination with other tax credits available under Washington law. Such other credit programs, however, authorize credit carryovers from reporting period to period until the credits are fully utilized. Thus, the MATC must be computed and used to offset business and occupation tax liabilities during any tax reporting period before any other program credits to which a claimant may be entitled are claimed or applied. Failure to compute and take the MATC before applying other available credits may result in the loss of the other credit benefits.

(11) Superseding provisions. The MATC provisions of this section supersede and control the provisions of other sections of chapter 458-20 WAC (other tax rules) relating to intrastate, interstate, and foreign transactions to the extent that such provisions are or appear to be contrary or conflicting.

(12) Unique or special credit situations—Appeals. The provisions of this section generally explain the nature of the MATC system and the tax credit qualifications, limitations, and claiming procedures. The complexity of the integrated tax reporting and credit taking procedures may develop situations or questions which are not addressed herein. Such matters and requests for specialized rulings should be submitted to the department of revenue for prior determination before credits are claimed. Generally, prior determinations will be provided within sixty days after the department receives the information necessary to make such a ruling. Adverse rulings, tax credit denials, or tax assessments resulting from audits or other examinations of returns upon which the MATC is claimed may be administratively appealed under the provisions of chapter 82.32 RCW and WAC 458-20-100.

[Statutory Authority: RCW 82.32.300. 87-23-008 (Order 87-8), § 458-20-19301, filed 11/6/87.]

WAC 458-20-194 Doing business inside and outside the state. Persons domiciled outside this state who (1) sell or lease personal property to buyers or lessees in this state, or (2) perform construction or installation contracts in this state, or (3) render services to others herein, are doing business in this state, irrespective of the domicile of such persons and irrespective of whether or not such persons maintain a permanent place of business in this state.

Persons domiciled in and having a place of business in this state, who (1) sell or lease personal property to buyers or lessees outside this state, or (2) perform construction or installation contracts outside this state, or (3) render services to others outside this state, are doing business both inside and outside this state. Whether or not such persons are subject to business tax under the law depends upon the kind of business and the manner in which it is transacted. The following general principles govern in determining tax liability or tax immunity.

Business and Occupation Tax

When the business involves a transaction in or related to interstate or foreign commerce, see WAC 458-20-193.

When the business involves a construction or installation contract in this state, no deduction from the measure of the tax is permitted, even though the contractor is domiciled outside this state and maintains a place of business outside this state which may contribute to the contract performed in this state. See WAC 458-20-137, 458-20-170, 458-20-171 and 458-20-172.

When the business involves a construction or installation contract outside this state, the tax does not apply to any part of the income derived therefrom (except such part of the income as may be applicable to the manufacture in this state by the contractor of articles used or incorporated in such construction or installation), even though the contractor is domiciled in this state and maintains a place of business herein which may contribute to the contract performed outside this state. See WAC 458-20-136.

When the business involves a transaction taxable under the classification service and other business activities, the tax does not apply upon any part of the gross income received for services incidentally rendered to persons in this state by a person who does not maintain a place of business in this state and who is not domiciled herein. However, the tax applies upon the income received for services incidentally rendered to persons outside this state by a person domiciled herein who does not maintain a place of business within the jurisdiction of the place of domicile of the person to whom the service is rendered.

For example, persons domiciled herein, but having no place of business outside this state, are taxable upon the following types of income:

(1) An insurance agency upon commissions received for insurance placed without the state.

(2) An attorney upon fees received from persons without the state, even though a portion of his services were necessarily performed without the state.

(3) A collection agency upon income received from clients without the state or with respect to collections made from persons without the state.

(4) An accountant upon income received from persons for services performed without the state.

(5) A financial business upon income received from loans placed without the state.

(6) A commodity broker upon commissions received from persons without the state.

(7) An advertising agency upon income received from advertising solicited and secured from firms without the state.

(8) An employment agency upon income received for securing employees for firms without the state.

(9) A physician upon income received from the treatment of patients without the state.

(10) A purchasing agency upon commissions received from clients without the state or with respect to purchases made without the state.

Persons engaged in a business taxable under the service and other business activities classification and who maintain places of business both inside and outside this state which contribute to the performance of a service, shall apportion to this state that portion of gross income derived from services rendered by them in this state. Where it is not practical to determine such apportionment by separate accounting methods, the taxpayer shall apportion to this state that proportion of total income which the cost of doing business within this state bears to the total cost of doing business both within and without this state.

For purposes of apportionment under RCW 82.04.460 and this rule the term "place of business" generally means a location at which regular business of the taxpayer is conducted and which is either owned by the taxpayer or over which the taxpayer exercises legal dominion and control. The term does not include locations or facilities at which the taxpayer acquires merely transient lodging nor does it include mere telephone number listings or telephone answering services.

Public Utility Tax

Persons engaged in a public service business in this state are not taxable with respect to gross income derived from conducting business outside this state, nor in respect to conducting business in interstate or foreign commerce.

[Statutory Authority: RCW 82.32.300. 83-08-026 (Order ET 83-1), § 458-20-194, filed 3/30/83; Order ET 70-3, § 458-20-194 (Rule 194), filed 5/29/70, effective 7/1/70.]

WAC 458-20-195 Taxes, deductibility. (A) **Deductibility, generally**. In computing tax liability, the amount of certain taxes may be excluded or deducted from the gross amount reported as the measure of tax under the business and occupation tax, the retail sales tax and the public utility tax. Such taxes may be deducted provided they (1) have been included in the gross amount reported under the classification with respect to which the deduction is sought, and (2) have not been otherwise deducted through inclusion in the amount of an allowable deduction taken under such classification for another reason, i.e., interstate commerce, etc.

The amount of taxes which are not allowable as deductions or exclusions must in every case be included in the gross amount reported.

(B) **Motor vehicle fuel taxes**. So much of the sale price of motor vehicle fuel as constitutes the amount of tax imposed by the state of Washington or the United States government upon the sale thereof may be deducted by every seller thereof from the gross proceeds of sales reported under the business and occupation tax.

(C) **Other taxes**. The amount of taxes collected by a taxpayer, as agent for the state of Washington or its political subdivisions, or for the federal government, may be deducted from the gross amount reported. Such taxes are deductible under each tax classification of the Revenue Act under which the gross amount from such sales or services must be reported.

This deduction applies only where the amount of such taxes is received by the taxpayer as collecting agent and is paid by the agent directly to the state, its political subdivisions, or to the federal government. When the taxpayer is the person upon whom a tax is primarily imposed, no deduction or exclusion is allowed, since in such case the tax is a part of the cost of doing business. The mere fact that the amount of tax is added by the taxpayer as a separate item to the price of goods he sells, or to the charge for services he renders, does not in itself, make such taxpayer a collecting agent for the purpose of this deduction.

Specific taxes, deductible. The deductions under paragraphs B and C above apply to the following excise taxes among others:

FEDERAL—

Tax on gasoline	26 U.S.C.A. Sec. 4081;
Tax on telegraph, telephone, radio and cable messages	26 U.S.C.A. Sec. 4251;
Tax on transportation of persons	26 U.S.C.A. Sec. 4261;
Tax on transportation of property	26 U.S.C.A. Sec. 4271;

STATE—

Leasehold excise tax collected from lessees, chapter 82.29A RCW;
Motor vehicle fuel tax, chapter 82.36 RCW;
Retail sales tax collected from buyers, chapter 82.08 RCW;
Use tax collected from buyers, chapter 82.12 RCW;

MUNICIPAL—

City admission tax (imposed by city ordinance pursuant to RCW 35.21.280);
County admissions and recreations tax (imposed by county ordinance pursuant to chapter 36.38 RCW).

Specific taxes—Nondeductible. No deduction is allowed with respect to the following licenses and taxes, among others:

FEDERAL—

A.A.A. compensating tax	7 U.S.C.A. Sec. 615(e);
A.A.A. processing tax	7 U.S.C.A. Sec. 609;
Employment taxes	26 U.S.C.A. chapter 21-25;
Estate taxes	26 U.S.C.A. chapter 11;
Gift taxes	26 U.S.C.A. chapter 12;
Income taxes	26 U.S.C.A. Subtitle A;
Liquor taxes	26 U.S.C.A. chapter 51;

Manufacturers' and importers of sugar tax	26 U.S.C.A. Sec. 4501;
Manufacturers' excise and import taxes	26 U.S.C.A. chapter 32;
Automobiles, etc.	26 U.S.C.A. Sec. 4061;
Firearms, shells and cartridges	26 U.S.C.A. Sec. 4181;
Taxes imposed by Revenue Act of 1954	26 U.S.C.A. chapter 32;
Sporting goods	26 U.S.C.A. Sec. 4161;
Lubricating oils	26 U.S.C.A. Sec. 4091;
Tires and inner tubes	26 U.S.C.A. Sec. 4071;
Narcotics tax	26 U.S.C.A. chapter 39;
Occupation taxes:	
Importers, manufacturers and dealers in firearms	26 U.S.C.A. Sec. 5801;
Insurance policies issued by foreign insurers	26 U.S.C.A. Sec. 4371;
Sale and transfer of firearms tax	26 U.S.C.A. Sec. 5811;
Tobacco excise taxes	26 U.S.C.A. chapter 52;
Wagering taxes	26 U.S.C.A. chapter 35;
STATE AND MUNICIPAL—	
Ad valorem property taxes	Title 84 RCW;
Alcoholic beverages licenses and stamp taxes (Breweries, distillers, distributors and wineries)	chapter 66.24 RCW;
Boxing and wrestling licenses and tax	chapter 67.08 RCW;
Business and occupation tax	chapter 82.04 RCW;
Cigarette tax	chapter 82.24 RCW;
Conveyance tax	chapter 82.20 RCW;
Gift and inheritance taxes	Title 83 RCW;
Local license fees	
Parimutuel tax	RCW 67.16.100;
Public utility tax	chapter 82.16 RCW;
Real estate excise tax	chapter 28A.45 RCW;
Regulatory fees	
State license fees	
Tobacco products tax	chapter 82.26 RCW
Use tax when not collected as agent for state	chapter 82.12 RCW.

The question of the right to exclude or deduct the amount of any tax other than those authorized herein should be submitted to the department of revenue for determination.

[Statutory Authority: RCW 82.32.300. 83-08-026 (Order ET 83-1), § 458-20-195, filed 3/30/83; Order ET 70-3, § 458-20-195 (Rule 195), filed 5/29/70, effective 7/1/70.]

WAC 458-20-196 Credit losses, bad debts, recoveries.

Business and Occupation Tax

In computing business and occupation tax there may be deducted by taxpayers whose regular books of accounts are kept upon an accrual basis, the amount of business credit losses actually sustained, providing that such deduction will be allowed only with respect to transactions upon which a tax has been previously paid and providing that the amount thereof has not been otherwise deducted and that credits have not been issued with respect thereto.

Bad debt deductions must be taken by the taxpayer during the tax reporting period during which such bad debts were actually charged off on the taxpayer's books of account.

In cases where the amount of bad debts legitimately charged off in a particular reporting period exceeds the gross income for such period, the excess of the amount of the bad debts charged off during such period may be deducted from the gross income of the subsequent tax reporting period.

A dishonored (bad) check which proves to be uncollectible is a bad debt, to the extent it was taken as payment for goods or services on which business tax was previously reported and paid.

Extracting or manufacturing, special application. Bad debt deductions will be allowed under the extracting or manufacturing classifications only when the value of products is computed on the basis of gross proceeds of sales.

Retail Sales Tax

A seller is entitled to a credit or refund for sales taxes previously paid on debts which are deductible, on and after January 1, 1983, as worthless for federal income tax purposes.

Public Utility Tax

In computing public utility tax credit losses may be deducted under the same conditions set out under the business and occupation tax. However, the special provisions set out for the extracting and manufacturing classifications are not applicable to the public utility tax.

Methods of determining credit losses. The amount of credit losses actually sustained must be determined in accordance with one of the following methods:

(1) Specific charge-off method. The amount which is charged off within the tax reporting period with respect to debts ascertained to be worthless.

(a) Worthlessness of a debt is usually evidenced when all the surrounding and attending circumstances indicate that legal action to enforce payment would result in an uncollectible judgment.

(b) A "charge-off" of a debt, either wholly or in part, must be evidenced by entry in the taxpayer's books of account.

(2) Reserve method. In the discretion of the department of revenue a reasonable addition to a reserve for bad debts will be authorized to taxpayers who charge off credit losses at the end of their taxable year but who desire to apportion such losses on a monthly basis.

(a) This will be permitted, in lieu of the specific charge-off method, only to taxpayers who have established or are allowed by the Internal Revenue Service to use for federal income tax purposes, the reserve method of treating bad debts, or who, upon securing permission from the department adopt that method.

(b) What constitutes a reasonable addition to a reserve for bad debts must be determined in light of the facts and will vary between classes of business and with conditions of business prosperity. The addition to the reserve allowed as a deduction by the Internal Revenue Service for federal income tax purposes, in the absence of evidence to the contrary, will be presumed reasonable.

If the taxpayer actually determines and charges off bad debts on a tax reporting period basis, the amount so charged off each period shall be considered prima facie as a proper deduction for such period.

When bad debt losses are ascertained annually upon specific charge-off method, the deduction must be taken against the gross amount reported for the period in which the bad debts were actually charged off.

When the reserve method is employed in taking deductions for bad debts on returns and the amount of debts actually ascertained to be wholly or partially worthless and charged against the reserve account during the taxable year and reported do not agree with the amount of reserve set up therefor, adjustment of the amount of loss deducted shall be made to make the total amount claimed for the tax year coincide with the amount of loss actually sustained.

Recoveries. Amounts subsequently received on account of a bad debt or on account of a part of such debt previously charged off and allowed as a deduction for business tax purposes, must be included in gross proceeds of sales (including value of products when measured by gross proceeds of sales) or gross income of the business reported for the taxable period in which received. This is true even though the recoveries during such period exceed the amount of the bad debt charge-off.

[Statutory Authority: RCW 82.32.300. 83-07-032 (Order ET 83-15), § 458-20-196, filed 3/15/83; Order ET 70-3, § 458-20-196 (Rule 196), filed 5/29/70, effective 7/1/70.]

WAC 458-20-197 When tax liability arises. (1) Gross proceeds of sales and gross income shall be included in the return for the period in which the value proceeds or accrues to the taxpayer. For the purpose of determining tax liability of persons making sales of tangible personal property, a sale takes place when the goods sold are delivered to the buyer in this state. With respect to leases or rentals of tangible personal property, liability for retail sales tax arises as of the time the rental payments fall due (see WAC 458-20-211).

(2) **Accrual basis.**

(a) When returns are made upon the accrual basis, value accrues to a taxpayer at the time:

(i) The taxpayer becomes legally entitled to receive the consideration, or,

(ii) In accord with the system of accounting regularly employed, enters as a charge against the purchaser, customer, or client the amount of the consideration agreed upon, whether payable immediately or at a definitely determined future time.

(b) Amounts actually received do not constitute value accruing to the taxpayer in the period in which received if the value accrues to the taxpayer during another period. It is immaterial if the act or service for which the consideration accrues is performed or rendered, in whole or in part, during a period other than the one for which return is made. The controlling factor is the time when the taxpayer is entitled to receive, or takes credit for, the consideration.

(3) **Cash receipts basis.**

(a) When returns are made upon cash receipts and disbursements basis, value proceeds to a taxpayer at the time the taxpayer receives the payment, either actually or constructively. It is immaterial that the contract is performed, in whole or in part, during a period other than the one in which payment is received.

(b) See: WAC 458-20-199 for limitation as to persons who may report on the cash receipts basis.

(4) **Special application, contractors.**

Value accrues for a building or construction contractor who maintains his accounting records on the accrual basis, as of the time the contractor becomes entitled to compensation under the contract.

(a) If by the terms of the contract the taxpayer becomes entitled to compensation upon estimates as the work progresses, value, to the extent of such estimates, accrues as of the time that each estimate is made and the balance at the time of the completion of the work or of the final estimate.

(b) If by the terms of the contract the taxpayer becomes entitled to compensation only upon the completion of the work, value accrues as of the earlier of the completion of the work, or, any use of the facilities being constructed, or, 60 days after the facility is substantially complete.

(i) Example: A contractor agrees to build two buildings for a buyer. Under the terms of the contract, payment is to be made only upon completion of both buildings. One building is substantially completed and occupied on April 15, 1991, the other building is substantially completed on May 15, 1991 and occupied on July 1, 1991. The work on both buildings is completed under the contract on June 15, 1991. Value accrues for the first building on April 15, 1991, the date it was used. Value accrues for the remainder of the contract on June 15, 1991, the date the work was completed.

(ii) Example: A contractor agrees to build a building for a buyer. Under the terms of the contract, the buyer is to make payment for the building only upon completion of the building. The building is completed, except for minor alterations, and available for planned occupancy on August 15, 1990. However, because of a contract dispute between the buyer and his tenant for the building, the buyer is unable to pay the contractor until February 25, 1991 when the building is finally occupied. The building is completed under the contract on November 15, 1990. Value accrues on the building for sales tax and B&O tax purposes on October 14, 1990, 60 days after August 15, 1991, the date the building was substantially complete.

(5) **Warehousemen**. In the case of warehousemen value proceeds or accrues to the taxpayer as follows:

(a) When the taxpayer is reporting upon the accrual basis, value accrues at the time the charge is entered against the owner of the goods stored in accordance with the terms of the contract between the parties and the regular system of accounting employed by the taxpayer.

(i) Value accrues when the charge is entered whether the consideration for storage is at a fixed rate per unit per month or other period, or, at a flat charge regardless of the length of time, or, whether payable periodically or at the time of withdrawal.

(ii) Thus, where a warehouseman, keeping books on accrual basis, customarily enters as a charge to the owner of the goods and a credit to storage income the full amount of a flat storage charge as of the time the goods are received, even though the time for payment is deferred until withdrawal of the goods, value accrues as of the time the goods are received. However, if the warehouseman customarily does not enter such charge until the time of withdrawal, value accrues as of such later date.

(b) When the taxpayer is reporting upon a cash receipts basis, value proceeds at the time the payment for storage is received.

For effect of rate changes, see WAC 458-20-235.

[Statutory Authority: RCW 82.32.300. 90-10-082, § 458-20-197, filed 5/2/90, effective 6/2/90; Order ET 70-3, § 458-20-197 (Rule 197), filed 5/29/70, effective 7/1/70.]

WAC 458-20-198 Conditional and installment sales, method of reporting.

Business and Occupation Tax

Persons making conditional sales or other installment sales of tangible personal property must report the total selling price of such sales in the tax reporting period in which the sale is made.

A deduction from gross proceeds of sales as a credit loss is allowed to such sellers for the amount of the unpaid balance of the contract price on any installment sale if and when the property purchased is repossessed upon default by the buyer.

Retail Sales Tax, Use Tax

Persons making conditional sales or other installment sales of tangible personal property must report the total selling price of such sales in the tax period in which the sale is made.

The foregoing is true irrespective of the fact that such sellers arrange to receive payment of tax in installments or that a contract may be discounted or pledged with or sold to a finance company. In the latter case, although as a part of the agreement with the seller the finance company actually makes collection of the tax from the buyer as the installments fall due, the finance company should not report to the department of revenue the amount of tax collected since the total tax already has been reported by the seller.

Revised July 1, 1956.

[Statutory Authority: RCW 82.32.300. 83-07-032 (Order ET 83-15), § 458-20-198, filed 3/15/83; Order ET 70-3, § 458-20-198 (Rule 198), filed 5/29/70, effective 7/1/70.]

WAC 458-20-199 Accounting methods. (1) **Introduction.** In computing tax liability under the business and occupation tax and the retail sales tax, one of the following accounting methods must be used. This is true for all businesses, whether their activity involves the sale of tangible personal property or the rendering of services. (See WAC 458-20-197 for an explanation of when tax liability arises under the accrual method versus the cash receipts method.)

(2) **Method one, cash basis.** A taxpayer may file excise tax returns in each reporting period with figures based upon cash receipts only if the taxpayer's books of account are regularly kept on a cash receipts basis. (See RCW 82.04.090.) A taxpayer whose books of account recognize income at the time a sale is made or a service is rendered, regardless of when payment is received, is keeping its records on an accrual basis and must report and pay tax on the accrual basis. For those taxpayers who maintain formal accounting records, the department of revenue will generally look to the revenue accounts of the general ledger of the taxpayer and to the method of accounting used for reporting of federal income taxes to determine when the income is recognized. However, all records of the taxpayer will be considered by the department in determining whether the records are being kept on an accrual basis, particularly for those taxpayers who do not maintain formal records such as a general ledger.

The fact that a taxpayer makes sales "on account" and has records to identify the accounts receivable does not preclude the taxpayer from reporting on a cash receipts basis. Taxpayers can have accounts receivable and still report on the cash basis, provided the accounting records, such as the general ledger or federal income tax returns, do not record the sales on account as income until the cash is actually received. If a taxpayer keeps a general ledger on an accrual basis and federal income tax returns on a cash basis, the taxpayer may elect to report state tax returns on either the cash basis or the accrual basis. However, once a reporting basis is selected, the reporting basis may not be changed without authorization from the department unless the method for reporting federal taxes changes or the method used in keeping the records changes. A taxpayer who maintains its records throughout the year on a cash basis, including a general ledger, and elects to make a worksheet adjustment at year-end to report federal taxes on an accrual basis, will be permitted to report state taxes on a cash basis.

(3) **Method two, accrual basis.** A taxpayer who does not regularly keep books of account on a cash receipts basis must file returns with figures based on the accrual method. These taxpayers must report the gross proceeds from all cash sales made in the tax reporting period in which the sales are made, together with the total amount of charge sales during such period. The law does not require a taxpayer to use a particular accounting system. However, the taxpayer must report based on the system of accounting used by the business, regardless of the taxpayer's reasons for selecting a particular accounting system. It will be presumed that a taxpayer who is permitted under federal law or regulations to report its federal income taxes on a cash basis and does do so is maintaining the records on a cash basis. A taxpayer who maintains a general ledger on an accrual basis and files federal tax returns on an accrual basis must also report state tax returns on an accrual basis.

(a) Taxpayers who make installment sales or leases of tangible personal property must use the accrual method when they compute their tax liability. (See RCW 82.08.090, WAC 458-20-198 and 458-20-211.)

(b) In the case of rentals or leases, the income is considered to have accrued to the seller in the tax reporting period in which the seller is entitled to receive the rental or lease payment.

(4) **Constructive receipt.** "Constructive receipt" means income that a cash basis taxpayer is entitled to receive, but will not receive because of an action taken by the taxpayer. Constructive receipts are taxable in the tax reporting period in which the taxpayer gives up the entitlement to actual future receipt of the income. The following examples show how this applies to a cash basis taxpayer.

(a) XYZ has $10,000 in accounts receivable which XYZ expects to collect over the next six months. XYZ elects to sell these accounts receivable for eighty percent of their face value. Even though the taxpayer only receives $8,000 from the sale of the accounts receivable, XYZ is taxable on the full $10,000 because it has taken constructive receipt of the full $10,000 by taking an action to give up entitlement to the $2,000.

(b) XYZ has $1,500 in accounts receivable from customers who are delinquent in making payment. XYZ turns these accounts receivable over to a collection agency with the understanding that the collection agency may keep half of whatever is collected. The collection agency over the next month collects $500 and keeps $250 of this amount for its services. XYZ is taxable on the full $500 collected by the collection agency. XYZ has constructive receipt of this amount and the $250 retained by the collection agency is a cost of doing business to the taxpayer.

(c) XYZ is involved in a bankruptcy proceeding. The receipt of cash from accounts receivable will be placed in an escrow account. These funds will be used to pay creditors and a portion of these amounts will be given to the taxpayer. The full amount of the accounts receivable collected and going into the escrow is taxable income to XYZ. XYZ has received the full benefit of the cash received from the accounts receivable through payment of XYZ's creditors.

[Statutory Authority: RCW 82.32.300. 96-12-024, § 458-20-199, filed 5/30/96, effective 6/30/96; 92-03-026, § 458-20-199, filed 1/8/92, effective 2/8/92; 83-07-032 (Order ET 83-15), § 458-20-199, filed 3/15/83; Order ET 70-3, § 458-20-199 (Rule 199), filed 5/29/70, effective 7/1/70.]

WAC 458-20-200 Leased departments. (1) Any person leasing departments of the business conducted may include in its tax returns the business done and sales made by the lessee where such lessor keeps the books for the lessee and makes collection on the latter's account: *Provided, however,* That each lessee must apply for and obtain from the department of revenue a certificate of registration, as provided under WAC 458-20-101. The lessee will remain liable for its tax liability if the lessor fails to make the proper return or fails to pay taxes due.

(2) **Business and occupation tax and retail sales tax.** Any taxpayer making returns for any leased department shall report the total tax liability thereof under both the business and occupation tax and the retail sales tax, including therein all cash and charge sales. The leased department in such case is not entitled to the taxable minimum provided in WAC 458-20-104.

(a) Where the lessor receives a flat monthly rental or a percentage of sales as rental for a leased department, such income is presumed to be from the rental of real estate and is not taxable. In a determination of whether an occupancy is a rental of real estate, all the facts and circumstances, including the actual relationship of the parties, are to be considered (see: WAC 458-20-118). Written agreements, while not required, are preferred and are given considerable weight in deciding the nature of the occupancy. While the fact that the written agreement may identify the occupancy as a "lease" is not controlling, agreements which contain the following provisions support the presumption that the occupancy is a rental of real estate:

i. The occupant is granted exclusive possession and control of the space.

ii. The occupancy is for a time certain which is more than 30 days, i.e. month to month, yearly, etc.

iii. The parties are required to notify each other in the event of termination of the occupancy.

(b) If the lessor provides any clerical, credit, accounting, janitorial, or other services to the lessee, the lessor must report the income from these services under the service B&O tax classification. The amounts for providing these services must be segregated from the amounts received from the rental of real estate. In the absence of a reasonable segregation, it will be presumed that the entire income is for providing these services.

(3) Examples. The following examples identify a number of facts and then state a conclusion as to whether the situation is a rental of real estate. These examples should be used only as a general guide. The tax status of each occupancy must be determined after a review of the agreement and all of the facts and circumstances.

(a) A retailer enters into a written occupancy agreement for rental of space within a mall for a one year term. The agreement can be terminated upon 30 days written notice of either party, subject to some penalty provisions for early termination. The agreement provides that the retailer can decorate the store and arrange the inventory in any manner desired by the retailer so long as the facility does not create a safety hazard to the mall or other tenants and is consistent with the overall decor of the mall. The mall owner may enter the premises of the retailer during nonbusiness hours only with the consent of the retailer except for emergencies where physical property is at risk. The retailer's area is separated from other lessees by walls with the exception of the front area which is open to the mall common area and is used as the entrance by potential customers and the retailer. The retailer does have a movable partition that can be locked and is used to close off the entrance from the mall common area. The agreement calls for the retailer to be open for business at all times during the hours stipulated by the mall.

This is a rental of real estate with the rental term being for a fixed period. The agreement and the facts and circumstances have established a rental of real estate. The retailer has exclusive possession and control over a specific area as indicated by the control the retailer has over the premises, even to the exclusion of the mall owner. The restriction which requires the retailer to maintain the same business hours as other lessees does not make this a license to use real estate. The lessor can exclude from the B&O tax that portion of the income which is from the rental of the real estate. The lessor must identify and pay a B&O tax on the portion of the income which is from providing services such as security, janitorial, or accounting.

(b) A hairdresser enters into an oral occupancy agreement with the operator of a hair salon for the use of a work station. The hairdresser has use of a specific work station during specific hours of every day. A particular work station may be used by more than one hairdresser during a particular month or even during a given day. This work station can not be closed off from other areas within the shop. The hairdresser must obtain advance permission from the owner to make any changes to the work area. This hairdresser also shares a sink, telephone, and other facilities with others in the shop.

This occupancy is not a rental of real estate. The hairdresser does not have EXCLUSIVE possession and control over the premises to the exclusion of others as is indicated by the requirement that the hairdresser must obtain approval for any changes in the work area. This is further indicated by hairdressers use of a specific work station only during specific hours of every day with multiple users of the same work station. The work station could not be closed off from other areas of the shop, but this in itself is not determinative of whether this is a rental of real estate or a license to use. The presence of walls or the lack of walls is not controlling. The fact that the agreement uses the term "lease" is also not controlling. This is a "license to use" taxable under the service B&O tax classification.

(c) Department store agrees to sell household paint for a paint supplier. The paint supplier checks on the inventory on a monthly basis and provides additional paint as needed. The department store handles stocking of shelves and all aspects of the sale. The department store makes a charge to the paint supplier based on the space required to maintain the inventory. By agreement of the parties, the department store agrees to report the retailing and retail sales tax on paint sales.

This is not a leased department or a rental of real estate. The income is merely tied to the amount of space being used. However, the income is a commission from the sale of merchandise for the paint supplier and held on consignment. The retailing tax is the liability of the paint supplier and is paid by the department store only by agreement. The commission is taxable under the service B&O tax classification. See WAC 458-20-159.

[Statutory Authority: RCW 82.32.300. 91-02-057, § 458-20-200, filed 12/28/90, effective 1/28/91; Order ET 70-3, § 458-20-200 (Rule 200), filed 5/29/70, effective 7/1/70.]

WAC 458-20-201 Interdepartmental charges. The term "interdepartmental charges" means amounts credited to the sales account or other gross income account of a taxpayer for goods, materials or services furnished by one department or branch of a business organization to another department or branch of the same business concern or firm.

Tax may be due upon interdepartmental charges covering transfers of goods from a central location to two or more retail outlets. See WAC 458-20-231, Tax on internal distributions. Tax is also due upon the value of products extracted or manufactured by one branch or department of a business for commercial or industrial use of another branch or department of the same business. See WAC 458-20-134. In other cases amounts representing interdepartmental charges may be excluded in computing tax due. This does not permit the exclusion or deduction of charges against or income derived from an affiliated corporation or other affiliated association.

Municipal corporations are entitled to an exclusion of interdepartmental charges in computing tax whether or not the charges represent an actual transfer of money or merely a bookkeeping entry (see WAC 458-20-189).

[Statutory Authority: RCW 82.32.300. 83-08-026 (Order ET 83-1), § 458-20-201, filed 3/30/83; Order ET 70-3, § 458-20-201 (Rule 201), filed 5/29/70, effective 7/1/70.]

WAC 458-20-202 Pool purchases. The term "pool purchase" means the joint purchase by two or more persons, engaging in independent business activities, of commodities in carload or truck load quantities for the purpose of obtaining a purchase price or freight rate which is less than when purchased or delivered in smaller quantities.

The term "principal member" means that member of the pool to whom the goods are charged by the vendor of the commodities purchased.

In computing tax liability of the principal member under chapter 82.04 RCW, there may be deducted from gross proceeds of sales the amount received by him from other members of the pool of their proportionate share of the cost thereof of the commodities purchased.

This deduction is allowed only when all of the following conditions are met:

(1) The amount received is included in gross proceeds of sales.

(2) The pool purchase agreement was entered into prior to the time of placing the order for the commodities purchased.

(3) The pool purchase agreement provides that each member shall accept a specific portion of the shipment.

(4) Division of the shipment is made prior to warehousing of the commodities by a member of the pool.

In no event will a "pool purchase" deduction be allowed when an agreement relative to the amount of the share to be distributed to any member is made after the date of the purchase order, or where one member of a pool pays an amount for his portion in excess of the proportionate amount paid by another member.

Revised June 1, 1970.

[Order ET 70-3, § 458-20-202 (Rule 202), filed 5/29/70, effective 7/1/70.]

WAC 458-20-203 Corporations, Massachusetts trusts. Each separately organized corporation is a "person" within the meaning of the law, notwithstanding its affiliation with or relation to any other corporation through stock ownership by a parent corporation by the same group of individuals.

Each corporation shall file a separate return and include therein the tax liability accruing to such corporation. This applies to each corporation in an affiliated group, as the law makes no provision for filing of consolidated returns by affiliated corporations or for the elimination of intercompany transactions from the measure of tax.

Each unincorporated association organized under the Massachusetts Trust Act of 1959 (chapter 23.90 RCW) is likewise taxable in the same way as are separate corporations.

Revised June 20, 1959.

[Order ET 70-3, § 458-20-203 (Rule 203), filed 5/29/70, effective 7/1/70.]

WAC 458-20-204 Outdoor advertising and advertising display services. The term "outdoor advertising" means the business of rendering an advertising service to others by posting or painting advertising copy upon billboards owned or controlled by the outdoor advertiser.

The term "advertising display service" means the business of installing and maintaining advertising displays upon property of others, when title to the property used in the display is retained by the person engaged in such business.

Business and Occupation Tax

Service and other business activities. Taxable under the service and other business activities classification upon the gross income from advertising services.

Retail Sales Tax

Persons engaged in the business of outdoor advertising or advertising display services are performing an advertising service, and are not required to collect the retail sales tax. Persons purchasing or producing tangible personal property for use in the performance of advertising services are required to pay the retail sales tax upon purchasing such property, or the use tax upon the value of the property produced and used in the performance of such services.

Revised May 1, 1943.

[Order ET 70-3, § 458-20-204 (Rule 204), filed 5/29/70, effective 7/1/70.]

WAC 458-20-205 Sales of utility services by building companies. When building companies, apartment house owners or other real estate owners or lessors furnish utility services such as heat and electrical energy to their own tenants of office buildings, apartment houses and storerooms under circumstances indicating it is a part of the normal and customary landlord-tenant relationship and the charge made therefor is the cost of this utility service to the owner or lessor prorated among his tenants based upon the use or consumption of such services, the income derived therefrom is construed to be incidental to and a part of gross income from the renting or leasing of real estate and not subject to the provisions of the business and occupation tax. This is true whether the charge therefor is included in a lump sum rental or is billed separately. However, when the furnishing of utility services is not in accordance with the foregoing, the income derived therefrom is considered to be a separate business activity and is taxable under the appropriate chapter of the Revenue Act.

Revised June 1, 1970.

[Order ET 70-3, § 458-20-205 (Rule 205), filed 5/29/70, effective 7/1/70.]

WAC 458-20-206 Use tax, fuel oil, oil products, other extracted products. The use tax applies to the use of any oil products (except motor vehicle fuel for highway use) or other extracted products used within the state by the producer or extractor thereof, whether such products have been produced or extracted within or without the state, except when used as a fuel directly in the operation of the particular extractive operation or manufacturing plant which produced the same. (RCW 82.12.0263.)

Distributors who are consumers of fuel oil, are subject to the use tax with respect to the use of such fuel oil, unless the sale of such oil has been subjected to the retail sales tax and the tax paid thereon by such distributor.

[Statutory Authority: RCW 82.32.300. 83-08-026 (Order ET 83-1), § 458-20-206, filed 3/30/83; Order ET 70-3, § 458-20-206 (Rule 206), filed 5/29/70, effective 7/1/70.]

WAC 458-20-207 Legal, arbitration, and mediation services. (1) **Introduction.** This section explains the taxability of amounts received for legal, arbitration, and mediation services.

(2) **Definitions.**

(a) "Arbitration" means the process by which the parties to a dispute submit to the hearing and judgment of an impartial person or group appointed by mutual consent or statute.

(b) "Arbitration services" means services relating to the resolution of a dispute submitted to arbitration.

(c) "Attorney" means an active member of a state Bar Association engaged in the practice of law. The term also includes a professional service corporation incorporated under chapter 18.100 RCW, a professional limited liability company formed under chapter 18.190 RCW, or a partnership, provided the ownership of these business entities are properly restricted to attorneys and organized primarily for engaging in the practice of law.

(d) "Collective investment fund" means:

(i) A mutual fund or other regulated investment company as defined in Internal Revenue Code section 851(a);

(ii) An "investment company" as that term is used in section 3(a) of the Investment Company Act of 1940 as well as an entity that would be an investment company under section 3(a) of the Investment Company Act of 1940 except for the section 3 (c)(1) or (11) exemptions, or except that it is a foreign country;

(iii) An "employee benefit plan," which includes any plan, trust, commingled employee benefit trusts, or custodial arrangement that is subject to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., or that is described in Internal Revenue Code sections 125, 401, 403, 408, 457, or 501 (c)(9) and (17) through (23), or similar plan maintained by state or local governments, or plans, trusts, or custodial arrangements established to self-insure benefits required by federal, state, or local law;

(iv) A fund maintained by a tax exempt organization as defined in Internal Revenue Code sections 501 (c)(3) or 509(a) for operating, quasi-endowment, or endowment purposes; or

(v) Funds that are established for the benefit of such tax exempt organization such as charitable remainder trusts, charitable lead trusts, charitable annuity trusts, or other similar trusts.

(e) "Legal services" means services relating to or concerned with the law. Such services include, but are not limited to, representation by an attorney (or other person, when permitted) in an administrative or legal proceeding, legal drafting, paralegal services, legal research services, and court reporting services.

(f) "Mediation" means the process by which the parties to a dispute or negotiations agree to have an intermediary hear their differences and/or positions and facilitate and/or make suggestions concerning an agreement and/or the resolution of their dispute.

(3) **Business and occupation tax.** Every person whose business is providing legal, arbitration or mediation services, is taxable under the selected business services classification upon the gross income of the business, unless such services are provided to a collective investment fund or related to the identification, investigation, or cleanup arising out of the release or threatened release of hazardous substances when done to determine if a release of hazardous substances has occurred or is likely to occur.

(a) Gross income. The gross income of the business generally includes the amount of compensation paid for legal, arbitration, or mediation services and amounts attributable to providing those services (i.e., charges for tangible personal property directly used or consumed in supplying legal, arbitration, or mediation services). Reimbursed general overhead costs are generally includable in the gross income of the business even though indirectly related to litigation. Any reimbursed costs (not directly related to litigation) for which the attorney assumes personal liability for payment are also includable in gross income.

(b) Overhead costs. Amounts received (or, for taxpayers reporting under the accrual accounting method, accrued) to compensate for overhead costs are fully subject to tax. Such overhead costs are taxable even though they may be separately stated on the billings or expressly denominated as costs of the client. Examples of such overhead costs include, but are not limited to:

(i) Photocopy or other reproduction charges, except charges paid to the provider, or the agent of the provider, for the official or original copy of a record, or other document, provided for litigation;

(ii) Long distance telephone tolls;

(iii) Secretarial expenses;

(iv) Office rent;

(v) Office supplies;

(vi) Travel, meals and lodging;

(vii) Utilities, including facsimile telephone charges; and

(viii) Postage, unless paid for service of legal papers as a direct cost of litigation.

(c) Excluded amounts. The following amounts are excluded from gross income if complete and accurate records are maintained of these amounts:

(i) Client trust accounts. The gross income of the business does not include amounts held in trust for the client.

(ii) Litigation expenses. Attorneys are bound by the rules of professional conduct. RPC 1.8(e) prohibits an attorney from financing the expenses of contemplated or pending litigation unless the client remains ultimately liable for these expenses. This means that an attorney normally acts solely as the agent for the client when financing litigation. Accordingly, amounts received from a client for the direct expenses of litigation do not constitute gross income to the attorney. Amounts received (or, for taxpayers reporting under the accrual accounting method, accrued) to compensate for the following direct litigation expenses are not included in gross income:

(A) Filing fees and court costs;

(B) Process server and messenger fees;

(C) Court reporter fees;

(D) Expert witness fees; and

(E) Costs of associate counsel.

A cash basis taxpayer cannot exclude or deduct amounts of unreimbursed litigation expenses. For example, an attorney advances all the litigation expenses for a contingency fee case. The case is ultimately resolved against the attorney's client and are not repaid because of the client's bankruptcy. The attorney cannot then deduct these expenses as a bad debt or otherwise exclude them against other income earned by the attorney.

(iii) Expense advances and reimbursements. Sometimes in the regular course of business an attorney may receive amounts from a client for expenses of third-party providers or other costs incurred in connection with a legal matter other than litigation. Such amounts are excluded from the business and occupation tax only if the attorney has no obligation for payment other than as agent for the client or equivalent commitment for their payment (see WAC 458-20-111, Advances and reimbursements). Generally, such amounts will be for third-party service providers (for example, accountants, appraisers, architects, artists, drafters, economists, engineers, investigators, physicians, etc.). However, these costs could also include client expenses for registration, licensing or maintenance fees, title and other insurance premiums, and escrow fees paid to third-party escrow agents. These costs are excludable only when the attorney does not have any personal liability to the third-party provider for their payment.

(iv) Records requirement. In order to support the exclusion from taxable gross income of any of the foregoing expenses, the attorney must maintain records which indicate the amount of the payment received from the client, the name of the client, the name of the person to whom the attorney has made payment, and a description of the item for which payment was made. If the foregoing expenses are incurred outside the context of litigation or contemplated litigation, the attorney must maintain records which indicate the amount of the payment received, the name of the client, and the person to whom the attorney makes payment. In addition, the attorney must provide the person to whom payment is made with written notice that:

(A) Payment is made, or will be made on behalf of a named client; and

(B) The attorney assumes no liability for payment, other than as agent for the named client.

(d) Excluded services. The following legal services are excluded from the selected business services tax classification.

(i) Hazardous waste. Legal, arbitration, or mediation services related to the identification, investigation, or cleanup arising out of the release or threatened release of hazardous substances when the services are performed to determine if a release of hazardous substances has occurred or is likely to occur are not taxable as selected business services. Income from these excluded services are taxable under the service and other business activities classification (see WAC 458-20-224). For example, a legal opinion specifically determining whether and to what extent a client is subject to federal and state law as it concerns hazardous waste identification, investigation, and cleanup would not be taxable as a selected business service.

Also, arbitration or mediation services provided to resolve or negotiate settlement in a case determining the liability for or the release of hazardous substances are examples of excluded services which would not be taxable as selected business services.

(ii) Collective investment funds. Income derived from legal, arbitration, or mediation services provided to, performed for, on behalf of, or for the benefit of a collective investment fund is excluded from gross income under the selected business services classification. Income received from these clients is taxable under the service and other business activities classification (see WAC 458-20-224).

(e) Multiple business activities. Attorneys and other persons engaged in providing legal, arbitration, and mediation services sometimes engage in other business activities which are classified under a different tax classification (i.e., escrow services, acting as the trustee for a trust, acting as the personal representative of an estate, etc.). In some circumstances, income from these other business activities will be subject to tax under a tax classification other than selected business services.

(i) Independent business activities. If the other activities engaged in by the person are independent from the legal, arbitration, or mediation services provided to the client, these activities are taxed based on the tax classification that applies to each of those other activities, provided these other activities are separately accounted for and/or itemized as a separate amount in billings or invoices to the client. Failure to separately account and/or itemize for such activities will result in classification of all activities under the selected business services classification. Legal activities specifically excluded from the selected business services tax classification will be treated as an independent business activity taxable under the other services and business activities tax classification, provided the excluded service is separately accounted for and/or itemized as a separate amount in billings or invoices to the client.

(ii) Combined business activities. If the other activities are related to the legal, arbitration, or mediation services provided to the client, the primary activity provided the client in each taxable period will determine the tax classification. Generally, the activity will be considered as related when there is some interaction between the two activities to reach an ultimate goal (i.e., a law firm which provides legal advice and brokers the financing of a business arrangement). There are a number of elements which may be examined to determine whether a sufficient relationship between the multiple activities exist. Some elements considered are the timing for the selection and provision of services, the relationship between the contracting parties, the procedure used in the selection process, the dependence of the relationship between the two or more activities, the relationship of the prices between the two activities, and the means of payment selected for the activities.

(iii) Examples. The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(A) A law firm has an escrow department. This escrow department is run by employees who are not attorneys (but the supervising employee is a limited practice officer who has experience as a certified escrow agent), has a separate phone number, separate bank account, separate trust account, separate computer system, and maintains its own accounting system. Contracts for the escrow services state that the law firm is being retained as an independent escrow agent and not to represent any person involved in the transaction. Further, the contract states that the law firm shall not offer legal advice upon the transaction. The escrow department of this law firm would be considered an independent business activity and be taxed separately under the retailing classification for escrow businesses (see WAC 458-20-156).

(B) A law firm limits its practice to real estate. It primarily provides escrow services and real estate closings. Even though this firm has chosen to limit its practice, it is the nature and the character of its activities which will determine the primary activity for each closing. When a closing includes the preparation, selection, or drafting of the deed between the purchaser and seller, drafting legal documents to obtain clear title, and/or the preparation, selection or drafting of the promissory notes, deeds of trust, mortgages, and agreements modifying these documents, it will be presumed that the primary activity performed for the client is providing these legal services.

(I) The law firm closed a real estate transaction performing all the escrow services. Except for the escrow services provided, the firm represented the buyer in the closing. Although an attorney from the firm reviewed and approved the legal documents provided by the seller, the attorney did not prepare any legal documents for the transaction. Since the firm was representing a specific client in this real estate closing, the escrow services are considered incidental to the legal services provided. Accordingly, the firm will report the income from this transaction under the selected business services classification.

(II) The firm was engaged by both parties in a real estate transaction to handle a real estate closing. An attorney for the firm selected and prepared the earnest money escrow agreement, the purchase and sales agreement, the closing agreement, and the deeds for the transfer. Title was clear and did not require any additional drafting. The firm also entered into an escrow agreement with both parties and held in escrow the buyer's deposit and the seller's deed. Since an attorney for the law firm was required to select, analyze, and review the legal documents in this transaction, the escrow activity will be considered incidental. This closing is reported under the selected business services classification for legal services.

(III) A certified escrow agency, owned by a principal qualified under APR 12 (the limited practice rule for limited practice officers), provides both escrow and the limited legal services allowed under APR 12 to its clients. The escrow company itemizes the services provided. APR 12(d) allows a limited practice officer to select, prepare and complete documents in a form previously approved by the board for use in closing a loan, extension of credit, sale or other transfer of real or personal property. The nature of this limited license prevents an escrow company using limited practice officers from ever engaging in legal services as a primary activity in a real estate closing. Accordingly, the escrow company will report the income from escrow and closings under the retail sales classification (see WAC 458-20-156).

(IV) The same facts as above, but the escrow company hires employees who are attorneys to provide the allowable limited legal services. The result is the same. Under RPC 5.4, an attorney is prohibited from sharing legal fees with a nonlawyer and, under RPC 5.5, cannot assist a person who is not a member of the Bar Association in the performance of an activity that constitutes the unauthorized practice of law, and under RPC 7.1 a lawyer cannot make false or misleading communications about the lawyer or the lawyer's services. Accordingly, an attorney hired by an escrow company would not be providing legal services to the escrow companies' clients except to the extent authorized for a limited practice officer. Since only limited legal services can be offered, the escrow company would continue to report all fees from both the escrow and closing services under the retail sales tax classification.

(V) An attorney acts as the trustee for a testamentary trust which the attorney drafted. The attorney maintains the trust records, invests the assets of the trust, reviews distributions, accounts for trust assets, earnings, and distributions to the trust beneficiaries, and files all required returns and forms for the trust. The trust pays an annual fee for these services. On occasion, the attorney provides general legal advice to the trust which is billed to the trust at an hourly rate. After the death of the settlor, the primary activity engaged in by the attorney for this client is that of trustee. Accordingly, the gross income from the trust administration activities after the death of the settlor are taxed separately under the other service and business activities classification. The separately accounted for legal services are taxed under the selected business services rate.

(VI) An attorney acts as the trustee for an inter-vivos trust which the attorney drafted. After being appointed trustee, the attorney continues to represent the settlor of the trust (who is also the primary beneficiary) and provides legal advice to the trust. The attorney is paid an annual fee for duties as a trustee and an hourly rate for legal services. The initial relationship between the parties was that of attorney and client. The attorney continues to actively maintain this relationship and provides legal services to the settlor and the trust. Accordingly, the primary activity engaged in by the attorney for this client is that of attorney. The gross income from this activity would be taxed under the selected business services classification. However, if the inter-vivos trust was an excluded services trust (i.e., a charitable lead trust) any legal services provided the trust would be reported under the other service and business activities classification.

(4) **Retail sales tax**. Sales of tangible personal property to attorneys for use in rendering professional services are retail sales upon which the retail sales tax must be collected. Such sales include, among others, sales of office furniture and equipment, stationery, office supplies, law books, and reference materials.

(5) **Use tax.**

(a) The use tax applies upon the use of articles purchased or manufactured for use upon which retail sales tax has not been paid or collected. This includes, but is not limited to, the following:

(i) Materials used and consumed while rendering legal, arbitration, or mediation services; and

(ii) Office supplies and office equipment purchased by the firm for its own use.

(b) The use tax also applies to all purchases of tangible personal property acquired without payment of retail sales tax and resold to clients but not separately stated from legal services rendered on the agency's billing.

[Statutory Authority: RCW 82.32.300 and 34.05.410. 95-15-013, § 458-20-207, filed 7/7/95, effective 8/7/95. Statutory Authority: RCW 82.32.300. 85-20-012 (Order ET 85-4), § 458-20-207, filed 9/20/85; Order ET 70-3, § 458-20-207 (Rule 207), filed 5/29/70, effective 7/1/70.]

WAC 458-20-208 Accommodation sales. The term "accommodation sales" means only sales for resale by persons regularly engaged in the business of making sales of the type of property so sold to other persons similarly engaged in the business of selling such property where (1) the amount paid by the buyer does not exceed the amount paid by the seller to his vendor in the acquisition of the article and (2) the sale is made as an accommodation to the buyer to enable him to fill a bona fide existing order of a customer or is made within fourteen days to reimburse in kind a previous accommodation sale by the buyer to the seller.

The "amount paid by the seller to his vendor" may under some circumstances include certain actual costs incurred by the seller and billed as such to the buyer in addition to the invoice cost of the article sold at an accommodation sale. The facts concerning such added costs must be submitted to the department of revenue for specific rulings. The "amount paid by the seller to his vendor" shall not be reduced by the amount of any manufacturer's holdbacks or discounts received after an article has been sold at an accommodation sale even though such holdbacks or discounts may be retained by the seller.

Business and Occupation Tax

In computing tax under the wholesaling—Other classification, there may be deducted from the reported gross amount so much as represents receipts from accommodation sales. Each seller claiming this deduction must retain as a part of his sales records sufficient evidence to prove the nature of the transactions.

Revised June 1, 1970.

[Order ET 70-3, § 458-20-208 (Rule 208), filed 5/29/70, effective 7/1/70.]

WAC 458-20-209 Farming for hire and horticultural services performed for farmers. (1) **Introduction.** This section provides tax reporting information for persons performing horticultural services for farmers. Persons providing horticultural services to persons other than farmers should refer to WAC 458-20-226. Farmers and persons making sales to farmers may also want to refer to the following sections of chapter 458-20 WAC:

(a) WAC 458-20-122 (Sales of feed, seed, fertilizer, spray materials, and other tangible personal property for farm use);

(b) WAC 458-20-210 (Sales of agricultural products by farmers); and

(c) WAC 458-20-239 (Sales to nonresidents of farm machinery or implements).

(2) **Definitions.** For the purposes of this section, the following definitions apply:

(a) "Farmer" means any person engaged in the business of growing or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product whatsoever for sale. "Farmer" does not include a person using such products as ingredients in a manufacturing process, or a person growing or producing such products for the person's own consumption. The term does not include a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard, slaughter or packing house. "Farmer" does not include any person in respect to the business of taking, cultivating, or raising timber. RCW 82.04.213.

(b) "Agricultural product" means any product of plant cultivation or animal husbandry including, but not limited to a product of horticulture, grain cultivation, vermiculture, or viticulture. "Agricultural product" includes plantation Christmas trees, animals, birds, insects, or the substances obtained from such animals. RCW 82.04.213. On and after July 1, 1993, "agricultural product" includes products of "aquaculture" and animals that are "cultured aquatic products," as those terms are defined by RCW 15.85.020. Also effective July 1, 1993, "turf" was added to the definition of "agricultural product," and "animals intended to be pets" were specifically excluded. (See chapter 25, Laws of 1993 sp.s.)

(c) "Horticultural services" include services related to the cultivation of vegetables, fruits, grains, field crops, ornamental floriculture, and nursery products. The term "horticultural services" includes, but is not limited to, the following:

(i) Soil preparation services such as plowing or weed control before planting;

(ii) Crop cultivation services such as planting, thinning, pruning, or spraying; and

(iii) Crop harvesting services such as threshing grain, mowing and baling hay, or picking fruit.

(3) **Business and occupation tax.** Persons performing horticultural services for farmers are generally subject to the service and other business activities B&O tax upon the gross proceeds. However, if the person providing horticultural services also sells tangible personal property for a separate and distinct charge, the charge made for the tangible personal property will be subject to either the wholesaling or retailing B&O tax, depending on the nature of the sale. Persons making sales of tangible personal property to farmers should refer to WAC 458-20-122 to determine whether the wholesaling or retailing tax applies, and under what circumstances retail sales tax must be collected.

(a) A farmer who occasionally assists another farmer in planting or harvesting a crop is generally not considered to be engaged in the business of performing horticultural services. These activities are generally considered to be casual and incidental to the farming activity. For example, a farmer owning baling equipment which is used primarily for baling hay produced by the farmer, but who may occasionally accommodate neighboring farmers by baling small quantities of hay produced by them, is not considered to be in business with respect thereto.

(b) The extent to which horticultural services are performed for others is determinative of whether or not they are considered taxable business activities. Persons who advertise or hold themselves out to the public as being available to perform farming for hire will be considered as being engaged in business. For example, a person who regularly engages in baling hay or threshing grain for others is engaged in business and taxable upon the gross proceeds derived therefrom, irrespective of the amount of such business or that this person also does some farming of his or her own land.

(c) In cases where doubt exists in determining whether or not a person is engaged in the business of performing horticultural services, all pertinent information should be submitted to the department of revenue for a specific ruling.

(4) **Deferred sales or use tax.** If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred sales or use tax directly to the department.

(a) Purchases of machinery, machinery parts and repair, tools, and cleaning materials by persons performing horticultural services are subject to retail sales tax.

(b) Persons taxable under the service and other business activities B&O tax classification are defined as consumers of anything they use in performing their services. (Refer to RCW 82.04.190.) As such, these persons are required to pay retail sales or use tax upon the purchase of all items used in performing the service, such as fertilizers, spray materials, and baling wire, which are not sold separate and apart from the service they perform.

(5) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(a) John Doe is a wheat farmer owning threshing equipment which is generally used only for threshing his own wheat. Occasionally a neighbor's threshing equipment may break down and John will use his own equipment to assist the neighbor in completing the neighbor's wheat harvest. While John receives payment for providing the threshing assistance, this activity is considered to be a casual and isolated sale. John does not hold himself out as being in the business of performing farming (threshing) for hire. John Doe is not considered to be engaging in taxable business activities. The amounts John Doe receives for assisting in the harvest of his neighbors' wheat is not subject to tax.

(b) X Spraying applies fertilizer to orchards owned by Farmer A. The sales invoice provided to Farmer A by X Spraying reflects a "lump sum" amount with no segregation of charges for the fertilizer and the application. When reporting its tax liability, X Spraying would report the total charge under the service B&O tax classification. X Spraying must also remit retail sales or use tax upon the purchase of the fertilizer. The entire amount charged by X Spraying is for horticultural services, and X Spraying is considered the consumer of the fertilizer.

(c) Z Flying aerial sprays pesticides on crops owned by Farmer B. The sales invoice Z Flying provides to Farmer B segregates the charge for the pesticides and the charge for the application. When reporting its tax liability, Z Flying would report the charge for the application under the service B&O tax classification. The charge for the sale of the spray materials is subject to the wholesaling B&O tax, provided Z Flying obtains a resale certificate from Farmer B. (See WAC 458-20-122.) Z Flying's purchase of the pesticides is a purchase for resale and not subject to the retail sales tax.

[Statutory Authority: RCW 82.32.300. 94-07-050, § 458-20-209, filed 3/10/94, effective 4/10/94; 83-08-026 (Order ET 83-1), § 458-20-209, filed 3/30/83; Order ET 70-3, § 458-20-209 (Rule 209), filed 5/29/70, effective 7/1/70.]

WAC 458-20-210 Sales of agricultural products by farmers. (1) **Introduction.** This section explains the B&O

and retail sales tax applications to sales of agricultural products by farmers. Farmers should refer to WAC 458-20-101 to determine whether they must obtain a tax registration endorsement or a temporary registration certificate with the department of revenue. Farmers and persons making sales to farmers may also want to refer to the following sections of chapter 458-20 WAC:

(a) WAC 458-20-122 (Sales of feed, seed, fertilizer, spray materials, and other tangible personal property for farm use);

(b) WAC 458-20-209 (Farming for hire and horticultural services performed for farmers); or

(c) WAC 458-20-239 (Sales to nonresidents of farm machinery or implements).

(2) **Definitions.** For the purposes of this section, the following definitions apply:

(a) "Farmer" means any person engaged in the business of growing or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product whatsoever for sale. "Farmer" does not include a person using such products as ingredients in a manufacturing process, or a person growing or producing such products for the person's own consumption. The term does not include a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard, slaughter or packing house. "Farmer" does not include any person in respect to the business of taking, cultivating, or raising timber. RCW 82.04.213.

(b) "Agricultural product" means any product of plant cultivation or animal husbandry including, but not limited to a product of horticulture, grain cultivation, vermiculture, or viticulture. "Agricultural product" includes plantation Christmas trees, animals, birds, insects, or the substances obtained from such animals. RCW 82.04.213. On and after July 1, 1993, "agricultural products" includes products of "aquaculture" and animals that are "cultured aquatic products," as those terms are defined by RCW 15.85.020. Also effective July 1, 1993, "turf" was added to the definition of "agricultural product," and "animals intended to be pets" were specifically excluded. (See chapter 25, Laws of 1993 sp.s.)

(3) **Business and occupation tax.** Farmers selling agricultural products which they have not produced upon their own land or upon land which they have a present right of possession are subject to the provisions of the business and occupation tax, whether these products are sold at wholesale or retail. The business and occupation (B&O) tax applies to all sales of nonagricultural products. The B&O tax also applies to sales by persons operating a stockyard, slaughter or packing house who sell animal products raised by them.

(a) **Wholesale sales.** Farmers making wholesale sales of agricultural products produced by them upon land owned by them, or upon which they have a present right of possession, are not subject to the B&O tax. (See RCW 82.04.330.) However, this exemption does not apply to farmers who produce agricultural products for use in a manufacturing process, or who sell products at wholesale which they do not grow.

(b) **Retail sales.** Retail sales of agricultural products by farmers producing the same are subject to the retailing B&O tax. Thus, tax is due by any farmer engaging in the following activities:

(i) Conducting a roadside stand or a stand displaying agricultural products for sale at retail;

(ii) Posting signs on the premises, or through other forms of advertising soliciting sales at retail;

(iii) Operating a regular delivery route from which agricultural products are sold at retail from door to door; or

(iv) Maintaining an established place of business for the purpose of making retail sales of agricultural products.

(c) **Specific B&O tax exemptions.** There are specific B&O tax exemptions provided by statute for certain sales of agricultural products which do not otherwise qualify for exemption under RCW 82.04.330. The B&O tax does not apply to the following:

(i) Amounts received for the sale of hatching eggs or poultry by farmers producing the same, when these products are for use in the production for sale of poultry or poultry products. RCW 82.04.410.

(ii) Amounts received by hop growers or dealers for hops shipped outside the state of Washington for first use, even though the hops have been processed into extract, pellets, or powder in this state. RCW 82.04.337. However, the processor or warehouser of such products is not exempt on amounts charged for processing or warehousing such products.

(4) **Retail sales tax.** Farmers required to obtain a tax registration endorsement must collect and remit retail sales tax upon any retail sale for which a specific retail sales tax exemption is not provided. Retail sales tax exemptions are available for the following sales of agricultural products:

(a) Sales of food products for human consumption. This exemption also applies to sales of livestock sold for personal consumption as food. RCW 82.08.0293.

(b) Sales of pollen. RCW 82.08.0277.

(c) Sales of semen for use in the artificial insemination of livestock. RCW 82.08.0272.

(d) Sales of poultry for use in the production for sale of poultry or poultry products. RCW 82.08.0267.

(e) Sales of beef and/or dairy cattle for use by a farmer in producing an agricultural product. RCW 82.08.0259.

(f) Sales of purebred livestock for breeding purposes where the animals are registered in a nationally recognized breeding association. RCW 82.08.0259. Sellers claiming such an exemption should refer to WAC 458-20-122 for a description of the exemption certificate which must be retained by the seller.

(5) **Deferred sales or use tax.** If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred sales or use tax directly to the department.

(6) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(a) BG Orchards produces apples at its own orchards. Most apples are sold at wholesale, but BG does operate a seasonal roadside fruit stand at which it sells apples at retail. The gross proceeds derived from the wholesale sale of apples is exempt from the business and occupation tax. However, the retailing B&O tax applies to the retail sales of apples, notwithstanding these sales qualify for the food product sales tax exemption.

(b) AC, Inc. owns and operates a hatchery which produces poultry from eggs. The resulting poultry is then sold to egg producers. AC, Inc. is making retail sales of poultry. However, the gross proceeds received from these sales are exempt from both the retailing B&O and retail sales taxes under the provisions of RCW 82.04.410 and 82.08.0267, respectively.

[Statutory Authority: RCW 82.32.300. 94-07-048, § 458-20-210, filed 3/10/94 effective 4/10/94; 86-21-085 (Order ET 86-18), § 458-20-210, filed 10/17/86; 86-07-005 (Order ET 86-3), § 458-20-210, filed 3/6/86; 83-08-026 (Order ET 83-1), § 458-20-210, filed 3/30/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-210, filed 6/27/78; Order ET 70-3, § 458-20-210 (Rule 210), filed 5/29/70, effective 7/1/70.]

WAC 458-20-211 Leases or rentals of tangible personal property, bailments. (1) **Introduction**. This section explains how persons are taxable who rent or lease tangible personal property or rent equipment with an operator. RCW 82.04.050(4) was amended by chapter 25, Laws of 1993 sp. sess. to specifically include the rental of equipment with an operator as a retail sale. However, as will be explained in more detail below, some activities performed by operated equipment may be taxable under classifications other than retail sales if the operator and equipment perform activities as a prime contractor or subcontractor and these activities are specifically classified under other tax classifications by the revenue act.

(2) **Definitions.** (a) The terms "leasing" and "renting" are used interchangeably and refer generally to the act of granting to another the right of possession to and use of tangible personal property for a consideration. When "lease," "leasing," "lessee," or "lessor" are used in this section, these terms are intended to include rentals as well, even if not specifically stated.

Persons may not claim to be leasing or renting equipment to themselves since they are not granting to another the right of possession.

(b) The term "bailment" refers to the act of granting to another the temporary right of possession to and use of tangible personal property for a stated purpose without consideration to the grantor.

(c) The term "subcontractor" refers to a person who has entered into a contract for the performance of an act with the person who has already contracted for its performance. A subcontractor is generally responsible for performing the work to contract specification and determines how the work will be performed. In purchasing subcontract services, the customer is primarily purchasing the knowledge, skills, and expertise of the contractor to perform the task, as distinguished from the operation of the equipment.

(d) The term "rental of equipment with operator" means the provision of equipment with an operator to a lessee to perform work under the specific direction of the lessee. In such cases the lessor is generally not responsible for performing work to contract specification and does not determine how the work will be performed. Though not controlling, persons who rent equipment with an operator typically bill on the basis of the amount of time the equipment was used.

(e) The term "true object test" as it relates to this section means the analysis of a transaction involving equipment and an operator to determine if the lessee is simply purchasing the use of the equipment or purchasing the knowledge, skills, and expertise of the operator beyond those needed to operate the equipment. Even if it is determined that the customer is purchasing the knowledge, skills, and expertise of the operator, the transaction may still be a retail sale if the activity is specifically included by statute within the definition of a retail sale. This test can also be applied to rentals of tangible personal property when the seller performs some service in connection with the rental.

(f) The term "true lease" (often referred to as an "operating lease") refers to the act of leasing property to another for consideration with the property under the dominion and control of the lessee for the term of the lease with the intent that the property will revert back to the lessor at the conclusion of the lease.

(g) The term "financing lease" (often referred to as a "capital lease") typically involves the lease of property for a stated period of time with ownership transferring to the "lessee" at the conclusion of the lease for a nominal or minimal payment. The transaction is structured as a lease, but retains some elements of an installment sale. Financing leases will generally be taxed as if they are installment sales. The presence of some or all of the following factors indicates a financing lease with the transaction treated as an installment sale:

(i) The lessee is given an option to purchase the equipment, and, if so, the option price is nominal (sometimes referred to as a "bargain purchase option");

(ii) The lessee acquires equity in the equipment;

(iii) The lessee is required to bear the entire risk of loss;

(iv) The lessee pays all the charges and taxes imposed on ownership;

(v) There is a provision for acceleration of rent payments; and

(vi) The property was purchased specifically for lease to this lessee.

(3) A true lease, rental, or bailment of personal property does not arise unless the lessee or bailee, or employees or independent operators hired by the lessee or bailee actually takes possession of the property and exercises dominion and control over it. Where the owner/lessor of the equipment or the owner's/lessor's employees or agents maintain dominion and control over the personal property and actually operate it, the owner/lessor has not generally relinquished sufficient control over the property to give rise to a true lease, rental, or bailment of the property.

(4) RCW 82.04.050 excludes from the definition "retail sale" any purchases for the purpose of resale, "as tangible personal property." Persons who use equipment in performing services either as prime contractors or as subcontractors are not purchasing the equipment for purposes of reselling the equipment as tangible personal property. These contractors must pay retail sales tax or use tax at the time the equipment is acquired. Generally persons who rent equipment with an operator are not purchasing the equipment for resale as tangible personal property and must pay retail sales or use tax at the time the equipment is acquired. Persons renting operated equipment to others may purchase the equipment without payment of retail sales tax only when the

equipment is rented as tangible personal property. This can be demonstrated only when:

(a) The agreement between the parties is designated as an outright lease or rental, without reservations; and(b) The lessee acquires the right of possession, dominion, and control of the equipment, even to the exclusion of the lessor.

This last requirement is a factual question and the burden of proof is upon the owner/operator of the equipment to establish that the degree of control has been relinquished necessary to constitute a lessor-lessee relationship. Weight will be given to such factors as who has physical, operating control of the equipment; who is responsible for its maintenance, fueling, repair, storage, insurance (risk of loss or damage), safety and security of operation, and whether the operator is a loaned employee. If control of these factors is left with the owner/operator, then as a matter of fact, there has not been a relinquishing of control of the equipment to the degree necessary to create a lessor-lessee relationship for the rental of tangible personal property. This is true, even though the customer exercises some constructive control over such matters as when and where the equipment is used in connection with the construction work being performed, i.e., the contractor controls the job site.

(5) **Business and occupation (B&O) tax.**

(a) Outright rentals of bare (unoperated) equipment or other tangible personal property as well as leases of operated equipment are generally subject to the retailing classification of the business and occupation tax.

(i) When a lessor purchases equipment for bare rental or lease, the seller of the equipment is making a wholesale sale to the lessor and is required to obtain a resale certificate from the lessor as provided in WAC 458-20-102.

(ii) Under unique circumstances when equipment is rented for 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. The original seller is required to obtain a resale certificate for these wholesale sales.

(iii) Persons who purchase equipment for use as prime contractors or subcontractors are considered to be the consumers of these purchases. They are the consumers because they are not specifically reselling the tangible personal property. Persons selling equipment to these persons are retailers and subject to the retailing B&O tax.

(b) Persons who provide equipment or other tangible personal property and, in addition, operate the equipment or supply an employee to operate the same for a charge, without relinquishing substantial dominion and control to the customer, are providing a service that is classified as a retail sale unless the nature of the activity is specifically classified under another tax classification. Where a specific tax classification applies to the activity, the income is subject to the business and occupation tax (or public utility tax) according to the classification of the activities performed by the equipment and operator. In the case of building construction, it will be presumed that the rental of equipment with operator to a contractor is a retail sale unless the operator has responsibility for performing construction to contract specifications and assumes control over how the work will be performed.

(c) Under some circumstances, the leasing or renting of tangible personal property can be subject to the special "retailing of interstate transportation equipment" B&O tax classification. This classification applies if the sale is exempt from retail sales tax because of the specific tax exemptions of RCW 82.08.0261, 82.08.0262, or 82.08.0263. These exemptions apply primarily to sales to private or common carriers who are engaged in interstate or foreign commerce.

(d) The following examples show how the tax would be applied to certain situations.

(i) The charge made by a subcontractor to a prime construction contractor for use of equipment with an operator used in the paving of a parking lot as part of the construction of a building would be taxable under wholesaling—other when the subcontractor has the responsibility to perform the work to contract specification and determines how the work will be performed.

(ii) A contractor performing work to contract specification making a charge to a city for use of equipment and operator in the construction of a publicly-owned road would be taxable under public road construction.

(iii) Income for loading of a vessel using equipment with an operator is taxable under the stevedoring classification.

(iv) Income from transporting persons or property for hire by motor vehicle, including leasing or renting motor carrier equipment with driver, is generally taxable under either motor transportation or urban transportation.

(v) A customer rents scaffolding and the seller is responsible for a technician to setup, move, and dismantle it. This is the rental of tangible personal property since the true object of the transaction is having the scaffolding available for use by the customer. The customer also assumes dominion or control over the scaffolding by determining who will use the scaffolding and by controlling the use of the scaffolding.

(vi) Income from transporting persons or property for hire by vessel is not a retail equipment rental with operator.

(6) **Retail sales tax.** Persons who rent or lease tangible personal property to users or consumers are required to collect from their lessees the retail sales tax measured by gross income from rentals as of the time the rental payments fall due.

(a) RCW 82.04.050 excludes from the definition of the term "retail sale," purchases for resale "as tangible personal property." Thus the retail sales tax does not apply upon sales of tangible personal property to persons who purchase the same solely for the purpose of renting or leasing such property without operators. However, the retail sales tax applies upon sales to persons who provide such property with operators for a charge, without relinquishing substantial dominion and control, or who intend to make some use of the property other than or in addition to renting or leasing.

(b) Financing leases are treated for state tax purposes as installment sales. The retail sales tax applies to the full selling price. Refer to WAC 458-20-198.

(c) The retail sales tax does not apply to lease payments made by a seller/lessee under a sale/leaseback agreement in respect to property, equipment, and components used by the seller/lessee primarily in the business of canning, preserving, freezing, or dehydrating fresh fruits, vegetables, and fish. Nor does the sales tax apply to the purchase amount paid by the lessee pursuant to an option to purchase this specific kind of processing equipment at the end of the lease term. (See RCW 82.08.0295.) In both situations the availability of this special sales tax exemption is contingent upon the seller/lessee having paid retail sales tax or use tax at the time of acquisition of such special processing property, equipment, and components. The use tax will also not apply if the sales tax does not apply.

(7) **Use tax and/or deferred retail sales tax**. Consumers who rent or lease tangible personal property from others and who have not paid the retail sales tax to their lessors are liable for the retail sales tax or use tax on the amount of the rental payments as of the time the payments fall due unless an exemption from the tax applies. However, if the rental payments do not represent a reasonable rental value for the article, the taxable value shall be determined according to the rental charges made by other sellers of similar articles of like quality and character. This can include using the rate of return as a percentage of the capitalized value that lessors of the particular type of property are generally using in rate setting.

In some cases lessors may lease articles wherein the lease payments do not include property taxes or insurance. These leases are often referred to as "net leases" with the insurance and taxes paid directly by the lessee. If the lessor is the party insured and the party legally liable for payment of the taxes, the payments made directly by the lessee must be treated as additional consideration to the lessor and subject to the retailing and retail sales tax.

(a) Bailment. The value of tangible personal property held or used under bailment is subject to use tax if the property was purchased or acquired under conditions whereby the retail sales tax was not paid by the bailor. Tax liability is that of the bailor, or of the bailee if the bailor has not paid the tax. The measure of the tax to the bailor is the fair market value of the article at the time the article was first put to use in Washington. The measure of the use tax to the bailee for articles acquired by bailment is the reasonable rental with the value to be determined as nearly as possible according to the rental price at the place of use of similar products of like quality and character. In the absence of rental prices for similar products, the reasonable rental may be computed by prorating the retail selling price over the period of possession had by a bailee and payable in monthly installments. No further use tax is due upon property acquired by bailment after tax has been paid by the bailee or any previous bailee upon the full original value of the article.

(b) Use tax does not apply to use by a bailee of any article of tangible personal property which is entirely consumed in the course of research, development, experimental, and testing activities conducted by the user, providing the acquisition or use of such articles by the bailor are exempt from sales or use tax. (RCW 82.12.0265.)

(8) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances. In some situations it may be difficult to determine if the transaction is a retail equipment rental with operator. If in doubt as to whether a particular rental with an operator is a retail sale, taxpayers should contact the department for a specific ruling.

(a) ABC Crane is hired to supply a crane and operator to lift air conditioning equipment from the ground and hold it in place on the roof of a six-story building while the prime construction contractor bolts the unit down. ABC Crane's operator will retain control over the crane. ABC Crane has no responsibility to attach wiring, plumbing, or otherwise make the unit operational. ABC Crane is renting equipment with an operator since it has no responsibility to perform actual construction to contract specification. The activity of renting a crane with an operator is a service included within the definition of a retail sale and is not otherwise tax classified elsewhere within the revenue act. The purchase of the crane by ABC is also a retail transaction because ABC retained control over the crane and is not renting the crane as tangible personal property.

(b) ABC Crane is hired by a prime contractor to install a neon sign on the side of a new six-story building which is being constructed. ABC is responsible for making certain that the sign is correctly fastened to the side of the building and for installation of the electrical connections and meets the proper building codes. ABC is directly involved in construction and performs work to contract specification. Since the work is being done for the prime contractor for further resale, this is a wholesale sale, provided a resale certificate is obtained. Had ABC only been hired to hold the sign in place while the prime contractor fastened it, this would have been a retail rental of equipment with operator.

(c) XYZ Concrete Pumping is hired by a prime contractor to supply a concrete pump and operator to pump concrete from a premix concrete delivery truck to the location of the forms. XYZ has no responsibility to build forms, do the concrete finishing, or otherwise see that the concrete meets or is placed according to contract specifications. In short, the pump functions similarly to a wheelbarrow, but in a more efficient manner. XYZ is not a subcontractor and is making a retail rental of equipment with an operator.

(d) ABC Company purchases a crane which it rents to others as a bare rental. It periodically rents the crane to lessees on this basis for two years. Beginning in the third year of ownership of this crane, ABC decides to start providing these customers with an employee to operate the crane. The employee will operate under the direction of ABC with ABC retaining dominion and control over the crane. Does ABC owe use tax on the crane, and if so, what is the measure of the use tax?

ABC owes use tax upon the first use of the crane as a consumer. This occurred in the third year of ownership when ABC began supplying an operator. The measure of the tax is the retail market value of the crane at the time it is put to use by ABC.

(e) Farm Services, Inc. specializes in the cutting and baling of hay for farmers. The hay, after being cut and baled, is sold by the farmer. Farm Services is not making a retail rental of equipment with operator, but is engaged in a farming for hire activity which is taxable under the service and other business activities B&O tax classification. See WAC 458-20-209.

(f) Helicopter, Inc. contracts with Logs, Inc. to move logs from where they have been cut in the woods to a landing approximately one mile away where the logs will be sorted, loaded on trucks, and transported to a mill. Total control over the helicopter operation rests with Helicopter, Inc. This is not a rental of equipment with an operator, nor is it considered as an air transportation service. This activity is directly part of the timber extracting and harvesting activity and is taxable as extracting for hire.

(g) ABC Sound Productions provides lighting, amplifying equipment, and speakers as part of the services it sells to entertainment promoters. ABC also provides several operators of the equipment. This is a rental of equipment with operator. In applying the true object test, the promoter is primarily purchasing the use of the lighting and sound equipment. The performer or promoter could be expected to specify the color, location, and degree of lighting and may also request changes and modifications to the level of sound amplification during the performance.

(h) John Doe purchased a vessel which will be rented to others as a bare boat rental. The rentals will be arranged through an agent at a marina. The marina receives a commission based on any usage of the vessel, including usage by the owner. The rental of the boat is a retail sale when the boat is rented to others. The usage of the boat by John Doe is not a rental. Since John Doe will be using the boat at times for his own use, he may not purchase the boat for resale.

[Statutory Authority: RCW 82.32.300 and 82.08.010(1). 96-03-139, § 458-20-211, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 82.32.300. 87-17-015 (Order 87-4), § 458-20-211, filed 8/11/87; 83-08-026 (Order ET 83-1), § 458-20-211, filed 3/30/83; Order ET 71-1, § 458-20-211, filed 7/22/71; Order ET 70-3, § 458-20-211 (Rule 211), filed 5/29/70, effective 7/1/70.]

WAC 458-20-212 Insurance adjusters. The word "adjuster," as used herein, means a person licensed as such under the provisions of chapter 48.17 RCW.

Business and Occupation Tax

Persons engaged in business as insurance adjusters are taxable under the service and other business activities classification upon the gross income of the business.

There must be included within gross income all fees received for services rendered, and all charges recovered for expenses incurred in performing services, such as transportation costs, hotel, restaurant, telephone and telegraph charges, etc.

In computing tax liability, there may be deducted from gross income (if included therein) money or credits received as reimbursement of advances made for towing, storage of and repairs to damaged automobiles, or advances for doctor, hospital, and ambulance fees and charges, and other such expenditures made with respect to damaged property or injured persons, payment of which was the obligation of the insurer or the insured.

Revised May 1, 1947.

[Order ET 70-3, § 458-20-212 (Rule 212), filed 5/29/70, effective 7/1/70.]

WAC 458-20-213 Oil company bulk station agents. Persons operating oil company bulk stations under a commission agency agreement, billing in the name of the company they represent, hiring and paying employees or assistants, providing and maintaining trucks or other equipment are considered independent agents engaging in the business of distributing gas and oil rather than employees and are taxable under the service and other business activities classification of the business and occupation tax upon gross commissions.

Such persons are required to obtain a separate certificate of registration even though a branch certificate has been obtained for them by the oil company they represent, due to the fact that the oil company reports the wholesale sales made by such persons. Persons operating bulk stations under a commission agency agreement, who bill in their own name rather than in the name of the company they represent, are taxable as sellers either at wholesale or at retail, depending on the nature of the sales made.

Revised May 1, 1943.

[Order ET 70-3, § 458-20-213 (Rule 213), filed 5/29/70, effective 7/1/70.]

WAC 458-20-214 Cooperative marketing associations and independent dealers acting as agents of others with respect to the sale of fruit and produce. (1) Persons engaged in the business of buying and selling fruit or produce, as agents of others, are taxable under the provisions of the business and occupation tax and the retail sales tax as provided in this section. Tax is due on the business activities of such persons, irrespective of whether the business is conducted as a cooperative marketing association or as an independent produce agent.

(2) Persons who derive income from receiving, washing, sorting, packing, or otherwise preparing for sale, perishable horticultural products for others are also subject to business and occupation tax, except when such activities are performed for the growers of such products (RCW 82.04.4287.)

(3) Business and occupation tax.

(a) Retailing. Taxable with respect to the sale of ladders, picking bags, and similar equipment to consumers.

(b) Wholesaling. Taxable with respect to:

(i) The sale of boxes, nails, labels and similar supplies sold to growers for their use in packing fruit and produce for sale;

(ii) The sale of insecticides used as spray for fruits and produce;

(c) Warehousing. Taxable with respect to gross income from cold storage warehousing, but not including the rental of cold storage lockers. See also WAC 458-20-182.

(d) Service and other business activities. Taxable with respect to:

(i) Commissions for buying or selling;

(ii) Charges made for interest, no deduction being allowed for interest paid;

(iii) Charges for handling;

(iv) Charges for receiving, washing, sorting, and packing of fresh perishable horticultural products and the material and supplies used therein, when performed for persons other than the growers thereof;

(v) Rentals of cold storage lockers; and

(vi) Other miscellaneous charges, including analysis fees, but excepting actual charges made for foreign brokerage and bona fide charges for receiving, washing, sorting and packing fresh perishable horticultural crops and the materials and supplies used therein when performed for the grower, either as agent or independent contractor.

(4) Where a seller performs packing services for the grower and furnishes the materials and supplies used therein, the amount of the charge therefor is deductible, even though

the boxes and other packing material are loaned or charged to the grower prior to the time the fruit or produce is received for packing, provided that the boxes and packing materials are returned by the grower to the seller for use in packing fruit and produce for the grower.

(5) Retail sales tax.

(a) The retail sales tax applies to sales of ladders, picking bags, and other equipment sold to consumers, whether sold by associations to members, or by agents to their principals.

(b) Retail sales tax does not apply to sales of materials and supplies directly used by cooperative marketing associations, agents, or independent contractors for the purpose of packing fresh perishable horticultural products for the growers thereof. "Growers" are those persons described as exempt orchardists or farmers under RCW 82.04.330.

(c) Sales of food products are not subject to retail sales tax. See WAC 458-20-244.

(6) Use tax.

(a) The use tax applies upon the use by consumers of any article of tangible personal property which is subject to retail sales tax as noted above, but upon which retail sales tax has not been paid for any reason.

[Statutory Authority: RCW 82.32.300. 88-20-014 (Order 88-6), § 458-20-214, filed 9/27/88; 83-08-026 (Order ET 83-1), § 458-20-214, filed 3/30/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-214, filed 6/27/78; Order ET 70-3, § 458-20-214 (Rule 214), filed 5/29/70, effective 7/1/70.]

WAC 458-20-216 Successors, quitting business. Whenever any taxpayer quits business, sells out, exchanges or otherwise disposes of his business or his stock of goods, any tax payable hereunder shall become immediately due and payable, and such taxpayer shall, within ten days thereafter, make a return and pay the tax due. Any person who becomes a successor to such business shall become liable for the full amount of the tax and withhold from the purchase price a sum sufficient to pay any tax due from the taxpayer until such time as the taxpayer shall produce a receipt from the department of revenue showing payment in full of any tax due or a certificate that no tax is due. If the tax is not paid by the taxpayer within ten days from the date of sale, exchange or disposal, the purchaser or successor shall become liable for the payment of the full amount of tax. The payment thereof by the purchaser or successor shall, to the extent thereof, be deemed a payment upon the purchase price. If such payment is greater in amount than the purchase price, the amount of the difference shall become a debt due the purchaser or successor from the taxpayer.

A successor shall not be liable for any tax due from the person from whom he has acquired a business or stock of goods, if he gives written notice to the department of such acquisition and no assessment is issued by the department within six months of receipt of such notice against the former operators of the business and a copy thereof mailed to such successors.

The word "successor" means any person who shall, through direct or mesne conveyance, purchase or succeed to the business, or portion thereof, or the whole or any part of the stock of goods, wares, merchandise or fixtures or any interest therein of a taxpayer quitting, selling out, exchanging or otherwise disposing of his business. Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor.

The work "successor" includes all persons who acquire the taxpayer's equipment or merchandise in bulk, whether they operate the business or not, unless the property is acquired through insolvency proceedings or regular legal proceedings to enforce a lien, security interest, judgment, or repossession under a security agreement. The following factual situations illustrate the application of the foregoing:

(1) Taxpayer sells business and stock of goods. Purchaser is the successor.

(2) Taxpayer sells stock of goods in bulk. Purchaser is the successor, even though taxpayer continues in business through purchase of new stock.

(3) Taxpayer sells business, including fixtures, good will, etc., to one party and his stock of goods to another. Both purchasers are successors.

(4) Taxpayer sells one branch of the business and stock of goods, and continues to carry on his business at other locations. Purchaser is successor to the portion of the business purchased and liable for any tax incurred in the operation of that business.

(5) Taxpayer leaves business, including fixtures and stock of goods, which his landlord holds for unpaid rent. The landlord will be a successor unless he proceeds to foreclose his landlord's lien by posting notice and holding a sale by the sheriff.

(a) If the landlord, instead of foreclosing his lien, takes a bill of sale to all of the taxpayer's interest in the business or stock of goods in satisfaction of rent, he is a successor.

(b) If the landlord fails to foreclose his lien and sells the fixtures or stock of goods and the purchaser continues the business or a similar business, the purchaser is a successor.

(c) If the taxpayer does not leave any fixtures or stock of goods and the landlord engages in a like business in the same location or rents to a third person, neither the landlord nor the third person is a successor.

(6) Taxpayer purchases business, equipment, or stock of goods under a security agreement and the property is repossessed by the vendor, the vendor is not a successor.

(a) If the vendor sells to a third person who continues the business, the third persons is not a successor.

(b) If the taxpayer sells his equity under the security agreement to a third person, the third person is a successor.

(c) If the property is not repossessed and the vendor buys back the interest of the taxpayer, the vendor is a successor, and any third person who purchases the same from such vendor and continues the business is also a successor.

(7) Taxpayer dies or becomes bankrupt, goes into receivership, or makes an assignment for the benefit of creditors.

(a) The executor, administrator, trustee, receiver, or assignee is not a successor but stands in the place of the taxpayer and is responsible for payment of tax out of the proceeds derived upon disposition of the assets.

(b) A purchaser from the executor, administrator, trustee, receiver, or assignee is not a successor, unless under the terms of the purchase agreement he assumes and agrees to pay taxes and/or lien claims.

(8) Taxpayer is a contractor and is required to post a bond to insure completion of the contract. Taxpayer defaults on the contract and the bonding company completes it. The bonding company is a successor to the contractor to the extent of the contractor's liability for that particular contract and is also liable for taxes incurred in the completion of the contract.

Bulk transfers. Under chapter 62A.6 RCW persons whose principal business is the sale of merchandise from stock (including manufacturers) who transfer

(1) A major part of the materials, supplies, merchandise or other inventory of the business; or

(2) All or substantially all of the equipment of the business are required to furnish to the transferee a sworn list of all creditors, showing their names, addresses, and amounts owed. The parties (both the transferor and transferee) are then required to prepare a schedule of property being transferred, the schedule to be sworn to by the transferor. The list of creditors and schedule of property must be

(a) Preserved by the transferee for 6 months available for inspection and copying by any creditor,

(b) Filed by the transferee with the county auditor, and

(c) Served by the transferee on the department of revenue.

In addition to the foregoing, the transferee must, at least 10 days prior to taking possession of the goods or making payment for them, give notice of the transfer to

(1) All persons shown on the list of creditors,

(2) Any other persons known to hold or assert claims against the transferor, and

(3) The department of revenue.

The notice to creditors must also be filed with the county auditor and shall state

(1) That a bulk transfer is about to be made,

(2) Names and business addresses of the transferor and transferee,

(3) Whether debts of the transferor will be paid in full as they fall due and if so (a) the location and general description of the property to be transferred, (b) the estimated total of the transferor's debts, and (c) certain other information specified by RCW 62A.6-107.

Revised June 1, 1970.

[Order ET 70-3, § 458-20-216 (Rule 216), filed 5/29/70, effective 7/1/70.]

WAC 458-20-217 Lien for taxes. (1) Any tax due and unpaid, and all increases and penalties thereon, constitute a debt to the state and may be collected by court proceedings in the same manner as any other debt, which remedy is in addition to any and all other remedies.

(2) **Tax warrants**. When a warrant issued under RCW 82.32.210 and 82.32.220 has been filed with the clerk of the superior court and entered in the judgment docket, the warrant becomes a specific lien upon all goods, wares, merchandise, fixtures, equipment or other personal property used in the conduct of the business of the taxpayer, including property owned by third persons who have a beneficial interest, direct or indirect in the operation thereof, and no sale or transfer of such personal property in any way affects the lien. However, the lien is not superior to bona fide interests of third persons which had vested prior to the filing of the warrant when such third persons do not have a beneficial interest, direct or indirect, in the operation of the business, other than securing the payment of a debt or the receiving of a regular rental on equipment; provided that "bona fide interest of third persons" shall not include any mortgage of real or personal property or any other credit transaction that results in the mortgagee or the holder of the security acting as the trustee for unsecured creditors of the taxpayer mentioned in the warrant who executed such chattel or real property mortgage or the document evidencing such credit transaction.

(a) Thus, where an oil company leases a filling station and other equipment to an operator under conditions whereby the operator is required to sell, or does sell, the products of the lessor, the lien will attach to the personal property leased by the oil company. Likewise, where the owner of a tavern grants to another a concession to operate the lunch counter therein, the lien for unpaid taxes, increases, and penalties with respect to the operation of the lunch counter will attach to any equipment, fixtures, or other personal property owned by the tavern keeper but used by the concessionaire in the conduct of the business. Similarly, the lien attaches to a stock of merchandise supplied to a dealer by a distributor, manufacturer, bank or finance company whether on consignment or under a security agreement where it appears that the distributor, manufacturer, bank or finance company has financed the dealer by means of capital loans or has in any other way aided or assisted in maintaining the dealer in business. The amount of the warrant also becomes a lien upon the title to and interest in all other real and personal property of the taxpayer against whom it is issued and is the same as a judgment in a civil case docketed in the office of the clerk.

(b) Warrants so docketed are sufficient to support the issuance of writs of garnishment in favor of the state, provided the taxpayer has not been denied an opportunity to be heard regarding the assessment.

(3) **Withhold and deliver**. The department of revenue is authorized to issue to any person, or to any political subdivision or department of the state, a notice and order to withhold and deliver property of any kind whatsoever when there is reason to believe that there is in the possession of such person, political subdivision or department, property which is or shall become due, owing or belonging to any taxpayer against whom a warrant has been filed. The notice and order to withhold and deliver shall constitute a continuing levy on such property until the department shall issue its release of such levy.

(a) The notice and order to withhold and deliver may be served by the sheriff of the county wherein service is made, or by his deputy, or by any authorized representative of the department of revenue. The notice and order to withhold and deliver may also be served by certified mail, return receipt requested, by the sheriff, deputy, or authorized representative of the department. Persons upon whom service has been made are required to answer the notice within twenty days exclusive of the day of service. The answer must be under oath and in writing. If such answer states that it cannot be presently ascertained whether, in fact, any property is or shall become due, owing, or belonging to such taxpayer, the persons served herein are required to further answer when such fact can be ascertained with reasonable certainty.

(b) Property which may be subject to the claim of the department must be delivered forthwith to the department or its duly authorized representative upon demand, to be held in trust by the department for application on the indebtedness involved, or for return, without interest, in accordance with final determination of liability. In the alternative, there must be furnished a good and sufficient bond satisfactory to the department conditioned upon final determination of liability.

(c) Failure of any person to make answer to an order to withhold and deliver within the prescribed time permits the court to render a judgment by default for the full amount claimed by the department in the notice to withhold and deliver, together with costs.

(4) **Probate, insolvency, assignment for the benefit of creditors, or bankruptcy.** In all of these cases the claim of the state for unpaid taxes and increases and penalties thereon is a lien upon all real and personal property of the taxpayer, and the mere existence of such cases or conditions is sufficient to create the lien without any prior or subsequent action by the state, and in all such cases it is the duty of all administrators, executors, guardians, receivers, trustees in bankruptcy or assignees for the benefit of creditors, to notify the department of the existence thereof within thirty days from the date of their appointment and qualification. In the event such notice is not timely given, such persons become personally liable for the payment of the taxes and all increases and penalties.

The lien attaches as of the date of assignment or of the initiation of court proceedings, but shall not affect the validity or priority of any earlier lien that may have attached previously in favor of the state under any other provision of the Revenue Act.

(5) **Public improvement contracts.** The amount of all taxes, increases and penalties due or to become due under any chapter of the Revenue Act from a contractor or his successors or assignees with respect to a public improvement contract wherein the contract price is $20,000 or more is a lien prior to all other liens upon the amount of the retained percentage withheld by the disbursing officers, and the amount of all other taxes, increases and penalties due and owing from the contractor is a lien upon the balance of such retained percentage after all other statutory lien claims have been paid.

Any state, county or municipal officer charged with the duty of disbursing or authorizing the payment of public funds, before making final payment of the retained percentage to any person performing any such contract, or to his successors or assignees, must require the person to secure from the department a certificate that all taxes, increases and penalties due from such person, and all taxes to become due with respect to such contract have been paid in full or that they are, in the department's opinion, readily collectible without recourse to the lien and that said lien is therefore released.

(6) **Trust fund accountability for retail sales tax.**

(a) **Background**: This rule is promulgated pursuant to RCW 82.32.300 which directs that the department of revenue has the authority to implement the provisions of RCW 82.32.237, effective May 1, 1987.

(b) **Generally**: This rule implements legislation which is intended to enforce the timely remittance of retail sales tax to the department of revenue. The statute accomplishes that intent by imposing personal liability for retail sales tax collected by the retail seller upon those persons who (i) control or supervise the collection of retail sales tax and hold the same in trust pursuant to RCW 82.08.050 or (ii) are charged with the responsibility for the filing of returns or the payment to the state of retail sales tax held in trust.

(c) **Definitions**:

(i) **Person**: Person means "person" as defined in RCW 82.04.030. The use of the term person in the singular may mean persons or vice versa where appropriate in the circumstances or where the content requires the same.

(ii) **Collected**: The term "collected" shall mean actually and physically controlled. A corporation shall be deemed to have actual and physical control if possession shall be in an agent of the corporation.

(iii) **Termination**: The term "termination" means revocation of the corporation's certificate of registration, the first act of liquidation or distribution of corporate assets with the intent to cease any further business activity after liquidation or distribution, the filing of a petition in bankruptcy court for complete liquidation or any other act evidencing the intent to quit business or close business activity.

(iv) **Abandonment**: The term "abandonment" means the officers, directors, and shareholders have relinquished all dominion and control of the corporate affairs and there is no one who acknowledges authority to act for or on behalf of the corporation.

(v) **Dissolution**: The term "dissolution" means statutory dissolution pursuant to chapter 23A.28 RCW.

(d) **Requirements for assessment**: Before the department may assess trust fund accountability for retail sales tax held in trust, the statute requires that the underlying retail sales tax liability be that of a corporation. Second, there must also be a termination, dissolution or abandonment of the corporation. Third, the person against whom personal liability is sought willfully failed to pay or to cause to be paid retail sales tax collected and held in trust. Fourth, the person against whom personal liability is sought is a person who has control or supervision over the trust funds or is responsible for reporting or remitting the retail sales tax. Finally, there must be no reasonable means to collect the tax directly from the corporation.

(e) **Persons liable**: Any person who controls or supervises the collection of retail sales tax or is charged with the responsibility for the filing of returns or the payment of retail sales tax collected and held in trust, may be personally liable to the state for the retail sales tax which was collected, held in trust, pursuant to RCW 82.08.050 and not paid over to the state. There may be more than one person liable under this statute if the requirements as to each are present.

(i) "Control or supervision of the collection of retail sales tax" shall mean the person who has the power and responsibility under corporate bylaws, job description or other proper delegation of authority (as established by written documentation or through a course of conduct) to collect, account and deposit the corporate revenue and to make payment of the retail sales tax to the department of revenue. The term means significant rather than exclusive control or supervision. Thus, the term shall not mean the sales clerk who actually collects the funds from the customer or the person whose only responsibility is to take control of the funds and deposit the same into the bank, but it shall include the treasurer of the corporation if it is that person's responsibility to assure that the revenue is collected from the cash registers, tills or similar collection devices and that the amounts are deposited into the corporate account. It may also include the bookkeeper if the bookkeeper has the responsibility to collect, account and deposit the corporate revenue. In both examples, it is the treasurer or bookkeeper who have the significant control or supervision.

(ii) "Responsibility for the filing of returns or the payment of the retail sales tax collected and held in trust" shall mean the person who has the authority and discretion to file state excise tax returns and to determine which corporate debts should be paid. The person who signs the state excise tax returns or signs checks on behalf of or for the corporation may be a responsible party if that person also has the authority and discretion to determine which corporate debts should be paid. If the corporate account requires the signature of more than one person, then all such signatories may be a responsible party for trust fund accountability purposes. A member of the board of directors, a shareholder or an officer may also become a responsible party if the director, shareholder or officer actually approves the payment of corporate debts whereby the result of such approval is to pay the trust funds to someone other than the department of revenue.

(f) **Extent of personal liability**: If a person is found personally liable for the retail sales tax held in trust, such person shall be liable for any retail sales tax held in trust including interest and penalties which have accrued or may be accruing on such taxes. The liability of such person shall be limited to only the retail sales tax held in trust (and the interest and penalties accruing thereon) for the time that the person had control or supervision over the retail sales tax collected or had responsibility for the filing of returns or the payment to the state of the retail sales tax held in trust.

(i) The amount of liability assessable against a person for trust fund accountability shall be the amount of the retail sales tax actually collected and held in trust (during the period for which personal liability is sought) plus any penalties and interest accruing on said amount. For corporations who report state excise taxes on the accrual basis or corporations who report retail sales tax in accordance with "method three" of WAC 458-20-199, the amount of the personal liability shall be reduced by payments of retail sales tax actually remitted to the state but not yet collected from the customer.

(ii) If the department has determined that there is no reasonable means of collection of the tax directly from the corporation and the corporation holds property which has a readily ascertainable value, then the department shall reduce the amount of assessable personal liability by an amount that represents the fair market value of such corporate property. The fair market value determined by the department shall be rebuttable by a preponderance of the evidence through persons who are competent and otherwise qualified to give testimony as to value. The term "fair market value" shall have its usual and customary meaning less reasonable costs of liquidation, if applicable.

(g) **Willfully fails to pay or to cause to be paid**: The statute defines the term "willfully fails to pay or to cause to be paid" as an intentional, conscious and voluntary course of action. The failure to pay over such tax must be the result of a willful failure to pay or to cause to be paid to the state any retail sales tax **collected** on retail sales by the corporation as opposed to retail sales tax due on the corporation's consumable items.

For example, if the treasurer knows that the retail sales tax must be remitted to the state on the twenty-fifth day of the following month, but rather than holding the funds for payment on the twenty-fifth, uses such funds to pay for any other obligation such as the payroll or additional inventory, such act is an intentional, conscious and voluntary course of action. If there are insufficient funds on the twenty-fifth day of the following month to pay over to the state, the treasurer will have willfully failed to pay or to cause to be paid retail sales tax held in trust.

(h) **Circumstances beyond the control**: Any person, who shall otherwise meet the requirements for personal liability, shall not be personally liable if the failure to pay or to cause to be paid is the result of circumstances beyond the control of such person and that person has exercised good faith in collecting and attempting to hold the funds in trust. The following examples are provided for illustrative purposes only and they do not, in any way, limit the scope of the circumstances which may be beyond the control of the person against whom liability is sought. Each case will be determined in accordance with its particular facts and circumstances.

(i) Immediately prior to timely payment of the retail sales tax, unknown to the person against whom personal liability is sought, the Internal Revenue Service levies and seizes the money. Such occurrence is beyond the control of the person against whom personal liability is sought.

(ii) Immediately prior to timely payment of the retail sales tax, unknown to the person against whom personal liability is sought, the person learns that the business is the victim of an embezzler, the criminal act of which has been reported and duly documented by the local law enforcement authority. Such occurrence is beyond the control of the person against whom personal liability is sought.

(iii) Immediately prior to timely payment of the retail sales tax, unknown to the person against whom personal liability is sought, the bank in which the retail sales tax has been deposited exercises a right of offset and removes the money from the taxpayer's control. Such occurrence is beyond the control of the person against whom personal liability is sought.

(iv) Prior to the date for timely payment of the retail sales tax, the person against whom personal liability is sought agrees to a judgment against the corporation and allows the judgment creditor to garnish the funds held in trust and become a preferred creditor over the state. Such occurrence lacks good faith and is not beyond the control of the person against whom personal liability is sought.

(i) **No reasonable means of collection**: Before the department is authorized to pursue personal liability for retail sales tax under the trust fund theory, the department must find that there is no reasonable means of collecting the retail sales tax directly from the corporation.

"No reasonable means of collection" shall mean that the burden to pursue the corporation's assets may outweigh the benefits to be achieved. Inconvenience of collection alone is insufficient to establish the absence of a reasonable means of collection. This standard, however, does not require that the department liquidate all assets of the corporation before it can pursue recourse under the theory of trust fund accountability. A lack of a reasonable means of collection is illustrated by the following examples. (These examples are used for illustration only and they shall not be considered the only circumstances under which the meaning of the phrase shall apply.)

(i) Assume that the corporation owned real estate upon which there were first and second mortgages. The value of the property may satisfy the first and second lien holders, but it is doubtful that, after costs of sale, there would be sufficient value remaining to satisfy all or a part of the trust fund liability. A reasonable means of collection is not present, because the cost to pursue the corporation's real property may produce no value with which to satisfy any or all of the liability.

(ii) Assume that the corporation owned miscellaneous office furniture and equipment. The value of the property is negligible. A reasonable means of collecting the tax is not present, because the burden to liquidate all assets in order to recover a negligible value outweighs the benefit of a few dollars to be recovered.

(j) **Notice of personal liability**: The department shall give the person against whom personal liability is sought notice in accordance with RCW 82.32.130. The notice shall include the taxpayer's name as well as registration, tax assessment and tax warrant numbers, if any, of the corporation; the name of the person against whom the personal liability is sought; a statement that there is no reasonable means of collection and the reasons for such conclusion; and the capacity (control/supervision or responsible person) upon which the department seeks to base the personal liability.

(k) **Appeal of trust fund accountability assessment**: Any person who has received an assessment under the authority of RCW 82.32.237, and this section shall have the right to proceed under WAC 458-20-100 and any other remedy found in RCW 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

[Statutory Authority: RCW 82.32.300. 88-01-050 (Order 87-9), § 458-20-217, filed 12/15/87; Order ET 71-1, § 458-20-217, filed 7/22/71; Order ET 70-3, § 458-20-217 (Rule 217), filed 5/29/70, effective 7/1/70.]

WAC 458-20-218 Advertising agencies. Advertising agencies are primarily engaged in the business of rendering professional services, but may also make sales of tangible personal property to their clients or others or make purchases of such articles as agents in behalf of their clients. Articles acquired or produced by advertising agencies may be for their own use in connection with the rendition of an advertising service or may be for resale as tangible personal property to their clients.

Business and Occupation Tax

The gross income received for advertising services, including commissions or discounts received upon articles purchased as agents in behalf of clients, is taxable under the service and other business activities classification. (See WAC 458-20-144 for discounts or commissions allowed by printers.) Included in this classification are amounts attributable to sales of tangible personal property, unless charges for such articles are separately stated in billings rendered to clients.

The retailing or wholesaling classification applies to articles of tangible personal property sold to persons for whom no advertising service is rendered and also to charges to clients for such articles if separately stated from charges for advertising services in billings rendered.

The manufacturing classification applies to articles manufactured for sale or commercial or industrial use (see WAC 458-20-134), and also to interstate sales of manufactured articles separately stated from advertising services. (General principles covering sales or services to persons in other states are contained in WAC 458-20-193.)

Retail Sales Tax

The retail sales tax applies upon all sales of plates, engravings, electrotypes, etchings, mats, and other articles to advertising agencies for use by them in rendering an advertising service and not resold to clients.

The retail sales tax must be paid by advertising agencies to vendors upon retail purchases made by them as agent in behalf of clients.

Advertising agencies are required to collect the retail sales tax upon charges taxable under the retailing classification as indicated hereinabove, and resale certificates may be given by advertising agencies in respect to purchases of such articles.

Use Tax

The use tax applies upon the use of articles purchased or manufactured for use in rendering an advertising service. Articles acquired without payment of retail sales tax which are resold to clients, but not separately stated from charges for advertising service, are also subject to use tax.

[Statutory Authority: RCW 82.32.300. 83-08-026 (Order ET 83-1), § 458-20-218, filed 3/30/83; Order ET 70-3, § 458-20-218 (Rule 218), filed 5/29/70, effective 7/1/70.]

WAC 458-20-221 Collection of use tax by retailers and selling agents. (1) **Statutory requirements**. RCW 82.12.040(1) provides that every person who maintains a place of business in this state, maintains a stock of goods in this state, or engages in business activities within this state must obtain a certificate of registration and must collect use tax from purchasers at the time it makes sales of tangible personal property for use in this state. The legislature has directed the department of revenue to specify, by rule, activities which constitute engaging in business activities within this state. These are activities which are sufficient under the Constitution of the United States to require the collection of use tax.

(2) **Definitions**.

(a) "Maintains a place of business in this state" includes:

(i) Maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business; or

(ii) Soliciting sales or taking orders by sales agents or traveling representatives.

(b) "Engages in business activities within this state" includes:

(i) Purposefully or systematically exploiting the market provided by this state by any media-assisted, media-facilitated, or media-solicited means, including, but not limited to, direct mail advertising, unsolicited distribution of catalogues, computer-assisted shopping, telephone, television, radio or other electronic media, or magazine or newspaper advertisements or other media; or

(ii) Being owned or controlled by the same interests which own or control any seller engaged in business in the same or similar line of business in this state; or

(iii) Maintaining or having a franchisee or licensee operating under the seller's trade name in this state if the franchisee or licensee is required to collect use tax.

(c) "Purposefully or systematically exploiting the market provided by this state" is presumed to take place if the gross proceeds of sales of tangible personal property delivered from outside this state to destinations in this state exceed five hundred thousand dollars during a period of twelve consecutive months.

(3) **Liability of buyers for use tax**. Persons in this state who buy articles of tangible personal property at retail are liable for use tax if they have not paid sales tax. See WAC 458-20-178.

(4) **Obligation of sellers to collect use tax**. Persons who obtain a certificate of registration, maintain a place of business in this state, maintain a stock of goods in this state, or engage in business activities within this state are required to collect use tax from persons in this state to whom they sell tangible personal property at retail and from whom they have not collected sales tax. Use tax collected by sellers shall be deemed to be held in trust until paid to the department. Any seller failing to collect the tax or, if collected, failing to remit the tax is personally liable to the state for the amount of tax. (For exceptions as to sale to certain persons engaged in interstate or foreign commerce see WAC 458-20-175.)

(5) **Local use tax**. Persons who are obligated to collect use tax solely because they are engaged in business activities within this state as defined in subsection (2)(b)(i) of this section may elect to collect local use tax at a uniform statewide rate of .005 without the necessity of reporting taxable sales to the local jurisdiction of delivery. Amounts collected under the uniform rate shall be allocated by the department to counties and cities in accordance with ratios reflected by the distribution of local sales and use taxes collected from all other taxpayers. Persons not electing to collect at the uniform state-wide rate or not eligible to collect at the uniform state rate shall collect local use tax in accordance with WAC 458-20-145.

(6) **Reporting frequency**. Persons who are obligated to collect use tax solely because they are engaged in business activities within this state as defined in subsection (2)(b) of this section shall not be required to file returns and remit use tax more frequently than quarterly.

(7) **Selling agents**. RCW 82.12.040 of the law provides, among other things, as follows:

(a) "Every person who engages in this state in the business of acting as an independent selling agent for persons who do not hold a valid certificate of registration, and who receives compensation by reason of sales of tangible personal property of his principals made for use in this state, shall, at the time such sales are made, collect from the purchasers the tax imposed under this chapter, and for that purpose shall be deemed a retailer as defined in this chapter."

(b) However, in those cases where the agent receives compensation by reason of a sale made pursuant to an order given directly to his principal by the buyer, and of which the agent had no knowledge at the time of sale, the said agent will be relieved of all liability for the collection of or payment of the tax. Furthermore, in other cases where payment is made by the buyer direct to the principal and the agent is unable to collect the tax from the buyer, the agent will be relieved from all liability for the collection of the tax from the buyer and for payment of the tax to the department, provided that within ten days after receipt of commission on any such sale, the agent shall forward to the department a written statement showing the following: Name and address of purchaser, date of sale, type of goods sold, and selling price. (Agents may avoid all liability for collection of this tax, provided their principals obtain a certificate of registration.)

(8) **Time and manner of collection**. The use tax is computed upon the value of the property sold. At the time of making a sale of tangible personal property, the use of which is taxable under the use tax, the seller must collect the tax from the purchaser and upon request give to the purchaser a receipt therefor. This receipt need not be in any particular form, and may be an invoice which identifies the property sold, shows the sale price thereof and the amount of the tax. It is a misdemeanor for a retailer to refund, remit, or rebate to a purchaser or transferee, either directly or indirectly, by whatever means, all or any part of the use tax.

(9) **Effective date**. This rule shall take effect on April 1, 1989.

[Statutory Authority: RCW 82.32.300. 89-06-016 (Order 89-4), § 458-20-221, filed 2/23/89, effective 4/1/89; 83-08-026 (Order ET 83-1), § 458-20-221, filed 3/30/83; Order ET 70-3, § 458-20-221 (Rule 221), filed 5/29/70, effective 7/1/70.]

WAC 458-20-222 Veterinarians. Veterinarians are primarily engaged in the business of rendering professional services, although many veterinarians, in addition to such services, also sell medicines and supplies for use in the care of animals.

Business and Occupation Tax

Taxable under the retailing classification upon gross sales of medicine and supplies when such articles are sold for a specific charge and not used by the veterinarian in the rendition of services.

Taxable under the service and other business activities classification upon gross income derived from the rendition of professional services and from the boarding and training of animals.

Retail Sales Tax

Veterinarians purchase medicines, bandages, splints and other supplies primarily for use by them in rendering professional services. Sales of such articles to veterinarians are retail sales and the retail sales tax applies thereto.

However, veterinarians are required to collect the retail sales tax when such articles are sold by them for a specific charge and not in connection with the rendition of a professional service.

Sales of semen for use in the artificial insemination of livestock are exempt from sales tax.

(See WAC 458-20-102 on resale certificates, particularly that portion under the heading purchases for dual purpose.)

[Statutory Authority: RCW 82.32.300. 83-08-026 (Order ET 83-1), § 458-20-222, filed 3/30/83; Order ET 70-3, § 458-20-222 (Rule 222), filed 5/29/70, effective 7/1/70.]

WAC 458-20-223 Persons performing contracts on the basis of time and material, or cost-plus-fixed-fee.

Business and Occupation Tax

Such persons are subject to business tax in accordance with the principles laid down in the department of revenue's published rules, as follows:

As to manufacturing or processing for hire, WAC 458-20-136;

As to constructing and repairing of new or existing buildings, WAC 458-20-170;

As to building or improving of publicly-owned roads, etc., WAC 458-20-171;

As to contracts involving only the grading and clearing of land, WAC 458-20-172;

As to service and other business activities, WAC 458-20-224.

The measure of the tax under each of the foregoing types of contracts is the amount of profit or fixed fee received, plus the amount of reimbursements or prepayments received on account of sales of materials and supplies, on account of labor costs, on account of taxes paid, on account of payments made to subcontractors, and on account of all other costs and expenses incurred by the contractor, plus all payments made by his principal direct to a creditor of the contractor in payment of a liability incurred by the latter.

Retail Sales Tax

The retail sales tax applies upon sales made to or by contractors to the extent set forth in said WAC 458-20-136, 458-20-170, 458-20-171, 458-20-172 and 458-20-224.

[Statutory Authority: RCW 82.32.300. 83-08-026 (Order ET 83-1), § 458-20-223, filed 3/30/83; Order ET 70-3, § 458-20-223 (Rule 223), filed 5/29/70, effective 7/1/70.]

WAC 458-20-224 Service and other business activities. (1) Chapter 82.04 RCW imposes a tax upon every person for the privilege of engaging in business in this state. Persons engaged in the certain specifically named business activities are subject to a tax rate set out in the statute which is measured by value of products, gross sales or gross income, e.g.: Extracting, manufacturing, retailing, wholesaling, printing and publishing, and building and repairing of publicly owned streets and roads.

(2) Persons engaged in any business activity, other than or in addition to those for which a specific rate is provided in the statute, are taxable under a classification known as service and other business activities, and so designated upon return forms. In general, it includes persons rendering professional or personal services to persons (as distinguished from services rendered to personal property of persons) such as accountants, aerial surveyors and map makers, agents, ambulances, appraisers, architects, assayers, attorneys, automobile brokers, barbers, baseball clubs, beauty shop owners, brokers, chemists, chiropractors, collection agents, community television antenna owners, court reporters, dentists, detectives, employment agents, engineers, financiers, funeral directors, refuse collectors, hospital owners, janitors, kennel operators, laboratory operators, landscape architects, lawyers, loan agents, music teachers, oculists, orchestra or band leaders contracting to provide musical services, osteopathic physicians, physicians, real estate agents, school bus operators, school operators, sewer services other than collection, stenographers, warehouse operators who are not subject to other specific statutory tax classifications, teachers, theater operators, undertakers, veterinarians, and numerous other persons.

(3) It does not include persons engaged in the business of cleaning, repairing, improving, etc., the personal property of others, such as automobile, house, jewelry, radio, refrigerator and machinery repairmen, laundry or dry cleaners. Also, it does not include certain personal and professional services specifically included within the definition of the term "sale at retail" in RCW 82.04.050, such as amusement and recreation businesses of a participatory nature (see WAC 458-20-183); abstract, title insurance and escrow businesses, credit bureau businesses and automobile parking and storage garage businesses. Furthermore, it does not include persons who render services to others in the capacity of employees as distinguished from independent contractors. (See WAC 458-20-105.)

(4) Business and occupation tax. Persons engaged in any business activity, other than or in addition to those for which a specific rate is provided in chapter 82.04 RCW, are taxable under the service and other business activities classification upon gross income from such business.

(5) Persons engaged in a public service business taxable under chapter 82.16 RCW (see WAC 458-20-179) are exempt from business tax under chapter 82.04 RCW with respect to such businesses.

(6) Retail sales tax. The retail sales tax applies upon all sales of tangible personal property made to persons for use or consumption in performing a business activity which is taxable under the service and other business activities classification of chapter 82.04 RCW.

[Statutory Authority: RCW 82.32.300. 86-18-069 (Order 86-16), § 458-20-224, filed 9/3/86; 83-17-099 (Order ET 83-6), § 458-20-224, filed 8/23/83; 83-07-032 (Order ET 83-15), § 458-20-224, filed 3/15/83; Order ET 70-3, § 458-20-224 (Rule 224), filed 5/29/70, effective 7/1/70.]

WAC 458-20-225 Pattern makers.

Business and Occupation Tax

Manufacturing. Pattern makers are taxable under the manufacturing classification with respect to making patterns.

Retail Sales Tax

Sales by pattern makers of their products to foundries, machine shops, machinery or equipment manufacturers, inventors or other persons who use or consume the patterns in producing, or in having produced, articles for sale or use are retail sales upon which the retail sales tax must be collected, irrespective of whether, after such use, such patterns are sold or title transferred along with the articles produced.

Sales by supply houses to pattern makers of lumber, nails, glue, steel, shellac or other materials becoming a component part of the patterns are sales for further processing. Accordingly, the retail sales tax is not collected on such sales by the supply houses.

On the other hand, sales by supply houses to pattern makers of machinery, equipment, tools and other articles or materials which are used in the production of the patterns, but do not become a component part thereof, are retail sales upon which the retail sales tax must be collected.

Revised June 1, 1970.

[Order ET 70-3, § 458-20-225 (Rule 225), filed 5/29/70, effective 7/1/70.]

WAC 458-20-226 Landscape and horticultural services. (1) **Introduction.** This section provides tax reporting instructions for persons who provide landscape and horticultural services. Chapter 39, Laws of 1995 amended RCW 82.04.050 to exclude from a retail sale the pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility. This change became effective July 1, 1995. Landscape maintenance and horticultural services became subject to the retail sales tax effective July 1, 1993, and previously were taxed under the service and other business activities classification. The law change which made landscape maintenance and horticultural services a retail sale does not apply to silvicultural activities or to horticultural services provided to farmers. Silviculture means the commercial production of timber and includes activities such as growing seed into seedlings, planting, fertilizer and pesticide application, pruning and thinning as provided to timber growers. These activities are specifically excluded from the scope of this rule. Silvicultural activities are generally subject to the extracting B&O tax classification or the service and other business activities B&O tax classification. (See WAC 458-20-135 and 458-20-224.)

(2) **Retail landscape and horticultural services.** Landscape and horticultural services which are retail sales include:

(a) Grading, filling, leveling, planting, seeding, sodding, removing, cutting, trimming, pruning, mulching, aerating, applying chemicals, watering, and fertilizing to establish, promote, or control the growth of trees, shrubs, flowers, grass, ground cover and other flora for ornamentation or other nonagricultural purposes.

(b) The sale or rental of landscaping materials and the construction of sprinkling systems, walks, pools, fences, trellises, rockeries, and retaining walls.

(c) Cultivating fruits, flowers, and vegetables for consumers other than farmers.

(d) All tree trimming other than for farmers or persons engaged in silviculture. This includes all trimming for size, shape, aesthetics, removal of diseased branches, and removal of limbs because they are too close to structures. It does not include tree trimming performed for public and private electric utilities or at the direction of electric utilities to keep power lines, distribution lines, or equipment free of tree branches or brush.

(3) **Nonretail landscape and horticultural services.** Landscape and horticultural services which are not retail sales include:

(a) Landscape design services performed by a landscape architect separate from a contract for landscape maintenance.

(b) Planting trees for farmers.

(c) Thinning or planting of trees for persons who are involved in the commercial production of timber. These are silvicultural activities and silvicultural activities are not considered to be horticultural or landscape maintenance activities. (See WAC 458-20-135 and 458-20-209.)

(d) Landscape services performed for municipal corporations or political subdivisions of the state on real property owned by those entities if the real property is used or held for public road purposes. (See WAC 458-20-171.)

(e) Horticultural services, including spraying and fertilizing, performed for farmers for agricultural purposes. See WAC 458-20-209 for examples of horticultural services performed for farmers.

(f) Pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility. The removing and clearing of trees includes the stump removal by grinding, digging, or any other means, if performed by or at the direction of an electric utility. These are retail activities when not performed by or at the direction of an electric utility.

(4) **Business and occupation tax.**

(a) **Retailing**. The gross income from landscape and horticultural services which are retail sales and which are performed for consumers is taxable under the retailing classification.

(b) **Wholesaling**. The gross income from services which are retail sales and which are performed for other contractors for resale is taxable under the wholesaling classification.

(c) **Service**. The gross income from horticultural services provided to farmers is taxable under the service and other activities classification. This tax classification also applies to income received from pruning, tree trimming, removing and clearing of trees and brush near electric lines, if performed by or at the direction of an electric utility.

(d) **Selected business services.** Effective July 1, 1993, landscape architects who perform design services are taxable under the selected business services tax classification. See RCW 82.04.290.

(e) **Public road construction**. Persons who perform landscape services for municipal corporations or political subdivisions of the state on real property owned by those entities are taxable under the public road construction B&O tax classification, but only if the real property is used or held for public road purposes.

(f) **Government contracting**. This classification applies to persons engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures for the United States, or a city or county housing authority created under chapter 35.82 RCW. This classification would include the construction or maintenance of items such as walls, fences, walks, pools and other structures. This classification does not include the planting of lawns or trees or the cutting of grass or tree trimming performed for these customers. These activities are subject to the retailing classification.

(5) **Retail sales and use tax.**

(a) Landscape gardeners and horticulturists, except horticulturists performing services for farmers, must generally collect and report the retail sales tax upon the full contract price when performing landscaping or horticultural services for consumers. For purposes of collecting the local option retail sales tax, the sale takes place where the service is performed. See WAC 458-20-145. The retail sales tax does not apply to charges to the United States for landscape services, including landscape maintenance services, and sellers may take a deduction from the retail sales tax classification in reporting those sales which are taxable under the retailing B&O tax classification.

(b) Persons performing a landscaping or horticultural service for a contractor for resale must provide a resale certificate. See WAC 458-20-102.

(c) Landscape gardeners and horticulturists must pay the retail sales tax to their vendors when purchasing tools, equipment, and supplies which are not resold, either directly or as a component part of the finished work. They must pay deferred sales or use tax directly to the department upon the value of any such property that was purchased or acquired without payment of Washington retail sales tax.

(d) Plants, shrubs, trees, sod, seed, chemicals, fertilizer, peat moss, sprinkler systems, rocks, building materials and any other tangible personal property which becomes a part of the finished work may be purchased for resale, except items used in providing horticultural services for farmers and items used in performing public road construction, government contracting, or services for timber growers.

(e) Retail sales tax or use tax is due with respect to items purchased by horticulturists for use in performing services for farmers.

(f) Retail sales tax or use tax is due with respect to items purchased for use in performing services for timber growers or which are taxable as either public road construction or government contracting. This includes items such as sod, seed, trees, building materials, fertilizers, spray materials, etc.

(g) The retail sales tax does not apply to the charge made by persons performing tree trimming near electric transmission or distribution lines, but only if the work is performed at the direction of an electric utility. Persons performing these services must pay retail sales or use tax on all materials, supplies, tools, and equipment used in performing the service.

(6) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(a) John Doe, a landscaper, was hired by a city to maintain the landscaping around the buildings at the city's municipal golf courses. He must collect and report the retail sales tax and pay retailing B&O tax on the full contract amount.

(b) John Doe purchased several plants, some fertilizer, and insect spray to use in landscaping the golf course. He also purchased some solvent and mineral oil to clean and maintain some of his landscaping tools. His purchases of the plants, fertilizer and insect spray are purchases for resale. He must pay retail sales tax to his vendors on his purchases of the solvent and mineral oil.

(c) Landscaping company provides complete landscaping services including landscape design by a licensed landscape architect, installation, and maintenance. Landscaping charged Jane Smith two hundred dollars for a landscaping plan for her new home. She planned to purchase the plants and do the landscaping work herself. Landscaping must report B&O tax on the charge for the design service at the rate for selected business services.

(d) Landscaping company entered into a contract to landscape the yard for a client's new home. The company must collect and report retail sales tax and pay retailing B&O on the full contract amount, even though part of Landscaping's services included drawing a landscaping plan.

(e) Landscaping company entered into a two-phase contract with a county. Phase one required the company to plant trees and shrubs and put in a sprinkling system as part of a public road project. The sprinkler system is located in the public road right of way. The contract provided Landscaping would receive five hundred thousand dollars for phase one of the project. Phase two provided that Landscaping would maintain the trees and shrubs for a period of five years. The contract provided for payments of four thousand dollars per month plus costs for fertilizer and spray for maintaining the planted strips. Phase one is part of public road construction and Landscaping is taxable under the public road construction classification upon the five hundred thousand dollars received for phase one. The company must pay sales tax when purchasing the trees and shrubs and materials for the sprinkling system for use in phase one of the project. See WAC 458-20-171 for the tax liability for public road construction.

Phase two for the maintenance of the completed project is also public road construction. This is not a retail sale because the work is performed for a municipal corporation or political subdivision of the state on land owned by that entity and which is being used for public road purposes. See RCW 82.04.190.

Landscaping will owe B&O tax under the public road construction classification and must pay retail sales or use tax on any items used in performing this work, including purchases of fertilizers, chemicals and other materials.

(f) John Doe operates a tree trimming business and has a contract with a public utility district (PUD) to trim trees along the PUD's power lines. Some of these trees are on private property with the PUD obtaining the permission of the owners to trim the trees. Some trees are also located on land for which the PUD has an easement, including along public road right of ways. This tree trimming is not a retail sale, but taxable under the service and other business activities classification. This includes trimming performed along the road right of way. The property on the road right of way is not owned by the PUD for whom the work is being performed. The easement is not for use as a public road and as such the tree trimming is not public road construction.

(g) John Doe provides a tree trimming service to his residential customers. The tree trimming is performed at the direction of the residential customer to remove diseased limbs, limbs too close to the house, limbs which are a safety hazard because of their proximity to power lines, and limbs which are objectionable to the desired shape of the tree. All of this tree trimming is a retail activity, regardless of the specific reason for cutting the limbs.

[Statutory Authority: RCW 82.32.300 and to implement RCW 82.04.050. 96-05-080, § 458-20-226, filed 2/21/96, effective 3/23/96. Statutory Authority: RCW 82.32.300 and 82.04.050 (3)(e). 94-23-053, § 458-20-226, filed 11/10/94, effective 12/11/94. Statutory Authority: RCW 82.32.300. 83-08-026 (Order ET 83-1), § 458-20-226, filed 3/30/83; Order ET 70-3, § 458-20-226 (Rule 226), filed 5/29/70, effective 7/1/70.]

WAC 458-20-227 Subscriber television services. (1) **Definitions.** The following definitions apply to this section.

(a) "Subscriber television" refers to all businesses providing television programming to consumers for a fee. It includes, but is not limited to, cable television and satellite television. Subscriber television often transmits to its customers special channels offering a variety of programming such as movies, sporting events, children's entertainment, news and other informational services.

(b) "Fee" includes the amount paid by the subscriber to receive the subscription television service. Generally, the fee consists of an amount for installation and a monthly charge for maintenance or service.

(2) **Business and occupation tax.** Persons engaging in the business of subscriber television are subject to the business and occupation tax as follows:

(a) Gross income derived from the charge made for installation and the monthly rental or service fee is subject to tax under the classification service and other activities. (See WAC 458-20-224.)

(b) Gross income derived from advertising revenues is subject to tax under the classification radio and television broadcasting. (See WAC 458-20-241.)

(c) No deductions from gross income may be taken for affiliate fees, video service fees, satellite fees, copyright fees, or any other amounts paid to other firms for special programming provided to subscribers.

(3) **Use tax.** Persons engaging in the business of subscriber television are subject to retail sales tax or use tax on all purchases of tangible personal property utilized or required in providing service to subscribers. (See WAC 458-20-178.)

[Statutory Authority: RCW 82.32.300. 91-05-039, § 458-20-227, filed 2/13/91, effective 3/16/91; 83-08-026 (Order ET 83-1), § 458-20-227, filed 3/30/83; Order ET 70-3, § 458-20-227 (Rule 227), filed 5/29/70, effective 7/1/70.]

WAC 458-20-228 Returns, remittances, penalties, extensions, interest, stay of collection. (1) **Introduction.** Taxpayers have a responsibility to become informed about applicable tax laws and to correctly and timely report their tax liability. The taxes imposed under chapter 82.24 RCW (Tax on cigarettes) are collected through sales of revenue stamps.

As to taxes imposed under chapter 82.04 RCW (Business and occupation tax), chapter 82.08 RCW (Retail sales tax), chapter 82.12 RCW (Use tax), chapter 82.14 RCW (Local sales and use taxes) chapter 82.16 RCW (Public utility tax), chapter 82.27 RCW (Tax on enhanced food fish), chapter 82.29A RCW (Leasehold excise tax), chapter 84.33 RCW (Timber and forest lands), and chapter 82.26 RCW (Tobacco products tax), returns and remittances are to be filed with the department of revenue by the taxpayer. Returns shall be made upon forms provided or approved and accepted by the department. Forms provided by the department are mailed to all registered taxpayers prior to the due date of the tax. The tax reporting frequency is assigned by the department of revenue. See WAC 458-20-22801.

(2) **Method of payment.** Payment of the taxes may be made by cash, check, money order, or in certain cases by electronic fund transfers.

(a) Payment by cash must be made at an office of the department of revenue.

(b) Payment of tax may be made by uncertified bank check, but if any such check is not honored by the bank on which drawn, the taxpayer shall remain liable for the payment of the tax and may be subject to penalties. The department may refuse to accept any check which, in its opinion, would not be honored by the bank on which such check is drawn. The remittance covered by any check which is so refused will be deemed not to have been made and the taxpayer will remain liable for the tax due and for the applicable penalties.

(c) The law requires that certain taxpayers pay their taxes through electronic fund transfers. The department of revenue will inform taxpayers who are required to pay their taxes in this manner. See WAC 458-20-22802.

(3) **Due dates.** For monthly reporting taxpayers, the tax returns are due on the 25th of the following month. For quarterly and annually reporting taxpayers, the tax returns are due on the last day of the next month after the period covered by the return. For example, tax returns covering the first quarter of the year are due on April 30.

(a) If the date for filing the tax return falls upon a Saturday, Sunday, or legal holiday, the filing shall be considered timely if performed on the next business day. See RCW 1.12.070 and 1.16.050.

(b) The postmark date as shown by the post office cancellation mark stamped on the envelope will be considered as conclusive evidence by the department in determining if a tax return was timely mailed by the taxpayer. It is the responsibility of the taxpayer to mail the tax return sufficiently in advance of the due date to assure that the postmark date is timely.

(4) **Penalties.** Various penalties may apply as a result of the failure to correctly or accurately compute the proper tax liability or to timely pay the tax. Separate penalties may apply and be cumulative for late payment, failure to follow specific written instructions, or evasion.

(a) If the tax return is not filed by the due date, a 5% penalty will apply; a 10% penalty will apply if the return is not filed within 30 days of the due date; and a 20% penalty will apply if the return is still delinquent 60 days from the due date. The minimum penalty for late payment is five dollars.

(i) The department may refuse to accept any return which is not accompanied by a remittance of the tax shown to be due thereon, and if not accepted, the taxpayer shall be deemed to have failed or refused to file a return, and shall be subject to the above penalties. If the tax return is accepted without payment and payment is not made by the due date, the late penalties will apply until the tax is paid.

(ii) The aggregate of penalties for failure to file a return, late payment of any tax, increase or penalty, or issuance of a warrant may not exceed thirty-five percent of the tax due, or twenty dollars, whichever is greater.

(iii) The department will apply the payment of the taxpayer first against interest, next against penalties, and then upon the tax, without regard to any direction of the taxpayer. In applying a partial payment to a tax assessment, the payment will be applied against the oldest tax liability first. For purposes of RCW 82.32.145, it will be assumed that any payments applied to the tax liability will be first applied against any retail sales tax liability. For example, an audit assessment is issued covering the years 1992 and 1993. The tax assessment includes interest and penalties of five hundred dollars, retail sales tax of four hundred dollars for the year 1992, six hundred dollars retail sales tax for the year 1993, two thousand dollars of other taxes for the year 1992, and seven thousand dollars of other taxes for the year 1993. The order of application of any payments will be first against the five hundred dollars interest and penalties, second against the four hundred dollars retail sales tax in 1992, third against the two thousand dollars of other taxes in 1992, fourth against the six hundred dollars retail sales tax of 1993, and finally against the seven thousand dollars of other taxes in 1993.

(b) An additional penalty of ten percent of the tax due will be added to any taxes assessed by the department if payment of the taxes assessed is not received by the department by the due date specified in the notice, or any extension thereof. The minimum for this penalty is five dollars.

(c) The department may issue a tax warrant if any fee, tax, increase, or penalty or any portion thereof is not paid within fifteen days after it becomes due. If a warrant is issued, a penalty will be added of five percent of the amount of the tax, but not less than ten dollars.

(d) Negligence penalty. If the department finds that all or any part of a deficiency resulted from the disregard of specific written instructions as to reporting of tax liabilities, the department will add a penalty of ten percent of the additional tax found due because of the failure to follow the instructions.

(i) The taxpayer will be considered as having disregarded specific written instruction when the department of revenue has informed the taxpayer in writing of its tax obligations and specifically advised the taxpayer that failure to act in accordance with those instructions may result in this penalty being imposed. The specific written instructions may be given as a part of a tax assessment, audit, determination, or closing agreement. The penalty may be applied only against the taxpayer to whom the specific written instructions were given. However, the taxpayer will not be considered as having disregarded the instructions if the taxpayer has appealed the subject matter of the instructions and the department has not issued its final instructions or decision.

(ii) The penalty will not be applied if the taxpayer has made a good faith effort to comply with specific written instructions.

(e) Evasion penalty. If the department finds that all or any part of the deficiency resulted from an intent to evade the tax due, a penalty of fifty percent of the additional tax found to be due shall be added.

(i) To the extent that the evasion involved only specific taxes, the evasion penalty will be added only to those taxes. The evasion penalty will not be applied to those taxes which were inadvertently under paid. For example, if it is found that the taxpayer intentionally understated the purchase price of equipment in reporting use tax and also inadvertently failed to collect or remit the sales tax at the correct rate on retail sales of merchandise, the evasion penalty will be added only to the use tax deficiency.

(ii) At times it may be necessary for the department to issue its assessment to protect the state's interest prior to completion of its investigation or evaluation of all of the facts and circumstances surrounding the tax deficiency. The department at its option may issue the tax assessment without including the evasion penalty or the penalty for failure to follow written instructions and may revise the assessment to assert the penalty at a later date if it is the department's opinion that these penalties are due. In order to give the taxpayer some certainty and finality of its tax liability, these penalties will be assessed within six months of the time that the tax was assessed to which the penalties relate.

(iii) The department may impose either the evasion penalty or the penalty for disregarding specific written instruction, as appropriate in its opinion, but may not impose both penalties on the same tax which is found to be due.

(f) The department will add the late payment penalties described in (a) of this subsection to assessments of those taxpayers which had not voluntarily registered prior to being contacted by the department of revenue. However, a person will be considered to have voluntarily registered with the department of revenue if the person contacted any other agency of the state and was issued a uniform business identifier number prior to being contacted by the department of revenue.

(g) The department may assert an additional ten percent penalty against a buyer who has failed to pay the seller the retail sales tax on taxable purchases if the department proceeds directly against the buyer for the payment of the tax. Refer to RCW 82.08.050.

(5) Interest. The department of revenue is generally required by law to add interest to assessments for tax deficiencies and overpayments. Interest also applies to penalties. Refer to WAC 458-20-229 for a discussion of refunds and WAC 458-20-230 for a discussion of the statute of limitations.

(a) For tax liabilities arising before January 1, 1992, interest will be added at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until date of payment.

(b) For tax liabilities arising after December 31, 1991, until the date of payment, interest will be added with the rate of interest being variable. The rate of interest will be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate will be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually, for the months of January, April, July, and October of the immediately preceding calendar year as published by the United States Secretary of the Treasury. The interest rate will be adjusted on the first day of January of each year.

(c) The following are examples of how the interest provisions apply.

(i) Assume a tax assessment is paid on December 31, 1994, and the assessment indicated tax deficiencies in each of the years of 1991, 1992, 1993, and 1994. The interest for 1991 will be calculated at a fixed rate of nine percent per year until the assessment is paid in full. The interest for tax deficiencies in 1992 and 1993 will be calculated at the variable rate discussed in (b) of this subsection. The interest rate for each year is calculated separately. For discussion purposes only, assume the compounded interest rate calculates to be eleven percent for the year 1992 and twelve percent for 1993. Since the tax deficiency for 1992 was not paid for a period of two years from the close of 1992, interest will be charged for two years on the 1992 deficiency. The interest amount is computed by multiplying the tax deficiency by twenty-three percent. The deficiency for 1993 will bear interest at twelve percent and will be computed on the tax deficiency since the deficiency remained unpaid for only one year.

(ii) If the assessment is not paid by the original due date, extension interest will be added based on the rate in effect at the time the extension is granted or the assessment is revised with the exception that extension interest will be computed at nine percent for all tax deficiencies which occurred prior to 1992.

(iii) If the assessment contains tax deficiencies in some years and overpayments in other years with the net difference being a tax deficiency, the interest rate for tax deficiencies will also be applied to the overpayments. Refer to WAC 458-20-229 for interest on refunds.

(6) **Waiver or cancellation of penalties.** The department will waive or cancel the penalties imposed under RCW 82.32.090 and interest imposed under RCW 82.32.050 upon finding that the failure of a taxpayer to pay any tax by the due date was due to circumstances beyond the control of the taxpayer. The department has no authority to cancel penalties or interest for any other reason. Penalties will not be cancelled merely because of ignorance or a lack of knowledge by the taxpayer of the tax liability.

(a) A request for a waiver or cancellation of penalties must be in letter form and should contain all pertinent facts and be accompanied by such proof as may be available. Petition for cancellation of penalties must be made within the period for filing under RCW 82.32.160 (within thirty days after the issuance of the original notice of the amount owed or within the period covered by any extension of the due date granted by the department). In all such cases the burden of proving the facts is upon the taxpayer.

(b) The following situations will be the only circumstances under which a cancellation of penalties will be considered by the department:

(i) The return was filed on time but inadvertently mailed to another agency.

(ii) The delinquency was due to erroneous written information given the taxpayer by a department officer or employee. A penalty generally will not be waived when it is claimed that erroneous oral information was given by a department employee. The reason for not cancelling the penalty in cases of oral information is because of the uncertainty of the facts presented, the instructions or information imparted by the department employee, or that the taxpayer fully understood the information received. Reliance by the taxpayer on incorrect advice received from the taxpayer's legal or accounting representative is not a basis for cancellation of the penalty.

(iii) The delinquency was caused by death or serious illness of the taxpayer or his immediate family, or illness or death of his accountant or in the accountant's immediate family, prior to the filing date.

(iv) The delinquency was caused by unavoidable absence of the taxpayer, prior to the filing date.

(v) The delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.

(vi) The taxpayer, prior to the time for filing the return, made timely application to the Olympia or district office, in writing, for proper forms and these were not furnished in sufficient time to permit the completed return to be paid before its delinquent date.

(vii) The delinquency penalty will be waived or cancelled on a one time only basis if the delinquent tax return was received under the following circumstances:

(A) The return was received by the department with full payment of tax due within 30 days after the due date; i.e., within the five percent penalty period prescribed by RCW 82.32.090, and

(B) The delinquency was the result of an unforeseen and unintentional circumstance, not immediately known to the taxpayer, which circumstances will include the error or misconduct of the taxpayer's employee or accountant, confusion caused by communications with the department, failure to receive return forms timely, natural disasters such as a flood or earthquake, and delays or losses related to the postal service.

(7) **Waiver or cancellation of interest.** The following situations will constitute circumstances under which a waiver or cancellation of interest upon assessments pursuant to RCW 82.32.050 will be considered by the department:

(a) The failure to pay the tax prior to issuance of the assessment was the direct result of written instructions given the taxpayer by the department.

(b) Extension of the due date for payment of an assessment was not at the request of the taxpayer and was for the sole convenience of the department.

(8) **Stay of collection.** RCW 82.32.200 provides, "When any assessment or additional assessment (of taxes) has been made, the taxpayer may obtain a stay of collection, under such circumstances and for such periods as the department may by general regulation provide, of the whole or any part thereof, by filing with the department a bond in an amount, not exceeding twice the amount on which stay is desired, and with sureties as the department deems necessary, conditioned for the payment of the amount of the assessments, collection of which is stayed by the bond, together with the interest thereon at the rate of one percent of the amount of such assessment for each thirty days or portion thereof from the due date until paid."

(Note: RCW 82.32.190 authorizes issuance of an order by the department holding in abeyance tax collection during pendency of litigation. Such tax might be that due on excise tax returns or tax due for unaudited periods for which no assessment has been issued. If, however, an assessment has been issued and is unpaid, RCW 82.32.200, not RCW 82.32.190, is the operative statute for stay of collection with respect to such an assessment.)

(a) The department will give consideration to a request that it grant a stay of collection if:

(i) Written request for the stay is made prior to the due date for payment of the tax assessment, and

(ii) Payment of any unprotested portion of the assessment and other taxes due is timely made, and

(iii) The requested stay is accompanied by an offer of a cash bond, or the offer of a security bond, the conditions of which are guaranteed by a specified authorized surety insurer; in either case the amount of the bond will ordinarily be set in an amount equal to the assessment or portion thereof for which stay is requested together with interest thereon at the rate of one percent per month, but in appropriate cases the department may require a bond in an increased amount not to exceed twice the amount for which stay is requested.

(b) The department will grant a stay of collection only when it is satisfied and determines that it is in the best interests of the state to do so. Factors which it will consider in making this determination include: The existence of 1. a constitutional issue to be litigated by the taxpayer the resolution of which is uncertain; 2. a matter of first impression for which the department has little precedent in administrative practice; and 3. an issue affecting other similarly situated taxpayers for whom the department would be willing to stay collection of the tax.

(c) Claims of financial hardship or threat of litigation are not grounds which would justify the granting of a stay of collection. However, the department will consider a claim of significant financial hardship as grounds for staying collection procedures, but this will be done only if a partial payment agreement is executed and kept in accordance with the department's procedures and with such security as the department deems necessary.

(d) If the department grants a stay of collection, the stay will be for a period of no longer than two calendar years from the date of acceptance of the taxpayer request therefor or thirty days following a decision not appealed from by a tribunal or court of competent jurisdiction upholding the validity of the tax assessed, whichever date occurs first. The department may extend the period of a stay originally granted, but only for good cause shown.

(9) **Extensions.** The department, for good cause, may extend the due date for filing any return. Any permanent extension, and any temporary extension in excess of thirty days, must be conditional upon deposit by the taxpayer with the department of an amount equal to the estimated tax liability for the reporting period or periods for which the extension is granted. This deposit is credited to the taxpayer's account and may be applied to the taxpayer's liability upon cancellation of the permanent extension or upon reporting of the tax liability where a temporary extension of more than thirty days has been granted.

The amount of the deposit is subject to departmental approval. The amount will be reviewed from time to time, and a change may be required at any time that the department concludes that such amount does not approximate the tax liability for the reporting period or periods for which the extension was granted.

[Statutory Authority: RCW 82.32.300. 92-03-025, § 458-20-228, filed 1/8/92, effective 2/8/92; 85-04-016 (Order 85-1), § 458-20-228, filed 1/29/85; 83-16-052 (Order ET 83-4), § 458-20-228, filed 8/1/83; Order ET 74-1, § 458-20-228, filed 5/7/74; Order ET 71-1, § 458-20-228, filed 7/22/72; Order ET 70-3, § 458-20-228, filed 5/29/70, effective 7/1/70.]

WAC 458-20-22801 Tax reporting frequency—Forms. (1) Introduction. Every person liable for an excise tax imposed by the laws of the state of Washington for which the department of revenue has primary or secondary administrative responsibility, i.e., Title 82 RCW and chapters 67.28 RCW (Hotel/motel tax), 70.93 RCW (Litter tax), 70.95 RCW (Tax on tires), and 84.33 RCW (Forest excise tax), shall file a tax return with the department of revenue accompanied by a payment of the tax due; *Provided,* The taxes under chapter 82.24 RCW (Tax on cigarettes) shall be collected through sales of revenue stamps.

(2) Reporting frequency—Forms. Combined excise tax returns with payments of the tax due are to be filed monthly. However, the department may relieve any taxpayer or class of taxpayers from this monthly obligation and may require the return to cover other longer reporting periods, but not in excess of one year. See: RCW 82.32.045.

(a) General rule. Unless otherwise provided by the department, a taxpayer shall report and pay taxes due according to the following schedule:

IF ANNUAL ESTIMATED TAX LIABILITY IS:	REPORTING FREQUENCY
Over $4800.00 per year	Monthly returns:
Between $1050.00 & $4800.00 per year	Quarterly returns:
Less than $1050.00 per year	Annual returns:

(b) When requested by a taxpayer or group of taxpayers, the department may approve more frequent or less frequent reporting if, in the opinion of the department, the change assists the department in the efficient and effective administration of the tax laws of this state.

(c) For the same reasons, the department may require a taxpayer or group of taxpayers to report more frequently or less frequently. Changes in reporting frequency are effective only after the department has consented to or required the change, and notice of the change has been given by the department to the taxpayer or group of taxpayers.

(d) Situations when changes in reporting frequency may be approved or required include, but are not limited to, the following:

(i) An increase or decrease in the estimated annual tax liability of a taxpayer results in a different threshold as provided in section (2)(a) above;

(ii) A taxpayer or group of taxpayers has substantial periods of no taxable business activity during the calendar year, i.e., seasonal businesses;

(iii) The department finds a taxpayer or a group of taxpayers has repeatedly failed to comply with tax reporting and/or payment obligations.

(e) Notice. No change in reporting frequency shall be effective except upon at least thirty days advance written notice from the department to the taxpayer at the taxpayer's last reported business address.

(f) Forms. Returns shall be made upon forms provided or approved and accepted by the department. Forms provided by the department are mailed to all registered taxpayers prior to the due date of the tax.

(g) Taxes not reported upon the combined excise tax return, i.e. forest excise tax, etc. shall be reported at such times and upon such forms as are otherwise provided by the department.

(3) See WAC 458-20-228 for information on returns, remittances, penalties, extensions, stay of collection.

[Statutory Authority: RCW 82.32.300 and 82.32.045. 90-05-044, § 458-20-22801, filed 2/15/90, effective 3/18/90.]

WAC 458-20-22802 Electronic funds transfer. (1) **Introduction.** Chapter 69, Laws of 1990, requires certain taxpayers to pay the taxes reported on the combined excise tax return with an electronic funds transfer (EFT). This EFT requirement for taxpayers with large monthly payments begins with the monthly tax return due January 25, 1991. EFT merely changes the method of payment and no other tax return procedures or requirements are changed.

(2) **Definitions.** For the purposes of this section, the following terms will apply:

(a) "Electric funds transfer" or "EFT" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

(b) "ACH" or "automated clearing house" means a central distribution and settlement system for the electronic clearing of debits and credits between financial institutions.

(c) "ACH debit" means the electronic transfer of funds cleared through the ACH system that is generated by the taxpayer instructing the department's bank to charge the taxpayer's account and deposit the funds to the department's account.

(d) "ACH credit" means the electronic transfer of funds cleared through the ACH system that is generated by the taxpayer instructing the taxpayer's bank to charge the taxpayer's account and deposit the funds to the department's account.

(e) "Department's bank" means the bank with which the department of revenue has a contract to assist in the receipt of taxes and includes any agents of the bank.

(f) "Collectible funds" actually means collected funds that have completed the electronic funds transfer process and are available for immediate use by the state.

(g) "ACH CCD + addenda" and "ACH CCD + record" mean the information in a required ACH format that needs to be transmitted to properly identify the payment.

(3) **Taxpayers required to pay by EFT.**

(a) For the calendar year 1991, taxpayers who have taxes due of $1,800,000 or more are required to pay by EFT.

(b) For calendar years after 1991, taxpayers who have taxes due of $240,000 or more are required to pay by EFT.

(c) In the interest of efficient tax administration, the department will notify those taxpayers required to pay by EFT at least three months prior to the start of their EFT payment requirement.

(d) The process of identifying taxpayers meeting the EFT threshold shall be based upon the taxes that were due in the last complete calendar year before the three month notification date. For example, taxpayers who will start paying by EFT in January, 1993 will be notified by the department by September 30, 1992. The base year for those taxpayers will be the calendar year 1991.

(e) Upon a showing by the taxpayer to the satisfaction of the department that it will not have taxes due in the payment year of more than the threshold amount, the department shall waive the requirement to pay by EFT.

(4) **Taxes covered.** The taxes covered by the EFT payment are taxes reported on the combined excise tax return. The included taxes are those administered by the department under chapter 82.32 RCW except city and town taxes on financial institutions (chapter 82.14A RCW), county tax on telephone access lines (chapter 82.14B RCW), cigarette tax (chapter 82.24 RCW), enhanced food fish tax (chapter 82.27 RCW), leasehold excise tax (chapter 82.29A), and forest tax (chapter 84.33 RCW).

(5) **Refunds by EFT.** Overpayments of tax will be either credited to future tax liabilities or, at the taxpayer's request, will be refunded. If the taxpayer is required to pay the taxes on the combined excise tax return by EFT, the taxpayer is entitled to a refund of those taxes by EFT. However, the taxpayer may agree in writing to waive this requirement. If the taxpayer wishes to have the refund made by EFT, the taxpayer shall provide the department with the information necessary to make an appropriate EFT.

(6) **EFT methods.** EFT shall be accomplished through the use of ACH debit or ACH credit. In an emergency, taxpayer shall contact the department for alternative methods of payment. The appropriate person to contact in the department will be included in the notification materials sent to all EFT remitters.

(7) **Due date of EFT payment.**

(a) The EFT payment is due on or before the banking day following the tax return due date. An EFT is timely when the state receives collectible U.S. funds on or before 3:00 p.m., Pacific time, of the EFT payment due date. The ACH system, either ACH debit or ACH credit, requires that the necessary information be in the originating bank's possession on the banking day preceding the date for completion. Each bank generally has its own transaction deadlines and it is the responsibility of the taxpayer to insure timely payment.

(b) The tax return due date shall be the next business day after the original due date if the original due date falls on a Saturday, Sunday or legal holiday. Legal holidays are determined under state of Washington law and banking holidays are those recognized by the Federal Reserve System in the state of Washington.

(i) Example. The tax return due date is December 25th, a legal and banking holiday, which, for the example, falls on a Friday. The next business day would be Monday, December 28th, and this is the new tax return due date. EFT must be completed by 3:00 p.m., Pacific time, Tuesday, December 29th, which is the next banking day after the new due date. For an ACH debit user, the department's bank must have the appropriate information by 3:00 p.m., Pacific time, on Monday, December 28th.

(8) **Coordinating return and payment.** The filed return and the payment by EFT shall be coordinated by the department. A return shall be considered timely filed only if it is received by the department on or before the due date, or with a postmark on or before the due date. In addition, the payment by EFT must have been completed by the next banking day after the due date. If both events occur, there is timely filing and payment and no penalties apply.

(9) **Form and contents of EFT.** The form and content of EFT will be as follows:

(a) If the taxpayer wishes to use the ACH debit system of EFT, the taxpayer will furnish the department with the information needed to complete the transaction. The department's bank will provide secrecy codes only to the taxpayer and all transactions must be initiated by the taxpayer.

(b) If the taxpayer wishes to use the ACH credit system of the EFT, the taxpayer is responsible to see that its bank has the information necessary for timely completion. The taxpayer shall provide the information necessary for its bank to complete the ACH CCD+ addenda for transmittal to the department's bank.

(10) **Voluntary use of EFT.** The use of EFT by taxpayers other than those required by statute to use EFT shall be by the written permission of the department.

(11) **Crediting and proof of payment.** The department will credit the taxpayer with the amount paid as of the date the payment is received by the department's bank. The proof of payment by the taxpayer shall depend on the means of transmission.

(a) An ACH debit transaction may be proved by use of the verification number received from the department's bank that the transaction was initiated and bank statements or other evidence from the bank that the transaction was settled.

(b) An ACH credit transaction is initiated by the taxpayer and the taxpayer has responsibility for the transaction. The taxpayer generally will be given a verification number by the taxpayer's bank. This verification number with proof of the ACH CCD + record showing the department's bank and account number, plus proof that the transaction has been settled will constitute proof of payment.

(12) **Correcting errors.** Errors in EFT process will result in either an underpayment or an overpayment of the tax. In either case, the taxpayer needs to contact the department to arrange for appropriate action. Overpayments may be used as a credit or the taxpayer may apply for a refund. The department will expedite a refund where it is caused by an error in transmission. Underpayments should be corrected by the taxpayer immediately to mitigate any penalties.

(13) **Penalties.**

(a) There are no special provisions for penalties when payment is made by EFT. The general provisions for all taxpayers apply. To avoid the imposition of penalties, it is necessary for both the filing of the tax return and the payment to be timely. Penalties may be waived only when the circumstances causing delinquency are beyond the control of the taxpayer. See: WAC 458-20-228.

(b) In an ACH debit transaction, the department's bank is the originating bank and is responsible for the accuracy of transmission. If the taxpayer has timely initiated the ACH debit, received a verification number, and shows adequate funds were available in the account, no penalties shall apply with respect to those funds authorized.

(c) In an ACH credit transaction, the taxpayer's bank is the originating bank and the taxpayer is primarily responsible for its accuracy. The taxpayer must have timely initiated the transaction, provided the correct information for the ACH CCD + record, and shown that there were sufficient funds in the account, in order to prove timely compliance. If the taxpayer can make this showing then no penalties shall apply as to those funds authorized if the transaction is not completed.

[Statutory Authority: RCW 82.32.300. 91-24-070, § 458-20-22802, filed 12/2/91, effective 1/2/92; 90-19-052, § 458-20-22802, filed 9/14/90, effective 10/15/90.]

WAC 458-20-229 Refunds. (1) **Introduction**. This section explains the procedures relating to refunds or credits for overpayment of taxes, and penalties or interest. It indicates the statutory period for refunds and the interest rate which applies to those refunds.

(2) **Statute of limitations for refunds or credits.**

(a) With the exception of (b) of this subsection, no refund or credit may be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which a refund or credit application is made or examination of records by the department is completed.

(b) Where a taxpayer has executed a written waiver of the limitations governing assessment under RCW 82.32.050 or 82.32.100, a refund or credit may be granted for taxes, penalties, or interest paid during, or attributable to, the years covered by such waiver if, prior to expiration of the waiver period, an application for a refund or credit of such taxes, penalties, or interest is made by the taxpayer or the department discovers a refund or credit is due. (Refer to WAC 458-20-230 for the circumstances under which the department may request a taxpayer to execute a statute of limitations waiver.)

(3) **Refund/credit procedures.** Refunds are initiated in the following ways:

(a) Departmental review. When the department audits or examines the taxpayer's records and determines the taxpayer has overpaid its taxes, penalties, or interest, the department will issue a refund or a credit, at the taxpayer's option. When overpayments are discovered by the department within the statute of limitations, the taxpayer does not need to file a petition or request for a refund or credit.

(b) Taxpayer request. When a taxpayer discovers that it has overpaid taxes, penalties, or interest, it may file an amended return or a petition for refund or credit with the department. The petition or amended tax return must be submitted within the statute of limitations. Refund or credit requests should generally be made to the division of the department to which payment of the tax, penalty, or interest was originally made. The amended tax returns or petitions are subject to future verification or examination of the taxpayer's records. If it is later determined that the refund or credit exceeded the amount properly due the taxpayer, an assessment may be issued to recover the excess amount, provided the assessment is made within four years of the close of the tax year in which the taxes were due or prior to the expiration of a statute of limitations waiver. The following are examples of refund or credit requests:

(i) A taxpayer discovers in January 1992 that the June 1991 combined excise tax return was prepared using incorrect figures which overstated its sales resulting in an overpayment of tax. The taxpayer files an amended June 1991 tax return with the department's taxpayer account administration division. The department treats the taxpayer's amended June 1991 tax return as a petition for refund or credit of the amounts overpaid during that tax period and may take whatever action it considers appropriate under the circumstances to verify the overpayment.

(ii) A customer of a seller pays retail sales tax on a transaction which the customer later believes was not taxable. The customer should request a refund or credit directly from the seller from whom the purchase was made. If the seller determines the tax was not due and issues a refund or credit to the customer, the seller may request a refund or credit from the department. It is generally to the advantage of a consumer to seek a refund directly from the seller for retail sales tax believed to have been paid in error. This is because the seller has the source records to know if retail sales tax was collected on the original sale, knows the customer, knows the circumstances surrounding the original sale, is aware of any disputes between itself and the customer concerning the product, may already be aware of the circumstances as to why a refund of sales tax is appropriate such as the return of the merchandise. When in doubt as to whether sales tax should be refunded, a seller may contact the department and request advice. However, in certain situations, upon presentation of acceptable proof of payment of retail sales tax, the department will consider making refunds of retail sales tax directly to consumers. These situations are as follows:

(A) The seller is no longer engaged in business.

(B) The seller has moved and the consumer can not locate the seller.

(C) The seller is insolvent and is financially unable to make the refund.

(D) The consumer has attempted to obtain a refund from the seller and can document that the seller refuses to refund the retail sales tax. However, the department will not consider making refunds directly to consumers when the law leaves it at the discretion of the seller to collect the tax. See, for example, RCW 82.08.0273.

(iii) The department completes an audit of the taxpayer's records relating to taxes reported on combined excise tax returns and an assessment is issued. After the assessment is paid, but within the statute of limitations for refund or credit, the taxpayer locates additional records which would have reduced the tax, penalties, or interest liability if these records had been available in the audit. The taxpayer contacts the department's audit division, requests that a reexamination of the appropriate records be performed, and files a petition for a refund or credit of overpaid amounts. The statute of limitations will be determined based on the date the assessment was paid for an adjustment of taxes, penalties, or interest assessed in the audit. For taxes, penalties, or interest paid through the filing of combined excise tax returns by the taxpayer, the statute of limitations will be based on the date the amounts were paid without regard to when the audit was completed or the assessment was issued.

(c) Taxpayer appeal. If the taxpayer believes that the tax, penalties, or interest overpayment is the result of a difference of legal opinion with the department as to the taxability of a transaction, the application of penalties or the inclusion of interest, the taxpayer may appeal to the department as provided in WAC 458-20-100 or directly to Thurston County superior court.

(d) Court decision. Refunds or credits will be made by the department as required by decisions of any court of competent jurisdiction when the decision of the court is not being appealed.

(i) In the case of court actions regarding refund or credit of retail sales taxes, the department will not require that consumers obtain a refund of retail sales tax directly from the seller if it would be unreasonable and an undue burden on the person seeking the refund to obtain the refund from the seller. In this case the department may make the refunds directly to the claimant and may use the public media to attempt to notify all persons who may be entitled to refunds or credits.

(ii) Forms for applications for refunds for these situations will be available either by mail or at the department's offices and the claimant will need to file an application for refund. The application will request the appropriate information needed to identify the claimant, item purchased, amount of sales tax to be refunded, and the seller. The department may at its discretion request additional documentation which the claimant could reasonably be expected to retain, based on the particular circumstances and value of the transaction. Such refund requests shall be approved or denied within thirty days after all documentation has been submitted by the claimant and legal questions have been resolved. If approved for refund, such refunds shall be made within sixty days after all documentation has been submitted.

(4) **Prompt refunds**. Taxpayers may expect refund requests to be processed promptly by the department. Refunds can generally be processed faster if the taxpayer provides the following information at the time a refund application is made:

(a) The taxpayer should include its registration number on all documents.

(b) The taxpayer should include the telephone number and name of the person the department should contact in case the department needs additional information or has questions.

(c) The taxpayer should include a detailed description or explanation of the claimed overpayment.

(d) Amended tax returns or worksheets should be attached to the refund or credit application and clearly identify the tax reporting periods involved.

(e) If the refund or credit request involves a situation where a seller has refunded retail sales tax to a customer and the seller is now seeking a refund or credit of the tax from the department, proof of refund to the customer should be attached.

(f) Generally, refund or credit requests require verification by the department through a review of specific taxpayer records which have a bearing on the refund or credit request. If the refund or credit request relates to a year for which the statute of limitations will expire within a short period, the department may be able to more promptly issue a refund by delaying the verification process until it is more convenient to the taxpayer and/or the department if the taxpayer will execute a statute of limitations waiver.

(5) **Interest on refunds or credits**. Interest will be allowed on credits or refunds.

(a) Interest is paid at the rate of three percent per annum for refunds and credits of taxes or penalties which were paid by the taxpayer prior to January 1, 1992.

(b) For amounts overpaid by a taxpayer after December 31, 1991, the rate of interest on refunds and credits is the average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus one percentage point. The rate will be adjusted on the first day of January of each year by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually, for the months of January, April, July, and October of the immediately preceding calendar year as published by the United States Secretary of Treasury.

(c) The department will include interest on credit notices with the interest computed to the date the taxpayer could reasonably be expected to use the credit notice, generally the due date of the next tax return.

(d) If a taxpayer requests that a credit notice be converted to a refund, interest will be recomputed to the date the refund (warrant) is issued, but not to exceed the interest which would have been granted through the credit notice.

(6) **Offsetting overpayments against deficiencies.** The department may apply overpayments against existing deficiencies/assessments for the same legal entity. However, a potential deficiency which is yet to be determined will not be reason to delay the processing of an overpayment where an overpayment has been conclusively determined. The following examples illustrate the use of offsets:

(a) The taxpayer's records are audited for the period 1988 through 1991. The audit disclosed underpayments in 1989 and overpayments in 1991. The department will apply the overpayments in 1991 to the deficiencies in 1989. The resulting amount will indicate whether a refund or credit is owed the taxpayer or whether the taxpayer owes additional amounts.

(b) The department has determined that the taxpayer has overpaid its real estate excise tax in 1991. The department believes that the taxpayer may owe additional B&O taxes, but this has yet to be established. The department will not delay the processing of the refund of the real estate excise tax while it proceeds with scheduling and performing of an audit for the B&O taxes.

(c) The department simultaneously performed a timber tax audit and a B&O tax audit of a taxpayer. The department determined that the taxpayer underpaid its B&O tax and overpaid its timber tax. Separate assessments were issued on the same date, one showing additional taxes due and the other overpayments. The department may offset the overpayment against the tax deficiency assessment since both the underpayment and overpayment have been established.

[Statutory Authority: RCW 82.32.300. 93-04-077, § 458-20-229, filed 2/1/93, effective 3/4/93; 83-08-026 (Order ET 83-1), § 458-20-229, filed 3/30/83; Order ET 70-3, § 458-20-229 (Rule 229), filed 5/29/70, effective 7/1/70.]

WAC 458-20-230 Statutory limitations on assessments. (1) **Introduction.** This section explains the time period during which the department of revenue may issue a tax assessment. It also explains the circumstances under which the department may request that a taxpayer complete a statute of limitations waiver.

(2) **Assessment period.** Tax assessments must be made within four years after the close of the tax (calendar) year in which the tax was incurred with the following exceptions:

(a) Against a taxpayer who was not registered as required by chapter 82.32 RCW.

(b) Upon a showing of fraud or of misrepresentation of a material fact by the taxpayer.

(c) Where the taxpayer has executed a written waiver of such limitation.

(d) Sales tax collected by a seller upon retail sales and not remitted to the department.

(3) **Unregistered taxpayer.** Except for evasion or misrepresentation, if the department of revenue discovers any unregistered taxpayer doing business in this state, the department will assess taxes, interest, and penalties for a period of seven years plus the current year. If a taxpayer voluntarily registers before being contacted by the department, assessments will not exceed four years plus the current year, provided the taxpayer has made a good faith attempt to report correctly and there is no evidence of intent to evade tax under RCW 82.32.050. It will be presumed that a taxpayer has registered with the department if the taxpayer voluntarily files for an identification number under the Unified Business Identifier (UBI) system prior to any contact from the department of revenue.

(4) **Evasion or misrepresentation.** There is no limitation for the period in which an assessment or correction of an assessment can be made upon a showing of evasion or of misrepresentation of a material fact. Evasion involves a situation where the taxpayer knows a tax liability is due and the taxpayer attempts to escape detection through deceit, fraud, or other intentional wrongdoing. The evasion must be shown by clear, cogent, and convincing evidence which is objective and creditable. However, in the case of evasion or misrepresentation, any assessment for taxes which extends beyond four years and the current year will be limited to taxes which were underpaid as a result of the evasion or misrepresentation. (See RCW 82.32.050 and 82.32.090.)

(5) **Statute of limitations waiver.** The department may request that a taxpayer complete a waiver of the statute of limitations in those cases where the delay in timely completing an audit or issuance of an assessment is the result of actions of the taxpayer. If the department requests that a statute of limitations waiver be completed, the waiver will also hold open the period during which the department may refund taxes discovered to have been overpaid. The department may also request that a taxpayer complete a waiver of the statute of limitations in connection with a request from a taxpayer for a refund or credit for overpaid taxes. If the refund or credit request relates to a year for which the statute of limitations will expire within a short period, the department may be able to more promptly issue a refund by delaying the verification process until it is more convenient to the taxpayer and/or the department if the taxpayer will execute a statute of limitations waiver. (Refer to WAC 458-20-229.)

(6) **Trust funds.** Retail sales tax which is collected by a seller must be remitted to the department of revenue. These amounts are deemed to be held in trust by the seller until paid to the department. The statute of limitations does not apply to retail sales tax which was collected and not remitted to the department.

(7) **Revised assessments.** The department may issue an assessment to correct errors found in examining tax returns or it may issue an assessment to correct errors based on a review of the taxpayer's records. Assessments which are

based on a review of the tax returns are subject to further review and revision by future audit. Once issued, the department may revise an audit assessment subject to the following restrictions.

(a) The assessment generally may not be increased from the amount originally assessed for those years for which the statute of limitations would have expired if this were an original assessment. For these years an assessment can be reduced, but not increased.

(b) An assessment may be increased upon discovery of fraud/evasion or misrepresentation of a material fact.

(8) **Assessments following conditional refunds or credits.** Taxpayers may petition for a credit or refund of overpaid taxes by following the procedures in WAC 458-20-229. The department at its option may grant such credits or refunds without further immediate verification. If it is later determined that a refund was granted in error and that there was no fraud/evasion or misrepresentation of a material fact, the department may issue an assessment to recover the taxes and interest which were refunded in error, provided the assessment is issued within four years from the close of the tax year in which the tax was incurred or within a period covered by a statute of limitations waiver.

(9) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(a) ABC Manufacturing has manufacturing plants in Oregon and Washington. This taxpayer properly registered with the department of revenue when first engaging in business in Washington a number of years ago and has remained registered. In 1987 the taxpayer transferred equipment from its Oregon plant and used the equipment in its Washington plant. (See RCW 82.12.010 for a definition of use.) This transfer was recorded in the accounting records in 1987, but the taxpayer inadvertently failed to report the use tax. The taxpayer's records were audited in 1992 at which time this transfer and the failure to report the use tax came to the department's attention. Since the department discovered the use tax had not been paid more than four years after the close of 1987 and none of the exceptions as stated in subsection (2) of this section apply, the department is barred by the statute of limitations from now assessing the use tax. The department can expand the statute of limitations to seven years plus the current year if the taxpayer was required to be registered and failed to do so.

(b) The department issued its assessment on December 20, 1992, for use taxes owed by ABC Manufacturing covering the period January 1, 1988, through September 30, 1992. The taxpayer contacted the department in April 1994 and provided documentation to support that retail sales tax had been paid on some items assessed for use tax in the tax years 1989 and 1990. In the process of reviewing the documentation, the department discovered that the auditor inadvertently had failed to assess use tax on some assets purchased in the year 1988 which would have resulted in a larger tax assessment for that year than originally assessed. The department issued a revised assessment on June 15, 1994, covering the period January 1, 1988, through September 30, 1992 which reflected the deletion of the use tax assessed in error for 1989 and 1990. The revised assessment did not increase the tax assessment for taxes owed in 1988 because this would have resulted in the assessment being increased more than four years after the close of the 1988 tax year. Any petition for refund must be made within four years of the close of the tax year in which the tax was paid.

(c) The department contacted XYZ Distributing on September 1, 1992, to schedule a routine audit of its records. The taxpayer requested that the department delay the start of the audit until December 1, 1992, because its records are maintained on a fiscal year ending September 30 and the audit would be extremely disruptive to its year end closing if begun immediately. This delay would not allow the department sufficient time to complete the review of the records for 1988 and timely make an assessment for any taxes found to be due. The department may request the taxpayer to complete a statute of limitations waiver for the year 1988 in exchange for delaying the start of the audit. The completion of the waiver by the taxpayer will also hold open the year 1988 for refund or credit of any taxes found to have been overpaid in this period until such time as an assessment is issued or the waiver expires.

(d) ABC Manufacturing was being audited by the department for the period January 1, 1988, through September 30, 1992. During the process of examining the records, the department discovered that ABC had collected retail sales tax on sales in 1986 which had never been remitted to the department. There was no fraud or misrepresentation involved in the taxpayer's failure to remit the tax. The department appropriately expanded the period covered by the assessment to include the unremitted retail sales tax in the year 1986. Retail sales tax collected by a seller is deemed to be held in trust until paid to the department and the statute of limitations does not apply. (See RCW 82.08.050.)

(e) The department, through staff at its Seattle office, was unable to find a registration for ARC Company. The department contacted ARC by letter inquiring about its business activities in Washington and asking ARC for its registration number. ARC had not registered with the department of revenue, nor had it registered with any other state agencies through the UBI system. Shortly after being contacted by the department's Seattle staff, ARC contacted the Olympia office of the department and completed an application for registration without disclosing the earlier contact by the Seattle office. ARC subsequently argued that the assessment should be restricted to four years plus the current year. The department appropriately made its assessment for seven years plus the current year because the taxpayer was unregistered at the time of being first contacted by the department.

(f) John Smith lives in Washington part of the year, votes in Washington, has a Washington driver's license, and uses his Washington address in filing federal tax returns. He spends the winters in Arizona. In 1986, while in Arizona, he purchased a new motor home which he licensed in Arizona. He assumed that it was appropriate to license the vehicle in Arizona since he spends a considerable part of the year there and was not aware that he should pay use tax on the first use in Washington which occurred later that year. In 1992 he traded this motor home for a new motor home which he purchased from an Arizona dealer. Shortly thereafter, he returned to Washington and the department became aware of Mr. Smith's use of both of these motor homes in Washington. The department concluded that use tax was due. However, because the department could not show any evidence of evasion or misrepresentation and the taxpayer was not required to be registered with the department, the statute of limitations had expired on the 1986 purchase. Use tax was properly due and assessed on the 1992 purchase with the value based on the total purchase price after allowing a deduction for the trade-in value.

(g) In 1992 the department audited the records of XYZ Hauling for the years 1988 through 1991. The audit disclosed that some income from hauling performed in 1988 had not been reported and issued an assessment in 1992 for additional taxes owed under the motor transportation public utility tax. The taxpayer paid the assessment in 1992. In 1994 the taxpayer contacted the department with additional records which disclosed that part of the hauling for which motor transportation tax was assessed for the year 1988 should have been assessed under the urban transportation classification, a lower tax rate. The taxpayer requested that all of the motor transportation tax be refunded and argued that the urban transportation tax could not be assessed since the statute of limitations had expired for the year 1988. The department issued a revised assessment in which it subtracted the tax that should have been paid under urban transportation from the motor transportation tax which was assessed. The department refunded the difference. The revised assessment did not result in additional taxes being assessed, but was a reduction of the original assessment.

[Statutory Authority: RCW 82.32.300. 93-03-004, § 458-20-230, filed 1/8/93, effective 2/8/93; Order ET 70-3, § 458-20-230 (Rule 230), filed 5/29/70, effective 7/1/70.]

WAC 458-20-231 Tax on internal distribution. (1) **Introduction**. The intent of RCW 82.04.270 is to impose a tax equal to the wholesaler's tax upon persons doing functions essentially the same as those of a wholesaler, but not making sales. Persons engaged in the business of distributing articles of tangible personal property owned by them from their own warehouse or other central location in this state to two or more of their own retail stores or outlets in this state are taxable under the internal distribution classification of the business and occupation tax. This tax applies to transfers of merchandise from a central location to retail outlets even if the goods are preordered and there is no inspection or opening of cartons or boxes at or by the central location.

(2) **Warehouse or other central location**. The term "warehouse or other central location" generally means any facility regardless of the type of activity conducted there, which is operated in this state by a person who distributed tangible personal property from that facility to two or more of his or her own retail stores or outlets.

(a) This term includes any retail outlet no matter how the distributed goods are inventoried or stored at such outlet. The term includes any facility, central distributing point, building, loading platform and adjacent areas operated by the taxpayer where articles of tangible personal property are received and from which they are distributed. Such facilities, distributing points, buildings, platforms and areas are included within the term regardless of how long such property may remain at such places and regardless of the nature of the activity performed at such places with respect to such property.

(b) This term also includes any manufacturing or processing facility operated by the taxpayer from which such distribution is made. The term does not include facilities operated by other persons at which team track deliveries are made into trucks for distribution to retail outlets nor does it include any individual trucks owned by the taxpayer from which deliveries are made at facilities or places not owned by the taxpayer to other trucks for distribution to retail outlets.

(3) **Two or more retail stores or outlets**. The term "two or more of their own retail stores or outlets" means two or more retail stores operated within this state separate and apart from any "warehouse or other central location." The term does not include a retail store or retail outlet, a part of which is operated as a warehouse from which distribution is made. However, a retail store or outlet will be counted as separate and apart, even though it may be located within the same premises or under the same roof as a warehouse or central location, if it is operated separately, as evidenced for example by separate employee payrolls, accounting records, inventory control, or clearly defined work and retail sale areas. The term does not include trucks or vans used solely for delivery purposes. The term does include trucks or vans from which sales are made at retail such as sales of safety shoes or food through catering vans. The term "retail store or outlet" does not include vending machines or similar devices through which sales are made by coin deposits. However, the term includes business establishments which sell goods to consumers primarily through the use of such devices.

(a) Transfers of merchandise for sale on consignment are not subject to the internal distributions tax when the merchandise is delivered to retail outlets operated by another retailer. Such transfers are not taxable because delivery is not made to the distributors own retail stores or outlets.

(b) Shipments directly to a consumer from a warehouse or central location are not subject to the internal distributions tax even if the billing to the consumer is made from a branch location of the distributor. There must be a physical delivery of the merchandise to the branch location for the internal distributions tax to apply.

(4) **Articles of tangible personal property**. The term "articles of tangible personal property" means all goods distributed from a warehouse or central location for sale, including particular articles which may be distributed to only one of two or more retail stores or outlets.

(5) **Taxable distributions**. In cases where the taxpayer sells at both wholesale and retail, the internal distribution tax will not apply with respect to articles distributed for sale at wholesale and upon the sale of which tax will be due under the classification wholesaling—other.

(a) Articles distributed from independent manufacturers or distributors directly to the taxpayer's retail stores or outlets, or the taxpayer's retail customers are not taxable distributions by the taxpayer. Only the first distribution of seasonal or other goods from a warehouse or central location is taxable, whether or not such goods were originally received in a retail store and later transferred to the warehouse or central location from which taxable distribution is later made.

(6) **Determination of the value of the articles distributed**. The value of articles distributed shall correspond as nearly as possible to gross proceeds of sales at wholesale in this state by other taxpayers of similar articles of like quality and character and in similar quantities.

(7) **Methods for determining taxable value**. One of the following methods must be used for determining the taxable value of internal distributions.

(a) **Method 1. Cost of production**. The value of articles distributed may be computed upon the basis of the cost of manufacturing or producing such articles. In such case there shall be included every item of cost attributable to the particular article or articles manufactured or produced, including direct and indirect overhead costs and the cost of transportation to the local distribution point. In such event tax liability accrues during the period in which the articles are distributed.

(b) **Method 2. Purchase price**. The value of articles distributed may be computed upon the basis of purchase price including delivery costs of such articles delivered at the local distribution point. The purchase price must include the amount of state and federal excise taxes imposed upon the distributor for the sale, handling or distribution of the articles distributed, whether such taxes are paid by the distributor to his vendor, or are paid by him directly to the taxing body. In such event tax liability accrues during the period in which the articles were purchased, even though the particular articles purchased may not be distributed until a later date. (Not available to those who manufacture or produce the articles distributed.)

(c) **Method 3. Invoice price to retail store**. The value of articles distributed may be computed upon the basis of charges or memorandum invoices rendered to the retail stores at the time the articles are distributed, providing the amount of such charges or invoices is not less than the cost price of such articles. In computing the cost price, there must be included the amount of state and federal excise taxes imposed upon the distributor for the sale, handling or distribution of the articles distributed, whether such taxes are paid by the distributor to his vendor, or are paid by him directly to the taxing body. In such event tax liability accrues during the period in which the articles are distributed.

(d) **Method 4. Retail selling price less 15%**. The value of articles distributed may be computed upon the basis of the retail selling price less 15%. In such event tax liability accrues during the period in which the articles are sold at retail.

(e) **Method 5. Corresponding wholesale sales**. The value of articles distributed may be determined according to the gross proceeds of sales of similar articles of like quality, character and quantity where bona fide wholesale sales are made during the same period, either by the taxpayer or by others, and providing a general standard price is established for such articles during said period. In such event tax liability accrues during the period in which the articles are distributed.

(8) **Election to be made**. A taxpayer may elect to report upon the basis of any one of the five above methods, providing that the method elected shall be applied to all articles distributed, and after such election is made such taxpayer shall not be permitted to change to any other method without securing the written consent of the department of revenue. Taxpayers who manufacture the product may use method 1 for those products and any one of the other methods for products which they do not manufacture. Intricate or unusual problems concerning determination of the value of articles distributed should be submitted to the department for special ruling.

(a) The statute provides that the internal distributions tax may not be assessed twice to the same person for the same article. In the absence of separate accounting for articles upon which the tax has or has not been paid, the taxpayer may use percentage formula computed according to a factual segregation of articles distributed for a test period of at least two representative months. Any such formula is subject to approval by the department.

[Statutory Authority: RCW 82.32.300. 90-23-020, § 458-20-231, filed 11/14/90, effective 12/15/90; 83-08-026 (Order ET 83-1), § 458-20-231, filed 3/30/83; Order ET 70-3, § 458-20-231 (Rule 231), filed 5/29/70, effective 7/1/70.]

WAC 458-20-233 Tax liability of medical and hospital service bureaus and associations and similar health care organizations. All medical service bureaus, medical service corporations, hospital service associations and similar health care organizations engaging in business within this state are subject to the provisions of the business and occupation tax and are taxable under the service and other business activities classification upon their gross income. The term "gross income" as defined in RCW 82.04.080 is construed to include the total contributions, fees, premiums or other receipts paid in by the members or subscribers. Insofar as tax liability is concerned it is immaterial that such organizations may be incorporated as charitable or nonprofit corporations.

Certain of these organizations operate under contracts by the terms of which the bureau or association acts solely as the agent of a physician, hospital, or ambulance company in offering to its members or subscribers medical and surgical services, hospitalization, nursing, and ambulance services. In computing tax liability such bureaus and associations, therefore, will be entitled to deduct from their gross income the amounts paid to member physicians, hospitals and ambulance companies. No deduction will be allowed with respect to amounts retained as surplus or reserve accounts or to amounts expended for the purchase of supplies or for any other expense of the bureau or association other than as provided herein.

Under contracts wherein these organizations furnish to their members medical and surgical, hospitalization and ambulance services as a principal and not as an agent, no such deduction is allowed.

Revised July 1, 1956.

[Order ET 70-3, § 458-20-233 (Rule 233), filed 5/29/70, effective 7/1/70.]

WAC 458-20-234 Business tax on flour millers, manufacturers of soybean or sunflower oil. RCW 82.04.260(2) imposes business and occupation tax upon the manufacture of wheat into flour, soybean oil, or sunflower oil as follows:

"Upon every person engaging within this state in the business of manufacturing wheat into flour, soybeans into soybean oil, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business shall be equal to the value of the flour or oil manufactured, multiplied by the rate of one-eighth of one percent."

This special classification for flour millers is limited strictly to those manufacturing "wheat into flour" and does not apply to the milling of any other type of grain; nor does it apply to the manufacture of any other product from wheat than flour. The term "flour" shall have its ordinary meaning and includes flours such as wheat, wholewheat, cracked wheat, entire wheat graham, bulgar, and rolled wheat but excluding such by-products as bran and shorts. Insofar as such other products are concerned, the tax under the general manufacturing classification (RCW 82.04.240) will apply.

Accordingly a miller milling wheat into flour will be taxable under manufacturing wheat into flour on the value of the flour manufactured and manufacturing—other on the value of the offal produced as a result of the milling process.

Persons making sales in this state of flour, soybean oil, or sunflower oil which they have manufactured are subject to business tax under either the retailing or wholesaling—all others classification and are not subject to tax under the classification manufacturing wheat into flour. (RCW 82.04.440.)

[Statutory Authority: RCW 82.32.300. 83-08-026 (Order ET 83-1), § 458-20-234, filed 3/30/83; Order ET 70-3, § 458-20-234 (Rule 234), filed 5/29/70, effective 7/1/70.]

WAC 458-20-235 Effect of rate changes on prior contracts and sales agreements. The term "retail sales tax" as used herein means the state sales tax of chapter 82.08 RCW as well as the local sales taxes of chapter 82.14 RCW. The following principles govern the applicability of changes in the rates of tax imposed under the Revenue Act with respect to contracts and sales agreements made prior to the effective date of the change:

When an unconditional contract to sell tangible personal property is entered into prior to the effective date of a rate change, and the goods are delivered after that date, the new rates will be applicable to the transaction. When an unconditional contract to sell tangible property is entered into prior to the effective date, and the goods are delivered prior to that date, the tax rates in effect for the prior period will be applicable.

When a contract to sell tangible personal property contains a specific provision to pass title at some time prior to delivery of the goods, such a specific provision will be deemed controlling and the tax rates in effect at that time will be applicable.

The retail sales tax and business and occupation tax due on conditional and installment sales must be wholly reported during the period in which the sale is made (see WAC 458-20-198), irrespective of the fact that the seller may elect to receive payment of the sales tax in installments. Therefore, sellers who receive installment payments after the effective date of a rate change on conditional and installment sales made prior to that date must collect the sales tax due on such installments at the rate applicable when the contract was written and the sale was made.

Lessors who lease tangible personal property are required to collect from their lessees the retail sales tax measured by the gross income from rentals as of the time the rental payments fall due (WAC 458-20-211). Lessors must collect the retail sales tax and pay the business and occupation tax at the new rates on all rental payments which fall due on and after the effective date of a rate change, including rental payments on leases entered into prior to that date.

Persons installing, repairing, cleaning, altering, imprinting or improving tangible personal property for others, or constructing, repairing, decorating or improving buildings or other structures upon the real property of others will collect retail sales tax and pay the business and occupation tax at the new rates with respect to all such services performed and billed on and after the effective date of a rate change. With respect to contracts requiring the above services or construction which were executed prior to the effective date of a change in rates, the new rates will be applicable to the full contract price unless the contract work is completed and accepted prior to the effective date. If, however, under the terms of the contract, the seller is entitled to periodic payments which amounts are calculated to compensate the seller for the work completed to the date of payment, the applicable tax rates upon such payments (including, in the case of public works contracts, the percentage retained by the public agency pursuant to the provisions of RCW 60.28.010) will be those in effect at the time the contractor becomes entitled to receive said payments.

Taxpayers filing returns on the cash basis (i.e., reporting charge sales at the time payment is received rather than at the time of sale) must make an accounts receivable adjustment (see WAC 458-20-199) at the time of a change in tax rates. For example, if a change of tax rate becomes effective July 1, a cash basis taxpayer should report along with the June cash receipts all accounts receivable outstanding as of June 30.

Intricate questions should be submitted in writing to the department of revenue for specific rulings.

[Statutory Authority: RCW 82.32.300. 83-07-032 (Order ET 83-15), § 458-20-235, filed 3/15/83; Order ET 70-3, § 458-20-235 (Rule 235), filed 5/29/70, effective 7/1/70.]

WAC 458-20-236 Baseball clubs and other sport organizations.

Business and Occupation Tax

Baseball clubs and other sport organizations are taxable under the classification of service and other business activities upon the total income derived from games for which such clubs are the sponsors or hosts, even though a fixed amount or a certain percentage of such income is paid to another team or club.

Conversely, amounts received by baseball clubs or other sport organizations as their share of the proceeds from games for which they are not the sponsor or host may be excluded from the measure of tax.

Issued July 1, 1956.

[Order ET 70-3, § 458-20-236 (Rule 236), filed 5/29/70, effective 7/1/70.]

WAC 458-20-237 Retail sales tax collection schedules. (1) **State retail sales and use tax.** Under the provisions of section 6, chapter 7, Laws of 1983 the state retail sales tax was increased to 6.5% effective March 1, 1983. For purposes of the state retail sales tax, where a retail sale occurs is to be determined under RCW 82.14.020 and WAC 458-20-145.

(2) **Local sales and use tax.** RCW 82.14.030 (1) and (2) authorizes counties and cities to levy a local sales and use tax of .5% and an additional local option sales and use tax of up to .5%. These local taxes are collected along with the 6.5% state tax.

(a) RCW 82.14.045 authorizes all cities and counties, after voter approval, to levy an additional sales and use tax of .1%, .2%, .3%, .4%, .5%, or .6%, to finance public transportation systems. This tax is collected along with the other state and local tax.

(b) Section 43, chapter 43, Laws of 1990 which took effect March 14, 1990, allows cities that operate transit systems, county transportation authorities, Metro and public transportation benefit areas, after voter approval, to levy a local sales and use tax in addition to those authorized in RCW 82.14.030 not to exceed an additional 1.0%. This tax is also collected along with the other state and local tax.

(3) **Availability of sales tax schedules.** Under the authority of RCW 82.08.060 and 82.14.070, the department of revenue has published schedules to govern the collection of retail sales tax on all retail sales. Copies of the schedules may be obtained by writing to Department of Revenue, Information and Education Section, General Administration Building, Olympia, Washington 98504-0090 or by contacting one of the local department of revenue district offices listed below.

(4) **Street and mailing addresses of local district offices.**

110 W. Market
P.O. Box 1018
Aberdeen 98520
(360) 533-9312

1904A Humboldt St.
P.O. Box 1176
Bellingham 98227
(360) 676-2114

4841 Auto Center Way
Suite 102
Bremerton 98312
(360) 478-4961

2020 35th Street
P.O. Box 6
Everett 98206
(206) 339-1880

711 Vine Street
P.O. Box 240
Kelso 98626
Longview/Kelso Office
(360) 577-2015

1024 Cleveland, Suite B
P.O. Box 278
Mount Vernon 98273
(360) 336-9616

919 SW Grady Way
P.O. Box 877
Renton 98057
1-800-647-7706

400 Mercer, Room 100
Seattle 98109
1-800-647-7706

300 Northtown Office Bldg.
North 4407 Division
P.O. Box 7248
Spokane 99207-0248
(509) 456-3140

11707 - 21st Ave. S.
P.O. Box 44010
Tacoma 98444-4010
(206) 493-2874

8008 - 4th Plain Blvd.
P.O. Box 1648
Vancouver 98668
(360) 577-2015

630 N. Chelan Ave., Ste. B3
P.O. Box 220
Wenatchee 98801
(509) 663-9714

1107 South Eastside
P.O. Box 7
Olympia 98507
1-800-647-7706

2110 West Henry
P.O. Box 2844
Pasco 99302
(509) 545-2442

1601 East Front Street
Bldg. 2, Suite A
P.O. Box 400
Port Angeles 98362
(360) 457-2564

1714 South 16th Ave.
Yakima 98902-5713
(509) 575-2783

INQUIRIES FROM OUT-OF-STATE, CALL:
1-800-233-6349

[Statutory Authority: RCW 82.32.300. 91-05-038, § 458-20-237, filed 2/13/91, effective 3/16/91; 83-09-028 (Order ET 83-2), § 458-20-237, filed 4/15/83; 82-16-061 (Order ET 82-7), § 458-20-237, filed 7/30/82. Statutory Authority: RCW 82.32.300 and 82.08.060. 82-06-020 (Order 82-1), § 458-20-237, filed 2/24/82. Statutory Authority: RCW 82.08.060 and 82.14.070. 81-01-099 (Order 80-5), § 458-20-237, filed 12/23/80. Statutory Authority: RCW 82.08.060, 82.14.070 and 82.32.300. 79-06-036 (Order ET 79-1), § 458-20-237, filed 5/17/79, effective 7/1/79; Order ET 76-2, § 458-20-237, filed 5/19/76; Order ET 72-3, § 458-20-237, filed 11/30/72; Order ET 70-3, § 458-20-237 (Rule 237), filed 5/29/70, effective 7/1/70.]

WAC 458-20-238 Sales of watercraft to nonresidents. (1) **Introduction.** This section explains the retail sales tax exemption provided by RCW 82.08.0266 for sales to nonresidents of watercraft requiring United States Coast Guard registration or documentation. It also explains the retail sales tax exemption provided by RCW 82.08.02665 for sales of watercraft to residents of foreign countries, which became effective July 25, 1993. (See chapter 119, Laws of 1993.) These statutes provide the exclusive authority for granting a retail sales tax exemption for sales of such watercraft when delivery is made within Washington. This section explains the requirements which must be met, and the documents which must be preserved, to substantiate a claim of exemption. It also discusses use tax exemptions for nonresidents bringing watercraft into Washington for enjoyment and/or repair.

This section primarily deals with the retail sales and use taxes where delivery takes place in Washington. Purchasers of watercraft should also be aware that there is a watercraft excise tax which may apply to the purchase or use of watercraft in Washington. (See chapter 82.49 RCW.) Sellers should refer to WAC 458-20-193 if they deliver the vessel to the purchaser at an out-of-state location.

(2) **Business and occupation tax.** Retailing B&O tax is due on all sales of watercraft to consumers if delivery is made within the state of Washington, notwithstanding the sale may qualify for an exemption from the retail sales tax. If the seller is also the manufacturer of the vessel, the seller must generally report under both the "production" (extracting and/or manufacturing) and "selling" (wholesaling or retailing) classifications of the B&O tax, and claim a tax credit under the multiple activities tax credit system. Manufacturers should also refer to WAC 458-20-136 (Manufacturing, processing for hire, fabricating) and WAC 458-20-19301 (Multiple activities tax credits).

(3) **Retail sales tax.** The retail sales tax generally applies to the sale of watercraft to consumers when delivery is made within the state of Washington. However, under

certain conditions retail sales tax exemptions are available for sales of watercraft to nonresidents of Washington, even when delivery is made within Washington.

(a) **Sales to residents of other states.** RCW 82.08.0266 provides an exemption from the retail sales tax for sales of watercraft to residents of states other than Washington for use outside this state, even when delivery is made within Washington. This specific exemption does not apply to sales of watercraft to Canadian or other foreign country residents. The retail sales tax exemption which is available for sales of watercraft to Canadian or other foreign country residents is explained in (b) of this subsection.

(i) The exemption provided by RCW 82.08.0266 is limited to the following:

(A) Sales of watercraft which are required to obtain United States Coast Guard documentation; and

(B) Sales of watercraft requiring registration by the United States Coast Guard or the state in which the vessel will be principally used, but only when that state has assumed the registration and numbering function under the Federal Boating Act of 1958.

(ii) The following requirements must be met to perfect any claim for exemption:

(A) The watercraft must leave Washington waters within forty-five days of delivery;

(B) The seller must examine acceptable proof that the buyer is a resident of a state other than the state of Washington; and

(C) The seller, at the time of the sale, must retain as a part of its records a completed exemption certificate. (See subsection (4) of this section.)

(b) **Sales to residents of foreign countries.** RCW 82.08.02665 provides a retail sales tax exemption for sales of vessels to residents of foreign countries for use outside this state, even when delivery is made in Washington. This exemption became effective July 25, 1993. (See chapter 119, Laws of 1993.)

(i) The term "vessel," for the purposes of this subsection, means every watercraft used or capable of being used as a means of transportation on the water, other than a seaplane. This exemption is not limited to the types of watercraft qualifying for the exemption discussed in (a) of this subsection.

(ii) The following requirements must be met to perfect any claim for exemption:

(A) The watercraft must leave Washington waters within forty-five days of delivery;

(B) The seller must examine acceptable proof that the buyer is a resident of a foreign country; and

(C) The seller, at the time of the sale, must retain as a part of its records a completed exemption certificate. (See subsection (4) of this section.)

(c) **Watercraft qualifying for exemption under RCW 82.08.0266 and 82.08.02665.** The exemptions provided by RCW 82.08.0266 and 82.08.02665 apply only to sales of watercraft. For the purposes of these exemptions, the term "watercraft" includes component parts which are installed in or on the watercraft prior to the watercraft being delivered to and accepted by the buyer, but only when these parts are sold by the seller of the watercraft. "Component part" means tangible personal property which is attached to the watercraft and used as an integral part of the operation of the watercraft, even if the item is not required mechanically for the operation of the watercraft. Component parts include, but are not necessarily limited to, boat motors, navigational equipment, radios, depth-finders, and winches, whether themselves permanently attached to the watercraft or held by brackets which are permanently attached. If held by brackets, the brackets must be permanently attached to the watercraft in a definite and secure manner.

These exemptions do not extend to the sale of boat trailers, repair parts, repair labor, etc. Nor do they extend to a separate seller of unattached component parts, even though these parts may be manufactured specifically for the watercraft and/or permanently installed in or on the watercraft prior to the watercraft being delivered to and accepted by the buyer.

(4) **Exemption certificate.** The exemption certificate must be completed in its entirety, and retained by the seller at the time of sale. The seller is required to review one piece of identification substantiating the nonresident status of the customer, and to indicate on the certificate the type of identification examined. This one piece of identification must either be a valid driver's license from the jurisdiction in which out-of-state residency is claimed, or a valid identification document which has a photograph of the holder and is issued by the out-of-state jurisdiction. If the customer is a partnership, corporation, limited liability company, association, or any other person who is not a natural person, the seller should refer to subsection (5) of this section for an explanation of what constitutes acceptable proof of the customer's nonresident status.

The seller should not accept an exemption certificate if the seller becomes aware of any information prior to completion of the sale which is inconsistent with the purchaser's claim of residency, such as a Washington address on a credit application. The exemption certificate must be substantially in the following form:

EXEMPTION CERTIFICATE

Seller's Name . . . .
Buyer's Name . . . .
Address of Buyer . . . .
State or Foreign Country of Residence . . . .
Date of Sale . . . .
Make and Model of Vessel . . . .
Serial Number of Vessel. . . . .

I certify that (a) the vessel described above will be registered or documented with the United States Coast Guard or the state of principal use; or (b) I am a resident of a foreign country and the vessel has been purchased for use outside the state of Washington. I further certify that this vessel will leave Washington state waters within forty-five days of delivery, and the purchase of this vessel is exempt from Washington state retail sales tax under the provisions of either RCW 82.08.0266 or 82.08.02665. This certificate is given with full knowledge of, and subject to, the legally prescribed penalties for fraud and tax evasion.

Signature of buyer or buyer's representative . . . .

CERTIFICATION BY SELLER

I hereby certify that I have personally examined one of the following items of documentary evidence submitted by the above purchaser to establish residency in the state or country of . . . .:

. . . Driver's License (list license number and date of expiration) . . . .
. . . Identification Card (list card number and date of expiration) . . . .

Signature of seller or agent of seller. . . . .

(5) **Sales to residents of other states or countries who are not natural persons.** The types of identification described in subsection (4) of this section are not applicable for establishing the residency of partnerships, corporations, limited liability companies, or other persons who are not natural persons. Because many of the types of documentation which would establish the nonresident status of these persons contain confidential information (e.g., federal income tax returns), the seller may satisfy its requirement to examine and record documentary evidence by retaining at the time of sale a completed affidavit substantially in the following form:

AFFIDAVIT OF OUT-OF-STATE RESIDENCY

(This affidavit for use only by purchasers who are not natural persons, such as corporations.)

Name of buyer . . . .
Address . . . .
State or foreign country of residency . . . .
Registration # . . . .
Type of entity (e.g., corporation, partnership, etc.) . . . . .

I certify that . . . (buyer's name) . . . is a resident of . . . (state or foreign country). . .

Name of buyer's representative (printed) . . . .
Signature of buyer's representative . . . .

The affidavit of out-of-state residency may only be accepted and used for establishing the nonresident status of persons who are not natural persons. It may not be used as documentary evidence for sales to natural persons. The seller must at the time of sale retain this affidavit as well as the exemption certificate described in subsection (4) of this section. A partnership, corporation, limited liability company, or other person who is not a natural person is a "nonresident" for the purposes of exemption under RCW 82.08.0266 or 82.08.02665 if that person's principal place of business is not in Washington, and that person is not incorporated in Washington.

(6) **Use tax.** Persons using watercraft on Washington waters are generally subject to the use tax if Washington retail sales tax has not been paid, unless such use is specifically exempted by law from the use tax.

(a) The deferred retail sales tax or use tax is due on the use by any nonresident of watercraft purchased from a Washington vendor and first used within this state for more than forty-five days if retail sales or use tax has not been paid by the user. Tax is due notwithstanding the watercraft qualified for retail sales tax exemption at the time of purchase.

(b) Watercraft brought into this state by nonresidents for their use and enjoyment while temporarily within this state are exempt from the use tax. However, it will be presumed that usage within Washington which exceeds more than sixty days in any twelve-month period is more than temporary usage and use tax is due.

(c) Watercraft temporarily brought into this state by nonresidents for repair are exempt from the use tax if removed from this state within sixty days. If repair cannot be made within this period, the exemption may be extended by completing and filing with this department an affidavit verifying the vessel is located upon the waters of this state exclusively for repair, reconstruction or testing. This affidavit, titled "Nonresident Out-of-State Vessel Repair Affidavit," is effective for sixty days. If additional extensions of the exemption period are needed, additional affidavits may be completed. The affidavit should be sent to the department of revenue - compliance division. This affidavit is the affidavit which is required under RCW 88.02.030, and failure to complete this affidavit can result in requiring that the vessel be registered in Washington.

(7) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances. In all examples, retailing B&O tax is due from the seller for all sales of watercraft and parts, and all charges for repair parts and labor.

(a) Company A sells a vessel to Jane Smith, a Canadian resident. Company A examines Jane Smith's driver's license to verify Jane to be a resident of Canada, and retains the proper exemption certificate at the time of sale. Delivery is made in Washington and Jane removes the vessel from Washington waters within forty-five days of delivery. The sale of the vessel is not subject to the retail sales tax because all requirements for exemption under RCW 82.08.02665 have been satisfied.

(b) Company A sells a yacht to John Doe, an Oregon resident, who takes delivery in Washington. The yacht is required to be registered by the state of Oregon, which has assumed the registration and numbering function under the Federal Boating Act of 1958. The vessel is removed from Washington waters within forty-five days of delivery. Company A examines a driver's license confirming John Doe to be an Oregon resident, and records this information in the sales file. Company A does not complete and retain the required exemption certificate.

The sale of the yacht is subject to the retail sales tax. The exclusive authority for granting a retail sales tax exemption for this sale is provided by RCW 82.08.0266. Completion of an exemption certificate is a statutorily imposed condition for obtaining this exemption. Company A has not satisfied the conditions and requirements necessary to grant an exemption under this statute. The exemption provisions under RCW 82.08.0273 for sales to nonresidents of states having less than three percent retail sales tax can not be used for purchases of vessels which require United States Coast Guard registration or documentation, or registration in the state of principal use. If the exemption certificate had been properly completed at the time of sale, this sale would have qualified for retail sales tax exemption.

(c) Mr. Jones, a California resident, contracts Company B to manufacture a pleasure yacht. Mr. Jones purchases a boat motor from Company Y with instructions that delivery be made to Company B for installation on the yacht. The yacht is required to be registered with the state of California, which has assumed the registration and numbering function under the Federal Boating Act of 1958. Company B examines Mr. Jones' driver's license to verify Mr. Jones is a nonresident of Washington, and retains the proper exemption certificate at the time of sale. Delivery is made in Washington, and Mr. Jones removes the vessel from Washington waters within forty-five days of delivery.

The sale of the yacht by Company B to Mr. Jones is not subject to the retail sales tax, as the requirements and conditions for exemption have been satisfied. Retail sales tax does, however, apply to the sale of the motor by Company Y to Mr. Jones. The exemption provided by RCW 82.08.0266 does not extend to a separate seller of unattached component parts, even though the parts are installed in the watercraft prior to delivery.

(d) Mr. Smith, a resident of California, brings his yacht into Washington for repair. Extensive repairs and testing require the yacht to remain in Washington waters for ninety days. Mr. Smith extends the exemption period by filing a "Nonresident Out-of-State Vessel Repair Affidavit" with the department of revenue prior to end of the initial sixty-day exemption period. An employee of the repair facility is on board the yacht during all testing, and there is no personal use by Mr. Smith during this period. Upon completion of the repairs and testing, Mr. Smith takes delivery at the repair facility and promptly removes the yacht from Washington waters.

Mr. Smith has not incurred a use tax liability on his yacht. The conditions and requirements exempting the yacht from use tax during the period of repair and testing have been met. However, retail sales tax is due, and must be paid, on all charges for repair parts and labor. The exemption from sales tax for purchases of vessels does not extend to repairs.

[Statutory Authority: RCW 82.32.300. 95-24-103, § 458-20-238, filed 12/6/95, effective 1/6/96; 83-21-061 (Order ET 83-7), § 458-20-238, filed 10/17/83; 83-08-026 (Order ET 83-1), § 458-20-238, filed 3/30/83; Order ET 70-3, § 458-20-238 (Rule 238), filed 5/29/70, effective 7/1/70.]

WAC 458-20-239 Sales to nonresidents of farm machinery or implements.

Business and Occupation Tax

In computing tax under the retailing classification, no exemption or deduction is allowed by reason of the fact that farm machinery or implements are sold to nonresidents for use outside this state when delivery is made in this state.

Retail Sales Tax

Under RCW 82.08.0268 an exemption from retail sales tax is allowed in respect to sales to nonresidents of this state of machinery and implements for use in conducting a farming activity outside this state, when such machinery and implements are transported outside the state immediately after sale. This exemption is allowed even though the goods sold are delivered to the purchaser in this state, but only where the seller receives from the buyer an exemption certificate as hereinafter provided and examines acceptable proof that the buyer is a resident of a state or country other than the state of Washington. The exemption certificate should be in substantially the following form and is to be retained by the seller as a part of his records. Each sale claimed exempt must be supported by a separately executed certificate. Certificates for other or prior transactions or "blanket" certificates are not acceptable.

Exemption Certificate

I, (printed or typed name of purchaser) hereby certify: That I am a bona fide resident of the state of . . . . . . and my address is (street and number or box and route), (city, town or post office), (state). That on (date) I purchased from (seller) the following machinery or implements:

(name or description) (brand) (model) That the machinery or implements named above are purchased for my use in conducting a farming activity at (address), and the date of transporting the same outside the state of Washington is (month, day and year)

. . . .
(date)   (signature of purchaser)

Certification of Dealer

I hereby certify that I personally examined the following items of documentary evidence submitted by the above purchaser which show his residence to be the state of . . . . . .:

. . . Payroll or W-2 Forms
. . . Driver's License
. . . Fishing or Hunting License
. . . Voter's Registration Card
. . . Copies of Conditional Sales Contracts
. . . Copies of Income Tax Returns

. . . .
(signature of dealer or representative)   (Dealer's registration number with Department of Revenue)

. . . .
title-officer or agent

[Statutory Authority: RCW 82.32.300. 83-08-026 (Order ET 83-1), § 458-20-239, filed 3/30/83; Order ET 70-3, § 458-20-239 (Rule 239), filed 5/29/70, effective 7/1/70.]

WAC 458-20-240 Manufacturers, tax credits. (1) Introduction. Chapter 82.62 RCW establishes a business and occupation tax credits program. Its purpose is to stimulate the economy and create employment opportunities in specific distressed areas of this state. In addition to the tax credit benefits of this program, specific financial incentives to employers who locate or expand business facilities in this state are administered by the Washington state employment security department. The provisions of this section, however, apply only for manufacturing or research and development activities conducted at specific business facilities in announced eligible areas of this state.

(2) Effective April 1, 1986, persons engaged in manufacturing or research and development activities, who

otherwise qualify, will receive credits against their business and occupation tax due under chapter 82.04 RCW. Those credits amount to one thousand dollars for each qualified employment position directly created in an eligible business project, as those terms are defined in this section.

(3) Definitions. For purposes of the tax credits program the following definitions will apply.

(a) "Applicant" means a person applying for tax credit under this program.

(b) "Department" means the department of revenue.

(c) "Eligible area" means:

(i) A county in which the average level of unemployment for the three years before the year in which an application is filed exceeds the average state unemployment for those years by twenty percent. The department will publish a list of such eligible areas by May 1 of each year during the life of this program.

(ii) A metropolitan statistical area, as defined by the Office of Federal Statistical Policy and Standards, United States Department of Commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application for credit is filed exceeds the average state unemployment for such calendar year by twenty percent. Applications under this subsection shall be filed by April 30, 1989.

(d) "Eligible business project" means manufacturing or research and development activities which are conducted by an applicant in an eligible area at a specific facility: *Provided,* That in order to qualify as an eligible business project, the applicant's average full-time qualified employment positions at the specific facility will be at least fifteen percent greater in the year for which credit is being sought than they were at the same facility in the immediately preceding year.

(e) The term "eligible business project" defined earlier, does not include any of the following:

(i) Any business project undertaken by a light and power business;

(ii) Any portion of a business project creating employment positions outside an eligible area;

(iii) Any business projects of persons who are receiving sales tax deferrals under chapter 82.61 RCW (see WAC 458-20-24002).

(f) "Manufacturing" has the meaning given in RCW 82.04.110 and WAC 458-20-136. For purposes of this section the term also includes computer programming, the production of computer software, and other computer-related services, and the activities of research and development and commercial testing laboratories.

(g) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, services, or process before commercial sales have begun.

(h) "Qualified employment position" means a permanent full-time employee, employed in an eligible business project during the entire tax year: *Provided,* That,

(i) Once a full-time position is established and filled it will continue to qualify for tax credit purposes so long as it is filled by any person or, during any period of vacancy, the employer is training or actively recruiting a replacement employee;

(ii) A position will not be deemed to be filled in order to qualify for tax credit if it is vacant for any period in excess of thirty consecutive days;

(iii) The requirement for employment during the "entire" tax year will be satisfied if the full-time position is filled for a period of twelve consecutive months.

(i) "Permanent full-time employee" means a person who works for the recipient on a paid basis, at least thirty-five hours per week. It does not include independent contractors, independent representatives, persons compensated exclusively on a commissioned basis, or seasonal and similar 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 depart-

ment's refusal, or within any extension of such time granted by the department. A certificate holder shall initiate construction of the investment project within one hundred eighty days of receiving approval from the department and issuance of the tax deferral certificate.

(22) A tax deferral certificate shall only be issued to persons who, on June 14, 1985, are not engaged in manufacturing or research and development activities within this state. For purposes of this section, a person shall not be considered to be engaged in manufacturing or research and development activities where the only activities performed by such person in this state are sales, installation, repair, or promotional activities in respect to products manufactured outside this state. Any person who has succeeded by merger, consolidation, incorporation, or any other form or change of identity to the business of a person engaged in manufacturing or research and development activities in this state on June 14, 1985 and any person who is a subsidiary of a person engaged in manufacturing or research and development activities in this state on June 14, 1985 shall also be ineligible to receive a tax deferral certificate.

(23) No application for deferral of taxes shall be accepted after June 30, 1994. For purposes of this regulation, the time of receipt of an application shall be determined by the date shown by the post office cancellation mark stamped upon the envelope containing the application if transmitted by the United States Postal Service, the date stamped on the envelope if transmitted by another carrier, or the date of receipt if hand delivered to an office of the department.

(24) Use of the certificate. A tax deferral certificate issued under this program shall be for the use of the recipient thereof for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified buildings, machinery, and equipment as defined in this section. Thus, sales and use taxes cannot be deferred on items which do not become part of the qualified buildings, machinery, and equipment.

(25) The tax deferral certificate shall be used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102. The certificate holder shall provide its vendors with a copy of the tax deferral certificate at the time goods or services are purchased. The seller or vendor shall be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller or vendor shall retain a copy of the certificate as part of its permanent records. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller or vendor is liable for reporting business and occupation tax on all deferral sales.

(26) Audit procedures. The certificate holder shall notify the department in writing when the construction project is operationally complete. Upon receipt of such notification or other information, the department shall conduct a final audit of the investment project. The certificate holder shall open its books and records to the department and make available the final cost figures for the investment project. The department may request reasonable supporting documentation and other proof to justify the final cost of the project.

(27) Upon completion of the audit the department shall certify the amount of sales and use taxes subject to deferral and the date on which the project was operationally complete. The recipient shall be notified in writing of the total amount of deferred taxes, the date(s) upon which the deferred taxes shall be paid, and any reports required to be submitted in the subsequent years. If the department disallows all or any portion of the amount of sale and use taxes requested for deferral, the recipient may seek administrative review of the department's action pursuant to the provisions of WAC 458-20-100, within twenty days from the date of the notice of disallowance.

(28) The deferral is allowable only in respect to investment in the construction of a new plant complex used in manufacturing or research and development activities, as defined above. Where a plant complex is used partly for manufacturing or research and development purposes and partly for purposes which do not qualify for deferral under this section and it is not possible to identify the nonqualifying items through separate accounting, the applicable tax deferral shall be determined by apportionment according to the ratio which the construction cost per square foot of that portion of the plant complex directly used for manufacturing purposes bears to the construction cost per square foot of the total plant complex.

(29) The amount of tax deferral allowable for leased equipment shall be calculated upon that amount of the consideration paid by the lessee/recipient to the lessor:

(a) Over the initial term of the lease, excluding any period of extension or option to renew, where the lease term ends on or before the last date for repayment of the deferred taxes; or

(b) Over that portion of the lease term to the last date for repayment of deferred taxes as provided hereinafter, where the lease term, excluding any period of extension or option to renew extends beyond such repayment date.

(30) After that date the lessee/recipient shall pay the appropriate sales tax to the lessor for the remaining term of the lease.

(31) No taxes may be deferred under this section prior to June 14, 1985. No applications for deferral of taxes will be accepted after June 30, 1994, nor will sales or use tax deferral certificates be issued after August 29, 1994. A certificate holder must commence construction of the investment project within one hundred eighty days of receiving approval from the department and issuance of the tax deferral certificate but no later than December 31, 1994.

(32) Reporting and monitoring procedure. An applicant must provide the department with the estimated cost of the investment project at the time the application is made. The applicant shall also provide information relative to the number of jobs contemplated to be created by the project.

(33) The department and the department of trade and economic development shall jointly make two reports to the legislature about the effect of this deferral law on new manufacturing and research and development activities and projects in Washington. The report shall contain information concerning the number of deferral certificates granted, the amount of state and local sales and use taxes deferred, the number of jobs created, and other information useful in measuring such effects. The departments shall submit their

joint reports to the legislature by January 1, 1986 and by January 1 of each year through 1995.

(34) Any recipient of a sales and use tax deferral may be asked to submit reports to the department or department of trade and economic development during any period of time the recipient is receiving benefits under this deferral law. The report shall be made to the department in a form and manner prescribed by the department. The recipient may be asked to report information regarding the actual average employment related to the project, the actual wages of the employees related to the project, and any other information required by the department. If the recipient fails to submit a report, the department may not impose any penalties or sanctions against the recipient.

(35) Payment procedures. The recipient of sales and use tax deferral under this program shall begin paying the deferred taxes in the third year after the date certified by the department as the date on which the construction project was operationally complete. The first payment will be due on December 31st of the third calendar year after such certified date, with subsequent annual payments due on December 31st of the following four years, with amounts of payment scheduled as follows:

Repayment Year	Percentage of Deferred Tax Repaid
1	10%
2	15%
3	20%
4	25%
5	30%

(36) The department may authorize an accelerated repayment schedule upon request of the recipient. Interest shall not be charged on any taxes deferred under this program during the period of deferral, although other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for any delinquent payments during the repayment period pursuant to chapter 82.32 RCW. The debt for deferred taxes shall not be extinguished by insolvency or other failure of the recipient nor shall the debt for the deferred taxes be extinguished by the sale, exchange, or other disposition of the recipient's business. Any person who becomes a successor (see WAC 458-20-216) to such investment project shall be liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient.

(37) Special provisions affecting aluminum production facilities. Effective May 19, 1987, the law makes special provisions for sales and use tax deferrals for new or used equipment, machinery and operating property, and labor and services in connection with the startup or continued operation of aluminum smelter facilities which were in operation before 1975, but which have ceased operations (or are in imminent danger of ceasing operations). Also, such special provisions may apply to modernization projects involving the construction, acquisition, or upgrading of new or used equipment and machinery to increase the operating efficiency of aluminum smelters or aluminum rolling mills and facilities. Such special provisions entail consultation with collective bargaining units for existing employees as well as the concurrence by such bargaining units with the deferral requested. Persons who operate such facilities should contact the department of revenue to determine if the sales and use tax deferrals are available in any specific case.

(38) Disclosure of information. The law provides that information contained in applications, reports, and other information received by the department in connection with this tax deferral program shall not be confidential and shall be subject to disclosure.

[Statutory Authority: RCW 82.32.300. 88-17-047 (Order 88-5), § 458-20-24002, filed 8/16/88; 87-19-007 (Order ET 87-5), § 458-20-24002, filed 9/8/87; 86-14-019 (Order ET 86-13), § 458-20-24002, filed 6/24/86; 85-21-013 (Order ET 85-5), § 458-20-24002, filed 10/7/85.]

WAC 458-20-241 Radio and television broadcasting. For the purpose of this rule:

"Broadcast" or "broadcasting" includes both radio and television commercial broadcasting stations unless it clearly appears from the context to refer only to radio or television.

"Local advertising" means all broadcast advertising other than national, network, or regional advertising as herein defined.

"National advertising" means broadcast advertising paid for by sponsors which supply goods or services on a national or international basis.

"Network advertising" means broadcast advertising originated by national or regional broadcast networks from outside the state of Washington, the broadcast advertising being supplied by national or regional network broadcasting companies.

"Regional advertising" means broadcast advertising paid for by sponsors which supply goods or services on a regional basis over two or more states.

Business and Occupation Tax

Radio and television broadcasting. Taxable on gross income from the sale of radio or television advertising, and any other gross income from broadcasting, excluding sales to other broadcasters of the right to broadcast material on processed film, sound recorded magnetic tape, and other transcriptions (see service and other activities).

Deductions from gross income from advertising:

(1) **Agency fees**. It is a general trade practice in the broadcasting industry to make allowances to advertising agencies in the form of the deduction or exclusion of a certain percentage of the gross charge made for advertising ordered by the agency for the advertiser. This allowance will be deductible as a discount in the computation of the broadcaster's tax liability in the event that the allowance is shown as a discount or price reduction in the billing or that the billing is on a net basis, i.e., less the discount.

(2) **Gross receipts from national, network, and regional advertising**. The taxpayer may deduct either actual gross receipts from national, network, and regional advertising as herein defined, as included in the gross amount reported under radio and television broadcasting, or may take a "standard deduction" as provided by RCW 82.04.280, as amended by chapter 149, Laws of 1967 ex. sess., which will be a percentage arrived at annually for all broadcast stations in the state of Washington which use the standard deduction method. This percentage will be determined by dividing the total broadcast advertising receipts in the nation from

network, national, and regional advertising by the total broadcast advertising receipts in the nation.

This standard deduction will be based on the most current figures published at the beginning of the calendar year and shall be used throughout that calendar year notwithstanding the publishing of the following year's figures within that calendar year. Previously the Federal Communications Commission published the figures used to compute the standard deduction. The Federal Communications Commission no longer publishes these figures and henceforth it will be the responsibility of the industry to annually provide these figures to the department of revenue. The figures used will be subject to verification by the department.

Example of computation:

The standard deduction for persons engaged in radio and television broadcasting was 64% for the calendar year 1970. The deduction was computed as follows:

1. Total radio advertising receipts 1968	$1,076,300,000
2. Total television advertising receipts 1968	2,087,600,000
3. Total broadcast advertising receipts	3,163,900,000
4. Total national, network, regional advertising receipts, radio, 1968	379,200,000
5. Total national, network, regional advertising receipts, television, 1968	1,635,100,000
6. Total broadcast advertising receipts from national, network, and regional advertising	2,014,300,000
7. Standard deduction for 1970 will be the quotient of line 6 divided by line 3 or	64%

(3) **Interstate business, allocation.** It is recognized that radio and television broadcasting is an interstate business and that under the Constitution of the United States a tax is prohibited upon so much of the revenue of a radio or television broadcasting station as is derived from the service of broadcasting to persons in other states or foreign countries. Accordingly, revenues from local advertising shall be allocated to remove from the tax base the gross income from advertising which is intended to reach potential customers of the advertiser who are located outside the state of Washington.

It will be presumed that the entire gross income of radio and television stations located within the state of Washington from local advertising as herein defined is subject to tax unless and until the taxpayer submits proof to the department of revenue that some portion of such income is exempt according to the principles set forth herein and until a specific allocation formula has been approved by the department.

Method of allocation. When the total daytime listening area of a radio or television station extends beyond the boundaries of the state of Washington, the allowable deduction is that portion of revenue represented by the out-of-state audience computed as a ratio to the station's total audience as measured by the 100 microvolt signal strength and delivery by wire, if any. The out-of-state audience may therefore be determined by delivery "over the air" and by community antenna television systems. However, community antenna television audiences may not be claimed by a station in the same area in which it claims an audience served over the air, thus eliminating a claim for double exemption.

The most current United States and Canadian census figures will be used to determine the in-state and out-of-state audience.

An engineer holding at least a first class operator's license from the Federal Communications Commission must compute the 100 microvolt contour for the station claiming the exemption. The 100 microvolt contour will be applicable to all broadcasting stations, whether standard (AM), frequency modulation (FM), or television (TV), and the applicable contour will be the daytime ground-wave contour. The computation must be submitted to the department of revenue in map form, showing the scale used in miles, with the contour drawn on the map and the counties or cities within the contour indicated. The map must be certified as being correct by the personal signature of the engineer making the computation. The type of license held by the engineer should be indicated. The map must have attached to it the population covered both within and without the state according to the applicable United States and Canadian census.

In the event that cable antenna television subscribers are claimed as part of the out-of-state audience, the name of the systems, the location, and the number of subscribers must also be attached to the map. The number of subscribers will be multiplied by a factor of 3, representing the average size household family.

The foregoing exhibits must be forwarded to the Department of Revenue, Olympia, Washington 98504, and must be approved by the department before any deduction is allowable.

Service and other activities. Taxable on gross income from personal or professional services, including gross income from producing and making custom commercials or special programs, fees for providing writers, directors, artists and technicians, charges for the granting of a license to use facilities (as distinct from the leasing or renting of tangible personal property, see WAC 458-20-211), and charges to other broadcasters for the mere right to broadcast material on processed film, sound recorded magnetic tape, and other transcriptions when the material is returned to the original broadcaster.

Retailing or wholesaling. Taxable on gross proceeds of sales of tangible personal property, including gross proceeds from sales of films and tape produced for general distribution and from sales of copies of commercials, programs, films, etc., even though the original was not subjected to sales tax. The sale of custom-made programs, commercials, films, etc., is not taxable under this classification. (See subheading **Service and other activities** above.)

Manufacturing. Taxable on the cost to produce special programs, such as public affairs, religious, travelogues, and other general programming, which are vended to other broadcasters under a lease or contract granting a mere license to use. This tax does not apply to a recording made for the broadcaster's own use, including news, delayed programs, commercials and promotions, special and syndicated programming, and "entire day" programming.

Retail sales tax. Sales to broadcasters of equipment, supplies and materials for use and not for resale are subject to the retail sales tax. This includes sales of raw or unprocessed film or magnetic tape and other transcription material as well as processed film, recorded magnetic tape or other transcriptions unless vended under a lease or contract granting a mere license to use.

If the tapes, films, etc., upon which the sales tax has been paid are later sold by the broadcaster in the regular course of business, the provisions of WAC 458-20-102 concerning purchases for dual purposes will apply.

Sales to broadcasters of the right to broadcast the material on processed film, sound recorded magnetic tape, and other transcriptions under a right or license granted by lease or contract are not retail sales and the retail sales tax is not applicable.

The broadcaster must collect retail sales tax on sales of packaged films, programs, etc., produced for general distribution, including training and industrial films, and also on sales of copies of films, commercials, programs, etc., even though the original was not subjected to sales tax.

Use tax. Acquisition or exercise of the right to broadcast processed film, recorded magnetic tape or other transcriptions under a right or license granted by lease or contract is not the use of tangible personable property by the broadcaster and the use tax is not applicable.

Broadcasters of radio and television programs are subject to use tax on the value of articles manufactured or produced by them for their own use (excluding custom produced commercials or special programs which includes, but is not necessarily limited to, recordings of news, delayed programs, commercials and promotions, special and syndicated programming, and "entire day" programming) and on the use of tangible personal property purchased or acquired under conditions whereby the retail sales tax has not been paid. The broadcaster is liable for use tax on the value (cost of production) of processed film, sound recorded magnetic tape, and other transcriptions when the broadcaster vends merely the right to broadcast such material under a right or license granted by lease or contract.

Effective September 1, 1982.

[Statutory Authority: RCW 82.32.300. 83-08-026 (Order ET 83-1), § 458-20-241, filed 3/30/83; Order ET 70-3, § 458-20-241 (Rule 241), filed 5/29/70, effective 7/1/70.]

WAC 458-20-242A Pollution control exemption and/or credits for single purpose facilities added to existing production plants to meet pollution control requirements and which are separately identifiable equipment principally for pollution control. Rule 242 deals with pollution control facilities and is published in two parts:

Part A. Single purpose facilities added to existing production plants as separately identifiable equipment principally for pollution control and which are not designed for production of products other than recovered products which but for the facility would be released as pollutants.

Part B. Dual purpose facilities which consist of new plant equipment which achieves pollution control in the process of production of the plant's products rather than through the add on of a pollution device to existing plant equipment at some point in processing or upon completion of processing.

Definition of Terms

For purposes of this rule:

(1) "Facility" shall mean an "air pollution control facility" or a "water pollution control facility" as herein defined:

(a) "Air pollution control facility" includes any treatment works, control devices and disposal systems, machinery, equipment, structures, property or any part or accessories thereof, installed or acquired for the primary purpose of reducing, controlling or disposing of industrial waste which if released to the outdoor atmosphere could cause air pollution. "Air pollution control facility" shall not mean any motor vehicle air pollution control devices used to control the emission of air contaminants from any motor vehicle.

(b) "Water pollution control facility" includes any treatment works, control device or disposal system, machinery, equipment, structures, property or any accessories thereof installed or acquired for the primary purpose of reducing, controlling or disposing of sewage and industrial waste, which if released to a water course could cause water pollution; provided, that the word "facility" shall not be construed to include any control device, machinery, equipment, structure, disposal system or other property installed or constructed for a municipal corporation or for the primary purpose of connecting any commercial establishment with the waste collecting facilities of public or privately owned utilities.

(c) For purposes of this exemption or credit, the terms "commercial establishment" and "other commercial establishment" do not include contractors or their suppliers who install pollution control equipment in facilities of and for another person.

(2) For the purpose of tax credit or exemption, "cost" shall be limited to capital expenditures directly related to the acquisition and installation of the control facility as described in the application. For the purposes of this definition, capital expenditures may include engineering, architecture, legal fees, overhead and other costs which may be directly attributed to the control facility.

(3) "Net commercial value of recovered products" shall mean the value of recovered products less the costs incurred in processing, including overhead costs, and costs attributable to their sale, or other disposition for value. The term shall not include a deduction for the cost or the depreciation of the facility.

(4) "Certificate" shall mean a pollution control tax exemption and credit certificate for which application has been timely made.

(5) "Appropriate control agency" shall mean the state department of ecology; or the operating local or regional air

pollution control agency within whose jurisdiction a facility is or will be located.

(6) For the purposes of this rule "depreciation" shall be determined by the straight line method. That is, the cost of the facility, less the salvage or residual value, divided by months of useful life yields the amount by which the facility is depreciated monthly. In computing depreciation for purposes of obtaining a certificate, depreciation shall be computed through the last full month prior to the month in which the application for certificate is filed.

(7) "Department" shall mean the Washington state department of revenue.

Filing Application and Issuance of Certificates

An application for a certificate will be made available by the department to cover the following conditions:

(1) Existing facilities, to provide the basis for a tax credit and for sales tax paid.

(2) Proposed facilities

(a) To provide the basis for a tax exemption on the purchase of material and equipment;

(b) To provide the basis for a tax credit.

The application must show the cost of the facility, specifically stating costs of materials and equipment incorporated into it. When the certificate is for the purposes referred to in "2" above, estimated costs must be shown. The certificate issued on an application based on estimated costs will not permit the holder to claim the credit referred to in "2b" above until an application showing actual costs has been filed and a supplement to the certificate issued.

Applications showing actual costs must also show the total depreciation which is applicable to the facility to the date of the application, the net commercial value of all materials recovered or captured by the facility during the entire period of operation prior to the date of application, and the amount of federal tax credit taken on federal tax returns filed prior to the date of application.

If, subsequent to the issuance of a certificate for a facility, a determination is made to modify or replace such facility, the certificate holder may file an application for a new or a supplemental certificate covering the modification or replacement following the same procedures provided for making application for original certificate. After the issuance by the department of any new certificate or supplement, all subsequent tax exemption and credits for the modified replacement facility shall be based thereon.

The application will be submitted to the department which will forward it to the appropriate control agency within ten days of its receipt from the applicant. The determination that a facility is designed and operated or is intended to be operated primarily for the control, capture and removal of pollutants from the air, or for the control and reduction of water pollution, and that the facility is suitable and reasonably adequate, and meets the intent and purposes of chapter 70.94 RCW (air pollution) or chapter 90.48 RCW (water pollution) will be made by the appropriate control agency. The control agency will notify the department of its findings within thirty days of the date the application was received for approval. The department will make the final determination of cost.

In making a determination, the appropriate control agency will afford to the applicant an opportunity for a hearing. If the local or regional air pollution control agency fails to act or if the applicant feels aggrieved by the action of the local board, the applicant may appeal to the department of ecology pursuant to rules and regulations established by that department.

Upon notification of the action taken by the control agency the department will issue a certificate or notice of denial within thirty days of the receipt of the application from the control agency. The department will send a certificate or supplement, when issued, by certified mail. Notice of refusal to issue a certificate will likewise be sent by certified mail.

Time limitations. Application must be made no later than December 31, 1969, except that with respect solely to a facility required to be installed in an industrial, manufacturing, waste disposal, utility, or other commercial establishment which is in operation or under construction as of July 30, 1967, such application will be deemed timely if made within one year after the effective date of specific requirements for such facility promulgated by the appropriate control agency; whether or not the determination is made before or after the limitation date of December 31, 1969. The "effective date of specific requirements" refers to the compliance order's date for completion of engineering.

Revocation of certificate. The department may revoke an issued certificate upon subsequent discovery that it was improperly issued for reason of illegality, fraud, mistake, or the ineligibility of the applicant.

Utilization of Exemption and Credit

Sales tax exemption. The original acquisition of a facility, or the modification (meaning a substantial improvement resulting from added capacity in the removal of pollutants from the air or water) of an existing facility by the holder of a certificate shall be exempt from sales tax imposed by chapter 82.08 RCW and use tax subsequent to the effective date of the certificate. For applications filed subsequent to January 1, 1975 certificate holders shall receive credit for sales and use tax paid on acquisition of the facility prior to receiving certification. This exemption does not extend to servicing, maintenance, repairs or replacement parts after a facility is complete and placed in service.

Subsequent to July 30, 1967, a certificate holder may elect to pay sales or use tax on the acquisition and installation of a control facility and, subsequently, take a credit against future liability under business and occupation, use, or public utility tax to the extent of the foregoing exemption, except that a person so electing may not take any further manufacturing tax credit as provided in RCW 82.04.435 on the same facility.

Business and Occupation, Use, or Public Utility Tax Credit. With respect to a facility which has been placed in operation and for which a certificate has been issued, a tax credit not exceeding 2 percent of the cost of a new facility or of the depreciated cost of an existing facility may be taken for each year the certificate is in force. Such credit may be claimed against business and occupation, use, or public utility tax liability; however, it shall not exceed 50 percent of the tax liability for any reporting period for which it is claimed nor shall the cumulative amount of credit allowed for any facility exceed 50 percent of the cost of the facility.

Credits to be reduced. Credits claimed will be reduced by the net commercial value of materials captured or recovered by the pollution control facility. The value of such material shall first reduce the credit available in the current reporting period and then be applied against the cumulative credit balance which has been established but which may not be currently available to the certificate holder. Applicants and certificate holders shall provide the department with information required to establish the net commercial value of recovered or captured material and will be required to make books and records available to the department to verify the correctness of information furnished. The cumulative credit will also be reduced by the amount of federal investment tax credit or other federal tax credits allowed to the certificate holder which are applicable to the facility. The federal tax credits shall be taken as an offset against a pollution control tax credit claimed in the first reporting period following the date of filing the tax return on which the federal tax credit was taken, and thereafter as an offset against a credit hereunder as it becomes available to the certificate holder. The applicant shall advise the department of adjustments to the federal tax credits, either increase or decrease, resulting from either an audit by the internal revenue service, or otherwise. Adjustments to the credit allowable under this rule will be made by the department accordingly.

The department will issue instructions and forms to the certificate holder covering the accounting for the credit for which the certificate holder is eligible. Where a certificate holder is also eligible for manufacturing tax credit, the department may issue special instructions covering the separate accounting for the tax credits.

Credit will be allowable only in any period in which a certificate is in force.

[Statutory Authority: RCW 82.32.300. 83-08-026 (Order ET 83-1), § 458-20-242A, filed 3/30/83; Order ET 77-1, § 458-20-242A, filed 12/8/77 (formerly codified WAC 458-20-242); Order ET 70-3, § 458-20-242 (Rule 242), filed 5/29/70, effective 7/1/70.]

WAC 458-20-242B Pollution control exemption and/or credits for dual purpose facilities which are constructed to meet pollution control requirements and which achieve pollution control in the process of production of the plant's products. Rule 242 deals with pollution control facilities and is published in two parts:

Part A. Single purpose facilities added to existing production plants as separately identifiable equipment principally for pollution control and which are not designed for production of products other than recovered products which but for the facility would be released as pollutants.

Part B. Dual purpose facilities which consist of new plant equipment which achieves pollution control in the process of production of the plant's products rather than through the add on of a pollution device to existing plant equipment at some point in processing or upon completion of processing.

This rule sets out instructions for determining pollution control tax exemption and/or credit for a dual purpose pollution control facility.

A dual purpose pollution control facility is defined as a single, integrated facility which is installed to meet standards for air or water pollution, or both, and which is also necessary to the manufacture of products. It refers to a facility in which the portion of the total facility to be identified as for the purpose of pollution control is so integrated into the total facility that physical separation into identifiable component parts—that is, that which is for manufacturing and that which is for pollution control—is not possible. If these criteria are met, the following net cost approach shall be used to determine tax exemption and/or credit.

The application for certification shall be filed with the department of revenue in accordance with chapter 82.34 RCW and WAC 458-20-242A. Upon approval by the appropriate control agency, subject to the qualification that the facility described in the application is a dual purpose facility and that all requirements outlined in chapter 82.34 RCW are met, an exemption/credit certificate shall be issued. To determine the net cost attributable to the pollution control elèment of the dual function facility, the computations described in the following steps are required.

(1) Obtain cost estimates (for facilities under construction) and final cost figures (for completed facilities) directly related to the new dual function facility. (Actual allowable credits will be based on final costs of completed facilities.) Add to this final cost the amount of unrecovered depreciation on existing equipment replaced, if any. Subtract from this the salvage value of the replaced equipment, if and. Sales and use tax paid shall not be included as part of the facility cost.

(2) Determine the percentage that actual production capacity per unit of time of the existing plant equipment (before installation of the control facility) is of the actual capacity per unit of time of the new dual purpose facility. If the percentage so obtained is equal to or greater than 100 percent, use the figure obtained in step (1) for calculations commencing at step (3).

If the percentage so obtained is less than 100 percent, multiply that percentage times the figure derived in step (1) above. This figure represents the gross cost of constructing the new facility which meets pollution control requirements and obtains productive capacity of the existing plant. Productive capacity shall include all production of commercial or industrial value other than recovered or captured materials deductible from credits under provisions of RCW 82.34.060.

(3) All computations used to adjust the gross cost (as determined in step (2) above) shall be expressed in terms of current dollars at the start up date as defined in this step (3). To this end, a discount rate suitable for determining the present value of future income or expenditures is required. The basis of the discount rate will be the average cost of borrowed capital based on Aa Industrial Bonds as reported in Moody's Bond Record and the cost of equity capital as established by the price earnings ratio for the particular industry class as reported in the value line. This will be the average of amounts so reported for the 12 months preceding and 12 months succeeding the start up date. This date is the first date the new dual purpose facility is both in operation

and in compliance with the requirements of the appropriate pollution control agency.

The discount rate to be applied will be a combination of these rates. The two rates shall be weighted 50/50. The same discount rate shall be used for all adjustments to the gross cost.

(4) The next step in the procedure is to calculate the present value of future capital that will not be spent at some specific future date due to the expenditure now of the amount determined in (2) above. This "specific future date" is the date determined by the department as the date of projected replacement of the existing plant absent the need to meet pollution control requirements. This will be the amount of expenditure calculated in (2) above multiplied by the discount factor (as determined by use of the discount rate as calculated in (3) above) which will equal the present worth of that amount of money received or expended on the date representing the end of the useful life of the existing plant by the new installation (the date of "projected replacement"). This calculated amount shall be reduced by the present value, if any, of the undepreciated balance that would remain after the end of the depreciation period for the new facility if construction had been delayed to the date used as the end of the useful life of the facility replaced. This net calculation is then subtracted from the amount computed as the "gross cost" in (2).

(5) From the amount determined in (4) deduct the present value, after deduction of a percentage equal to the maximum corporate federal income tax rate as of the start up date, of operating savings expected to accrue to the date of projected replacement used in (4) applying the discount factor for annual savings based on the discount rate calculated in (3). Operating savings shall not include the net commercial value of materials captured or recovered by virtue of the new installation deductible under RCW 82.34.060 (2)(b).

(6) The next step is to deduct from the balance as computed in (5) the present net value of federal income tax savings to be derived from depreciation of the gross cost of the dual purpose facility due to its construction sooner than at the date of projected replacement using straight line depreciation over the useful life of the facility. The determination of net present value of federal income tax reductions due to depreciation allowances will consist of three steps.

(a) Calculate the present value of depreciation allowances from date of completion of the new facility using straight line depreciation to the projected replacement date.

(b) Deduct from (a) the present value of depreciation that would have been allowable after the date of full depreciation of the new dual purpose facility if construction of the new facility had been delayed until the projected replacement date of the existing facility.

(c) Multiply the result of (a) minus (b) by the maximum corporate federal income tax rate as of the start up date.

The net amount of federal tax benefits arrived at in (c) shall then be deducted from the balance determined in step (5).

(7) The remaining amount from that calculated in (2) after adjustments provided for in steps (3) through (6) is the "net cost" of pollution control equipment to be used as the base for calculation of credits.

Calculation of credits

(A) Determine 2 percent of the amount computed in step 7. this is the gross annual credit.

(B) Multiply the amount shown in step (7) by 50 percent to determine maximum total credit allowable.

(C) The gross credit allowable per year must first be reduced by the net commercial value of captured or recovered materials. Captured or recovered materials means materials which, but for compliance with pollution control requirements, would be discharged into the air or water and which discharge is required to be reduced or eliminated by requirements of the appropriate pollution control agency. The result is the *net* credit allowable per year.

The formula for "C" is the value of materials captured or recovered from the new plant less the value of materials which would have been captured or recovered over a comparable period of time from the existing plant, but for compliance with pollution control requirements, multiplied by the percentage derived by dividing net cost (step 7) by total cost (step 1).

If the net commercial value of recovered materials exceeds the gross credit allowable per year, the excess must be carried forward for purposes of reducing credits for future years. The amount of the net commercial value of recovered materials reduces both the annual and total credit allowable.

(D) Determine the total amount of Federal Investment Tax Credit or other federal tax credit actually received. Then multiply this tax credit by the percentage which the net cost portion (step 7) is to the total cost of the facility (step 1) to arrive at the portion of the tax credit applicable to the pollution control element of the dual purpose facility.

(E) Deduct the amount determined in step (D) from the amount determined in step (C) until total federal tax credits are totally offset. This is to be an annual calculation.

(F) If the annual amount of net credit to be taken after computation through step (E) exceeds 50 percent of the firm's tax liability under chapters 82.04, 82.12, and 82.16 RCW, it must be reduced to 50 percent of such tax liability.

Adopted December 8, 1977.

[Order ET 77-1, § 458-20-242B (Rule 242 Part B), filed 12/8/77.]

WAC 458-20-243 Litter tax. RCW 70.93.120 levies an annual litter assessment upon manufacturers, wholesalers, and retailers of certain products. The rate of this special tax is .00015 (.015%) and it applies to sales within this state made on and after May 21, 1971.

The tax is to be computed on and paid with the last return for the calendar year. A designated space on this return is to be used for reporting the litter tax.

The measure of the tax is the gross proceeds of the sales of the business and will apply to places of business on sales of products falling into the thirteen categories listed in RCW 70.93.130 which are defined as follows:

(1) **Food for human or pet consumption** means any substance, except drugs, the chief general use of which is for human or pet nourishment, including candy, chewing gum, and condiments. It includes sales of meals, snacks, lunches, or other food by restaurants, drive-ins, snack bars, concessions, and taverns. Drugs means substances or products appearing in the latest listing of United States pharmacopoeia or national formulary the chief general use of which is as

medicine for treating disease, healing, or relieving pain, but excluding devices, apparatus, instruments, prostheses and the like.

(2) **Groceries** means all products, except drugs, sold by persons in a place of business selling food for off premises consumption, but excluding building materials, clothing, furniture, and appliances.

(3) **Cigarettes and tobacco products** include all of the products subject to the excise taxes of chapters 82.24 and 82.26 RCW.

(4) **Soft drinks and carbonated waters** means all beverages, excluding liquor as defined by Title 66 RCW or rules and regulations of the Washington state liquor control board, but including fruit juices, milk, and all mixtures or dilutions of nonalcoholic beverages.

(5) **Beer and other malt beverages** means all beverages defined as beer or malt liquor by Title 66 RCW or rules and regulations of the Washington state liquor control board.

(6) **Wine** means all alcoholic beverages defined as wine in Title 66 RCW or rules and regulations of the Washington state liquor control board.

(7) **Newspapers and magazines** means all daily and periodical publications.

(8) **Household paper and paper products** means materials or substances made into sheets or leaves from natural organic or synthetic fibrous material for home or other personal use. It includes also products or articles made from such sheets or leaves for home or other personal use.

(9) **Glass containers** means articles made wholly or in substantial part of processed silicates which can be, or are, used to hold other things within themselves.

(10) **Metal containers** means articles made wholly or in substantial part of materials such as iron, steel, tin, aluminum, copper, zinc, lead, silver and any alloys thereof and which can be, or are, used to hold other things within themselves.

(11) **Plastic or fiber containers made of synthetic material** means articles which can be, or are, used to hold other things within themselves and which are made of synthetically produced ethylene derivatives, resins, waxes, adhesives, or polymers or by synthesis of fiber materials with adhesives, polymers, waxes, resins, or other materials. It includes containers made of paper, pasteboard, or cardboard in which the container materials consists of fibrous substances synthesized with other materials. Synthetic material means that produced by synthesis which is the process of making or building up by a composition or union of simpler parts or elements as distinguished from the process of extraction or refinement.

(12) **Cleaning agents** means all soaps, detergents, solvents, or other cleansing substances used for cleaning buildings, places, persons, animals, or other things.

Toiletries means all substances such as soap, powder, cologne, perfume, cosmetics, toothpaste, etc., used in connection with personal dressing or grooming.

(13) **Nondrug drugstore sundry products** means all products, goods, or articles, except drugs, sold by persons in a place of business selling drugs, but excluding building materials, clothing, furniture, and appliances.

"Place of business" for purposes of this rule means any location, department, or division even though it be a part of a larger business operation provided it is separate from such other or additional business physically, operationally, and in its books and records. Thus, a department store which consists of a grocery department and a clothing department, each with its own space and having separate employees, cash registers, and accounting records would not be subject to the groceries litter tax on the sales of its clothing department merely because it was located in the same building and under the same ownership as the grocery department.

"Gross proceeds of the sales of the business" means the value proceeding or accruing from the sale of tangible personal property and/or for services rendered without any deduction for costs or expenses. In the case of publishers of newspapers and magazines the measure of the litter tax is the same as specified in WAC 458-20-143 for business and occupation tax; i.e., gross income from the publishing business including advertising income.

The law intends that the tax be limited to sales within this state and therefore there may be deducted from the measure of the tax sales to persons in other states or transfers to points outside the state without sale. Out of state firms making sales in or into Washington will be subject to the litter tax under the principles set out for business and occupation tax in WAC 458-20-193B.

Persons operating drugstores may report and pay the litter tax measured by 50% of total sales in lieu of separately accounting for sales of drugstore sundry products. Persons operating grocery stores may report and pay the litter tax measured by 95% of total sales in lieu of separately accounting for grocery and nongrocery products sold.

[Statutory Authority: RCW 82.32.300. 83-08-026 (Order ET 83-1), § 458-20-243, filed 3/30/83; Order ET 71-2, § 458-20-243, filed 10/27/71.]

WAC 458-20-244 Food products. (1) Introduction. Effective on June 1, 1988, the law is changed regarding the exemption of retail sales tax and use tax on food products. Formerly, sales of food products were sometimes taxable depending upon how and where the products were sold. Under the changes in the law the intent is to tax such product sales or exempt them from tax in a uniform and consistent manner so that the tax either applies or not equally for all sellers and buyers. Generally, it is the intent of the law, as amended, to provide the exemption for groceries and other unprepared food products with some specific exclusions. It is the intent of the law to tax the sales of meals and food prepared by the seller regardless of where it is served or delivered to the buyer. Again, there are some specific exclusions. This section provides the guidelines for determining if food product sales are taxable or exempt of tax under the changed law. It also explains special tax exemption provisions for food purchased with food stamps.

(2) Definitions. As used herein and for purposes of the sales tax and use tax exemptions, the following definitions apply:

(a) "Food products" means only substances, products, and byproducts sold for use as food or drink by humans. The term includes, but is not limited to, the following items:

Baby foods, formulas	Baking soda and powder
Bakery products	Bouillon cubes

Candy	Meat, meat products, including livestock sold for human consumption
Cereal products	Milk, milk products
Chewing gum	Mustard
Chocolate	Noncarbonated soft drinks
Cocoa	Nuts
Coffee and coffee substitutes	Oleomargarine
Condiments	Olives, olive oil
Crackers	Peanut butter
Diet food, not including dietary supplements or adjuncts	Popcorn
Eggs, egg products	Popsicles
Extracts and flavoring for food	Potato chips
Fish, fish products	Powdered drink mixes
Flour	Salt and salt substitutes
Food coloring	Sandwich spreads
Frozen foods	Sauces
Fruit, fruit products	Sherbet
Gelatin	Shortening
Honey	Soup
Ice cream, toppings	Spices and herbs
Jam, jelly, jello	Sugar, sugar products, sugar substitutes
Marshmallows	Syrups
Mayonnaise	Tea
Yeast	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	Ice, bottled water (mineral or otherwise)
Aspirin	Mouthwashes
Beer or wine making supplies	Nonedible cake decorations
Breeding stock	Nonprescription medicines
Calcium tablets	Patent medicines
Carbonated beverages	Pet food and supplies
Chewing tobacco	Seeds and growing plants including edible plants
Cod liver oil	Tobacco products
Cough medicines (liquid or lozenge)	Tonics, vitamins
Dietary supplements or adjuncts as defined below	Toothpaste
First-aid products	

(c) "Dietary supplements or adjuncts" are medicines or preparations in liquid, powdered, granular, tablet, capsule, lozenge, or pill form taken in addition to natural or processed foods in order to meet special vitamin or mineral needs. Dietary supplements or adjuncts are not food products entitled to tax exemption. However, the term "dietary supplements or adjuncts" does not include products whose primary purpose is to provide the complete nutritional needs of persons who cannot ingest natural or processed foods. Also, this term does not include food in its raw or natural state which has been merely dried, frozen, liquified, fortified, or otherwise merely changed in form rather than content.

Such substances as dried milk, powdered spices and herbs, brewers yeast, desiccated liver, powdered kelp, herbal extracts, and the like are not dietary supplements or adjuncts subject to tax.

(d) "Eligible foods," as used in subsection (10) of this section, means any food which can be purchased with food stamps under the Federal Food Stamp Act of 1977. "Eligible foods" include any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods or hot food products prepared for immediate consumption. The term also includes seeds and plants used to grow foods for personal consumption (7 U.S.C.A. U 2012). Thus some substances are "eligible foods" which are defined above as "nonfood products."

(3) Business and occupation tax. There is no general tax exemption for sales of food or food products for B&O tax purposes. The gross proceeds of sales of food are subject to the wholesaling or retailing classification of B&O tax, as the case may be.

(4) Retail sales tax - Taxable sales. Sales of food products are subject to retail sales tax under any of the following circumstances:

(a) Effective June 1, 1988, sales by any retail vendor of any food handled on the vendor's premises which by law requires the vendor to have a food and beverage service worker's permit under RCW 69.06.010 (handling unwrapped or unpackaged food) are subject to sales tax. Such sales include, but are not limited to, sandwiches prepared or chicken cooked on the premises, deli trays, home delivered pizzas or meals, and salad bars. However, certain sales of foods which require a permit are expressly excluded from taxation. See subsection (5)(a) of this section.

(b) Food products sold for consumption within a place, the entrance to which is subject to an admission charge, except for national or state parks or monuments, are subject to sales tax.

(i) Example. Food of any kind sold at a snack bar, food stand, restaurant, or by individual roving food vendors inside a sports arena, theater, or similar place of amusement or recreation which charges admission is subject to sales tax.

(ii) Even sales of food products within national or state parks where admission is charged are subject to retail sales tax upon any food the preparation of which requires the retail vendor to have a permit specified in (a) of this subsection.

(c) Sales of baked goods as a part of meals or with beverages in unsealed containers are subject to sales tax. (However, see the provision for combination businesses in subsection (6) of this section.)

(d) Vending machine sales. Sales of any food products dispensed by vending machines are subject to sales tax under a formula which requires the tax to be reported and paid by the vending machine owner or operator upon fifty-seven percent of the gross receipts from such machines. However, sales tax must be reported and paid upon one hundred percent of the gross receipts of vending machines which dispense hot prepared food products, e.g., hot coffee, soups, tea, chocolate, etc.

(i) It is not required that food vending machines be posted with prices separately showing the sales tax amount or rate charged.

(ii) The retail sales tax may be factored out of the gross receipts of such vending machines to derive the measure for reporting B&O tax.

(5) Retail sales tax - Exempt sales. RCW 82.08.0293 exempts sales of food products for human consumption from the retail sales tax except for the taxable sales described in subsection (4) of this section.

(a) Sales of the following food products are exempt of sales tax even though sold by a person required to have a food handler's permit (i.e., handling unwrapped or unpackaged foods):

(i) Raw meat prepared by persons who slaughter animals, including fish and fowl, or dress or wrap 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 458-20-245 Telephone business, telephone service. Under the provisions of various sections of chapter 3, Laws of 1983 2nd Ex. Sess., the retail sales tax is extended to "telephone service." The effective date is July 1, 1983 and the tax applies to all sales of "telephone service" billed on or after that date, whether or not such service was rendered before that date.

Persons engaged in the "telephone business" or rendering "telephone service" are taxable under the retailing of wholesaling classification of the business and occupation tax, whichever is applicable, on total gross revenues, as described herein. Such persons who are taxable under retailing must also collect retail sales tax from consumers, subject to certain exemptions explained more fully herein.

Definitions

As used herein: The term "telephone service" includes competitive telephone service and network telephone service.

The term "telephone business" means the business of providing network telephone service and includes cooperative or farmers line telephone companies or associations operating an exchange.

The term "competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as installation, repair, or maintenance services, if the equipment or apparatus is of a type which can be provided by persons that are not subject to regulation as telephone companies under Title 80.

The term "network telephone service" means the providing by any person of access to a local telephone network, switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, over a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" includes interstate service, including toll service, originating from or received on telecommunications equipment or apparatus in this state if the charge for the service is billed to a person in this state. "Network telephone service" does not include the providing of competitive telephone service, the providing of cable television service, nor the providing of broadcast services by radio or television stations.

The term "residential customer" means an individual subscribing to a residential class of telephone service.

The term "toll service" means the charge for services outside the local telephone network except customer access line charges for access to a toll calling network.

The term "telephone company" means a person engaged in the telephone business or rendering telephone service.

Business and Occupation Tax

Retailing and wholesaling. Persons making retail sales of telephone service to consumers are taxable upon the gross proceeds of sales under the retailing classification. Persons making sales of telephone services for resale in the regular course of business are taxable upon the gross proceeds of sales under the wholesaling classification. The tax shall apply to the gross income from all sales of competitive telephone service and network telephone service, as described more fully below.

For purposes of applying the business and occupation tax to telephone service, a sale takes place in Washington when a call originates from or is received on any telephone or other telecommunications equipment, instrument, or apparatus in Washington and the cost for the telephone service is charged to that equipment, instrument, or apparatus, regardless of where the actual billing invoice is sent.

The business and occupation tax shall apply to the gross proceeds of sales of competitive telephone service to customers. The tax shall be measured by total gross billings to such customers. The business and occupation tax shall also apply to the gross proceeds of sales of network telephone service, other than interstate and intrastate toll service, measured by total gross billings to customers. The tax as applied to interstate and intrastate service, including toll service, shall be determined under the apportionment guidelines set forth in the following paragraph.

With respect to interstate and intrastate toll service, the business and occupation tax shall apply to the income received from the interstate or intrastate division of revenue pool. The income subject to tax shall include amounts received for expenses incurred in furnishing the interstate or intrastate services plus any amounts received as return. Persons who are not members of the interstate or intrastate division of revenue pool but who receive shared interstate or intrastate revenues through a member of the division of revenue pool, are liable for business and occupation tax on the income received.

Persons engaged in the telephone business or rendering telephone service shall report on the combined excise tax return their total gross income received from billings to customers under column 2 of the appropriate classification line on the return (wholesaling or retailing). An adjustment may be made under column 3 of the excise tax return for revenues received from providing interstate and intrastate toll service, as described in the previous paragraph. On the reverse side of the return it should be explained that such adjustment was the result of income received from the interstate or intrastate division of revenue pool. The reported gross income under column 2 shall be the same under the retailing business and occupation tax and retail sales tax classifications, with appropriate adjustments and deductions noted under column 3.

Service. Persons engaged in the telephone business or rendering telephone service are taxable under the service and other activities classification on their income from services which are not included within the definition of the terms "sale at retail" in RCW 82.04.050 or "competitive telephone service" and "network telephone service," as defined herein. Included under this classification are, among others, gross income from the sale of advertising in telephone directories, gross income from charges made for processing NSF checks, and any other miscellaneous income.

Retail Sales Tax

The retail sales tax applies to all sales of competitive telephone service provided to both residential and business (nonresidential) customers. The retail sales tax also applies to all sales of network telephone service provided to business (nonresidential) customers.

The retail sales tax applies upon sales to a telephone company of all tangible personal property used as a consumer in providing telephone service. A consumer is liable for retail sales tax on all telephone service, as described herein, in situations where the tax was not paid to a telephone company as a result of a billing or other invoice rendered by that company.

The retail sales tax must be collected and accounted for in every case where retailing business and occupation tax is due as outlined herein, except for the following. The retail sales tax shall not apply to sales of network telephone service, other than toll service, provided to residential customers nor to sales of network telephone service paid for by inserting coins in coin-operated telephones.

The retail sales tax does not apply to sales of network telephone service, other than toll service, provided to residential customers.

The retail sales tax does not apply to sales of network telephone service which is paid for by inserting coins in coin-operated telephones. However, the retail sales tax does apply if the network telephone service is provided through a coin-operated telephone, the service originates from or is received on equipment in this state, and the charge for the service is billed to a telephone or other telecommunications equipment, instrument, or apparatus which is located in Washington.

The sales tax does not apply to network telephone service which is merely billed to a telephone or other telecommunications equipment, instrument, or apparatus whose situs is in Washington if the service neither originated from nor was received on equipment in this state.

Use Tax

The use tax applies to telephone or other telecommunications equipment, instrument, or apparatus purchased at retail and upon which the sales tax has not been paid. (See WAC 458-20-178.) A telephone company is liable for use tax on all tangible personal property purchased at retail and upon which the sales tax has not been paid. A telephone company is not liable for use tax on its own use as a consumer of its own network telephone service.

Special Situations

Persons making sales of telephone service for resale in the regular course of business must follow the provisions of WAC 458-20-102 concerning resale certificates.

The local retail sales tax applies to sales of telephone services as described herein. (See WAC 458-20-145.)

Persons engaged in telephone business or rendering telephone service are not taxable under the public utility tax, except with respect to gross income from engaging in telegraph or any other public service business as defined in WAC 458-20-179.

All retail telephone services including sales of equipment are taxable at the same state retail sales tax rate of 6.5 percent, regardless that such sales may be made in a border county. (See WAC 458-20-237.)

[Statutory Authority: RCW 82.32.300. 83-17-099 (Order ET 83-6), § 458-20-245, filed 8/23/83.]

WAC 458-20-246 Sales to or through a direct seller's representative. Under RCW 82.04.423, the business and occupation tax does not apply to any out-of-state person in respect to the gross income derived from the business of making sales in this state of "consumer products" at wholesale or retail to or through a "direct seller's representative," subject to certain requirements explained more fully below. The effective date of this exemption is August 23, 1983. For an outline of the tax liability of persons making sales of goods which originate in other states to customers in Washington, other than sales to or through a "direct seller's representative," see WAC 458-20-193B.

Definitions

For purposes of the exemption explained herein, the following definitions shall apply:

The term "consumer product" means any article of tangible personal property, or component part thereof, of the type sold for personal use or enjoyment. The term includes only those kinds of items of tangible personal property which are customarily sold at stores, shops, and retail outlets open to the public in general. It includes such things as home furnishings, clothing, personal effects, household goods, food products, and similar items purchased for personal use or consumption. The term does not include commercial equipment, manufacturing items, industrial use products, and the like, including component parts thereof. However, if a product is primarily used for personal use or enjoyment, it remains a "consumer product" within this definition notwithstanding that a portion of the product's distribution is for commercial, industrial, or manufacturing purposes.

A "direct seller's representative" is a person who (a) buys "consumer products" on a buy-sell basis or a deposit-commission basis for resale, by the buyer or any other person, in the home or other than in a permanent retail establishment or (b) sells or solicits the sale of, "consumer products" in the home or other than in a permanent retail establishment. In order to be considered a "direct seller's representative" a person must also show that:

1. Substantially all of the remuneration paid, whether or not paid in cash, for the performance of services is directly related to sales or other output, including the performance of services, rather than the number of hours worked; and

2. The services performed are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for federal tax purposes.

Business and Occupation Tax

Wholesaling and retailing. The business and occupation tax does not apply to an out-of-state seller making wholesale or retail sales to or through a "direct seller's representative." The out-of-state seller must show that it is represented in this state by a "direct seller's representative," as defined above. In addition, the out-of-state seller must also show that it:

1. Does not own or lease real property within this state;

2. Does not regularly maintain a stock of tangible personal property in this state for sale in the ordinary course of business;

3. Is not a corporation incorporated under the laws of this state; and

4. Makes sales in this state exclusively to or through a "direct seller's representative."

Thus, a representative who solicits sales of "consumer products" in this state, other than in a permanent retail establishment, and also meets the other requirements of the law as set forth above, qualifies as a "direct seller's representative." If the out-of-state seller and the instate representative can factually establish compliance with all of the above listed requirements, the out-of-state seller is exempt from business and occupation tax.

The exemption is available only where an out-of-state seller is present in this state and represented exclusively by a "direct seller's representative." If an out-of-state seller makes wholesale or retail sales of "consumer products" in Washington to or through a "direct seller's representative" and also has a branch office, local outlet, or other local place of business, or is represented by any other employee, agent, or other representative, no portion of the sales are exempt from business and occupation tax.

The business and occupation tax likewise applies to the gross income of a "direct seller's representative" who buys "consumer products" for resale and does in fact resell the products. The measure of the business and occupation tax is the gross proceeds of sales.

Service. The law provides no similar business and occupation tax exemption with regard to the compensation paid to the "direct seller's representative." Thus, the representative will remain subject to the business and occupation tax on all commissions or other compensation earned.

Sales and Use Tax

An out-of-state vendor is required to pay or collect and remit the tax imposed by chapter 82.08 or 82.12 RCW if the vendor regularly solicits or makes retail sales of "consumer products" in this state through a "direct seller's representative," as defined above, even though such sales are exempt from business and occupation tax pursuant to RCW 82.04.423.

Every person who engages in this state in the business of acting as a "direct seller's representative" for unregistered principals, and who receives compensation by reason of sales of "consumer products" of such principals for use in this state, is required to collect the use tax from purchasers, and remit the same to the department of revenue, in the manner and to the extent set forth in WAC 458-20-221.

[Statutory Authority: RCW 82.32.300. 84-24-028 (Order 84-3), § 458-20-246, filed 11/30/84.]

WAC 458-20-247 Trade-ins, selling price, sellers' tax measures. Initiative Measure No. 464, approved November 6, 1984 amended RCW 82.08.010(1), the statutory definition of "selling price," by excluding from that term the value of "trade-in property of like kind." The effective date of this exclusion is December 6, 1984. As a result, the retail sales tax measure on trade-in sales is reduced by the value of the property traded in. Thus, on and after the effective date, the value of "trade-in property" may be excluded from the measure of retail sales tax to be collected and reported by the seller who accepts the trade-in property as payment for new or used property sold. Actual **delivery** of the property to the buyer determines when the sale is made (see WAC 458-20-103). The initiative applies only to sales where the property is delivered to the purchaser on or after December 6, 1984.

Under RCW 82.08.010, as amended by the initiative, "the term 'selling price' means the consideration, whether money, credits, rights, or other property **except trade-in property of like kind,** expressed in terms of money, paid or delivered by a buyer to a seller, all without any deduction, on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discounts, delivery costs, taxes other than taxes imposed under this chapter if the seller advertises the price as including the tax or that the seller is paying the tax, or any other expense whatsoever paid or accrued and without any deduction on account of losses." (Amendatory language underscored.)

Definitions

Unless otherwise stated, the terms "tax," "taxable," and "nontaxable," as used in this rule, refer to retail sales tax only.

The terms, "trade-in," "traded-in," and "property traded-in" have their ordinary and common meaning. They mean property of like kind to that acquired in a retail sale which is applied, in whole or in part, toward the selling price.

The term "property of like kind" means articles of tangible property of the same generic classification. It refers to the class and kind of property, not to its grade or quality. The term includes all property within a general classification rather than within a specific category in the classification. Thus, as examples, it means furniture for furniture, motor vehicles for motor vehicles, licensed recreational land vehicles for licensed recreational land vehicles, appliances for appliances, auto parts for auto parts, audio/video equipment for audio/video equipment, and the like. These general classifications are determined by the nature of the property and its function or use. It may be that some kinds of property fit within more than one general classification. For example, a motor home is both a motor vehicle and a licensed recreational land vehicle. Thus, for purposes of this rule, a motor home may be taken as a trade-in on a travel trailer, truck, camper, or a truck with camper attached, and vice versa. Similarly, a travel trailer may be taken as trade-in on a motor home even though a travel trailer is not a motor vehicle; both are licensed recreational land vehicles. Conversely, a utility trailer may not be taken as trade-in on a travel trailer, for purposes of this rule, because a utility trailer is neither a motor vehicle nor a licensed recreational land vehicle. Similarly, a car may not be taken as trade-in on a camper and vice versa.

Under these definitions it is not required that a car be traded-in exclusively on another car in order to get the trade-in reduction of the tax measure. It could, as well, be traded-in as part payment for a truck, motorcycle, motor home, or any other qualifying motor vehicle. Similarly, a sofa for a recliner chair, a pistol for a rifle, a sailboat for a motorboat, or a gold chain for a wrist watch are the kinds of generic trade-in transfers which would qualify. However, the exclusion of the value of property traded-in does not include such things as a motorcycle for a boat, a diamond ring for a television set, a battery for lumber, or farm machinery (including tractors and self propelled combines) for a car.

Value of property traded-in — The seller and buyer establish the value of property traded-in. However, the parties may not overstate the value of the property traded-in in order to artificially lower the amount of sales of use tax due. Absent proof of a higher value, the property traded-in must be determined by the fair market value of similar property of like quality, quantity, and age, sold or traded under comparable conditions. It is the substance of the actual sale and trade-in transaction which will control the retail sales tax measure, regardless of any subsequent accounting adjustments to the seller's inventory records or books of account.

Record keeping — RCW 82.32.070 requires every person liable for any tax to keep and preserve records from which true tax liability can be determined. Before any exclusion from the selling price for the value of property traded-in will be allowed, the property traded-in must be specifically identified and clearly indicated as "trade-in," by model, serial number and year of manufacture where applicable, and the full trade-in value must be shown on the sales agreement or invoice given to the purchaser, with a copy retained in the seller's permanent sales records.

For example:

Less "trade-in" - 1983 G.E. Refrigerator/Freezer Model No. GE-RF0001, Serial No. 0001, $300.

Encumbered property traded-in — Sellers are allowed to consider as nontaxable the value of property traded-in even though ownership of the property may be encumbered by a conditional sale, retail installment contract, or security interest; provided that, the property traded-in must be actually transferred to the seller of the new or used property for which it is traded-in.

Casual or isolated sales — The retail sales tax applies to all casual or isolated retail sales made by any person who is engaged in business activity, that is, a person required to be registered and reporting tax to the state. Persons who are not engaged in business activity, i.e., private persons, are not required to be registered and are not required to collect sales tax on their casual or isolated sales (see WAC 458-20-106). Registered persons who make casual or isolated sales (e.g., a law firm which sells its law books) may reduce the taxable selling price by the value of the property traded-in. The same record keeping requirements apply as explained earlier in this rule.

Retail services — The exclusion of the value of property traded-in from the selling price tax measure applies only to sales involving tangible property traded-in for tangible property sold. It does not apply to any transactions involving services which have been statutorily included as "sales at retail" (see RCW 82.04.050). Thus, for example, a construction contractor may not accept part payment in tangible property to thereby reduce the sales tax measure of the construction contract selling price. Similarly, a seller of tangible personal property may not accept retail services as part payment to thereby reduce the selling price tax measure. Such transfers neither qualify as trade-in transfers of tangible property nor "in-kind" transfers.

Trade-in for rental property — Under RCW 82.04.050, rentals or leases of tangible personal property are "retail sales." The term "selling price" as amended by Initiative 464 is also the tax measure for such rentals and leases. Thus, where tangible property is traded-in as part payment for the rental or lease of property of like kind (e.g., a used computer against the rental of a new one) the sales tax will apply to all payments after the value of the property traded-in has been depleted or consumed and the lessor of the property actually begins making charges for the lease or rental of tangible property.

When tangible personal property is rented or leased, the "selling price" includes all charges to the renter or lessee for the use of the property rented or leased, including charges designated as insurance, interest and other costs recovered stated separately from the regular rental fee. When tangible personal property is rented or leased under circumstances that the consideration paid does not represent a reasonable rental for the use of the articles so rented or leased, the "selling price" must be determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character. In cases of doubt, all of the pertinent facts should be submitted to the department of revenue for an advisory determination.

Real property transfers — The trade-in exclusion does not apply to sales of real property. It also does not apply where real property is traded-in for tangible personal property.

Business and Occupation Tax

The trade-in exclusion affects only the measure of retail sales tax to be collected and paid. There is no trade-in exclusion for business and occupation tax. Thus, the gross receipts to be reported under the retailing classification of business and occupation tax continues to be the total value proceeding or accruing from the sale, including the value of property traded-in.

RCW 82.04.070 provides, "The term 'gross proceeds of sales' means the value proceeding or accruing from the sale of tangible personal property . . . without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes or any other expense whatsoever paid or accrued and without any deduction on account of losses."

Also, the terms "selling price" and "gross proceeds of sales" include items of cost which are the direct obligation of the seller but which the seller may invoice separately to the purchaser. Examples of such costs are the cost of the contractor's performance bond, the cost of city or state business and occupation taxes of public utility taxes, the cost of insurance protecting the seller and the cost of freight in. The selling price can be payable in money or otherwise. If it is payable in whole or in part in property, each party is a seller of the property being transferred.

Use Tax

RCW 82.12.010 defines the measure of the use tax as the "value of the article used." Under certain circumstances that value is determined by the "selling price" of the article or property used. Also, this use tax statute provides that the meaning of words in chapter 82.08 RCW (retail sales tax) shall have full force as well with respect to the use tax chapter. Thus, the Initiative 464 amendment of the definition of "selling price" will apply equally for use tax purposes. Therefore, the measure of the use tax for tangible property upon which no retail sales tax has been paid (e.g., if it were purchased in another state with no sales tax) is the same "selling price" as defined for retail sales tax purposes. In such cases the value of the property traded-in will be excluded from the use tax measure.

The consumer-user, or any out-of-state seller who is registered in this state and collects this state's use tax, must retain the sales records reflecting property "traded-in," as explained earlier in this rule.

Preparing Tax Returns

The gross amounts reported under column 2 on the combined excise tax return should be the same amounts under the retailing business and occupation tax (line 18) and the retail sales tax (line 19). The reduction of the "selling price" tax measure for property traded-in should be reflected as a deduction only under the retail sales tax (column 3, line 19). Until return forms are amended, this sales tax deduction should be shown on the back side of the form (line 19) under "other deductions" and explained as "traded-in sales."

[Statutory Authority: RCW 82.32.300. 86-04-024 (Order 86-2), § 458-20-247, filed 1/28/86; 85-02-006 (Order ET 84-6), § 458-20-247, filed 12/21/84.]

WAC 458-20-248 Sales of precious metal bullion and monetized bullion. Effective July 1, 1985, amounts derived from sales of precious metal bullion and monetized bullion as defined herein, are not subject to business and occupation tax under either the wholesaling or retailing classification or to retail sales tax. Statutory law expressly excludes such sales from the definitions of the terms, "wholesale sale," "sale at wholesale," "retail sale," and "sale at retail."

The term, "precious metal bullion" is statutorily defined to mean any precious metal which has been put through a process of smelting or refining, including, but not limited to, gold, silver, platinum, rhodium, and palladium, and which is in such state or condition that its value depends upon its contents and not upon its form.

The term, "monetized bullion" means coin or other forms of money manufactured from gold, silver, or other metals and heretofore, now, or hereafter used as a medium of exchange under the laws of this state, the United States, or any foreign nation, but does not include coins or money sold to be manufactured into jewelry or works of art.

Thus, sales of processed or refined precious metal valued solely upon the content thereof, whatever its form, are not subject to tax in this state. This includes processed nuggets, bars, sticks, dust, and other processed forms of precious metal. For example, sales of gold or silver in raw, refined forms to dentists, laboratories, jewelers, and other persons, for their own consumption or for resale are not taxable. However, sales of precious metal which has been manufactured or further processed into any form which determines or adds to the value thereof are fully taxable. For example, sales of jewelry items, medallions, artworks, and other items, the value of which is dependent upon more than the mere content of precious metal therein, are subject to wholesaling or retailing business and occupation tax, whichever is applicable, and retail sales tax as appropriate.

Sales of metal money, in coined or other form, which is recognized as a medium of exchange in the financial marketplace, are not taxable. However, sales of coin or money, whether or not recognized as a medium of exchange, to jewelers or other persons for the purpose of manufacturing jewelry or artworks therefrom are fully taxable. For example, sales of coins for necklaces or to be used as buttons or in paintings or painting frames, etc., are taxable.

It is presumed that all sales of coin and metal money are entitled to tax exemption: *Provided,* That in order to be exempt of tax persons who knowingly sell such things to buyers who are regularly engaged in the business of manufacturing jewelry or works of art must take a written, signed, and dated statement from such buyers that the coins or metal money are not being purchased for use in manufacturing jewelry or works of art. Artistic or cultural organizations which purchase such things are exempt of retail sales tax as provided in WAC 458-20-249.

The tax exclusions explained herein apply equally to sales of precious metal bullion or monetized bullion transferred through documents of ownership, certificates, confirmation slips, or other indicia of ownership.

Taxable Commissions

Amounts received as commissions upon sales of precious metals by dealers, brokers, and other selling and/or buying agents who sell or buy precious metal bullion or monetized bullion for the accounts of customers are subject to the service and other activities classification of business and occupation tax. The amount of any shared commission or fee paid to other dealers or commissioned agents associated in such transactions are deductible from the measure of this tax. However, no deduction is allowed for any of the dealer's or commissioned agent's own costs of doing business, including salaries or commissions paid to their own salespersons or other employees. Similarly, persons who receive any part of shared commissions derived from having been associated in transactions for the purchase or sale of precious metal or monetized bullion for the account of others, are themselves subject to service business tax measured by such amounts received.

Use Tax

The use tax does not apply upon the use of precious metal bullion or monetized bullion in this state under such circumstances that the sale of such bullion to the user would not be taxable if made in this state as explained earlier herein. In all other cases the use tax applies upon the first use by a consumer of precious metals in this state if retail sales tax has not been paid. See WAC 458-20-178.

[Statutory Authority: RCW 82.32.300. 86-09-016 (Order ET 86-6), § 458-20-248, filed 4/9/86.]

WAC 458-20-249 Artistic or cultural organizations. For purposes of business and occupation tax deduction and certain retail sales tax and use tax exemptions, RCW 82.04.4328 expressly defines the term "artistic or cultural organizations" in pertinent part as follows:

". . . the term "artistic or cultural organization" means an organization which is organized and operated exclusively for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs, . . . for viewing or attendance by the general public. The organization must be a not-for-profit corporation under chapter 24.03 RCW and managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or by a corporation sole under chapter 24.12 RCW. In addition, to qualify for deduction or exemption from taxation . . . the corporation shall satisfy the following conditions:

(a) No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;

(b) Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the state;

(c) Assets of the corporation must be irrevocably dedicated to the activities for which the exemption is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation which also would be entitled to the exemption;

(d) The corporation must be duly licensed or certified when licensing or certification is required by law or regulation;

(e) The amounts received that qualify for exemption must be used for the activities for which the exemption is granted;

(f) Services must be available regardless of race, color, national origin, or ancestry; and

(g) The director of revenue shall have access to its books in order to determine whether the corporation is exempt from taxes.

(2) The term "artistic or cultural exhibitions, presentations, or performances or cultural or art education programs" includes and is limited to:

(a) An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;

(b) A musical or dramatic performance or series of performances; or

(c) An educational seminar or program, or series of such programs, offered by the organization to the general public on an artistic, cultural, or historical subject."

Effective July 1, 1985, artistic or cultural organizations, as defined herein, are not subject to business and occupation tax upon amounts derived from conducting any business activities whatever. Formerly, a business and occupation tax deduction was available only for amounts received by such organizations from the United States and its instrumentalities or the state and local government entities (RCW 82.04.-4322); certain manufacturing activities (RCW 82.04.4324); and tuition fees for artistic or cultural education programs (RCW 82.04.4326). Under current law, however, the deduction is unrestricted and applies to all activities conducted by such qualifying organizations.

Retail Sales Tax

Artistic or cultural organizations which make any charges for goods or services which are included in the definition of "retail sale" under RCW 82.04.050, must collect and report the retail sales tax thereon. No sales tax exemption is available for sales by such organizations.

Such organizations are exempt of paying retail sales tax upon their purchases of certain "objects" for the purpose of exhibition or presentation to the general public if the objects are:

(1) Objects of art;

(2) Objects of cultural value;

(3) Objects to be used in the creation of a work of art, other than tools; or

(4) Objects to be used in displaying art objects or presenting artistic or cultural exhibitions or performances. (RCW 82.08.031)

The term "objects" is deemed to mean items of tangible personal property. It does not include professional or commercial services rendered by third parties. Where, however, certain services are performed which are merely incidental to sales of tangible personal property, e.g., designing playbills or altering stage curtains which are then sold to qualifying organizations, the total charge therefore will be exempt.

Charges for materials, equipment, and services related to repair, maintenance, or replacement of buildings or structures are not exempt. Thus, e.g., theater seats, aisle carpeting, air conditioning systems, painting of interior or exterior of buildings, and the like are not tax exempt "objects."

Under Washington law exempt sales include rentals of exempt objects.

Examples of objects which may be purchased by qualifying artistic or cultural organizations without payment of retail sales tax are:

a) Tickets, programs, signs, posters, fliers, and playbills printed for particular displays or performances; scenery, costumes, stage, props, scrims, and materials for their construction;

b) Stage lights, filters, control panels, color medium, stage drapes, sets, set paint, gallery exhibition materials, risers, display platforms, and materials for their construction;

c) Sheet music, recordings, musical instruments and musical supplies for the staging of displays and performances;

d) Movie projectors, films, sound systems, video and sound equipment and supplies and computer hardware and standard, prewritten software directly used exclusively in the staging of performances or actual display of art objects.

Examples of objects which may be purchased by qualifying artistic or cultural organizations, upon which the retail sales tax must be paid are:

a) Supplies and equipment for clerical support, including bulk tickets for general use, stationery, typewriters, copy machines, and general office supplies;

b) Theater seats, lobby furniture, carpeting, vending machines, and general supplies for audience or patrons' convenience and use;

c) Shipping and packing materials, crates, boxes, dunnage, labels, tags, and container-related items for transfer or storage of exempt objects;

d) Sewing machines and other durable equipment used to prepare, repair, and maintain exempt objects (such items are deemed to be "tools," rather than exempt objects);

e) Theater or building lighting and utility fixtures and systems, and computer hardware and software not directly and exclusively used in staging performances or actually displaying art objects.

Qualified artistic and cultural organizations may obtain the tax exemptions by providing their suppliers with a written statement in essentially the following form:

I, (buyer's name) , hereby confirm that the items purchased on (date of purchase) , without payment of retail sales tax, from (seller's name) are all objects of art or cultural value or to be used in the creation of such objects or in displaying art objects or presenting artistic or cultural exhibitions or performances.

(signature of authorized purchaser)
for: (name of organization)
(registration no. of organization)

Vendors who accept such certifications in good faith will be excused from the responsibility of collecting and remitting sales tax on such sales.

Use Tax

Under RCW 82.12.031, the use tax does not apply to the use of any objects for the purposes explained earlier in this rule, and upon which the retail sales tax would be exempt if the objects were purchased in this state. The use tax applies upon all other items of tangible personal property used by artistic or cultural organizations upon which retail sales tax has not been paid.

[Statutory Authority: RCW 82.32.300. 86-07-006 (Order ET 86-4), § 458-20-249, filed 3/6/86.]

WAC 458-20-250 Refuse-solid waste collection business—Core deposits and credits, battery core charges, and tires. [(1)] Introduction. This section administers the taxes on solid waste collection and the special provisions for core deposits and credits, battery core charges, and tires.

(a) Chapter 282, Laws of 1986 established the specific business activity of the "refuse collection business" and imposed a "refuse collection tax" similar in nature to retail sales tax. The burden of this tax is upon the ultimate consumer of the refuse collection service. The tax rate is three and six tenths percent (.036), and the tax measure is the total consideration charged to the consumer-customer for the services. Chapter 431, Laws of 1989 changes the name of this tax from a refuse collection tax to a solid waste collection tax.

(b) Chapter 431, Laws of 1989, imposes, effective July 1, 1989, an additional tax of 1 percent of the consideration charged for the service. Generally, the tax is imposed in addition to and is similar to the refuse collection tax enacted in 1986. However, unlike the refuse collection tax, the measure of the new 1 percent tax is limited to the charges for the actual solid waste collection services that are provided and a maximum tax measure is provided for residential collection service charges.

(c) For ease of administration and accounting, the 3.6 percent tax shall retain its former name and be called for purposes of this section the "refuse collection tax," and, the tax imposed in 1989, the 1 percent tax, shall be called the "solid waste collection tax."

(2) Neither the 1986 law or the 1989 law expressly establishes a specific business tax classification for the gross receipts of persons engaged in the refuse-solid waste collection business. Thus, because of the provisions of RCW 82.04.290, such persons are subject to the service or other activities classification of business and occupation tax.

(3) For purposes of this section the following terms will apply.

(a) "Refuse collection business" - "solid waste collection business" means every person who receives waste for transfer, storage, or disposal including but not limited to all collection services, public or private dumps, transfer stations, and similar operations.

(b) "Person" shall have the meaning given in RCW 82.04.030 or any later, superseding section.

(c) "Waste"-"solid waste" means garbage, trash, rubbish, or other material discarded as worthless or not economically viable for further use. The term does not include hazardous or toxic waste nor does it include material collected primarily for recycling or salvage.

(d) "Taxpayer" means that person upon whom the refuse-solid waste collection tax is imposed, that is, the private or commercial consumer-customer.

(e) "Department" means the department of revenue.

(f) "Consideration charged for the services" means the total amount billed to a taxpayer as compensation for refuse-solid waste collection services, without any deduction for any costs of doing business or any other expense whatsoever, paid or accrued, provided, that the term does not include any amount included in the charges for materials collected primarily for recycling, nor the refuse-solid waste collection tax itself whether separately itemized or not, nor any similar utility taxes or consumer taxes, imposed by the state or any political subdivision thereof or any municipal corporation, directly upon the consumer-taxpayer and separately itemized on the taxpayer's billing. Also, the term does not include late charges or penalties which may be imposed for nontimely payment by taxpayers.

(4) Refuse and solid waste collection tax measure.

(a) The refuse collection tax applies to the consideration paid for refuse-solid waste collection services. The rate of the tax is 3.6 percent of the amount charged for garbage collection and disposal services.

(b) For purposes of the solid waste collection tax, the following terms will apply.

(i) "Standby," "availability," or "base" charges mean those charges to a residential customer who receives no actual garbage pickup service.

(ii) "Residential collection service" has its ordinary meaning and is per can garbage collection service other than commercial or industrial service. For purposes of this section, a residential collection service is that service provided for each housing unit. In the case of multiple housing units in a single structure such as apartments, condominiums, or duplexes, or, an association of housing units such as a mobile home park or retirement village, the service is deemed commercial unless each occupier of a housing unit is individually provided can service and is individually billed for such service.

(iii) "Can" or "can equivalent" has its ordinary meaning and shall include a receptacle for waste collection made of durable, corrosion-resistant material, watertight with a close fitting cover, with two handles, and does not exceed 32 gallons, 4 cubic feet or 65 lbs. (including contents), nor weigh more than 12 lbs. when empty. (This definition comports with the definition of "unit" by the utilities and transportation commission.) For purposes of this section, containers of 60 gallon or more capacity, commonly called "toters," are considered more than 2 cans.

(c) The solid waste collection tax applies to the consideration paid for actual solid waste collection services provided and utilized by the customer and does not apply to amounts charged by a solid waste collection business for "standby," "availability," or "base" charges where no actual garbage collection occurs. Additionally, the tax does not apply to amounts charged for materials primarily collected for recycling.

(d) For a residential customer, the tax measure is the consideration paid, but not more than $8.00 of the monthly charge for garbage pickup service of less than 2 cans, or, not more than $12.00 of the monthly charge for 2 cans or more.

(i) Example. City X provides residential garbage collection service to a customer and the customer has subscribed to less than two can service. The monthly charge is $11.00 for the service which includes a charge of $2.00 for special pickup of recyclables. After adjustment for the recycling charges of $2.00, the refuse collection tax measure is $9.00 and the solid waste collection tax measure is $8.00. The tax measure for solid waste residential pickup is limited to not more than $8.00 of monthly charge paid. The refuse collection tax is 32 cents ($9.00 x .036), and, the solid waste collection tax is 8 cents ($8.00 x .01), for a total refuse-solid waste collection tax of 40 cents.

(e) For computation of the maximum solid waste collection tax due for residential customers, extra solid waste collected effects the tax base only for a residential customer with less than 2 can service. The tax measure for a customer with 2 or more can service will never exceed $12.00. The tax measure for a customer with less than 2 can service does not exceed $8.00 unless the extras collected are an additional can equivalent sufficient to change the less than 2 can customer to a 2 can or more customer. A less than 2 can customer becomes a 2 can or more customer when, over a reasonable period of time, i.e., 6 months, charges for less than 2 can service plus extras equals or exceeds the customary charges for 2 can service.

(i) Example. Residential customer Z has less than 2 can service for which Z is charged $9.00 per month and results in a refuse tax of 32 cents ($9.00 x .036) and a solid waste tax of 8 cents ($8.00 x .01) for a total tax of 40 cents. For 7 consecutive months Z has extra trash bags picked up each month. The monthly charge including extras is $11.00 and the customary 2 can or more charge is $12.00. The refuse tax for each month is 40 cents ($11.00 x .036) and the solid waste tax is 8 cents ($8.00 x .01) for a total tax of 48 cents. Z remains a less than 2 can customer during the period as the monthly charge, including the charge for extras, is less than the customary 2 can or more rate. The solid waste tax measure is limited to the consideration paid up to $8.00, while the refuse tax is not so limited.

(ii) Example. Residential customer X has 2 or more can service for which X is charged $9.00 per month resulting in a refuse tax of 32 cents ($9.00 x .036) and a solid waste tax of 9 cents ($9.00 x .01) for a total tax of 41 cents. One month X has several trash bags picked up and the charge for this month is $13.00. The refuse tax is 47 cents ($13.00 x .036) and the solid waste tax is 12 cents ($12.00 x .01) for a total tax of 59 cents. The solid waste tax measure for 2 can or more service is limited to the consideration paid up to $12.00 while the refuse collection tax measure is not so limited.

(iii) Example. A city provides residential garbage collection for which the city charges a $5.00 base fee and a total charge of $9.00 for less than 2 can service and $13.00 for 2 can or more service. A customer chooses to deliver his garbage by his own means to the local disposal site for which the customer is charged $10.00 per month. The city charges the customer on his monthly utility bill the $5.00 base fee. The refuse tax collected at the disposal site is 36 cents ($10.00 x .036) and the solid waste tax collected at the disposal site is 10 cents ($10.00 x .01) for a total collection at the disposal site of 46 cents. The refuse tax collected by the city is 18 cents ($5.00 x .036) and no solid waste tax is collected by the city because no actual garbage collection services were provided the customer. As the per can limitations apply only to residential pick up service, any garbage delivered to disposal site by anyone other than another refuse-solid waste collection business will always incur a combined refuse-solid waste tax of 4.6 per cent of the consideration paid.

(5) The person who collects the charges for refuse-solid waste collection services from the taxpayer is responsible for collecting the refuse-solid waste collection tax and remitting it to the state.

(6) The law provides that if any person charged with collecting the tax fails to bill the taxpayer for it, or to notify the taxpayer in writing that the tax is due, then that person

shall be personally liable for the tax. Thus, unlike the retail sales tax, the refuse-solid waste collection tax may be included within the gross refuse fee or charge billed to taxpayers and need not be separately itemized on such billings, but only if such taxpayers are notified in writing that the tax has been imposed and is being collected. Nothing prevents any refuse-solid waste collection business from separately itemizing the tax on customer billings, at its option.

(7) Furthermore, if any person collects that tax from the taxpayer and fails to pay it to the department in the manner provided in this section, for any reason whatever, that person shall be personally liable for the tax.

(8) The refuse-solid waste collection tax is due from the taxpayer within twenty-five days from the date the taxpayer is billed for the refuse-solid waste collection services. The refuse collection tax and the solid waste collection tax shall be separately reported upon lines provided on the combined excise tax return.

(9) The tax is due to be remitted to the department by the person collecting it at the end of the tax reporting period in which the tax is received by that person.

(10) If a taxpayer makes only a partial payment of the amount billed for the services and tax, the amount paid must first be used to remit the refuse-solid waste collection tax to the department. This tax has first priority over all other claims against the amount paid by the taxpayer.

(11) The federal government, its agencies and instrumentalities, and all refuse service contracts with such federal entities are not subject to the refuse-solid waste collection tax. There are no other taxpayers expressly exempted from paying the refuse-solid waste collection tax. Any other taxpayer claiming exemption of this tax for any reason whatsoever must provide the refuse-solid waste collection business with proof of its entitlement to exemption. The department will verify such claims upon request.

(12) To prevent pyramiding or multiple taxation of single transactions, the refuse-solid waste collection tax does not apply to any person other than the taxpayer. It is a tax upon the ultimate consumer-customer of the refuse-solid waste service.

(13) Persons who collect the refuse-solid waste collection tax and who, themselves, utilize the further services of others for the transfer, storage, or disposal of the waste collected are not required to again pay the tax to such other service providers. However, in order to be exempt of such tax payment a refuse-solid waste collection business must provide other refuse-solid waste service providers with a refuse-solid waste collector's exemption certificate in the following form:

(a) We hereby certify that we are engaged in the refuse-solid waste collection business and are registered with the state department of revenue to collect and report the refuse collection tax imposed under chapter 282, Laws of 1986 and chapter 431, Laws of 1989. We certify further that the refuse-solid waste collection tax due with respect to the refuse-solid waste collection business being performed under this certificate has been or will be collected and paid and that we are exempt [of] [for] further payment of such tax on charges for any refuse-solid waste collection services being procured by us.

Business Name . . . . Authorized Signature . . . .

Business Address . . . . Date . . . .

Revenue Registration No. . . . .

U.T.C. Certificate of Public Necessity No. . . . .

If not regulated by U.T.C., please check here . . . . . .

(b) Blanket certificates may be provided in advance by refuse-solid waste collectors or other persons who collect the customer charges for refuse-solid waste collection and who are liable for collecting and remitting the refuse-solid waste collection tax.

(c) Refuse-solid waste collection businesses which provide services for the transfer, storage, or disposal of waste, and who accept completed certifications in good faith are not required to collect and remit the refuse-solid waste collection tax and will not be held personally liable for it.

(14) Persons engaged in the refuse-solid waste collection business by operating facilities for the transfer, storage, or disposal of waste, including public and private dumps, and who provide such services directly to taxpayers for a charge, are liable for the collection of the refuse collection tax on such charges.

(15) Examples of taxable and tax exempt transactions are:

(a) A private person or commercial customer hauls its own waste to a dump site for disposal and pays a fee - the fee is subject to the 3.6 percent refuse collection tax and the 1 percent solid waste collection tax.

(b) A refuse-solid waste collection company picks up and hauls residential or commercial waste to a dump for disposal - this company bills the customer for the tax and need not pay the tax upon any further charge made by the dump site operator, by providing a refuse-solid waste collector's certificate.

(c) A city provides refuse-solid waste collection services to its residents through an independent hauler under a negotiated contract, and uses a county operated land fill. The city bills the residents on their utility bills. The 3.6 percent and 1 percent taxes apply to the refuse-solid waste portion of the utility bill adjusted as provided in this section. These taxes do not apply to any charge paid by the city to the hauling company, nor to any charge made by the county to the city for dumping services. The city must provide the hauler and the county with a refuse-solid waste collector's certificate.

(16) The refuse-solid waste collection tax is imposed in much the same manner as retail sales tax; that is, it is payable by the refuse-solid waste consumer to the refuse-solid waste service provider who does the customer billing. Likewise, other refuse-solid waste service providers up the chain of transactions from the billing provider are treated in the same manner as wholesalers and need not collect the tax if the appropriate certificate is taken.

(17) Business and occupation tax. There is no exemption from business and occupation tax measured by gross income of any person engaged in the refuse-solid waste collection business. Such persons are subject to the service classification of business and occupation tax measured by their gross receipts. (See RCW 82.04.290.) Also, there is no general provision under the law for the nonpyramiding effect of the business and occupation tax. Thus, each refuse-

solid waste collection business is separately liable for this tax on its total gross receipts without any deduction for any costs of doing business or any amounts paid over to other refuse-solid waste service providers. Also, all amounts designated as late charges or penalties are included within this business tax measure.

(18) The refuse-solid waste collection business is an "enterprise activity," as defined in WAC 458-20-189, when it is funded over fifty percent by user fees. Thus, the amounts derived from this activity are not exempt of business and occupation tax even though they may be charged by governmental entities. (See RCW 82.04.419.)

(19) The exemption of refuse-solid waste collection tax for the federal government, its agencies and instrumentalities, does not apply for business and occupation tax. Thus, refuse-solid waste collection businesses who charge such federal entities for services, under contract or otherwise, must pay the business and occupation tax upon such gross receipts.

(20) Persons engaged in the refuse-solid waste collection business may be entitled to certain express deductions or exemptions from business and occupation tax for specific reasons unrelated to the nature of their refuse-solid waste business activity. (See RCW 82.04.419 and 82.04.4291.)

(21) Refuse-solid waste collection businesses which provide waste receptacles, containers, dumpsters, and the like to their customers for a charge, separate from any charge for collection of the waste, are engaged in the business of renting tangible personal property taxable separate and apart from the refuse-solid waste collection business. Charges for such rentals, however designated, are subject to retailing business and occupation tax when they are billed separately or are line itemized on customer billings. Such businesses are engaged in more than one taxable kind of business activity and are separately taxable on each. (See RCW 82.04.440.)

(22) Retail sales tax. Persons who separately charge and bill customers for waste receptacles, as explained earlier, must collect and remit the retail sales tax on the itemized rental price, fee, or other consideration, however designated, charged for the receptacles.

(23) Refuse-solid waste collection businesses are themselves the consumers of all tangible personal property purchased for their own use in conducting such business, other than items for resale or renting to customer[s], e.g., rented receptacles. Retail sales tax must be paid to materials suppliers and providers of such tangible consumables. (See RCW 82.04.050.)

(24) Use tax. The use tax is due upon all tangible personal property used as consumers by refuse-solid waste collection businesses, upon which the retail sales tax has not been paid. (See RCW 82.12.020.)

(25) Core deposits and credits - Battery core charges.

(a) For purposes of this section the following terms apply.

(i) "Core deposits or credits" means the amount representing the value of returnable products such as batteries, starters, brakes, and other products with returnable value added for purposes of recycling or remanufacturing.

(ii) "Battery core charge" means that amount of the retail selling price of a vehicle battery, not less than $5.00, which is retained by the seller when the purchaser has no used battery to exchange or trade-in.

(b) Retail sales tax.

(i) The retail sales tax does not apply to the consideration received as core deposits or credits in a retail or wholesale sale when a purchaser exchanges or trades-in a core to the seller. (RCW 82.08.010, WAC 458-20-247, and chapter 431, Laws of 1989). Therefore, when a purchaser of a vehicle battery, starter, etc., exchanges or trades-in a used battery, starter, etc., to the seller, retail sales tax does not apply to the value of the used property exchanged or traded-in.

(ii) Chapter 431, Laws of 1989, effective July 23, 1989, requires the retail selling price of a vehicle battery to include a core charge of not less than $5.00. The core charge must be omitted from the sales price when the purchaser offers to the seller a used battery of equivalent size. The retail sales tax does apply to the core charge amount included in the sales price of a vehicle battery when the purchaser does not offer to the seller a used battery for exchange or trade-in. The exemption for "core deposits or credits" applies only when an article of tangible personal property is returned by the purchaser to the seller for the purpose of recycling or remanufacturing. Upon the offer by the purchaser to the seller of a used battery of equivalent size for exchange or trade-in within 30 days after the purchase date of the battery, the seller shall refund to the purchaser the core charge amount and the retail sales tax paid on such core charge.

(c) Use tax. The use tax does not apply to the value of core deposits or credits in a retail or wholesale sale.

(d) Business and occupation tax. The core deposit and credit exemptions apply only to the amount of retail sales tax and use tax to be collected and paid. There is no core deposit or credit exclusion for B&O tax. It is important to note that the base for B&O tax and retail sales tax may be different amounts. Thus, the gross receipts under the appropriate classification of B&O tax, retailing, wholesaling, manufacturing, etc., continues to include the value of core deposits and credits. Battery core charges are included as gross receipts in the retailing classification of the B&O tax.

(e) Examples:

(i) A customer wishes to purchase from an auto parts store a new replacement battery and a reconditioned starter. He brings with him a battery core and a starter core. The purchase price of the new battery is $60.00 less $3.00 for the value of the core exchanged; and, the purchase price of the starter is $50.00 less $5.00 for the starter core. Retailing B&O tax is due upon the total value of cash plus core value, in this case $110.00 ($60.00 + 50.00). However, retail sales tax is due only on $102 ($57.00 + 45.00), which is the purchase price less the core deposits. The customer pays $102.00 plus sales tax for the battery and the starter.

(ii) A customer wishes to purchase a new replacement battery which sells for $62.00. The customer has no returnable battery core to exchange. Thus, a battery core charge of $5.00 or more must be added to the sales price for a total of $67.00 or more. Both retail sales tax and B&O tax apply to the actual price paid by the customer.

(iii) In example (ii) above, the customer returns to the store within 30 days with a proof of purchase and a used battery of equivalent size. The seller must refund the $5.00 or more battery core charge plus the sales tax paid the $5.00

or more. B&O tax is due upon the value of the battery, $62.00.

(26) Tires. Chapter 431, Laws of 1989 amends RCW 70.95.510 and, effective October 1, 1989, levies a $1 per tire fee on the retail sale of new replacement tires. The $1 per tire fee levied replaces the .012 percent tax imposed in 1985. The fee imposed shall be paid by the buyer and collected by the seller. The fee collected from the buyer by the seller shall be paid to the department in accordance with RCW 82.32.045 less 10 percent retained by the seller.

(a) Retail sales tax - Use tax - Business and occupation tax. Chapter 431, Laws of 1989 exempts the fee from retail sales tax and use tax. Neither the fee nor the part of the fee retained by the seller is subject to business and occupation tax. The seller is only the state's collecting and reporting agent for the portion paid to the department. The 10 percent retained portion is expressly authorized for use by the seller to defray costs associated with the proper management of waste tires.

[Statutory Authority: RCW 82.32.300. 89-16-090 (Order 89-11), § 458-20-250, filed 8/2/89, effective 9/2/89; 86-15-064 (Order ET 86-14), § 458-20-250, filed 7/22/86.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

WAC 458-20-251 Sewerage collection business. (1) Introduction. Under the provisions of chapter 471, Laws of 1985, the "sewerage collection business" was reclassified for tax purposes from the service classification of business and occupation tax to the public service business - sewer collection classification of public utility tax. To implement this change in law the department of revenue amended and adopted WAC 458-20-179, on November 1, 1985, which subjected gross receipts from all sewerage services to the higher rated public utility tax classification, as of the effective date of chapter 471, Laws of 1985, July 1, 1985.

(2) The department has determined that, within the intent of the law, only the portion of gross receipts from customer billings attributable to the "collection" portion of services rendered should be taxed under the public utility tax classification. Thus, this section now supersedes and effectively repeals the specific provisions of WAC 458-20-179 pertaining to sewerage collection businesses. The provisions of this new section have retroactive effect from July 1, 1985 forward.

(3) Definitions. For purposes of this section the following terms will apply.

(a) "Sewerage collection business" means the activity of receiving sewage deposited into and carried off by a system of sewers, drains, and pipes to a common point, or points, for disposal or for transfer to treatment for disposal, but does not include such transfer, treatment, or disposal of sewage.

(i) This term does not include the activity of receiving, collecting, or disposing of toxic or hazardous waste materials regardless of the system employed for collection of such substances.

(b) "Sewage" means the waste matter carried off by sewer drains and pipes.

(c) "Gross receipts" of the sewerage collection business means only that portion of income from customer billings which is allocable to the collection of sewage by a sewerage collection business as defined herein.

(i) "Gross receipts," as defined here, is the public utility tax measure. It does not include any charges of any kind attributable to sewerage services other than collection.

(ii) The term does not include late charges or penalties which may be imposed for nontimely payment by customers.

(d) "Person" has the meaning given in RCW 82.04.030 or any later, superseding section.

(4) Persons engaged in the sewerage collection business may also be engaged in related business activities involving the interception, transfer, storage, treatment, and/or disposal of sewage, or any of these activities. If so, such persons are engaged in both public utility taxable activities (sewerage collection) and business and occupation taxable activities (other sewer services). See RCW 82.16.060 and 82.04.310.

(5) Public utility tax. Persons engaged in the sewerage collection business, as defined herein, are subject to the public utility tax under the classification, sewer collection, measured by "gross receipts" of the collection business as explicitly defined herein, at the currently prescribed rate. (See RCW 82.16.020 (1)(a).)

(6) In order to determine the "gross receipts" of the collection business there are two alternative methods.

(a) If customer billings are itemized to show the actual charge for sewage "collection," that amount is the "gross receipts" tax measure: *Provided,* That such amount shall not be less than the actual cost of providing the collection service.

(b) If collection services are provided jointly with other, related sewer services provided by the sewerage collection business or any other person, and the actual charge for sewerage "collection" is not itemized on customer billings, a simple cost-of-doing-business formula must be used to derive the "gross receipts," public utility tax measure.

(i) The totality of all business costs incurred in rendering all sewer services, including collection, is to be divided into the costs of providing sewerage collection services. The resulting percentage is to be multiplied by gross income from customer billings (all sewerage related charges). The result is the "gross receipts" public utility tax measure from engaging in the sewerage collection business.

(ii) The formula looks like this:

$$\frac{\text{Sewage collection costs (Annualized)}}{\text{Total sewer service costs (Annualized)}} = \_\_\_\% \times \text{gross billings} = \text{Public Utility Tax Measure}$$

(iii) All costs of operation of the sewer services business must be included in the denominator, including but not limited to capitalized equipment, labor, direct and indirect overhead, and administration.

(iv) The standard cost accounting records of the sewerage collection business will be used for this purpose.

(v) For the purpose of annualizing its costs, the sewerage collection business may use the previous calendar year costs or its budget allocations for the current tax year. In either case, however, it must make an end of year adjustment to its reporting based upon actual costs incurred during the current year.

(7) Business and occupation tax. Persons engaged in providing other sewer services, in addition to or separate

from the "sewerage collection business" as defined herein, are subject to the business and occupation tax under the classification, service and other business activities. The measure of this tax is the gross income derived from such other services. It does not include any amount reported for public utility tax under the sewer collection classification.

(8) The service business and occupation tax on sewer services is not intended to have a pyramiding effect. RCW 82.04.432 thus provides a deduction from the tax measure for amounts paid by municipal sewerage utilities and other public corporations to any other municipal corporation or governmental agency for sewage interception, treatment, or disposal. This deduction results in each one of several sewer service providers being taxable only on the amounts actually received and retained by them as their respective share of gross customer billings for the totality of all services.

(9) Under the law, depending upon the arrangement for providing the totality of all sewer services, it may be that a person will report tax under both the public utility tax (on collection services income) and business and occupation tax (on other related services income), as appropriate, upon respective portions of that person's retained share of income from customer billings.

(10) The "sewerage collection business" and many other sewer services are "enterprise activities" as defined in WAC 458-20-189, when funded over fifty percent by user fees. Thus, the amounts derived from these business activities are not exempt of tax even though they may be provided and charged for by governmental entities. (See RCW 82.04.419.)

(11) Persons engaged in providing sewer services other than sewerage collection, such as the transfer, storage, treatment, and/or disposal of sewage, may be entitled to certain express deductions or exemptions from business and occupation tax for specific reasons unrelated to the nature of their sewer service activities. (See RCW 82.04.419 and RCW 82.04.4291.) These deductions and exemptions are not available for "sewerage collection businesses" upon their income subject to public utility tax.

(12) Retail sales tax. Persons engaged in the "sewerage collection business" and/or engaged in providing other related sewer services are themselves the consumers of all tangible personal property purchased for their own use in conducting such activities, other than items held for resale in the ordinary course of business. Retail sales tax must be paid to materials suppliers and providers of all such tangible consumables. (See RCW 82.04.050.)

(13) Use tax. The use tax is due upon all tangible personal property used as consumers by "sewerage collection businesses" and sewer service providers, upon which the retail sales tax has not been paid. (See RCW 82.12.020.)

(14) Retroactivity - procedures for refund. Because of the provisions of WAC 458-20-179 relating to sewer services, which were effective from July 1, 1985 and have been retroactively repealed, some persons providing sewer services after that date may have overreported their tax liability. Any such persons who reported and paid public utility tax measured by gross customer billings income or measured by income allocable to the transfer, treatment, and/or disposal of sewage are entitled to a refund or credit. Such refunds or credits will be in the amount of the difference between the public utility tax rate (.03852) and the service business tax rate (.015) on the income reported. The refund or credit may be obtained by timely providing amended copies of past reporting documents to the Taxpayer Accounts Administration Section of the Department of Revenue, Olympia, Washington. (See RCW 82.32.170.) Similarly, persons who have discontinued reporting tax liability on income from any sewer services, on or after July 1, 1985, will have additional tax liability to report.

[Statutory Authority: RCW 82.32.300. 86-18-069 (Order 86-16), § 458-20-251, filed 9/3/86.]

WAC 458-20-252 Hazardous substance tax and petroleum product tax. PART 1 - HAZARDOUS SUBSTANCE TAX

(1) Introduction. Under the provisions of chapter 82.22 RCW a hazardous substance tax was imposed, effective January 1, 1988, upon the wholesale value of certain substances and products, with specific credits and exemptions provided. This law is significantly changed, effective on March 1, 1989, because of Initiative 97 (I-97) which was passed by the voters in the November 8, 1988 general election. The tax, which is reimposed by I-97, is an excise tax upon the privilege of possessing hazardous substances or products in this state. It is imposed in addition to all other taxes of an excise or property tax nature and is not in lieu of any other such taxes.

(a) I-97, which will be referred to as chapter 2, Laws of 1989, defines certain specific substances as being hazardous and includes other substances by reference to federal legislation governing such things. It also provides authority to the director of the state department of ecology to designate any substances or products as hazardous which could present a threat to human health or the environment. The department of ecology, by duly published rule, defines and enumerates hazardous substances and products and otherwise administers the provisions of the law relating to hazardous and toxic or dangerous materials, waste, disposal, cleanup, remedial actions, and monitoring. (See chapter 173-___ of the WAC.)

(b) Sections 8 through 12 of I-97 consist of the tax provisions relating to hazardous substances and products which are administered exclusively under this section. The tax provisions relate exclusively to the possession of hazardous substances and products. The tax provisions do not relate to waste, releases or spills of any materials, cleanup, compensation, or liability for such things, nor does tax liability under the law depend upon such factors. The incidence or privilege which incurs tax liability is simply the possession of the hazardous substance or product, whether or not such possession actually causes any hazardous or dangerous circumstance.

(c) The hazardous substance tax is imposed upon any possession of a hazardous substance or product in this state by any person who is not expressly exempt of the tax. However, it is the intent of the law that the economic burden of the tax should fall upon the first such possession in this state. Therefore, the law provides that if the tax has not been paid upon any hazardous substance or product the department may collect the tax from any person who has had possession. The amount of tax paid then constitutes a debt owed by the first person having had taxable possession to the person who pays the tax.

(2) Definitions. For purposes of this part the following terms will apply.

(a) "Tax" means the hazardous substance tax imposed under section 10 of I-97.

(b) "Hazardous substance" means anything designated as such by the provisions of chapter 173 WAC, administered by the state department of ecology, as adopted and thereafter amended. In addition, the law defines this term to include:

(i) Any substance that, on March 1, 1989, is a hazardous substance under section 101(14) of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by Public Law 99-499. These substances consist of chemicals and elements in their purest form. A CERCLA substance which contains water is still considered pure. Combinations of CERCLA substances as ingredients together with nonhazardous substances will not be taxable unless the end product is specifically designated as a hazardous substance by the department of ecology.

(ii) Petroleum products (further defined below);

(iii) Pesticide products required to be registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); and

(iv) Anything else enumerated as a hazardous substance in chapter 173-__ WAC by the department of ecology.

(c) "Product(s)" means any item(s) containing a combination of ingredients, some of which are hazardous substances and some of which are not hazardous substances.

(d) "Petroleum product" means any plant condensate, lubricating oil, crankcase motor oil, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual fuel, asphalt base, liquefied or liquefiable gases, such as butane, ethane and propane, and every other product derived from the refining of crude oil, but the term does not include crude oil.

(i) The term "derived from the refining of crude oil" as used herein, means produced because of and during petroleum processing. "Petroleum processing" includes all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to crude oil or any byproduct of crude oil so that as a result thereof a fuel or lubricant is produced for sale or commercial or industrial use. "Fuel" includes all combustible gases and liquids suitable for the generation of energy. The term "derived from the refining of crude oil" does not mean petroleum products which are manufactured from refined oil derivatives, such as petroleum jellies, cleaning solvents, asphalt paving, etc. Such further manufactured products become hazardous substances only when expressly so designated by the director of ecology.

(e) "Possession" means control of a hazardous substance located within this state and includes both actual and constructive possession.

(i) "Control" means the power to sell or use a hazardous substance or to authorize the sale or use by another.

(ii) "Actual possession" occurs when the person with control has physical possession.

(iii) "Constructive possession" occurs when the person with control does not have physical possession.

(f) "Previously taxed hazardous substance" means a hazardous substance upon which the tax has been paid and which has not been remanufactured or reprocessed in any manner.

(i) Remanufacturing or reprocessing does not include the mere repackaging or recycling for beneficial reuse. Rather, these terms embrace activities of a commercial or industrial nature involving the application of skill or labor by hand or machinery so that as a result, a new or different substance or product is produced.

(ii) "Recycling for beneficial reuse" means the recapturing of any used substance or product, for the sole purpose of extending the useful life of the original substance or product in its previously taxed form, without adding any new, different, or additional ingredient or component.

(iii) Example: Used motor oil drained from a crankcase, filtered, and containerized for reuse is not remanufactured or reprocessed. If the tax was paid on possession of the oil before use, the used oil is a previously taxed substance.

(iv) Possessions of used hazardous substances by persons who merely operate recycling centers or collection stations and who do not reprocess or remanufacture the used substances are not taxable possessions.

(g) "Wholesale value" is the tax measure or base. It means the fair market value determined by the wholesale selling price.

In cases where no sale has occurred, wholesale value means the fair market wholesale value, determined as nearly as possible according to the wholesale selling price at the place of use of similar substances of like quality and character. In such cases the wholesale value shall be the "value of the products" as determined under the alternate methods set forth in WAC 458-20-112.

(h) "Selling price" means consideration of any kind expressed in terms of money paid or delivered by a buyer to a seller, without any deductions for any costs whatsoever. Bona fide discounts actually granted to a buyer result in reductions in the selling price rather than deductions.

(i) "State," for purposes of the credit provisions of the hazardous substance tax, means:

(i) The state of Washington,

(ii) States of the United States or any political subdivisions of such other states,

(iii) The District of Columbia,

(iv) Territories and possessions of the United States,

(v) Any foreign country or political subdivision thereof.

(j) "Person" means any natural or artificial person, including a business organization of any kind, and has the further meaning defined in RCW 82.04.030.

(i) The term "natural person," for purposes of the tax exemption provided by section 11(2) of I-97 regarding substances used for personal or domestic purposes, means human beings in a private, as opposed to a business sense.

(k) Except as otherwise expressly defined in this section, the definitions of terms provided in chapters 82.04, 82.08, and 82.12 RCW apply equally for this section. Other terms not expressly defined in these chapters or this section are to be given their common and ordinary meanings.

(3) Tax rate and measure. The tax is imposed upon the privilege of possessing hazardous substances in this state. The tax rate is seven tenths of one percent (.007). The tax measure or base is the wholesale value of the substance, as defined herein.

(4) Exemptions. The following are expressly exempt from the tax:

(a) Any successive possessions of any previously taxed hazardous substances are tax exempt.

(i) Any person who possesses a hazardous substance which has been acquired from any other person who is registered with the department of revenue and doing business in this state may take a written statement certifying that the tax has been previously paid. Such certifications must be taken in good faith and must be in the form provided in the last part of this section. Blanket certifications may be taken, as appropriate, which must be renewed at intervals not to exceed four years. These certifications may be used for any single hazardous substance or any broad classification of hazardous substances, e.g., "all chemicals."

(ii) In the absence of taking such certifications, the person who possesses any hazardous substance must retain proofs that it purchased or otherwise acquired the substance from a previous possessor in this state. It is not necessary for subsequent possessors to obtain certificates of previously taxed hazardous substances in order to perfect their tax exemption. Documentation which establishes any evidence of previous tax payment by another person will suffice. This includes invoices or billings from in state suppliers which reflect their payment of the tax or simple bills of lading or delivery documents revealing an in state source of the hazardous substances.

(iii) This exemption for taxes previously paid is available for any person in successive possession of a taxed hazardous substance even though the previous payment may have been satisfied by the use of credits or offsets available to the previous person in possession.

(iv) Example. Company A brings a substance into this state upon which it has paid a similar hazardous substance tax in another state. Company A takes a credit against its Washington tax liability in the amount of the other state's tax paid. It then sells the substance to Company B, and provides Company B with a certificate of previously taxed substance. Company B's possession is tax exempt even though Company A has not directly paid Washington's tax but has used a credit against its Washington liability.

(b) Any possession of a hazardous substance by a natural person for use of a personal or domestic nature rather than a business nature is tax exempt.

(i) This exemption extends to relatives, as well as other natural persons who reside with the person possessing the substance, and also to regular employees of that person who use the substance for the benefit of that person.

(ii) This exemption does not extend to possessions by any independent contractors hired by natural persons, which contractors themselves provide the hazardous substance.

(iii) Examples: Possessions of spray materials by an employee-gardener or soaps and cleaning solvents by an employee-domestic servant, when such substances are provided by the natural person for whose domestic benefit such things are used, are tax exempt. Also, possessions of fuel by private persons for use in privately owned vehicles are tax exempt.

(c) Any possession of any hazardous substance, other than pesticides or petroleum products, possessed by a retailer for making sales to consumers, in an amount which is determined to be "minimal" by the department of ecology. That department has determined that the term "minimal" means less than $1,000.00 worth of such hazardous substances measured by their wholesale value, possessed during any calendar month.

(d) Possessions of alumina or natural gas are tax exempt.

(e) Persons or activities which the state is prohibited from taxing under the United States Constitution are tax exempt.

(i) This exemption extends to the U.S. government, its agencies and instrumentalities, and to any possession the taxation of which has been expressly reserved or preempted under the laws of the United States.

(ii) The tax will not apply with respect to any possession of any hazardous substance purchased, extracted, produced or manufactured outside this state which is shipped or delivered into this state until the interstate transportation of such substance has finally ended in this state. Thus, out of state sellers or producers need not pay the tax on substances shipped directly to customers in this state. The customers must pay the tax upon their first possession unless otherwise expressly exempt.

(iii) Out of state sellers or producers will be subject to tax upon substances shipped or delivered to warehouses or other in state facilities owned, leased, or otherwise controlled by them.

(iv) However, the tax will not apply with respect to possessions of substances which are only temporarily stored or possessed in this state in connection with through, interstate movement of the substances from points of origin to points of destination both of which are outside of this state.

(f) The former exemption for petroleum products for export sale or use outside this state as fuel was effectively repealed by I-97. There are no exemptions under the law for any possessions of hazardous substances in this state simply because such substances may later be sold or used outside this state.

(g) Though I-97 contains an exemption for persons possessing any hazardous substance where such possession first occurred before March 1, 1989, this exemption applies only to the tax imposed under I-97. It does not apply retroactively to excuse the hazardous substance tax which was imposed under chapter 82.22 RCW in effect from January 1, 1988 until March 1, 1989. However:

(i) **Transitional rule**: Persons who possess stocks or inventories of petroleum products as of March 1, 1989, which are destined for sale or use outside this state as fuel are not subject to tax upon such possessions of preexisting inventories. For periods before March 1, 1989 the former exemption of RCW 82.22.040(3) for export petroleum products applies. For periods on and after March 1, 1989 the exemption for prepossessed hazardous substances explained in subsection (g) above will apply. Records appropriate to establish that such petroleum products were destined for out of state sale or use as fuel must be retained by any possessor claiming exemption under this transitional rule.

(5) Credits. There are three distinct kinds of tax credits against liability which are available under the law.

(a) A credit may be taken by any manufacturer or processor of a hazardous substance produced from ingredients or components which are themselves hazardous substances, and upon which the hazardous substance tax has been paid by the same person or is due for payment by the same person.

(i) Example. A manufacturer possesses hazardous chemicals which it combines to produce an acid which is also designated as a hazardous substance or product. When it reports the tax upon the wholesale value of the acid it may use a credit to offset the tax by the amount of tax it has already paid or reported upon the hazardous chemical ingredients or components. In this manner the intent of the law to tax hazardous substances only once is fulfilled.

(ii) Under circumstances where the hazardous ingredient and the hazardous end product are both possessed by the same person during the same tax reporting period, the tax on the respective substances must be computed and the former must be offset against the latter so that the tax return reflects the tax liability after the credit adjustment.

(iii) This credit may be taken only by manufacturers who have the first possession in this state of both the hazardous ingredients and the hazardous end product.

(b) A credit may be taken in the amount of the hazardous substance tax upon the value of fuel which is carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle.

(i) The credit may be claimed only for the amount of tax reported or actually due to be paid on the fuel, not the amount representing the value of the fuel.

(ii) The purpose of this credit is to exclude from taxation any possessions of fuel which remains in the fuel tanks of any carrier vehicles powered by such fuel when they leave this state, regardless of where or from whom such fuel-in-tanks was acquired.

(iii) The nature of this credit is such that it generally has application only for interstate and foreign private or common carriers who carry fuel into this state and/or purchase fuel in this state. The intent is that the tax will apply only to so much of such fuel as is actually consumed by such carriers within this state.

(iv) In order to equitably and efficiently administer this tax credit, any fuel which is brought into this state in carrier vehicle fuel tanks must be accounted for separately from fuel which is purchased in this state for use in such fuel tanks. Formulas approved by the department for reporting the amount of fuel consumed in this state for purposes of this tax or other excise tax purposes will satisfy the separate accounting required under this subsection.

(v) Fuel-in-tanks brought into this state must be fully reported for tax and then the credit must be taken in the amount of such fuel which is taken back out of this state. This is to be done on the same periodic excise tax return so that the net effect is that the tax is actually paid only upon the portion of fuel consumed here.

(vi) The credit for fuel-in-tanks purchased in this state must be accounted for by using a fuel-in-tanks credit certificate in substantially the following form:

Certificate of Credit for Fuel Carried from this State in Fuel Tanks

I hereby certify that the petroleum products specified herein, purchased by or transferred to the undersigned, from (name of seller or transferor), are entitled to the credit for fuel which is carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle operated by a private or common carrier in interstate or foreign commerce. I will become liable for and pay the taxes due upon all or any part of such fuel which is not so carried from this state. This certification is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion.

Registration No. . . . .
(if applicable)
Type of Business . . . .
Firm Name . . . .
Business Address . . . .
Registered Name . . . .
(if different)
Tax Reporting Agent . . . .
(if applicable)
Authorized Signature . . . .
Title . . . .
Identity of Fuel . . . .
(kind and amount by volume)

Date: . . . .

(vii) This certificate may be executed and provided to any possessor of fuel in this state, throughout the chain of distribution, with respect to fuel which ultimately will be sold and delivered into any carrier's fuel tanks in this state. Thus, refiners or manufacturers will take such certificates directly from carriers or from their wholesale purchasers who will sell to such carriers. Similarly, fuel dealers and distributors will take such certificates from carriers to whom they sell such fuel. These certificates must be retained as a permanent part of such seller's business records.

(viii) Persons who execute and provide these credit certificates to their fuel suppliers must retain suitable purchase and sales records as may be necessary to determine the amount of tax for which such persons may be liable.

(ix) Blanket certificates may be used to cover recurrent purchases of fuel by the same purchaser. Such blanket certificates must be renewed every two years.

(c) A credit may be taken against the tax owed in this state in the amount of any other state's hazardous substance tax which has been paid by the same person measured by the wholesale value of the same hazardous substance.

(i) In order for this credit to apply, the other state's tax must be significantly similar to Washington's tax in all its various respects. The taxable incident must be possessing the substance; the tax purpose must be that the substance is hazardous; and the tax measure must be stated in terms of the wholesale value of the substance, without deductions for costs of doing business, such that the other state's tax does not constitute an income tax or added value tax.

(ii) This credit may be taken for the amount of any other state's qualifying tax which has actually been paid before Washington state's tax is incurred because the substance was previously possessed by the same person in another taxing jurisdiction.

(iii) The amount of credit is limited to the amount of tax paid in this state upon possession of the same hazardous substance in this state. Also, the credit may not be applied against any tax paid or owed in this state other than the hazardous substance tax imposed by section 10 of I-97.

(iv) Exchange agreements under which hazardous substances or products possessed in this state are exchanged through any accounts crediting system with like substances possessed in other states do not qualify for this credit. The substance taxed in another state, and for which this credit is sought, must be actually, physically possessed in this state.

(v) Persons claiming this credit must maintain records necessary to verify that the credit taking qualifications have been met. See WAC 458-20-19301, part (9) for record keeping requirements. The department of revenue will publish an excise tax bulletin listing other states' taxes which qualify for this credit.

(6) Newly defined hazardous substances. The director of ecology may identify and designate things as being hazardous substances after March 1, 1989. Also, things designated as hazardous substances may be deleted from this definition. Such actions are done by the adoption and subsequent periodic amendments to rules of the department of ecology under the Washington Administrative Code.

(a) The law allows the addition or deletion of substances as hazardous by rule amendments, no more often than twice in any calendar year.

(b) When such definitions are changed, they do not take effect for tax purposes until the first day of the following month which is at least thirty days after the effective date of rule action by the department of ecology.

(i) Example. The department of ecology adopts or amends the rule by adding a new substance and the effective date of the amendment is June 15. Possession of the substance does not become taxable until August 1.

(ii) The tax is owed by any person who has possession of the newly designated hazardous substance upon the tax effective date as explained herein. It is immaterial that the person in possession on that date was not the first person in possession of the substance in this state before it was designated as hazardous.

(7) Recurrent tax liability. It is the intent of the law that all hazardous substances possessed in this state should incur this tax liability only once unless they are expressly exempt. This is true of hazardous ingredients of products as well as the manufactured end product itself, if designated as a hazardous substance. The *exemption* for previously taxed hazardous substances does not apply to "products" which have been manufactured or remanufactured simply because an ingredient or ingredients of that product may have already been taxed when possessed by the manufacturer. Instead of an exemption, manufacturers in possession of both the hazardous ingredient(s) and end product(s) should use the *credit* provision explained at part (5)(a) of this section.

(a) However, the term "product" is defined to mean only an item or items which contain a combination of both hazardous substance(s) and nonhazardous substance(s). The term does not include combinations of only hazardous substances. Thus, possessions of substances produced by combining other hazardous substances upon all of which the tax has previously been paid will not again be taxable.

(b) When any hazardous substance(s) is first produced during and because of any physical combination or chemical reaction which occurs in a manufacturing or processing activity, the intermediate possession of such substance(s) within the manufacturing or processing plant is not considered a taxable possession if the substance(s) becomes a component or ingredient of the product being manufactured or processed or is otherwise consumed during the manufacturing or processing activity.

(i) However, when any intermediate hazardous substance is first produced during a manufacturing or processing activity and is withdrawn for sale or transfer outside of the manufacturing or processing plant, a taxable first possession occurs.

(c) Concentrations or dilutions for shipment or storage. The mere addition or withdrawal of water or other nonhazardous substances to or from hazardous substances designated under CERCLA or FIFRA for the sole purpose of transportation, storage, or the later manufacturing use of such substances does not result in any new hazardous product.

(8) How and when to pay tax. The tax must be reported on a special line of the combined excise tax return designated "hazardous substances." It is due for payment together with the timely filing of the return upon which it is reported, covering the tax reporting period during which the hazardous substance(s) is first possessed within this state. Any person who is not expressly exempt of the tax and who possesses any hazardous substance in this state, without having proof that the tax has previously been paid on that substance, must report and pay the tax.

(a) It may be that the person who purchases a hazardous substance will not have billing information from which to determine the wholesale value of the substance when the tax return for the period of possession is due. In such cases the tax is due for payment no later than the next regular reporting due date following the reporting period in which the substance(s) is first possessed.

(b) The taxable incident or event is the possession of the substance. Tax is due for payment by the purchaser of any hazardous substance whether or not the purchase price has been paid in part or in full.

(c) Special provision for manufacturers, refiners, and processors. Manufacturers, refiners, and processors who possess hazardous substances are required to report the tax and take any available exemptions and credits only at the time that such hazardous substances are withdrawn from storage for purposes of their sale, transfer, remanufacture, or consumption.

(9) How and when to claim credits. Credits should be claimed and offset against tax liability reported on the same excise tax return when possible. The tax return form provides a line for reporting tax on hazardous substances and a line for taking credits as an offset against the tax reported. It is not required that any documents or other evidences of entitlement to credits be submitted with the report. Such proofs must be retained in permanent records for the purpose of verification of credits taken.

(10) Special provision for consumer/first possessors. Under circumstances where the consumer is the first person in possession of any nonexempt hazardous substance (e.g., substances imported by the consumer), or where the consumer is the person who must pay the tax upon substances previously possessed in this state (fuel purchased for export in fuel tanks) the consumer's tax measure will be eighty percent of its retail purchase price. This provision is intended to achieve a tax measure equivalent to the wholesale value.

(11) Hazardous substances or products on consignment. Consignees who possess hazardous substances or products in this state with the power to sell such things, in their own name or on behalf of a disclosed or undisclosed consignor

are liable for payment of the tax. The exemption for previously taxed substances is available for such consignees only if the consignors have paid the tax and the consignee has retained the certification or other proof of previous tax payment referred to in part (4)(i) and (ii) of this section. Possession of consigned hazardous substances by a consignee does not constitute constructive possession by the consignor.

(12) Hazardous substances untraceable to source. Various circumstances may arise whereby a person will possess hazardous substances in this state, some of which have been previously taxed in this or other states and some of which may not. In such cases formulary tax reporting may be used, only upon a special ruling by the department of revenue.

(a) Example. Fungible petroleum products from sources both within and outside this state are commingled in common storage facilities. Formulary reporting is appropriate based upon volume percentages reflecting the ratio of in-state production to out-of-state production or other form of acquisition.

(13) Administrative provisions. The provisions of chapter 82.32 RCW regarding due dates, reporting periods, tax return requirements, interest and penalties, tax audits and limitations, disputes and appeals, and all such general administrative provisions apply equally to the hazardous substance tax. Special requested rulings covering unique circumstances generally will be issued within sixty days from the date upon which complete information is provided to the department of revenue.

(14) Certification of previously taxed hazardous substance. Certification that the hazardous substance tax has already been paid by a person previously in possession of the substance(s) may be taken in substantially the following form:

I hereby certify that this purchase - all purchases of ....
(omit one)

.... by ....,
(identify substance(s) purchased) (name of purchaser)

who possesses registration no. ....,
(buyer's number, if registered)

consists of the purchase of hazardous substance(s) or product(s) upon which the hazardous substance tax has been paid in full by a person previously in possession of the substance(s) or product(s) in this state. This certificate is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion, and with the full knowledge and agreement that the undersigned hereby assumes any liability for hazardous substance tax which has not been previously paid because of possession of the hazardous substance(s) or product(s) identified herein.

.... The registered seller named below personally paid the tax upon possession of the hazardous substances.

.... A person in possession of the hazardous substances prior to the possession of the registered seller named below paid the tax.

(Check the appropriate line.)

Name of registered seller .... Registration No. ....

Firm name .... Address ....

Type of business ....

Authorized signature .... Title ....

Date ....

PART II - PETROLEUM PRODUCTS TAX

(1) Under the provisions of chapter 383, Laws of 1989, (hereinafter referred to as the law), a petroleum product tax was imposed, effective July 1, 1989, upon the wholesale value of petroleum products in this state with specific credits and exemptions provided. The tax is an excise tax upon the privilege of first possessing petroleum products in this state. It is imposed in addition to all other taxes of an excise or property tax nature, including the hazardous substance tax explained earlier in this section, and is not in lieu of any other such taxes.

(a) Sections 14-18 of the law consist of the tax provisions relating to possession of petroleum products which are administered exclusively under this section. The application of the petroleum product tax with the exceptions noted below, is the same as the hazardous substance tax applications explained in subsection (1)(c) of part 1 of this section.

(b) The petroleum product tax is imposed upon any possession of petroleum products in this state by any person who is not expressly exempt of the tax. However, it is the intent of the law that the economic burden of the tax should fall only upon the first such possession in this state just like the hazardous substance tax.

(2) Definitions. For purposes of this part the following terms will apply.

(a) "Tax" means the petroleum product tax imposed under section 16 of the law.

(b) "Petroleum product" means any plant condensate, lubricating oil, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual fuel oil, asphalt base, liquefied or liquefiable gases, such as butane, ethane and propane, and every other product derived from the refining of crude oil, but the term does not include crude oil.

(c) "Possession" means control of a petroleum product located within this state and includes both actual and constructive possession.

(i) "Control" means the power to sell or use a petroleum product or to authorize the sale or use by another.

(ii) "Actual possession" occurs when the person with control has physical possession.

(iii) "Constructive possession" occurs when the person with control does not have physical possession.

(d) "Previously taxed petroleum products" means petroleum products upon which the petroleum product tax has been paid and which have not been remanufactured or reprocessed in any manner (other than mere repackaging or recycling for beneficial reuse) since the tax was paid.

(e) "Wholesale value" is the tax measure or base. It means the fair market value determined by the wholesale selling price at the place of use of similar products of like quality and character. "Wholesale value" shall be determined in precisely the manner for the petroleum product tax as it is for the hazardous substance tax in part 1, subsection (2)(g) of this section.

(f) "Selling price." See 2(h) of part 1 of this section.

(g) "State," for purposes of the credit provisions of the petroleum product tax, means:

(i) A state of the United States other than Washington, or any political subdivision of such other state,

(ii) The District of Columbia,

(iii) Any foreign country or political subdivision thereof, and

(iv) Territories and possessions of the United States.

(3) Tax rate and measure. The tax is imposed upon the privilege of possession of petroleum products in this state. The tax rate is fifty one-hundredths of one percent (.005). The tax measure or base is the wholesale value of the petroleum products, as defined herein. The tax will apply for first possessions of petroleum products in all periods after its effective date unless the department notifies taxpayers in writing of the department's determination that the pollution liability reinsurance program trust account contains a sufficient balance to cause a moratorium on the tax application. The department will again notify taxpayers in writing if and when the account balance requires reapplication of the tax.

(4) Exemptions. The following are expressly exempt from the tax:

(a) Any successive possessions of any previously taxed petroleum products are exempt in precisely the manner as the same exemption for the hazardous substance tax. (See part 1, subsection (4)(a) of this section.) If the tax is paid by any person other than the first person having taxable possession of a petroleum product, the amount of tax paid shall constitute a debt owed by the first person having taxable possession to the person who paid the tax.

(b) Any possession of a petroleum product by a natural person for use of a personal or domestic nature rather than a business nature is exempt in precisely the manner as the same exemption for the hazardous substance tax. (See part 1, subsection (4)(b) of this section.)

(c) Any possessions of the following substances are tax exempt:

(i) Natural gas, or petroleum coke;

(ii) Liquid fuel or fuel gas used in processing petroleum;

(iii) Petroleum products that are exported for use or sale outside this state as fuel.

(iv) The exemption for possessions of petroleum products for export sale or use as fuel may be taken by any person within the chain of distribution of such products in this state. To perfect its entitlement to this exemption the person possessing such product(s) must take from its buyer or transferee of the product(s) a written certification in substantially the following form:

Certificate of Tax Exempt Export Petroleum Products

I hereby certify that the petroleum products specified herein, purchased by or transferred to the undersigned, from (seller or transferor), are for export for use or sale outside Washington state as fuel. I will become liable for and pay any petroleum product tax due upon all or any part of such products which are not so exported outside Washington state. This certificate is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion.

Registration No. . . . .
Type of Business . . . .
(If applicable) Firm Name . . . .
Registered Name (If different) . . . .

Authorized Signature . . . .

Title . . . .

Identity of Petroleum Product . . . .
(Kind and amount by volume)

Date: . . . .

(v) Each successive possessor of such petroleum products must, in turn, take a certification in this form from any other person to whom such petroleum products are sold or transferred in this state. Failure to take and keep such certifications as part of its permanent records will incur petroleum product tax liability by such sellers or transferrers of petroleum products.

(vi) Persons in possession of such petroleum products who themselves export or cause the exportation of such products to persons outside this state for further sale or use as fuel must keep the proofs of actual exportation required by WAC 458-20-193, parts A or C. Carriers who will purchase fuel in this state to be taken out of state in the fuel tanks of any ship, airplane, truck, or other carrier vehicle will provide their fuel suppliers with this certification. Then such carriers will directly report and pay the tax only upon the portion of such fuel actually consumed by them in this state. (With respect to fuel brought into this state in fuel tanks and partially consumed here, see the credit provisions of part 1, subsection (5)(b) of this section.

(vii) Blanket export exemption certificates may never be accepted in connection with petroleum products exchanged under exchange agreements.

(d) Any possession of petroleum products packaged for sale to ultimate consumers. This exemption is limited to petroleum products which are prepared and packaged for sale at usual and ordinary retail outlets. Examples are containerized motor oil, lubricants, and aerosol solvents.

(5) Credits. There are two distinct kinds of tax credits against liability which are available under the law.

(a) A credit may be taken in the amount of the petroleum product tax upon the value of fuel which is carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle. The credit is applied in precisely the same manner as the hazardous substance tax in part 1, subsection (5)(b) of this section.

The same form of certification as used for the fuel-in-tanks hazardous substance tax credit in subsection (5)(b)(vi) of part 1 of this section may be used.

(b) A credit may be taken against the tax owed in this state in the amount of any other state's petroleum product tax which has been paid by the same person measured by the wholesale value of the same petroleum product tax.

(i) In order for this credit to apply, the other state's tax must be significantly similar to Washington's tax in all its various respects. The taxable incident must be on the act or privilege of possessing petroleum products and the tax must be of a kind that is not generally imposed on other activities or privileges; the tax purpose must be to fund pollution liability insurance; and the tax measure must be stated in terms of the wholesale value of the petroleum products, without deductions for costs of doing business, such that the other state's tax does not constitute an income tax or added value tax.

(ii) The credit is applied in precisely the same manner as the state credit for hazardous substance tax in part 1, subsection (5)(c) of this section. The amount of the credit shall not exceed the petroleum product tax liability with respect to that petroleum product.

(6) The general administrative and tax reporting provisions for the hazardous substance tax contained in part 1 (8) through (14) of this section apply as well for the petroleum products tax of this part in precisely the same manner except the references to "hazardous substance(s)" or "substance(s)" should be replaced with the words, "petroleum products."

[Statutory Authority: RCW 82.32.300. 89-16-091 (Order 89-12), § 458-20-252, filed 8/2/89, effective 9/2/89; 89-10-051 (Order 89-1), § 458-20-252, filed 5/2/89; 88-06-028 (Order 88-2), § 458-20-252, filed 2/26/88.]

WAC 458-20-253 Mobile homes and mobile home park fee. (1) **Definitions.**

(a) "Landlord" means the owner of a mobile home park and includes the agents of the owner.

(b) "Lot" means a portion of a mobile home park designated as the location for one mobile home and its accessory buildings, and intended for the exclusive use by the occupants of that mobile home as a primary residence.

(c) "Mobile home" means a structure, designed and constructed to be transportable in one or more sections and is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities that include plumbing, heating, and electrical systems contained therein. The structure must comply with the National Mobile Home Construction and Safety Standards Act of 1974 as adopted by chapter 43.22 RCW if applicable.

(d) "Mobile home park" means any real property which is rented or held out for rent for the placement of two or more mobile homes for the primary purpose of production of income, except where such real property is rented or held out for rent for seasonal, recreational purposes only and is not intended for continuous occupancy.

(e) "Used mobile home as defined in RCW 82.45.032" means a mobile home which has been previously sold at retail and has been subjected to sales tax, or which has been previously used and has been subjected to use tax, and which has substantially lost its identity as a mobile unit by virtue of its being fixed in location upon land owned or leased by the owner of the mobile home and placed on a foundation (posts or blocks) with fixed pipe connections with sewer, water, and other utilities.

(2) **Sales by dealers or selling agents**. Dealers or selling agents applying for new certificates of ownership for mobile homes they have sold must remit the sales tax on such sales to the county auditor or the department of licensing at the time of application.

(a) County auditors and the department of licensing must collect sales tax on these transactions unless the mobile home dealer or selling agent presents a written statement signed by the department of revenue or its duly authorized agent showing that no sales tax or use tax is due.

(b) The application for a new certificate of ownership must state the selling price paid for the mobile home. The selling price does not include the value of trade-in property of like kind. See WAC 458-20-247.

(c) Dealers and selling agents remitting sales tax to county auditors or the department of licensing should report the income from such sales on their combined excise tax returns and take a sales tax deduction in the amount of sales tax so remitted.

(d) Where sales tax on the purchase of a mobile home has been remitted to a county auditor or the department of licensing and the purchaser believes that sales tax was not legally due, such purchaser may apply for a refund directly from the department of revenue. The application for refund must be received by the department of revenue within four years from payment of the tax. If the application for refund is denied the purchaser may seek a refund in accordance with the procedures described in WAC 458-20-100.

(3) **Used mobile homes.**

(a) Sales tax. Sales tax does not apply to the sale of used mobile homes as defined in RCW 82.45.032.

(b) Use tax. Use tax does not apply to the use of used mobile homes as defined in RCW 82.45.032.

(4) **Rental or lease of mobile homes**. Sales tax does not apply to the rental or lease of mobile homes if the rental agreement or lease exceeds thirty days in duration and if the rental or lease is not in conjunction with the provision of short term lodging for transients.

(5) **Mobile home park fee.**

(a) Landlords, as defined in subdivision (1)(a) of this section, must register with the department of revenue for purposes of the mobile home park fee imposed in RCW 59.22.060.

(b) Landlords must pay a fee of one dollar per year for each lot within the mobile home park which is occupied on January 1 of each year.

(c) Landlords must remit the fee to the department of revenue by January 31 of each year.

(6) **Registration for mobile home parks**. Landlords who are registered with the department of revenue for excise tax purposes need not submit a separate registration. Landlords who are not otherwise registered with the department of revenue must register by means of the master business application. There is no cost for registering solely for purposes of reporting the mobile home park fee. A registration remains valid for as long as the landlord owns the mobile home park. The department of revenue will provide registered landlords with returns for reporting the mobile home park fee.

[Statutory Authority: RCW 82.32.300. 89-21-002, § 458-20-253, filed 10/5/89, effective 11/5/89; 89-01-033 (Order 88-8), § 458-20-253, filed 12/13/88.]

WAC 458-20-254 Record keeping. (1) Every person liable for an excise tax imposed by the laws of the state of Washington for which the department of revenue has primary or secondary administrative responsibility, i.e., Title 82 RCW, and, chapters 67.28 RCW (hotel/motel tax), 70.93 RCW (litter tax), 70.95 RCW (tax on tires), and 84.33 RCW (forest excise tax), shall keep complete and adequate records from which the department may determine any tax for which such person may be liable.

(2) **General requirements.**

(a) It is the duty of each taxpayer to prepare and preserve all books of record in a systematic manner conforming to accepted accounting methods and procedures. Records are to be kept, preserved, and presented upon request of the department which will demonstrate:

(i) The amounts of gross receipts and sales from all sources, however derived, including barter or exchange transactions, whether or not such receipts or sales are taxable. These amounts must be supported by original source documents including but not limited to all purchase and sales invoices and contracts or such other documents as may be necessary to substantiate gross receipts and sales;

(ii) The amounts of all deductions, exemptions, or credits claimed through supporting documentation required by statute or administrative rule, or such other supporting documentation necessary to substantiate the deduction, exemption, or credit.

(b) The records kept, preserved and presented must include the normal books of account maintained by an ordinary prudent business person. Such records may include general ledgers, sales journals, cash receipts journals, check registers, and purchase journals, together with all bills, invoices, cash register tapes, or other documents of original entry supporting the books of account entries. The records shall include all federal and state tax returns and reports and all schedules or work papers used in the preparation of tax reports or returns.

(c) All such records shall be open for inspection and examination at any time by the department, upon reasonable notice, and shall be kept and preserved for a period of five years. RCW 82.32.070

(3) **Microfilm and/or microfiche**. Records may be microfilmed or microfiched, such as general books of accounts including cash books, journals, voucher registers, ledgers and like documents provided the microfilmed and/or microfiched records are authentic, accessible, and readable, and all of the following requirements are fully satisfied:

(a) Appropriate facilities are provided to preserve the films or fiche for the periods such records are required to be open to examination and to provide transcriptions of any information on film or fiche required to verify tax liability.

(b) All microfilmed or microfiched data must be indexed, cross referenced, and labeled to show beginning and ending numbers and beginning and ending alphabetical listings of all documents included.

(c) Taxpayers must make available upon request of the department, a reader/printer in good working order at the examination site for reading, locating, and reproducing any record that is maintained on microfilm or microfiche.

(d) Taxpayers must set forth in writing the procedures governing the establishment of a microfilm or microfiche system and the names of persons who are responsible for maintaining and operating the system with appropriate authorization from the boards of directors, general partner(s), or owner(s), whichever is applicable.

(e) The microfilm or microfiche system must be complete and must be used consistently in the regularly conducted activity of the business.

(f) Taxpayers must establish procedures with the appropriate documentation so that an original document can be traced through the microfilm or microfiche system.

(g) Taxpayers must establish internal procedures for microfilm or microfiche inspection and quality assurance.

(h) Taxpayers must keep a record identifying where, when, by whom, and on what equipment the microfilm or microfiche was produced.

(i) When displayed on a microfilm or microfiche reader (viewer) or reproduced on paper, the material must be legible and readable. For this purpose, legible means the quality of a letter or numeral which enables the reader to identify it positively and quickly to the exclusion of all other letters or numerals. Readable means the quality of a group of letters or numerals recognizable as words or complete numbers.

(j) All production of microfilm or microfiche and the processing duplication, quality control, storage, identification, and inspection thereof must meet industry standards as set forth by the American National Standards Institute, National Micrographics Association, or National Bureau of Standards.

(4) **Automated data process system**. An automated data process (ADP) accounting system may be used to provide the records required to verify tax liability. All ADP systems used for this purpose must include a method for producing legible and readable records to verify tax liability, reporting, and payment. The following requirements apply to any taxpayer who maintains records on an ADP system:

(a) ADP records shall provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are done, the system must have the capability to reconstruct these transactions.

(b) A general ledger, with source references, shall be written out to coincide with financial reports for tax reporting periods. In the cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers shall be written out periodically.

(c) The audit trail shall be so designed that the details underlying the summary accounting data may be identified and made available to the department and that supporting documents, such as sales invoices, purchase invoices, credit memoranda, and like documents are readily available.

(d) A description of the ADP portion of the accounting system shall be made available. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate:

(i) The application being preformed;

(ii) The procedures employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures); and,

(iii) The controls used to insure accurate and reliable processing.

(e) Important changes in an ADP accounting system or any part thereof, together with their effective dates, shall be noted to preserve an accurate chronological record of such changes.

(f) Adequate record retention facilities shall be available for the storage of such information, printouts and all supporting documents.

(5) **Out-of-state businesses**. An out-of-state business which does not keep the necessary records within this state may either produce within this state such records as are required for examination by the department, or, permit the examination of the records by the department at the place where the records are kept. RCW 82.32.070, see also, WAC 458-20-215.

(6) **Failure of taxpayer to maintain and disclose complete and adequate records**. Any person who fails to

comply with the requirements of RCW 82.32.070 or this section shall be forever barred from questioning, in any court action or proceedings, the correctness of any assessment of taxes made by the department based upon any period for which such books, records, and invoices have not been so kept and preserved. RCW 82.32.070

[Statutory Authority: RCW 82.32.300. 89-11-040 (Order 89-6), § 458-20-254, filed 5/16/89.]

WAC 458-20-255 Carbonated beverage and syrup tax. (1) **Introduction.** Under the provisions of chapter 80, Laws of 1991, a tax is imposed, effective June 1, 1991, upon the volume of carbonated beverages and syrups sold at wholesale and retail in this state with specific credits and exemptions provided. This tax is an excise tax upon the business activity of selling carbonated beverages or syrups in this state. It is imposed in addition to all other taxes of an excise or property tax nature and is not in lieu of any other such taxes.

(2) **Definitions.** For purposes of this section the following terms will apply.

(a) "Tax" means the carbonated beverage or syrup tax imposed by chapter 80, Laws of 1991.

(b) "Carbonated beverage" has its ordinary meaning and includes any nonalcoholic liquid intended for human consumption which contains carbon dioxide.

(i) Thus, "carbonated beverage" includes but is not limited to soft drinks, "soda pop," mineral waters, seltzers, fruit juices, or any other nonalcoholic beverages, including carbonated waters, which are produced for human consumption and which contain any amount of carbon dioxide.

(ii) However, "carbonated beverage" does not include bromides or other carbonated liquids commonly sold as pharmaceuticals.

(c) "Previously taxed carbonated beverage or syrup" means a carbonated beverage or syrup in respect to which a tax has been paid under this chapter. A "previously taxed carbonated beverage" includes carbonated beverages in respect to which the tax has been paid on either the carbonated beverage or on the syrup in the carbonated beverage.

(i) Example. A retailer who produces a carbonated beverage by adding water and carbonation to a syrup, upon which the tax has been paid to and collected by a wholesaler incurs no additional tax liability because the tax has been paid upon the syrup and collected by the wholesaler.

(d) "Syrup" means a concentrated liquid which is added to carbonated water to produce a carbonated beverage.

(i) Thus, "syrup" includes the concentrated liquid marketed by manufacturers to which the purchaser adds water and/or carbon dioxide, or, carbonated water to produce a carbonated beverage.

(e) "State" means for the credit provisions of this section:

(i) A state of the United States other than Washington, or any political subdivision of such other state,

(ii) The District of Columbia, and

(iii) Any foreign country or political subdivision thereof.

(f) Except as otherwise expressly defined in this section, the definitions of terms provided in chapters 82.04, 82.08, and 82.12 RCW apply equally for this section. Other terms not expressly defined in these chapters or this section are to be given their common and ordinary meanings.

(3) **Tax imposition, rate and measure.**

(a) The tax is imposed upon the wholesale or retail business activity of selling carbonated beverages or syrups within this state. The tax shall be paid by the buyer to the wholesaler and each wholesaler shall collect the tax from the buyer unless the wholesaler is prohibited from collecting the tax from the buyer under the Constitution of this state or the Constitution or laws of the United States in which case the wholesaler is liable for the amount of the tax. The amount of the tax required to be collected by the wholesaler is a debt from the buyer to the wholesaler until the tax is paid by the buyer to the wholesaler. A wholesaler who fails or refuses to collect the tax with intent to violate the provisions of this chapter or to gain some advantage directly or indirectly, is guilty of a misdemeanor. When a retailer sells carbonated beverages or uses syrup which the retailer has purchased from an out-of-state wholesaler who has not collected the tax, the retailer must report and pay the tax.

(i) When a bottler produces a carbonated beverage end product, the measure of the tax shall be the volume of the carbonated beverage end product sold at wholesale or retail.

(ii) Manufacturers of syrup are taxable on the business activity of selling syrup only when such syrup is removed from the production process and sold without further processing by them or another manufacturer or bottler.

(iii) Example. An ingredient used in the manufacturing process by a bottler of carbonated beverages is never taxed even if the ingredient is a syrup. Therefore, a manufacturer of syrup who sells an ingredient to another manufacturer of syrup or a bottler, is not taxed on the ingredient sold even if the ingredient is a syrup. The product sold is not a taxable syrup but an ingredient in the manufacturing process. The purchasing manufacturer or bottler is taxed upon the end product produced by such manufacturer of syrup or bottler, or by a contract bottler hired by him.

Similarly, a manufacturer of syrup or bottler who receives a product from an out-of-state source for use as an ingredient in the manufacturing or bottling process is taxed when the end product produced is sold.

(b) The tax rate and measure for carbonated beverages is eighty-four one thousandths of a cent per ounce. The tax rate and measure for syrup is seventy five cents per gallon. Fractional amounts shall be taxed proportionally.

(4) **Exemptions.** The following are exempt from the tax:

(a) Any successive possession of a previously taxed carbonated beverage or syrup.

(i) In order to verify the payment of the tax, all persons selling or otherwise transferring possession of taxed beverages or syrup, except retailers, shall separately itemize the amount of the tax on the invoice, bill of lading, or other instrument of sale. Beer and wine wholesalers selling carbonated beverages or syrup upon which the tax has been paid and who are prohibited under RCW 68.28.010 from having a direct or indirect financial interest in any retail business may, in lieu of a separate itemization of the amount of the tax, provide a statement on the instrument of sale that the carbonated beverage and syrup tax has been paid. For purposes of the payment and the itemization of the tax, the tax computed on standard units of a product, cases, liters, gallons, etc., may be stated in an amount rounded to the nearest cent. In competitive bid documents, the tax will be considered to not be included in the bid price unless the bid documents separately itemizes the tax. In either case, the tax must be separately itemized on the instrument of sale except when the separate itemization is prohibited by law.

(ii) Any person prohibited by federal or state law, ruling or requirement from itemizing the tax on an invoice, bill of lading, or other document of delivery shall retain the documentation necessary for verification of the payment of the tax.

(iii) A subsequent sale of carbonated beverages or syrups sold or delivered upon an invoice, bill of lading, or other document of sale which contains a separate itemization of the tax shall be exempt from the tax.

(iv) However, a subsequent sale of carbonated beverages or syrups sold or delivered to the subsequent seller upon an invoice, bill of lading or other document of sale which does not contain a separate itemization of the tax is conclusively presumed to be previously untaxed carbonated beverage or syrup and the wholesaler must report and pay the tax. The retailer must report and pay the tax when the retailer purchases from an out-of-state wholesaler who has not collected the tax.

(v) This exemption for taxes previously paid is available for any person selling previously taxed carbonated beverage or syrup even though the previous payment may have been satisfied by the use of credits or offsets available to the prior seller.

(vi) Example. Company A sells to Company B a carbonated beverage or syrup upon which it has paid a similar carbonated beverage or syrup tax in another state. Company A takes a credit against its Washington tax liability in the amount of the other state's tax paid. It provides Company B with an invoice containing a separate itemization of the tax. Company B's subsequent sale is tax exempt even though Company A has not directly paid Washington's tax but has used a credit against its Washington liability.

(b) Any carbonated beverage or syrup that is transferred to a point outside the state for use outside the state.

(i) The exemption for the sale of exported carbonated beverages or syrups may be taken by any seller within the chain of distribution of such products in this state. To perfect its entitlement to this exemption the seller of such carbonated beverage or syrup must take from its buyer or transferee of the carbonated beverage or syrup a written certification in substantially the following form:

Certificate of Tax Exempt Export Carbonated Beverages or Syrup

I hereby certify that the carbonated beverages or syrups specified herein, purchased by the undersigned, from (seller), are for export for use or sale outside Washington state. I will become liable for and pay any carbonated beverage or syrup tax due upon all or any part of such products which is not so exported outside Washington state. This certificate is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion.

Registration No. . . . . Type of Business . . . . . .
(if applicable)

Firm Name . . . .

Registered Name . . . .
(If different)

Authorized Signature . . . .

Title . . . .

Identity of Carbonated Beverages or Syrups. . . . .
(Kind and amount by volume)

Date . . . .

This certificate may be used so long as some portion of the product is exported. Sellers are under no obligation to verify the amount of the product to be exported by their buyers providing such certificates. Buyers providing such certificates are, however, subject to penalties and interest, for any late payment of tax due on products not exported.

(ii) Each successive sale of such carbonated beverages or syrups must, in turn, take a certification in substantially this form from any other person to whom such carbonated beverages or syrups are sold. Failure to take and keep such certifications as part of its permanent records will incur carbonated beverage or syrup tax liability by such sellers if the tax has not been previously paid.

(iii) Persons who themselves export or cause the exportation of such products to persons outside this state for further sale or use outside this state must keep the proofs of actual exportation required by WAC 458-20-193.

(c) Persons or activities which the state is prohibited from taxing under the United States Constitution are tax exempt.

This exemption extends to the U.S. government, its agencies and instrumentalities, and to any sale the taxation of which has been expressly reserved or preempted under the laws of the United States. This exemption applies only to purchases by the United States, its agencies and instrumentalities. The exemption does not apply to persons who sell carbonated beverages or syrups to agencies and instrumentalities of the United States located in this state. When the United States or its agencies or instrumentalities purchases carbonated beverages or syrup from a wholesaler who is required to collect this tax from its buyer, the wholesaler itself is liable for, and must report and pay, the tax on the volume of product sold to the United States or its agencies or instrumentalities.

(d) The sale of any carbonated beverages or syrups prior to June 1, 1991, is tax exempt. Sales of carbonated beverages and syrups after June 1, 1991, are exempt if carbonated beverage and syrup possession tax has been paid on the product.

It is the intent, under the law, that this exemption will apply to the carbonated beverages or syrups throughout their succeeding chain of distribution for the life of those carbonated beverages or syrups. That is, carbonated beverages or syrups already possessed as of May 31, 1991, and upon which the possession carbonated beverage and syrup tax has been paid will not incur another tax liability upon the sale of the product after May 31, 1991.

(e) Any sale at wholesale of a trademarked carbonated beverage or syrup by any person to a person commonly known as a bottler who is appointed by the owner of the trademark to manufacture, distribute, and sell such trademarked carbonated beverage within a specific geographic territory.

(5) **Credit.** Credit shall be allowed against the taxes imposed in this section for any carbonated beverage or syrup tax paid to another state with respect to the same carbonated beverage or syrup. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to that carbonated beverage or syrup.

(a) "Carbonated beverage or syrup tax" means a tax:

(i) That is imposed on the sale at wholesale of carbonated beverages or syrup and is not generally imposed on other activities or privileges; and

(ii) That is measured by the value or volume of the carbonated beverage or syrup.

(b) In order for this credit to apply, the other state's tax must be significantly similar to Washington's tax in all its various respects. The taxable incident must be the wholesale sale of carbonated beverages or syrups without deductions for costs of doing business, such that the other state's tax does not constitute an income tax or added value tax.

(c) This credit may be taken for the amount of any other state's qualifying tax which has actually been paid as a result of the same carbonated beverage or syrup being previously sold by the same person in another taxing jurisdiction before Washington state's tax is incurred.

(d) The amount of credit is limited to the amount of tax paid in this state upon the wholesale sale of the same carbonated beverage or syrup in this state. Also, the credit may not be applied against any tax paid or owed in this state other than the carbonated beverage tax imposed by chapter 80, Laws of 1991.

(6) **How and when to pay tax.**

(a) The tax must be reported on a special line of the combined excise tax return designated "carbonated beverage or syrup." The volume reported shall be the net volume subject to tax, i.e., the gross volume sold less volume exempt.

(b) The tax is due for payment together with the timely filing of the return upon which it is reported, covering the tax reporting period during which the carbonated beverage or syrup is sold.

(i) A wholesaler making a wholesale sale of carbonated beverage or syrup in this state must collect the tax from the buyer and report and pay it to the department. The buyer is not obligated to report or pay the tax.

(ii) A retailer making a retail sale in this state of carbonated beverage or syrup purchased from an out-of-state wholesaler who has not collected the tax must collect the tax from the buyer and report and pay it to the department. The buyer is not obligated to report or pay the tax.

(c) The taxable incident or event is the sale of the carbonated beverage or syrup. Tax is due for payment by the first seller, whether wholesaler or retailer, of carbonated beverage or syrup upon which the tax has not been paid. It is the intent of the law that all carbonated beverages or syrups sold in this state should incur this tax liability only once unless they are expressly exempt.

(d) Various circumstances may arise whereby a person will sell carbonated beverages or syrups in this state, some of which have been previously taxed in this or other states and some of which may not. In such cases formulary tax reporting may be used, only after receipt of a special ruling issued by the department of revenue authorizing such formulary reporting.

(7) **How and when to claim credit.** Any tax credit available to the taxpayer should be claimed and offset against tax liability reported on the same excise tax return when possible. The tax return form provides a line for reporting tax on carbonated beverages and syrups and the credit shall be taken on the line for taking "other credits" as an offset against the tax reported. A statement showing the computation of the credit must be provided. It is not required that any other documents or other evidences of entitlement to credits be submitted with the report. Such proofs must be retained in permanent records for the purpose of verification of credits taken.

(8) **Notice to consumers by retailers that purchase price includes Washington drug fund tax.** Chapter 80, Laws of 1991 authorizes the voluntary posting or print advertising by certain retailers that the price of the product includes the Washington drug fund tax. The intent of this voluntary program is to increase public and consumer awareness of the state's drug problem and its enforcement measures.

(9) **Administrative provisions.** The provisions of chapters 82.32 and 82.04 RCW regarding due dates, reporting periods, tax return requirements, interest and penalties, tax audits and limitations, disputes and appeals, and all such general administrative provisions apply equally to the carbonated beverage or syrup tax.

[Statutory Authority: RCW 82.32.300. 91-20-058, § 458-20-255, filed 9/24/91, effective 10/25/91; 89-17-001 (Order 89-13), § 458-20-255, filed 8/3/89, effective 9/3/89.]

WAC 458-20-256 Trade shows, conventions and seminars. (1) When a trade show, convention or educational seminar is sponsored and held by a nonprofit trade or nonprofit professional organization for a group other than the general public, the sponsoring organization may deduct from its business and occupation tax measure all "attendance" or "space" charges it collects for such an event, per RCW 82.04.4282. Nonqualifying organizations, and qualifying organizations sponsoring nonqualifying events, must include "attendance" and "space" charges in their tax measure for purposes of computing service and other activity business and occupation tax thereon.

(2) Nonprofit organizations are taxed in the same fashion as profit-making individuals or groups, with but few tax exemptions. This section implements one of those exemptions. See also WAC 458-20-114 and 458-20-169.

(3) For purposes of this section, the following definitions shall apply:

(a) The term "nonprofit" means exempt from tax under Section 501 of the Internal Revenue Code. The tax exempt status must be in effect when the trade show, convention, or seminar is conducted.

(b) A "trade organization" is an entity whose members are engaged "in trade", ie., in one or more lawful commercial trades, businesses, crafts, industries, or distinct productive enterprises.

(c) A "professional organization" is an entity whose members are engaged in a particular lawful vocation, occupation or field of activity of a specialized nature.

(d) A "trade show" is a gathering of persons in trade for the purpose of exhibiting, demonstrating, and explaining services, products and/or equipment.

(e) A "convention" is a gathering of persons in trade or a profession for the purposes of providing, publishing and exchanging information, ideas and attitudes and conducting the business of the organization.

(f) A "seminar" is a gathering of persons in trade or a profession for the purpose of research, study, and/or exchange of specialized information, ideas and attitudes in regard to that trade or profession.

(g) "Not open to the general public" means that attendance is limited to members of the sponsoring organization and to specific invited guests of the sponsoring organization.

(4) As of July 23, 1989, for purposes of computing taxable receipts subject to business and occupation tax, a qualifying "nonprofit" organization may deduct all amounts the organization collects as charges for

(a) Admissions, and

(b) Licenses to occupy space in order to display exhibits, equipment and/or goods, at an organization-sponsored trade show, convention or seminar not open to the general public.

(5) No statutory deduction is available for the following:

(a) Outright sales of tangible personal property or services for which a specific charge separate from the charge for attending or occupying space is made. It is only those charges which are paid for the express privilege of attending or exhibiting at such an event which are deductible; and

(b) Admission or space charges for purely social, recreational, entertainment or other nontrade or nonprofessional gatherings regardless of the nonprofit tax status of the sponsoring organization.

(6) Examples:

(a) The local building trade council (council) organizes and sponsors a trade show held for specialty and general housing contractors. Council has on file a letter of tax exemption under Section 501 of the Internal Revenue Code. Council collects $100.00, prepaid, from each exhibitor for licenses to display and exhibit construction equipment, tools and related wares at preassigned booths, and $5.00, paid at the door, from each contractor who attends the event. Because the sponsoring organization qualifies as a nonprofit trade organization, the event qualifies as a trade show sponsored by the organization, and it is not open to the general public, all of the amounts collected constitute deductible receipts of admission and/or space charges.

(b) The metropolitan business group (metro), a recognized tax-exempt organization under IRC Section 501, organizes and sponsors a convention for all of its businesses members. Following completion of regular metro business matters (election of officers, etc.), there are speeches by accountants, attorneys, bankers, financial consultants, city planners, and other persons able to give legal and business advice and information to those attending. Metro charges a $25.00 per person entry fee. Included with the program is a hosted luncheon at which the mayor gives an explanation of local governmental regulations. The entry charges are fully deductible by Metro from its business and occupation tax measure. The sponsoring organization is "nonprofit" and a "trade organization" because its members are generically "in trade" even though not all are members of just one trade. The event constitutes a convention for persons "in trade" (generic, not specific) and the event is not open to the public. Finally, the moneys collected all constitute admission charges, no special charge for the meal having been made.

(c) The eastside whiffle ball association (association), a corporation recognized in writing to be tax exempt under Section 501 of the Internal Revenue Code, holds a "skills" clinic for all interested persons. The association charges $3.00 to all attending, which is just sufficient to cover the cost of materials and the use of a facility. Following the event, a special barbecue is held for $4.00 extra per participant. Souvenirs imprinted with the association name are also available for extra charge. The $3.00 admission charges, the $4.00 dinner charges, and the souvenir charges must all be included in the association's B&O tax measure for the following reasons, each one of which disallows the deduction:

(i) The association is not a trade or professional organization,

(ii) The event is not a trade show, convention or seminar, and

(iii) The event is open to the public. Separate dinner and souvenir charges are nondeductible in any event because they constitute itemized charges for goods and services.

(d) A local concerned citizen group (group), which has never applied for federal tax exempt status, organizes and sponsors a health care seminar held in the local school auditorium for district health care professionals, nurses, sport trainers, parents, and concerned students. To cover the cost of hiring competent medical experts to speak at the seminar, the group charges $5.00 per person. The event is sponsored by the group for a worthwhile public purpose and the entry fees are in fact admission charges. For the following reasons, each one of which disallows the deduction, the group will have to include all door charges in its tax measure: (i) The sponsoring organization is not properly recognized to be nonprofit (no federal tax recognition) or to be a trade or professional organization, and (ii) the event is open to the public at large.

[Statutory Authority: RCW 82.32.300. 90-04-058, § 458-20-256, filed 2/2/90, effective 3/5/90.]

WAC 458-20-257 Warranties and maintenance agreements. (1) **Definitions**. For the purposes of this section, the following terms will apply:

(a) Warranties. Warranties, sometimes referred to as guarantees, are agreements which call for the replacement or repair of tangible personal property with no additional charge for parts or labor, or both, based upon the happening of some unforeseen occurrence, e.g., the property needs repair within the warranty period.

(b) Warrantor. The warrantor is the person obligated, as specified in the warranty agreement, to perform labor and/or provide materials to the owner of the personal property to which the warranty agreement relates.

(c) Maintenance agreements. Maintenance agreements sometimes referred to as service contracts, are agreements which require the specific performance of repairing, cleaning, altering, or improving of tangible personal property on a regular or irregular basis to ensure its continued satisfactory operation.

(2) **B&O tax.**

(a) Manufacturer's warranties included in the retail selling price of the article being sold.

(i) When a manufacturer's warranty is included in the retail selling price of the property sold and no additional charge is made, the value of the warranty is a part of the selling price. The value of the warranty is included in the "gross proceeds of sale" of the article sold and reported under the appropriate classification, e.g. retailing, wholesaling, etc.

(ii) When a repair is made by the manufacturer-warrantor under the warranty, the value of the labor and or parts provided are not subject to B&O tax.

(iii) When a person other than the manufacturer-warrantor makes a repair for the manufacturer-warrantor, the person making the repair is making a wholesale sale of the repair service to the manufacturer-warrantor. The person doing the repair is B&O taxable under the wholesaling classification on the value of the parts and labor provided.

(b) Nonmanufacturer's warranties and manufacturer's warranties not included in the retail selling price of the article being sold.

(i) When a warranty is sold for a charge separate from the charge of the product, e.g., a warranty extending the manufacturer's warranty, the charge is reported in the service and other activities classification of the B&O tax.

(ii) When a repair is made by the warrantor under a separately stated warranty, the value of the labor and or parts provided are not subject to B&O tax.

(iii) When a person other than the warrantor makes a repair for the warrantor, the person making the repair is making a retail sale of the repair service to the warrantor. The person making the repair is B&O taxable under the retailing classification.

(c) Maintenance agreements.

(i) Maintenance agreements (service contracts) require the periodic specific performance of inspecting, cleaning, physical servicing, altering, and/or improving of tangible personal property. Charges for maintenance agreements are retail sales, subject to retailing B&O tax and retail sales tax under all circumstances.

(d) Amounts received as a commission or other consideration for selling a warranty or maintenance agreement of a third-party warrantor or provider are generally subject to B&O tax under the service and other activities classification. However, if the seller of the warranty is licensed under chapter 48.17 RCW with respect to this selling activity, the commission is subject to B&O tax under the insurance agent classification.

(e) In the event a warrantor purchases an insurance policy to cover the warranty, amounts received by the warrantor under the insurance policy are insurance claim reimbursements not subject to B&O tax.

(3) **Retail sales tax.**

(a) Manufacturer's warranties included in the retail selling price of the article being sold.

(i) When a manufacturer's warranty is included in the retail selling price of the property sold and no additional or separate charge is made, the value of the warranty is a part of the selling price and retail sales tax applies to the entire selling price of the article being sold.

(ii) When a repair is made by the manufacturer-warrantor under the warranty, the repair performed is not a retail sale and no retail sales tax is collected.

(iii) When a person other than the manufacturer-warrantor makes a repair for the manufacturer-warrantor, the person making the repair is making a wholesale sale of the repair service to the manufacturer-warrantor. No retail sales tax is collected from the manufacturer-warrantor.

(b) Nonmanufacturer's warranties and manufacturer's warranties not included in the retail selling price of the article being sold.

(i) When a warranty is sold for a charge separate from the charge of the product, e.g., a warranty extending the manufacturer's warranty, the sale is not a retail sale and no retail sales tax is collected on the amount charged.

(ii) When a repair is made by the warrantor under its own separately stated warranty, the value of the labor and/or parts provided is not a retail sale and no retail sales tax is collected.

(iii) When a person other than the warrantor makes a repair for the warrantor, the person making the repair is making a retail sale of the repair service to the warrantor. Retail sales tax is collected from the warrantor measured by the labor and materials provided.

(c) Maintenance agreements are sales at retail and subject to retail sales tax under all circumstances.

(i) Parties subcontracting to the party selling the maintenance agreement are making sales at wholesale, and are required to take from their customer (maintenance seller) a resale certificate as provided in WAC 458-20-102.

(4) USE TAX.

(a) Manufacturer's warranties included in the retail selling price of the article being sold.

(i) When a manufacturer-warrantor makes repairs required under its warranty, the value of the parts used in making the repairs is not subject to use tax.

(ii) Where a third party makes repairs for a manufacturer-warrantor, the transaction is a wholesale sale and the parts used in the repair are not subject to use tax.

(b) Nonmanufacturer's warranties and manufacturer's warranties not included in the retail selling price of the article being sold.

(i) When a repair is made by the warrantor under a separately stated warranty, the warrantor is the consumer of the parts and the parts are subject to use tax measured by the warrantor's cost.

(ii) When a person other than the warrantor makes a repair for the warrantor, the person making the repair is making a retail sale to the warrantor. Retail sales tax, not use tax, is collected.

(c) Maintenance agreements.

(i) Persons performing services under the requirements of maintenance agreements sold by them, are not subject to use tax or retail sales tax on materials which become a part of the required repairs or services.

(5) **Additional service - deductible.** In the event services are provided in addition to any warranty or maintenance agreement, such services are separately taxable as retail sales, subject to retail sales tax and retailing B&O tax.

This includes so-called "deductible" amounts not covered by a warranty or maintenance agreement.

(6) **Mixed agreements**. If an agreement contains warranty provisions but also requires the actual specific performance of inspection, cleaning, servicing, altering, or improving the property on a regular or irregular basis, without regard to the operating condition of the property, such agreements are fully taxable as maintenance agreements, not warranties.

(7) **Examples**:

(a) An automobile dealer sells a vehicle to a customer for selling price of $15,000 cash and the selling price includes a manufacturer's limited warranty for 5 years or 50,000 miles. The owner of the vehicle has $600 ($200 parts and $400 labor) warranty work, paying no deductible, performed by the dealer who is not the manufacturer-warrantor. The tax liability of the dealer is as follows:

(i) Retail sales tax is collected on the $15,000 selling price.

(ii) The $15,000 selling price is reported under the retailing B&O tax classification. The $600 repair is reported under the wholesaling B&O tax classification.

(iii) The $200 of parts used in the repair are not subject to use tax.

(b) The automobile dealer in example (a) also sells its own extended warranty to the customer for $200. The dealer insures itself with an insurance carrier and under the policy, claims are paid on the retail value of the repairs. In addition to the repairs in example (a), the customer has the dealer complete $500 of repairs under the dealer's extended warranty. The customer paid the $100 deductible and the dealer received $400 from his insurance carrier. In completing the repair, the dealer installed parts from its inventory which had a cost to the dealer of $150 and subcontracted part of the repair to an electrical shop which charged the dealer $200. The tax liability to the dealer and the subcontractor are as follows:

(i) The dealer reports the $200 sale of the warranty under the service and other activities classification of B&O tax. No retail sales tax is collected on the sale.

(ii) The $100 deductible received by the dealer is a retail sale subject to retail sales tax and retailing B&O tax.

(iii) The $400 received by the dealer from the insurance company is a nontaxable insurance claim reimbursement.

(iv) The dealer is the consumer of the parts removed from its inventory and used in the repair. The $150 dealer cost of the parts taken from inventory is subject to use tax.

(v) The subcontractor is making a retail sale to the dealer subject to retail sales tax and retailing B&O.

[Statutory Authority: RCW 82.32.300. 90-10-081, § 458-20-257, filed 5/2/90, effective 6/2/90.]

WAC 458-20-258 Travel agents and tour operators. (1) **Introduction**. This section describes the business and occupation (B&O) taxation of travel agents and tour operators. Travel agents are taxed at the special travel agent rate under RCW 82.04.260(10). Tour operators are generally taxed under the service or other business classification under RCW 82.04.290. However, the business activities of tour operators may sometimes include activities like those of a travel agent. This section recognizes the overlap of activities and taxes them consistently.

(2) **Definitions**:

(a) "Commission" means the fee or percentage of the charge or their equivalent, received in the ordinary course of business as compensation for arranging the service. The customer or receiver of the service, not the person receiving the commission, is always responsible for payment of the charge.

(b) "Pass-through expense" means a charge to a tour operator business where the tour operator is acting as an agent of the customer and the customer, not the tour operator, is liable for the charge. The tour operator cannot be primarily or secondarily liable for the charge other than as agent for the customer. See: WAC 458-20-111 Advances and reimbursements.

(c) "Tour operator business" means a business activity of providing directly or through third party providers, transportation, lodging, meals, and other associated services where the tour operator purchases or itself provides any or all of the services offered, and is itself liable for the services purchased.

(d) "Travel agent business" means the business activity of arranging transportation, lodging, meals, or other similar services which are purchased by the customer and where the travel agent or agency merely receives a commission for arranging the service.

(3) **Travel agents**.

(a) The gross income of a travel agent or a travel agent business is the gross commissions received without any deduction for the cost of materials used, labor costs, interest, discount, delivery cost, taxes, losses, or any other expense. It is taxed at the special travel agent rate.

(b) Gross receipts, other than commissions, from other business activities of a travel agent, including activities as a tour operator, are taxed in the appropriate B&O classification, service, retailing, etc., as the case may be.

(4) **Tour operators**.

(a) The gross income of a tour operator or a tour operator business is the gross commissions received when the activity is that of a travel agent business.

(i) When a tour operator receives commissions from a third party service provider for all or a part of the tour or tour package, the gross income of the business for that travel agent activity is the commissions received.

(b) However, if the activity is that of a tour operator business, receipts are B&O taxable in the service classification without any deduction for the cost of materials used, labor costs, interest, discount, delivery cost, taxes, losses, or any other expense; **except**, receipts attributable to pass-through expenses are not included as part of the gross income of the business.

(5) **Examples**:

(a) A travel agent issues an airplane ticket to a customer. The cost of the ticket is $250 which is paid by the customer. The travel agent receives $25 from the airline for providing the service.

(i) The gross income of the business for the travel agent is the $25 commission received.

(ii) The gross income of the business is taxed at the special travel agent rate.

(b) A tour operator offers a tour costing $1,500 per person. The tour cost consists of $800 airfare, $500 lodging and meals, and $200 bus transportation. The tour operator has an arrangement with each of the service providers to receive a 10% commission for each service of the tour, which in this case is $150 ($80 + $50 + $20). The tour operator issues tickets, etc, only when paid by the customer and is not liable for any services reserved but not provided.

(i) The tour operator is engaged in a travel agent activity and the gross income of the business is commissions received, $150.

(ii) The gross income of the business, $150, is taxed at the special travel agent rate.

(c) The same facts as in example (b) except that the tour operator has a policy of requiring 10% or $150 as a down payment with the remaining $1,350 payable 20 days prior to departure with 95% refundable up to 10 days prior to departure and nothing refunded after 10 days prior to departure. The customer cancels 15 days prior to departure and is refunded $1,425 with the tour operator retaining $75.

(i) The gross income of the tour operator business is the $75 retained. No amount is attributable to pass-through expense since the tour operator was not obligated to the service provider in the event of cancellation and the tour operator was not acting as the agent of the customer.

(ii) The gross income of the business, $75, is taxed in the service B&O tax classification.

(d) A tour operator offers a package tour for the Superbowl costing $800 per person. The tour operator purchases noncancellable rooms in a hotel for $300 per room for 2 nights, and game tickets which cost $100 each. The package includes airfare which costs $200 per person for which the tour operator receives the normal commission of $20. As an extra feature, the tour operator offers to provide, for an extra cost, special event tickets, if available, at his cost of $50 each. The tour operator is B&O taxable as follows:

(i) The gross income of the tour operator business is $600 ($800 less $200 airfare). Because the tour operator purchased the rooms and the game tickets in its own name and is liable for the rooms or tickets if not resold, the tour operator is not operating as a travel agent business and is B&O taxable in the service classification. If the tour operator receives a commission on the rooms sold to itself, the activity remains taxable as a tour operator business under the service classification and the commission received is treated as a cost discount, not included in the gross income of the business.

(ii) The $50 received for the special event ticket is attributable to a pass-through expense and is not included in the gross income of the tour operator business. The special event ticket receipt is attributable to a pass-through expense because the tour operator is acting as an agent for the customer.

(iii) The $20 received as commission from the sale of the airfare is a travel agent business activity and is included as gross income of a travel agent and taxed at the special travel agent rate.

[Statutory Authority: RCW 82.32.300. 90-17-003, § 458-20-258, filed 8/2/90, effective 9/2/90.]

WAC 458-20-259 Small timber harvesters—Business and occupation tax exemption. (1) **Exemption.** Harvesters of timber are generally subject to business and occupation (B&O) tax in the extracting classification. After June 6, 1990, chapter 141, Laws of 1990 provides a limited exemption from B&O tax for small harvesters of timber (as defined in RCW 84.33.073) whose value of product harvested, gross proceeds of log sales, or gross income of the timber harvesting business is less than $100,000 per year.

(2) **Registration - return.**

(a) A person whose only business activity is as small harvester of timber and whose gross income in a calendar year from the harvesting of timber is less than $100,000, is not required to register with the department for B&O tax purposes.

(b) A small harvester of timber is required to register with the department for B&O tax purposes in the month when the gross proceeds received during a calendar year from the timber harvested exceeds the exempt amount.

(c) When the gross proceeds received during a calendar year from timber harvested by a small harvester exceeds the exempt amount, a return shall be filed and shall include all proceeds received during the calendar year to the time when the filing of a return is required. See: WAC 458-20-228 and WAC 458-20-22801 for penalties, interest and return filing periods.

(d) A harvester of timber must register with the forest tax division of the department for payment of timber excise tax.

(3) **Definition - small harvester - RCW 84.33.073(1).** "Small harvester" means every person who from his own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use in an amount not exceeding five hundred thousand board feet in a calendar quarter and not exceeding one million board feet in a calendar year: *Provided,* that whenever the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein, so fells cuts, or takes timber for sale or for commercial or industrial use, not exceeding these amounts, the small harvester is the first person other than the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein, who acquires title to or a possessory interest in such timber. "Small harvester" does not include persons performing under contract the necessary labor or mechanical service for a harvester, and it does not include harvesters of Christmas trees.

(4) **Examples:**

(a) A person not otherwise registered with the department for B&O tax purposes and who is a small harvester under RCW 84.33.073, harvests timber during the calendar year and receives $60,000.

(i) No B&O tax is due and the person need not register with the department for B&O tax purposes.

(ii) However, the person must register with the department's forest tax division for payment of the timber excise tax.

(b) A person not otherwise registered with the department for B&O tax purposes and who is a small harvester under RCW 84.33.073, harvests timber during the calendar year. The small harvester has contracted with a logging company to provide the labor and mechanical services of the harvesting. The small harvester is to receive 60% and the logging company 40% of the log sale proceeds. The log purchaser pays $150,000 for the logs paying $90,000 to the person and $60,000 to the logging company.

(i) For the small harvester, B&O tax is due on the entire $150,000 paid for the logs. The small harvester is taxed upon the gross sales price of the logs without deduction for the amount paid to the logging company. See: RCW 82.04.070 and WAC 458-20-135. The small harvester must register with the department for B&O tax purposes in the month when, for the calendar year, the proceeds from all timber harvested exceeds $100,000.

(ii) The logging company is taxed on the $60,000 it received under the appropriate business tax classification(s). The logging company is not a small harvester as defined in RCW 84.33.073 and the exemption of this section is not applicable to the logging company.

(iii) The small harvester must register with the department's forest tax division for payment of the timber excise tax.

(c) A person is primarily engaged in another business which is currently registered with the department for B&O tax purposes and has monthly receipts of $250,000. The person is a small harvester under RCW 84.33.073 and receives $10,000 from the sale of the timber harvested.

(i) B&O tax remains due on $250,000 from the other business activities. The $10,000 received from the sale of logs is exempt and is not reported on the person's combined excise tax return. The exemption applies to the activity of harvesting timber and receipts from the sale of logs are not combined with the receipts from other business activities to make the sale of logs taxable.

(ii) The person must register with the department's forest tax division for the payment of timber excise tax.

(d) A person is primarily engaged in another business which is currently registered with the department for B&O tax purposes and has monthly receipts of $40,000. The person is a small timber harvester under RCW 84.33.073 and receives $50,000 from the sale of the timber harvested.

(i) B&O tax remains due on $40,000 from the other business activities. The $50,000 received from the sale of logs is exempt and is not reported on the persons combined excise tax return. The exemption applies to the activity of harvesting timber only and receipts from the sale of logs are not combined with the receipts of other business activities to make the other activity exempt.

(ii) The person must register with the department's forest tax division for the payment of timber excise tax.

(e) A person not currently registered with the department for B&O tax purposes and who is a small harvester under RCW 84.33.073, harvests timber in June and again in August receiving $50,000 in June and $75,000 in August from the sale of the logs harvested.

(i) B&O tax is due on the entire $125,000 received from the sale of logs. The small harvester must register with the department in August when the receipts from the timber harvesting business exceed the $100,000 exemption amount. A tax return is to be filed in the appropriate period as provided in WAC 458-20-22801.

(ii) The person must register with the department's forest tax division for the payment of timber excise tax.

[Statutory Authority: RCW 82.32.300. 90-17-007, § 458-20-259, filed 8/3/90, effective 9/3/90.]

WAC 458-20-260 Oil spill response and administration tax. (1) **Introduction.** This section explains and implements the provisions of chapter 82.23B RCW which imposes an oil spill response tax and an oil spill administration tax, effective October 1, 1991, and as amended by chapter 73, Laws of 1992, effective October 1, 1992. The taxes are imposed upon the privilege of receiving crude oil or petroleum products at a marine terminal in this state from a waterborne vessel or barge operating through or upon the navigable waters of this state. This section provides applicable definitions, the rate and measure of the tax, the tax payment and reporting procedure, and describes an exemption and a credit against tax.

(2) **Definitions.** For purposes of this section, the following terms will apply.

(a) "Tax" means the oil spill response and oil spill administration taxes imposed by chapter 82.23B RCW.

(b) "Barrel" means a unit of measurement of volume equal to forty-two United States gallons of crude oil or petroleum product.

(c) "Crude oil" means any naturally occurring liquid hydrocarbon at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline.

(d) "Department" means the department of revenue.

(e) "Marine terminal" means a facility of any kind, other than a waterborne vessel, that is used for transferring crude oil or petroleum products to or from a waterborne vessel or barge.

(f) "Navigable waters" means those waters of the state and their adjoining shorelines, that are subject to the ebb and flow of the tide, including the Columbia and Snake rivers.

(g) "Person" has the meaning provided in RCW 82.04.030.

(h) "Petroleum product" means any liquid hydrocarbons at atmospheric temperature and pressure that are the product of the fractionation, distillation, or other refining or processing of crude oil, and that are used as, useable as, or may be refined as fuel or fuel blendstock, including but not limited to, gasoline, diesel fuel, aviation fuel, bunker fuel, and fuels containing a blend of alcohol and petroleum.

(i) "Taxpayer" means the person owning crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine terminal in this state from a waterborne vessel or barge and who is liable for the tax.

(j) "Waterborne vessel or barge" means any ship, barge, or other watercraft capable of travelling on the navigable waters of this state and capable of transporting any crude oil or petroleum product in quantities of ten thousand gallons or more for purposes other than providing fuel for its motor or engine.

(k) "Previously taxed product" means any crude oil or petroleum product which has been received in this state in a manner subject to the tax and upon which the tax has been paid.

(l) "Offloading" means the physical act of moving crude oil or petroleum product from a waterborne vessel or barge to a marine terminal.

(3) **Tax rate and measure.** The tax is imposed on the privilege of receiving crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating through or across the navigable waters of this state. The tax is levied upon the owner of the crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine terminal.

(a) The oil spill response tax is imposed at the rate of two cents per barrel of crude oil or petroleum product received.

(b) The oil spill administration tax is imposed at the rate of three cents per barrel of crude oil or petroleum product received.

(c) The number of barrels received shall be computed as the net barrels received by the marine terminal operator. Net barrels shall be computed by using an industry standard adjustment to gross barrels offloaded to account for variations in temperature and content of water or other nonpetroleum substances.

(4) **Tax collection by the marine terminal operator.** Unless the taxpayer has been issued a direct payment certificate as provided in subsection (5) of this section, the operator of any marine terminal located in this state where crude oil or petroleum products are received and placed into storage tanks is responsible for the collection of the tax from the taxpayer.

(a) Failure to collect the tax from the taxpayer and remit it to the department will cause the marine terminal operator to become personally liable for the tax, unless the marine terminal operator has billed the taxpayer for the tax or notified the taxpayer in writing of the imposition of the tax. The tax has been billed to a taxpayer when an invoice, statement of account, or notice of imposition of the tax is mailed or delivered to the taxpayer by the terminal operator within the operator's normal billing cycle and separately states the dates of receipt, rate of tax, number of barrels received and placed into storage tanks, and the amount of the tax required to be collected. A taxpayer has been notified of the imposition of the tax when, within twenty days from the date of receipt, a notice is mailed or delivered to the taxpayer, or to an agent of the taxpayer authorized to accept notices of this type other than the marine terminal operator, which separately states the dates of receipt, rate of tax, number of barrels received into storage tanks, and the amount of the tax required to be collected. Marine terminal operators shall maintain a record of the names and addresses of taxpayers billed for the tax, or in cases where taxpayers are sent written notification of the imposition of the tax, the names and addresses of the persons to whom notice is sent. Such records shall indicate those persons billed or notified from whom the tax has been collected. Upon request, the records shall be made available for inspection by the department.

(b) The tax collected shall be held in trust by the terminal operator until paid to the department.

(c) The tax collected shall be due from the marine terminal operator, along with reports and returns on forms prescribed by the department, within twenty-five days after the end of the month in which the tax is collected.

(d) A terminal operator who relies in good faith upon a direct payment certificate issued to a taxpayer shall be relieved from any liability for the collection of the tax from the taxpayer. A marine terminal operator shall likewise be relieved from liability for collection of the tax from a taxpayer if the marine terminal operator relies in good faith upon a current roster of certificate holders published by the department which bears the name of a taxpayer.

(5) **Direct payment to the department.** Any taxpayer may apply to the department in writing for permission to pay the tax directly to the department. Upon approval of the department, any taxpayer making application for direct payment shall be issued a direct payment certificate entitling the taxpayer to pay the tax directly to the department.

(a) In order to qualify for direct payment, the taxpayer must meet the following requirements:

(i) The taxpayer must be registered with the department.

(ii) The taxpayer must file a bond with the department in an amount equal to two months estimated liability for the tax, but in no event less than ten thousand dollars. The bond shall be executed by the taxpayer as principal, and by a corporation approved by the department and authorized to engage in business as a surety company in this state, as surety. Two months estimated tax liability shall be the total number of barrels received and placed into the storage tanks of a marine terminal in this state by the taxpayer during the two months in the immediately preceding twelve-month period with the highest number of barrels received multiplied by the total tax rate. If the department determines that the result of the foregoing calculation does not represent a fair estimate of the actual tax liability which the taxpayer is expected to incur, it may set the bond requirement at such higher amount as the department determines in its judgment will secure the payment of the tax. The bond requirement may be waived upon proof satisfactory to the department that the taxpayer has sufficient assets located in this state to insure payment of the tax.

(iii) The taxpayer must be current in all of its tax obligations to the state having filed all returns as required by Title 82 RCW.

(b) The department may, from time to time, review the amount of any bond filed by a taxpayer possessing a direct payment certificate and may, upon twenty days written notice to the taxpayer, require such higher bond as the department determines to be necessary to secure the payment of the tax. The filing of a substitute bond in such higher amount shall be a condition to the continuation of the right to make direct payment under this section.

(c) A direct payment certificate issued under this section may be revoked by the department if the taxpayer fails to maintain a current registration, fails to file a substitute bond within twenty days from a written request, or becomes delinquent in the payment of the tax.

(d) The department shall maintain a current roster of all taxpayers who have a direct payment certificate. Copies of the roster shall be made available on a monthly basis to any interested person requesting to be placed on the roster subscription list. Requests to be placed on the subscription list should be mailed to the Miscellaneous Tax Division, Department of Revenue, P.O. Box 47470, Olympia, WA 98504-7470.

(e) Applications for a direct payment certificate shall be in writing and shall include the name and address of the applicant, the applicant's registration number if currently registered, and the name and phone number of a contact person. The application shall also contain a statement that if the application is approved, the taxpayer consents to the public disclosure that the taxpayer has been granted a direct payment certificate, or if the certificate is later revoked, the taxpayer consents to the public disclosure of the fact of revocation. Applications should be mailed to the Miscellaneous Tax Division, Department of Revenue, P.O. Box 47470, Olympia, WA 98504-7470.

(6) **Exemption - previously taxed oil or petroleum products.** The tax applies only to the first receipt of crude oil or petroleum products into the storage tanks of a marine terminal in this state. An exemption is available for the subsequent receipt into storage tanks at a marine terminal in this state of previously taxed product. This exemption applies even though the previously taxed product is refined or processed prior to subsequent transportation and receipt into storage tanks.

(a) Crude oil or petroleum products received and placed into storage tanks for the first time at a marine terminal in this state which have been commingled with previously taxed product present a special problem in determining the amount of tax properly due. In such cases the amount of tax due is equal to the difference between the total number of barrels received and placed into storage tanks and the number of barrels of previously taxed product multiplied by the total tax rates. Due to the difficulty of determining the amount of tax due under such circumstances the following rebuttable presumptions shall apply:

(i) All crude oil or petroleum products loaded on a vessel and shipped from a point within this state will be presumed, subject to rebuttal, to be previously taxed product. The subsequent receipt at a point within this state of such product will be treated as exempt from the tax.

(ii) All crude oil or petroleum products loaded on a vessel and shipped from a point outside this state will be presumed to be crude oil or petroleum products received for the first time in this state. The subsequent receipt at a point within this state of such crude oil or petroleum products will be treated as subject to the tax.

(b) The presumptions in this subsection may be rebutted upon proof of the number of barrels of previously taxed product received into storage tanks in this state.

(c) **Example.** The presumptions in this subsection (6) can be illustrated by the following example:

A previously taxed petroleum product is loaded on an ocean-going barge at a marine terminal located on Puget Sound in Washington. The barge is towed to Portland, Oregon where the petroleum product is offloaded and commingled with a similar product which has not been subjected to the tax. Later, commingled product is loaded onto a barge which is towed up the Columbia River to a marine terminal located in Pasco, Washington and, where it is offloaded and placed into storage tanks. The petroleum products loaded onto the barge in Portland would be presumed, subject to rebuttal, to be subject to the tax when received in Pasco.

(7) **Export credit.** A credit is allowed against the tax imposed for any crude oil or petroleum products previously received in a manner subjected to the tax and subsequently exported or sold for export from the state.

(a) An export credit may be taken by any person exporting or selling for export any previously taxed product who has paid the tax on such product to a marine terminal operator or the department. An export credit may also be taken by any person who has purchased previously taxed product and who subsequently exports the product or sells the product for export, provided that such person has been invoiced for and has paid the tax to its seller. Any such invoice must state the amount of the tax passed on to the purchaser and identify the product to which the tax amount relates by type and quantity.

(b) A person exports previously taxed product when they actually transport the product beyond the borders of this state for purposes of sale, or deliver the product to a common carrier for delivery and subsequent sale or use at a point outside this state.

(c) A person sells previously taxed product for export when as a necessary incident to a contract of sale the seller agrees to, and does deliver previously taxed product:

(i) To the buyer at a destination outside this state;

(ii) To a carrier consigned to and for transportation to a destination outside this state;

(iii) To the buyer alongside or aboard a vessel or other vehicle of transportation under circumstances where it is clear that the process of exportation of the product has begun; or

(iv) Into a pipeline for transportation to a destination outside this state.

In all circumstances there must be a certainty of export evidenced by some overt step taken in the export process. A sale for export will not necessarily be deemed to have occurred if the product is merely in storage awaiting shipment, even though there is reasonable certainty that the product will be exported. The intention to export, as evidenced for example, by financial and contractual relationships does not indicate certainty of export if the product has not commenced its journey outside this state. The product must actually enter the export stream. Sales of petroleum products by delivery into the fuel tank of a vessel or other vehicle in quantities greater than one hundred gallons will be considered placed into the export stream, provided the vessel or vehicle is immediately destined for a point outside this state and the seller obtains and keeps the documentary evidence provided in (d) of this subsection.

(d) A person claiming credit for sales for export under this subsection (7) must document the fact the product was placed into the export process. This fact may be shown by obtaining and keeping any of the following documentary evidence:

(i) A bona fide bill of lading in which the seller is the shipper/consignor and by which the carrier agrees to transport the product to the buyer at a destination outside this state; or

(ii) A written certification in substantially the following form:

Certificate of Export

I hereby certify that the crude oil or petroleum products specified herein, purchased by or transferred to the undersigned from (seller or transferor), have been received into the export stream and are for export for sale or use outside Washington state. I will become liable for any tax credit granted (seller or transferor) pertaining to any crude oil or petroleum products which are not so exported outside Washington state. This certificate is given with full knowledge of, and subject to the legally prescribed penalties for fraud.

Registration No. . . . . . . (If applicable) Type of Business . . . . . .

Firm Name . . . . . . Registered Name . . . . (If different)

Authorized Signature . . . .

Title . . . .

Identity of Product . . . . (Kind and amount by volume)

Date . . . . ; or

(iii) Documents consisting of:

(A) Purchase orders or contracts of sale which show that the seller is required to place the product into the export stream, e.g., "f.a.s. vessel"; and

(B) Local delivery receipts, tripsheets, waybills, warehouse releases, etc., reflecting how and when the product was delivered into the export stream; and

(C) When available, records showing that the products were packaged, numbered or otherwise handled in a way which is exclusively attributable to products sold for export.

(e) Only the export or sale for export of crude oil or petroleum products will qualify for the export credit. Crude oil or petroleum products will not be eligible for the export credit if, prior to export, they are subject to further processing or used as ingredients in other compounds unless the resulting products are themselves crude oil or petroleum products.

(f) Crude oil or petroleum products delivered to purchasers in other states pursuant to location exchange agreements will not qualify for the export credit unless the crude oil or petroleum products were previously subject to the tax and credit has not yet been taken. A location exchange agreement is any arrangement where crude oil or petroleum products located in this state are exchanged through an accounts crediting system, or any other method, for like substances located in other states. Any person acquiring previously taxed product in this state for which no credit has been taken may claim a credit on any such product subsequently exported or sold for export, provided all of the requirements set forth in this subsection (7) have been met.

Example. An oil company enters into a location exchange agreement with a competitor which provides for the delivery of one thousand barrels of petroleum products to a local storage facility owned by the competitor. In exchange for the petroleum products delivered in Washington the competitor delivers one thousand barrels of like petroleum products to the oil company's storage facilities in California. The delivery of petroleum products in California would not constitute an export or sale for export of the products delivered in Washington even though the products are of like quality and quantity. If the competitor delivers products which have been previously subject to the tax and no credit has been taken, the delivery of products in California may qualify for the credit. The subsequent export of the petroleum products received by the competitor in Washington would qualify for the credit if the competitor has been invoiced for and has paid the tax to the exchanging oil company.

(g) Persons claiming this credit must maintain records necessary to verify that the credit taking qualifications have been met. For this purpose any person claiming a credit who maintains those records required by WAC 458-20-19301 (Multiple activities tax credit), subsection (9), will be considered to have satisfied the requirements of this subsection.

(8) **Amount of credit.** The amount of the credit will be equal to the tax previously paid by the person claiming the credit on the crude oil or petroleum product exported or sold for export.

(a) In the case of a person claiming credit who is not the taxpayer, the credit will be equal to that portion of the tax billed on an invoice which relates to the particular product exported or sold for export. In order to determine the amount of tax reflected on an invoice which relates to a particular product exported or sold for export, it may be necessary to convert the tax paid from a rate per barrel to a rate per gallon or some other unit of measurement. This conversion is computed by taking the total amount of tax paid on an invoice for a particular product and dividing that figure by the total quantity of the product expressed in terms of the unit of measurement used for export. The credit is then computed by multiplying the converted rate times the quantity of product exported or sold for export. In no event will a credit be allowed in excess of the tax paid on the product exported or sold for export.

(b) Due to the fungible nature of crude oil and petroleum products it will sometimes be impossible for a person claiming a credit to determine exactly the rate of tax invoiced for a specific quantity of oil being exported or sold for export. The physical handling of oil or petroleum products requires that products of like kind be stored in bulk. This commingling results in product bearing tax passed on at different rates making it difficult to determine the amount of credit applicable to an export sale. Under such circumstances a person claiming the export credit may compute the tax using one of the following methods:

(i) First-in, first-out method. Under this method the export credit is computed by treating existing inventory as sold before later acquired inventory.

(ii) Average of tax paid method. Under this method the export credit is determined by calculating the average rate of tax paid on all inventory. This method requires computing the tax by making adjustments in the rate of tax paid on all product on hand as it is removed from or added to storage.

(iii) Any other method approved by the department.

(c) The use of one of the methods set forth in this subsection (8) to account for tax paid on commingled crude oil or petroleum products shall constitute an election to continue using the method selected. Once selected, no change in accounting method will be permitted without the prior consent of the department.

(d) Examples. The following are examples of the way in which the credit is to be computed:

(i) A petroleum products distributor purchases 100 barrels each of premium unleaded gasoline and regular unleaded gasoline. The invoice from the refiner separately states that the invoice includes $5.00 of tax for each of the two types of products. The distributor pays the invoiced amount and later sells 2,000 gallons of the premium unleaded and 4,000 gallons of the regular unleaded to a retailer located outside Washington. In order to compute the amount of credit on the export sales the distributor must convert the tax paid from barrels to gallons. Since there are 42 US gallons in a barrel and 200 barrels purchased, the number of gallons equals 8400 (42 × 200). The per gallon tax paid on both products is equal to .119 cents per gallon ($10.00 ÷ 8400). The distributor would be eligible for credit equal to $2.38 for the premium unleaded (2,000 × $.00119) and $4.76 for the regular unleaded (4,000 × $.00119).

(ii) A petroleum products distributor purchases 100 barrels of unleaded gasoline which it will use to blend with 30 barrels of ethanol to produce gasohol. The invoice for the unleaded separately states that the total price includes $4.00 of tax. The distributor pays the invoiced amount and sells 2,940 gallons of gasohol to a retailer for sale outside Washington. The tax paid on the unleaded is equal to .095 cents per gallon ($4.00 ÷ 4200). Since the exported product has been blended with a component that has not been taxed, only 76.9% of the exported product is eligible for credit (100 ÷ 130). The credit would be $2.15 (2,940 × .769 × $.00095).

(iii) A petroleum distributor purchases 100 barrels of unleaded gasoline from refinery A and later purchases 100 barrels from refinery B. The distributor stores all of its unleaded gasoline in a single storage tank. The invoice from refinery A separately states the amount of tax on the gasoline as $5.00 and the refinery B invoice states the tax as $4.00. The distributor pays the two invoiced amounts and sells 2,100 gallons of the commingled unleaded to a retailer located outside Washington. The distributor then purchases 100 more barrels of unleaded gasoline from distributor C. Distributor C's invoice separately states the tax as $3.00. Following payment of the invoice, the distributor exports an additional 2,100 gallons of unleaded. The distributor could choose to calculate the tax using one of the methods of accounting described in (b) of this subsection.

(A) Under the first-in, first-out method the distributor would treat all 4,200 gallons sold as if it was the unleaded gasoline purchased from refinery A. Under this method, the credit would be equal to .119 cents per gallon ($5.00 ÷ 4,200) or $5.00 total ($.00119 × 4,200).

(B) Under the average of tax paid method the distributor would recompute the tax paid on average for the entire commingled amount making adjustments as gasoline is sold or gasoline is added. Prior to the addition of the purchases from refinery B or distributor C, the rate would be .119 cents per gallon ($5.00 ÷ 4,200). Following the addition of the 100 barrels from refinery B the tank contains 8,400 gallons. The rate of tax would now be .107 cents per gallon (($5.00 + $4.00) ÷ 8,400). Out of this amount 2,100 gallons is exported in the first sale. The credit for this sale would be equal to $2.25 ($.00107 × 2,100). After the addition of the 100 barrels from distributor C, the tank contains 10,500 gallons (8,400 - 2,100 + 4,200). In order to recompute the tax, the total tax paid on the remaining gasoline after the first sale must be computed. After withdrawal of the 2,100 gallons of unleaded for the first sale, the total tax paid on the remainder would be $6.74 ((8,400 - 2,100) × $.00107). The addition of the 100 barrels from distributor C causes the total tax for the stored amount to rise to $9.74 ($6.74 + $3.00). The average rate of tax is now .093 cents per gallon ($9.74 ÷ 10,500). The credit for the second export sale would be $1.95 ($.00093 × 2,100).

(9) **Credit for use of petroleum products.** Effective March 26, 1992, any person having paid the tax imposed by this chapter may claim a refund or credit for the following:

(a) The use of petroleum products, as a consumer, for a purpose other than as a fuel. For this purpose, the term consumer shall be defined as provided in RCW 82.04.190; or

(b) The use of petroleum products as a component or ingredient in the manufacture of an item which is not a fuel.

(c) The amount of refund or credit claimed may not exceed the amount of tax paid by the person making such claim on the petroleum products so consumed or used.

(10) **How and when to pay tax.** The tax must be reported on special return forms prescribed by the department. The tax is due for payment together with the timely filing of the return upon which it is reported, on the twenty-fifth day of the month following the month in which the taxable receipt into storage tanks occurs. In case any offloading commences on the last day of any month and extends past midnight, the receipt will be deemed to have occurred during the following month.

(11) **How and when to claim credits.** Persons who pay tax under a direct payment certificate and persons who are both taxpayers and marine terminal operators should claim credits as an offset against tax liability reported on the same return when possible. The tax return form provides a line for reporting the tax and a line and supporting schedule for taking credits as an offset against the tax reported. Persons claiming credit who are not required to file returns reporting liability for the tax may claim credits on forms provided by the department for this purpose. It is not required that any documents or other evidences of entitlement to credits be submitted with the report. Such proofs must be retained in permanent records for the purpose of verification of credits taken.

(12) **Sales to United States government.** The tax does not apply to the receipt into storage tanks of crude oil or petroleum products owned by the United States government. The United States government is also not required to collect the tax as a marine terminal operator when the United States government owns the facilities where crude oil or petroleum products are received. However, owners of crude oil or petroleum products received and placed into the storage tanks of marine terminals owned by the United States government remain liable for the tax. In such instances the taxpayer is required to report the tax on forms supplied by the department. The tax is due for payment along with a completed return on the twenty-fifth day of the month following the month in which receipt into storage tanks occurred.

[Statutory Authority: RCW 82.23B.050 and 82.32.300. 92-24-049, § 458-20-260, filed 11/30/92, effective 12/31/92. Statutory Authority. RCW 82.23B.050. 92-10-006, § 458-20-260, filed 4/24/92, effective 5/25/92.]

WAC 458-20-99999 Appendix—The Buck Act.

Appendix—Buck Act

An act of Congress commonly known as the Buck Act H.R. 6687

AN ACT TO PERMIT THE STATES TO EXTEND THEIR SALES, USE, AND INCOME TAXES TO PERSONS RESIDING OR CARRYING ON BUSINESS, OR TO TRANSACTIONS OCCURRING, IN FEDERAL AREAS, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

Section 1.

a. That no person shall be relieved from liability for payment of, collection of, or accounting for any sales or use tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, on the ground that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a Federal area; and such State or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

b. The provisions of subsection "a" shall be applicable only with respect to sales or purchases made, receipts from sale received, or storage or use occurring, after December 31, 1940.

Section 2.

a. No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

b. The provisions of subsection "a" shall be applicable only with respect to income or receipts received after December 31, 1940.

Section 3.

a. The provisions of sections 1 and 2 of this Act shall not be deemed to authorize the levy or collection of any tax on or from the United States or any instrumentality thereof, or the levy or collection of any tax with respect to sale, purchase, storage, or use of tangible personal property sold by the United States or any instrumentality thereof to any authorized purchaser.

b. A person shall be deemed to be an authorized purchaser under this section only with respect to purchases which he is permitted to make from commissaries, ship's stores, or voluntary unincorporated organizations of Army or Navy personnel, under regulations promulgated by the Secretary of War or the Secretary of the Navy.

Section 4.

The provisions of the Act shall not for the purposes of any other provision of law be deemed to deprive the United States of exclusive jurisdiction over any Federal area over which it would otherwise have exclusive jurisdiction or to limit the jurisdiction of the United States over any Federal area.

Section 5.

Nothing in sections 1 and 2 of this Act shall be deemed to authorize the levy or collection of any tax on or from any Indian not otherwise taxed.

Section 6.

As used in this Act:

a. The term "person" shall have the meaning assigned to it in section 3797 of the Internal Revenue Code.

b. The term "sales or use tax" means any tax levied on, with respect to, or measured by, sales, receipts from sales, purchases, storage, or use of tangible personal property, except a tax with respect to which the provisions of section 10 of the Federal Highway Act, approved June 16, 1936, are applicable.

c. The term "income tax" means any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts.

d. The term "State" includes any Territory or possession of the United States.

e. The term "Federal area" means any lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency of the United States, and any Federal area, or any part thereof, which is located within the exterior boundaries of any State shall be deemed to be a Federal area located within such State.

Section 7.

a. Subsection "a" of section 10 of the Federal Highway Act, approved June 16, 1936, is amended (1) by striking out the words "upon sales of gasoline and other motor vehicle fuels" and inserting in lieu thereof the words "upon, with respect to, or measured by, sales, purchases, storage, or use of gasoline or other motor vehicle fuels;" and (2) by striking out the words "upon such fuels" and inserting in lieu thereof the words "with respect to such fuels."

b. Subsection "b" of such section 10 is amended by striking out the words "not sold for the exclusive use of the United States during" and inserting in lieu thereof the words "with respect to which taxes are payable under subsection "a" for."

Passed by the 76th Congress and
signed by the President on October 9, 1940.

Chapter 458-28 WAC

TAXATION OF FINANCIAL BUSINESSES BY CITIES OR TOWNS

WAC 458-28-010 Scope of rule. Chapter 134, Laws of 1972 ex. sess., authorizes cities and towns to impose a license fee or tax on financial institutions. Financial institutions having business locations in cities and towns which levy a tax upon gross income or gross receipts for the privilege of engaging in business shall divide their gross income for purposes of computing income earned in the cities, towns or unincorporated areas in which such places of business are located in accordance with these rules.

[Order ET 72-1, § 458-28-010, filed 9/29/72.]

WAC 458-28-020 Gross income defined. "Gross income of the business" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

Other examples of gross income are receipts from carrying charges, service charges, credit cards, safety deposit box rentals, bookkeeping or data processing, overdraft fees, flooring fees, and penalty fees.

[Order ET 72-1, § 458-28-020, filed 9/29/72.]

WAC 458-28-030 Deductions. In arriving at income taxable to a city or town from activities of a place of business located therein, financial institutions may deduct from gross income:

(1) Dividends received by a parent from a subsidiary corporation.

(2) Interest received on investments or loans primarily secured by first mortgages or trust deeds on nontransient residential properties.

(3) Interest received on obligations of the State of Washington, its political subdivisions, and municipal corporations. A deduction may also be taken for interest received on direct obligations of the Federal government, but not for interest attributable to loans or other financial obligations on which the Federal government is merely a guarantor or insurer.

(4) Gross proceeds from the sale or rental of real estate.

[Order ET 72-1, § 458-28-030, filed 9/29/72.]

WAC 458-28-040 Branch locations, division of income. Financial institutions having more than one place of business shall divide total taxable gross income so as to attribute taxable income to each location in the ratio of total interest earned (whether taxable or not) on loans originated at each location during the period covered by the tax return. The location at which a loan is originated is the place of business of the financial institution at which the customer deals with the financial institution to obtain the loan. Financial institutions having time or demand deposits may compute the ratio of total deposits at each location as a basis for approximating gross income of each location, provided the financial institution can demonstrate that the taxable income so computed will not differ by more than $10,000 in any one calendar year as to any one business location from the amount computed using the ratio of interest earned on loans originated at each location.

[Order ET 72-1, § 458-28-040, filed 9/29/72.]

Chapter 458-30 WAC
OPEN SPACE TAXATION ACT RULES

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

Reviser's note: The former codification of Order 71-2, filed 3/26/71 and amended by Order 71-3, filed 4/29/71, showing related histories, was published in the Washington Administrative Code in Supp. #8 (4/1/71) and Supp. #9 (9/1/71). The sections showing captions and histories thereto are as follows:

Sections

458-30-005 Definitions. [Order 71-3, § 458-30-005, filed 4/29/71; Order 71-2, § 458-30-005, filed 3/26/71.]
458-30-010 Classified lands. [Order 71-2, § 458-30-010, filed 3/26/71.]
458-30-015 Agreement. [Order 71-2, § 458-30-015, filed 3/26/71.]
458-30-020 Application. [Order 71-2, § 458-30-020, filed 3/26/71.]
458-30-025 Application fee. [Order 71-2, § 458-30-025, filed 3/26/71.]
458-30-030 Withdrawal—Breach. [Order 71-2, § 458-30-030, filed 3/26/71.]
458-30-035 Assessor. [Order 71-2, § 458-30-035, filed 3/26/71.]
458-30-040 Granting authority. [Order 71-2, § 458-30-040, filed 3/26/71.]
458-30-045 Owner applicant. [Order 71-2, § 458-30-045, filed 3/26/71.]
458-30-050 Treasurer. [Order 71-2, § 458-30-050, filed 3/26/71.]
458-30-055 Basis for assessment. [Order 71-3, § 458-30-055, filed 4/29/71; Order 71-2, § 458-30-055, filed 3/26/71.]
458-30-060 Valuation procedures. [Order 71-3, § 458-30-060, filed 4/29/71.]
458-30-065 Training. [Order 71-3, § 458-30-065, filed 4/29/71.]

Order PT 73-9, filed 10/30/73 adopts amended sections which are, in some respects, unrelated to former codification and adopts as new sections formerly codified rules which have been published in the Washington Administrative Code under another section number. Prior histories have been codified as part of a history where a similar subject has been amended. Please consult the above list, as filed by Order PT 73-9, for clarification.

458-30-005 Definitions. [Order PT 73-9, § 458-30-005, filed 10/30/73; Order 71-3, § 458-30-005, filed 4/29/71; Order 71-2, § 458-30-005, filed 3/26/71.] [See reviser's note following chapter digest.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.
458-30-010 Classified lands. [Order PT 73-9, § 458-30-010, filed 10/30/73; Order 71-2, § 458-30-010, filed 3/26/71.] [See reviser's note following chapter digest.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.
458-30-015 Agreement. [Order PT 73-9, § 458-30-015, filed 10/30/73; Order 71-2, § 458-30-015, filed 3/26/71.] [See reviser's note following chapter digest.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.
458-30-020 Application. [Order PT 73-9, § 458-30-020, filed 10/30/73; Order 71-2, § 458-30-020, filed 3/26/71.] [See reviser's note following chapter digest.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.
458-30-025 Application fee. [Order PT 73-9, § 458-30-025, filed 10/30/73; Order 71-2, § 458-30-025, filed 3/26/71.] [See reviser's note following chapter digest.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.
458-30-030 Withdrawal—Change of use. [Order PT 73-9, § 458-30-030, filed 10/30/73; Order 71-2, § 458-30-030, filed 3/26/71.] [See reviser's note following chapter digest.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.
458-30-035 Additional tax. [Order PT 73-9, § 458-30-035, filed 10/30/73.] Repealed by 78-07-027 (Order PT 78-3), filed 6/16/78. Statutory Authority: RCW 84.34.141.
458-30-040 Breach—Change of use. [Order PT 73-9, § 458-30-040, filed 10/30/73.] Repealed by 78-07-027 (Order PT 78-3), filed 6/16/78. Statutory Authority: RCW 84.34.141.
458-30-045 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.
458-30-065 Conditions where additional tax not imposed. [Order PT 73-9, § 458-30-065, filed 10/30/73.] Repealed by 78-07-027 (Order PT 78-3), filed 6/16/78. Statutory Authority: RCW 84.34.141.
458-30-070 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, § 458-30-075, filed 3/26/71.] [See reviser's note following chapter digest.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.
458-30-080 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.] [See reviser's note following chapter digest.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-120 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.] [See reviser's note following chapter digest.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-130 Treasurer. [Order PT 73-9, § 458-30-130, filed 10/30/73; Order 71-2, § 458-30-050, filed 3/26/71.] [See reviser's note following chapter digest.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-135 Advisory committee. [Order PT 73-9, § 458-30-135, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-140 Basis for assessment. [Order PT 73-9, § 458-30-140, filed 10/30/73; Order 71-3, § 458-30-055, filed 4/29/71; Order 71-2, § 458-30-055, filed 3/26/71.] [See reviser's note following chapter digest.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-145 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.] [See reviser's note following chapter digest.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-146 Valuation cycle. [Statutory Authority: RCW 84.34.141. 78-07-027 (Order PT 78-3), § 458-30-146, filed 6/16/78.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-150 Change of timber land classification to chapter 84.33 RCW. [Order PT 73-9, § 458-30-150, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-155 Reclassification of farm and agricultural land under 1973 amendatory act. [Order PT 73-9, § 458-30-155, filed 10/30/73.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-160 Training. [Order PT 73-9, § 458-30-160, filed 10/30/73; Order 71-3, § 458-30-065, filed 4/29/71.] [See reviser's note following chapter digest.] Repealed by 88-23-062 (Order PT 88-12), filed 11/15/88. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW.

458-30-235 Granting authority response. [Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-235, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-235, filed 11/15/88.] Repealed by 95-21-002, filed 10/4/95, effective 11/4/95. Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360.

458-30-261 Five year average grain prices. [Statutory Authority: Chapter 84.34 RCW and RCW 84.08.010(2). 89-05-008 (Order PT 89-1), § 458-30-261, filed 2/8/89.] Repealed by 90-02-080 (Order PT 90-1), filed 1/2/90, effective 2/2/90. Statutory Authority: RCW 84.08.010(2) and 84.34.141.

458-30-290 Additional tax—Withdrawal. [Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-290, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-290, filed 11/15/88.] Repealed by 95-21-002, filed 10/4/95, effective 11/4/95. Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360.

WAC 458-30-200 Definitions. (1) **Introduction.** This section provides definitions for the terms used throughout chapter 458-30 WAC. 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.

(2) **Definitions.** For purposes of chapter 458-30 WAC, the following definitions apply:

(a) "Additional tax" means the tax that will be collected when classification is withdrawn or removed from land that is classified according to the provisions of chapter 84.34 RCW.

(b) "Affidavit" means the real estate excise tax affidavit required by chapter 82.45 RCW and chapter 458-61 WAC. See WAC 458-30-275 for a more detailed definition.

(c) "Agreement" means an agreement executed between an owner and the granting authority regarding the classification of land in accordance with chapter 84.34 RCW.

(d) "Applicant" means the owner who submits an application for classification of land in accordance with chapter 84.34 RCW.

(e) "Application" means an application for classification of land in accordance with chapter 84.34 RCW.

(f) "Approval" means a determination by the granting authority that the land qualifies for classification under chapter 84.34 RCW.

(g) "Appurtenance" refers to something used with, and related to or dependent upon another thing; that is, something that belongs to something else, an adjunct. The thing appurtenant is strictly necessary and essential to the proper use and enjoyment of the land, as well as useful or necessary for carrying out the purposes for which the land was classified under chapter 84.34 RCW.

(i) In terms of farm and agricultural land, an appurtenance is something used for a particular sort of farm and the thing is widely and routinely used in the operation of the commercial agricultural enterprise.

(ii) For example, an appurtenance may be an outhouse, barn, or tool shed attached to or adjoining a dwelling or it may be equipment used for a particular purpose or task, such as tools, instruments, or clothing.

(h) "Aquaculture" means the growing and harvesting of marine or fresh water flora or fauna in a soil or water medium for commercial agricultural purposes.

(i) "Assessor" means the county assessor or any agency or person who is authorized to act on behalf of the assessor.

(j) "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.

(k) "Change in use" means direct action taken by an owner that actually changes the use of, or has started changing the use of, classified land to a use that is not in compliance with the conditions of the agreement executed between the owner and the granting authority or to a use that is otherwise not in compliance with the provisions of chapter 84.34 RCW.

(l) "Classified land" means a parcel(s) of land that has been approved by the appropriate granting authority for taxation under chapter 84.34 RCW.

(m) "Commercial agricultural purposes" means the use of land on a continuous and regular basis, prior to and subsequent to application for classification, that demonstrates that the owner or lessee intends to obtain through lawful means, a monetary profit from cash income received by:

(i) Raising, harvesting, and selling lawful crops;

(ii) Feeding, breeding, managing, and selling of livestock, poultry, fur-bearing animals, or honey bees, or any products thereof;

(iii) Dairying or selling of dairy products;

(iv) Animal husbandry;

(v) Aquaculture;

(vi) Horticulture;

(vii) Participating in a government-funded crop reduction or acreage set-aside program; or

(viii) Cultivating Christmas trees or short-rotation hardwoods on land that has been prepared by intensive cultivation and tilling, such as by plowing or turning over the soil, and on which all unwanted plant growth is controlled continuously for the exclusive purpose of raising such trees.

(n) "Contiguous" means land that adjoins other land that is owned by the same owner or under the same ownership. Land that is an integral part of a farming operation is considered contiguous even though the land may be separated by a public road, railroad, right of way, or waterway.

(o) "County financial authority" and "financial authority" mean the county treasurer or any agency or person charged with the responsibility of billing and collecting property taxes.

(p) "County legislative authority" means the county commission, council, or other county legislative body.

(q) "County recording authority" means the county auditor or any agency or person charged with the recording of documents.

(r) "Current" and "currently" means as of the date on which property is to be listed and valued by the assessor.

(s) "Current use value" means the taxable value of a parcel of land placed on the assessment rolls following classification under the provisions of chapter 84.34 RCW.

(t) "Department" means the department of revenue.

(u) "Farm woodlot" means an area of land within a parcel(s) of classified farm and agricultural land that is used in a manner compatible with commercial agricultural purposes including, but not limited to, the growing and cutting of trees for the use of the owner or the sheltering of livestock.

(v) "Granting authority" means the appropriate agency or official who acts on an application for classification in accordance with the provisions of chapter 84.34 RCW.

(w) "Gross income" means cash income derived from commercial agricultural purposes, including payments received from the United States Department of Agriculture for participating in a crop reduction or acreage set-aside program when such payments are based on the productive capacity of the land. The term shall not include the following:

(i) The value of any products produced on the land and consumed by the owner or lessee;

(ii) Cash income from leases for the use of the land for other than commercial agricultural purposes; or

(iii) Payments for soil conservation programs.

(x) "Incidental use" means a use of land classified as farm and agricultural land that is compatible with commercial agricultural purposes if it does not exceed twenty percent of the classified land. An incidental use may include, but is not limited to, wetland preservation, a gravel pit, a farm woodlot, or a produce stand.

(y) "Integral" means that which is central to or inherent in the use or operation of classified farm and agricultural land for commercial agricultural purposes.

(z) "Net cash rental" means the earning or productive capacity of farm and agricultural land less the production costs customarily or typically paid by an owner or landlord. See WAC 458-30-260 for a more detailed explanation.

(aa) "Owner" means:

(i) Any person(s) having a fee interest in a parcel of land, except when the land is subject to a real estate contract; and

(ii) The vendee when the land is subject to a real estate contract.

(bb) "Parcel of land" means a property identified as such on the assessment roll. For purposes of chapter 84.34 RCW and this WAC chapter, a parcel shall not include any land area not owned by the applicant including, but not limited to, a public road, right of way, railroad, or waterway.

(cc) "Penalty" means an amount due when land is removed from classification in accordance with chapter 84.34 RCW. The amount of the penalty is equal to twenty percent of the additional tax and applicable interest calculated according to the provisions of RCW 84.34.108.

(dd) "Planning authority" means the local government agency empowered by the appropriate legislative authority to develop policies and proposals relating to land use.

(ee) "Primary use" means the existing use of a parcel or parcels of land so prevalent that when the characteristic use of the land is evaluated a conflicting or nonrelated use is limited or excluded.

(ff) "Qualification of land" means the approval of an application for classification of land by the granting authority in accordance with the provisions of chapter 84.34 RCW.

(gg) "Rating system" means a public benefit rating system adopted for the open space classification according to RCW 84.34.055.

(hh) "Reclassification" means the process by which land classified under chapter 84.34 or 84.33 RCW is changed from one classification to another classification established by chapter 84.34 RCW or into forest land as described in chapter 84.33 RCW. For example, land classified as farm and agricultural land under RCW 84.34.020(2) may be reclassified as either timber or open space land under the provisions of chapter 84.34 RCW or as forest land under the provisions of chapter 84.33 RCW.

(ii) "Sale of ownership" means the conveyance of the ownership of a parcel of land in exchange for a valuable consideration.

(jj) "Tax year" means the year when property tax is due and payable.

(kk) "Timber management plan" means the plan filed with the county legislative authority or with the assessor when classified timber land is sold or transferred that details an owner's plan regarding the management of classified timber land including, but not limited to, the planting, growing and/or harvesting of forest crops.

(ll) "Transfer" means the conveyance of the ownership of a parcel of land without an exchange of valuable consideration.

(mm) "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. The term also refers to market value, that is, the amount of money a willing, but not obligated to buy, purchaser would pay a willing, but not obligated to sell, owner for the property.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-200, filed 10/4/95, effective 11/4/95. Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-200, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-200, filed 11/15/88.]

WAC 458-30-205 Department of revenue—Duties. (1) **Introduction.** This section explains the duties assigned to the department of revenue in order to implement and administer chapter 84.34 RCW.

(2) **General authority.** The department shall maintain general administrative authority to assure that chapter 84.34 RCW is effectively and equitably applied throughout the state. Accordingly, the department, upon request, shall provide all reasonable assistance to the granting authorities relating to the administration of chapter 84.34 RCW.

(3) **Forms.** The department shall design all application and other administrative forms necessary under chapter 84.34 RCW, except those forms necessary for the rating system. Forms relating to the rating system shall be designed by the granting authority. Granting authorities shall provide all forms to applicants who seek classification under chapter 84.34 RCW.

(4) **Training.** The department shall provide the guidelines and necessary training to assessors and county boards of equalization so that they may administer chapter 84.34 RCW. Members of the advisory committee and members of any granting authority may attend the training sessions provided by the department.

(5) **Wheat and barley prices.** The department shall annually issue by December 31, by whatever means it deems suitable, a five-year average of wheat and barley prices for use by the assessor in the following assessment year.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-205, filed 10/4/95, effective 11/4/95. Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-205, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-205, filed 11/15/88.]

WAC 458-30-210 Classification of land under chapter 84.34 RCW. (1) **Introduction.** Under chapter 84.34 RCW, land may be placed into one of three classifications on the basis of its current use. This section explains and describes each classification of land as defined in RCW 84.34.020.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Farm employee or farm and agricultural employee" means an individual who is employed on farm and agricultural land on a full time basis or a seasonal or migratory worker who works on farm and agricultural land only during the planting, growing, and/or harvesting seasons. The term also includes an individual who is employed at least twenty-five hours per week on farm and agricultural land. It does not include a person who is employed full time by a business activity that is not conducted on classified farm and agricultural land and who only works occasional weekends or during the harvest season on classified farm and agricultural land.

(b) "Integral" means that which is central to or inherent in the use or operation of classified farm and agricultural land for commercial agricultural purposes. For purposes of this section, the residence of the farm operator or owner and/or housing for farm employees must be the place(s) from which the farmer conducts his/her commercial agricultural business.

(3) **Open space land.** Land classified as "open space land" means one of the following:

(a) Any parcel(s) of land so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly.

(b) Any parcel(s) of land, whereby preservation in its present use would either:

(i) Conserve and enhance natural or scenic resources;

(ii) Protect streams or water supply;

(iii) Promote conservation of soils, wetlands, beaches, or tidal marshes;

(iv) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, natural reservations or sanctuaries, or other open spaces;

(v) Enhance public recreation opportunities;

(vi) Preserve historic sites;

(vii) Preserve visual quality along a highway, road, or street corridor, or scenic vistas;

(viii) Retain in its natural state, tracts of land of not less than one acre in size situated in an urban area and open to public use on such conditions as may be reasonably required by the granting authority; or

(ix) Any parcel(s) of farm and agricultural conservation land. Farm and agricultural conservation land means either:

(A) Land previously classified as farm and agricultural land that no longer meets the criteria of farm and agricultural land and is reclassified as "open space land"; or

(B) Traditional farmland that is not classified under chapter 84.33 or 84.34 RCW, has not been irrevocably devoted to a use inconsistent with agricultural uses, and has a high potential for returning to commercial agriculture.

(4) **Farm and agricultural land.** Land classified as "farm and agricultural land" means one of the following:

(a) Any parcel of land twenty or more acres in size or multiple parcels of land that are contiguous and total twenty or more acres in size when the land is:

(i) Primarily used to produce livestock or agricultural products for commercial purposes;

(ii) Enrolled in the federal conservation reserve program or its successor administered by the United States Department of Agriculture; or

(iii) Primarily used in similar commercial agricultural activities as may be established by rule.

(b) Any parcel of land or contiguous parcels of land at least five acres, but less than twenty acres, in size that is primarily used for commercial agricultural purposes, and produces a gross income each year equal to:

(i) 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 when the application was made prior to January 1, 1993; or

(ii) Two hundred dollars or more in cash per acre per year for three of the five calendar years preceding the date of application for classification when the application is made on or after January 1, 1993.

(c) Any parcel of land or contiguous parcels of land less than five acres in size that is primarily used for commercial agricultural purposes, and produces a gross income each year equal to:

(i) One thousand dollars or more in cash per year for three of the five calendar years preceding the date of application for classification when the application was made prior to January 1, 1993; and

(ii) One thousand five hundred dollars or more in cash per year for three of the five calendar years preceding the date of application for classification when the application is made on or after January 1, 1993.

(d) Any parcel of land that is twenty or more acres in size or multiple parcels of land that are contiguous and total twenty or more acres in size on which housing for farm and agricultural employees and the principal residence of the farm operator or the owner of land classified pursuant to RCW 84.34.020 (2)(a) is situated if:

(i) The housing or residence is on or contiguous to the classified parcel; and

(ii) The use of the housing or the residence is integral to the use of the classified parcel for agricultural purposes. (See WAC 458-30-317.)

(e) Farm and agricultural land also includes:

(i) Land on which appurtenances necessary for the production, preparation, or sale of commercial agricultural products are situated when the appurtenances are used in conjunction with the land(s) producing agricultural products, such as a machinery maintenance shed or a shipping facility located on farm and agricultural land that produces the products to be shipped;

(ii) Land incidentally used for an activity or enterprise that is compatible with commercial agricultural purposes as long as the incidental use does not exceed twenty percent of the classified land. An incidental use of classified farm and agricultural land may include, but is not limited to, wetland preservation, a gravel pit, a farm woodlot, or a produce stand; and

(iii) Any noncontiguous parcel of land from one to five acres in size that constitutes an integral part of the commercial agricultural operations of a parcel classified as farm and agricultural land under RCW 84.34.020(2).

(5) **Timber land.** Land classified as "timber land" means any parcel of land five or more acres in size or multiple parcels of land that are contiguous and total five or more acres in size that is primarily used for the commercial growth and harvesting of forest crops.

(a) Timber land refers only to the land.

(b) A timber management plan shall be filed with the county legislative authority or assessor when:

(i) An application for classification as timber land is submitted pursuant to chapter 84.34 RCW; or

(ii) A sale or transfer of timber land occurs and a notice of classification continuance is signed.

(c) Timber land does not include:

(i) Land listed on the assessment roll as classified or designated forest land according to chapter 84.33 RCW; or

(ii) Land on which nonforest crops or any improvements to the land are located.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-210, filed 10/4/95, effective 11/4/95. Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-210, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-210, filed 11/15/88.]

WAC 458-30-215 Application process. (1) **Introduction.** This section explains the general application procedures of classification of land under chapter 84.34 RCW including where to obtain an application and the information that must accompany an application for classification or reclassification.

(2) **Availability of forms.** The assessor and the county legislative authority shall make available application forms for classification or reclassification and shall supply them upon request.

(a) The assessor and the county legislative authority shall provide the appropriate forms, informational materials (including, but not limited to, copies of chapter 84.34 RCW and chapter 458-30 WAC), and reasonable assistance to an owner who submits an application for classification or reclassification of land under chapter 84.34 RCW.

(b) If the county legislative authority adopts a public benefit rating system for the open space classification, it shall prepare the appropriate forms, provide informational materials, and provide assistance to applicants.

(3) **The applicant.** The applicant shall be the owner of the land described on the application.

(4) **If land is purchased or transferred while application is pending.** 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 the original applicant; in all aspects of the application process the purchaser or transferee shall assume the original applicant's rights and responsibilities in the application process. 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.

(5) **Application due date.** Application for classification of land according to chapter 84.34 RCW shall be made from January 1 through December 31 for classification or reclassification and the assessment of the land in its classified status will begin on January 1 in the year following application.

(a) In other words, application must be made during the calendar year preceding the assessment year in which the classification or reclassification is to begin and the taxes on the land based on its classified use and status are payable the year following the assessment year.

(b) Example. An owner submits an application for classification on April 1, 1993. If it qualifies for classification, the land will be assessed based on its current use status for assessment year 1994 and the owner will pay taxes based on this assessment in 1995.

(6) **Information to accompany application.** The application for classification or reclassification shall require only such information as is reasonably necessary to properly classify an area of land under the provisions of chapter 84.34 RCW, including a signed statement as to the truth of the information. It shall also include a statement that the applicant is aware of the potential tax liability involved when the land ceases to qualify as open space, farm and agricultural, or timber land. Additionally, 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 chapter 84.34 RCW.

(7) **Land in multiple counties.** If the land described in the application for classification or reclassification is in more than one county, the owner shall file a separate application with the granting authority of each county.

(8) **Waiting period imposed after application is denied.** If an application for classification or reclassification 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 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-215, filed 10/4/95, effective 11/4/95. 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. (1) **Introduction.** This section explains the processing fee that may be established by the city or county legislative authority and that may be required when an application for classification or reclassification is submitted. It also explains the manner in which the amount of this fee is determined and the distribution of this fee upon receipt.

(2) **Processing fee.** The city or county legislative authority may, at their discretion, require a processing fee to accompany each application. This fee shall be in an amount that reasonably covers the processing costs of the application.

(a) If any agreement is to be recorded, the cost of such recording shall come from the fee.

(b) The fee shall be made payable to the county financial authority, who shall forward a portion of the fee to any city in which the parcel of land is located in proportion to the land area included in the city to the total land area of the parcel.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-220, filed 10/4/95, effective 11/4/95. Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-220, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-220, filed 11/15/88.]

WAC 458-30-225 Application for farm and agricultural classification. (1) **Introduction.** This section explains the application process for an applicant who seeks to have land classified or reclassified as farm and agricultural land under RCW 84.34.020(2).

(2) **Where to submit - granting authority.** An application for classification or reclassification as farm and agricultural land shall be made to the assessor of the county in which the land is located. The assessor shall be the granting authority.

(3) **Duties of assessor.**

(a) The assessor shall act on each application with due regard to all relevant evidence and may approve or deny the application in whole or in part. If any part of the application is denied, the applicant may withdraw the entire application.

(b) Except as provided by chapter 84.34 RCW and chapter 458-30 WAC, the assessor cannot impose conditions or restrictions regarding the approval of an application for classification or reclassification as farm and agricultural land.

(c) The assessor shall consider the relevant zoning ordinances and regulations. If a zoning ordinance prohibits the farm and agricultural activity for which classification or reclassification is being sought, the assessor shall deny the application.

(d) Upon receipt of an application for classification or reclassification, the assessor may require the applicant(s) to provide data regarding the current use of the 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 requested information shall be cause to deny an application. Generally, prospective use of the land may not be relevant evidence in acting upon an application.

(e) After an application has been approved and the classification or reclassification has been granted, the assessor may review the classification at any time.

(f) The assessor shall retain a copy of all applications submitted.

(g) The assessor may consider the land area used as a homesite in determining the eligibility of a parcel of land for farm and agricultural classification. If the homesite does not qualify for classification as farm and agricultural land in accordance with RCW 84.34.020 (2)(d) and WAC 458-30-210 (4)(d), the land shall be taxed at its true and fair value.

(4) **Approval.** 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.

(5) **Denial.** The assessor may approve or deny an application for classification in whole or in part.

(a) The assessor shall notify the applicant in writing of the extent to which the application is approved or denied.

(b) An applicant who receives a notice that his or her application has been denied may appeal this decision to the board of equalization in the county where the land is located.

The appeal shall be filed within thirty calendar days of the date the notice of denial was mailed and shall be in the form specified in RCW 84.40.038.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-225, filed 10/4/95, effective 11/4/95. Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-225, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-225, filed 11/15/88.]

WAC 458-30-230 Application for open space classification. (1) **Introduction.** This section explains the application process for an applicant who seeks to have land classified or reclassified as open space land under RCW 84.34.020(1).

(2) **Where to submit.** An application for classification or reclassification of land as open space shall be made to the county legislative authority of the county in which the land is located.

(3) **Granting authority.** The identity of the entity that will act as the granting authority shall be determined by the location of the land the applicant seeks to classify or reclassify as open space land. The granting authority shall be determined as follows:

(a) If the parcel(s) of land is located in an unincorporated area of the county, the county legislative authority shall be the granting authority.

(b) If the parcel(s) of land is located in an incorporated area of the county, a copy of the application for classification or reclassification shall be forwarded to the city legislative authority in which the land is located. The granting authority shall be composed of three members of the county legislative authority and three members of the city legislative authority.

(4) **Application process.** An application for classification or reclassification of a parcel(s) of land as open space land shall be processed as follows:

(a) Comprehensive land use plan. The granting authority shall determine whether or not the land is located in an area designated as "open space" by an official comprehensive land use plan adopted by a city or county and zoned accordingly.

(i) If the land is in an area subject to a comprehensive plan, the application for classification or reclassification shall be treated in the same manner as a proposed amendment to that plan.

(ii) If the land is in an area not subject to a comprehensive plan, a public hearing on the application shall be conducted. A notice of this hearing shall be announced once by publication in a newspaper of general circulation in the region, city, or county at least ten days before the hearing. The owner who submitted the application for classification or reclassification that is the subject of the public hearing shall be notified in writing of the date, time, and location of this hearing.

(b) Factors to consider. In determining whether an application for classification or reclassification as open space land should be approved, the granting authority:

(i) May take particular notice of the benefits to the general welfare of preserving the current use of the parcel(s) of land described in the application; and

(ii) Shall consider the following:

(A) The revenue loss or tax shift that will result from granting the application;

(B) Whether granting the application for classification or reclassification of land under RCW 84.34.020 (1)(b) will:

(I) Conserve or enhance natural, cultural, or scenic resources;

(II) Protect streams, stream corridors, wetlands, natural shorelines, and aquifers;

(III) Protect soil resources, unique or critical wildlife, and native plant habitat;

(IV) Promote conservation principles by example or by offering educational opportunities;

(V) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries, or other open spaces;

(VI) Enhance recreation opportunities;

(VII) Preserve historic and archaeological sites;

(VIII) Preserve visual quality along highway, road, and street corridors or scenic vistas; or

(IX) Affect any other factors relevant in weighing benefits to the general welfare of preserving the current use of the land; and

(C) Whether granting the application for classification or reclassification of land as farm and agricultural conservation land (RCW 84.34.020 (1)(c)) will:

(I) Either preserve land previously classified as farm and agricultural land under RCW 84.34.020(2) or preserve traditional farmland not classified under chapter 84.33 or 84.34 RCW;

(II) Preserve land with a potential for returning to commercial agriculture; and

(III) Affect any other factors relevant in weighing general benefits of preserving the current use of the property.

(iii) In addition to the foregoing concerns, the granting authority shall consider:

(A) The existence of any mining claim or mining lease on the land, and if such a claim or lease will seriously interfere with the considerations stated in (b)(i) and (ii) of this subsection. 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 or reclassified, 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 the application for classification or reclassification is filed.

(5) **Approval or denial of application.** The granting authority shall either approve or disapprove the application within six months of the date the completed application was received by the county legislative authority.

(a) The granting authority may approve the application for classification or reclassification in whole or in part. If any part of the application is denied, the applicant may withdraw the entire application.

(b) In approving the application in whole or in part, the granting authority may also require that certain conditions be met including, but not limited to, the granting of easements. As a condition of granting an application for open space classification, the granting authority may not require public access on land classified under RCW 84.34.020 (1)(b)(iii) to promote the conservation of wetlands.

(c) 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.

(d) When the application for classification or reclassification as open space has been approved, the granting authority shall prepare an agreement. See WAC 458-30-240 for a detailed description of this agreement.

(e) The granting or denial of an application for classification or reclassification as open space land is a legislative determination and shall be reviewable only for arbitrary and capricious actions.

(6) **Public benefit rating system.** When an application for classification or reclassification under RCW 84.34.020 (1)(b) and (c) is submitted regarding land that is subject to a public benefit rating system adopted under RCW 84.34.055, the county legislative authority shall rate the parcel(s) of land in accordance with the public benefit rating system to determine whether the application should be approved or denied.

Land that was classified under RCW 84.34.020 (1)(b) or (c) prior to the adoption of a public benefit rating system does not have to requalify for classification under the criteria of the public benefit rating system. The land shall not be removed from classification by an assessor. This land may be rated according to the public benefit rating system as appropriate. (See WAC 458-30-330, 458-30-335, and 458-30-340 for more information about the public benefit rating system.)

(7) **Record retention.** The granting authority shall keep a record of each application, agreement, and records relating to each agreement.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-230, filed 10/4/95, effective 11/4/95. 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 458-30-232 Application for timber land classification. (1) **Introduction.** This section explains the application process for an applicant who seeks to have land classified or reclassified as timber land under RCW 84.34.020(3).

(2) **Definition.** For purposes of this section, the following definition applies:

"Stand of timber" means a stand of trees that will yield log and/or fiber:

(a) Suitable in size and quality for the production of lumber, plywood, pulp, or other forest products; and

(b) Of sufficient value to cover at least all the costs of harvest and transportation to available markets.

(3) **Where to submit.** An application for classification or reclassification of land as timber land under RCW 84.34.020(3) shall be made to the county legislative authority of the county in which the land is located.

(4) **Granting authority.** The identity of the entity that will act as the granting authority will be determined by the location of the land the applicant seeks to classify or reclassify as timber land. The granting authority will be determined as follows:

(a) If the parcel(s) of land is located in an unincorporated area of county, the county legislative authority shall be the granting authority.

(b) If the parcel(s) of land is located in an incorporated area, a copy of the application for classification shall be forwarded to the city legislative authority in which the land is located. The granting authority shall be composed of three members of the county legislative body and three members of the city legislative authority.

(5) **Application process.**

(a) Consider all relevant evidence. The granting authority shall act upon the application with due regard to all relevant evidence.

(b) Information that must accompany application. An application for classification or reclassification of a parcel(s) of land as timber land shall be made on forms prepared by the department and shall include the following:

(i) A legal description of or the parcel number(s) of all land the applicant desires to be classified as timber land;

(ii) The date or dates the land was acquired;

(iii) A brief description of the timber on the land or, if the timber has been harvested, the owner's plan for restocking;

(iv) Whether there is a timber or forest management plan for the land;

(v) If there is a timber or forest management plan for the land, the nature and extent to which the plan has been implemented;

(vi) Whether the land is used for grazing;

(vii) Whether the land has been subdivided or a plat has been filed with respect for the land;

(viii) Whether the land and the applicant have complied with the restocking, forest management, fire protection, insect and disease control, weed control, and forest debris provisions of Title 76 RCW or applicable rules under Title 76 RCW;

(ix) Whether the land is subject to forest fire protection assessments pursuant to RCW 76.04.610;

(x) Whether the land is subject to a lease, option, or other right that permits the land to be used for a purpose other than growing and harvesting timber;

(xi) A summary of the applicant's past experience and activities in growing and harvesting timber;

(xii) A summary of the applicant's current and continuing activities in growing and harvesting of timber; and

(xiii) A statement that the applicant is aware of the potential tax liability involved when the land ceases to be classified as timber land.

(c) Solitary factors that will result in automatic denial. An application may be denied for any of the following reasons without regard to any other factor:

(i) The land does not contain a stand of timber as defined in subsection (2) of this section, as well as in chapter 76.09 RCW, and WAC 222-16-010. This reason alone shall not be sufficient to deny the application if:

(A) The land has been recently harvested or supports a growth of brush or noncommercial type timber and the application includes a plan for restocking within three years or a longer period necessitated because seed or seedlings are unavailable; or

(B) Only isolated areas within the land do not meet minimum standards due to rock outcroppings, swamps, unproductive soil, or other natural conditions.

(ii) The applicant, with respect to the land for which classification or reclassification is sought, has failed to comply with a final administrative or judicial order regarding a violation of the restocking, forest management, fire protection, insect and disease control, weed control, and forest debris provisions of Title 76 RCW or applicable rules under Title 76 RCW.

(iii) The land abuts a body of salt water and lies between the line of ordinary high tide and a line paralleling the ordinary high tide line and two hundred feet horizontally landward from the high tide line.

(6) **Public hearing required.** An application for classification of land as timber land shall be acted upon after a public hearing on the application has been held. A notice of this hearing shall be announced once by publication in a newspaper of general circulation in the region, city, or county at least ten days before the hearing. The owner who submitted the application for classification or reclassification that is the subject of the public hearing shall be notified in writing of the date, time, and location of the hearing.

(7) **Approval or denial of application.** The granting authority shall either approve or disapprove the application for classification or reclassification within six months of the date it is received by the county legislative authority.

(a) The granting authority may approve the application for classification or reclassification in whole or in part. If any part of the application is denied, the applicant may withdraw the entire application.

(b) In approving the application in whole or in part, the granting authority may also require that certain conditions be met. The granting authority may not require the granting of easements for land classified as timber land.

(c) The granting or denial of an application for classification as open space land or reclassification is a legislative determination and shall be reviewable only for arbitrary and capricious actions.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-232, filed 10/4/95, effective 11/4/95.]

WAC 458-30-240 Agreement relating to open space and timber land classifications. (1) **Introduction.** This section explains the contents of and the procedures relating to the agreement that is executed when an application for classification or reclassification as open space land under RCW 84.34.037 or timber land under RCW 84.34.041 has been approved by the granting authority.

(2) **Preparation and contents.** When an application for classification or reclassification as open space or timber land has been approved by the granting authority, the granting authority shall prepare an agreement. For purposes of this section, the date of approval shall be the date on which the granting authority approves the application for classification or reclassification.

(a) The agreement shall state all conditions attached to the approval of the application. The conditions of approval and any requirements of the classification detailed in the agreement shall be binding upon any heir, successor, or assignee of the parties of the original agreement.

(b) The agreement shall apply to the parcel(s) of land described in the agreement.

(c) The agreement may include, but is not limited to, a description of the ways the classified land may be used to retain its classified status, the actions that will cause removal of the land from classification, and the consequences of a change in the classified use of the land.

(3) **Submit agreement to owner for signature.**

(a) Within five calendar days after the approval of the application for classification or reclassification, in whole or in part, the granting authority shall deliver by certified mail, return receipt requested, the agreement to the owner for signature.

(b) The owner may accept or reject the agreement.

(c) If accepted, the agreement shall be signed and returned to the granting authority within thirty calendar days after receipt.

(d) If the agreement is not signed and returned to the granting authority within thirty days of the date the unsigned agreement was mailed to the owner, the granting authority shall conclusively presume the agreement has been rejected unless the owner can show proof that he or she was prevented from returning the agreement by events beyond his or her control.

(e) To be properly executed, the agreement shall be signed by the owner and shall become effective on the date the granting authority receives the signed agreement from the owner of the classified parcel(s) of land.

(4) **Executed agreement to be sent to assessor.** The granting authority shall, within ten days after receiving the signed agreement, send one copy to the assessor of the county in which the land is located.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-240, filed 10/4/95, effective 11/4/95. 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 458-30-242 Application for open space/farm and agricultural conservation land classification. (1) **Introduction.** The 1992 legislative changes to chapter 84.34 RCW created a subclassification of farm and agricultural conservation land within the open space classification. This section explains the criteria and procedures related to farm and agricultural conservation land.

(2) **Open space application criteria and process must be followed.** Farm and agricultural conservation land is not a separate classification within chapter 84.34 RCW. This type of land is merely a subclassification within the open space classification.

(a) To obtain the open space/farm and agricultural conservation land classification, the applicant must follow and comply with the procedures and requirements related to the open space classification. The process of applying for open space classification is set forth in RCW 84.34.037 and WAC 458-30-230.

(b) In addition to the information normally required to accompany an application for open space classification, an applicant seeking open space/farm and agricultural conservation land classification shall submit a statement about the previous use, the current use, and the intended future use of the land. If the land is traditional farmland that has never been classified under chapter 84.33 or 84.34 RCW, this information should be included in the applicant's signed statement.

(3) **Specific requirements for classification as open space/farm and agricultural conservation land.** To be classified as farm and agricultural conservation land, the land shall be:

(a) Previously classified as farm and agricultural land under RCW 84.34.020(2), that no longer meets the criteria for classification under RCW 84.34.020(2), and that shall be reclassified as open space land under RCW 84.34.020(1); or

(b) Traditional farmland that is not classified under chapter 84.33 or 84.34 RCW, that has not been irrevocably dedicated to a use inconsistent with agricultural uses, and that has a high potential for returning to commercial agricultural purposes.

(4) **Examples.**

(a) Farmer Jones and his wife own nineteen acres of classified farm and agricultural land. Farmer Jones dies and his wife inherits the classified land. Mrs. Jones realizes that she cannot actively farm the land and produce the annual amount of income required by RCW 84.34.020 (2)(b). She decides to have the land reclassified as farm and agricultural conservation land within the open space classification. The land may be reclassified as open space/farm and agricultural conservation land under subsection (3)(a) of this section if she submits an application for reclassification as open space/farm and agricultural conservation land and the application for reclassification is approved by the granting authority.

(b) Farmer McDowell has a fifty acre parcel of land on which he raises pigs and goats. He inherited this land from his father who farmed it before him. Also, the land has never been classified under chapter 84.34 RCW nor has it ever been designated forest land under chapter 84.33 RCW. As the result of an accident, Farmer McDowell breaks his back and cannot actively farm the land for an extended period of time. This land may be classified as open space/farm and agricultural conservation land under subsection (3)(b) of this section if Farmer McDowell submits an application for classification as open space/farm and agricultural conservation land, the application for classification is approved, the land is not irrevocably dedicated to a use inconsistent with agricultural uses, and the land has a high potential for returning to commercial agriculture.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-242, filed 10/4/95, effective 11/4/95.]

WAC 458-30-245 Recording of documents. (1) **Introduction.** This section details the documents relating to lands classified under chapter 84.34 RCW that must be filed with the county assessor and the county recording authority in accordance with RCW 84.34.050.

(2) **Notice to assessor.** When the granting authority has classified land under chapter 84.34 RCW, the granting authority shall file a notice to this effect with the assessor within ten working days of making the determination. As to any land classified under chapter 84.34 RCW, the assessor shall annually make a notation on the county's assessment list and tax roll of the assessed value of this land for the use for which it is classified and the assessed value of this land if it were not so classified.

(3) **Agreement relating to open space land or timber land classification.** Within ten working days of receipt of an agreement regarding land classified as open space or timber land from a granting authority, the assessor shall submit the executed agreement to the county recording authority for recording in the place and manner provided for the public recording of tax liens on real property. The county recording authority shall return the agreement to the assessor following recording.

(4) **Notice of approval relating to farm and agricultural land classification.** Within ten working days of the approval of an application for farm and agricultural land classification or reclassification, the assessor shall send a notice of approval to the county recording authority for recording in the place and manner provided for the public recording of tax liens on real property.

(5) **Notice of withdrawal or removal.** When land is to be withdrawn or removed from classification under chapter 84.34 RCW, the assessor shall forward a notice of withdrawal or removal to the county recording authority. The county recording authority shall record all notices of withdrawal or removal. The owner shall pay all recording fees for the notices.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-245, filed 10/4/95, effective 11/4/95. 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 Approval or denial and appeal. (1) **Introduction.** This section describes the procedure an applicant must follow if his or her application for classification or reclassification under chapter 84.34 RCW is denied, in whole or in part, and he or she wishes to appeal the determination.

(2) **General requirement.** The granting authority shall immediately notify the assessor and the applicant of the approval or denial of an application for classification or reclassification. An application for classification or classification as open space, timber, or farm and agricultural land should be approved or denied no later than six months after the receipt of this application. However, if an application for classification or reclassification as farm and agricultural land is not denied, in whole or in part, by the first day of May of the year after the application was submitted, the application shall be deemed approved. For example, an application for classification as farm and agricultural land shall be considered approved if it was delivered to the assessor on August 30, 1993, and was not denied prior to May 1, 1994.

(3) **Written denials with reasons required.** All denials of an application for classification or reclassification shall be in writing and shall include the reasons for denial.

(4) **Owner's right to appeal.** The owner shall have the right to appeal any denial of an application for classification or reclassification.

(a) If an application for classification or reclassification as farm and agricultural land is denied by the granting authority, in whole or in part, the applicant may appeal to the board of equalization of the county in which the land is located within thirty calendar days of date the denial was mailed.

(b) If an application for classification or reclassification as either open space or timber land is denied by the granting authority, in whole or in part, the applicant may appeal only to the superior court of the county in which the land is located and the application was made.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-250, filed 10/4/95, effective 11/4/95. 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—Assessor's duties. (1) **Introduction.** This section explains the assessor's duty to determine the current use value of land classified under chapter 84.34 RCW.

(2) **Duties of assessor.** The assessor shall determine the current use value of land classified under chapter 84.34 RCW according to the procedures and standards set forth in WAC 458-30-260, 458-30-267, and 458-30-317. In determining this value, the assessor shall consider only the current use of the classified land and shall not consider any potential use or any income from a potential use.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-255, filed 10/4/95, effective 11/4/95. 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 for farm and agricultural land. (1) **Introduction.** This section outlines the methods an assessor may use to determine the value of land classified as farm and agricultural land under chapter 84.34 RCW. The valuation procedures are outlined in RCW 84.34.065. The method used to value the principal residence of the farm operator or owner and the housing of farm and agricultural employees on classified farm and agricultural land is described in WAC 458-30-317.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Landlord" means the person(s) or business enterprise that leases or rents classified farm and agricultural land to another person(s) or business entity.

(b) "Net cash rental" means the average rental paid on an annual basis, in cash, for the land being appraised and other farm and agricultural land of similar quality and similarly situated that is available for lease for a period of at least three years to any reliable person without unreasonable restrictions on its use for the production of agricultural crops.

(c) "Rate of interest" means the rate of interest charged by the farm credit administration and other large financial institutions regularly making loans secured by farm and agricultural lands through mortgages or similar legal instruments averaged over the immediate past five years.

(3) **General considerations.** The assessor shall use all available information to determine the productive or earning capacity of classified farm and agricultural land including, but not limited to, farm production information, actual crop production within an area averaged over not less than five years, and other relevant data. The assessor may also use reliable statistical sources. Additionally, a soil capability analysis may be considered in determining the productive or earning capacity of classified land.

(4) **Determination of current use value.** The value of classified farm and agricultural land shall be determined by the productive or earning capacity of comparable land from crops typically grown in the area averaged over not less than five years, capitalized at indicative rates. The assessor shall use the capitalization of income method to value this type of classified land.

(a) The earning or productive capacity of comparable land is the "net cash rental," capitalized at a "rate of interest" charged on long-term loans secured by a mortgage on farm or agricultural land plus a component for property taxes. The rate of interest and the property tax component for each county are set forth in WAC 458-30-262.

(b) The value of classified farm and agricultural land shall be the net cash rental of the land divided by the capitalization rate.

(5) **Net cash rental.** The net cash rental to be capitalized shall be determined as follows:

(a) Based on leases. Leases of farm and agricultural land paid on an annual basis, in cash, shall be used in determining the net cash rental. The cash value of these leases shall include government subsidies if the subsidies are based on the earning or productive capacity of the land. Only leases of land that is available for rent for a period of at least three years to any reliable person without unreasonable restrictions on its use to produce agricultural crops may be used in this determination. Lease payments shall be averaged as follows:

(i) Each annual lease or rental payment for the land being valued and for other farm and agricultural land within the area of similar quality and upon which typical crops in the area are grown shall be averaged for at least the preceding five crop years; and

(ii) The typical cash rental for each year shall be averaged for at least the preceding five crop years.

(A) Costs of crop production customarily paid by the landlord may be deducted from the typical cash rental. All costs and expenses shall be averaged for at least the preceding five crop years.

(B) If the land is irrigated by a sprinkler system, the amount of rent attributable, if any, to the irrigation equipment shall be deducted from the gross cash rent to determine the net cash rental of the land only. However, the value of irrigation equipment will be placed on the assessment roll at its true and fair value.

(b) Earning or productive capacity of land. If only an insufficient number of leases are available, the earning or productive capacity of farm and agricultural land shall be calculated by determining the cash value of typical crops grown on land of similar quality and similarly situated within the area then subtracting the standard production costs of the crops. The cash value minus the production costs of typical crops are to be averaged over at least five crop years. Cash value shall include, but is not limited to, government subsidies if the subsidies are based on the earning or productive capacity of the land. Any acreage kept out of production because of government subsidies shall be included in the total acreage valued by the capitalization of the income method.

(c) When the land being valued is not being used for commercial agricultural purposes or when the available information is insufficient to determine the earning or productive capacity of the land, the assessor shall compute a reasonable amount based on the land's estimated productive capacity to be capitalized as income.

(6) **Capitalization rate.** The capitalization rate that is used to value classified farm and agricultural land is the sum of the following:

(a) An interest rate determined by the department on or before January 1st each year. This rate shall be the rate of interest charged on long-term loans secured by mortgages or similar legal instruments averaged over the immediate past five years; plus

(b) A component for property taxes determined by dividing the total taxes levied within the county for the year preceding the assessment by the total assessed value of all property within the county and multiplying the quotient by one hundred.

(7) **Appeal of interest rate determination.** The department shall annually determine a rate of interest and property tax component that shall be announced in a rule. (WAC 458-30-262.) This rule will be published in the *Washington State Register* before January 1st each year so that it may be used in that assessment year. The department's determination of the interest rate may be appealed to the state board of tax appeals within thirty calendar days after the date of publication by:

(a) Any 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 under chapter 84.34 RCW.

(8) **Valuation of principal residence or housing for employees.** Land classified as farm and agricultural land because it is the site of the principal residence of the operator or owner of the land and the housing for farm and agricultural employees will be valued in accordance with RCW 84.34.065 and WAC 458-30-317. If the residence or housing for employees does not meet all the requirements for classification, the land may not be classified as farm and agricultural land and it must be valued at its true and fair value in accordance with WAC 458-12-301.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-260, filed 10/4/95, effective 11/4/95. Statutory Authority: RCW 84.08.010(2) and 84.34.141. 90-02-080 (Order PT 90-1), § 458-30-260, filed 1/2/90, effective 2/2/90. Statutory Authority: RCW 84.08.010(2) and 84.34.065. 89-05-009 (Order PT 89-2), § 458-30-260, filed 2/8/89. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-260, filed 11/15/88.]

WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component. For assessment year 1997, the interest rate and the property tax component that are to be used to value classified farm and agricultural lands are as follows:

(1) The interest rate is 9.2 percent; and

(2) The property tax component for each county is:

COUNTY	PERCENT	COUNTY	PERCENT
Adams	1.44	Lewis	1.24
Asotin	1.56	Lincoln	1.53
Benton	1.38	Mason	1.26
Chelan	1.37	Okanogan	1.38
Clallam	1.17	Pacific	1.28
Clark	1.39	Pend Oreille	1.34
Columbia	1.36	Pierce	1.59
Cowlitz	1.20	San Juan	0.81
Douglas	1.36	Skagit	1.23
Ferry	1.16	Skamania	1.05
Franklin	1.58	Snohomish	1.33
Garfield	1.52	Spokane	1.54
Grant	1.46	Stevens	1.18
Grays Harbor	1.42	Thurston	1.49
Island	0.95	Wahkiakum	1.17
Jefferson	1.17	Walla Walla	1.50
King	1.38	Whatcom	1.26
Kitsap	1.41	Whitman	1.72
Kittitas	1.12	Yakima	1.40
Klickitat	1.12		

[Statutory Authority: RCW 84.34.065, 84.34.141, 84.08.010 and 84.34.070. 97-02-066, § 458-30-262, filed 12/31/96, effective 1/1/97. Statutory Authority: RCW 84.34.065, 84.34.141, 84.08.010 and 84.34.070. 96-01-095, § 458-30-262, filed 12/19/95, effective 1/1/96. Statutory Authority: RCW 84.34.065, 84.34.141, 84.08.010 and 84.08.070. 95-09-041, § 458-30-262, filed 4/14/95, effective 5/15/95. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.34.065. 94-05-062, § 458-30-262, filed 2/11/94, effective 3/14/94. Statutory Authority: RCW 84.08.010 and 84.08.070. 93-07-067, § 458-30-262, filed 3/17/93, effective 4/17/93; 92-03-068, § 458-30-262, filed 1/14/92, effective 2/14/92; 91-04-001, § 458-30-262, filed 1/24/91, effective 2/24/91; 90-24-087, § 458-30-262, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2) and 84.34.141. 90-02-080 (Order PT 90-1), § 458-30-262, filed 1/2/90, effective 2/2/90.]

WAC 458-30-265 Valuation cycle. (1) **Introduction.** This section explains the timing of revaluations of land classified under the provisions of chapter 84.34 RCW.

(2) **Revaluation 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. 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.

(3) **Notice required.** 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 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-265, filed 10/4/95, effective 11/4/95. 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 458-30-267 Valuation procedures for open space and timber land. (1) **Introduction.** This section outlines the procedures set forth in RCW 84.34.060 about how to value land(s) classified as open space or timber land under the provisions of chapter 84.34 RCW.

(2) **Open space land.**

(a) In valuing land classified as open space, the assessor shall consider only the way in which the land and improvements are currently used; the assessor shall not consider potential uses of the land.

(b) The assessed value of open space land shall not be less than the minimum value per acre of classified farm and agricultural land.

(c) If open space land is located within a county where the county legislative authority has adopted an open space plan and a public benefit rating system in accordance with RCW 84.34.055, the assessed value of this open space land may be based on the public benefit rating system. The open space plan shall contain criteria for determining eligibility of lands, the process for establishing a public benefit rating system, and an assessed valuation schedule. An assessed valuation schedule shall be developed by the assessor and shall be a percentage of true and fair value based on the public benefit rating system.

(3) **Timber land.** The assessor shall value classified timber land according to the provisions of chapter 84.33 RCW.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-267, filed 10/4/95, effective 11/4/95.]

WAC 458-30-270 Data relevant to continuing eligibility—Assessor may require owner to submit. (1) **Introduction.** This section explains the types of data or information the assessor may require a person seeking continued classification or reclassification to submit so that land may retain its eligibility or be reclassified under chapter 84.34 RCW.

(2) **General authorization.** The assessor may require an owner of land classified under chapter 84.34 RCW to submit data relevant to the use of the land, productivity of typical crops, and other information pertinent to continued classification or reclassification and appraisal of the land. The assessor may request any relevant information that will assist him or her in determining whether the land is eligible for continued classification or reclassification. Relevant data or information includes, but is not limited to:

(a) Receipts from sales of agricultural products produced on classified land;

(b) Federal income tax returns including schedules documenting farm income, production costs, and other operating expenses;

(c) Rental or lease agreements and receipts;

(d) Government payments and subsidies;

(e) Crop and livestock production data; or

(f) Other income and expense information related to the land for which continued classification or reclassification is sought.

(3) **Request for information - procedure.** The assessor shall send the request for information by first class mail. The person seeking continued classification or reclassification must submit the requested information or data, in writing, no later than sixty calendar days following the date the request was mailed.

(a) If no response is received within sixty days, the assessor's office shall send the owner a second request for information by certified mail, return receipt requested. This second request shall include a statement that failure to submit the requested information or data within thirty calendar days of the date of mailing may cause the land to be removed from classification.

(b) If the owner of classified land does not respond to a request for information, the assessor may remove the land from classification.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-270, filed 10/4/95, effective 11/4/95. 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 upon sale or transfer of ownership of classified land. (1) **Introduction.** When land classified under chapter 84.34 RCW is sold or transferred certain procedures must be followed if the new owner wishes to keep the land in its present classified status. This section explains the required procedures and forms.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Affidavit" means the real estate excise tax affidavit that the department prescribes and furnishes to county treasurers for use by the owner in reporting sales and/or transfers of classified land. The form will require the signature, under the penalty of perjury, of the owner and purchaser or transferee or agents of each. See chapter 82.45 RCW and chapter 458-61 WAC for more specific details.

(b) "Notice of continuance" means the notice signed when land classified as open space, farm and agricultural, or timber land under the provisions of chapter 84.34 RCW is sold or transferred and when the new owner of the classified land wishes to have the land remain classified under the provisions of chapter 84.34 RCW. This notice may be either part of the real estate excise tax affidavit or a separate document created by the department.

(c) "Owner" means any person or persons having a fee interest in a parcel of land, except when the land is subject to a real estate contract and the vendee when the land is subject to a real estate contract. For purposes of this section, the owner or owners of classified land must all sign the notice of classification continuance and/or real estate excise tax affidavit.

(3) **General requirements.** When a parcel(s) of land classified as open space, farm and agricultural, or timber land under chapter 84.34 RCW is sold or transferred and the new owner wishes to keep the land in its classified status, the new owner must:

(a) Sign a notice of classification continuance that is part of a real estate tax affidavit. (See subsection (8) of this section for a discussion regarding this affidavit); and

(b) Provide the assessor with a signed statement that explains how the owner will use the parcel(s) of land so as to continue its eligibility for classification under the provisions of chapter 84.34 RCW; and

(c) Sign a separate notice of continuance prepared by the department if the county has decided that it will require new owners to submit such a form.

(4) **Assessor's duties and authority related to sale or transfers.** When land classified under chapter 84.34 RCW is in the process of being sold or transferred, the new owner must sign a notice of continuance and the statement described in subsection (3) of this section if he or she wishes the land to remain classified. This notice of continuance and signed statement shall be presented to the assessor who must determine if the land will continue to be used in a manner approved for classified status or if the land will not be used in a manner consistent with the current use program. The assessor shall be allowed a reasonable amount of time to determine whether the classified use of the land will be continued by the new owner.

(a) Upon receipt of the notice of classification continuance, the assessor may require the new owner to submit additional information including, but not limited to, the types of data listed in WAC 458-30-270.

(b) Within fifteen calendar days of receiving the notice of classification continuance, the signed statement, and all requested information, the assessor shall determine whether the land qualifies for continued classification as of the date of conveyance.

(c) The assessor may consult with the granting authority to determine if the land will qualify for continued classification. The assessor and/or the granting authority may ask the owner to submit additional information and pertinent data to ensure that the land will continue to be used for a classified use.

(d) No instrument of conveyance may be filed with the county auditor or recorded unless:

(i) The assessor has determined that the land will be used for current use purposes and can continue to be classified within the current use program;

(ii) If the land is no longer eligible to be classified within the current use program, the seller or transferor has paid the additional tax, applicable interest, and penalty;

(iii) The land will be removed from classification and the removal results solely from one of the exceptions listed in RCW 84.34.108(5) to the imposition of additional tax, applicable interest, and penalty. See also WAC 458-30-300 that implements this statute; or

(iv) In the case of a sale, a completed real estate excise tax affidavit has been submitted to the treasurer of the county in which the classified land is located. To be complete the real estate excise tax affidavit must indicate whether the land is classified under the provisions of chapter 84.34 RCW.

(e) If land must be removed from classification because it was sold or transferred as a result of any of the occurrences or actions listed in RCW 84.34.108(5), the assessor shall:

(i) Follow the standard procedures set forth in WAC 458-30-295 and 458-30-300 for removing the land from classification;

(ii) Notify the county treasurer and the seller or transferor that no additional tax, applicable interest, or penalty are due as a result of the sale or transfer because RCW 84.34.108(5) specifically exempts the transaction from the imposition of additional tax, applicable interest, and penalty; and

(iii) In the case of land acquired for conservation purposes by any of the entities listed in RCW 84.34.108 (5)(f), inform the new owner or transferee that if the land ceases to be used for the purposes enumerated in RCW 84.34.210 or 64.04.130, the additional tax, applicable interest, and penalty will be due.

(5) **Timber land.** When a parcel(s) of classified timber land is sold or transferred, the new owner must submit a timber management plan to the assessor in order to continue the classification, in addition to the general requirements listed in subsection (3) of this section. The assessor shall send a copy of the timber management plan to the county legislative authority of the county in which the classified land is located. WAC 458-30-232 contains a list of the types of additional information an assessor may require the new owner to submit so that the assessor can determine if the land will continue to be used to grow and harvest forest crops for commercial purposes.

(6) **Farm and agricultural land.** When a parcel(s) of classified farm and agricultural land is sold or transferred, the new owner must comply with the general requirements set forth in subsection (3) of this section. The size of the parcel(s) of farm and agricultural land sold or transferred will determine whether any additional requirements must also be satisfied. A parcel(s) of land that is less than twenty acres must produce a specified amount of income to remain classified as farm and agricultural land. After all required information is submitted, the assessor shall determine whether the land qualifies for continued classification.

(a) Twenty acres or more. If the parcel(s) sold or transferred is twenty acres or more, the new owner must satisfy the general requirements listed in subsection (3) of this section.

(b) Less than twenty acres. In a sale or transfer involving less than twenty acres, the new owner will be required to comply with the general requirements of subsection (3) of this section and may be asked to provide gross income data relating to the productivity of the farm or agricultural operation for three of the past five years. This information regarding the earning or productive capacity of the classified land will be used to determine if the land meets the income criteria listed in chapter 84.34 RCW and this WAC chapter.

(i) Minimum income limits are set forth in RCW 84.34.020 (2)(b)(i) and (ii) for parcels that are at least five but less than twenty acres in size and in RCW 84.34.020 (2)(c)(i) and (ii) for parcels that are less than five acres in size. Any sale or transfer of classified land, except to a surviving spouse, subject to these income limits. See WAC 458-30-210(3) and 458-30-317 for further information and details.

(ii) If, after January 1, 1993, classified land is sold by an owner who applied for and was granted classification prior to January 1, 1993, to a new owner, the minimum income requirements specified in RCW 84.34.020 (2)(b)(ii) and (c)(ii) will be deferred for a period of three years. The new owner must meet these minimum income limits at least once during the three calendar years immediately following the sale or transfer of the classified farm and agricultural land. For example, if classification was granted in 1978 to a fifteen acre parcel that produced a gross income of one hundred thirty dollars per acre per year and the land is sold on April 15, 1993, the minimum income requirements will be deferred until 1996. By the end of 1996, the new owner must provide proof that the parcel produced two hundred dollars per acre at least one year during the three-year period between 1993 and 1996. If the land has produced a gross income of two hundred dollars per acre the land will remain classified as farm and agricultural land. If the land has not produced this amount at least once during this three-year period, the land shall be removed from classification and the owner will be required to pay an additional tax, interest, and penalty.

(iii) If, after January 1, 1993, classified land is sold by an owner who applied for and was granted classification after January 1, 1993, the assessor will review the information regarding the productivity of the land for three out of the past five years to determine whether the minimum income limits set forth in RCW 84.34.020 (2)(b)(ii) or (c)(ii) have been met. For example, if a ten acre parcel was granted classification on May 1, 1993, and it is sold on February 23, 1994, the assessor will ask the seller and/or buyer of the classified land to provide information about the earning or production capacity of the land for at least the five calendar years preceding the sale (i.e., 1989 through 1993). To retain the current use classification, the land must have produced a minimum of two hundred dollars per acre per year at least three out of the five calendar years preceding the date of sale.

(c) Segregation of land. In a sale or transfer involving a land segregation, the owner of the newly created parcel(s), and the owner of the parcel(s) of land from which the segregated land was taken must comply with the requirements of (a) or (b) of this subsection before the assessor determines if the land qualifies for continued classification.

(7) **New owner's warranty.** The new owner, upon signing the notice of continuance, warrants that future use of the land will conform to the provisions of chapter 84.34 RCW and this WAC chapter.

(8) **Real estate excise tax.** Under the provisions of chapter 82.45 RCW whenever real property is sold or transferred an excise tax is imposed; the amount of this tax is related to the selling price of the real property. Real estate excise tax is due at the time of sale. This tax is paid to and collected by the treasurer of the county where the real property is located.

(a) The seller or the buyer, or the agent of either, of the real property must pay the excise tax and must submit a signed real estate excise tax affidavit to the treasurer of the county where the real property is located.

(b) When the ownership of classified land is sold or transferred to a new owner who intends to continue classification of the land under the provisions of chapter 84.34 RCW, the new owner must make a notation of this intent on the affidavit.

(c) No instrument of sale or conveyance evidencing a sale subject to the real estate excise tax may be accepted by the county auditor for filing or recording until a stamp is affixed to the affidavit by the treasurer that shows the tax has been paid. The county treasurer shall not stamp the instrument of sale or conveyance unless the assessor has determined that the classified use of the land will be continued or that the additional tax, interest, and/or penalty required under RCW 84.34.080 and 84.34.108, except as exempted under RCW 84.34.070 or 84.34.108(5), have been collected.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-275, filed 10/4/95, effective 11/4/95. Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-275, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-275, filed 11/15/88.]

WAC 458-30-280 Notice to withdraw from classification. (1) **Introduction.** When an owner of classified land wishes to withdraw all or part of this land from the current use program, the owner must submit a request to withdraw classification to the assessor. This section explains when an owner may request a withdrawal from classification under the provisions of chapter 84.34 RCW and what the assessor must do upon receipt of this request.

(2) **Definition.** For purposes of this section, the following definition applies: "Withdrawal" or "withdrawn" occurs when the owner of land classified under the provisions on chapter 84.34 RCW has filed a notice of request to withdraw all or a portion of the land from classification. In order to qualify for withdrawal, the parcel(s) of land must have been classified for a minimum of ten years and the owner must have filed a notice of request to withdraw with the assessor at least two years prior to the assessment year when the parcel will be valued at the assessed value as determined in accordance with the county's approved revaluation cycle. Land is withdrawn from classified status by a voluntary act of the owner.

(3) **Requirements - ten years and notice of request for withdrawal.** Except as otherwise provided, land classified under the provisions of chapter 84.34 RCW shall remain classified and shall not be applied to any other use for at least ten assessment years from the effective date of classification.

(a) During the ninth or later assessment year of classification, the owner may file with the assessor a notice of request for withdrawal. The request for withdrawal may involve all or part of the land.

(b) 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 for classification.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-280, filed 10/4/95, effective 11/4/95. 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. (1) **Introduction.** After a request to withdraw classification is received, the assessor is required to make a series of determinations. This section explains the procedures the assessor must follow upon receipt of a request for withdrawal.

(2) **Definition.** For purposes of this section, the following definition applies: "Withdrawal" or "withdrawn" occurs when the owner of land classified under the provisions of chapter 84.34 RCW has filed a notice of request to withdraw all or a portion of the land from classification. In order to qualify for withdrawal, the parcel(s) of land must have been classified for a minimum of ten years and the owner must have filed a notice of request to withdraw with the assessor at least two years prior to the assessment year when the parcel will be valued at the assessed value as determined in accordance with the county's approved revaluation cycle. Land is withdrawn from classified status by a voluntary act of the owner.

(3) **Complete or partial withdrawal.** Land that has been classified under chapter 84.34 RCW must be applied to the classified use and remain in its classified status for at least ten years from the date of classification. During the ninth or later year of classification, if the owner decides to have the land withdrawn from the current use program he or she must submit a request to withdraw classification.

(a) A parcel of land may be withdrawn from classification in whole or in part.

(b) The additional tax and applicable interest set forth in RCW 84.34.108 are due when land is withdrawn from classification. When a request to withdraw classification has been received by the assessor's office and an intervening act causes the current use classification to be removed before two assessment years have elapsed, the penalty described in RCW 84.34.108 (3)(c) is also due. However, if the removal is a result of one of the circumstances set forth in RCW 84.34.108(5) no additional tax, interest, or penalty will be imposed. (See WAC 458-30-300.)

(4) **Procedure for partial withdrawal.** If only a portion of the classified land is to be withdrawn from classification, the remaining parcel must meet the same requirements the entire parcel was required to meet when the land was originally granted classification unless the remaining parcel has different criteria. For example, if a thirty acre parcel of land was previously classified as farm and agricultural land and the owner now wishes to withdraw fifteen acres, the land that remains classified must meet the income production requirements set forth in RCW 84.34.020 (2)(b) even though the thirty acre parcel was not required to meet any income production requirements.

(a) The assessor may ask the owner of the remaining parcel of classified land to submit information relevant to continuing eligibility of the land under chapter 84.34 RCW. See WAC 458-30-270 for more details about such a request.

(b) If the parcel is classified as farm and agricultural land, the assessor shall verify that the remaining portion meets the requirements of RCW 84.34.020(2) and this WAC chapter.

(c) If the parcel is classified as open space or timber land, the assessor shall consult with the granting authority before determining whether the remaining portion meets the requirements of RCW 84.34.020 (1) and (3) and this WAC chapter. The granting authority may ask the owner to submit pertinent data that it considers necessary to assist it in making this determination.

(d) The assessor may segregate the portion from which classification is being withdrawn for valuation and taxation purposes.

(5) **Date of withdrawal and notice to owner.** According to RCW 84.34.070(1) the assessor shall withdraw land when two assessment years have elapsed following receipt of the request to withdraw classification. In other words, land shall be withdrawn from classification as of January 1st of the third assessment year after the request to withdraw classification is received by the assessor's office.

(a) Method for counting assessment years. The year in which the request to withdraw is received shall count as the first assessment year; the second assessment year shall begin on January 1 of the year immediately following the year in which the request was received; and the third assessment year shall begin on January 1 of the following year. (For example, if a request to withdraw classification is received on November 1, 1995, the first assessment year is 1995, the second assessment year is 1996, and the third assessment year is 1997. The land is withdrawn from classification as of January 1, 1997.)

(b) Notice to owner. No later than thirty days after withdrawing the land from classification, the assessor shall notify the owner in writing that classification has been withdrawn from the parcel(s).

(c) Valuation of land withdrawn from classification. When land has been withdrawn from classification, it shall be placed on the assessment roll at the assessed value as determined in the county's approved revaluation cycle.

(d) Example. An application for classification as open space land was submitted in April 1980 and approved effective assessment year 1981. In 1989, the owner submits a notice of request to withdraw all the land from classification. The assessor shall withdraw the land from classification as of January 1, 1991, which is the third assessment year after the request to withdraw classification was received; the land value shall be the assessed value as determined in accordance with the county's approved revaluation cycle on January 1 of assessment year 1991.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-285, filed 10/4/95, effective 11/4/95. Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-285, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-285, filed 11/15/88.]

WAC 458-30-295 Removal of classification. (1) **Introduction.** This section discusses the occurrences that may cause land to be removed from classification and the actions taken by an assessor relative to a removal. Classified land may be removed if it is no longer used for the purpose for which classification was granted or if the owner has sought reclassification of the land and the land does not meet the criteria for classification under chapter 84.34 or 84.33 RCW.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Reclassification" means the process by which land classified under chapter 84.34 or 84.33 RCW is changed from one classification to another classification established by chapter 84.34 RCW or into forest land as described in chapter 84.33 RCW. For example, land classified as farm and agricultural land under RCW 84.34.020(2) may be reclassified as either timber or open space land under the provisions of chapter 84.34 RCW or as forest land under the provisions of chapter 84.33 RCW.

(b) "Removal" means that all or a portion of land classified under the provisions on chapter 84.34 RCW must be removed from classification because the land is no longer being used for the purpose for which classification was granted or for any other classified use within the current use program. The change in use may occur because of the sale or transfer of the classified land, the request by the owner to remove the land from current use program, the determination by the assessor that the classified land no longer meets the criteria for classification under chapter 84.34 RCW, or any of the other occurrences listed in subsection (4) of this section.

(3) **General requirement.** If land classified under chapter 84.34 RCW is applied to a use other than the one for which classification is granted, the owner shall notify the assessor of the change in use within thirty days of the change. An additional property tax, applicable interest, and a penalty shall be imposed upon the land when it is removed from classification due to this change in use. See WAC 458-30-300 for details about the additional tax, interest, and/or imposed.

(4) **Actions that cause removal of land from classification.** When any of the following actions occur, the

assessor shall remove from classification all or a portion of the parcel:

(a) Receipt of a written notice from the owner directing removal of the land from classification;

(b) Sale or transfer of the land to an owner exempt from paying property taxes, except a transfer that resulted from a default in loan payments made to or secured by a governmental agency that intends to or is required by law or regulation to resell the land for the same use as before;

(c) Any change in use that occurs after a request to withdraw classification is made in accordance with the provisions of WAC 458-30-285 and before actual withdrawal of the classification;

(d) Sale or transfer of all or a portion of classified land to a new owner who is not exempt from paying property taxes and who has not signed a notice of classification continuance, except a transfer to an owner who is an heir or devisee of a deceased owner;

(e) Failure of an owner to respond to a request for data pursuant to WAC 458-30-270;

(f) When the owner has sought a reclassification of the land because the land no longer meets the criteria of the classification under which it is classified or the owner has decided to change the use of the classified land thereby requiring a change in classification and the land does not meet the requirements of the new classification; or

(g) 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 no longer meets the criteria for classification under chapter 84.34 RCW.

(i) Example 1. During an on-site inspection of a parcel of classified farm and agricultural land, the assessor discovers that the land is no longer being used for commercial agricultural purposes because the five acre parcel has been paved over and is currently being used as a parking lot for school buses.

(ii) Example 2. Based on information released at a public meeting of the county planning commission, the assessor learns that an owner of classified timber land has harvested all forest crops from the classified land, the land has been platted, public services such as roads, sewers, and domestic water supply have all been made available to the platted land, and at least six houses have been built on the classified timber land.

(iii) The assessor must notify the owner in writing regarding this determination, but may not remove classification until the owner has had an opportunity to respond.

(iv) The owner must respond, in writing, to the assessor's inquiry about the use of the classified land no later than thirty calendar days following the date this inquiry was mailed.

(v) If the parcel of land in question is classified as open space land or timber land, the assessor may ask the granting authority to provide reasonable assistance in determining whether the classified land continues to meet the criteria for classification. The granting authority shall provide this assistance within thirty days of receiving the request for assistance.

(5) **Notice to owner.** Within thirty days after the removal of all or a portion of the land from classification, the assessor shall notify the owner in writing of the reason(s) for the removal.

(6) **Right of appeal.** The seller, transferor, or owner may appeal the removal of land from classification to the board of equalization of the county in which the land is located. The appeal must be filed within thirty calendar days following the date the notice of removal was mailed by the assessor.

(7) **Assessor's duty after removal.** Unless the removal is reversed on appeal, the assessor shall revalue the previously classified land by consulting the existing assessment rolls that contain both the current use and the true and fair value of the land. After the effective date of the removal, the assessor will list only the true and fair value of the land on the assessment roll. The assessment roll will list both the assessed valuation before and after the removal of classification. Taxes will be prorated according to the portion of the year to which each assessed valuation applies.

(8) **Possible segregation after removal.** If only a portion of the land is being removed from classification, the assessor may segregate the affected portion for valuation and tax purposes.

(9) **Penalties due when land is removed.** The additional tax, applicable interest, and penalty set forth in RCW 84.34.108 will be due when land is removed from classification unless the removal is the result on one of transactions exempt under that statute. (See WAC 458-30-300.)

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-295, filed 10/4/95, effective 11/4/95. Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-295, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-295, filed 11/15/88.]

WAC 458-30-300 Additional tax—Withdrawal or removal from classification. (1) **Introduction.** When land is withdrawn or removed from classification an additional tax and applicable interest are due. A penalty is also due when land is removed. This section explains how the additional tax, applicable interest, and, if appropriate, penalty are calculated. It also sets forth the situations under which no additional tax, applicable interest, and/or penalty are due if land is withdrawn or removed from classification. The provisions of RCW 84.34.108 and 84.34.070(2) are outlined in this section.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Reclassification" means the process by which land classified under chapter 84.34 or 84.33 RCW is changed from one classification to another classification established by chapter 84.34 RCW or into forest land as described in chapter 84.33 RCW. The process of reclassification is a voluntary act taken on the part of an owner of classified land when the land must either be removed from classification or transferred to another classification to remain eligible under chapter 84.34 or 84.33 RCW. For example, land classified as farm and agricultural land under RCW 84.34.020(2) may be reclassified as either timber or open space land under the provisions of chapter 84.34 RCW or as forest land under the provisions of chapter 84.33 RCW.

(b) "Removal" means that all or a portion of land classified under the provisions of chapter 84.34 RCW must be removed from classification because the land is no longer being used for the purpose for which classification was granted or for any other classified use within the current use program. The change in use may occur because of the sale or transfer of the classified land, the request by the owner to remove the land from the current use program, the determination by the assessor that the classified land no longer meets the criteria for classification under chapter 84.34 RCW, or any of the other occurrences listed in WAC 458-30-295.

(c) "Withdrawal" or "withdrawn" occurs when the owner of land classified under the provisions of chapter 84.34 RCW has filed a notice of request to withdraw all or a portion of the land from classification. In order to qualify for withdrawal, the parcel(s) of land must have been classified for a minimum of ten years and the owner must have filed a notice of request to withdraw with the assessor at least two years prior to the assessment year when the parcel will be valued at the assessed value as determined in accordance with the county's approved revaluation cycle. Land is withdrawn from classified status by a voluntary act of the owner.

(3) **Duties of assessor and county treasurer.** When land is withdrawn from classification the assessor shall compute an additional tax and applicable interest and when land is removed from classification the assessor shall compute an additional tax, applicable interest, and penalty. As soon as possible after determining that the land is to be withdrawn or removed from classification, the assessor shall compute the amount of the additional tax, applicable interest, and, if appropriate, penalty, except as provided in subsection (6) of this section. The county treasurer shall mail a notice to the owner regarding the additional tax, applicable interest, and penalty due and the date on which the total amount is due. The additional tax, applicable interest, and penalty shall be due and payable to the county treasurer thirty days after the notice is mailed to the owner.

(4) **Amount of additional tax, applicable interest, and penalty.** The amount of additional tax, applicable interest, and penalty shall be determined as follows:

(a) The amount of additional tax shall be equal to the difference between the property tax that was levied on the land based on its classified current use value and the tax that would have been levied on its true and fair value for the seven tax years preceding the withdrawal or removal, in addition to the portion of the tax year when the withdrawal or removal takes place;

(b) The amount of applicable interest shall be equal to the interest on the amount of additional tax determined under (a) of this subsection at the statutory rate, specified in RCW 84.56.020, charged on delinquent property taxes starting from the date the tax could have been paid without interest to the date the additional tax is paid; and

(c) The amount of penalty shall be twenty percent of the additional tax and applicable interest; that is, twenty percent of the total amount computed in (a) and (b) of this subsection. A penalty is not imposed when:

(i) The land has been classified for at least ten years at the time of declassification and the owner has given the assessor a request to withdraw classification two years in advance of the date the classified land will be withdrawn, in accordance with RCW 84.34.070; or

(ii) The change in use was the result of one of the circumstances listed in RCW 84.34.108(5). See subsection (6) of this section for a detailed list of these circumstances.

(5) **Failure to sign notice of continuance.** If a new owner fails to sign the notice of classification continuance when classified land is sold or transferred, an additional tax, applicable interest, and penalty shall be calculated according to subsection (4) of this section.

(6) **Exceptions - no additional tax, applicable interest, or penalty are due.** When all or a portion of classified land is withdrawn or removed from classification, no additional tax, applicable interest, or penalty shall be imposed if the withdrawal or removal is the result of one or more of the following circumstances:

(a) Transfer to a governmental entity in exchange for other land located within the state of Washington;

(b) A taking through the exercise of the power of eminent domain or the sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of this power, said entity having manifested its intent to exercise the power of eminent domain in writing or by other official action;

(c) 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;

(d) Official action by an agency of the state of Washington or by the county or city in which the land is located disallowing the current use of classified land. For the purposes of this section, "official action" may include, but is not limited to, city ordinances, zoning restrictions, Growth Management Act, Shoreline Protection Act, and Environmental Protection Act(s);

(e) Transfer of land to a church when the land would qualify for property tax exemption pursuant to RCW 84.36.020. The conditions set forth in RCW 84.36.020 shall only apply to the affected parcel of land and shall not relieve any portion not so affected from the potential tax liability;

(f) Acquisition of property interests by public agencies or private organizations qualified under RCW 84.34.210 or 64.04.130 for the purposes specified therein. See subsection (7) of this section for a listing of these agencies, organizations, and purposes. However, when the property interests are not used for the purposes enumerated in these statutes, the additional tax, applicable interest, and penalty specified in subsection (4) of this section shall be imposed;

(g) Removal of land that was granted classification as farm and agricultural land under RCW 84.34.020 (2)(d) because the principal residence of the farm operator or owner and/or housing for farm and agricultural employees was situated on it; or

(h) The result of one of the following changes in classification:

(i) Reclassification from farm and agricultural land under RCW 84.34.020(2) to timber land under RCW 84.34.020(3), open space land under RCW 84.34.020(1), or forest land under chapter 84.33 RCW;

(ii) Reclassification from timber land under RCW 84.34.020(3) to farm and agricultural land under RCW 84.34.020(2), open space land under RCW 84.34.020(1), or forest land under chapter 84.33 RCW;

(iii) Reclassification from open space/farm and agricultural conservation land under RCW 84.34.020 (1)(c) to farm and agricultural land under RCW 84.34.020(2) if the land was previously classified as farm and agricultural land; or

(iv) Reclassification from forest land under chapter 84.33 RCW to open space land under RCW 84.34.020(1).

(7) **Land acquired by agencies or organizations qualified under RCW 84.34.210 or 64.04.130.** If the purpose for acquiring classified land is to protect, preserve, maintain, improve, restore, limit the future use of, or conserve the land for open space purposes and otherwise conserve the land for public use or enjoyment and the classified land is acquired by any of the following entities, no additional tax, applicable interest, or penalty are due as long as the property is used for one of the purposes listed in this subsection:

(a) State agency;

(b) Federal agency;

(c) County;

(d) City;

(e) Town;

(f) Metropolitan park district;

(g) Metropolitan municipal corporation;

(h) Nonprofit historic preservation corporation as defined in RCW 64.04.130; or

(i) Nonprofit nature conservancy corporation or association as defined in RCW 84.34.250.

(8) **Removal of classification from land that was previously classified or designated forest land under chapter 84.33 RCW.** Land that was previously classified or designated as forest land under chapter 84.33 RCW may be reclassified under RCW 84.34.020. If the current use classification is subsequently removed before the land has been classified for at least ten assessment years under chapter 84.34 RCW, a combination of compensating tax and additional tax shall be due. RCW 84.33.145 explains the way in which these taxes are calculated.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-300, filed 10/4/95, effective 11/4/95. Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-300, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-300, filed 11/15/88.]

WAC 458-30-305 Due date of additional tax, applicable interest, and penalty upon withdrawal or removal. (1) **Introduction.** This section specifies the date upon which the additional tax, applicable interest, and, if appropriate, penalty are due when land is withdrawn or removed from classification under chapter 84.34 RCW. This section also explains the consequences of failure to timely pay these charges.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Removal" means that all or a portion of land classified under the provisions of chapter 84.34 RCW must be removed from classification because the land is no longer being used for the purpose for which classification was granted or for any other classified use within the current use program. The change in use may occur because of the sale or transfer of the classified land, the request by the owner to remove the land from the current use program, the determination by the assessor that the classified land no longer meets the criteria for classification under chapter 84.34 RCW, or any of the other occurrences listed in WAC 458-30-295.

(b) "Withdrawal" or "withdrawn" occurs when the owner of land classified under the provisions of chapter 84.34 RCW has filed a notice of request to withdraw all or a portion of the land from classification. In order to qualify for withdrawal, the parcel(s) of land must have been classified for a minimum of ten years and the owner must have filed a notice of request to withdraw with the assessor at least two years prior to the assessment year when the parcel will be valued at the assessed value as determined in accordance with the county's approved revaluation cycle. Land is withdrawn from classified status by a voluntary act of the owner.

(3) **Result of a sale or transfer.** If a parcel of land is withdrawn or removed from classification because of a sale or transfer, the additional tax, applicable interest, and penalty, if owed, are due and payable at the time of the sale or transfer.

(4) **General rule - withdrawal or removal due to all other circumstances.** Except for a sale or transfer, the additional tax, applicable interest, and penalty, if owed, are due no later than thirty days after the date the county treasurer mails the written notice to the owner regarding the amounts owed. This notice shall also state the date upon which the amounts owed are due.

(5) **Failure to timely pay - delinquency.** Any additional tax, applicable interest, or penalty that is unpaid on its due date is delinquent. Interest shall be charged on the total amount due at the same rate as applied by law to delinquent property taxes (RCW 84.56.020) from the date of the delinquency until the date the total amount is paid in full.

(6) **Additional tax, applicable interest, and penalty constitute a lien.** When classification is withdrawn or removed from a parcel of land, the additional tax, applicable interest, and/or penalty shall become a lien on the parcel of land as of the date of withdrawal or removal. This lien shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which this land may become charged or liable. The lien may be foreclosed at the same time and in same manner provided by law for foreclosure of liens for delinquent real property taxes as set forth in RCW 84.64.050.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-305, filed 10/4/95, effective 11/4/95. Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-305, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-305, filed 11/15/88.]

WAC 458-30-310 County recording authority—Duties. (1) **Introduction.** This section explains the conditions under which documents will be accepted by the county recording authority under the provisions of chapter 84.34 RCW.

(2) **Limited documents may be accepted.** The county recording authority shall not accept for recording any instrument of conveyance involving a parcel of land classified according to chapter 84.34 RCW unless:

(a) Any required additional tax, applicable interest, and/or penalty has been paid;

(b) The notice of continuance on the real estate excise tax affidavit is signed by the new owner or transferee; or

(c) The land is to be removed from classification and the removal results solely from one of the exceptions listed in RCW 84.34.108(5) to the imposition of additional tax, applicable interest, and penalty. See also WAC 458-30-300 that implements this statute.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-310, filed 10/4/95, effective 11/4/95. Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-310, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-310, filed 11/15/88.]

WAC 458-30-315 County financial authority—Duties. (1) **Introduction.** This section explains the duties of the county financial authority when a parcel of land is withdrawn or removed from classification under chapter 84.34 RCW.

(2) **Duties and responsibilities.** The county financial authority shall take the following actions:

(a) Upon receipt of a notice of withdrawal of classification from the assessor, the financial authority shall bill and collect all additional taxes and applicable interest due pursuant to RCW 84.34.070 and WAC 458-30-300.

(b) Upon receipt of a notice of removal of classification, the financial authority shall bill and collect all additional taxes, applicable interest, and penalties due pursuant to RCW 84.34.108 and WAC 458-30-300.

(c) Upon collection of the additional tax, applicable interest, and penalty by the financial authority, these funds shall be distributed in the same manner as current taxes applicable to the subject land are distributed.

(d) The financial authority shall treat any additional tax, applicable interest, and penalty that are not timely paid in the same manner as delinquent property taxes.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-315, filed 10/4/95, effective 11/4/95. Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-315, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-315, filed 11/15/88.]

WAC 458-30-317 Principal residence of farm operator or housing for farm and agricultural employees. (1) **Introduction.** Under RCW 84.34.020 (2)(d) the land on which the principal residence of the farm operator or owner of farm and agricultural land is situated and the housing for farm and agricultural employees is situated may be classified as farm and agricultural land.

This section explains the criteria that must be met to include this type of residence or employee housing within the farm and agricultural land classification and the procedure used to value a classified residence or housing.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Farm employee or farm and agricultural employee" means an individual who is employed on farm and agricultural land on a full-time basis or a seasonal or migratory worker who works on farm and agricultural land only during the planting, growing, and/or harvesting seasons.

(i) For purposes of this section, "full-time basis" refers to an individual who is employed at least twenty-five hours per week on farm and agricultural land.

(ii) The term does not include a person who is employed full time by a business activity that is not conducted on classified farm and agricultural land and who only works occasional weekends or during the harvest season on classified farm and agricultural land.

For example, housing occupied by a person who works full time at a foundry and who works on a farm only two weeks per year helping with the wheat harvest should not be granted classification.

(b) "Integral" means that which is central to or inherent in the use or operation of classified farm and agricultural land for commercial agricultural purposes. For purposes of this section, the residence of the farm operator or owner and/or housing for farm employees must be the place(s) from which the farmer conducts his commercial agricultural business.

(c) "True and fair value" means 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. The term also refers to market value; that is, the amount of money a buyer willing but not obligated to buy would pay to a seller willing but not obligated to sell for the real property.

(3) **Requirements for classification.** The land on which the principal residence of a farm operator or the owner of land is situated and the housing for farm or agricultural employees is situated may be classified as farm and agricultural land if it meets the following conditions:

(a) The land on which the residence or housing stands is twenty or more acres or multiple parcels that are contiguous and total twenty or more acres; and

(i) Primarily used to produce livestock or agricultural products for commercial purposes; or

(ii) Enrolled in the federal Conservation Reserve Program or its successor administered by the United States Department of Agriculture; and

(b) The use of the residence or housing is integral to the use of the classified land for commercial agricultural purposes.

(4) **Examples.**

(a) On a parcel of land twenty acres or more, there are two dwellings: One is the principal residence of the farm operator or owner of classified farm and agricultural land and the second is inhabited by the owner's son who is employed full time at a foundry in town and works on the farm only during harvest time. The land on which the principal residence is situated may be classified as farm and agricultural land if the use of the dwelling is integral to the use of the classified land. The land on which the second home is situated may not be included within the farm and agricultural land classification because it is not inhabited by a farm employee as defined in subsection (2) of this section.

(b) On a parcel of land twenty acres or more, there are two dwellings: One is the principal residence of the farm operator or owner of farm and agricultural land and the second is inhabited by seasonal farm workers who work on the farm only during harvest time. The land on which both dwellings are situated may be classified as farm and agricultural land if the use of the dwellings are integral to the use of the classified land.

(c) On a parcel of classified land that is twenty acres, there is one dwelling. This dwelling is occupied by the owner of the classified land but the owner does not run the farm. The farm is leased to a cooperative that conducts the commercial agricultural activities of the farm from central administrative headquarters that are not located on the classified land. The land on which this dwelling stands may not be classified as farm and agricultural land because the use of the dwelling is not integral to the commercial agricultural purposes of the farm.

(5) **Valuation.**

(a) The land. The land on which the principal residence of a farm operator or owner of farm and agricultural land or the housing for farm and agricultural employees is situated shall be valued in the following manner:

(i) The prior's year average value of classified farm and agricultural land in the county; plus

(ii) The value of land improvements used to serve the residence or housing, such as sewer, water, and power.

(iii) If the use of the residence or housing for employees is not integral to the farming operation, the land on which the residence or housing stands shall be valued at its true and fair value in accordance with WAC 458-12-301.

(b) The principal residence or housing for employees. The building(s) used by the farm operator or owner as his or her principal residence and building(s) used to provide shelter to farm and agricultural employees shall be valued at its true and fair value in accordance with WAC 458-12-301.

(c) Excluded structures. The land on which storeyards, barns, machine sheds, and similar type structures are located shall not be considered as part of the principal residence of the farm operator or owner nor housing for farm and agricultural employees. However, the land upon which these structures stand may be classified as farm and agricultural land generally.

(6) **Withdrawal or removal.** Additional tax, interest, and penalty, if owed, are not imposed if farm and agricultural land classified under RCW 84.34.020 (2)(d) is withdrawn or removed from classification.

(7) **Effect of 1992 legislation on county revaluation cycle.** Land on which the farm owner's or operator's residence is located and land on which the housing for farm and agricultural employees is located shall be revalued in accordance with the 1992 legislative changes, described in subsection (5) of this section, only in the assessment year when the land is being revalued in accordance with the county's revaluation cycle.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-317, filed 10/4/95, effective 11/4/95.]

WAC 458-30-320 Assessment and tax rolls. (1) **Introduction.** This section explains the manner in which land classified under chapter 84.34 RCW is to be listed on the assessment and tax rolls.

(2) **Listing of current use land.** When land has been classified under chapter 84.34 RCW, the assessor shall annually enter on the assessment and tax rolls, the current use value and the true and fair value of that land. The assessor shall provide notice of these values to the county financial authority who shall list these values in the place and manner provided for public recording of tax liens on real property.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-320, filed 10/4/95, effective 11/4/95. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-320, filed 11/15/88.]

WAC 458-30-325 Transfers between classifications—Application for reclassification. (1) **Introduction.** This section discusses the process by which classified land is reclassified under another classification of chapter 84.34 RCW or under chapter 84.33 RCW.

(2) **Definitions.** For purposes of this section the following definitions apply:

(a) "Reclassification" means the process by which land classified under chapter 84.34 or 84.33 RCW is changed from one classification to another classification established by chapter 84.34 RCW or into forest land as described in chapter 84.33 RCW. The process of reclassification is a voluntary act taken on the part of an owner of classified land when the land must either be removed from classification or transferred to another classification to remain eligible under chapter 84.34 RCW or 84.33 RCW. For example, land classified as farm and agricultural land under RCW 84.34.020(2) may be reclassified as either timber or open space land under the provisions of chapter 84.34 RCW or as forest land under the provisions of chapter 84.33 RCW.

(b) "Removal" means that all or a portion of land classified under the provisions on chapter 84.34 RCW must be removed from classification because the land is no longer being used for the purpose for which classification was granted or for any other classified use within the current use program. The change in use may occur because of the sale or transfer of the classified land, the request by the owner to remove the land from the current use program, the determination by the assessor that the classified land no longer meets the criteria for classification under chapter 84.34 RCW, or any of the other occurrences listed in WAC 458-30-295.

(3) **General information - when reclassification is required.** When the current use program was revised in 1992, the statutes were changed to allow a transfer or reclassification between the different classifications of chapter 84.34 RCW and forest land under chapter 84.33 RCW. The following circumstances may cause reclassification to be sought:

(a) The classified land is no longer being used for the purpose for which it was granted classification;

(b) The owner or new owner of classified land has decided to change the use of classified land;

(c) The classified land no longer meets the requirements of the classification under which it was granted classification; for example, farm and agricultural land that does not produce the minimum income required by RCW 84.34.020 (2)(b) and (c);

(d) The new owner is an heir or devisee of a deceased owner who held classified land and the new owner either does not or cannot meet the requirements of the classification under which it was granted classification; or

(e) The assessor has determined that the classified land is no longer eligible under the existing classification and the land must either be reclassified or removed from classification.

(4) **Reclassification process if land is subject to removal.** Within thirty days of receiving notice from the assessor that the classified land is to be removed from the current use program, the owner must submit an application for reclassification to another classification under chapter 84.34 or 84.33 RCW. The removal notice shall include a statement that informs the owner of the classified land that he or she may seek reclassification. If the application for reclassification is submitted within thirty days, the classified land shall not be removed from classification until the application for reclassification is approved or denied.

(5) **Reclassification when owner seeks change of classification.** An owner of land classified under 84.34 RCW may seek reclassification of that land under a different current use classification or may seek classification or designation as forest land under chapter 84.33 RCW. The owner of classified land may seek reclassification because of a desire to change the use of the classified land or because he or she does not want to meet or cannot meet the requirements of the classification under which the land is currently classified.

(a) The owner must submit an application for reclassification to the assessor of the county in which the land is located. This form shall be designed by the department and supplied to county assessors.

(b) Within seven days of receipt of this request, the assessor shall forward a copy of this application for reclassification to the appropriate granting authority. The assessor shall retain a copy of all applications for reclassification.

(c) The status of classified land for which reclassification is sought shall not be changed until the application for reclassification is approved or denied.

(6) **Application procedure.** An application for reclassification shall be handled in the same manner as an initial application for classification, which may include payment of an application fee if the county requires one. All classification requirements of RCW 84.34.035 for farm and agricultural land, RCW 84.34.037 for open space land, RCW 84.34.041 for timber land, and chapter 84.33 RCW for forest land must be satisfied in order to reclassify land. (These requirements are also described in WAC 458-30-225, 458-30-230, 458-30-232, 458-30-242, and chapter 458-40 WAC.)

(a) When evaluating an application for reclassification, the granting authority will follow the same procedures it has for processing an initial application for classification under chapter 84.34 or 84.33 RCW.

(b) An application for reclassification may be approved or denied in whole or in part.

(i) The granting authority shall notify the applicant in writing of the extent to which the application for reclassification is approved or denied.

(ii) The applicant shall have the same appeal rights in relation to a denial of an application for reclassification as he or she has in regards to an initial application for classification.

(iii) If an application for reclassification is denied, the assessor shall remove the land from classification and shall calculate the additional tax, applicable interest, and penalty in the manner set forth in WAC 458-30-300.

(7) **Reclassifications exempt from additional tax.** No additional tax, applicable interest, and penalty are due when the reclassification is a result of any of the following transfers between classifications:

(a) Reclassification from farm and agricultural land under RCW 84.34.020(2) to timber land under RCW 84.34.020(3), open space land under RCW 84.34.020(1), or forest land under chapter 84.33 RCW;

(b) Reclassification from timber land under RCW 84.34.020(3) to farm and agricultural land under RCW 84.34.020(2), open space land under RCW 84.34.020(1), or forest land under chapter 84.33 RCW;

(c) Reclassification from open space/farm and agricultural conservation land under RCW 84.34.020 (1)(c) to farm and agricultural land under RCW 84.34.020(2) if the land was previously classified as farm and agricultural land; or

(d) Reclassification from forest land under chapter 84.33 RCW to open space land under RCW 84.34.020(1).

(8) **Income criteria of land to be reclassified.** The income criteria relating to the following reclassifications may be deferred for a period of up to five years from the date of reclassification when:

(a) Land classified as open space/farm and agricultural conservation land under RCW 84.34.020 (1)(c) or timber land under RCW 84.34.020(3) is reclassified as farm and agricultural land under RCW 84.34.020 (2)(b) and (c); or

(b) Land classified or designated as forest land under chapter 84.33 RCW is reclassified as farm and agricultural land under RCW 84.34.020 (2)(b) and (c).

(9) **Valuation of reclassified land.** The assessed value of land that has been reclassified shall reflect the new classification as of January 1 of the assessment year following the reclassification. For example, if an application for reclassification from farm and agricultural land to open space/farm and agricultural conservation land is submitted on February 15, 1993, and approved effective June 1, 1993, the land shall be valued and assessed as open space/farm and agricultural conservation land on January 1, 1994, and the owner shall pay taxes on this new assessed value in 1995.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-325, filed 10/4/95, effective 11/4/95. Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-325, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-325, filed 11/15/88.]

WAC 458-30-330 Rating system—Authorization to establish. (1) **Introduction.** This section sets forth the general authority that has been conferred on a county legislative authority to establish an open space plan and a public benefit rating system under RCW 84.34.055.

(2) **General authorization.** The county legislative authority may direct the county planning commission to set open space priorities and to adopt, following a public hearing, an open space plan and a public benefit rating system for the county. The open space plan shall include, but is not limited to, the following:

(a) Criteria to determine eligibility of land;

(b) A process for establishing a public benefit rating system; and

(c) An assessed valuation schedule that shall be developed by the assessor and shall be a percentage of true and fair value based on the public benefit rating system.

(3) **Public hearing required.** At least one public hearing must be held before an open space plan, a public benefit rating system, or an assessed valuation schedule may be approved by the county legislative authority.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-330, filed 10/4/95, effective 11/4/95. 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—Procedure to establish. (1) **Introduction.** This section discusses the factors that must be considered when a public benefit rating system is established under RCW 84.34.055. It also includes a nonexclusive list of recognized sources to be used in determining open space priorities.

(2) **Rating of land.** The public benefit rating system shall provide for the rating of parcel(s) of land classified as open space under chapter 84.34 RCW.

(3) **Criteria.** The county legislative authority shall include within the public benefit rating system the criteria contained in chapter 84.34 RCW. The granting authority shall consider this criteria when acting on an application for classification or reclassification.

(4) **Open space plan-recognized sources.** 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.

(a) Recognized sources of open space priorities include, but are not limited to:

(i) The natural heritage data base;

(ii) The state office of historic preservation;

(iii) The interagency committee for outdoor recreation inventory of dry accretion beach and shoreline features;

(iv) The state, national, county, and/or state registers of historic places;

(v) The shoreline master program; or

(vi) Studies conducted by the parks and recreation commission and by the departments of fisheries, natural resources, and wildlife.

(b) Particular features and sites may be verified by an outside expert in the field and approved by the appropriate state or local agency to be sent to the county legislative authority for final approval as open space.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-335, filed 10/4/95, effective 11/4/95. 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—Adoption—Notice to owner—Loss of classification. (1) **Introduction.** This section outlines the procedures that must be followed when an open space plan and a public benefit rating system have been approved and the effects of this adoption on owners of land classified as open space at the time of adoption under the provisions of RCW 84.34.055.

(2) **Notice to owner upon classification - request for removal.** When the county legislative authority has adopted an open space plan and a public benefit rating system, the assessor shall notify all owners of land classified as "open space" of the new assessed value of their land in the same manner as provided in RCW 84.40.045.

(a) Within thirty days of receipt of this notice of new assessed value, the owner may request that the parcel(s) of land be removed from the classification without additional tax, interest, or penalty.

(b) If land classified as open space no longer qualifies for this classification after an open space plan and a public benefit rating system are adopted, the land shall not be removed from the open space classification, but it may be rated in accordance with the public benefit rating system.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-340, filed 10/4/95, effective 11/4/95. 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. (1) **Introduction.** This section explains how the advisory committee mandated by RCW 84.34.145 is formed, the type of advice this committee may give the assessor, and the consequences of not forming this committee.

(2) **Formation.** The county legislative authority shall appoint a five-member advisory committee representing the active farming community to advise the assessor in implementing assessment guidelines as established by the department for open space, farm and agricultural, and timber land classified under the provisions of chapter 84.34 RCW, unless the county legislative authority finds insufficient interest by the farming community in the formation of such a committee.

(a) The committee shall elect officers and adopt operating procedures.

(b) All meetings and records shall be open to the public according to chapters 42.30 and 42.17 RCW.

(c) Upon appointment, each member of the advisory committee shall serve a one-year term.

(d) Members may be removed from the advisory committee by majority vote of the county legislative authority.

(3) **Type of advice.** 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 the assessor in determining appropriate values.

(4) **Failure to appoint advisory committee.** 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 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-345, filed 10/4/95, effective 11/4/95. Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-345, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. 88-23-062 (Order PT 88-12), § 458-30-345, filed 11/15/88.]

WAC 458-30-350 Reclassification of lands classified under chapter 84.34 RCW prior to 1973. (1) **Introduction.** This section explains the affect of the 1973 act on land that was classified under chapter 84.34 RCW prior to July 16, 1973.

(2) **General reclassification mandated.** Land classified under the provisions of chapter 84.34 RCW prior to July 16, 1973, that meets the criteria for classification under the provisions of chapter 84.34 RCW, as amended, is hereby reclassified.

(a) This change shall be made without additional tax, applicable interest, penalty, or other requirements.

(b) After it has been reclassified, the land shall be fully subject to the provisions of chapter 84.34 RCW.

(c) If prior to July 16, 1973, the granting authority imposed a condition upon land classified as open space or timber land, the condition shall remain in effect during the period of classification.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-350, filed 10/4/95, effective 11/4/95. 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. (1) **Introduction.** This section explains that the agreement to tax according to current use is a noncontractual agreement that may be annulled or cancelled at any time by the legislature.

(2) **No contractual obligation.** The agreement to tax land according to its current use is not a contract between the owner and any other party. This agreement can be abrogated, annulled, or cancelled at any time by the legislature in which event no additional tax, interest, and/or penalty shall be imposed. In other words, if the changes made to the Open Space Taxation Act or chapter 84.34 RCW by the legislature cause classified land to be removed from classification, the owner of the land shall not be required to pay the additional tax, interest, or penalty that is generally imposed when land is removed from classification.

(a) Example 1. The legislature eliminates the timber land classification from chapter 84.34 RCW. All land classified as timber land shall be removed from classification and no additional tax, interest, or penalty will be imposed because the legislature caused the removal of the land when it eliminated the timber land classification from the Open Space Taxation Act.

(b) Example 2. The legislature amends RCW 84.34.020(2) so that only parcels of twenty acres or more may be granted classified status as farm and agricultural land. All parcels of classified farm and agricultural land that are less than twenty acres in size may be removed from classification and no owner of such land may be required to pay any additional tax, interest, or penalty because the legislature's action caused the removal of the land.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-355, filed 10/4/95, effective 11/4/95. 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 458-30-360 Correction of erroneous classification or reclassification. (1) **Introduction.** If an application for classification or reclassification is approved and the land is mistakenly placed in the wrong classification, the assessor has the authority to correct this error under RCW 84.34.045. This section explains the assessor's responsibility and authority to correct classification or reclassification errors. RCW 84.34.045 and this section will expire on December 31, 1995.

(2) **General authority to correct errors.** When an application for the classification or reclassification of land under RCW 84.34.020 (1), (2), or (3) is approved and the land is placed in the wrong classification, the assessor may correct the error and place the land in the correct classification.

(a) After discovery of the error in classification, the assessor may ask the owner to submit additional information to determine if the land will qualify under another classification set forth in RCW 84.34.020.

(b) The owner is not required to submit a new application for classification or reclassification, but the assessor may request a new application if he or she feels that the circumstances have substantially changed or a substantial amount of time has passed since the original application was submitted.

(c) If, after discovery of the error, the assessor determines that the land does not meet the criteria for any classification set forth in RCW 84.34.020 and should not have been classified under chapter 84.34 RCW, the land shall be removed from classification and the additional tax, applicable interest, and penalty imposed by RCW 84.34.108 shall be collected.

(3) **Notice of correction required.** When the assessor extracts the land from the erroneous classification and places it in the correct classification, the assessor shall notify the landowner of this correction. The assessor shall also notify the owner of the requirements necessary to keep the land classified in the corrected classification.

(4) **No additional tax due on correction.** The correction of errors made in accordance with this section is not considered a withdrawal or removal from classification and no additional tax, applicable interest, and/or penalty imposed by RCW 84.34.108 are due.

(5) **Expiration date.** RCW 84.34.045 that gives the assessor the ability to correct erroneous classifications or reclassifications will expire on December 31, 1995. Consequently, this section will also expire on December 31, 1995.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-360, filed 10/4/95, effective 11/4/95.]

WAC 458-30-500 Definitions of terms used in WAC 458-30-500 through 458-30-590. (1) **Introduction.** This section sets forth the definitions to be used in administering and understanding the statutes and rules relating to special benefit assessments on classified farm and agricultural and timber land.

(2) **Definitions.** For the purposes of WAC 458-30-500 through 458-30-590, unless otherwise required by the context, the following definitions apply:

(a) "Average rate of inflation" means the annual rate of inflation adopted each year by the department of revenue in accordance with WAC 458-30-580 averaged over the period of time provided in WAC 458-30-550 and 458-30-570.

(b) "Connection charge" or "charge for connection" means the charge required to be paid to the district for connection to the service as opposed to the assessment based upon the benefits derived.

(c) "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 the districts.

(d) "Farm and agricultural land" means land classified under the provisions of RCW 84.34.020(2); in other words, one of the following:

(i) Any parcel of land twenty or more acres in size or multiple parcels of land that are contiguous and total twenty or more acres in size when the land is:

(A) Primarily used to produce livestock or agricultural products for commercial purposes;

(B) Enrolled in the federal Conservation Reserve Program or its successor administered by the United States Department of Agriculture; or

(C) Primarily used in similar commercial agricultural activities as may be established by rule.

(ii) Any parcel of land or contiguous parcels of land at least five acres, but less than twenty acres, in size that is primarily used for commercial agricultural purposes, and produces a gross income each year equal to:

(A) 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 when the application was made prior to January 1, 1993; or

(B) Two hundred dollars or more in cash per acre per year for three of the five calendar years preceding the date of application for classification when the application is made on or after January 1, 1993.

(iii) Any parcel of land or contiguous parcels of land less than five acres in size that is primarily used for commercial agricultural purposes, and produces a gross income each year equal to:

(A) One thousand dollars or more in cash per year for three of the five calendar years preceding the date of application for classification when the application was made prior to January 1, 1993; and

(B) One thousand five hundred dollars or more in cash per year for three of the five calendar years preceding the date of application for classification when the application is made on or after January 1, 1993.

(iv) Any parcel of land that is twenty or more acres in size or multiple parcels of land that are contiguous and total twenty or more acres in size on which housing for farm and agricultural employees and the principal residence of the farm operator or the owner of land classified pursuant to RCW 84.34.020 (2)(a) is situated if:

(A) The housing or residence is on or contiguous to the classified parcel; and

(B) The use of the housing or the residence is integral to the use of the classified parcel for agricultural purposes.

(e) "Final assessment roll" means a final special benefit assessment roll approved or confirmed by local government for the purpose of levying special benefit assessments against property specially benefited by a sanitary and/or storm sewerage system, domestic water supply and/or distribution system, or road construction and/or improvement.

(f) "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 and/or improvement purposes.

(g) "Owner" means:

(i) Any person(s) having the fee interest in land, except that where land is subject to real estate contract; and

(ii) The vendee when the land is subject to a real estate contract.

(h) "Removal" or "removed" means that all or a portion of land classified under the provisions of chapter 84.34 RCW must be removed from classification because the land is no longer being used for the purpose for which classification was granted or for any other classified use within the current use program. The change in use may occur because of the sale or transfer of the classified land, the request by the owner to remove the land from the current use program, the determination by the assessor that the classified land no longer meets the criteria for classification under chapter 84.34 RCW, or any of the other occurrences listed in WAC 458-30-295.

(i) "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 that may be levied only for the special benefits to be realized by property because of the local improvement.

(j) "Timber land" means land classified under the provisions of RCW 84.34.020(3); in other words, any parcel of land five or more acres in size or multiple parcels of land that are contiguous and total five or more acres in size that is primarily used to commercially grow and harvest forest crops. "Timber land" refers only to the land.

(k) "Withdrawal" or "withdrawn" occurs when the owner of land classified under the provisions of chapter 84.34 RCW has filed a notice of request to withdraw all or a portion of the land from classification. In order to qualify for withdrawal, the parcel(s) of land must have been classified for a minimum of ten years and the owner must have filed a notice of request to withdraw with the assessor at least two years prior to the assessment year when the parcel will be valued at the assessed value as determined in accordance with the county's approved revaluation cycle. Land is withdrawn from classified status by a voluntary act of the owner.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-500, filed 10/4/95, effective 11/4/95. 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—Adoption of final assessment roll. (1) **Introduction.** RCW 84.34.320 requires local government officials to take certain steps upon "creation" of a district and upon adoption or confirmation of a final assessment roll. This section defines when a district shall be deemed to have been "created" and when a final assessment shall be deemed "adopted" or "confirmed."

(2) **Exemption from special benefit assessments.** Any farm and agricultural or timber land classified in accordance

with the provisions of chapter 84.34 RCW shall be exempt from special benefit assessments or charges in lieu of assessment for such purposes as long as the classified land remains in classification if the legislative authority of a local government adopts a resolution, ordinance, or legislative act:

(a) To create a local improvement district in which the classified land is included or would have been included but for the classification designation; or

(b) To approve or confirm a final specific benefit assessment roll that would have included the classified land but for the classification designation relating to a:

(i) Sanitary and/or storm sewerage system;

(ii) Domestic water supply and/or distribution system; or

(iii) Road construction and/or improvement.

(3) **When a district is deemed to be created.**

(a) For districts outside of cities, a district shall be considered created upon its actual adoption at the required public hearing.

(b) 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.

(4) **Protest the formation of a district.**

(a) For districts within cities, a protest may be filed with the city or town council within thirty days of the date the ordinance ordering the improvement is passed. Creation of a district can be prevented by the property owners within the district whose combined payments for said improvement(s) are equal to, or in excess of, sixty percent of the cost of the improvement.

(b) For all other districts, their creation can be prevented by the property owners within those districts whose combined property ownership is equal to, or greater than, forty percent of the area to be included in the district.

(5) **Final assessment roll.** 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 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-510, filed 10/4/95, effective 11/4/95. 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) **Introduction.** This section explains the procedures that follow the creation of a district.

(2) **Notice to assessor and legislative authority.** 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 its creation.

(3) **Assessor duties.** 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 or timber land is within its boundaries.

(a) If there is any classified farm and agricultural or timber land within the district boundaries, the assessor shall certify what land is within its boundaries by providing parcel numbers and legal descriptions of the property.

(b) If any owner of land within the created district has timely filed, as of January 1st, an application for current use classification or reclassification as farm and agricultural or timber land and no action has been taken, the assessor will report the status of the pending application(s) to the district. The assessor shall take immediate action to render a decision for the approval or denial of this application. The assessor shall also inform the district that any decision regarding classification or reclassification is appealable under RCW 84.34.035 and that the classification or reclassification as farm and agricultural or timber land would become effective as of the initial filing date, January 1.

(c) If the legislature extends the filing date for applying for classification or reclassification as farm and agricultural or timber land beyond December 31, those applications approved will receive their status as of January 1 of the filing year.

(4) **District duties.** The district, upon receipt of the assessor's certification required by subsection (3) of this section, shall notify the assessor and the legislative authority of 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.

(5) **If land is removed from classification.** The assessor shall notify the district when any farm and agricultural or timber land is removed from current use classification.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-520, filed 10/4/95, effective 11/4/95. 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 458-30-525 Notification of final assessment roll. (1) **Introduction.** This section explains the procedures outlined in RCW 84.34.320 that follow the adoption or confirmation of a final special benefit assessment roll.

(2) **Notice to assessor, legislative authority, and treasurer required.** When a local government approves or confirms a final assessment roll, it shall file a notice of this action with the assessor, legislative authority, and treasurer of the county in which classified farm and agricultural or timber land is located. This notice shall describe:

(a) The action taken;

(b) The type of improvement involved;

(c) The land exempted from special benefit assessments; and

(d) The amount of special benefit assessments that would be levied against the land if the land was not exempt.

(3) **Effect of notice.** If local government has filed a notice signifying the adoption of a final assessment roll with the assessor and treasurer of the county in which land exempt from special benefits is located, the notice shall serve as constructive notice to a purchaser or encumbrancer of the affected land and to any person who subsequently executes or records a conveyance or encumbrance that the land is subject to special benefits assessment when the farm and agricultural or timber land is removed or withdrawn from its current use classification.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-525, filed 10/4/95, effective 11/4/95.]

WAC 458-30-530 Notification of owner regarding creation of district. (1) **Introduction.** This section explains the assessor's duty to notify an owner of classified farm and agricultural or timber land when a local improvement district is created.

(2) **Assessor to notify owner.** The assessor, upon receiving notice that a district was created, shall notify the owner of the farm and agricultural or timber lands as shown on the current assessment rolls of this fact. This notification shall be made on forms approved by the department of revenue and shall contain the following:

(a) Notice of the creation of the local improvement district;

(b) Notice of the exemption of classified farm and agricultural or timber land from special benefit assessments;

(c) Notice that the farm and agricultural or timber 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 the final special benefit assessment roll is confirmed;

(d) Notice of potential liability if the exemption is not waived and the land is subsequently withdrawn or removed from the farm and agricultural or timber land classification;

(e) The portion of the land measured as the benefited "residence" as provided in WAC 458-30-560 will be assessed for benefits received;

(f) That connection to the system shall result in a connection charge; and

(g) That connection to the system subsequent to the creation of the district and the initial final assessment will result in being liable for the amounts as calculated in WAC 458-30-570.

(3) **Owner's right to appeal.** The property owner shall have the same right of appeal that is guaranteed to any other property owner within the district.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-530, filed 10/4/95, effective 11/4/95. 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 of exemption. (1) **Introduction.** This section explains the owner's right to waive the exemption relating to special benefit assessments as set forth in RCW 84.34.320.

(2) **Owner may waive exemption.** The owner of land exempted from special benefit assessments may waive this exemption by filing a notarized statement to that effect with the legislative authority of the local government creating the district after receiving notice from local government concerning the assessment roll hearing. This statement must be filed before the local government confirms the final special benefit assessment roll.

(3) **Copy of waiver to assessor.** A copy of this waiver shall be filed by the local government with the assessor and the county legislative authority, but the failure to file this document shall not affect the waiver.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-540, filed 10/4/95, effective 11/4/95. 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 or withdrawal. (1) **Introduction.** This section explains the process that must be followed when classified land subject to a special benefit assessment is withdrawn or removed from the farm and agricultural classification.

(2) **General treatment of land.** After the creation of a district or the adoption and confirmation of a final assessment roll, an owner of classified farm and agricultural or timber land who wishes it to be exempt from special benefit assessments is not required to take any further action. The land will retain its classified status; it will not be connected to the improvement(s) or be listed on the final assessment roll.

(3) **Subsequent withdrawal or removal.** If the owner initially chose to remain exempt, but subsequently is removed or withdrawn from the farm and agricultural or timber land classification, the owner shall become liable to pay for the special benefit assessment 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 listed in the notice provided for in RCW 84.34.320 and;

(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; or

(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 listed in the notice provided for in RCW 84.34.320;

(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 were retired, and;

(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 were retired to the time the land is withdrawn or removed from exempt status.

(4) **Withdrawal or removal of land with partial assessment.** If land is withdrawn or removed from classification and a partial special benefit assessment has been paid because the classified land was connected to a domestic water system, sewerage facility, or road improvement, the amount of partial assessment paid shall be credited against the total amount due for special benefit assessments.

(5) **Due date of special benefit assessment upon withdrawal or removal.** When land is to be withdrawn or removed from farm and agricultural or timber land classification and an amount of special benefit assessments is due, the amount of special benefit assessments shall be due on the date the land is withdrawn or removed from its classification. This amount shall be a lien on the land prior and superior to any other lien whatsoever except for general

taxes and shall be enforceable in the same manner as special benefit assessments are collected by local government.

(6) **Notice of withdrawal or removal to local government and land owner.** When farm and agricultural or timber land is withdrawn or removed from classification, the assessor of the county in which the land is located shall send a written notice of the withdrawal or removal to the local government, or its successor, that filed the original notice regarding creation of a district with the assessor. After receiving this notice, the local government shall mail a written statement setting forth the amount of special benefit assessments due to the owner of the farm and agricultural or timber land withdrawn or removed from classification. This amount shall be delinquent if it is not paid within one hundred eighty days of the date the statement is mailed and is subject to the same interest, penalties, lien, priority, and enforcement procedures that are applicable to delinquent assessments on the final assessment roll from which the land was exempted, except the rate of interest charged shall not exceed the rate provided in RCW 84.34.330.

(7) **Partial withdrawal or removal of land exempt from special benefit assessments.** If a portion of classified farm and agricultural or timber land exempt from special benefit assessments is withdrawn or removed from classification, the previously exempt benefit assessments shall be due only on the portion of the land being withdrawn or removed.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-550, filed 10/4/95, effective 11/4/95. 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 special benefit assessment—Computation. (1) **Introduction.** When classified farm and agricultural or timber land is connected to a domestic water system, sewerage facilities, or road improvements, a partial special benefit assessment will be made. This section explains the manner in which this partial assessment is calculated.

(2) **General obligation.** 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.

(3) **Amount of partial assessment.** 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 the property with a written estimate of the partial assessment as determined from the following methods:

(a) For assessments relating to sanitary and/or storm sewerage service or domestic water service one of the following methods shall be used:

(i) 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:

(A) Calculate the square footage of the residential area, i.e., the "main dwelling."

(B) 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.)

(ii) 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:

(A) 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

(B) 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.

(iii) 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:

(A) 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

(B) 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:

(I) 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

(II) 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.

(iv) 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.)

(v) 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.

(b) For assessments relating to road construction and/or improvements. If the property is provided access to a 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 is forty-five percent of the amount the assessment would have been if the owner had waived the exemption.)

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-560, filed 10/4/95, effective 11/4/95. 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) **Introduction.** If classified farm and agricultural or timber land is connected to water and/or sewer systems or road improvements after the final assessment roll has been approved, the owner of this land will be liable for the special benefit assessments relating to the improvements. This section explains how the assessments are calculated and the costs associated with the services.

(2) **Connection to local improvements after final assessment roll.** The owner of property exempted from special benefit assessments under the current use farm and agricultural or timber land classification who connects to the sanitary and/or sewerage systems, domestic water supply and/or distribution systems, or road construction and/or improvements provided by the district after the final assessment roll has been approved will be liable for the special benefit assessments as determined by WAC 458-30-560 including interest. In addition, the annual payment required for each year following the connection shall be due and payable.

(3) **Cost of connection.** In addition to the charges imposed in subsection (2) of this section, the owner will also be liable for the cost of connection.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-570, filed 10/4/95, effective 11/4/95. 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. (1) **Introduction.** This section explains the department of revenue's obligation to annually publish a rate of inflation and the manner in which this rate is determined.

(2) **General obligation of department.** Each year the department shall determine and publish a rule establishing an annual rate of inflation. This rate of inflation is to be used in computing the interest that is assessed when farm and agricultural or timber land, exempt from special benefit assessments, is withdrawn or removed from classification.

(a) The rate will be based upon the implicit price deflator for personal consumption expenditures calculated by the United States Department of Commerce.

(b) 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.

(c) 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.

(3) **Calculation of inflation rate - effective date.** 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.

(a) Interest for withdrawal or removal will be calculated only for the time (years and months) the property was in exempt status.

(b) For example, if the local improvement district was created in January 1980 and land was withdrawn for the farm and agricultural classification on July 1, 1987, interest would be calculated using the inflation rates for 1980 through 1987 and for January through June 1987.

[Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-580, filed 10/4/95, effective 11/4/95. 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. (1) **Introduction.** This section sets forth the rates of inflation discussed in WAC 458-30-550.

(2) **Rates of inflation.** The rates of inflation to be used for calculating the interest as required by WAC 458-30-550 are as follows:

YEAR	PERCENT	YEAR	PERCENT
1976	5.6	1977	6.5
1978	7.6	1979	11.3
1980	13.5	1981	10.3
1982	6.2	1983	3.2
1984	4.3	1985	3.5
1986	1.9	1987	3.7
1988	4.1	1989	4.8
1990	5.4	1991	4.2
1992	3.3	1993	2.7
1994	2.2	1995	2.3
1996	2.2		

[Statutory Authority: RCW 84.34.360 and 84.34.310. 97-02-067, § 458-30-590, filed 12/31/96, effective 1/1/97; 96-01-094, § 458-30-590, filed 12/19/95, effective 1/1/96; 95-06-043, § 458-30-590, filed 2/24/95, effective 3/27/95. Statutory Authority: RCW 84.34.360. 94-11-098, § 458-30-590, filed 5/17/94, effective 6/17/94; 92-22-061, § 458-30-590, filed 10/29/92, effective 11/29/92. Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-590, filed 12/5/90, effective 1/5/91. Statutory Authority: Chapter 84.34 RCW and RCW 84.34.360. 89-05-010 (Order PT 89-3), § 458-30-590, filed 2/8/89. Statutory Authority: RCW 84.34.360. 88-07-004 (Order PT 88-4), § 458-30-590, filed 3/3/88; 87-07-009 (Order PT 87-3), § 458-30-590, filed 3/10/87.]

Chapter 458-40 WAC
TAXATION OF FOREST LAND AND TIMBER

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

458-40-010 Definitions. [Order 71-4, § 458-40-010, filed 10/8/71.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-020 Forest land grading rules. [Order 71-4, § 458-40-020, filed 10/8/71.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-025 Forest land values. [Order 72-6, § 458-40-025, filed 6/28/72; Order PT 72-2, § 458-40-025, filed 2/18/72.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-026 Forest land values—1973. [Order PT 72-14, § 458-40-026, filed 11/29/72.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-027 Forest land values—1974. [Order PT 73-9, § 458-40-027, filed 11/30/73.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-028 Forest land values—1975. [Order FT 74-1, § 458-40-028, filed 11/22/74.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-029 Forest land values—1976. [Order FT 75-6, § 458-40-029, filed 12/1/75.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-030 Forest land designation. [Order FT 75-3, § 458-40-030, filed 6/5/75; Order 71-4, § 458-40-030, filed 12/17/71.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-040 Definitions. [Order FT 75-3, § 458-40-040, filed 6/5/75; Order 71-4, § 458-40-040, filed 12/17/71.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-050 Forest land application. [Order FT 75-3, § 458-40-050, filed 6/5/75; Order 71-4, § 458-40-050, filed 12/17/71.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-060 Forest management plan. [Order FT 75-3, § 458-40-060, filed 6/5/75; Order 71-4, § 458-40-060, filed 12/17/71.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-070 Notification by assessor of denial of application, appeals. [Order FT 75-3, § 458-40-070, filed 6/5/75; Order 71-4, § 458-40-070, filed 12/17/71.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-080 Notification by assessor of removal of designated forest land, appeals. [Order FT 75-3, § 458-40-100 (codified as WAC 458-40-080), filed 6/5/75; Order 71-4, § 458-40-080, filed 12/17/71.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-090 Notation on assessment and tax rolls of designated forest land. [Order FT 75-3, § 458-40-080 (codified as WAC 458-40-090), filed 6/5/75; Order 71-4, § 458-40-090, filed 12/17/71.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-100 Removal from designation. [Order FT 75-3, § 458-40-090 (codified as WAC 458-40-100), filed 6/5/75; Order 71-4, § 458-40-100, filed 12/17/71.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-10001 Compensating tax liability and rate. [Order FT 75-3, § 458-40-110 (codified as WAC 458-40-10001), filed 6/5/75.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-110 Definitions. [Order 71-4, § 458-40-110, filed 12/17/71.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-120 Timber roll—Preparation and use. [Order 71-4, § 458-40-120, filed 12/17/71 and 1/13/72.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-121 Timber roll—Correction affecting timber factor. [Order 73-5, § 458-40-121, filed 8/13/73.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-130 Reconstruction of 1970 timber value. [Order 71-4, § 458-40-130, filed 12/17/71.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-140 Timber—Assessed valuation. [Order 71-4, § 458-40-140, filed 12/17/71.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-150 Determining millage. [Order 71-4, § 458-40-150, filed 12/17/71.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-160 Stumpage value areas. [Order 72-13, § 458-40-160, stumpage value area map, filed 11/28/72.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-161 Stumpage value areas. [Order PT 73-8, § 458-40-161, filed 11/1/73.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-162 Stumpage value areas. [Order FT 74-2, § 458-40-162, filed 11/27/74.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-163 Stumpage value areas. [Order FT 76-2, § 458-40-163, filed 7/1/76; Order FT 75-7, § 458-40-163, filed 12/1/75.]

Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-164 Stumpage value areas. [Order FT 76-2, § 458-40-164, filed 7/1/76.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-165 Hauling distance zones. [Order 72-13, § 458-40-165, filed 11/28/72.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-166 Hauling distance zones. [Order PT 73-8, § 458-40-166, filed 11/1/73.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-167 Hauling distance zones. [Order FT 74-2, § 458-40-167, filed 11/27/74.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-168 Hauling distance zones. [Order FT 76-2, § 458-40-168, filed 7/1/76; Order FT 75-7, § 458-40-168, filed 12/1/75.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-169 Hauling distance zones. [Order FT 76-2, § 458-40-169, filed 7/1/76.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-170 Stumpage values. [Order 72-13, § 458-40-170 and Stumpage Tables, filed 11/28/72.] Decodified.

458-40-171 Stumpage values. [Order PT 74-3, § 458-40-171, filed 3/21/74; Order PT 73-8, § 458-40-171, filed 11/1/73.] Decodified.

458-40-172 Stumpage values. [Order 75-5, § 458-40-172, filed 8/8/75; Emergency Order FT 75-4, § 458-40-172, filed 7/1/75; Order FT 74-2, § 458-40-172, filed 11/27/74.] Decodified.

458-40-173 Stumpage values. [Order FT 76-2, § 458-40-173, filed 7/1/76; Order FT 75-7, § 458-40-173, filed 12/1/75.] Decodified.

458-40-174 Stumpage values. [Order FT 76-2, § 458-40-174, filed 7/1/76.] Decodified.

458-40-175 Adjustments. [Order 72-13, § 458-40-175 and Adjustment Tables, filed 11/28/72.] Decodified.

458-40-176 Adjustments. [Order PT 73-8, § 458-40-176, filed 11/1/73.] Decodified.

458-40-177 Adjustments. [Order 75-2, § 458-40-177, filed 5/12/75; Order FT 74-2, § 458-40-177, filed 11/27/74.] Decodified.

458-40-178 Adjustments. [Order FT 76-2, § 458-40-178, filed 7/1/76; Order FT 75-7, § 458-40-178, filed 12/1/75.] Decodified.

458-40-179 Adjustments. [Order FT 76-2, § 458-40-179, filed 7/1/76.] Decodified.

458-40-180 Quality classes. [Order 72-13, § 458-40-180 and Quality Class Tables, filed 11/28/72.] Decodified.

458-40-181 Quality classes. [Order PT 74-3, § 458-40-181, filed 3/21/74; Order PT 73-8, § 458-40-181, filed 11/7/73 and 11/1/73.] Decodified.

458-40-182 Quality classes. [Order FT 74-2, § 458-40-182, filed 11/27/74.] Decodified.

458-40-183 Quality classes. [Order FT 76-2, § 458-40-183, filed 7/1/76; Order FT 75-7, § 458-40-183, filed 12/1/75.] Decodified.

458-40-184 Quality classes. [Order FT 76-2, § 458-40-184, filed 7/1/76.] Decodified.

458-40-185 Stumpage index definition. [Order FT 75-1, § 458-40-185, filed 2/21/75.] Repealed by Order FT 76-2, filed 7/1/76.

458-40-18600 General. [Statutory Authority: Chapter 84.33 RCW. 85-02-026 (Order FT-84-7), § 458-40-18600, filed 12/28/84. Statutory Authority: RCW 82.01.060 and 1984 c 204. 84-14-049 (Order FT-84-4), § 458-40-18600, filed 6/29/84. Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 84-02-041 (Order FT-83-7), § 458-40-18600, filed 12/30/83. Statutory Authority: RCW 84.33.071. 83-14-039 and 83-14-040 (Emergency Order FT-83-4 and Permanent Order FT-83-3), § 458-40-18600, filed 6/30/83, effective 6/30/83. Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 83-02-033 (Order FT-82-7), § 458-40-18600, filed 12/30/82. Statutory Authority: RCW 82.01.060 and 84.33.071. 82-14-037 (Order FT-82-3), § 458-40-18600, filed 6/30/82; 82-02-035 (Order FT-81-4), § 458-40-18600, filed 12/31/81; 81-14-047 (Order FT 81-2), § 458-40-18600, filed 6/30/81; 81-02-007 (Order FT 80-6), § 458-40-18600, filed 12/30/80; 80-08-042 and 80-08-041 (Emergency Order FT 80-1 and Permanent Order FT 80-2), § 458-40-18600, filed 6/30/80, effective 6/30/80; 80-01-091 (Order FT 79-40), § 458-40-18600, filed 12/31/79; Order 76-5, § 458-40-18600, filed 12/31/76.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-18601 Definitions. [Order 76-5, § 458-40-18601, filed 12/31/76.] Decodified.

458-40-18602 Stumpage value areas—Map for 1/1/77 through 6/30/77. [Order 76-5, § 458-40-18602, filed 12/31/76.] Decodified.

458-40-18603 Hauling distance zones—Maps for 1/1/77 through 6/30/77. [Order 76-5, § 458-40-18603, filed 12/31/76.] Decodified.

458-40-18604 Timber quality code numbers—Tables for 1/1/77 through 6/30/77. [Order 76-5, § 458-40-18604, filed 12/31/76.] Decodified.

458-40-18605 Stumpage values—Tables for 1/1/77 through 6/30/77. [Order 76-5, § 458-40-18605, filed 12/31/76.] Decodified.

458-40-18606 Harvest adjustments—Tables for 1/1/77 through 6/30/77. [Order 76-5, § 458-40-18606, filed 12/31/76.] Decodified.

458-40-18607 Definitions for 7/1/77 through 12/31/77. [Order 77-2, § 458-40-18607, filed 6/29/77.] Decodified.

458-40-18608 Stumpage value areas—Map for 7/1/77 through 12/31/77. [Order 77-2, § 458-40-18608, filed 6/29/77.] Decodified.

458-40-18609 Hauling distance zones—Maps for 7/1/77 through 12/31/77. [Order 77-2, § 458-40-18609, filed 6/29/77.] Decodified.

458-40-18610 Timber quality code numbers—Tables for 7/1/77 through 12/31/77. [Order 77-2, § 458-40-18610, filed 6/29/77.] Decodified.

458-40-18611 Stumpage values—Tables for 7/1/77 through 12/31/77. [Order 77-2, § 458-40-18611, filed 6/29/77.] Decodified.

458-40-18612 Harvest adjustments—Tables for 7/1/77 through 12/31/77. [Order 77-2, § 458-40-18612, filed 6/29/77.] Decodified.

458-40-18613 Definitions for 1/1/78 through 6/30/78. [Order FT 77-5, § 458-40-18613, filed 12/30/77.] Decodified.

458-40-18614 Stumpage value areas—Map for 1/1/78 through 6/30/78. [Order FT 77-5, § 458-40-18614, filed 12/30/77.] Decodified.

458-40-18615 Hauling distance zones—Maps for 1/1/78 through 6/30/78. [Order FT 77-5, § 458-40-18615, filed 12/30/77.] Decodified.

458-40-18616 Timber quality code numbers—Tables for 1/1/78 through 6/30/78. [Order FT 77-5, § 458-40-18616, filed 12/30/77.] Decodified.

458-40-18617 Stumpage values—Tables for 1/1/78 through 6/30/78. [Order FT 77-5, § 458-40-18617, filed 12/30/77.] Decodified.

458-40-18618 Harvester adjustments—Tables for 1/1/78 through 6/30/78. [Order FT 77-5, § 458-40-18618, filed 12/30/77.] Decodified.

458-40-18619 Definitions for 7/1/78 through 12/31/78. [Statutory Authority: RCW 82.04.291. 78-07-065 (Order FT 78-2), § 458-40-18619, filed 6/30/78.] Decodified.

458-40-18620 Stumpage value areas—Map for 7/1/78 through 12/31/78. [Statutory Authority: RCW 82.04.291. 78-07-065 (Order FT 78-2), § 458-40-18620, filed 6/30/78.] Decodified.

458-40-18621 Hauling distance zones—Maps for 7/1/78 through 12/31/78. [Statutory Authority: RCW 82.04.291. 78-07-065 (Order FT 78-2), § 458-40-18621, filed 6/30/78.] Decodified.

458-40-18622 Timber quality code numbers—Tables for 7/1/78 through 12/31/78. [Statutory Authority: RCW 82.04.291. 78-07-065 (Order FT 78-2), § 458-40-18622, filed 6/30/78.] Decodified.

458-40-18623 Stumpage values—Tables for 7/1/78 through 12/31/78. [Statutory Authority: 1979 c 6 § 1. 79-08-014 (Order FT 79-37), § 458-40-18623, filed 7/10/79. Statutory Authority: RCW 82.04.291. 78-07-065 (Order FT 78-2), § 458-40-18623, filed 6/30/78.] Decodified.

458-40-18624 Harvestable adjustments—Tables for 7/1/78 through 12/31/78. [Statutory Authority: RCW 82.04.291. 78-07-065 (Order FT 78-2), § 458-40-18624, filed 6/30/78.] Decodified.

458-40-18625 Definitions for 1/1/79 through 6/30/79. [Statutory Authority: RCW 82.04.291. 79-01-065 (Order FT 78-7), § 458-40-18625, filed 12/29/78.] Decodified.

458-40-18626 Stumpage value areas—Map for 1/1/79 through 6/30/79. [Statutory Authority: RCW 82.04.291. 79-01-065 (Order FT 78-7), § 458-40-18626, filed 12/29/78.] Decodified.

458-40-18627 Hauling distance zones—Maps for 1/1/79 through 6/30/79. [Statutory Authority: RCW 82.04.291. 79-01-065 (Order FT 78-7), § 458-40-18627, filed 12/29/78.] Decodified.

458-40-18628 Timber quality code numbers—Tables for 1/1/79 through 6/30/79. [Statutory Authority: RCW 82.04.291. 79-01-065 (Order FT 78-7), § 458-40-18628, filed 12/29/78.] Decodified.

458-40-18629 Stumpage values—Tables for 1/1/79 through 6/30/79. [Statutory Authority: RCW 82.04.291. 79-01-065 (Order FT 78-7), § 458-40-18629, filed 12/29/78.] Decodified.

458-40-18630 Harvester adjustments—Tables for 1/1/79 through 6/30/79. [Statutory Authority: RCW 82.04.291. 79-01-065 (Order FT 78-7), § 458-40-18630, filed 12/29/78.] Decodified.

458-40-18631 Definitions for 7/1/79 through 12/31/79. [Statutory Authority: RCW 82.01.060 and 1979 c 6 § 1. 79-07-083 and 79-07-084 (Emergency Order FT 79-34 and Permanent Order FT 79-35), § 458-40-18631, filed 6/29/79, effective 6/29/79.] Decodified.

458-40-18632 Stumpage value areas—Map for 7/1/79 through 12/31/79. [Statutory Authority: RCW 82.01.060 and 1979 c 6 § 1. 79-07-083 and 79-07-084 (Emergency Order FT 79-34 and Permanent Order FT 79-35), § 458-40-18632, filed 6/29/79, effective 6/29/79.] Decodified.

458-40-18633 Hauling distance zones—Maps for 7/1/79 through 12/31/79. [Statutory Authority: RCW 82.01.060 and 1979 c 6 § 1. 79-07-083 and 79-07-084 (Emergency Order FT 79-34 and Permanent Order FT 79-35), § 458-40-18633, filed 6/29/79, effective 6/29/79.] Decodified.

458-40-18634 Timber quality code numbers—Tables for 7/1/79 through 12/31/79. [Statutory Authority: RCW 82.01.060 and 1979 c 6 § 1. 79-07-083 and 79-07-084 (Emergency Order FT 79-34 and Permanent Order FT 79-35), § 458-40-18634, filed 6/29/79, effective 6/29/79.] Decodified.

458-40-18635 Stumpage values—Tables for 7/1/79 through 12/31/79. [Statutory Authority: RCW 82.01.060 and 1979 c 6 § 1. 79-07-083 and 79-07-084 (Emergency Order FT 79-34 and Permanent Order FT 79-35), § 458-40-18635, filed 6/29/79, effective 6/29/79.] Decodified.

458-40-18636 Harvester adjustments—Tables for 7/1/79 through 12/31/79. [Statutory Authority: RCW 82.01.060 and 1979 c 6 § 1. 79-07-083 and 79-07-084 (Emergency Order FT 79-34 and Permanent Order FT 79-35), § 458-40-18636, filed 6/29/79, effective 6/29/79.] Decodified.

458-40-18637 Definitions for 1/1/80 through 6/30/80. [Statutory Authority: RCW 82.01.060 and 84.33.071. 80-01-091 (Order FT 79-40), § 458-40-18637, filed 12/31/79.] Decodified.

458-40-18638 Stumpage value areas—Map for 1/1/80 through 6/30/80. [Statutory Authority: RCW 82.01.060 and 84.33.071. 80-01-091 (Order FT 79-40), § 458-40-18638, filed 12/31/79.] Decodified.

458-40-18639 Hauling distance zones—Maps for 1/1/80 through 6/30/80. [Statutory Authority: RCW 82.01.060 and 84.33.071. 80-01-091 (Order FT 79-40), § 458-40-18639, filed 12/31/79.] Decodified.

458-40-18640 Timber quality code numbers—Tables for 1/1/80 through 6/30/80. [Statutory Authority: RCW 82.01.060 and 84.33.071. 80-01-091 (Order FT 79-40), § 458-40-18640, filed 12/31/79.] Decodified.

458-40-18641 Stumpage values—Tables for 1/1/80 through 6/30/80. [Statutory Authority: RCW 82.01.060 and 84.33.071. 80-01-091 (Order FT 79-40), § 458-40-18641, filed 12/31/79.] Decodified.

458-40-18642 Harvestable adjustments—Tables for 1/1/80 through 6/30/80. [Statutory Authority: RCW 82.01.060 and 84.33.071. 80-01-091 (Order FT 79-40), § 458-40-18642, filed 12/31/79.] Decodified.

458-40-18643 Definitions for 7/1/80 through 12/31/80. [Statutory Authority: RCW 82.01.060 and 84.33.071. 80-08-042 and 80-08-041 (Emergency Order FT 80-1 and Permanent Order FT 80-2), § 458-40-18643, filed 6/30/80, effective 6/30/80.] Decodified.

458-40-18644 Stumpage value areas—Map for 7/1/80 through 12/31/80. [Statutory Authority: RCW 82.01.060 and 84.33.071. 80-08-042 and 80-08-041 (Emergency Order FT 80-1 and Permanent Order FT 80-2), § 458-40-18644, filed 6/30/80, effective 6/30/80.] Decodified.

458-40-18645 Hauling distance zones—Maps for 7/1/80 through 12/31/80. [Statutory Authority: RCW 82.01.060 and 84.33.071. 80-08-042 and 80-08-041 (Emergency Order FT 80-1 and Permanent Order FT 80-2), § 458-40-18645, filed 6/30/80, effective 6/30/80.] Decodified.

458-40-18646 Timber quality code numbers—Tables for 7/1/80 through 12/31/80. [Statutory Authority: RCW 82.01.060 and 84.33.071. 80-08-042 and 80-08-041 (Emergency Order FT 80-1 and Permanent Order FT 80-2), § 458-40-18646, filed 6/30/80, effective 6/30/80.] Decodified.

458-40-18647 Stumpage values—Tables for 7/1/80 through 12/31/80. [Statutory Authority: RCW 82.01.060 and 84.33.071. 80-08-042 and 80-08-041 (Emergency Order FT 80-1 and Permanent Order FT 80-2), § 458-40-18647, filed 6/30/80, effective 6/30/80.] Decodified.

458-40-18648 Harvester adjustments—Tables for 7/1/80 through 12/31/80. [Statutory Authority: RCW 82.01.060 and 84.33.071. 80-08-042 and 80-08-041 (Emergency Order FT 80-1 and Permanent Order FT 80-2), § 458-40-18648, filed 6/30/80, effective 6/30/80.] Decodified.

458-40-18649 Definitions for 1/1/81 through 6/30/81. [Statutory Authority: RCW 82.01.060 and 84.33.071. 81-02-007 (Order FT 80-6), § 458-40-18649, filed 12/30/80.] Decodified.

458-40-18650 Stumpage value areas—Map for 1/1/81 through 6/30/81. [Statutory Authority: RCW 82.01.060 and 84.33.071. 81-02-007 (Order FT 80-6), § 458-40-18650, filed 12/30/80.] Decodified.

458-40-18651 Hauling distance zones—Maps for 1/1/81 through 6/30/81. [Statutory Authority: RCW 82.01.060 and 84.33.071. 81-02-007 (Order FT 80-6), § 458-40-18651, filed 12/30/80.] Decodified.

458-40-18652 Timber quality code numbers—Tables for 1/1/81 through 6/30/81. [Statutory Authority: RCW 82.01.060 and 84.33.071. 81-02-007 (Order FT 80-6), § 458-40-18652, filed 12/30/80.] Decodified.

458-40-18653 Stumpage values—Tables for 1/1/81 through 6/30/81. [Statutory Authority: RCW 82.01.060 and 84.33.071. 81-02-007 (Order FT 80-6), § 458-40-18653, filed 12/30/80.] Decodified.

458-40-18654 Harvester adjustments—Tables for 1/1/81 through 6/30/81. [Statutory Authority: RCW 82.01.060 and 84.33.071. 81-02-007 (Order FT 80-6), § 458-40-18654, filed 12/30/80.] Decodified.

458-40-18655 Definitions for 7/1/81 through 12/31/81. [Statutory Authority: RCW 82.01.060 and 84.33.071. 81-14-047 (Order FT 81-2), § 458-40-18655, filed 6/30/81.] Decodified.

458-40-18656 Stumpage value areas—Map for 7/1/81 through 12/31/81. [Statutory Authority: RCW 82.01.060 and 84.33.071. 81-14-047 (Order FT 81-2), § 458-40-18656, filed 6/30/81.] Decodified.

458-40-18657 Hauling distance zones—Maps for 7/1/81 through 12/31/81. [Statutory Authority: RCW 82.01.060 and 84.33.071. 81-14-047 (Order FT 81-2), § 458-40-18657, filed 6/30/81.] Decodified.

458-40-18658 Timber quality code numbers—Tables for 7/1/81 through 12/31/81. [Statutory Authority: RCW 82.01.060 and 84.33.071. 81-14-047 (Order FT 81-2), § 458-40-18658, filed 6/30/81.] Decodified.

458-40-18659 Stumpage values—Tables for 7/1/81 through 12/31/81. [Statutory Authority: RCW 82.01.060 and 84.33.071. 81-14-047 (Order FT 81-2), § 458-40-18659, filed 6/30/81.] Decodified.

458-40-18660 Harvester adjustments—Tables for 7/1/81 through 12/31/81. [Statutory Authority: RCW 82.01.060 and 84.33.071. 81-14-047 (Order FT 81-2), § 458-40-18660, filed 6/30/81.] Decodified.

458-40-18661 Definitions for 1/1/82 through 6/30/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-02-035 (Order FT-81-4), § 458-40-18661, filed 12/31/81.] Decodified.

458-40-18662 Stumpage value areas—Map for 1/1/82 through 6/30/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-02-035 (Order FT-81-4), § 458-40-18662, filed 12/31/81.] Decodified.

458-40-18663 Hauling distance zones—Maps for 1/1/82 through 6/30/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-02-035 (Order FT-81-4), § 458-40-18663, filed 12/31/81.] Decodified.

458-40-18664 Timber quality code numbers—Tables for 1/1/82 through 6/30/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-02-035 (Order FT-81-4), § 458-40-18664, filed 12/31/81.] Decodified.

458-40-18665 Stumpage values—Tables for 1/1/82 through 6/30/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-02-035 (Order FT-81-4), § 458-40-18665, filed 12/31/81.] Decodified.

458-40-18666 Harvester adjustments—Tables for 1/1/82 through 6/30/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-02-035 (Order FT-81-4), § 458-40-18666, filed 12/31/81.] Decodified.

458-40-18667 Small harvester option for 1/1/82 through 6/30/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-02-035 (Order FT-81-4), § 458-40-18667, filed 12/31/81.] Decodified.

458-40-18668 Definitions for small harvester option for 1/1/82 through 6/30/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-02-035 (Order FT-81-4), § 458-40-18668, filed 12/31/81.] Decodified.

458-40-18669 Taxable stumpage value for 1/1/82 through 6/30/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-02-035 (Order FT-81-4), § 458-40-18669, filed 12/31/81.] Decodified.

458-40-18670 Definitions for 7/1/82 through 12/31/82. [Statutory Authority: RCW 82.01.060, 84.33.030 and 84.33.071 as amended by 1982 2nd ex.s. c 4. 82-19-011 (Order FT-82-5), § 458-40-18670, filed 9/7/82. Statutory Authority: RCW 82.01.060 and 84.33.071. 82-14-037 (Order FT-82-3), § 458-40-18670, filed 6/30/82.] Decodified.

458-40-18671 Stumpage value areas—Map for 7/1/82 through 12/31/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-14-037 (Order FT-82-3), § 458-40-18671, filed 6/30/82.] Decodified.

458-40-18672 Hauling distance zones—Maps for 7/1/82 through 12/31/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-14-037 (Order FT-82-3), § 458-40-18672, filed 6/30/82.] Decodified.

458-40-18673 Timber quality code numbers—Tables for 7/1/82 through 12/31/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-14-037 (Order FT-82-3), § 458-40-18673, filed 6/30/82.] Decodified.

458-40-18674 Stumpage values—Tables for 7/1/82 through 12/31/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-14-037 (Order FT-82-3), § 458-40-18674, filed 6/30/82.] Decodified.

458-40-18675 Harvester adjustments—Tables for 7/1/82 through 12/31/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-14-037 (Order FT-82-3), § 458-40-18675, filed 6/30/82.] Decodified.

458-40-18676 Small harvester option for 7/1/82 through 12/31/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-14-037 (Order FT-82-3), § 458-40-18676, filed 6/30/82.] Decodified.

458-40-18677 Definitions for small harvester option for 7/1/82 through 12/31/82. [Statutory Authority: RCW 82.01.060, 84.33.030 and 84.33.071 as amended by 1982 2nd ex.s. c 4. 82-19-011 (Order FT-82-5), § 458-40-18677, filed 9/7/82. Statutory Authority: RCW 82.01.060 and 84.33.071. 82-14-037 (Order FT-82-3), § 458-40-18677, filed 6/30/82.] Decodified.

458-40-18678 Taxable stumpage value for 7/1/82 through 12/31/82. [Statutory Authority: RCW 82.01.060 and 84.33.071. 82-14-037 (Order FT-82-3), § 458-40-18678, filed 6/30/82.] Decodified.

458-40-18679 Definitions for January 1 through June 30, 1983. [Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 83-02-033 (Order FT-82-7), § 458-40-18679, filed 12/30/82.] Decodified.

458-40-18680 Stumpage value areas—Map for January 1 through June 30, 1983. [Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 83-02-033 (Order FT-82-7), § 458-40-18680, filed 12/30/82.] Decodified.

458-40-18681 Hauling distance zones—Maps for January 1 through June 30, 1983. [Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 83-02-033 (Order FT-82-7), § 458-40-18681, filed 12/30/82.] Decodified.

458-40-18682 Timber quality code numbers—Tables for January 1 through June 30, 1983. [Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 83-02-033 (Order FT-82-7), § 458-40-18682, filed 12/30/82.] Decodified.

458-40-18683 Stumpage values—Tables for January 1 through June 30, 1983. [Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 83-02-033 (Order FT-82-7), § 458-40-18683, filed 12/30/82.] Decodified.

458-40-18684 Harvestable adjustments—Tables for January 1 through June 30, 1983. [Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 83-02-033 (Order FT-82-7), § 458-40-18684, filed 12/30/82.] Decodified.

458-40-18685 Small harvester option for January 1 through June 30, 1983. [Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 83-02-033 (Order FT-82-7), § 458-40-18685, filed 12/30/82.] Decodified.

458-40-18686 Definitions for small harvester option for January 1 through June 30, 1983. [Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 83-02-033 (Order FT-82-7), § 458-40-18686, filed 12/30/82.] Decodified.

458-40-18687 Taxable stumpage value for January 1 through June 30, 1983. [Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 83-02-033 (Order FT-82-7), § 458-40-18687, filed 12/30/82.] Decodified.

458-40-18688 Definitions for July 1 through December 31, 1983. [Statutory Authority: RCW 84.33.071. 83-14-039 and 83-14-040 (Emergency Order FT-83-4 and Permanent Order FT-83-3), § 458-40-18688, filed 6/30/83, effective 6/30/83.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-18689 Stumpage value areas—Map for July 1 through December 31, 1983. [Statutory Authority: RCW 84.33.071. 83-14-039 and 83-14-040 (Emergency Order FT-83-4 and Permanent Order FT-83-3), § 458-40-18689, filed 6/30/83, effective 6/30/83.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-18690 Hauling distance zones—Maps for July 1 through December 31, 1983. [Statutory Authority: RCW 84.33.071. 83-14-039 and 83-14-040 (Emergency Order FT-83-4 and Permanent Order FT-83-3), § 458-40-18690, filed 6/30/83, effective 6/30/83.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-18691 Timber quality code numbers—Tables for July 1 through December 31, 1983. [Statutory Authority: RCW 84.33.071. 83-14-039 and 83-14-040 (Emergency Order FT-83-4 and Permanent Order FT-83-3), § 458-40-18691, filed 6/30/83, effective 6/30/83.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-18692 Stumpage values—Tables for July 1 through December 31, 1983. [Statutory Authority: RCW 84.33.071. 83-14-039 and 83-14-040 (Emergency Order FT-83-4 and Permanent Order FT-83-3), § 458-40-18692, filed 6/30/83, effective 6/30/83.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-18693 Harvester adjustments—Tables for July 1 through December 31, 1983. [Statutory Authority: RCW 84.33.071. 83-14-039 and 83-14-040 (Emergency Order FT-83-4 and Permanent Order FT-83-3), § 458-40-18693, filed 6/30/83, effective 6/30/83.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-18694 Small harvester option for July 1 through December 31, 1983. [Statutory Authority: RCW 84.33.071. 83-14-039 and 83-14-040 (Emergency Order FT-83-4 and Permanent Order FT-83-3), § 458-40-18694, filed 6/30/83, effective 6/30/83.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-18695 Definitions for small harvester option for July 1 through December 31, 1983. [Statutory Authority: RCW 84.33.071. 83-14-039 and 83-14-040 (Emergency Order FT-83-4 and Permanent Order FT-83-3), § 458-40-18695, filed 6/30/83, effective 6/30/83.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-18696 Taxable stumpage value for July 1 through December 31, 1983. [Statutory Authority: RCW 84.33.071. 83-14-039 and 83-14-040 (Emergency Order FT-83-4 and Permanent Order FT-83-3), § 458-40-18696, filed 6/30/83, effective 6/30/83.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-18700 Definitions. [Statutory Authority: Chapter 84.33 RCW. 86-14-064 (Order FT-86-2), § 458-40-18700, filed 6/30/86; 86-02-045 (Order FT-85-5), § 458-40-18700, filed 12/31/85; 85-02-026 (Order FT-84-7), § 458-40-18700, filed 12/28/84. Statutory Authority: RCW 82.01.060 and 1984 c 204. 84-14-049 (Order FT-84-4), § 458-40-18700, filed 6/29/84. Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 84-02-041 (Order FT-83-7), § 458-40-18700, filed 12/30/83.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-18701 Small harvester option. [Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 84-02-041 (Order FT-83-7), § 458-40-18701, filed 12/30/83.] Repealed by 84-14-049 (Order FT-84-4), filed 6/29/84. Statutory Authority: RCW 82.01.060 and 1984 c 204.

458-40-18702 Definitions for small harvester option. [Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 84-02-041 (Order FT-83-7), § 458-40-18702, filed 12/30/83.] Repealed by 84-14-049 (Order FT-84-4), filed 6/29/84. Statutory Authority: RCW 82.01.060 and 1984 c 204.

458-40-18703 Taxable stumpage value for small harvester option. [Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 84-02-041 (Order FT-83-7), § 458-40-18703, filed 12/30/83.] Repealed by 84-14-049 (Order FT-84-4), filed 6/29/84. Statutory Authority: RCW 82.01.060 and 1984 c 204.

458-40-18704 Stumpage value areas and hauling distance zone—Map. [Statutory Authority: Chapter 84.33 RCW. 86-14-064 (Order FT-86-2), § 458-40-18704, filed 6/30/86; 85-02-026 (Order FT-84-7), § 458-40-18704, filed 12/28/84. Statutory Authority: RCW 82.01.060 and 1984 c 204. 84-14-049 (Order FT-84-4), § 458-40-18704, filed 6/29/84. Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 84-02-041 (Order FT-83-7), § 458-40-18704, filed 12/30/83.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-18705 Hauling distance zones—Maps. [Statutory Authority: RCW 82.01.060 and 1984 c 204. 84-14-049 (Order FT-84-4), § 458-40-18705, filed 6/29/84. Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 84-02-041 (Order FT-83-7), § 458-40-18705, filed 12/30/83.] Repealed by 85-02-026 (Order FT-84-7), filed 12/28/84. Statutory Authority: Chapter 84.33 RCW.

458-40-18706 Timber quality code numbers—Tables. [Statutory Authority: Chapter 84.33 RCW. 86-14-064 (Order FT-86-2), § 458-40-18706, filed 6/30/86; 86-02-045 (Order FT-85-5), § 458-40-18706, filed 12/31/85; 85-02-026 (Order FT-84-7), § 458-40-18706, filed 12/28/84. Statutory Authority: RCW 82.01.060 and 1984 c 204. 84-14-049 (Order FT-84-4), § 458-40-18706, filed 6/29/84. Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 84-02-041 (Order FT-83-7), § 458-40-18706, filed 12/30/83.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-18711 Stumpage values—Tables for January 1 through June 30, 1984. [Statutory Authority: RCW 82.01.060 and 84.33.071. 84-08-020 (Order FT-84-1), § 458-40-18711, filed 3/28/84. Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 84-02-041 (Order FT-83-7), § 458-40-18711, filed 12/30/83.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-18712 Harvester adjustments—Tables for January 1 through June 30, 1984. [Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 84-02-041 (Order FT-83-7), § 458-40-18712, filed 12/30/83.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-18713 Stumpage values—Tables for July 1 through December 31, 1984. [Statutory Authority: RCW 82.01.060 and 1984 c 204. 84-14-049 (Order FT-84-4), § 458-40-18713, filed 6/29/84.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-18714 Harvester adjustments—Tables for July 1 through December 31, 1984. [Statutory Authority: RCW 82.01.060 and 1984 c 204. 84-14-049 (Order FT-84-4), § 458-40-18714, filed 6/29/84.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-18715 Stumpage values—Tables for January 1 through June 30, 1985. [Statutory Authority: Chapter 84.33 RCW. 85-02-026 (Order FT-84-7), § 458-40-18715, filed 12/28/84.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-18716 Harvester adjustments—Tables for January 1 through June 30, 1985. [Statutory Authority: Chapter 84.33 RCW. 85-02-026 (Order FT-84-7), § 458-40-18716, filed 12/28/84.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-18717 Stumpage values—Tables for July 1 through December 31, 1985. [Statutory Authority: Chapter 84.33 RCW. 85-14-048 (Order FT-85-2), § 458-40-18717, filed 6/28/85.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-18718 Harvester adjustments—Tables for July 1 through December 31, 1985. [Statutory Authority: Chapter 84.33 RCW. 85-14-048 (Order FT-85-2), § 458-40-18718, filed 6/28/85.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-18719 Stumpage values—Tables for January 1 through June 30, 1986. [Statutory Authority: Chapter 84.33 RCW. 86-02-045 (Order FT-85-5), § 458-40-18719, filed 12/31/85.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-18720 Harvester adjustments—Tables for January 1 through June 30, 1986. [Statutory Authority: Chapter 84.33 RCW. 86-02-045 (Order FT-85-5), § 458-40-18720, filed 12/31/85.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-18721 Stumpage values—Tables for July 1 through December 31, 1986. [Statutory Authority: Chapter 84.33 RCW. 86-14-064 (Order FT-86-2), § 458-40-18721, filed 6/30/86.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-18722 Harvester adjustments—Tables for July 1 through December 31, 1986. [Statutory Authority: Chapter 84.33 RCW. 86-14-064 (Order FT-86-2), § 458-40-18722, filed 6/30/86.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-19000 Timber pole volume table for west of Cascade summit. [Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 84-02-041 (Order FT-83-7), § 458-40-19000, filed 12/30/83. Statutory Authority: RCW 84.33.071. 83-14-039 and 83-14-040 (Emergency Order FT-83-4 and Permanent Order FT-83-3), § 458-40-19000, filed 6/30/83, effective 6/30/83. Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 83-02-033 (Order FT-82-7), § 458-40-19000, filed 12/30/82. Statutory Authority: RCW 82.01.060 and 84.33.071. 82-14-037 (Order FT-82-3), § 458-40-19000, filed 6/30/82; 82-02-035 (Order FT-81-4), § 458-40-19000, filed

12/31/81; 81-14-047 (Order FT 81-2), § 458-40-19000, filed 6/30/81; 81-02-007 (Order FT 80-6), § 458-40-19000, filed 12/30/80; 80-08-042 and 80-08-041 (Emergency Order FT 80-1 and Permanent Order FT 80-2), § 458-40-19000, filed 6/30/80, effective 6/30/80; 80-01-091 (Order FT 79-40), § 458-40-19000, filed 12/31/79; 79-07-083 and 79-07-084 (Emergency Order FT 79-34 and Permanent Order FT 79-35), § 458-40-19000, filed 6/29/79, effective 6/29/79. Statutory Authority: RCW 82.04.291. 79-01-065 (Order FT 78-7), § 458-40-19000, filed 12/29/78; 78-07-065 (Order FT 78-2), § 458-40-19000, filed 6/30/78; Order 77-2, § 458-40-19000, filed 6/29/77; Order 76-5, § 458-40-19000, filed 12/31/76.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-19001 Timber piling volume table for west of Cascade summit. [Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 84-02-041 (Order FT-83-7), § 458-40-19001, filed 12/30/83. Statutory Authority: RCW 84.33.071. 83-14-039 and 83-14-040 (Emergency Order FT-83-4 and Permanent Order FT-83-3), § 458-40-19001, filed 6/30/83, effective 6/30/83. Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 83-02-033 (Order FT-82-7), § 458-40-19001, filed 12/30/82. Statutory Authority: RCW 82.01.060 and 84.33.071. 82-14-037 (Order FT-82-3), § 458-40-19001, filed 6/30/82; 82-02-035 (Order FT-81-4), § 458-40-19001, filed 12/31/81; 81-14-047 (Order FT 81-2), § 458-40-19001, filed 6/30/81; 81-02-007 (Order FT 80-6), § 458-40-19001, filed 12/30/80; 80-08-042 and 80-08-041 (Emergency Order FT 80-1 and Permanent Order FT 80-2), § 458-40-19001, filed 6/30/80, effective 6/30/80; 80-01-091 (Order FT 79-40), § 458-40-19001, filed 12/31/79; 79-07-083 and 79-07-084 (Emergency Order FT 79-34 and Permanent Order FT 79-35), § 458-40-19001, filed 6/29/79, effective 6/29/79. Statutory Authority: RCW 82.04.291. 79-01-065 (Order FT 78-7), § 458-40-19001, filed 12/29/78; 78-07-065 (Order FT 78-2), § 458-40-19001, filed 6/30/78; Order 77-2, § 458-40-19001, filed 6/29/77; Order 76-5, § 458-40-19001, filed 12/31/76.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-19002 Timber pole volume table for east of Cascade summit. [Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 84-02-041 (Order FT-83-7), § 458-40-19002, filed 12/30/83. Statutory Authority: RCW 84.33.071. 83-14-039 and 83-14-040 (Emergency Order FT-83-4 and Permanent Order FT-83-3), § 458-40-19002, filed 6/30/83, effective 6/30/83. Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 83-02-033 (Order FT-82-7), § 458-40-19002, filed 12/30/82. Statutory Authority: RCW 82.01.060 and 84.33.071. 82-14-037 (Order FT-82-3), § 458-40-19002, filed 6/30/82; 82-02-035 (Order FT-81-4), § 458-40-19002, filed 12/31/81; 81-14-047 (Order FT 81-2), § 458-40-19002, filed 6/30/81; 81-02-007 (Order FT 80-6), § 458-40-19002, filed 12/30/80; 80-08-042 and 80-08-041 (Emergency Order FT 80-1 and Permanent Order FT 80-2), § 458-40-19002, filed 6/30/80, effective 6/30/80; 80-01-091 (Order FT 79-40), § 458-40-19002, filed 12/31/79; 79-07-083 and 79-07-084 (Emergency Order FT 79-34 and Permanent Order FT 79-35), § 458-40-19002, filed 6/29/79, effective 6/29/79. Statutory Authority: RCW 82.04.291. 79-01-065 (Order FT 78-7), § 458-40-19002, filed 12/29/78; 78-07-065 (Order FT 78-2), § 458-40-19002, filed 6/30/78; Order FT 77-5, § 458-40-19002, filed 12/30/77; Order 77-2, § 458-40-19002, filed 6/29/77; Order 76-5, § 458-40-19002, filed 12/31/76.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-19003 Timber piling volume table for east of Cascade summit. [Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 84-02-041 (Order FT-83-7), § 458-40-19003, filed 12/30/83. Statutory Authority: RCW 84.33.071. 83-14-039 and 83-14-040 (Emergency Order FT-83-4 and Permanent Order FT-83-3), § 458-40-19003, filed 6/30/83, effective 6/30/83. Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 83-02-033 (Order FT-82-7), § 458-40-19003, filed 12/30/82. Statutory Authority: RCW 82.01.060 and 84.33.071. 82-14-037 (Order FT-82-3), § 458-40-19003, filed 6/30/82; 82-02-035 (Order FT-81-4), § 458-40-19003, filed 12/31/81; 81-14-047 (Order FT 81-2), § 458-40-19003, filed 6/30/81; 81-02-007 (Order FT 80-6), § 458-40-19003, filed 12/30/80; 80-08-042 and 80-08-041 (Emergency Order FT 80-1 and Permanent Order FT 80-2), § 458-40-19003, filed 6/30/80, effective 6/30/80; 80-01-091 (Order FT 79-40), § 458-40-19003, filed 12/31/79; 79-07-083 and 79-07-084 (Emergency Order FT 79-34 and Permanent Order FT 79-35), § 458-40-19003, filed 6/29/79, effective 6/29/79. Statutory Authority: RCW 82.04.291. 79-01-065 (Order FT 78-7), § 458-40-19003, filed 12/29/78; 78-07-065 (Order FT 78-2), § 458-40-19003, filed 6/30/78; Order FT 77-5, § 458-40-19003, filed 12/30/77; Order 77-2, § 458-40-19003, filed 6/29/77; Order 76-5, § 458-40-19003, filed 12/31/76.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-19004 Conversion definitions and factors. [Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 84-02-041 (Order FT-83-7), § 458-40-19004, filed 12/30/83. Statutory Authority: RCW 84.33.071. 83-14-039 and 83-14-040 (Emergency Order FT-83-4 and Permanent Order FT-83-3), § 458-40-19004, filed 6/30/83, effective 6/30/83. Statutory Authority: RCW 82.01.060, 84.33.071, 84.33.073 and 84.33.074. 83-02-033 (Order FT-82-7), § 458-40-19004, filed 12/30/82. Statutory Authority: RCW 82.01.060 and 84.33.071. 82-14-037 (Order FT-82-3), § 458-40-19004, filed 6/30/82; 82-02-035 (Order FT-81-4), § 458-40-19004, filed 12/31/81; 81-14-047 (Order FT 81-2), § 458-40-19004, filed 6/30/81; 81-02-007 (Order FT 80-6), § 458-40-19004, filed 12/30/80; 80-08-042 and 80-08-041 (Emergency Order FT 80-1 and Permanent Order FT 80-2), § 458-40-19004, filed 6/30/80, effective 6/30/80; 80-01-091 (Order FT 79-40), § 458-40-19004, filed 12/31/79; 79-07-083 and 79-07-084 (Emergency Order FT 79-34 and Permanent Order FT 79-35), § 458-40-19004, filed 6/29/79, effective 6/29/79. Statutory Authority: RCW 82.04.291. 79-01-065 (Order FT 78-7), § 458-40-19004, filed 12/29/78; 78-07-065 (Order FT 78-2), § 458-40-19004, filed 6/30/78; Order FT 77-5, § 458-40-19004, filed 12/30/77; Order 77-2, § 458-40-19004, filed 6/29/77; Order 76-5, § 458-40-19004, filed 12/31/76.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-19005 Timber excise tax credit for personal property tax. [Statutory Authority: RCW 84.33.077. 84-08-021 (Order FT-84-2), § 458-40-19005, filed 3/28/84.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-19100 Forest land values for year 1977. [Statutory Authority: RCW 84.33.120. 79-01-005 (Order FT 78-5), § 458-40-19100, filed 12/8/78; Order 76-3, § 458-40-19100, filed 12/1/76.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-19101 Forest land values amended for western Washington for year 1978. [Statutory Authority: RCW 84.33.120. 83-05-013 (Order FT-83-2), § 458-40-19101, filed 2/8/83; 79-08-015 (Order FT 79-36), § 458-40-19101, filed 7/10/79; Order 77-3, § 458-40-19101, filed 11/30/77.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-19102 Forest land values—1979. [Statutory Authority: RCW 84.33.120. 78-12-036 (Order FT 78-3), § 458-40-19102, filed 11/22/78.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-19103 Forest land values—1980. [Statutory Authority: RCW 84.33.120. 79-12-061 (Order FT 79-38), § 458-40-19103, filed 11/29/79.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-19104 Forest land values—1981. [Statutory Authority: RCW 84.33.120. 80-18-029 (Order FT 80-3), § 458-40-19104, filed 12/1/80.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-19105 Forest land values—1981. [Statutory Authority: RCW 84.33.120. 80-18-030 (Order FT 80-4), § 458-40-19105, filed 12/1/80.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-19106 Forest land values—1982. [Statutory Authority: RCW 84.33.120 as amended by chapter 148, Laws of 1981. 81-24-039 (Order FT 81-2), § 458-40-19106, filed 11/30/81.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-19107 Forest land values—1983. [Statutory Authority: RCW 84.33.120 as amended by chapter 148, Laws of 1981. 82-24-030 (Order FT 82-6), § 458-40-19107, filed 11/23/82.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-19108 Forest land values—1984. [Statutory Authority: RCW 84.33.120 as amended by 1981 c 148. 83-23-027 (Order FT 83-5), § 458-40-19108, filed 11/8/83.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-19109 Forest land values—1985. [Statutory Authority: RCW 84.33.120 as amended by 1984 c 204. 84-24-011 (Order FT 84-5), § 458-40-19109, filed 11/27/84.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-19110 Forest land values—1986. [Statutory Authority: RCW 84.33.120. 85-24-036 (Order FT-85-3), § 458-40-19110, filed 11/27/85.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-19300 Private forest land grades according to species and site index. [Statutory Authority: RCW 84.33.120. 82-07-086 (Order FT 82-1), § 458-40-19300, filed 3/24/82; 80-18-030 (Order FT 80-4), § 458-40-19300, filed 12/1/80.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-300 Forest land classification. [Order FT 75-3, § 458-40-300, filed 6/5/75.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-310 Definitions. [Order FT 75-3, § 458-40-310, filed 6/5/75.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-320 Application for forest land classification. [Order FT 75-3, § 458-40-320, filed 6/5/75.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-330 Notation on assessment and tax rolls of classified forest land. [Order FT 75-3, § 458-40-330, filed 6/5/75.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-340 Removal of forest land classification. [Order FT 75-3, § 458-40-340, filed 6/5/75.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-350 Removal from classification—Compensating tax not imposed. [Order FT 75-3, § 458-40-350, filed 6/5/75.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-360 Notification to owner of removal. [Order FT 75-3, § 458-40-360, filed 6/5/75.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-370 Compensating tax liability and rate. [Order FT 75-3, § 458-40-370, filed 6/5/75.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

458-40-380 Appeals procedure for classification of forest lands. [Order FT 75-3, § 458-40-380, filed 6/5/75.] Repealed by 87-02-023 (Order 86-4), filed 12/31/86. Statutory Authority: Chapter 84.33 RCW.

WAC 458-40-500 Property tax, forest land—Statement of purpose. The purpose of the rules contained in WAC 458-40-500 through 458-40-540 is to prescribe policies and procedures for the classification, designation, grading and assessment of forest lands for purposes of ad valorem taxation as required by RCW 84.33.100 through 84.33.170. WAC 458-40-500 through 458-40-599 replace WAC 458-40-010 through 458-40-380 which pertain to forest land.

[Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-500, filed 12/31/86.]

WAC 458-40-510 Property tax, forest land—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply to WAC 458-40-500 through 458-40-540.

(1) Department. The department of revenue of the state of Washington.

(2) Forest land. Synonymous with timberland and means all land in any contiguous ownership of twenty or more acres which is primarily devoted to and used for growing and harvesting timber and means land only.

(3) Legal description. A description of an area of land using government lots and standard general land office subdivision procedures. If the boundary of the area is irregular, the physical boundary shall be described by metes and bounds or by other means that will clearly identify the property.

(4) Site index. The productive quality of forest land, determined by the total height reached by the dominant and codominant trees on a particular site at a given age.

[Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-510, filed 12/31/86.]

WAC 458-40-520 Property tax, forest land—Classification, designation, removal by assessor, compensating taxes. (Reserved.)

[Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-520, filed 12/31/86.]

WAC 458-40-530 Property tax, forest land—Land grades. The following shall constitute the conversion of species and site indices to forest land grades:

WASHINGTON STATE PRIVATE FOREST LAND GRADES

SPECIES	SITE INDEX	LAND GRADE	
WESTSIDE			
Douglas	136 ft. and over	1	
Fir	118-135 ft.	2	
	99-117 ft.	3	
	84-98 ft.	4	
	under 84 ft.	5	
Western	136 ft. and over	1	
Hemlock	116-135 ft.	2	
	98-115 ft.	3	
	83-97 ft.	4	
	68-82 ft.	5	
	under 68 ft.	6	
Red	117 ft. and over	6	
Alder	under 117 ft.	7	
	MFP	7 or 8	*2
	NC	8	*3

EASTSIDE			
Douglas Fir	140 ft. and over	3	*1
&	120-139 ft.	4	*1
Ponderosa	96-119 ft.	5	*1
Pine	70-95 ft.	6	*1
	under 70 ft.	7	*1
	MFP	7 or 8	*2
	NC	8	*3

*1 These are the site indices for one hundred percent stocked stands. Stands with lower stocking levels would require higher site indices to occur in the same land grade.

*2 (MFP) Marginal forest productivity will be land grade 7 operability class 3, in the following townships. All MFP in other townships will be land grade 8.

WESTERN WASHINGTON

Whatcom County - all townships east of Range 6 East, inclusive.
Skagit County - all townships east of Range 7 East, inclusive.
Snohomish County - all townships east of Range 8 East, inclusive.
King County - all townships east of Range 9 East, inclusive.
Pierce County - T15N, R7E; T16N, R7E; T17N, R7E; T18N, R7E; T19N, R9E; T19N, R10E; T19N, R11E.

EASTERN WASHINGTON

Chelan County - all townships west of Range 17 East, inclusive.
Kittitas County - all townships west of Range 15 East, inclusive.
Yakima County - all townships west of Range 14 East, inclusive.

*3 (NC) Noncommercial

[Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-530, filed 12/31/86.]

WAC 458-40-535 Property tax, forest land—Operability classes. Operability classes are established according to intrinsic characteristics of soils and geomorphic features. The criteria for each class apply state-wide.

(1) Class 1—Favorable. Stable soils that slope less than thirty percent. Forest operations do not significantly impact soil productivity and soil erosion. Forest operations, such as roading and logging, are carried out with minimal limitations.

(2) Class 2—Average. Stable soils that slope less than thirty percent, but on which significant soil erosion, compaction, and displacement may occur as a result of forest operations.

(3) Class 3—Difficult. Soils with one or both of the following characteristics:

(a) Stable soils that slope between thirty and sixty-five percent; and

(b) Soils that slope between zero and sixty-five percent, but display evidence that rapid mass movement may occur as a direct result of forest operations.

(4) Class 4—Extreme. All soils that slope more than sixty-five percent.

(5) Variations. Unique conditions found in any one geographic area may impact forest operations to a greater degree than the above classes permit. With documented evidence, the department may place the soil in a more severe class.

[Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-535, filed 12/31/86.]

WAC 458-40-540 Forest land values—1996. The forest land values, per acre, for each grade of forest land for the 1996 assessment year are determined to be as follows:

LAND GRADE	OPERABILITY CLASS	1996 VALUES ROUNDED
1	1	$220
	2	215
	3	204
	4	148
2	1	186
	2	179
	3	171
	4	124
3	1	145
	2	141
	3	139
	4	106
4	1	110
	2	107
	3	106
	4	81
5	1	80
	2	74
	3	73
	4	48
6	1	41
	2	37
	3	37
	4	35
7	1	20
	2	20
	3	19
	4	19
8		1

[Statutory Authority: RCW 82.32.330, 84.33.096 and 84.33.120. 96-02-055, § 458-40-540, filed 12/29/95, effective 1/1/96. Statutory Authority: RCW 82.32.300 and 84.33.120. 95-02-039, § 458-40-540, filed 12/30/94, effective 1/1/95. Statutory Authority: RCW 82.32.300. 94-02-046, § 458-40-540, filed 12/30/93, effective 1/1/94. Statutory Authority: RCW 84.33.120. 93-02-024, § 458-40-540, filed 12/31/92, effective 1/1/93; 91-24-026, § 458-40-540, filed 11/26/91, effective 1/1/92. Statutory Authority: RCW 84.33.120 and 84.08.010. 90-24-012, § 458-40-540, filed 11/27/90, effective 12/28/90; 89-23-095, § 458-40-540, filed 11/21/89, effective 12/22/89. Statutory Authority: RCW 84.33.120 and 84.33.130. 88-23-055 (Order FT-88-3), § 458-40-540, filed 11/15/88; 87-22-068 (Order FT-87-3), § 458-40-540, filed 11/4/87. Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-540, filed 12/31/86.]

WAC 458-40-600 Timber excise tax—Statement of purpose. The purpose of the rules contained in WAC 458-40-600 through 458-40-690 is to prescribe the policies and procedures for the taxation of timber harvested from public and private forest lands as required by RCW 84.33.010 through 84.33.096. WAC 458-40-600 through 458-40-690 replace those portions of WAC 458-40-010 through 458-40-380 which pertain to the taxation of timber.

[Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-600, filed 12/31/86.]

WAC 458-40-610 Timber excise tax—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply to WAC 458-40-600 through 458-40-690.

(1) Codominant trees. Trees whose crowns form the general level of the crown cover and receive full light from above, but comparatively little light from the sides.

(2) Competitive sales. The offering for sale of timber which is advertised to the general public for sale at public auction under terms wherein all qualified potential buyers have an equal opportunity to bid on the sale, and the sale is awarded to the highest qualified bidder. The term "competitive sales" includes making available to the general public permits for the removal of forest products.

(3) Department. The department of revenue of the state of Washington.

(4) Dominant trees. Trees whose crowns are higher than the general level of the canopy and which receive full light from the sides as well as from above.

(5) Harvest unit. An area of timber harvest having the same forest excise tax permit number, stumpage value area, hauling distance zone, harvest adjustments, and harvester. It may include more than one section: *Provided,* A harvest unit may not overlap a county boundary.

(6) Hauling distance zone. An area with specified boundaries as shown on the state-wide stumpage value area and hauling distance zone maps contained in WAC 458-40-640, having similar accessibility to timber markets.

(7) Log grade. Those grades listed in the *"Official Log Scaling and Grading Rules"* handbook developed and authored by the Northwest Log Rules Advisory Group (Advisory Group). "Utility grade" means logs that do not meet the minimum requirements of peeler or sawmill grades as defined in the handbook published by the Advisory Group but are suitable for the production of firm useable chips to an amount of not less than fifty percent of the gross scale; and meeting the following minimum requirements:

Minimum gross diameter—two inches.

Minimum gross length—twelve feet.

Minimum volume—ten board feet net scale.

Minimum recovery requirements—one hundred percent of adjusted gross scale in firm useable chips.

(8) Lump sum sale. Also known as a cash sale or an installment sale, it is a sale of timber wherein the total sale price is dependent upon an estimate of the total volume of timber in the sale rather than the actual volume harvested.

(9) MBF. One thousand board feet measured in Scribner Decimal C Log Scale Rule.

(10) Noncompetitive sales. Sales of timber in which the purchaser has a preferential right to purchase the timber or a right of first refusal.

(11) Other consideration. Value given in lieu of cash as payment for stumpage, such as improvements to the land that are of a permanent nature. It may include, but is not limited to, the construction of permanent roads and the installation of permanent bridges.

(12) Permanent road. A road built as part of the harvesting operation which is intended to have a useful life subsequent to the completion of the harvest.

(13) Private timber. All timber harvested from privately owned lands, including timber on reclassified reforestation land under chapters 84.28 and 84.33 RCW.

(14) Public timber. Timber harvested from federal, state, county, municipal, or other government owned lands.

(15) Remote island. An area of land which is totally surrounded by water at normal high tide and which has no bridge or causeway connecting it to the mainland.

(16) Sale price. The amount paid for timber in cash or other consideration.

(17) Scale sale. A sale of timber in which the sale price is the product of the actual volume harvested and the unit price at the time of harvest.

(18) Species. A grouping of timber based on biological or physical characteristics. In addition to the designations of species or subclassifications defined in Agriculture Handbook No. 451 Checklist of United States Trees (native and naturalized) found in the state of Washington, the following shall be considered separate species for the purpose of harvest classification used in the stumpage value tables:

(a) Other conifer. All conifers not separately designated in the stumpage value tables. See WAC 458-40-660.

(b) Other hardwood. All hardwoods not separately designated.

(c) Special forest products. The following are considered to be separate species of special forest products: Christmas trees (various species), posts (various species), western redcedar flatsawn and shingle blocks, western redcedar shake blocks and boards.

(d) Chipwood. All timber processed to produce chips or chip products delivered to a designated chipwood destination that has been approved in accordance with the provisions of WAC 458-40-670 or otherwise reportable in accordance with the provisions of WAC 458-40-670 (4) or (5).

(e) Small logs. All conifer logs harvested in stumpage value areas 6 or 7 generally measuring seven inches or less in scaling diameter, delivered to and purchased by weight measure at designated small log destinations that have been approved in accordance with the provisions of WAC 458-40-670(6). Log diameter and length is determined by merchandizer scanner with length not to exceed twenty feet.

(f) Sawlog. For purposes of timber harvest in stumpage value areas 6 and 7, a sawlog is a log having a net scale of not less than 33 1/3% of gross scale, nor less than ten board feet and meeting the following minimum characteristics: Gross scaling diameter of five inches and a gross scaling length of eight feet.

(g) Piles. All logs sold for use or processing as piles that meet the specifications described in the most recently published edition of the *Standard Specification for Round*

Timber Piles (Designation: D 25) of the American Society for Testing and Materials.

(h) Poles. All logs sold for use or processing as poles that meet the specifications described in the most recently published edition of the *National Standard for Wood Poles—Specifications and Dimensions (ANSI 05.1)* of the American National Standards Institute.

(19) Stumpage. Standing or fallen trees, live or dead, having commercial value which have not been severed from the stump.

(20) Stumpage value area (SVA). An area with specified boundaries which contains timber having similar growing, harvesting and marketing conditions.

(21) Thinning. Timber removed from a harvest unit meeting all the following conditions:

(a) Located in stumpage value areas 1, 2, 3, 4, 5, and 10;

(b) The total volume removed is less than forty percent of the total merchantable volume of the harvest unit prior to harvest;

(c) Leave a minimum of one hundred undamaged, evenly spaced, dominant or codominant trees per acre of a commercial species or combination thereof.

(22) Timber. Forest trees, standing or down, on privately or publicly owned land, and except as provided in RCW 84.33.170, includes Christmas trees.

[Statutory Authority: RCW 82.32.330, 84.33.096 and 84.33.091. 96-02-054, § 458-40-610, filed 12/29/95, effective 1/1/96. Statutory Authority: RCW 82.32.330 and 84.33.096. 95-18-026, § 458-40-610, filed 8/25/95, effective 8/25/95. Statutory Authority: RCW 84.33.096 and 82.32.300. 90-14-033, § 458-40-610, filed 6/29/90, effective 7/30/90. Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-610, filed 12/31/86.]

WAC 458-40-615 Timber excise tax—Stumpage values—Reporting of private stumpage sales to the department. (1) **Introduction**. The department is required to semi-annually publish stumpage tables. The department has designated areas containing similar growing, harvesting and marketing conditions to be used as units for the preparation and application of stumpage values. Stumpage tables for each species or subclassification within a stumpage value area are prepared on or before each December 31 for use the following January through June and on or before June 30 for use July through December. The stumpage value is the amount that each species or subclassification would sell for at a voluntary sale (public or private) made in the ordinary course of business for purposes of immediate harvest. The stumpage values are determined in a manner which makes reasonable allowances for age, size, quantity, costs of removal, accessibility to point of conversion, market conditions and all other relevant factors from:

(a) Gross proceeds from sales (public and/or private) on the stump of similar timber of like quality and character at similar locations and in similar quantities;

(b) Gross proceeds from sales (public and/or private) of logs adjusted to reflect only the portion of such proceeds attributable to value on the stump immediately prior to harvest; or

(c) A combination of (a) and (b) of this subsection.

(2) **Reporting requirement-in general**. To enable the department to determine stumpage values, the department must have information on public and private sales of stumpage (timber), both lump sum sales and scale sales. RCW 84.33.0501 requires the reporting, by the purchaser, of voluntary sales of privately owned timber made in the ordinary course of business. The law also provides a penalty for failure to report a sale. The elements for the report and the penalty provisions are explained in the following subsections of this section. All public sales of stumpage are available to the department through information sharing agreements.

(3) **Reporting of stumpage purchases-buyers**. All private stumpage purchases in excess of 200,000 board feet shall be reported to the department on the informational return/report provided by the department or in any reasonable alternate form or, at the purchaser's option, by submitting the timber sale contract or relevant portions thereof, provided that all the information required in subsection (6) of this section is reported. The buyer of stumpage must report each stumpage purchase. For purposes of this section, all stumpage purchases are either;

(a) Lump sum sales as defined in WAC 458-40-610(7), which states: "Lump sum sale. Also known as a cash sale or installment sale, it is a sale of timber wherein the total sale price is dependent upon an estimate of the total volume of timber in the sale rather than the actual timber harvested."; or

(b) Scale sales as defined in WAC 458-40-610(16), which states: "Scale sale. A sale of timber in which the sale price is the product of the actual volume harvested and the unit price at the time of harvest."

(4) **Time of reporting**. The informational returns/reports for purchases of stumpage, or the returns/reports to the department of the information required by subsection (6) of this section, are due to the department no later than the last day of the month following the month in which the purchase of stumpage occurred.

(5) **Reporting-confidentiality of information**. All data submitted to the department in compliance with this section is and is deemed to be confidential tax information protected from disclosure under RCW 82.32.330. To the extent allowable by law, the department will not use or publish the informational return/report information in a manner such that the data from a particular return/report can be identified.

(6) **Informational return/report**. The return/report shall consist of an information page which contains the identification of the seller and buyer, the date of the sale, and such other information as the department may require for the identification of the transaction.

(a) A supply of informational returns will be provided to those persons involved in transactions on a regular basis.

(b) Persons who do not receive a supply of informational returns from the department will be provided a supply of informational returns upon a request to the department.

(c) Any report not made on the department's informational return form complies with this section if it contains all information relevant to the value of the timber purchased, including, but not limited to, the following, as applicable:

(i) Purchaser's name;

(ii) Purchaser's address;

(iii) Sale date;

(iv) Termination date in sale agreement;

(v) Total sale price;

(vi) Total acreage involved;

(vii) Net volume of timber purchased;

(viii) Legal description of sale area and/or map of sale area;

(ix) Road construction or improvements required or completed;

(x) Timber cruise volume data by species and log grade or log sort, as appropriate; and

(xi) Timber thinning data.

(7) **Penalty for failure to report.** A purchaser of timber who is required to report the purchase in accordance with RCW 84.33.0501 and this section, and who fails to report the purchase as required is liable for a penalty of two hundred fifty dollars for each failure to report.

When a penalty for failure to report is imposed, the department shall notify the purchaser, by certified mail, of the imposition of the penalty, provide a due date for the payment of the penalty, and shall provide in the notice the availability of administrative appeal of the penalty imposition as provided in subsection (9) of this section.

(8) **Waiver of penalty.** The penalty waiver provisions of RCW 82.32.105 applying to certain excise taxes apply to the penalty imposed by RCW 84.33.0501. See: WAC 458-20-228 for waiver of penalties.

(a) The department will waive or cancel the penalties imposed upon a finding that the failure of a taxpayer to file the report as provided in this section was due to circumstances beyond the control of the purchaser. The department has no authority to cancel penalties for any other reason. Penalties will not be cancelled merely because of ignorance or a lack of knowledge by the purchaser of the reporting requirement.

A purchaser, in addition to the right to appeal the imposition of the penalty as provided in subsection (9) of this section, may request cancellation or waiver of the penalty from the office that issued the notice of imposition of the penalty. Such a request for a waiver or cancellation of penalties must be in letter form and addressed to the office which issued the notice of penalty imposition. Such request shall contain all pertinent facts and be accompanied by such proof as may be available. If the request to the office issuing the notice of penalty is denied, the purchaser may petition for review as provided in subsection (9) of this section. Or, the purchaser may petition for review directly as provided in subsection (9) of this section. A request to the office issuing the notice of the imposition of the penalty for cancellation and/or waiver of the penalty, and a petition for cancellation of penalties under subsection (9) of this section each must be made within the period for filing under RCW 82.32.160 (within thirty days after the issuance of the original notice of the amount owed or within the period covered by any extension of the due date granted by the department). In all cases the burden of proving the facts is upon the purchaser.

(b) The following situations will be the only circumstances under which a cancellation of penalties will be considered by the department:

(i) The return/report was filed on time but inadvertently mailed to another agency.

(ii) The failure to file the report was due to erroneous written information given the purchaser by a department officer or employee. A penalty generally will not be waived when it is claimed that erroneous oral information was given by a department employee. The reason for not cancelling the penalty in cases of oral information is because of the uncertainty of the facts presented, the instructions or information imparted by the department employee, or that the purchaser fully understood the information received. Reliance by the purchaser on incorrect advice received from the taxpayer's legal or accounting representative is not a basis for cancellation of the penalty.

(iii) The delinquency was caused by death or serious illness of the purchaser or his immediate family, or illness or death of the purchaser's accountant or the accountant's immediate family, prior to the filing date.

(iv) The failure to report was caused by unavoidable absence of the taxpayer, prior to the filing date.

(v) The failure to report was caused by the destruction by fire or other casualty of the purchaser's place of business or business records.

(vi) The purchaser, prior to the time for filing the return, made timely application to the Olympia or district office, in writing, for proper forms and these were not furnished in sufficient time to permit the completed return/report to be timely filed.

(vii) The failure to file a return/report penalty will be waived or cancelled on a one time only basis if the return/report was received under the following circumstances:

(A) The return/report was received by the department within thirty days after the due date; and

(B) The failure to report was the result of an unforeseen and unintentional circumstance, not immediately known to the taxpayer, which circumstance will include the error or misconduct of the taxpayer's employee or accountant, confusion caused by communications with the department, failure to receive return forms timely, natural disasters such as a flood or earthquake, and delays or losses related to the postal service.

(c) Any person aggrieved by the imposition of the penalty by the department may petition the department in writing in accordance with RCW 82.32.160 and WAC 458-20-100.

(9) **Appeal.** A purchaser may appeal the imposition of the penalty to the department. The appeal provisions of RCW 82.32.160 and 82.32.170 shall each apply. The petition for appeal of the imposition of the penalty must be filed with the department's interpretation and appeals division within thirty days of the later of:

(a) The date of the notice of the imposition of the penalty, plus extensions, if any, provided by the department; or

(b) The denial of the request for cancellation or waiver of the penalty made to the office which issued the notice of imposition of the penalty as provided in subsection (8)(a)(i) of this section.

(c) See: WAC 458-20-100 for appeal process and procedure.

[Statutory Authority: RCW 82.32.300 and 84.33.096. 95-14-086, § 458-40-615, filed 6/30/95, effective 7/1/95; 92-18-030, § 458-40-615, filed 8/26/92, effective 9/26/92.]

WAC 458-40-620 Timber excise tax—Tax liability—Harvester as taxpayer, harvester defined. For purposes of determining which person is the timber harvester and, therefore, the person liable for payment of the tax imposed under RCW 84.33.041, and except as provided under WAC 458-40-622 and 458-40-624, the harvester of timber shall be that person or persons who own the timber at the time the quantity by species is first definitely determined (at the time the logs are scaled). In cases where the ownership of the timber at the time of scaling is in doubt, the department shall consider the owner of the land from which the timber was harvested to be the harvester and the one liable for paying the tax.

[Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-620, filed 12/31/86.]

WAC 458-40-622 Timber excise tax—Tax liability—Government entity as harvester. Whenever a government entity as defined in RCW 84.33.035 harvests timber and retains title to the timber until it is scaled, the harvester shall be the first person or persons who obtain title to the timber or exclusive possessory interest in such timber, and such person or persons shall be liable for paying the taxes due under RCW 84.33.041.

[Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-622, filed 12/31/86.]

WAC 458-40-624 Timber excise tax—Tax liability—Reclassified reforestation lands. As provided in RCW 84.33.055, when timber is harvested from reclassified reforestation lands, as defined in RCW 84.28.205, the tax imposed under RCW 84.33.041 and 84.33.055 shall be paid by the owner of such lands.

[Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-624, filed 12/31/86.]

WAC 458-40-626 Timber excise tax—Tax liability—Private timber, tax due when timber harvested. For purposes of determining the proper calendar quarter in which to pay tax on timber harvested from private land—including reclassified reforestation lands—the tax shall be due and payable on the last day of the month following the end of the calendar quarter in which the timber was harvested.

[Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-626, filed 12/31/86.]

WAC 458-40-628 Timber excise tax—Tax liability—Public timber lump sum vs. scale sales. For purposes of determining the proper quarter in which to pay taxes on timber harvested from public land, the taxes due under RCW 84.33.041 shall be due and payable as follows:

(1) LUMP SUM SALE: The tax shall be due and payable on the last day of the month following the quarter in which the purchaser is billed by the seller for the timber: *Provided,* That if payments are made to the seller before any harvest, road construction or other work has begun on the timber sale contract, taxes may be deferred until the quarter in which harvest or other contract work begins. In the quarter that harvest commences, taxes shall become due and payable on all billings accrued by the buyer in all prior quarters as well as the current quarter.

(2) SCALE SALE: The tax shall be due and payable on the last day of the month following the end of the calendar quarter in which the timber was harvested. For tax purposes the timber is to be considered harvested in the quarter for which the volumes and values appear on the monthly billing statements. Indexing or escalation amounts shall be included in the quarter in which they apply.

(3) OTHER CONSIDERATIONS: Tax due on considerations other than cash shall be due and payable not later than the last quarter of harvest: *Provided,* That if road credits (United States Forest Service Sales) are used as payment for stumpage, the tax is due in the quarter in which the road credits are applied as payment.

[Statutory Authority: RCW 84.33.096 and 82.32.300. 90-02-049, § 458-40-628, filed 12/29/89, effective 1/29/90. Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-628, filed 12/31/86.]

WAC 458-40-630 Timber excise tax—Stumpage value—General definition. The term stumpage value shall mean the true and fair market value of timber for purposes of immediate harvest. Taxable stumpage value shall be the value of timber as defined in RCW 84.33.035(5), and this chapter.

[Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-630, filed 12/31/86.]

WAC 458-40-632 Timber excise tax—Taxable stumpage value—Private timber. Except as provided under WAC 458-40-634 for small harvesters, the taxable stumpage value shall be the appropriate value for the species of timber harvested as set forth in the stumpage value tables adopted under this chapter.

[Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-632, filed 12/31/86.]

WAC 458-40-634 Timber excise tax—Taxable stumpage value—Small harvester option. A small harvester is a harvester who harvests timber from privately or publicly owned forest land in an amount not exceeding two million board feet in a calendar year. Small harvesters may elect to calculate the excise tax in the manner provided by RCW 84.33.073 and 84.33.074. The taxable stumpage value shall be determined by one of the following methods as appropriate:

(1) Sale of logs. Timber which has been severed from the stump, bucked into various lengths and sold in the form of logs shall have a taxable stumpage value equal to the actual gross receipts for the logs, less any costs associated with harvesting and marketing the timber. Harvesting and marketing costs shall include only those costs directly and exclusively associated with harvesting the timber from the land and delivering it to the buyer, and may include the costs of slash disposal required to abate extreme fire hazard. Harvesting and marketing costs shall not include the costs of reforestation, permanent road construction, or any other costs not directly and exclusively associated with the harvesting and marketing of the timber. The actual harvesting and marketing costs must be used in all instances where documented records are available. When the taxpayer is unable to provide documented proof of such costs, the deduction for harvesting and marketing costs shall be thirty-five percent of the gross receipts from the sale of the logs.

(2) Sale of stumpage. Timber which is sold as stumpage and harvested within twelve months of the date of sale shall have a taxable stumpage value equal to the actual gross receipts for the stumpage for the most recent sale prior to harvest. If a person purchases stumpage and harvests the timber more than twelve months after purchase of the stumpage, the taxable value shall be computed as in subsection (1) of this section.

[Statutory Authority: RCW 82.32.330, 84.33.096 and 84.33.120. 96-02-056, § 458-40-634, filed 12/29/95, effective 1/29/96. Statutory Authority: RCW 82.33.096. 93-14-090, § 458-40-634, filed 7/1/93, effective 8/1/93. Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-634, filed 12/31/86.]

WAC 458-40-636 Timber excise tax—Taxable stumpage value—Public timber. The taxable stumpage value for public timber sales shall be determined as follows:

(1) Competitive sales. The taxable value shall be the actual purchase price in cash or other consideration. The taxable value of other consideration shall be the fair market value of the other consideration; provided that if the other consideration is permanent roads, the taxable value shall be the appraised value as appraised by the seller. If the seller does not provide an appraised value for roads, the taxable value shall be the actual costs incurred by the purchaser for constructing or improving the roads.

(2) Noncompetitive sales. The taxable value shall be determined using the department's stumpage value tables as set forth in this chapter.

(3) Sale of logs. The taxable value for public timber sold in the form of logs shall be the actual purchase price for the logs in cash or other consideration less appropriate deductions for costs of felling, bucking, and yarding the logs to the point of sale. Cost deductions shall be the actual costs when documented proof is available. In the absence of verifiable actual cost data, cost deductions shall be based on the costs as appraised by the seller, if available; or an estimate of such costs based on the best available information from the sale of similar timber under similar harvesting conditions.

(4) Transitional sales. Sales in which the harvest began before July 1, 1984, and continued after that date. On such sales, the volume harvested prior to July 1, 1984, shall be taxed using the department's stumpage value tables as set forth in this chapter. For volume harvested on or after July 1, 1984, the taxable stumpage value shall be determined by actual payments for stumpage in cash or other consideration.

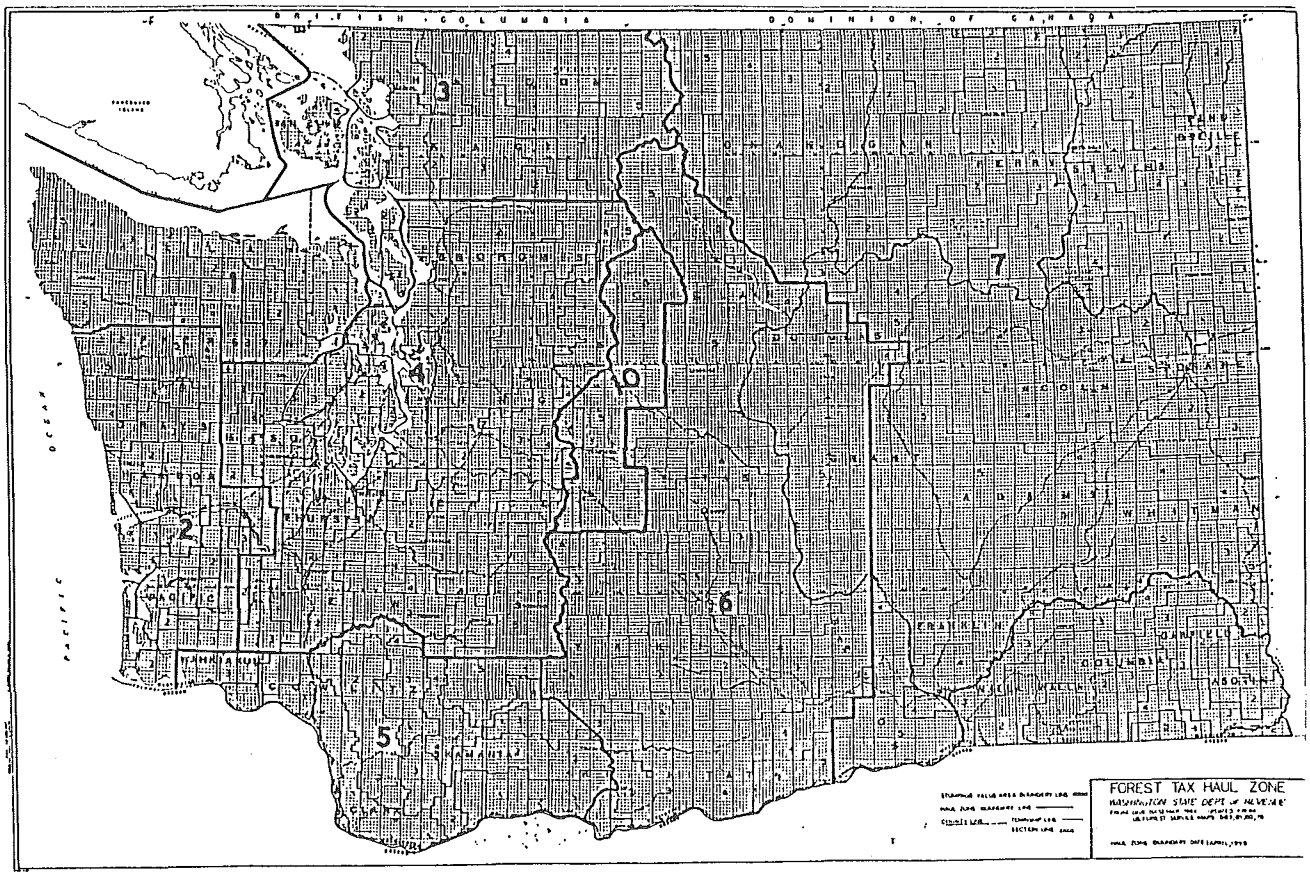
(5) Defaulted sales and uncompleted contracts. In the event of default on a public timber sale contract, wherein the taxpayer has made partial payment for the timber but has not removed timber, no tax shall be due. If part of the sale is logged and the purchaser fails to complete the harvesting, taxes shall be due on the amount the purchaser has been billed by the selling agency for the volume removed to date.

[Statutory Authority: RCW 84.33.096 and 82.32.300. 90-14-033, § 458-40-636, filed 6/29/90, effective 7/30/90. Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-636, filed 12/31/86.]

WAC 458-40-640 Timber excise tax—Stumpage value area (map). The stumpage value area and hauling distance zone map contained in this section shall be used to determine the proper stumpage value table and haul zone to be used in calculating the taxable stumpage value of timber harvested from private land.

WAC 458-40-640 STUMPAGE VALUE AREA AND HAULING ZONE -- MAP

Harvesters may obtain a larger scale map by writing to the Washington State Department of Revenue, Special Programs Division, Forest Tax Section, Post Office Box 47472, Olympia, WA. 98504-7472; or by calling (206) 753-7086.



[Statutory Authority: RCW 82.32.300 and 84.33.096. 95-14-086, § 458-40-640, filed 6/30/95, effective 7/1/95; 95-02-037, § 458-40-640, filed 12/30/94, effective 1/1/95; 90-14-033, § 458-40-640, filed 6/29/90, effective 7/30/90. Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-640, filed 12/31/86.]

WAC 458-40-650 Timber excise tax—Timber quality codes defined. The timber quality code numbers for each species of timber shown in the stumpage value tables contained in this chapter are defined as follows:

TABLE 1—Timber Quality Code Table
Stumpage Value Areas 1, 2, 3, 4, 5, and 10

Species	Quality Code Number	Log grade specifications[1]
Douglas-fir	1	Over 50% No. 2 Sawmill and better log grade, and 15% and over Special Mill, No. 1 Sawmill, and better log grade.
Douglas-fir	2	Over 50% No. 2 Sawmill and better log grade, and less than 15% Special Mill, No. 1 Sawmill, and better log grade.
Douglas-fir	3	25-50% inclusive No. 2 Sawmill and better log grade.
Douglas-fir	4	Less than 25% No. 2 Sawmill and better log grade.
Western Redcedar and Alaska-Cedar	1	Over 30% No. 2 Sawmill and better log grade, and 15% and over Special Mill, No. 1 Sawmill, Peeler and better log grade.
Western Redcedar and Alaska-Cedar	2	Over 30% No. 2 Sawmill and better log grade, and less than 15% Special Mill, No. 1 Sawmill, Peeler Land better log grade.
Western Redcedar and Alaska-Cedar	3	5-30% inclusive No. 2 Sawmill and better log grade.
Western Redcedar and Alaska-Cedar	4	Less than 5% No. 2 Sawmill and better log grade.
Western Hemlock, True Firs, Other Conifer, and Spruce	1	Over 50% No. 2 Sawmill and better log grade, and 5% and over Special Mill, No. 1 Sawmill and better log grade.
Western Hemlock, True Firs, Other Conifer, and Spruce	2	Over 50% No. 2 Sawmill and better log grade, and less than 5% Special Mill, No. 1 Sawmill and better log grade.
Western Hemlock, True Firs, Other Conifer, and Spruce	3	25-50% inclusive No. 2 Sawmill and better log grade.

Western Hemlock, True Firs, Other Conifer, and Spruce	4	Less than 25% No. 2 Sawmill and better log grade.
Ponderosa Pine	1	Less than 10 logs 16 feet long per thousand board feet Scribner scale.
Ponderosa Pine	2	10 or more logs 16 feet long per thousand board feet Scribner scale.
Lodgepole Pine	1	All log grades.
Red Alder and other hardwoods	1	Over 50% No. 3 Sawmill and better log grades.
Red Alder and other hardwoods	2	10-50% inclusive No. 3 Sawmill and better other hardwoods log grades.
Red Alder and other hardwoods	3	Less than 10% No. 3 Sawmill and better log grades.
Black Cottonwood	1	35% and over Peeler log grade.
Black Cottonwood	2	Less than 35% Peeler log grade and 15% and greater No.1 Sawmill and better log grade.
Black Cottonwood	3	Less than 15% No. 1 Sawmill and better log grade.
Chipwood	1	All logs that comply with the definition of chipwood in WAC 458-40-610 (18)(d).
Piles	1	All logs that comply with the definition of piles in WAC 458-40-610 (18)(g).
Poles	1	All logs that comply with the definition of poles in WAC 458-40-610 (18)(h).

[1] For detailed descriptions and definitions of approved log scaling, grading rules, and procedures see WAC 458-40-680.

TABLE 2—Timber Quality Code Table Stumpage Value Areas 6 and 7

Species	Quality Code Number	Log grade specifications1
Ponderosa Pine	1	Less than 10 logs 16 feet long per thousand board feet Scribner scale.
Ponderosa Pine	2	10 or more logs 16 feet long per thousand board feet Scribner scale.
All conifers other than Ponderosa Pine	1	All log sizes.
Hardwoods	1	Sawlogs only.
Small logs	1	All conifer logs that comply with the definition of small logs in WAC 458-40-610 (18)(e).
Chipwood	1	All logs that comply with the definition of chipwood in WAC 458-40-610 (18)(d).
Piles	1	All logs that comply with the definition of piles in WAC 458-40-610 (18)(g).
Poles	1	All logs that comply with the definition of poles in WAC 458-40-610 (18)(h).

[Statutory Authority: RCW 82.32.330, 84.33.096 and 84.33.091. 96-02-054, § 458-40-650, filed 12/29/95, effective 1/1/96. Statutory Authority: RCW 82.32.300 and 84.33.096. 95-14-084, § 458-40-650, filed 6/30/95, effective 7/31/95. Statutory Authority: RCW 84.33.091, 84.32.300 [82.32.300] and 84.33.096. 94-14-048, § 458-40-650, filed 6/30/94, effective 7/1/94; 92-14-083, § 458-40-650, filed 6/29/92, effective 7/1/92; 92-02-067, § 458-40-650, filed 12/31/91, effective 1/1/92. Statutory Authority: RCW 84.33.091 and chapter 84.33 RCW. 88-14-032 (Order FT-88-2), § 458-40-650, filed 6/30/88. Statutory Authority: Chapter 84.33 RCW. 87-14-042 (Order 87-2), § 458-40-650, filed 6/30/87; 87-02-023 (Order 86-4), § 458-40-650, filed 12/31/86.]

WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) **Introduction.** This section sets forth the stumpage value tables and the stumpage value adjustments that are used to calculate the amount of timber excise tax owed by a timber harvester.

(2) **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, 1997:

TABLE 1—Stumpage Value Table Stumpage Value Area 1

January 1 through June 30, 1997

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	$701	$694	$687	$680	$673
		2	660	653	646	639	632
		3	523	516	509	502	495
		4	267	260	253	246	239
Western Redcedar[2]	RC	1	498	491	484	477	470
		2	495	488	481	474	467
		3	455	448	441	434	427
		4	449	442	435	428	421
Western Hemlock[3]	WH	1	396	389	382	375	368
		2	379	372	365	358	351
		3	379	372	365	358	351
		4	271	264	257	250	243
Other Conifer	OC	1	396	389	382	375	368
		2	379	372	365	358	351
		3	379	372	365	358	351
		4	271	264	257	250	243
Red Alder	RA	1	211	204	197	190	183
		2	180	173	166	159	152
		3	99	92	85	78	71
Black Cottonwood	BC	1	64	57	50	43	36
		2	42	35	28	21	14
		3	32	25	18	11	4
Other Hardwood	OH	1	101	94	87	80	73
		2	95	88	81	74	67
		3	68	61	54	47	40
Douglas-fir Poles and Piles	DFL	1	959	952	945	938	931
Western Redcedar Poles and Piles	RCL	1	959	952	945	938	931
Chipwood[4]	CHW	1	1	1	1	1	1
RC Shake Blocks	RCS	1	303	296	289	282	275
RC Shingle Blocks	RCF	1	121	114	107	100	93
RC & Other Posts[5]	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees[6]	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees[6]	TFX	1	0.50	0.50	0.50	0.50	0.50

[1] Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.

2 Includes Alaska-Cedar.
3 Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
4 Stumpage value per ton.
5 Stumpage value per 8 lineal feet or portion thereof.
6 Stumpage value per lineal foot.

TABLE 2—Stumpage Value Table
Stumpage Value Area 2
January 1 through June 30, 1997

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	$774	$767	$760	$753	$746
		2	619	612	605	598	591
		3	531	524	517	510	503
		4	379	372	365	358	351
Western Redcedar[2]	RC	1	498	491	484	477	470
		2	495	488	481	474	467
		3	455	448	441	434	427
		4	449	442	435	428	421
Western Hemlock[3]	WH	1	439	432	425	418	411
		2	439	432	425	418	411
		3	423	416	409	402	395
		4	347	340	333	326	319
Other Conifer	OC	1	439	432	425	418	411
		2	439	432	425	418	411
		3	423	416	409	402	395
		4	347	340	333	326	319
Red Alder	RA	1	211	204	197	190	183
		2	180	173	166	159	152
		3	99	92	85	78	71
Black Cottonwood	BC	1	64	57	50	43	36
		2	42	35	28	21	14
		3	32	25	18	11	4
Other Hardwood	OH	1	101	94	87	80	73
		2	95	88	81	74	67
		3	68	61	54	47	40
Douglas-fir Poles and Piles	DFL	1	959	952	945	938	931
Western Redcedar Poles and Piles	RCL	1	959	952	945	938	931
Chipwood[4]	CHW	1	1	1	1	1	1
RC Shake Blocks	RCS	1	303	296	289	282	275
RC Shingle Blocks	RCF	1	121	114	107	100	93
RC & Other Posts[5]	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees[6]	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees[6]	TFX	1	0.50	0.50	0.50	0.50	0.50

1 Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.
2 Includes Alaska-Cedar.
3 Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
4 Stumpage value per ton.
5 Stumpage value per 8 lineal feet or portion thereof.
6 Stumpage value per lineal foot.

TABLE 3—Stumpage Value Table
Stumpage Value Area 3
January 1 through June 30, 1997

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	$652	$645	$638	$631	$624
		2	643	636	629	622	615
		3	506	499	492	485	478
		4	407	400	393	386	379
Western Redcedar[2]	RC	1	498	491	484	477	470
		2	495	488	481	474	467
		3	455	448	441	434	427
		4	449	442	435	428	421
Western Hemlock[3]	WH	1	507	500	493	486	479
		2	437	430	423	416	409
		3	430	423	416	409	402
		4	316	309	302	295	288
Other Conifer	OC	1	507	500	493	486	479
		2	437	430	423	416	409
		3	430	423	416	409	402
		4	316	309	302	295	288
Red Alder	RA	1	211	204	197	190	183
		2	180	173	166	159	152
		3	99	92	85	78	71
Black Cottonwood	BC	1	64	57	50	43	36
		2	42	35	28	21	14
		3	32	25	18	11	4
Other Hardwood	OH	1	101	94	87	80	73
		2	95	88	81	74	67
		3	68	61	54	47	40
Douglas-fir Poles and Piles	DFL	1	959	952	945	938	931
Western Redcedar Poles and Piles	RCL	1	959	952	945	938	931
Chipwood[4]	CHW	1	1	1	1	1	1
RC Shake Blocks	RCS	1	303	296	289	282	275
RC Shingle Blocks	RCF	1	121	114	107	100	93
RC & Other Posts[5]	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees[6]	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees[6]	TFX	1	0.50	0.50	0.50	0.50	0.50

1 Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.
2 Includes Alaska-Cedar.
3 Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
4 Stumpage value per ton.
5 Stumpage value per 8 lineal feet or portion thereof.
6 Stumpage value per lineal foot.

TABLE 4—Stumpage Value Table Stumpage Value Area 4 January 1 through June 30, 1997

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	$682	$675	$668	$661	$654
		2	665	658	651	644	637
		3	578	571	564	557	550
		4	433	426	419	412	405
Lodgepole Pine	LP	1	190	183	176	169	162
Ponderosa Pine	PP	1	489	482	475	468	461
		2	245	238	231	224	217
Western Redcedar[3]	RC	1	498	491	484	477	470
		2	495	488	481	474	467
		3	455	448	441	434	427
		4	449	442	435	428	421
Western Hemlock[4]	WH	1	507	500	493	486	479
		2	452	445	438	431	424
		3	410	403	396	389	382
		4	371	364	357	350	343
Other Conifer	OC	1	507	500	493	486	479
		2	452	445	438	431	424
		3	410	403	396	389	382
		4	371	364	357	350	343
Red Alder	RA	1	211	204	197	190	183
		2	180	173	166	159	152
		3	99	92	85	78	71
Black Cottonwood	BC	1	64	57	50	43	36
		2	42	35	28	21	14
		3	32	25	18	11	4
Other Hardwood	OH	1	101	94	87	80	73
		2	95	88	81	74	67
		3	68	61	54	47	40
Douglas-fir Poles and Piles	DFL	1	959	952	945	938	931
Western Redcedar Poles and Piles	RCL	1	959	952	945	938	931
Chipwood[5]	CHW	1	1	1	1	1	1
RC Shake Blocks	RCS	1	303	296	289	282	275
RC Shingle Blocks	RCF	1	121	114	107	100	93
RC & Other Posts[6]	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees[7]	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees[7]	TFX	1	0.50	0.50	0.50	0.50	0.50

1 Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.
2 Includes Western Larch.
3 Includes Alaska-Cedar.
4 Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
5 Stumpage value per ton.
6 Stumpage value per 8 lineal feet or portion thereof.
7 Stumpage value per lineal foot.

TABLE 5—Stumpage Value Table Stumpage Value Area 5 January 1 through June 30, 1997

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	$682	$675	$668	$661	$654
		2	590	583	576	569	562
		3	545	538	531	524	517
		4	383	376	369	362	355
Lodgepole Pine	LP	1	190	183	176	169	162
Ponderosa Pine	PP	1	489	482	475	468	461
		2	245	238	231	224	217
Western Redcedar[3]	RC	1	498	491	484	477	470
		2	495	488	481	474	467
		3	455	448	441	434	427
		4	449	442	435	428	421
Western Hemlock[4]	WH	1	507	500	493	486	479
		2	497	490	483	476	469
		3	389	382	375	368	361
		4	371	364	357	350	343
Other Conifer	OC	1	507	500	493	486	479
		2	497	490	483	476	469
		3	389	382	375	368	361
		4	371	364	357	350	343
Red Alder	RA	1	211	204	197	190	183
		2	180	173	166	159	152
		3	99	92	85	78	71
Black Cottonwood	BC	1	64	57	50	43	36
		2	42	35	28	21	14
		3	32	25	18	11	4
Other Hardwood	OH	1	101	94	87	80	73
		2	95	88	81	74	67
		3	68	61	54	47	40
Douglas-fir Poles and Piles	DFL	1	959	952	945	938	931
Western Redcedar Poles and Piles	RCL	1	959	952	945	938	931
Chipwood[5]	CHW	1	1	1	1	1	1
RC Shake Blocks	RCS	1	303	296	289	282	275
RC Shingle Blocks	RCF	1	121	114	107	100	93
RC & Other Posts[6]	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees[7]	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees[7]	TFX	1	0.50	0.50	0.50	0.50	0.50

1 Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.
2 Includes Western Larch.
3 Includes Alaska-Cedar.
4 Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
5 Stumpage value per ton.
6 Stumpage value per 8 lineal feet or portion thereof.
7 Stumpage value per lineal foot.

TABLE 6—Stumpage Value Table
Stumpage Value Area 6
January 1 through June 30, 1997

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	$281	$274	$267	$260	$253
Engelmann Spruce	ES	1	217	210	203	196	189
Lodgepole Pine	LP	1	190	183	176	169	162
Ponderosa Pine	PP	1	489	482	475	468	461
		2	245	238	231	224	217
Western Redcedar[3]	RC	1	303	296	289	282	275
True Firs[4]	WH	1	238	231	224	217	210
Western White Pine	WP	1	378	371	364	357	350
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles and Piles	RCL	1	516	509	502	495	488
Small Logs[5]	SML	1	28	27	26	25	24
Chipwood[5]	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks	RCF	1	92	85	78	71	64
LP & Other Posts[6]	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees[7]	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees[8]	DFX	1	0.25	0.25	0.25	0.25	0.25

[1] Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.
[2] Includes Western Larch.
[3] Includes Alaska-Cedar.
[4] Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
[5] Stumpage value per ton.
[6] Stumpage value per 8 lineal feet or portion thereof.
[7] Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
[8] Stumpage value per lineal foot.

TABLE 7—Stumpage Value Table
Stumpage Value Area 7
January 1 through June 30, 1997

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	$281	$274	$267	$260	$253
Engelmann Spruce	ES	1	217	210	203	196	189
Lodgepole Pine	LP	1	190	183	176	169	162
Ponderosa Pine	PP	1	489	482	475	468	461
		2	245	238	231	224	217
Western Redcedar[3]	RC	1	303	296	289	282	275
True Firs[4]	WH	1	238	231	224	217	210
Western White Pine	WP	1	378	371	364	357	350
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles and Piles	RCL	1	516	509	502	495	488
Small Logs[5]	SML	1	22	21	20	19	18
Chipwood[5]	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks	RCF	1	92	85	78	71	64
LP & Other Posts[6]	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees[7]	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees[8]	DFX	1	0.25	0.25	0.25	0.25	0.25

[1] Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.
[2] Includes Western Larch.
[3] Includes Alaska-Cedar.
[4] Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
[5] Stumpage value per ton.
[6] Stumpage value per 8 lineal feet or portion thereof.
[7] Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
[8] Stumpage value per lineal foot.

TABLE 8—Stumpage Value Table
Stumpage Value Area 10
January 1 through June 30, 1997

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	$668	$661	$654	$647	$640
		2	651	644	637	630	623
		3	564	557	550	543	536
		4	419	412	405	398	391
Lodgepole Pine	LP	1	190	183	176	169	162
Ponderosa Pine	PP	1	489	482	475	468	461
		2	245	238	231	224	217
Western Redcedar[3]	RC	1	484	477	470	463	456
		2	481	474	467	460	453
		3	441	434	427	420	413
		4	435	428	421	414	407
Western Hemlock[4]	WH	1	493	486	479	472	465
		2	438	431	424	417	410
		3	396	389	382	375	368
		4	357	350	343	336	329
Other Conifer	OC	1	493	486	479	472	465
		2	438	431	424	417	410
		3	396	389	382	375	368
		4	357	350	343	336	329
Red Alder	RA	1	197	190	183	176	169
		2	166	159	152	145	138
		3	85	78	71	64	57
Black Cottonwood	BC	1	50	43	36	29	22
		2	28	21	14	7	1
		3	18	11	4	1	1
Other Hardwood	OH	1	87	80	73	66	59
		2	81	74	67	60	53
		3	54	47	40	33	26
Douglas-fir Poles and Piles	DFL	1	945	938	931	924	917

Western Redcedar Poles and Piles	RCL	1	945	938	931	924	917
Chipwood[5]	CHW	1	1	1	1	1	1
RC Shake Blocks	RCS	1	303	296	289	282	275
RC Shingle Blocks	RCF	1	121	114	107	100	93
RC & Other Posts[6]	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees[7]	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees[8]	TFX	1	0.50	0.50	0.50	0.50	0.50

[1] Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.
[2] Includes Western Larch.
[3] Includes Alaska-Cedar.
[4] Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
[5] Stumpage value per ton.
[6] Stumpage value per 8 lineal feet or portion thereof.
[7] Stumpage value per lineal foot.

(3) **Harvest value adjustments.** Harvest value adjustments relating to the various logging and harvest conditions shall be allowed against the stumpage values as set forth in subsection (2) of this section for the designated stumpage value areas. See WAC 458-40-670 for more information about these adjustments.

The following harvest adjustment tables are hereby adopted for use during the period of January 1 through June 30, 1997:

**TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, 5, and 10**

January 1 through June 30, 1997

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 40 thousand board feet per acre.	$0.00
Class 2	Harvest of 20 thousand board feet to 40 thousand board feet per acre.	- $4.00
Class 3	Harvest of 10 thousand board feet to but not including 20 thousand board feet per acre.	- $7.00
Class 4	Harvest of 5 thousand board feet to but not including 10 thousand board feet per acre.	- $9.00
Class 5	Harvest of less than 5 thousand board feet per acre.	- $10.00
II. Logging conditions		
Class 1	Most of the harvest unit has less than 30% slope. No significant rock outcrops or swamp barriers.	$ 0.00
Class 2	Most of the harvest unit has slopes between 30% and 60%. Some rock outcrops or swamp barriers.	- $17.00
Class 3	Most of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	- $25.00
Class 4	For logs that are yarded from stump to landing by helicopter. This does not include special forest products.	- $145.00
Note:	A Class 2 adjustment may be used for slopes less than 30% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department.	
III. Remote island adjustment:		
	For timber harvested from a remote island	- $50.00
IV. Thinning (see WAC 458-40-610(21))		
Class 1	Average log volume of 50 board feet or more.	- $25.00
Class 2	Average log volume of less than 50 board feet.	- $125.00

**TABLE 10—Harvest Adjustment Table
Stumpage Value Areas 6 and 7**

January 1 through June 30, 1997

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	Most of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	$0.00
Class 2	Most of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	- $20.00
Class 3	Most of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	- $30.00
Class 4	For logs that are yarded from stump to landing by helicopter. This does not include special forest products.	- $145.00
Note:	A Class 2 adjustment may be used for slopes less than 30% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department.	
III. Remote island adjustment:		
	For timber harvested from a remote island	- $50.00

TABLE 11—Domestic Market Adjustment

Public Timber

Harvest of timber not sold by a competitive bidding process that 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 that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska Yellow Cedar. (Stat. Ref. - 36 CFR 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Red Cedar only. (Stat. Ref. - 50 USC appendix 2406.1)

Private Timber

Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the Act of March 29, 1944, (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The adjustment amounts shall be as follows:

Class 1:	SVA's 1 through 6, and 10	$0.00 per MBF
Class 2:	SVA 7	$0.00 per MBF

Note: The adjustment will not be allowed on special forest products.

[Statutory Authority: RCW 82.32.330, 84.33.096 and 84.33.091. 97-02-069, § 458-40-660, filed 12/31/96, effective 1/1/97; 96-14-063, § 458-40-660, filed 6/28/96, effective 7/1/96; 96-02-057, § 458-40-660, filed 12/29/95, effective 1/1/96. Statutory Authority: RCW 82.32.330, 84.33.096 and 84.33.200. 95-18-027, § 458-40-660, filed 8/25/95, effective 9/25/95. Statutory Authority: RCW 82.32.300 and 84.33.096. 95-02-038, § 458-40-660, filed 12/30/94, effective 1/1/95. Statutory Authority: RCW 84.33.091, 84.32.300 [82.32.300] and 84.33.096. 94-14-048, § 458-40-660, filed 6/30/94, effective 7/1/94; 94-02-047, § 458-40-660, filed 12/30/93, effective 1/1/94; 93-14-051, § 458-40-660, filed 6/30/93, effective 7/1/93; 93-02-025, § 458-40-660, filed 12/31/92, effective 1/1/93; 92-14-083, § 458-40-660, filed 6/29/92, effective 7/1/92; 92-02-067, § 458-40-660, filed 12/31/91, effective 1/1/92. Statutory Authority: RCW 84.33.096 and 82.32.300. 91-14-077, § 458-40-660, filed 6/28/91, effective 7/1/91; 91-09-030, § 458-40-660, filed 4/12/91, effective 5/13/91; 91-02-088, § 458-40-660, filed 12/31/90, effective 1/31/91; 90-14-033, § 458-40-660, filed 6/29/90, effective 7/30/90; 90-02-049, § 458-40-660, filed 12/29/89, effective 1/29/90. Statutory Authority: Chapter 84.33 RCW and RCW 84.33.091. 89-14-051 (Order FT-89-2), § 458-40-660, filed 6/30/89; 89-02-027 (Order FT-88-5), § 458-40-660, filed 12/30/88; 88-14-032 (Order FT-88-2), § 458-40-660, filed 6/30/88; 88-02-026 (Order FT-87-5), § 458-40-660, filed 12/31/87. Statutory Authority: Chapter 84.33 RCW. 87-14-042 (Order 87-2), § 458-40-660, filed 6/30/87; 87-02-023 (Order 86-4), § 458-40-660, filed 12/31/86.]

WAC 458-40-670 Timber excise tax—Stumpage value adjustments—Chipwood and small log destinations. (1) **Introduction.** This section explains the harvest value adjustments to the stumpage value tables (WAC 458-40-660) for various logging and harvesting conditions. It also describes the procedure by which businesses that process chipwood, chipwood products, and/or small logs can become designated chipwood or small log destinations.

(2) **Harvest 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:

(a) No harvest adjustment shall be allowed against special forest products, chipwood, or small logs as those terms are defined in WAC 458-40-610.

(b) Stumpage value rates for conifer and hardwoods shall be adjusted to a value no lower than one dollar per MBF.

(c) Timber harvesters planning to remove timber from areas having damaged timber may apply to the department for adjustment in stumpage values. The application shall contain a map with the legal descriptions of the area, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received by the department before the harvest commences. Upon receipt of an application, the department will determine the amount of adjustment allowed and notify the harvester. In the event the extent of the damage or additional costs is not known at the time the application is filed, the harvester may provide relevant information to the department for a period not exceeding ninety days following completion of the harvest unit.

(d) The harvest adjustment tables are set forth in WAC 458-40-660(3).

(3) **Chipwood destinations.** Businesses that process logs to produce chips or chip products may be designated as approved "chipwood destinations." Logs delivered to the log yards designated as "chipwood destinations" for the purpose of being chipped may be reported as chipwood and have the volume measured by weight.

(a) The department of revenue will maintain a current list of approved chipwood destinations. This list will be updated as necessary and will be formally reviewed by the department at least twice a year. A list of approved chipwood destinations is available from the special programs division, forest tax section of the department.

(b) A log processor in the business of processing logs to produce chips or chip products that has not been designated as an approved destination may file an application to be listed as an approved chipwood destination. The application should be submitted to the Department of Revenue, Forest Tax Section, P. O. Box 47472, Olympia, Washington 98504-7472, to be included in this listing. To qualify as an approved destination, not less than ninety percent of the weight volume of logs delivered to and purchased by the log processor at a specified log yard or location must be processed to produce chips or chip products.

(c) Any applicant seeking administrative review of the department's decision made under (b) of this subsection may appeal the decision in accordance with WAC 458-20-100.

(4) **Logs chipped in the woods.** Logs chipped in the woods may also be reported as chipwood. Volume shall be measured in net weight of green chips.

(5) **Other chipwood processing locations.** Logs processed at locations other than those listed on the approved list of chipwood destinations maintained by the department and other than as provided in subsection (4) of this section may be reported as chipwood volume when scaled as utility grade logs, based on log scaling or upon approved sample log scaling methods.

If a harvester reports chipwood volume that was delivered to a location that is not listed as an approved chipwood destination and there has been no log scaling or approved sample log scaling, the chipwood volume so reported will be converted by the department to the appropriate sawlog volume in accordance with WAC 458-40-684 and 458-40-686 for purposes of timber excise taxation.

(6) **Small log destinations.** Businesses that process small logs as defined in WAC 458-40-610 may be designated as approved "small log destinations."

(a) The department of revenue will maintain a current list of approved small log destinations. This list will be updated as necessary and will be formally reviewed by the department at least twice a year. A list of approved small log destinations is available from the special programs division, forest tax section of the department.

(b) A log processor in the business of processing small logs that has not been designated as an approved destination may file an application to be listed as an approved small log destination. The application should be submitted to the Department of Revenue, Forest Tax Section, P. O. Box 47472, Olympia, Washington 98504-7472, to be included in this listing.

(c) Any applicant seeking administrative review of the department's decision made under (b) of this subsection may appeal the decision in accordance with WAC 458-20-100.

[Statutory Authority: RCW 82.32.330, 84.33.096 and 84.33.200. 95-18-027, § 458-40-670, filed 8/25/95, effective 9/25/95. Statutory Authority: RCW 84.33.091, 84.32.300 [82.32.300] and 84.33.096. 94-14-048, § 458-40-670, filed 6/30/94, effective 7/1/94; 94-02-047, § 458-40-670, filed 12/30/93, effective 1/1/94; 93-14-051, § 458-40-670, filed 6/30/93, effective 7/1/93; 93-02-025, § 458-40-670, filed 12/31/92, effective 1/1/93; 92-14-083, § 458-40-670, filed 6/29/92, effective 7/1/92; 92-02-067, § 458-40-670, filed 12/31/91, effective 1/1/92. Statutory Authority: RCW 84.33.096 and 82.32.300. 91-14-077, § 458-40-670, filed 6/28/91, effective 7/1/91; 91-02-088, § 458-40-670, filed 12/31/90, effective 1/31/91; 90-14-033, § 458-40-670, filed 6/29/90, effective 7/30/90; 90-02-049, § 458-40-670, filed 12/29/89, effective 1/29/90. Statutory Authority: Chapter 84.33 RCW and RCW 84.33.091. 89-14-051 (Order FT-89-2), § 458-40-670, filed 6/30/89; 89-02-027 (Order FT-88-5), § 458-40-670, filed 12/30/88; 88-14-032 (Order FT-88-2), § 458-40-670, filed 6/30/88; 88-02-026 (Order FT-87-5), § 458-40-670, filed 12/31/87. Statutory Authority: Chapter 84.33 RCW. 87-14-042 (Order 87-2), § 458-40-670, filed 6/30/87; 87-02-023 (Order 86-4), § 458-40-670, filed 12/31/86.]

WAC 458-40-680 Timber excise tax—Volume harvested—Approved scaling and grading methods. (1) Acceptable log scaling and grading rules—Stumpage value areas 1, 2, 3, 4, 5, and 10: The acceptable log scaling and grading rule shall be the Scribner Decimal C log rule as described in the most current edition of the "Official Log Scaling and Grading Rules" handbook developed and authored by the Northwest Log Rules Advisory Group. These are the official rules for the following log scaling and grading bureaus: Columbia River, Grays Harbor, Northern California, Puget Sound, Southern Oregon, and Yamhill.

(2) Acceptable log scaling rule—Stumpage value areas 6 and 7: The acceptable log scaling rule shall be the Scribner Decimal C log rule described in the most current edition of the "National Forest Log Scaling Handbook" (FSH 2409.11) as published by the United States Forest Service. Provided, the maximum scaling length is twenty feet and maximum trim allowance shall be six inches for logs eight to twenty feet in length; and provided, further, that lodgepole pine harvested in stumpage value areas 6, 7, or 10 shall be scaled using a one inch taper allowance per log segment.

(3) Special services scaling: Special services scaling as described in the Northwest Log Rules Advisory Group handbook shall not be used for tax reporting purposes without prior written approval of the department; and all measurements and grades must be converted to standard Scribner Decimal C log rules as they are described in the handbook.

[Statutory Authority: RCW 82.32.330, 84.33.096 and 84.33.120. 96-02-056, § 458-40-680, filed 12/29/95, effective 1/29/96. Statutory Authority: RCW 82.32.300 and 84.33.096. 95-14-084, § 458-40-680, filed 6/30/95, effective 7/31/95. Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-680, filed 12/31/86.]

WAC 458-40-682 Timber excise tax—Volume harvested—Sample scaling. Sample scaling shall not be used for tax reporting purposes without prior written approval of the department. To be approved, sample scaling must be in accordance with the following guidelines:

(1) Sample selection, scaling, and grading must be conducted on a continuous basis as the unit is harvested.

(2) The sample must be taken in such a manner to assure random, unbiased measurements in accordance with accepted statistical tests of sampling.

(3) The sample used to determine total volume, species, and quality of timber harvested for a given reporting period must have been taken during that period.

(4) Sample frequency shall be large enough to meet board foot variation accuracy limits of plus or minus two and five-tenths percent standard error at the ninety-five percent confidence level.

(5) Harvesters must maintain sufficient supporting documentation to allow the department to verify source data, and test statistical reliability of sample scale systems.

(6) Exceptions: Sampling designs and accuracy standards other than those described herein may only be used with the prior written approval of the department of revenue.

[Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-682, filed 12/31/86.]

WAC 458-40-684 Timber excise tax—Volume harvested—Conversions to Scribner Decimal C Scale for Western Washington. The following definitions, tables, and conversion factors shall be used in determining taxable volume for timber harvested that was not originally scaled by the Scribner Decimal C Log Rule. Conversion methods, other than those listed are not to be used for tax reporting purposes without prior written approval of the department.

(1) **Weight measurement.** If the original unit of measure was by weight, and the harvester has not applied for approval of sample scaling (WAC 458-40-682), the following table shall be used for converting to Scribner Decimal C. Harvesters must keep records to substantiate the species and quality codes reported. For tax reporting purposes, a ton equals 2,000 pounds.

(Stumpage Value Areas 1, 2, 3, 4, 5, & 10)
BOARD FOOT WEIGHT SCALE FACTORS
(TONS/MBF)

Quality Code	Species code DF*	WH**	RC	RA***
1	5.0	6.0	4.5	7.0
2	6.0	6.5	5.0	7.75
3	6.5	7.5	6.5	8.5
4	7.5	8.25	7.0	

*Includes Douglas-fir, and Sitka Spruce.
**Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and other conifers not separately designated. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
***Maple, Black Cottonwood and other hardwoods.

(2) **Cord measurement**. A cord is a measure of wood with dimensions of 4 feet by 4 feet by 8 feet (128 cubic feet).

(a) Logs with an average scaling diameter of 8 inches and larger shall be converted to Scribner volume using 400 board feet per cord. Logs having an average scaling diameter of less than 8 inches shall be converted to Scribner volume using 330 board feet per cord.

(b) A cord of Western Redcedar shake or shingle blocks shall be converted to Scribner volume using 600 board feet per cord.

(3) **Cants or lumber from portable mills**. To convert from lumber tally to Scribner volume, multiply the lumber tally for the individual species by 75% and round to the nearest one thousand board feet (MBF).

(4) **Eastern, western log scale conversion**. Timber harvested in stumpage value areas 1, 2, 3, 4, and 5 and which has been scaled by methods and procedures published in the "National Forest Log Scaling Handbook" (FSH 2409.11) shall have the volumes reported reduced by eighteen percent to reflect the difference between eastern and western scaling practices.

(5) **Timber pole volume table**. Harvesters of poles in stumpage value areas 1, 2, 3, 4, and 5 shall use the following table to determine the Scribner board foot volume for each pole length and class:

Pole Length	Pole Class[1]	Total Scribner Board Foot Volume by Pole Length by Pole Class[2]
	1	50
	2	50
	3	40
	4	40
20'	5	30
	6	30
	7	20
	9	20
	10	20
	1	60
	2	60
	3	50
	4	50
25'	5	40
	6	40
	7	30
	9	30
	10	30
	1	110
	2	70
	3	60
30'	4	60
	5	50
	6	50
	7	40
	9	40
	H2	160
	H1	160
	1	130
	2	100
35'	3	80
	4	80
	5	60
	6	60
	7	50
	H4	240(240)
	H3	200(200)
	H2	180
	H1	180
40'	1	150
	2	120
	3	120
	4	90
	5	70
	6	60
	H6	380(380)
	H5	340(340)
	H4	340(340)
	H3	280(270)
	H2	230(130)
45'	H1	230(130)
	1	190(110)
	2	150
	3	120
	4	120
	5	90
	6	90
	H6	430(430)
	H5	370(370)
	H4	370(370)
	H3	300(300)
	H2	260(260)
50'	H1	260(150)
	1	210(120)
	2	160
	3	140
	4	140
	5	100
	H6	470(470)
	H5	410(410)
	H4	410(410)
	H3	330(330)
	H2	280(160)
55'	H1	280(160)
	1	230(130)
	2	180
	3	150
	4	150

60'	H6	540(540)
	H5	470(470)
	H4	470(470)
	H3	410(410)
	H2	340(210)
	H1	340(210)
	1	290(180)
	2	220(150)
	3	190
	4	190
65'	H6	610(610)
	H5	520(520)
	H4	520(520)
	H3	420(420)
	H2	380(230)
	H1	380(230)
	1	320(190)
	2	260(160)
	3	210
	4	210
70'	H6	650(650)
	H5	560(560)
	H4	560(560)
	H3	480(480)
	H2	400(240)
	H1	400(240)
	1	350(210)
	2	270(170)
	3	230
	4	230
75'	H6	700(700)
	H5	600(600)
	H4	600(600)
	H3	520(520)
	H2	520(520)
	H1	520(330)
	1	440(270)
	2	290(180)
	3	250
80'	H6	820(820)
	H5	700(700)
	H4	700(700)
	H3	600(600)
	H2	600(600)
	H1	540(360)
	1	440(290)
	2	360(240)
	3	290(200)
85'	H6	910(910)
	H5	800(800)
	H4	800(800)
	H3	660(660)
	H2	660(660)
	H1	660(520)
	1	570(450)
	2	490(340)
	3	360(200)
90'	H6	1080(1080)
	H5	930(930)
	H4	930(930)
	H3	820(820)
	H2	820(820)
	H1	690(560)
	1	590(480)
	2	490(420)
	3	400(210)
95'	H6	1170(1170)
	H5	1000(1000)
	H4	1000(1000)
	H3	870(870)
	H2	870(870)
	H1	750(600)
	1	640(510)
	2	540(440)
100'	H6	1190(1190)
	H5	1030(1030)
	H4	1030(1030)
	H3	900(900)
	H2	900(900)
	H1	760(610)
	1	660(530)
	2	550(450)
105'	H6	1310(1310)
	H5	1160(1160)
	H4	1160(1160)
	H3	1000(1000)
	H2	1000(1000)
	H1	860(700)
	1	740(600)
	2	610(510)
110'	H6	1370(1370)
	H5	1220(1220)
	H4	1220(1220)
	H3	1050(1050)
	H2	1050(1050)
	H1	910(740)
	1	780(640)
	2	650(540)
115'	H6	1440(1440)
	H5	1280(1280)
	H4	1280(1280)
	H3	1100(1100)
	H2	1100(1100)
	H1	960(780)
	1	860(670)
	2	680(570)
120'	H6	1660(1660)
	H5	1460(1460)
	H4	1460(1460)
	H3	1300(1300)
	H2	1300(1300)
	H1	1140(960)
	1	970(820)
	2	820(700)

125'	H6	1840(1840)
	H5	1600(1600)
	H4	1600(1600)
	H3	1410(1410)
	H2	1410(1410)
	H1	1250(1100)
	1	1080(940)
	2	930(830)
130'	H6	1920(1920)
	H5	1680(1680)
	H4	1680(1680)
	H3	1490(1490)
	H2	1490(1490)
	H1	1310(1160)
	1	1120(990)
	2	970(870)

[1] Pole class definitions taken from American National Standard specifications and dimensions for wood poles as approved August 7, 1976 under American National Standard Institute, Inc. codified ANSI 05.1-1972.

[2] The number, enclosed in parenthesis after the total Scribner pole volume for each pole length and class, is the volume per pole for Number 2 Sawmill and better log grade, where applicable.

(6) **Timber piling volume table**. Harvesters of piling in stumpage value areas 1, 2, 3, 4, and 5 shall use the following table to determine the Scribner board foot volume for each piling length and class:

Piling Length	Piling Class[1]	Total Scribner Board Foot Volume by Pole Length by Pole Class[2]
20'	A	80
	B	70
25'	A	100
	B	90
30'	A	130
	B	110
35'	A	130
	B	110
40'	A	150
	B	120
45'	A	150
	B	120
50'	A	160
	B	140
55'	A	180
	B	150
60'	A	190
	B	160
65'	A	210
	B	180
70'	A	230
	B	190
75'	A	230
	B	200
80'	A	250
	B	210
85'	A	260(140)
	B	210
90'	A	260(150)
	B	220
95'	A	290(150)
	B	240
100'	A	310(160)
	B	250
105'	A	330(170)
	B	270
110'	A	380(220)
	B	300(180)
115'	A	400(230)
	B	310(190)
120'	A	500(290)
	B	400(240)

[1] Piling class definitions as per American Society for Testing and Materials for "round timber piles." As the designation: D 25-58 (reapproved 1964).

[2] The number, enclosed in parenthesis after the total Scribner board foot volume for each piling length and class, is the volume per piling for Number 2 Sawmill and better log grade, where applicable.

(7) Harvesters who wish to use a method of conversion other than those listed above must obtain written approval from the department before harvesting.

[Statutory Authority: RCW 82.32.300 and 84.33.096. 95-14-086, § 458-40-684, filed 6/30/95, effective 7/1/95. Statutory Authority: RCW 84.33.091, 84.32.300 [82.32.300] and 84.33.096. 92-14-083, § 458-40-684, filed 6/29/92, effective 7/1/92. Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-684, filed 12/31/86.]

WAC 458-40-686 Timber excise tax—Volume harvested—Conversions to Scribner Decimal C Scale for Eastern Washington. The following definitions, tables, and conversion factors shall be used in determining taxable volume for timber harvested that was not originally scaled by the Scribner Decimal C Log Rule. Conversion methods, other than those listed are not to be used for tax reporting purposes without prior written approval of the department.

(1) **Weight measurement**. If the original unit of measure was by weight, and the harvester has not applied for approval of sample scaling (WAC 458-40-682); the following table shall be used for converting to Scribner Decimal C. Harvesters must keep records to substantiate the species and quality codes reported. For tax reporting purposes, a ton equals 2,000 pounds.

(Stumpage Value Areas 6, 7, & 10)
BOARD FOOT WEIGHT SCALE FACTORS

Species	Tons/MBF
Ponderosa Pine (quality code 1)	5.0
Ponderosa Pine (quality code 2)	6.5
Douglas-fir*	5.5
Lodgepole Pine	6.0
Western Hemlock**	5.5
Englemann Spruce	4.5
Western Redcedar***	4.5

* Includes Western Larch.
** Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
*** Includes Alaska-cedar.

(2) **Cord measurement**. A cord is a measure of wood with dimensions of 4 feet by 4 feet by 8 feet (128 cubic feet).

(a) Logs with an average scaling diameter of 8 inches and larger shall be converted to Scribner volume using 470 board feet per cord. Logs having an average scaling diameter of less than 8 inches shall be converted to Scribner volume using 390 board feet per cord.

(b) A cord of Western Redcedar shake or shingle blocks shall be converted to Scribner volume using 600 board feet per cord.

(3) **Cants or lumber from portable mills**. To convert from lumber tally to Scribner volume, multiply the lumber tally for the individual species by 88% and round to the nearest one thousand board feet (MBF).

(4) **Eastern, western log scale conversion**. Timber harvested in stumpage value areas 6, 7, and 10 and which has been scaled by methods and procedures published in the "Official Log Scaling and Grading Rules" handbook, developed and authored by the Northwest log rules advisory group, shall have the volumes reported increased by eighteen percent to reflect the difference between eastern and western scaling practices.

(5) **Timber pole volume table**. Harvesters of poles in stumpage value areas 6, 7, and 10 shall use the following table to determine the Scribner board foot volume for each pole length and class. The timber quality code number shall be determined in accordance with the log grade specifications outlined in WAC 458-40-650.

Length	Class[1]	Total Scribner Board Foot Volume by Pole Length and Pole Class[2]
20'	1	70
	2	60
	3	50
	4	50
	5	30
	6	30
	7	20
	9	20
	10	20
25'	1	80
	2	70
	3	50
	4	50
	5	40
	6	40
	7	30
	9	30
	10	20
30'	1	110
	2	90
	3	60
	4	60
	5	50
	6	50
	7	50
	9	40
35'	H2	190
	H1	160
	1	140
	2	100
	3	100
	4	70
	5	60
	6	60
	7	50
40'	H3	240
	H2	240
	H1	200
	1	170
	2	120
	3	110
	4	100
	5	70
	6	70

	H6	390
	H5	330
	H4	330
	H3	270
	H2	270
	H1	220
	1	180
45'	2	150
	3	110
	4	110
	5	80
	6	70
	H6	460
	H5	390
	H4	390
50'	H3	340
	H2	340
	H1	280
	1	240
	2	190
	3	150
	4	150
	5	120
	H6	510
	H5	430
	H4	430
	H3	370
55'	H2	360
	H1	300
	1	250
	2	190
	3	150
	4	150
	H6	610
	H5	530
	H4	530
	H3	440
	H2	440
60'	H1	380
	1	310
	2	240
	3	200
	4	200
	H6	650
	H5	570
	H4	570
	H3	490
	H2	480
65'	H1	410
	1	350
	2	280
	3	220
	4	220
	H6	750
	H5	650
	H4	650
	H3	550
	H2	470
70'	H1	470
	1	410
	2	320
	3	260
	4	260
	H6	810
	H5	700
	H4	700
	H3	600
	H2	600
75'	H1	500
	1	440
	2	340
	3	270
	H6	960
	H5	830
	H4	830
	H3	710
80'	H2	710
	H1	610
	1	510
	2	420
	3	340
	H6	1020
	H5	870
	H4	870
	H3	760
85'	H2	760
	H1	640
	1	550
	2	450
	3	360
	H6	1110
	H5	970
	H4	970
	H3	840
90'	H2	840
	H1	720
	1	620
	2	500
	3	420
	H6	1160
	H5	1010
	H4	1010
	H3	870
95'	H2	870
	H1	740
	1	640
	2	510

	H6	1380
	H5	1210
	H4	1210
	H3	1060
100'	H2	1060
	H1	910
	1	780
	2	650
	H6	1430
	H5	1250
	H4	1250
	H3	1100
105'	H2	1100
	H1	940
	1	820
	2	690
	H6	1580
	H5	1390
	H4	1390
	H3	1220
110'	H2	1220
	H1	1070
	1	920
	2	770
	H6	1660
	H5	1470
	H4	1470
	H3	1280
115'	H2	1280
	H1	970
	1	810
	2	680
	H6	1880
	H5	1680
	H4	1680
120'	H3	1480
	H2	1480
	H1	1290
	1	1130
	2	950
	H6	1910
	H5	1690
	H4	1690
	H3	1490
125'	H2	1490
	H1	1140
	1	970
	2	810
	H6	2170
	H5	1920
	H4	1920
	H3	1710
130'	H2	1710
	H1	1510
	1	1320
	2	1140

[1] Pole class definitions as per American National Standard specifications and dimensions for wood poles as approved August 7, 1976 under American National Standard Institute, Inc. codified ANSI 05.1-1972.

[2] Volumes are based on the Scribner Decimal C Log Rule using methods and procedures outlined in the current edition of the "National Forest Log Scaling Handbook."

(6) **Timber piling volume table**. Harvesters of piling in stumpage value areas 6, 7, and 10 shall use the following table to determine the Scribner board foot volume for each piling length and class. The timber quality code number shall be determined by procedures outlined in WAC 458-40-650.

Length	Class[1]	Total Scribner Board Foot Volume by Pole Length and Pole Class[2]
20'	A	90
	B	70
25'	A	100
	B	80
30'	A	130
	B	110
35'	A	140
	B	100
40'	A	140
	B	100
45'	A	150
	B	110
50'	A	190
	B	150
55'	A	190
	B	150
60'	A	240
	B	200
65'	A	240
	B	200
70'	A	260
	B	210
75'	A	270
	B	220
80'	A	220
	B	220
85'	A	300
	B	240
90'	A	280
	B	280
95'	A	360
	B	280
100'	A	360
	B	280

105'	A	400
	B	300
110'	A	460
	B	340
115'	A	470
	B	360
120'	A	560
	B	450

[1] Piling class definitions taken from American Society for Testing and Materials for "round timber piles." As the designation: D 25-56 (reapproved 1964).

[2] Volumes are based on the Scribner Decimal C Log Rule using methods and procedures outlined in the current edition of the "National Forest Log Scaling Handbook."

(7) Harvesters who wish to use a method of conversion other than those listed above must obtain written approval from the department before harvesting.

[Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-686, filed 12/31/86.]

WAC 458-40-690 Timber excise tax—Credit for property tax. In accordance with RCW 84.33.077 and 84.36.473, persons engaged in business as harvesters of timber from public land shall be allowed a tax credit against the timber excise tax imposed under chapter 84.33 RCW for any personal property taxes paid to a county on such public timber sales. The credit shall be allowed only for property taxes paid on public timber purchased on or after August 1, 1982. The credit shall be taken only on excise taxes due on timber harvested from public land. No excise tax credits shall be allowed against excise taxes due on timber harvested from private land.

(1) Amount of credit. The total dollar amount of all excise tax credits claimed on one or more sales shall not exceed the total amount of all personal property taxes levied and paid on such timber. No excise tax credit shall be allowed for property tax penalties or interest charges imposed on delinquent property taxes. No excise tax credits shall be allowed prior to payment of personal property taxes, and the amount of credit allowed shall not exceed the amount of property tax actually paid as certified by the county treasurer.

(2) Excess credits and refunds. If the amount of the credit exceeds the amount of timber excise tax due for the calendar quarter in which the credit is claimed, the excess credit may be carried forward to the new quarterly reporting period and applied against the amount of timber excise tax due, if any, on public timber or may be refunded to the taxpayer in accordance with RCW 82.32.060 and WAC 458-20-229.

(3) Credit application procedures. Taxpayers who wish to claim such timber excise tax credits must apply on forms prepared by the department. The application must be certified by the county assessor and treasurer of the county in which the property taxes were paid. Application forms shall be made available in the offices of county assessors, county treasurers, and the department. The applications must be submitted with timber excise tax returns for taxes due on public timber.

[Statutory Authority: RCW 82.32.330, 84.33.096 and 84.33.091. 97-02-069, § 458-40-690, filed 12/31/96, effective 1/1/97. Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-690, filed 12/31/86.]

Chapter 458-50 WAC

INTERCOUNTY UTILITIES AND TRANSPORTATION COMPANIES—ASSESSMENT AND TAXATION

WAC

WAC 458-50-010 Assessment of public utilities—Purpose—Definitions. (1) **Introduction.** The department of revenue has the statutory responsibility valuing and apportioning the operating property of inter-county and interstate public utilities. This responsibility is a task of considerable magnitude, and requires the combined efforts and cooperation of the department of revenue, the county assessors, and the public utilities in order to ensure accurate and fair assessment and apportionment of utility operating property at minimal overall expense to all parties concerned.

(2) **Purpose.** These rules are promulgated by the department of revenue, pursuant to the authority granted by RCW 82.01.060 and 82.12.360, for the purpose of performing the valuation and apportionment of public utility operating property in an expeditious, orderly, and uniform manner consistent with the department's duties as set forth in chapter 84.12 RCW.

(3) **Definitions.**

(A) For purposes of chapter 458-50 WAC, and unless otherwise required by the context, the meaning given to the terms set forth in RCW 84.12.200 shall be applicable to such terms as used herein.

(B) The term "department" shall mean the department of revenue of the state of Washington.

[Order PT 75-2, § 458-50-010, filed 3/19/75.]

WAC 458-50-020 Annual reports—Duty to file. Each company doing an inter-county or interstate business in this state shall make and file an annual report with the department. At the time of making such report, each company shall if directed by the department also file with the department:

(1) Annual reports of the board of directors or other officers to the stockholders of the company.

(2) Duplicate copies of the annual reports made to the federal regulatory agency or agencies exercising jurisdiction over the company.

(3) Duplicate copies of the annual reports made to the Washington state utilities and transportation commission or other Washington state regulatory agency exercising jurisdiction over the company.

(4) Duplicate copies of such other annual or special reports as the department may, from time to time, direct each company to make.

[Order PT 75-2, § 458-50-020, filed 3/19/75.]

WAC 458-50-030 Annual reports—Contents. Annual reports shall be made on forms furnished by the department, and shall contain such information as is required to enable the department to determine the true and fair value of a company's operating property in the state, and the apportionment thereof to the several counties and taxing districts. The report shall be signed by the president, treasurer or other responsible official of the company.

(1) In determining what types of information shall be required to be included in the annual report, the department may take into account, among other factors, the necessity and worth of such information in valuing, allocating or apportioning operating property; whether such information is of the type customarily maintained by the industry for internal accounting or regulatory agency purposes; and the cost and difficulty of obtaining or maintaining such information. The department's determination shall be final, and no company shall be excused from providing such information except upon a clear showing that undue hardship would result.

(2) On or before December 1st of the year preceding the calendar year to be covered by the annual report, the department shall notify the companies of the types of information required to be included in the annual report for such forthcoming year: *Provided,* That the foregoing requirement shall not be applicable for calendar year 1975.

[Order PT 75-2, § 458-50-030, filed 3/19/75.]

WAC 458-50-040 Annual reports—Time of filing—Extension of time. Annual reports shall be filed with the department on or before the fifteenth day of March. The department may grant a reasonable extension of time, not to exceed thirty days, upon written application of the company filed with the department on or before the fifteenth day of March, and showing good cause why such an extension is required. In the event any other report required to be filed with the department, e.g., annual stockholders report or regulatory agency report, is not available at the time the annual report is filed, the company shall so notify the department and thereafter file such report as soon as it becomes available.

[Order PT 75-2, § 458-50-040, filed 3/19/75.]

WAC 458-50-050 Access to books, records, and property. The department shall have access to all books, papers, documents, statements and accounts on file or of record in any of the departments of the state. The records, books, accounts, and papers of each company shall be subject to visitation, investigation, or examination by the department, or any employee or agent thereof officially designated by the department. All real and/or personal property of any company shall be subject to visitation, investigation, examination and/or listing at any and all times by the department, or any person officially designated by the director.

[Order PT 75-2, § 458-50-050, filed 3/19/75.]

WAC 458-50-060 Failure to make report—Default valuation—Penalty—Estoppel. (1) If any company, or any of its officers or agents shall refuse or neglect to make any report required by law or by the department, or shall refuse to permit an inspection and examination of its records, books, accounts, papers or property requested by the department, or shall refuse or neglect to appear before the department in obedience to a subpoena, the department shall proceed, in such manner as it may deem best, to obtain facts and information upon which to base its valuation, assessment, and apportionment of such company.

(2) Willful failure to file with the department any report required by the department within the time fixed by law, including any extension granted by the department, shall constitute refusal or neglect to make a report, and the department may proceed in accordance with subsection (1) to value, assess, and apportion the property of such company as if no report had been made.

(3) **Penalty.** When the department has ascertained the value of the property of such company in accordance with subsections (1) or (2), it shall add to the value so ascertained twenty-five percent as a penalty.

(4) Where the department has proceeded in accordance with subsections (1) or (2), such company shall be estopped to question or impeach the valuation, assessment, or apportionment made by the department in any administrative or judicial proceeding thereafter.

[Order PT 75-2, § 458-50-060, filed 3/19/75.]

WAC 458-50-070 Annual assessment—Procedure. (1) **In general.** Annually between the fifteenth day of March and the first day of July the department shall proceed to list and value the operating property of each company subject to assessment by the department. The department shall prepare a report summarizing the information, factors and methods used in determining the tentative value of each such company (hereafter called "report of tentative value"). The department shall prepare an assessment roll upon which shall be placed after the name of each company a general description of the operating property of the company described in accordance with RCW 84.12.200 (16) and WAC 458-50-010, following which shall be entered the actual cash value as tentatively determined by the department.

(2) **Notice of tentative value.** On or before the thirtieth day of June, (for purposes of the 1988 assessment year only, such notice shall be given on or before the thirty-first day of July) the department shall notify each company by mail of the tentative valuation entered upon such assessment roll. At the time of making such notification, the department shall also transmit to the company the report of tentative value prepared by the department. Upon written request of a

county assessor the department shall also transmit the report of tentative value to such assessor.

(3) **Hearings.**

(a) *In general.* Each company may petition the department for a hearing relating to the value of its operating property as tentatively determined by the department and to the value of other taxable properties in the counties in which its operating property is situated. Such petition shall be made in writing and filed with the department on or before the ninth day of July. (For purposes of the 1988 assessment year only, such petition must be filed on or before the ninth day of August.) The department shall appoint a time between the tenth and twenty-fifth days of July, (for purposes of the 1988 assessment year only, the time frame specified shall be between the tenth and twenty-fifth days of August) for the conduct of such hearing, which may be held in such places throughout the state as the department may deem proper or necessary. Notice of the time and place of any or all hearings shall be given to any person upon request.

(b) The hearing shall be conducted by the director or by any employee or agent of the department designated by the director. A record of the proceedings shall be kept and shall be considered a public record. The hearing shall be recorded with a recording device and the recordings shall become a part of the record of the proceedings and considered a part of the public record. All records and documents presented at the hearing shall become a part of the record of the proceeding and shall be considered a part of the public record, except as provided in (c) of this subsection.

(c) The hearing shall be open to the public, except (i) when the company proposes to offer in evidence information relating to its assessment if disclosure of such information to other persons would violate the company's right to privacy or would result in an unfair competitive disadvantage to such company; or (ii) when the department proposes to offer in evidence information which has been obtained pursuant to RCW 84.12.240 if the disclosure of such information to other persons would violate the company's right to privacy or would result in an unfair competitive disadvantage to such company. The hearing at this point shall be closed to the public unless the company consents to the proceeding remaining open to the public.

(d) Testimony recorded, and all records and documents of a confidential nature introduced, during the period when the hearing is closed to the public shall become a part of the record, but shall not be disclosed except upon order of a court of competent jurisdiction or upon consent of the company.

(e) Records of the proceedings shall be maintained for a period of seven years following the close of the hearing.

(4) **Determination of final value.** On or before the twentieth day of August, the department shall make a final determination of the true and correct actual cash value of each company's operating property appearing on the assessment roll. The department may raise or lower the value from that amount tentatively set pursuant to this section: *Provided,* That failure of a company to request a hearing shall not preclude the department from setting a final value higher or lower than that amount tentatively set pursuant to this section: *Provided further,* That where a company has not requested a hearing, the department shall not adopt a final value higher than that tentatively set except after giving five days written notice to the company. The department shall notify each company by mail of the final true and correct actual cash value as determined by the department.

[Statutory Authority: RCW 84.12.340 and 84.12.390. 88-15-016 (Order PT 88-10), § 458-50-070, filed 7/11/88; Order PT 75-2, § 458-50-070, filed 3/19/75.]

WAC 458-50-080 True cash value—Criteria. (1) The true cash value of the operating property of public utilities is its "market value," i.e., the amount of money a buyer willing but not obligated to buy would pay for such operating property from a seller willing but not obligated to sell. In arriving at a determination of such value the department may consider only those factors which can within reason be said to affect the price in negotiations between a willing purchaser and a willing seller, and the department shall consider all such factors to the extent that reliable information is available to support a judgment as to the probable effect of such factors on price.

(2) In determining the true cash value of such operating property the department shall proceed in accordance with generally accepted principles applicable to the valuation of public utilities. The department may consider the cost approach, the income approach and the stock and debt approach to value. Any one of the three approaches to value, or all of them, or a combination of approaches may finally be used in making the final determination of true cash value, depending upon the circumstances.

(A) **The cost approach.** The cost approach determines the value of individual items of property. The types of cost include:

(i) Historical - cost when first put in service

(ii) Original - cost to present owner

(iii) Reproduction - cost today to produce in kind

(iv) Replacement - cost today to replace present property with a functional equivalent.

The department shall make adequate and reasonable allowances for depreciation, including functional and economic obsolescence where such factors are indicated, but in no event shall property be depreciated below salvage or scrap value.

(B) **Income approach.** The income approach determines the ability of operating property to earn a probable money income over some span of future years, discounted to a present value by means of an appropriate capitalization rate.

(i) **Future income stream.** The income to capitalize is the probable future average annual operating income to be derived from operating properties that exist on the assessment date. In making this estimate of probable future average annual operating income, the department may take into account past earnings, present earnings, the growth or shrinking of the property complex, demand for services provided by the company, and all other factors which can within reason be said to indicate the probable future income stream.

(ii) **Capitalization rate.** The capitalization rate may be derived by the comparative method, summation method, band of investment method, or other generally accepted method. Any one of these methods, or any combination thereof, may be used by the department in deriving the appropriate capitalization rate to be applied to probable future average annual operating income.

(C) **Stock and debt approach.** The stock and debt approach determines the value of a company's assets by appraising the value of the liabilities of the company, such as current liabilities, long term debt, reserves, deferred credits, and stockholder's equity. This approach is applicably [applicable] only where a "unitary" or "enterprise" value is sought. Appropriate deductions shall be made for nonoperating property of the enterprise where necessary.

[Order PT 75-2, § 458-50-080, filed 3/19/75.]

WAC 458-50-085 Computer software—Definitions—Valuation—Centrally assessed utilities. (1) This rule implements the provisions of chapter 29, Laws of 1991, ex. sess, regarding the property taxation of computer software for centrally assessed utilities.

(2) **Computer software.** Computer software is a set of directions or instructions that exist in the form of machine-readable or human-readable code, is recorded on physical or electronic medium and directs the operation of a computer system or other machinery and/or equipment. Computer software includes the associated documentation which describes the code and/or its use, operation, and maintenance and typically is delivered with the code to the user. Computer software does not include databases, but does include the computer programs and code which are used to generate databases. Computer software can be canned, custom, or a mixture of both.

(a) A database is text, data, or other information that may be accessed or managed with the aid of computer software but that does not itself have the capacity to direct the operation of a computer system or other machinery and equipment; and, therefore does not constitute computer software.

(3) **Custom software.** Custom software is computer software that is specially designed for a single person's or a small group of persons' specific needs. Custom software includes modifications to canned software and can be developed in-house by the user, by outside developers, or by both.

(4) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof.

(5) A "small group of persons" shall consist of less than four persons. A group of four or more persons shall be presumed not to be a small group of persons for the purposes of this section unless each of the persons are affiliated through common control and ownership.

(a) "Persons affiliated through common control and ownership" means

(i) Corporations qualifying as controlled group of corporations in 26 USC § 1563; or

(ii) Partnerships or other persons in which at least 80% of the ownership in the persons claimed to be affiliated is the same.

(6) **Canned software.** Canned software, also referred to as pre-written, "shrink-wrapped" or standard software, is computer software that is designed for and distributed "as is" for multiple persons who can use it without modifying its code and which is not otherwise considered custom software.

(a) Computer software that is a combination of pre-written or standard components and components specially modified to meet the needs of a user is a mixture of canned and custom software. The standard or prewritten components are canned software and the modifications are custom software.

(b) Canned software that is "bundled" with or sold with computer hardware retains its identity as canned software and shall be valued as such. "Bundled" software is canned software that is sold with hardware and does not have a separately stated price, and can include operating systems such as DOS, UNIX, OS-2, or System 6.0 as well as other programs.

(c) An upgrade is canned software provided by the software developer, author, distributor, inventor, licensor or sublicensor to improve, enhance or correct the workings of previously purchased canned software.

(7) **Embedded software.** Embedded software is computer software that resides permanently on some internal memory device in a computer system or other machinery and equipment, that is not removable in the ordinary course of operation, and that is of a type necessary for the routine operation of the computer system or other machinery and equipment.

(a) Embedded software can be either canned or custom software which:

(i) Is an integral part of the computer system or machinery or other equipment in which it resides;

(ii) Is designed specifically to be included in or with the computer system or machinery or other equipment; and

(iii) In its absence, the computer system or machinery or other equipment is inoperable.

(b) "Not removable in the ordinary course of operation" means that the software is not readily accessible and is not intended to be removed without

(i) Terminating the computer system, machinery, or equipment's operation; or

(ii) Removal of a computer chip, circuit board, or other mechanical device, or similar item.

(c) "Necessary for the routine operation" means that the software is required for the machinery, equipment, or computer to be able to perform its intended function. In the case of machinery or other equipment, such embedded software does not have to be a physical part of the actual machinery or other equipment, but may be part of a separate control or management panel or cabinet.

(8) **Retained rights.** Retained rights are any and all rights, including intellectual property rights such as those rights arising from copyright, patent, and/or trade secret laws, that are owned or held under contract or license by a computer software developer, author, inventor, publisher or distributor, licensor or sublicensor.

(9) **Golden or master copy.** A golden or master copy of computer software is a copy of computer software from

which a computer software developer, author, inventor, publisher or distributor makes copies for sale or license.

(10) **Acquisition cost.**

(a) The acquisition cost of computer software shall include the total consideration paid for the software, including money, credits, rights, or other property expressed in terms of money, actually paid or accrued. The term also includes freight and installation charges but does not include charges for modifying software, retail sales tax or training. No deduction from the acquisition cost of computer software shall be allowed for any retained rights held by the developer, author, inventor, publisher, or distributor.

(b) In cases where the acquisition cost of computer software cannot be specifically identified, it will be valued at the usual retail selling price of the same or substantially similar computer software.

(c) In cases where canned software is specially modified for the user, the canned component of the computer software retains its identity as canned software; and the modifications are considered custom software and not taxable.

(11) **Valuation of canned software.**

(a) In the first year in which it will be subject to assessment, canned software shall be listed and valued at one hundred percent of acquisition cost as defined in section (10)(a), above, regardless of whether the software has been expensed or capitalized on the accounting records of the business.

(b) In the second year in which it will be subject to assessment, canned software shall be listed at one hundred percent of acquisition cost and valued at fifty percent of its acquisition cost.

(c) After the second year in which canned software has been subject to assessment, it shall be valued at zero.

(d) Upgrades to canned software shall be listed and valued at the acquisition cost of the upgrade package under subsections (11)(a) and (b), above, and not at the value of what the complete software package would cost as a new item.

(12) **Valuation of customized canned software.** In the case where a person purchases canned software and subsequently has that canned software customized or modified in-house, by outside developers, or both, only the canned portion of such computer software shall be taxable and it shall be valued as described in subsection (11).

(13) **Valuation of embedded software.** Because embedded software is part of the computer system, machinery, or other equipment, it has no separate acquisition cost and shall not be separately valued apart from the computer system, machinery, or other equipment in which it is housed.

(14) **Taxable person.** Canned software is taxable to the person having the right to use the software, including a licensee.

(15) **Situs.** Canned and custom software with situs in Washington means software physically located in Washington or installed in or on machinery, equipment, or computer systems physically located in Washington on the assessment date.

(16) **Reporting.** Each utility/taxpayer defined in chapter 84.12 and 84.16 RCW shall report to the department, using the Annual Report tax form provided by the department, the following information regarding its software with situs in Washington in use on the assessment date:

(a) The acquisition cost of expensed canned computer software which was purchased:

(i) In the year preceding the assessment date; and

(ii) In the second year prior to the assessment date; and

(iii) In the years prior to the second year preceding the assessment date.

(b) The historic cost less depreciation of capitalized canned computer software which was purchased:

(i) In the year preceding the assessment date;

(ii) In the second year prior to the assessment date;

(iii) In the years prior to the second year preceding the assessment date;

(c) The acquisition cost of expensed custom computer software which was purchased:

(i) In the year preceding the assessment date;

(ii) In the second year prior to the assessment date;

(iii) In the years prior to the second year preceding the assessment date;

(d) The historic cost less depreciation of capitalized custom computer software.

(17) **Calculation of computer software value.** The following formulas shall be used for determining the percent taxable calculation of computer software used by centrally assessed utilities.

(a) For the purpose of determining the numerator of the percent taxable calculation, the historic cost less depreciation of all taxable Washington property shall be computed by adjusting the historic cost less depreciation of property capitalized in the company's records as follows:

(i) Add the acquisition cost of expensed canned software acquired in the year preceding the assessment date; and

(ii) Add 50% of the acquisition cost of expensed canned software acquired in the second year preceding the assessment date; and

(iii) Subtract 50% of the historic cost less depreciation of capitalized canned software acquired in the second year preceding the assessment date; and

(iv) Subtract the historic cost less depreciation of capitalized canned software acquired in years prior to the second year preceding the assessment date; and

(v) Subtract the historic cost less depreciation of capitalized custom software.

(b) For the purpose of determining the denominator of the percent taxable calculation, the historic cost less depreciation of all Washington property shall be computed by adding the acquisition cost of expensed canned and custom software in use on the assessment date to the historic cost less depreciation of Washington property capitalized in the company's records.

(c) The historic cost less depreciation of all taxable Washington property (calculated as set forth in subsection (a) above) shall be divided by the historic cost less depreciation of all Washington property (calculated as set forth in subsection (b) above) to arrive at the percent taxable calculation.

(d) The portion of the unit value allocated to Washington state shall be multiplied by the percent taxable calculated as set forth in subsection (c) above to determine the Washington taxable property value.

(18) **Exemptions.**

(a) All custom software, except embedded software, shall be exempt from property taxation;

(b) Retained rights of the computer software developer, author, inventor, publisher, distributor, licensor or sublicensor are exempt from property taxation;

(c) Modifications to canned software shall be exempt from property taxation as custom software; however, the underlying canned software shall retain its identity as canned software and shall be valued as prescribed in subsection (11) of this rule;

(d) Master or golden copies of computer software are exempt from property taxation;

(e) The taxpayer is responsible for maintaining and providing records sufficient to support any claim of exemption for either canned or custom software.

[Statutory Authority: RCW 84.08.010 and 1991 c 29. 92-01-132, § 458-50-085, filed 12/19/91, effective 1/19/92.]

WAC 458-50-090 Methods of valuation. The department shall use either the summation method or "unitary" or "enterprise" method in valuing the operating property of companies. As a general rule, the unitary or enterprise method is preferred where valuing a thoroughly integrated group of properties such that removal or destruction of any one property would jeopardize and/or immobilize the entire operation of the company. The summation method is preferred where adequate information is not available to derive reliable indicators of unitary or enterprise value, and the nature of the operating property is such that it may be segregated into component parts and the value of the parts readily determined. Notwithstanding the provisions of WAC 458-50-080, the department may, in using the summation method, employ the comparable sales or "market" approach to value to the exclusion of any other approach.

[Order PT 75-2, § 458-50-090, filed 3/19/75.]

WAC 458-50-100 Apportionment of operating property to the various counties and taxing districts. In general. The department shall apportion the value of all public utility companies to the various counties in such a manner as will reasonably reflect the true cash value of the operating property located within each county and taxing district. Since it is impossible to determine with mathematical precision the precise value of each item of property located within each county and taxing district, the department shall apportion the value of operating property on the following basis:

(1) **Railroad companies** - The ratio that mileage of track, as classified by the department, situated within each county and taxing district bears to the total mileage of track within the state as of January 1 of the assessment year. In the event there exists operating property of railroad companies in counties or taxing districts not having track mileage, the department shall situs such property and apportion value directly on the basis of cost as determined in accordance with the cost approach set forth in WAC 458-50-080(A).

(2) **Pipeline companies** - The ratio that inch-equivalent of miles of pipeline situated within each county or taxing district bears to the total inch-equivalent of miles of pipeline within the state as of January 1 of the assessment year. In the event there exists operating property of pipeline companies in counties or taxing districts not having pipeline mileage, the department shall situs such property and apportion value to such county or taxing district directly on the basis of cost as determined in accordance with the cost approach set forth in WAC 458-50-080(A).

(3) **Telegraph companies** - The ratio that the cost (historical or original) of operating property situated within each county and taxing district bears to the cost (historical or original) of all operating property within the state as of January 1 of the assessment year.

(4) **Telephone companies** - The ratio that the cost (historical or original) of operating property situated within each county or taxing district bears to the total cost (historical or original) of all operating property within the state as of January 1 of the assessment year.

(5) **Electric light and power companies** - The ratio that cost (historical or original) of operating property situated within each county and taxing district bears to the total cost (historical or original) of all operating property within the state as of January 1 of the assessment year.

(6) **Gas companies** - The ratio that cost (historical or original) of operating property situated within each county and taxing district bears to the total cost (historical or original) of all operating property within the state as of January 1 of the assessment year: *Provided,* The value of pipeline shall be allocated on the basis of the ratio that inch-equivalent of miles of pipeline situated within each county or taxing district bears to the total inch-equivalent of miles of pipeline within the state as of January 1 of the assessment year.

(7) **Airplane companies** - The ratio that cost (historical or original) of operating property situated within each county and taxing district bears to the total cost (historical or original) of operating property within the state as of January 1 of the assessment year: *Provided,* That the value of aircraft shall be apportioned on the basis of the ratio that landings and take-offs of such aircraft within each county and taxing district bears to the total landings and take-offs within the state during the previous calendar year.

(8) **Steamboat companies** - The ratio that cost (historical or original) of operating property situated within each county and taxing district bears to the total cost (historical or original) of operating property within the state as of January 1 of the assessment year: *Provided,* That the value of watercraft shall be apportioned on the basis of the ratio that calls of such watercraft at ports within each county and taxing district bears to the total calls at all ports of call within the state during the previous calendar year.

[Statutory Authority: RCW 84.12.390. 88-02-009 (Order PT 87-9), § 458-50-100, filed 12/28/87; Order PT 75-2, § 458-50-100, filed 3/19/75.]

WAC 458-50-110 Apportionment reports. (1) On or before April 15 of each year the department shall furnish taxing district maps and report forms (hereinafter referred to as "apportionment reports") to each railroad, pipeline, telegraph, telephone, electric light and power, and gas company.

(2) Each company furnished an apportionment report shall complete and submit such report to the department on or before June 1 of the assessment year. Since all apportionment reports must be in the department's hands by June 1 in order to permit adequate opportunity to properly apportion operating property in accordance with WAC 458-50-100, an

extension of time for filing such reports will be granted only upon a showing of undue hardship.

[Order PT 75-2, § 458-50-110, filed 3/19/75.]

WAC 458-50-120 Notification of real estate transfers. Each company shall notify the department of any transfer of title, use or occupancy of operating property consisting of real property, whether such transfer is to or from such company. Such notification shall contain the legal description of the property, date of transfer, and name and address of transferor and transferee. For purposes of this rule, it shall be sufficient to transmit a copy of the deed, real estate contract, or lease (as the case may be) to the department. Such notification shall be made within ninety days of the effective date of such transfer.

[Order PT 75-2, § 458-50-120, filed 3/19/75.]

WAC 458-50-130 Taxing district boundary changes—Estoppel. (1) In accordance with RCW 84.09.030 and WAC 458-12-140, the county assessor is required on or before March 1 to transmit certain documents and maps setting forth taxing district boundary changes to the department of revenue, property tax division.

(2) The department shall prepare taxing district maps based upon information submitted to it on or before March 1. Such maps shall be used to fix taxing district boundaries for purposes of apportioning the operating property of each company among the various counties and taxing districts. Any county or taxing district not having submitted the documents and maps as required by WAC 458-12-140 shall be estopped from questioning the validity of any apportionment of value to it as determined by the department to the extent that such challenge is based upon taxing district boundaries different than as shown on the department's maps.

[Order PT 75-2, § 458-50-130, filed 3/19/75.]

Chapter 458-53 WAC
PROPERTY TAX ANNUAL RATIO STUDY

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

458-53-040	Land Use Code—Ratio study. [Statutory Authority: RCW 84.48.075. 79-11-029 (Order PT 79-3), § 458-53-040, filed 10/11/79.] Repealed by 96-05-002, filed 2/8/96, effective 3/10/96. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.075.
458-53-051	Ratio determination by land use class. [Statutory Authority: RCW 84.48.075. 86-21-004 (Order PT 86-6), § 458-53-051, filed 10/2/86; 83-16-050 (Order PT 83-2), § 458-53-051, filed 8/1/83.] Repealed by 96-05-002, filed 2/8/96, effective 3/10/96. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.075.
458-53-060	Stratification—Personal property. [Statutory Authority: RCW 84.48.075. 79-11-029 (Order PT 79-3), § 458-53-060, filed 10/11/79. Formerly WAC 458-52-050.] Repealed by 84-14-039 (Order PT 84-2), filed 6/29/84. Statutory Authority: RCW 84.48.075.
458-53-110	Property values used in the ratio study. [Statutory Authority: RCW 84.48.075 and 84.08.010(2). 89-09-021 (Order PT 89-5), § 458-53-110, filed 4/12/89. Statutory Authority: RCW 84.48.075. 87-12-029 (Order PT 87-5), § 458-53-110, filed 5/29/87; 86-21-004 (Order PT 86-6), § 458-53-110, filed 10/2/86; 84-14-039 (Order PT 84-2), § 458-53-110, filed 6/29/84; 81-22-036 (Order PT 81-15), § 458-53-110, filed 10/30/81; 79-11-029 (Order PT 79-3), § 458-53-110, filed 10/11/79.] Repealed by 96-05-002, filed 2/8/96, effective 3/10/96. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.075.
458-53-120	Review procedures for county studies. [Statutory Authority: RCW 84.48.075. 79-11-029 (Order PT 79-3), § 458-53-120, filed 10/11/79.] Repealed by 96-05-002, filed 2/8/96, effective 3/10/96. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.075.
458-53-141	Personal property audit selection. [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.] Repealed by 96-05-002, filed 2/8/96, effective 3/10/96. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.075.
458-53-142	Personal property audit studies—Date of valuation. [Statutory Authority: RCW 84.08.010 and 84.08.070. 91-01-008, § 458-53-142, filed 12/6/90, effective 1/6/91. Statutory Authority: RCW 84.48.075. 82-24-031 (Order PT 82-9), § 458-53-142, filed 11/23/82.] Repealed by 96-05-002, filed 2/8/96, effective 3/10/96. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.075.
458-53-150	Indicated real property ratio—Computation. [Statutory Authority: RCW 84.08.010 and 84.08.070. 91-01-008, § 458-53-150, filed 12/6/90, effective 1/6/91. Statutory Authority: RCW 84.48.075 and 84.08.010(2). 89-09-021 (Order PT 89-5), § 458-53-150, filed 4/12/89. Statutory Authority: RCW 84.48.075. 86-21-004 (Order PT 86-6), § 458-53-150, filed 10/2/86; 84-14-039 (Order PT 84-2), § 458-53-150, filed 6/29/84; 82-08-061 (Order PT 82-3), § 458-53-150, filed 4/6/82; 81-04-056 (Order PT 81-5), § 458-53-150, filed 2/4/81; 79-11-029 (Order PT 79-3), § 458-53-150, filed 10/11/79. Formerly WAC 458-52-090.] Repealed by 96-05-002, filed 2/8/96, effective 3/10/96. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.075.
458-53-163	Mobile homes—Use in study. [Statutory Authority: RCW 84.48.075 and 84.08.010(2). 89-09-021 (Order PT 89-5), § 458-53-163, filed 4/12/89. Statutory Authority: RCW 84.48.075. 87-12-029 (Order PT 87-5), § 458-53-163, filed 5/29/87; 84-14-039 (Order PT 84-2), § 458-53-163, filed 6/29/84.] Repealed by 96-05-002, filed 2/8/96, effective 3/10/96. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.075.
458-53-165	Property not properly valued—Use in study. [Statutory Authority: RCW 84.48.075. 84-14-039 (Order PT 84-2), § 458-53-165, filed 6/29/84; 83-16-050 (Order PT 83-2), § 458-53-165, filed 8/1/83.] Repealed by 96-05-002, filed

2/8/96, effective 3/10/96. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.075.

458-53-170 Final indicated ratio—Computation. [Statutory Authority: RCW 84.48.075. 79-11-029 (Order PT 79-3), § 458-53-170, filed 10/11/79. Formerly WAC 458-52-110.] Repealed by 84-14-039 (Order PT 84-2), filed 6/29/84. Statutory Authority: RCW 84.48.075.

458-53-180 Use of indicated ratios. [Statutory Authority: RCW 84.48.075. 84-14-039 (Order PT 84-2), § 458-53-180, filed 6/29/84; 79-11-029 (Order PT 79-3), § 458-53-180, filed 10/11/79. Formerly WAC 458-52-120.] Repealed by 96-05-002, filed 2/8/96, effective 3/10/96. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.075.

458-53-190 County assessor's review. [Statutory Authority: RCW 84.48.075. 79-11-029 (Order PT 79-3), § 458-53-190, filed 10/11/79. Formerly WAC 458-52-130.] Repealed by 84-14-039 (Order PT 84-2), filed 6/29/84. Statutory Authority: RCW 84.48.075.

WAC 458-53-010 Declaration of purpose. This chapter is promulgated by the department of revenue in compliance with RCW 84.48.075 to describe procedures for determination of indicated ratios of real and personal property for each county, so as to accomplish the equalization of property values required by RCW 84.12.350, 84.16.110, 84.48.080 and 84.52.065. The procedures in this chapter describing the department's annual ratio study are designed to ensure uniformity and equity in property taxation throughout the state to the maximum extent possible.

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.075. 96-05-002, § 458-53-010, filed 2/8/96, effective 3/10/96. Statutory Authority: RCW 84.48.075. 79-11-029 (Order PT 79-3), § 458-53-010, filed 10/11/79. Formerly WAC 458-52-010.]

WAC 458-53-020 Definitions. Unless the context clearly requires otherwise, the following definitions apply throughout this chapter:

(1) "Account" means a listing of personal property as shown on the county assessment record.

(2) "Advisory value" means a valuation determination by the department, made at the request of a county assessor.

(3) "Appraisal" means the determination of the market value of real property, or for real property classified under chapter 84.34 RCW, the determination of the current use value.

(4) "Assessed value" means the value of real or personal property determined by an assessor.

(5) "Audit" means the determination of the market value of personal property.

(6) "Average assessed value" is the total assessed value of a sample group of real or personal property divided by the number of properties in the sample group.

(7) "Average personal property market value" is the total value of a sample group as determined from personal property audits divided by the number of audits in the sample group.

(8) "Average real property market value" is the total sales price, less one percent, of a sample group of real property divided by the number of properties in the sample group, or the total appraised value of a sample group of real property divided by the number of appraisals in the same group.

(9) "Department" means the department of revenue.

(10) "Land Use Code" means the identification of each real property parcel by numerical digits as representations of the major use of the property. The Land Use Code is derived from the Standard Land Use Coding Manual as prepared by the Federal Bureau of Public Roads and includes use classifications specified by state law.

(11) "Market value" means the amount of money a buyer of property willing but not obligated to buy would pay a seller of property willing but not obligated to sell, taking into consideration all uses to which the property is adapted and might in reason be applied. True and fair value is the same as market value or fair market value.

(12) "Personal property" means all taxable personal property required by law to be reported by a taxpayer.

(13) "Ratio" is the percentage relationship of the assessed value of real or personal property to the market value of real or personal property.

(14) "Ratio study" is the department's annual comparison of the relationship between the county assessed values of real and personal property with the market value of that property as determined by the department's analysis of sales, appraisals, and/or audits or the comparison of the relationship between the county assessed values of real property classified under chapter 84.34 RCW (current use) with the current use value of that property as determined by the department.

(15) "Real property" means all parcels of taxable real property as shown on the county assessment record.

(16) "Sales study" is the comparison of the assessed value of real property with the selling price of the same property.

(17) "Strata" refer to classes of property grouped by assessed value and/or use categories.

(18) "Stratification" means the grouping of the real or personal property assessment records into specific assessed value and/or use categories for ratio sampling and calculation purposes.

(19) "Stratum" refers to a grouping of property with a given range of assessed values and/or having the same use category.

(20) "Valid sale(s)" means a sale of real property that occurs between August 1 preceding January of the current assessment year and March 31 of the current assessment year, and the transfer document is a warranty deed or real estate contract, and the sale is not a type listed in WAC 458-53-080(2).

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.075. 96-05-002, § 458-53-020, filed 2/8/96, effective 3/10/96. Statutory Authority: RCW 84.48.075 and 84.08.010(2). 89-09-021 (Order PT 89-5), § 458-53-020, filed 4/12/89. Statutory Authority: RCW 84.48.075. 79-11-029 (Order PT 79-3), § 458-53-020, filed 10/11/79. Formerly WAC 458-52-020.]

WAC 458-53-030 Stratification of assessment rolls—Real property. **(1) Stratification—Uses for ratio study.** The stratification process is the grouping of real property within each county into homogeneous classifications based upon certain criteria in order to obtain representative samples. Stratification is used in determining the number of appraisals to be included in the ratio study and also for ratio calculation. The county's most current certified assessment rolls are used for stratification. Counties shall stratify rolls using a land use code stratification system as prescribed by the department. (See RCW 36.21.100.)

(2) **Stratification—Parcel count and total value—Exclusions.** The stratification of the real property assessment rolls shall include a parcel count and a total value of the taxable real property parcels in each stratum excluding the following:

(a) Classified and designated forest lands and timberland classified under chapter 84.34 RCW (see RCW 84.34.060);

(b) State-owned game lands as defined in RCW 77.12.203(2);

(c) Current use properties in those counties where a separate study is conducted pursuant to WAC 458-53-095(3); and

(d) State assessed properties.

(3) **Stratification—By county.** For the real property ratio study, the assessment roll shall be stratified for individual counties according to land use categories and substratified by value classes as determined by the department. Stratification shall be reviewed at least every other year by the department to determine if changes need to be made to improve sampling criteria. After the strata have been determined, the department shall notify the counties of the strata limits and each county shall provide the department with the following, taken from the county's assessment rolls:

(a) A representative number of samples, as determined by the department, in each stratum, together with:

(i) The name and address of the taxpayer for each sample;

(ii) The land use code for each sample;

(iii) The assessed value for each sample; and

(iv) The actual number of samples;

(b) The total number of real property parcels in each stratum; and

(c) The total assessed value in each stratum.

(4) **Counties to provide information timely.** The stratification information described in subsection (3) of this section shall be provided by the counties to the department in a timely manner to enable the department to certify the preliminary ratios in accordance with WAC 458-53-200(1). Failure to provide the information in a timely manner will result in the department using its best estimate of stratum values to calculate the real property ratio.

(5) **Standard two digit land use code.** The following two digit land use code shall be used as the standard to identify the actual use of the land. Counties may elect to use a more detailed land use code system using additional digits, however, no county land use code system may use fewer than the standard two digits.

RESIDENTIAL

11 Household, single family units
12 Household, 2-4 units
13 Household, multi-units (5 or more)
14 Residential hotels - condominiums
15 Mobile home parks or courts
16 Hotels/motels
17 Institutional lodging
18 All other residential not elsewhere coded
19 Vacation and cabin

MANUFACTURING

21 Food and kindred products
22 Textile mill products
23 Apparel and other finished products made from fabrics, leather, and similar materials
24 Lumber and wood products (except furniture)
25 Furniture and fixtures
26 Paper and allied products
27 Printing and publishing
28 Chemicals
29 Petroleum refining and related industries
30 Rubber and miscellaneous plastic products
31 Leather and leather products
32 Stone, clay and glass products
33 Primary metal industries
34 Fabricated metal products
35 Professional scientific, and controlling instruments; photographic and optical goods; watches and clocks-manufacturing
36 Not presently assigned
37 Not presently assigned
38 Not presently assigned
39 Miscellaneous manufacturing

TRANSPORTATION, COMMUNICATION, AND UTILITIES

41 Railroad/transit transportation
42 Motor vehicle transportation
43 Aircraft transportation
44 Marine craft transportation
45 Highway and street right of way
46 Automobile parking
47 Communication
48 Utilities
49 Other transportation, communication, and utilities not classified elsewhere

TRADE

51 Wholesale trade
52 Retail trade - building materials, hardware, and farm equipment
53 Retail trade - general merchandise
54 Retail trade - food
55 Retail trade - automotive, marine craft, aircraft, and accessories
56 Retail trade - apparel and accessories
57 Retail trade - furniture, home furnishings and equipment
58 Retail trade - eating and drinking
59 Other retail trade

SERVICES

61 Finance, insurance, and real estate services
62 Personal services
63 Business services
64 Repair services
65 Professional services
66 Contract construction services
67 Governmental services
68 Educational services
69 Miscellaneous services

CULTURAL, ENTERTAINMENT AND RECREATIONAL

71 Cultural activities and nature exhibitions
72 Public assembly
73 Amusements

74 Recreational activities
75 Resorts and group camps
76 Parks
77 Not presently assigned
78 Not presently assigned
79 Other cultural, entertainment, and recreational

RESOURCE PRODUCTION AND EXTRACTION

81 Agriculture (not classified under current use law)
82 Agriculture related activities
83 Agriculture classified under current use chapter 84.34 RCW
84 Fishing activities and related services
85 Mining activities and related services
86 Not presently assigned
87 Classified forest land chapter 84.33 RCW
88 Designated forest land chapter 84.33 RCW
89 Other resource production

UNDEVELOPED LAND AND WATER AREAS

91 Undeveloped land
92 Noncommercial forest
93 Water areas
94 Open space land classified under chapter 84.34 RCW
95 Timberland classified under chapter 84.34 RCW
96 Not presently assigned
97 Not presently assigned
98 Not presently assigned
99 Other undeveloped land

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.075. 96-05-002, § 458-53-030, filed 2/8/96, effective 3/10/96. Statutory Authority: RCW 84.08.010 and 84.08.070. 91-01-008, § 458-53-030, filed 12/6/90, effective 1/6/91. Statutory Authority: RCW 84.48.075 and 84.08.010(2). 89-09-021 (Order PT 89-5), § 458-53-030, filed 4/12/89. Statutory Authority: RCW 84.48.075. 86-21-004 (Order PT 86-6), § 458-53-030, filed 10/2/86; 84-14-039 (Order PT 84-2), § 458-53-030, filed 6/29/84; 79-11-029 (Order PT 79-3), § 458-53-030, filed 10/11/79. Formerly WAC 458-52-030.]

WAC 458-53-050 Land use stratification, sales summary and abstract report. Stratification of the assessment rolls, the annual sales summary, and the abstract report to the department for real property will be based on the following abstract categories:

Abstract Category	Land Use Code
1. Single family residence	11, 18, 19
2. Multiple family residence	12, 13, 14
3. Manufacturing	21 through 39
4. Commercial	15, 16, 17, 41-49, 51-59, 61-69, 71-79
5. Agricultural	81
6. Agricultural (current use law)	83
7. Forest lands (chapter 84.33 RCW)	87, 88
8. Open space (current use law)	94
9. Timberland (current use law)	95
10. Other	82, 84, 85, 89, 91, 92, 93, 96-99

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.075. 96-05-002, § 458-53-050, filed 2/8/96, effective 3/10/96. Statutory Authority: RCW 84.48.075. 79-11-029 (Order PT 79-3), § 458-53-050, filed 10/11/79. Formerly WAC 458-52-040.]

WAC 458-53-070 Real property sales studies. (1) **Sales study data.** The basis of the real property ratio study is data obtained from real estate excise tax affidavits from each county. The department will supplement the sales study with appraisals when it is determined that the sales are insufficient to represent the level of assessment. The appraisals will be selected according to criteria set forth in WAC 458-53-130.

(2) **Time period for data used.** The sales study will only use sales occurring in the eight-month period between August 1 preceding January of the current assessment year and March 31 of the current assessment year.

(3) **Deduction from sale price.** One percent will be deducted from the sale price shown on all valid real estate excise tax affidavits as an adjustment for values transferred that are not assessable as real property.

(4) **Sales not included in the study—Assessment rolls using other than market value—New construction.** Individual sales that show a sale price to assessed value ratio of under twenty-five percent, or over one hundred seventy-five percent shall be excluded from consideration in the study. However, if the number of individual sales meeting either one of these criteria exceeds five percent of the total number of valid sales for a county, then these sales shall be considered in the study.

(a) The exclusion of valid sales in accordance with this subsection shall not apply in situations where other than market value of a particular type of property is being listed on the assessment rolls of the county, as disclosed in any examination by the department. If other than market value is being listed on the assessment rolls for a particular type of real or personal property and, after notification by the department, is not corrected, the department shall adjust the ratio of that type of property, which adjustment shall be used in determining the county's indicated personal or real property ratio. When a particular type of property is found to be at other than market value, that type of property shall be separated from the other properties in the computation of the ratio. The department shall compile the total assessed value and total market value for that type of property, and it shall be included in the ratio as provided in WAC 458-53-135(3) and 458-53-160(3).

(b) The exclusion of valid sales in accordance with this subsection shall not apply to sales of property on which there is new construction value that has not yet been placed on the county assessment roll.

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.075. 96-05-002, § 458-53-070, filed 2/8/96, effective 3/10/96. Statutory Authority: RCW 84.48.075 and 84.08.010(2). 89-09-021 (Order PT 89-5), § 458-53-070, filed 4/12/89. Statutory Authority: RCW 84.48.075. 83-16-050 (Order PT 83-2), § 458-53-070, filed 8/1/83; 82-08-061 (Order PT 82-3), § 458-53-070, filed 4/6/82; 79-11-029 (Order PT 79-3), § 458-53-070, filed 10/11/79. Formerly WAC 458-52-060.]

WAC 458-53-080 Real property sales sample selection. (1) **Sales included.** Except as provided in subsection (2) of this section, the sales study shall consider all transactions involving a warranty deed or a real estate contract that occurred during the eight-month period described in WAC 458-53-070(2). Sales of mobile homes shall also be included in the real property ratio study when the mobile home meets the definition of real property as defined in RCW 84.04.090. In the case of a county generated sales study (see WAC 458-53-100), the county may use a representative sample of all such transactions with the prior written approval of the department.

(2) **Sales excluded.** Sales or transfers of real property involving instruments other than a warranty deed or real estate contract shall not be considered in the sales study. The following types of sales transactions are examples of sales to be excluded from the sales study, regardless of the type of sale instrument used. Differences from the numerical coding designations set forth in this example may be used by individual counties with prior approval from the department.

NUMERICAL CODE	TYPE OF TRANSACTION
1	Family - a sale between relatives.
2	Transfers within a corporation by its affiliates or subsidiaries.
3	Administrator, guardian or executor of an estate.
4	Receiver or trustee in bankruptcy or equity.
5	Sheriff or bailee.
6	Tax deed.
7	Properties exempt from taxation (nonprofit, government, etc.).
8	Individual sales with assessment-to-sales ratios of less than twenty-five percent or greater than one hundred seventy-five percent except as provided in WAC 458-53-070.
9	Quitclaim deed.
10	Gift deed; love and affection deed.
11	Seller's or purchaser's assignment of contract or deed - transfer of interest.
12	Correction deed.
13	Trade - exchange of property between same parties.
14	Deeds involving partial interest in property, such as one-third or one-half interest. (If transfer involves total interest i.e., one hundred percent of the property, sale is valid.)
15	Forced sales - transfers in lieu of imminent foreclosure, condemnation or liquidation.
16	Easement or right of way.
17	Deed in fulfillment of contract (on a current transaction, a contract with a fulfillment deed is a valid sale).
18	Property physically improved after sale.
19	Timber or forest land.
20	Bare lots platted within the eight-month time period described in WAC 458-53-070(2), with less than twenty percent sold.
21	Plottage - when a larger unit of land is being assembled and an adjoining property is sold at a price significantly different from the price of property of a similar type.
22	$1,000 sale or under.
23	Lease - assignment, option, leasehold.
24	Classified as "current use" under chapter 84.34 RCW as of date of sale.
25	Change of use where rezoning takes place.
26	Current year segregations that have not been appraised.
27	Other - necessary to identify reason.

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.075. 96-05-002, § 458-53-080, filed 2/8/96, effective 3/10/96. Statutory Authority: RCW 84.48.075. 84-14-039 (Order PT 84-2), § 458-53-080, filed 6/29/84; 83-16-050 (Order PT 83-2), § 458-53-080, filed 8/1/83; 79-11-029 (Order PT 79-3), § 458-53-080, filed 10/11/79.]

WAC 458-53-090 Department generated sales studies. (1) **Department to gather data for certain counties.** For those counties that are unable to provide the department with a computer generated sales study in accordance with the provisions of WAC 458-53-100, the department will gather the data necessary for the ratio sales study.

(2) **Assessed value.** The assessed value attributed to those sales used in the ratio study will be the assessed value on the county assessment roll for the current assessment year. The assessed value attributed to those sales of property used in the ratio study on which there is new construction value that has not yet been placed on the county assessment roll will be the assessed value on the assessment roll for the current assessment year.

(3) **Sales prelist.** After the sales data has been gathered, the department shall provide a sales prelist to the assessor of each county for which the department is gathering data. The prelist will identify valid sale properties to be used in the sales study. The department will subsequently review the prelist with the assessor or the assessor's staff to verify the validity of the sales and the values indicated.

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.075. 96-05-002, § 458-53-090, filed 2/8/96, effective 3/10/96. Statutory Authority: RCW 84.48.075. 84-14-039 (Order PT 84-2), § 458-53-090, filed 6/29/84; 83-16-050 (Order PT 83-2), § 458-53-090, filed 8/1/83; 79-11-029 (Order PT 79-3), § 458-53-090, filed 10/11/79.]

WAC 458-53-095 Property values used in the ratio study. The following property values shall be included in the ratio study:

(1) **Assessed values.** Values determined by county assessors according to the provisions of chapters 84.40 RCW (Listing of property) and 84.41 RCW (Revaluation of property).

(2) **Forest land values.** Values of forest land classified or designated under chapter 84.33 RCW and values of timberland classified under chapter 84.34 RCW.

(3) **Current use values.** Values of land (except timber land) and improvements classified under chapter 84.34 RCW (current use assessment). Values of land (except timber land) and improvements classified under chapter 84.34 RCW shall be included as a separate class for counties when those values equal or exceed fifteen percent of the total assessed value of locally assessed real property in the county.

(4) **Advisory values.** Advisory values supplied to the assessor by the department, but only if 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.

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.075. 96-05-002, § 458-53-095, filed 2/8/96, effective 3/10/96.]

WAC 458-53-100 County generated sales studies. (1) **Sales data provided by county.** When sales data is provided to the department by counties in accordance with these rules and subject to audit by the department, the data shall be used by the department to determine the indicated real property ratio. The data provided shall be in the form of two reports, a report consisting of data from valid sales, and a report listing those sales deemed to be invalid.

(2) **Report of valid sales.** The county generated sales report consisting of data from valid sales shall include the following information for each valid sale:

(a) The real estate excise tax affidavit number.

(b) The parcel number(s), or other file identification number(s).

(c) The date of sale.

(d) The sale price of the transaction.

(e) The sale price of the transaction reduced by one percent.

(f) The land use code for the sale property.

(g) The current assessed value on the county's assessment roll for the sale property.

(h) A ratio determined by dividing the assessed value by the adjusted sale price (the adjusted sale price is the amount determined in (e) of this subsection).

(3) **Summary of valid sales data.** The county generated sales report shall also contain a summary of the sales information arranged according to land use categories and assessed value strata designated by the department for each county. The summaries for each stratum shall include:

(a) The total number of sales;

(b) The total assessed value of all sale property;

(c) The total adjusted sale price for all sales;

(d) The total average assessed value; and

(e) The total average adjusted sale price.

(4) **Report of invalid sales.** The county generated sales report consisting of data from invalid sales shall include the following information for each invalid sale:

(a) The real estate excise tax affidavit number.

(b) The parcel number(s), or other file identification number(s).

(c) The date of sale.

(d) The sale price of the transaction.

(e) The sale price of the transaction reduced by one percent.

(f) The land use code for the sale property.

(g) The current assessed value on the county's assessment roll for the sale property.

(h) A ratio determined by dividing the assessed value by the adjusted sale price (the adjusted sale price is the amount determined in (e) of this subsection).

(i) The appropriate numerical code (see WAC 458-53-080) or the matching description of the reason for determining that the sale was invalid. If numerical code number 27 is used, the reason for determining that the sale was invalid shall be described.

(5) **Sales report—When submitted.** The county generated sales report shall be submitted as soon as possible following the close of the assessment rolls on May 31st and, for sales of property involving new construction, as soon as possible following August 31st.

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.075. 96-05-002, § 458-53-100, filed 2/8/96, effective 3/10/96. Statutory Authority: RCW 84.48.075 and 84.08.010(2). 89-09-021 (Order PT 89-5), § 458-53-100, filed 4/12/89. Statutory Authority: RCW 84.48.075. 84-14-039 (Order PT 84-2), § 458-53-100, filed 6/29/84; 83-16-050 (Order PT 83-2), § 458-53-100, filed 8/1/83; 82-08-061 (Order PT 82-3), § 458-53-100, filed 4/6/82; 79-11-029 (Order PT 79-3), § 458-53-100, filed 10/11/79.]

WAC 458-53-105 Review procedures for county studies. (1) **Department to monitor compliance.** The department shall review a sales assessment study produced by a county in order to monitor compliance with the rules in this chapter.

(2) **Elements to be verified.** Elements of the county sales study that may be verified include, but are not limited to:

(a) Property identification;

(b) Land use code classification;

(c) Properties reported on real estate excise tax affidavits that were transferred using a warranty deed or real estate contract;

(d) Sales month identification;

(e) Deletion practices and identification;

(f) Computation procedures, including whether the sales value used was one hundred percent or whether the sales value was reduced by one percent;

(g) Sales and assessment values; and

(h) Revaluation assessment practices.

(3) **Findings to be discussed with assessor.** Ratio study review findings will be discussed with the individual county assessor and/or the assessor's staff upon completion of the department's review. Any errors in data or procedure discovered shall be corrected for the current and future year's studies.

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.075. 96-05-002, § 458-53-105, filed 2/8/96, effective 3/10/96.]

WAC 458-53-130 Real property appraisal studies. (1) **Review of prior year's sales.** In order to determine which strata do not have sufficient sales to produce a sales sample representative of the level of assessment, the department shall review a county's prior year's sales studies. This review will determine the number of appraisals necessary to be added to the sales sample.

(2) **Selection of properties for appraisal.** The properties to be appraised by the department shall be selected on a statistically accepted random basis such as stated numerical sequence or random number tables.

(3) **Department appraisals.** Appraisals conducted by the department shall include a physical appraisal of the subject property in order to assure that the most accurate estimate of market value is determined, and shall not be conducted on the basis of mass appraisal techniques. The value determined will be the value as of January 1 of the assessment year, or for appraisals involving new construction, the value as of July 31.

(4) **Review with county.** The department shall review completed appraisals with the assessor and/or the assessor's staff. After the review is complete, the appraisals shall be included with the sales data for computation of the real property ratio.

(5) **Allocation of real and personal property values.** Allocation of value between real and personal property of the total value of appraised property for purposes of the ratio study will be determined using each assessor's method of classifying real and personal property.

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.075. 96-05-002, § 458-53-130, filed 2/8/96, effective 3/10/96. Statutory Authority: RCW 84.48.075. 86-21-004 (Order PT 86-6), § 458-53-130, filed 10/2/86; 84-14-039 (Order PT 84-2), § 458-53-130, filed 6/29/84; 79-11-029 (Order PT 79-3), § 458-53-130, filed 10/11/79. Formerly WAC 458-52-070.]

WAC 458-53-135 Indicated real property ratio—Computation. (1) **Determination of ratio for assessed value strata.** For each real property stratum, average assessed value and average market value shall be determined from the results of selected sales and appraisal studies. The average assessed value of the samples for each stratum divided by the average market value of the samples determines the ratio for each assessed value stratum.

(2) **Determination of indicated market value.** The actual total assessed value for each stratum divided by the ratio for each assessed value stratum, as determined by using the calculation set forth in subsection (1) of this section, determines the indicated market value of each stratum for the county.

(3) **Addition of county assessed values for current use and forest land—Assessor's certification of values.** The county assessed values of current use land and improvements (chapter 84.34 RCW) and forest land (chapter 84.33 RCW) as indicated on the current certification provided by the assessor to the county board of equalization are added to the actual total assessed value for the county. Ratios for current use land and improvements and for forest land are applied to the county assessed values to determine indicated market values.

(a) A copy of the assessor's certification to the board of equalization shall be filed with the department by July 15th, or when the rolls for the current assessment year are completed, whichever is later. The certification form shall be properly completed with all required information.

(b) If a copy of the assessor's certification is not received from an assessor prior to September 1, the assessor's abstract of assessed values for the current year may be used, when available. If not available, the assessed values from the abstract of the previous year may be used.

(4) **Determination of county indicated ratio.** The sum total of the county assessed values is divided by the sum of the indicated market values to determine the county indicated real property ratio.

(5) **Example.** The following illustration, using simulated values and ratios, indicates simplified ratio study computation procedures for real property.

STEP 1
STRATUM AVERAGE VALUE & RATIO COMPUTATIONS

Type of Land Use	Stratum	Number of Samples	Average Assessed Value of Samples	Average Market Value of Samples	Stratum Ratio
SINGLE FAMILY RESIDENCE	0 - 75,000	400	$ 35,000	$ 45,000	77.8
	75,000 - 150,000	400	100,000	125,000	80.0
	150,000 - +	100	195,000	230,000	84.8
MULTI-FAMILY RESIDENCE	0 - 125,000	40	50,000	60,000	83.3
	125,000 - +	15	225,000	265,000	84.9
COMMERCIAL/ MANUFACTURING	0 - 500,000	40	140,000	165,000	84.8
	500,000 - +	25	2,000,000	2,350,000	85.1
AGRICULTURAL	0 - 125,000	35	60,000	65,000	92.3
	125,000 - +	35	300,000	330,000	90.9
OTHER	0 - 100,000	75	30,000	36,000	84.0
	100,000 - +	40	250,000	290,000	86.2

STEP 2
APPLICATION OF STRATUM RATIOS TO ACTUAL COUNTY ASSESSED VALUES

Type of Land Use	Stratum	(1) Actual County Real Property Assessed Value	(2) Ratio	(3) County Market Value Related to Actual Assessed Value Col. 1 ÷ Col. 2
SINGLE FAMILY RESIDENCE	0 - 74,999	$500,000,000	77.8	$642,673,522
	75,000 - 149,999	250,000,000	80.0	312,500,000
	150,000 - +	250,000,000	84.8	294,811,321
MULTI-FAMILY RESIDENCE	0 - 124,999	85,000,000	83.3	102,040,816
	125,000 - +	65,000,000	84.9	76,560,660
COMMERCIAL/ MANUFACTURING	0 - 499,999	245,000,000	84.8	288,915,094
	500,000 - +	200,000,000	85.1	235,017,626
AGRICULTURAL	0 - 124,999	110,000,000	92.3	119,176,598
	125,000 - +	95,000,000	90.9	104,510,451

OTHER	0 - 99,999	90,000,000	84.0	107,142,857
	100,000 - +	75,000,000	86.2	87,006,961
CURRENT USE LAND (CHAPTER 84.34 RCW)		125,500,000	95.2	131,827,731
CURRENT USE IMP (CHAPTER 84.34 RCW)		50,000,000	84.0	59,523,810
FORESTLAND (CHAPTER 84.33 RCW) AND TIMBERLAND (CHAPTER 84.34 RCW)		2,950,000	100.0	2,950,000
		$2,143,450,000		$2,564,657,447 = 83.6

(6) **Department may consider general trends in property values.** The department may consider the relationship between the market value trends of real property and the assessed value increases or decreases made by the assessor during the year in each county as checks of the validity of the results of the sales and appraisal studies. The assistant director of the property tax division of the department may authorize modification of the results of the sales and appraisal study in any county where there is a demonstrable showing by an assessor to the assistant director that the sales and appraisal study is inconclusive or does not result in a reasonable and factual determination of the relationship of assessed values to market value such that a significant variation results from the previous year not deemed by the assistant director to conform with general trends in property values.

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.075. 96-05-002, § 458-53-135, filed 2/8/96, effective 3/10/96.]

WAC 458-53-140 Personal property ratio study. (1) **Random selection of accounts.** The basis for a county's personal property ratio shall be accounts selected at random from the preceding year's assessment rolls at the January 1 value for the preceding year.

(2) **Stratification of rolls.** Determination of strata for each county shall be made by the department to ensure the selection of a representative audit sample and will be reviewed periodically. After the strata have been determined, the department shall notify the counties of the strata limits and each county shall provide the department with the following, taken from the county's assessment rolls:

(a) A representative number of samples, as determined by the department, in each stratum, together with:

(i) The name and address of the taxpayer for each sample;

(ii) The assessed value for each sample; and

(iii) The actual number of samples;

(b) The total number of personal property accounts in each stratum; and

(c) The total assessed value in each stratum.

(3) **Omitted property.** If the department discovers omitted property in a county, the results of the department's audit shall be included in the ratio study.

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.075. 96-05-002, § 458-53-140, filed 2/8/96, effective 3/10/96. Statutory Authority: RCW 84.48.075. 84-14-039 (Order PT 84-2), § 458-53-140, filed 6/29/84; 79-11-029 (Order PT 79-3), § 458-53-140, filed 10/11/79. Formerly WAC 458-52-080.]

WAC 458-53-160 Indicated personal property ratio—Computation. (1) **Determination of ratio for assessed value strata.** For each personal property assessed value stratum, excluding properties identified in WAC 458-53-070 (4)(a), an average assessed value, and an average market value shall be determined from the results of selected audit studies. The average assessed value for each stratum divided by the average market value determines the ratio for each assessed value stratum.

(2) **Determination of indicated market value.** The actual total assessed value of the county for each stratum divided by the ratio for each assessed value stratum, as determined by using the calculation set forth in subsection (1) of this section, determines the indicated market value of each stratum for the county.

(3) **Additional categories.**

(a) The actual county total assessed values of properties identified in WAC 458-53-070 (4)(a) are added as a separate category to the total county assessed value. A ratio determined for these properties is applied against the total assessed value for the category to determine the indicated total market value for the category.

(b) If ten percent or more of the total personal property assessed value of a county consists of publicly owned timber sold by competitive bid to private purchasers, the assessed value of the timber is added as a separate category to the total county assessed value. A ratio determined for this property is applied against the total assessed value for this category to determine the indicated total market value for this category.

(4) **Determination of county indicated ratio.** The sum of the actual total county assessed values is divided by the sum of the indicated market values to determine the county indicated personal property ratio.

(5) **Example.** The following illustration, using simulated values and ratios, indicates the ratio computation procedures for personal property.

STEP 1 - STRATUM AVERAGE VALUE AND RATIO COMPUTATIONS

Stratum	(1) Number of Samples	(2) Average Assessed Value of Samples	(3) Average Market Value of Samples	(4) Stratum Ratio (Col. 2 ÷ Col. 3)
$ 0 - 74,999	25	$ 17,000	$ 22,000	.773
75,000 - 249,999	15	124,000	235,000	.528
Over - 250,000	10	850,000	960,000	.885

STEP 2 - APPLICATION OF STRATUM RATIOS TO ACTUAL COUNTY ASSESSED VALUES

Stratum	(1) Actual County Personal Property Assessed Values	(2) Ratio	(3) County Market Value Related to Actual Assessed Value (Col. 1 ÷ Col. 2)
$ 0 - 74,999	$21,500,000	.773	$ 27,813,713
75,000 - 249,999	23,000,000	.528	43,560,606
Over - 250,000	50,000,000	.885	56,497,175
WAC 458-53-070(4)(a) Properties	0		0
Totals	$94,500,000	÷	$127,871,499 = 73.9
County Indicated Personal Property Ratio			73.9%

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.075. 96-05-002, § 458-53-160, filed 2/8/96, effective 3/10/96; 94-05-064, § 458-53-160, filed 2/11/94, effective 3/14/94. 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 458-53-200 Certification of county preliminary and indicated ratios—Review. (1) **Preliminary ratio certified to assessor.** The department shall annually determine the real property and personal property preliminary ratios for each county and shall certify these ratios to the county assessor on or before the first Monday in September.

(2) **Request for review.** Upon request of the assessor, a landowner, or an owner of an intercounty public utility or private car company, the department shall review the county's preliminary ratio with the requesting party and may make any changes indicated by such review. This review shall take place between the first and third Mondays of September. If the department does not certify the preliminary ratios as required by subsection (1) of this section, the review period shall extend for two weeks from the date of certification.

(3) **Certification of indicated ratios.** Prior to equalization of assessments pursuant to RCW 84.48.080 and after the third Monday of September, the department shall certify to each county assessor the indicated real and personal property ratios for that county.

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.075. 96-05-002, § 458-53-200, filed 2/8/96, effective 3/10/96. Statutory Authority: RCW 84.48.075. 84-14-039 (Order PT 84-2), § 458-53-200, filed 6/29/84; 79-11-029 (Order PT 79-3), § 458-53-200, filed 10/11/79. Formerly WAC 458-52-140.]

WAC 458-53-210 Appeals. If an assessor, landowner, or owner of an intercounty utility or private car company has reviewed the ratio study as provided in WAC 458-53-200, that person or company may appeal the department's indicated ratio determination, as certified for that county, to the state board of tax appeals pursuant to RCW 82.03.130(5). The appeal to the state board of tax appeals must be filed not later than fifteen days after the date of mailing of the certification.

[Statutory Authority: RCW 84.08.010, 84.08.070 and 84.48.075. 96-05-002, § 458-53-210, filed 2/8/96, effective 3/10/96. Statutory Authority: RCW 84.48.075. 84-14-039 (Order PT 84-2), § 458-53-210, filed 6/29/84; 79-11-029 (Order PT 79-3), § 458-53-210, filed 10/11/79. Formerly WAC 458-52-150.]

Chapter 458-57 WAC

STATE OF WASHINGTON ESTATE AND TRANSFER TAX REFORM ACT RULES

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

458-57-010 Scope of rules. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-010, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100. Later promulgation, see WAC 458-57-510.

458-57-020 Nature of inheritance tax. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-020, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100. Later promulgation, see WAC 458-57-520.

458-57-030 Property subject to inheritance tax. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-030, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100. Later promulgation, see WAC 458-57-530.

458-57-040 Jurisdiction—Domicile of decedent. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-040, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-050 Status and character of assets. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-050, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-060 Valuation. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-060, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-070 Valuation—Real estate. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-070, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-080 Valuation—Gold and silver bullion. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-080, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-090 Valuation—Securities. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-090, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-100 Closely held securities—Partnerships—Sole proprietorships. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-100, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-110 Valuation of certain life insurance and annuity contracts—Valuation of shares in an open-end investment company. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-110, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-120 Notes—Other intangibles. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-120, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-130 Real estate contracts. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-130, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-140 Cash on hand or on deposit. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-140, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-150 Tangible personal property, household and personal effects. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-150, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-160 Valuation of annuities, life estates, terms for years, remainders, and reversions. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-160, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-170 Tables for valuation of annuities, life estates, terms for years, remainders, and reversions for estates of decedents dying on and after May 30, 1979. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-170, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-180 Transfers prior to death—Computation of time—Valuation—Contemplation. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-180, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-190 Deductions. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-190, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-200 Nondeductible items. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-200, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-210 Exempt entities. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-210, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-220 Classes of beneficiaries—Heirs. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-220, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-230 Exemptions—Class A. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-230, filed

2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-240 Exemptions—Classes B and C. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-240, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-250 Exemptions—Aliens. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-250, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-260 Insurance—Exemptions. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-260, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-270 Prorating of exemptions. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-270, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-280 Prorating costs and fees. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-280, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-290 Credit for property previously taxed. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-290, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-300 Computation formula—Property previously taxed—Class A. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-300, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-310 Computation formula—Property previously taxed—Portion of net second estate to class other than A. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-310, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-320 Computation formula—Property previously taxed—Specific bequest second estate to class other than A. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-320, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-330 Computation formula—Property previously taxed—Specific bequest and portion of net second estate to class other than A. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-330, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-340 Federal credit for death taxes. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-340, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-350 Payment of tax. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-350, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-360 Payment of tax from residue—Tax on tax. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-360, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-370 Deferral of tax—Power of appointment—Minimum and maximum tax—Secured tax. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-370, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-380 Interest—Penalties. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-380, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-390 Interest on unpaid tax. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-390, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-400 Refunds. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-400, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-410 Escheat estates—Heirs—How located and proof. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-410, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100. Later promulgation, see WAC 458-57-640.

458-57-420 Preliminary statement. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-420, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-430 Inventory and appraisement—Inventory of assets. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-430, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-440 Inheritance tax returns—Duty to keep records and render statements—Filing of returns—Contents of returns. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-440, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-450 Payment of inheritance tax—Extension of time—Basis for—Reasonable cause—Undue hardship. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-450, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-460 Inheritance tax—Extension of time for payment—Failure to pay on time. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-460, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-470 Inheritance tax—Extension of time for payment—Security. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-470, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-480 Closely held businesses—What constitutes. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-480, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-490 Qualified or special use—Application of statutory and regulatory provisions. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-490, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

458-57-500 Miscellaneous provisions. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-500, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.

WAC 458-57-510 Scope of rules. These rules are promulgated under the authority of RCW 83.100.100 and are intended to implement chapter 83.100 RCW.

[Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-510, filed 8/11/83. Formerly WAC 458-57-010.]

WAC 458-57-520 Nature of estate tax. (1) The estate tax is neither a property tax nor an inheritance tax. It is a tax imposed on the transfer of the entire taxable estate and not upon any particular legacy, devise, or distributive share.

(2) The estate tax does not purport to reach completed absolute lifetime transfers. Section 2035(d) of the Internal Revenue Code generally exempts such transfers. To the extent permitted by this provision, lifetime transfers escape the state estate tax. There is no state gift tax.

[Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-520, filed 8/11/83. Formerly WAC 458-57-020.]

WAC 458-57-530 Property subject to estate tax. The estate tax is imposed on transfers of the taxable estate, as defined in section 2051 of the Internal Revenue Code. The following paragraphs contain a general description of the method to be used in determining the taxable estate of decedent:

(1) Gross estate. The first step in determining the tax is to ascertain the total value of the decedent's gross estate. The value of the gross estate includes the value of all property to the extent of the interest therein of the decedent at the time of his death. In addition, the gross estate may include property in which the decedent did not have an interest at the time of his death. A decedent's gross estate for federal estate tax purposes may therefore be very different from the same decedent's estate for local probate purposes. Examples of items which may be included in a decedent's gross estate and not in his probate estate are the following: Certain property transferred by the decedent during his lifetime without adequate consideration; property held jointly by the decedent and others; property over which the decedent had a general power of appointment; proceeds of certain policies of insurance on the decedent's life annuities; and dower and curtesy of a surviving spouse or a statutory estate in lieu thereof. For a detailed explanation of the method of ascertaining the value of the gross estate, see sections 2031 through 2044 of the Internal Revenue Code, and the regulations thereunder.

(2) Taxable estate. The second step in determining the tax is to ascertain the value of the decedent's taxable estate. The value of the taxable estate is determined by subtracting from the value of the gross estate the authorized exemption and deductions. Under various conditions and limitations, deductions are allowable for expenses, indebtedness, taxes, losses, charitable transfers, and transfers to surviving spouse. For a detailed explanation of the method of ascertaining the value of the taxable estate, see sections 2051 through 2056 of the Internal Revenue Code and the regulations thereunder.

[Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-530, filed 8/11/83. Formerly WAC 458-57-030.]

WAC 458-57-540 Residents—Tax imposed. A tax is imposed on the transfer of the taxable estate of every decedent who was domiciled in the state of Washington at the time of such decedent's death. The tax imposed is an amount equal to the federal credit as defined in RCW 83.100.020(3) and WAC 458-57-560(4).

[Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-540, filed 8/11/83.]

WAC 458-57-550 Valuation. The value of every item of property in a decedent's gross estate is its fair market value, except that if the personal representative elects the alternate valuation method under section 2032 of the Internal Revenue Code, it is the fair market value thereof at that date, with the adjustments prescribed in that section. Notwithstanding the preceding sentences, valuation of certain farm property and closely-held business property, properly made for federal estate tax purposes pursuant to an election authorized by section 2032A of the Internal Revenue Code, shall be binding for state estate tax purposes.

[Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-550, filed 8/11/83.]

WAC 458-57-560 Imposition of tax. (1) A tax in an amount equal to the federal credit is imposed by RCW 83.100.030 upon the net estate of every decedent. "Net estate" for state tax purposes means the same thing as "taxable estate" for federal tax purposes. When the amount of deductions allowable exceeds the value of the gross estate, there is no "taxable (or net) estate," and no state tax is due.

(2) The Internal Revenue Code of 1954 means the Internal Revenue Code of 1954, as amended or renumbered prior to January 1, 1982. See *St. of Wash. v. Readers Digest,* 81 Wn.2d 259, 501 P.2d 290 (1972).

(3) The "maximum amount of the credit for state death taxes allowed under section 2011" means allowed without regard to section 2011(a) of the Internal Revenue Code. The Washington estate tax is due in every case in which the credit is available whether or not it is claimed for federal tax purposes.

(4) The term "federal credit" means the credit amount prescribed in section 2011(b) of the Internal Revenue Code, as limited by the amount which the federal estate tax exceeds the unified credit prescribed in section 2010 of the Internal Revenue Code. It is computed on a special base denominated "adjusted taxable estate," which is determined by simply reducing the amount of federal taxable estate by $60,000.

(5) The amount of tax payable to the state of Washington shall not exceed an amount equal to the amount of tax computed in accordance with section 2001 of the Internal Revenue Code reduced by the amount of unified credit provided by section 2010 of the Internal Revenue Code.

(6) The amount of the tax shall not be reduced by the amount of any credit allowed for federal purposes other than the amount of credit prescribed under section 2010 of the Internal Revenue Code. Specifically, the amount of the state estate tax shall not be reduced by the amount of any credit

for tax on prior transfers, foreign death taxes, or death taxes on remainders provided in sections 2013, 2014, and 2015 of the Internal Revenue Code.

Amount of credit:

(A) Adjusted taxable estate or more than	(B) Adjusted taxable estate less than	(C) Credit on amount in column (A)	(D) Rates of credit on excess over amount in column (A) Percent
$ 40,000	$ 90,000	$ -0-	0.8
90,000	140,000	400	1.6
140,000	240,000	1,200	2.4
240,000	440,000	3,600	3.2
440,000	640,000	10,000	4.0
640,000	840,000	18,000	4.8
840,000	1,040,000	27,600	5.6
1,040,000	1,540,000	38,800	6.4
1,540,000	2,040,000	70,800	7.2
2,040,000	2,540,000	106,800	8.0
2,540,000	3,040,000	146,800	8.8
3,040,000	3,540,000	190,800	9.6
3,540,000	4,040,000	238,800	10.4
4,040,000	5,040,000	290,800	11.2
5,040,000	6,040,000	402,800	12.0
6,040,000	7,040,000	522,800	12.8
7,040,000	8,040,000	650,800	13.6
8,040,000	9,040,000	786,800	14.4
9,040,000	10,040,000	930,800	15.2
10,040,000	———	1,082,800	16.0

Example (1). A died in 1986, leaving her husband and children surviving. Her taxable estate, computed after allowance of the marital deduction, was $700,000. The adjusted taxable estate was $640,000. The Washington state estate tax due is $18,000.

Example (2). C died in 1983. All of his property passed to his wife D, outright under a community property agreement. His marital deduction under section 2056 of the Internal Revenue Code reduced his federal taxable estate to zero. Because his taxable estate is zero, no Washington tax is due.

Example (3). E, a single man, died in 1984. His federal taxable estate was $100,000; thus, the adjusted taxable estate was $40,000 ($100,000 - $60,000). No Washington tax is due. Section 2011 of the Internal Revenue Code provides for no credit unless the adjusted taxable estate exceeds $40,000.

Example (4). F, a widower, died in 1985. One year before his death he made an absolute transfer of almost all of his property to his son, G. His federal tax liability was computed on the basis of "adjusted taxable gifts" of $750,000 and a taxable estate of $3,000. No Washington estate tax is due, and there is no Washington gift tax.

Example (5). B, a widow, died in 1982 leaving a taxable estate of $290,000. The amount of tax payable to the state of Washington, equivalent to the federal death tax credit, is computed as follows:

Taxable estate	$290,000		
Less	60,000		
Adjusted taxable estate	$230,000		
Section 2011 credit on first	$140,000	is	$1,200
Plus 2.4% of	90,000	is	2,160
Washington tax liability			$3,360

Example (6). Decedent died in 1983, leaving a taxable estate of $280,000. The amount payable to the state of Washington is computed as follows:

Taxable estate	$280,000		
Less	60,000		
Adjusted taxable estate	$220,000		
Section 2011 credit on first	$140,000	is	$1,200
Plus 2.4% of	80,000	is	1,920
State Death Tax Credit equals			$3,120

BUT (Federal Estate Tax Computation)

Taxable estate	$280,000		
Tax on	$250,000	is	$70,800
Plus 34% of	30,000	is	10,200
Gross federal tax			$81,000
Less unified credit			79,300
Net estate tax			$ 1,700

Since the federal estate tax payable is $1,700, which amount is less than the computed state death tax credit, the amount payable to the state is $1,700 and zero is due the Internal Revenue Service.

[Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-560, filed 8/11/83.]

WAC 458-57-570 Tax returns to be filed. (1) For purposes of these rules, the word "return" shall mean the "report" called for under provisions of RCW 83.100.050. The Washington Estate Tax Return shall be filed on or before the date the Federal Estate Tax Return is required to be filed.

(2) Section 6075 of the Internal Revenue Code requires that federal estate tax returns be filed within nine months after the date of the decedent's death.

(3) Section 6081 of the Internal Revenue Code permits the granting of reasonable extensions of time for filing estate tax returns for periods generally not to exceed six months.

(4) In the case of any estate for which a federal return must be filed, a Washington state Estate Tax Return shall be filed with the department on or before the date on which the federal return is required to be filed. If a federal extension of the time to file is granted, the date for filing the Washington return is extended thereby. However, if the personal representative shall fail to file with the department a true copy of the extension within thirty days of the issuance of such extension, the department may require the personal representative to file the state return on the date that the federal return would have been due had the extension not been granted. Too, the penalty provided (RCW 83.100.070(2)) for late filing of the tax return shall be applicable if the tax return is filed after the due date, an extension of time to file has been requested, and the extension is denied.

(5)(a) A release shall be issued, when requested, in every case in which the department determines that an estate is not liable for the payment of the state estate tax in any amount. In instances in which the department is unable to make the determination, it may require proof by the personal representative that no tax is in fact due.

(b) If the department determines that no tax is due, it shall issue a release to the personal representative. The release shall state that the estate tax liability to the state of Washington has been fulfilled, and that the release shall give the personal representative authority to effectuate the transfer of all property comprising the decedent's estate.

(c) The release may be conditional. If, for example, the estate has avoided federal and state tax liability by reason of electing special use valuation under section 2032A of the Internal Revenue Code (entitled "Valuation of Certain Farm, etc. Real Property"), and if state tax will be due in the event the specially valued property is disposed of or taken out of qualified use within the period provided for in section 2032A(c), the request for the release must be joined in by those persons required to sign the agreement mentioned in section 2032A (d)(2), and when issued the release shall specify that it is issued in reliance upon representation that no such disposition or removal from qualified use is contemplated, and the qualified heir will notify the department if removal from qualified use thereafter occurs within ten years following the date of the decedent's death. Should removal from qualified use result in a tax being due the state of Washington, the qualified heir shall notify the department, pay the tax, together with interest at the rate of twelve percent per annum if the tax is not paid within six months of removal of the property from qualified use.

(d) "Qualified heir" shall mean those persons specified in section 2032A (e)(1).

[Statutory Authority: RCW 83.100.100. 86-12-024 (Order 86-1), § 458-57-570, filed 5/28/86; 83-17-033 (Order IT 83-2), § 458-57-570, filed 8/11/83.]

WAC 458-57-580 Formula. The amount of tax payable to Washington for nonresident decedents equals the amount of federal credit multiplied by a fraction, the numerator of which is the value of the property located in Washington, and the denominator of which is the value of the decedent's gross estate:

$$\text{Federal Credit} \times \frac{\text{Gross Value of Property in Washington}}{\text{Decedent's Gross Estate}} = \text{Amount to be Paid Washington State}$$

This formula contemplates the gross value as finally determined for federal estate tax purposes of any property "located in" Washington as provided in RCW 83.100.040(2). No reduction shall be allowed for any mortgages, liens or other encumbrances or debts associated with such property except to the extent allowable in computing the gross estate for federal estate tax purposes.

[Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-580, filed 8/11/83.]

WAC 458-57-590 Property "located in" Washington. (1) Real property. All real property physically situated in this state, with the exception of federal trust lands, and all interests in such property, are deemed "located in" Washington. Such interests include but are not limited to:

(a) Leasehold interests.

(b) Mineral interests.

(c) The vendee's (but not the vendor's) interest in an executory contract for the purchase of real property.

(d) Trusts (beneficial interest in trusts of realty).

(2) Tangible personal property. Tangible personal property of a nonresident decedent shall be deemed "located in" Washington only if:

(a) At the time of his death the property is situated in Washington;

(b) It is present for a purpose other than transiting the state.

Example: A nonresident decedent, a construction contractor working as an individual or sole proprietor, was on the date of death engaged in constructing a large building within the state. All equipment, such as earthmovers, bulldozers, trucks, etc., used on that contract and located in Washington at the time of death, would be deemed located in Washington for death tax purposes.

[Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-590, filed 8/11/83.]

WAC 458-57-600 Reciprocity exemption. If the state in which the nonresident decedent is domiciled exempts from estate, inheritance or other death taxes the property of residents of Washington, the estate of such decedent shall be exempt from Washington estate taxes. This exemption will apply if, as of the date of the decedent's death he was a citizen of the United States, resident of the United States but not of Washington, and such laws of the domicile state: (1) Made specific reference to this state; or (2) contained a reciprocal provision under which nonresidents were exempted from applicable death taxes with respect to property or transfers otherwise subject to the jurisdiction of such state. In those instances where application of this provision results in loss of available federal credit which would otherwise be allowed by the federal government, Washington will absorb that proportional share which is applicable to property within the jurisdiction of this state. Application of this provision will not act to increase the total tax obligation of the estate and will not apply if federal regulations prevent allowance of such credit.

[Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-600, filed 8/11/83.]

WAC 458-57-610 Releases. (1) In cases in which taxes are due under the act, the department shall issue a release to the personal representative upon request and after such taxes have been paid. The request shall be accompanied by a completed Washington Estate Tax Return and by a completed copy of the Federal Estate Tax Return (Form #706). The final determination of the amount of taxes due from the estate is contingent on receipt of a copy of the final closing letter issued by the Internal Revenue Service.

(2) The department may require additional information to substantiate information provided by the estate.

(3) The release issued by the department will not bind or estop the department in the event of a misrepresentation of facts.

[Statutory Authority: RCW 83.100.100. 86-12-024 (Order 86-1), § 458-57-610, filed 5/28/86; 83-17-033 (Order IT 83-2), § 458-57-610, filed 8/11/83.]

WAC 458-57-620 Amended returns—Final determination. (1) If an amended federal return is filed, an amended Washington return together with a copy of the amended federal return shall be filed with the department within five days after the date the amended federal return is filed with the Internal Revenue Service.

(2) The written notice to be given the department of the final determination of federal tax pursuant to RCW 83.100.090(2) shall include copies of any final examination

report, any compromise agreement, the estate tax closing letter, and any other available evidence of the final determination.

(3) Failure to file an amended return shall toll all applicable statutes of limitations against the tax.

[Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-620, filed 8/11/83.]

WAC 458-57-630 Administration—Rules. For the purposes of these rules, the term "court of record" shall mean a superior court or any division of the court of appeals. A rule determined to be invalid by a court other than an appellate court shall nevertheless continue to have persuasive effect in the application and interpretation of these rules.

[Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-630, filed 8/11/83.]

WAC 458-57-640 Escheat estates—Heirs—How located and proof. (1) In those cases where it is apparent that the estate will escheat to the state of Washington and heirs are subsequently located, the personal representative shall provide the department with all evidence of which he has knowledge or of which he has possession showing that the purported heirs are actually heirs. All documents in support of heirship must be in the English language when submitted to the department. The translation into English from any foreign document shall be authenticated as reasonably required by the department.

(2) In all cases where there is a court hearing or the taking of a deposition on the question of heirship, the personal representative shall give the department twenty days' written notice of such hearing or matter.

(3) The personal representative must give the department at least twenty days' written notice of the hearing on the final account and petition for distribution.

[Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-640, filed 8/11/83. Formerly WAC 458-57-410.]

WAC 458-57-650 Interest and penalties. (1) Estate taxes due the state are delinquent if not paid within nine months of the date of death. Interest accrues on delinquent taxes at the rate of twelve percent per annum and will be prorated in accordance with Table A.

(2) If the estate tax return required is not filed within the time specified in WAC 458-57-570, then the personal representative shall pay, in addition to the interest provided in subsection (1) of this section, a penalty equal to five percent of the tax due for each month the report has not been filed, but the total penalty shall not exceed twenty-five percent of the tax. The penalty is added to the total amount of tax and interest due. It shall be prorated for those periods less than a month in accordance with Table B.

(3) When interest and penalties have been imposed for late filing or payment, and partial payments of the total amount due are received, the payments shall be applied first to pay the penalty, then the accrued interest, and then the principal.

(4) The penalty for failure to file will not be assessed in those instances where prior to the due date a payment of the tax due has been made and the circumstances which render the timely filing of the return impossible have been brought to the attention of the department.

INTEREST AND PENALTY DAILY FACTORS

For Deaths on or After 1/1/82

Day	TABLE A 12% Per Annum Interest (1% per mo.)	Day	TABLE B 5% Penalty Failure to File
1	.000333	1	.001667
2	.000666	2	.003334
3	.000999	3	.005001
4	.001332	4	.006668
5	.001665	5	.008335
6	.001998	6	.010002
7	.002331	7	.011669
8	.002664	8	.013336
9	.002997	9	.015003
10	.003330	10	.016670
11	.003663	11	.018337
12	.003996	12	.020004
13	.004329	13	.021671
14	.004662	14	.023338
15	.004995	15	.025005
16	.005328	16	.026672
17	.005661	17	.028339
18	.005994	18	.030006
19	.006327	19	.031673
20	.006660	20	.033340
21	.006993	21	.035007
22	.007326	22	.036674
23	.007659	23	.038341
24	.007992	24	.040008
25	.008325	25	.041675
26	.008658	26	.043342
27	.008991	27	.045009
28	.009324	28	.046676
29	.009657	29	.048343
30 & 31	.010000	30 & 31	.050000

Example

Interest Factor			Penalty Factor		
Payment delinquent 4 mos. 13 days			Late filing 2 mos. 21 days		
4 x .01	=	.04	2 x .05	=	.10
Plus 13 days	=	.004329	Plus 21 days	=	.035007
Factor to use		.044329	Factor to use		.135007

Amount of death tax credit	$1,700.00
Plus interest (.044329 x 1,700)	75.36
Plus penalty (.135007 x 1,700)	229.51
Total Due	$2,004.87

[Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-650, filed 8/11/83.]

WAC 458-57-660 Refunds. Claims for refund of taxes overpaid must be initiated within one year of the time the taxes are first paid to the state of Washington. Such claim may be made only by the personal representative or his retained counsel. Any refund issued by the department will include interest at the existing statutory rate computed from the date the overpayment was received by the department until the date it is returned to the estate's representative.

[Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-660, filed 8/11/83.]

Chapter 458-61 WAC
REAL ESTATE EXCISE TAX

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

458-61-010 Authority. [Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-010, filed 7/21/82.] Repealed by 94-04-088, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25.

458-61-020 General provisions pursuant to chapter 82.32 RCW. [Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-020, filed 7/21/82.] Repealed by 94-04-088, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25.

458-61-040 Tax imposed. [Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-040, filed 7/21/82.] Repealed by 94-04-088, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25.

458-61-110 Tax appeals. [Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-110, filed 7/21/82.] Repealed by 94-04-088, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25.

458-61-140 Compliance. [Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-140, filed 7/21/82.] Repealed by 94-04-088, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25.

458-61-240 Care, comfort and support. [Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-240, filed 7/21/82.] Repealed by 94-04-088, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25.

458-61-270 Community property—To establish or separate. [Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-270, filed 7/21/82.] Repealed by 94-04-088, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25.

458-61-280 Condemnation. [Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-280, filed 7/21/82.] Repealed by 94-04-088, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25.

458-61-310 Corporation—Family. [Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-310, filed 7/21/82.] Repealed by 94-04-088, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25.

458-61-320 Corporation—Nonfamily. [Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-320, filed 8/6/86; 84-17-002 (Order PT 84-3), § 458-61-320, filed 8/2/84; 82-15-070 (Order PT 82-5), § 458-61-320, filed 7/21/82.] Repealed by 94-04-088, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25.

458-61-350 Earnest money receipts. [Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-350, filed 7/21/82.] Repealed by 83-02-022 (Order PT 82-10), filed 12/28/82. Statutory Authority: RCW 82.45.120 and 82.45.150.

458-61-360 Easement, sale of. [Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-360, filed 7/21/82.] Repealed by 94-04-088, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25.

458-61-380 Federal housing agencies. [Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-380, filed 7/21/82.] Repealed by 94-04-088, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25.

458-61-390 Foreclosure of mortgage, deed in lieu of. [Statutory Authority: RCW 82.45.120 and 82.45.150. 83-02-022 (Order PT 82-10), § 458-61-390, filed 12/28/82; 82-15-070 (Order PT 82-5), § 458-61-390, filed 7/21/82.] Repealed by 94-04-088, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25.

458-61-440 Improvements sold to be removed from the land. [Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-440, filed 7/21/82.] Repealed by 94-04-088, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25.

458-61-460 Inheritance. [Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-460, filed 7/21/82.] Repealed by 94-04-088, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25.

458-61-490 Joint tenancy. [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.] Repealed by 94-04-088, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25.

458-61-500 Leasehold interest. [Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-500, filed 8/6/86; 82-15-070 (Order PT 82-5), § 458-61-500, filed 7/21/82.] Repealed by 94-04-088, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25.

458-61-530 Mining claims. [Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-530, filed 7/21/82.] Repealed by 94-04-088, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25.

458-61-560 Partnership—Family. [Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-560, filed 7/21/82.] Repealed by 94-04-088, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25.

458-61-570 Partnership—Nonfamily. [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.] Repealed by 94-04-088, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25.

458-61-620 Sales made before imposition of tax. [Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-620, filed 7/21/82.] Repealed by 94-04-088, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25.

458-61-630 Security documents. [Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-630, filed 7/21/82.] Repealed by 94-04-088, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25.

458-61-680 Trust. [Statutory Authority: RCW 82.45.120 and 82.45.150. 84-17-002 (Order PT 84-3), § 458-61-680, filed 8/2/84; 82-15-070 (Order PT 82-5), § 458-61-680, filed 7/21/82.] Repealed by 94-04-088, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25.

458-61-690 Trustee sale pursuant to deed of trust (nonjudicial). [Statutory Authority: RCW 82.45.120 and 82.45.150. 83-02-022 (Order PT 82-10), § 458-61-690, filed 12/28/82.] Repealed by 94-04-088, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25.

WAC 458-61-015 General information. (1) **Background.** Chapter 82.45 RCW imposes an excise tax on every sale of real estate in this state at the rate of one and twenty-eight one-hundredths percent of the selling price. Unless otherwise specifically exempt from tax, all sales of real property are subject to the real estate excise tax. Chapter 82.46 RCW authorizes counties, cities and towns to impose additional taxes on sales of real property based on the same incidences, collection and reporting methods, as applicable under chapter 82.45 RCW. The taxes imposed are due at the time the sale occurs and are to be collected by the county treasurer upon presentation of the documents of sale for recording in the public records, or by the department in the case of a transfer of a controlling interest in an entity which owns real property located in this state. This chapter provides applicable definitions, describes tax payment, collection and reporting procedures, explains the imposition of penalties and interest on late payment, describes available exemptions from tax, and provides procedures for refunds of overpaid taxes and appeals from assessments of tax.

(2) **References.** The general provisions for the administration of the state's excise taxes contained in chapter 82.32 RCW apply to the real estate excise tax, except for the following: RCW 82.32.030, 82.32.040, 82.32.050, 82.32.140 and 82.32.270, and the penalties and limitations imposed by RCW 82.32.090.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-015, filed 2/1/94, effective 3/4/94.]

WAC 458-61-025 Taxability of the transfer or acquisition of the controlling interest of an entity with an interest in real property located in this state. (1) **Introduction.** Chapter 25, Laws of 1993 1st ex. sess., effective July 1, 1993, enacted a provision where the transfer of the controlling interest in an entity which has an interest in real property in this state is considered a taxable sale of the entity's real property for purposes of the real estate excise tax. This tax was enacted to equalize the excise tax burdens between other sales of real property and transfers of entity ownership essentially equivalent to sales of real property by extending the real estate excise tax to transfers of a controlling interest in an entity which has an interest in real property located in this state. This section explains the application of those provisions.

(2) **Definitions.**

(a) "Transfer of a controlling interest in an entity" means the transfer or acquisition for a valuable consideration within any twelve-month period of a controlling interest in any entity with an interest in real property located in this state. For purposes of this subsection, all acquisitions of persons acting in concert shall be aggregated for purposes of determining whether a transfer or acquisition of a controlling interest has taken place.

(b) "Controlling interest" means:

(i) In the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of the corporation entitled to vote, or fifty percent of the capital, profits, or beneficial interest in the voting stock of the corporation; and

(ii) In the case of a partnership, association, trust, or other entity, fifty percent or more of the capital, profits, or beneficial interest in such partnership, association, trust, or other entity.

(iii) Example 1. A and B each own 40% of the voting shares of a corporation. C, D, E and F each own 5% voting shares. C acquires B's 40% interest, and D's and E's 5% interests. This is a taxable acquisition because a controlling interest (50% or more) was acquired by C (40% from B plus 5% from D and 5% from E). However, if C, D and E were to transfer their shares (totaling 15%) to A, those transfers would not be taxable. Although A would own 55% of the corporation, only a 15% interest was transferred and acquired, so the acquisition by A is not taxable.

(iv) Example 2. Consider a limited partnership consisting of a general partner and three limited partners, each possessing a 25% interest. Even though the general partner controls the management and day to day operations, a 25% interest is not a controlling interest. Here, only if someone were to acquire at least a 50% interest from at least two of the partners would the taxable acquisition of a controlling interest occur. If one partner acquires an additional 25% interest from another partner for a total of a 50% interest, no transfer or acquisition of a controlling interest occurs because less than 50% is transferred and acquired.

(v) Example 3. A, B, C and D each own 25% of the voting shares of a corporation. The corporation redeems the shares of B, C and D. A now owns all the outstanding shares of the corporation. A taxable transfer occurred when the corporation redeemed the shares of B, C and D. The measure of the tax is the value of the property owned by the corporation. B, C and D are liable for payment of the real estate excise tax.

(vi) Example 4. A owns 75% of the voting shares of a corporation. A transfers 25% portions of the shares in three separate and unrelated transactions to B, C and D, who are not acting in concert. A taxable transfer of a controlling interest occurs when A transfers 75% of the voting shares of the corporation, even though no one has subsequently acquired a controlling interest. The taxable event occurs upon the transfer of the controlling interest.

(vii) Example 5. Corporation XRAY has 2 stockholders, A and B. A owns 90 shares of stock (90%) and B owns 10 shares of stock (10%). XRAY owns 60% of the stock of Corporation YANKEE, which owns real property. A, by virtue of owning 90% of the XRAY's stock, has a 54% interest in YANKEE (90% interest in XRAY multiplied by the 60% interest XRAY has in YANKEE equals the 54% interest A has in YANKEE). A sells his 90 shares of stock in XRAY to B. A, by selling his 90 shares of XRAY stock, has transferred a controlling interest (54%) in an entity that owns real property (YANKEE). This transfer is subject to the real estate excise tax. The real estate excise tax due is computed on the true and fair value of the real property owned by YANKEE.

(viii) Example 6. Assume the same facts as in Example 3 in (b)(v) of this subsection, except that XRAY owns only 50% of YANKEE's stock. Since A has not transferred and B has not acquired a controlling interest in YANKEE (90% X 50% = 45%), the real estate excise tax does not apply. If, however, XRAY had transferred its 50% interest in YANKEE, that would have been the transfer of a controlling interest and would be subject to the real estate excise tax.

(c) The terms "person" or "company" mean any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the state of Washington or any political subdivision thereof, 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 agency or instrumentality thereof.

(d) "True and fair value" means market value, which is the amount of money which a willing, but unobliged, buyer would pay a willing, but unobligated, owner for real property, taking into consideration all reasonable, possible uses of the property.

(e) "Twelve-month period" is any period of twelve consecutive months and may span two calendar years.

(f) "Acting in concert" occurs:

(i) When one or more persons have a relationship with each other such that one person influences or controls the actions of another through common ownership. For example, if a parent corporation and a wholly-owned subsidiary each purchase a 25% interest in an entity, the two corporations have acted in concert and acquired a controlling (i.e., at least 50%) interest in the entity.

(ii) Where individuals or entities are not commonly controlled or owned but the unity of purpose with which purchasers have negotiated and will consummate the acquisition of ownership interests indicates that they are acting together. For example, three separate individuals who decide together to acquire control of a company jointly through separate purchases of 20% interests in the company act in concert when they acquire the interests.

(3) **In general.** In order for the tax to apply when the controlling interest in an entity which has an interest in real property in this state has been transferred, the following must have occurred:

(a) The transfer or acquisition of the controlling interest occurred within a twelve-month period;

(b) The controlling interest was acquired in a single transaction or series of transactions by a single person or a group of persons acting in concert;

(c) The entity has an interest in real property located in this state;

(d) The transfer is not otherwise exempt under chapter 82.45 RCW and chapter 458-61 WAC; and

(e) The transfer was made for valuable consideration.

(4) **Measure of the tax.** The measure of the tax is the selling price of the real property in this state owned by the entity whose controlling interest has been acquired. See WAC 458-61-030(10) for a definition of selling price.

(a) If the price paid does not accurately reflect the true and fair value of the property, one of the following methods may be used to determine the true and fair value:

(i) A fair market value appraisal of the property; or

(ii) An allocation of assets by the seller and the buyer made pursuant to section 1060 of the Internal Revenue Code of 1986, as amended.

(b) If the true and fair value of the property to be valued at the time of the sale cannot reasonably be determined by either of the methods in (a) of this subsection, the market value assessment for the property maintained on the county property tax rolls at the time of the sale shall be used as the selling price.

(5) **Persons acting in concert.** This tax applies to acquisitions, but not transfers, made by persons acting in concert, as defined in subsection (2)(f) of this section.

(a) Where persons are not commonly controlled or influenced, factors that each indicate whether persons are acting in concert include:

(i) A close relation in time of the transfers or acquisitions;

(ii) Small number of purchasers;

(iii) Mutual terms contained in the contracts of sale; and

(iv) Additional agreements to the sales contract which bind the purchasers to a course of action with respect to the transfer or acquisition.

(b) If the acquisitions are completely independent, with each purchaser buying without regard to the identity of the other purchasers, then the acquisitions shall be considered separate acquisitions.

(c) Example 1. A owns 100% of Corporation, which owns real property. As a group, B, C, D, and E negotiate to acquire all of A's interest in Corporation. B, C, D, and E each acquire 25% of A's interest. The contracts of B, C, D, and E are identical and the purchases occur simultaneously. B, C, D, and E also negotiated an agreement binding themselves to a course of action with respect to the acquisition of Corporation and the terms of the shareholders agreement which will govern their relationship as owners of Corporation. B, C, D, and E are acting in concert and their acquisitions from A are treated as a single acquisition of a controlling interest which is subject to the real estate excise tax.

(d) Example 2. A partnership owns real property and consists of two partners, A and B. Each has a 50% partnership interest. In August of 1993, A and B decide together to transfer a percentage of their partnership interests. On August 20, 1993, A and B each transfer 12 1/2 percent of their respective partnership interests to C (who thereby acquires a 25% partnership interest). On June 27, 1994, A and B each transfer a 15% partnership interest to D (who thereby acquires a 30% partnership interest). Although A and B have acted in concert, they are the transferors of the interest. Only the activities of those persons acquiring the interest are aggregated. Because C and D did not act in concert, their acquisitions cannot be aggregated, and because neither C nor D individually acquired a controlling interest as a result of the transfers, the transfers are not subject to the real estate excise tax.

(6) **Date of sale.** When the controlling interest is acquired in one transaction, the actual date control is transferred shall be considered the date of sale. Examples of when an interest in an entity is transferred include when payment is received by the seller and the shares of stock are delivered to the buyer, or, when payment is received by the seller and partnership documents are signed, etc.

(a) When the acquisition of a controlling interest involves the aggregation of interests of persons acting in concert, the selling price of each transfer or acquisition shall be determined as of the actual date of that transfer or acquisition. The actual date control is transferred, not the date of the contract arranging the transfer, determines whether the transaction falls within the twelve-month period. However, if it can be shown that the sole reason for the delay in transferring control is the avoidance of the tax, then the date of the contract arranging the transfer may determine if the transaction falls within the twelve-month period.

(b) Example 1. A acquires a 10% interest in an entity which owns an apartment building under construction worth $500,000 from X on January 30. On July 30, A acquires a 30% interest in the same entity from Y, but the building is now worth $900,000. On September 30, A acquires a 10% interest in the same entity from Z, but the building is now worth $1,000,000. The final transfer allows A to acquire, within twelve months, a controlling interest in an entity which owns real property. September 30 is the date of sale.

(i) To determine the sellers' proportional tax liability in the example above, view the series of transactions as a whole. Note both the individual and the total interests transferred. Here, X and Z each conveyed 10% interests, while Y conveyed a 30% interest, with a total of a 50% interest being conveyed. To determine the liability percentage for each seller, divide the interest each conveyed by the total interest conveyed (Here, X and Z: 10/50 = 20%; Y: 30/50 = 60%). This results in tax liability percentages here for X and Z of 20% each and for Y, 60%.

(ii) To determine the amount of tax owed, apply the percentage to the value of the property at the time of conveyance. In the example above, the value of the property to which the percentage applies is dependent on the time of each transfer (i.e., X's 20% on the $500,000; Y's 60% on the $900,000; Z's 20% on the $1,000,000).

(7) **Tax liability.** When there is a transfer or acquisition of a controlling interest in an entity that has an interest in real property, on or after July 1, 1993, the seller of the interest is generally liable for the tax.

(a) When the seller has not paid the tax by the due date and neither the buyer nor the seller has notified the department of the sale within thirty days of the sale, the buyer is also liable for the tax.

(b) When the buyer has notified the department of the sale within thirty days of the sale, the buyer is absolved from liability for any tax due.

(c) When a controlling interest is transferred by a series of sales, each seller is liable for its proportional share of tax based on the value of the property on the date of sale as provided in subsection (6)(b) of this section.

(8) **Filing of returns.** The transfer of a beneficial interest in real property shall be reported to the department when no instrument is recorded in the official real property records of the county in which the property is located. If the transfer is not taxable due to an exemption, that exemption should be stated on the affidavit.

(a) The sale shall be reported by the seller to the department within five days from the date of the sale on the department of revenue affidavit form, DOR Form 84-0001B. The affidavit form shall be signed by both the seller and the buyer and shall be accompanied by payment of the tax due.

(b) The affidavit form may also be used to disclose the sale, in which case:

(i) It shall be signed by the person making the disclosure; and

(ii) It shall be accompanied by payment of the tax due only when submitted by a seller reporting a taxable sale.

(c) Any person who intentionally makes a false statement on any return or form required to be filed with the department under this chapter shall be guilty of perjury.

(9) **Due date, interest and penalties.** The tax imposed is due and payable immediately on the date of sale. If not paid within thirty days of the date of sale, it shall bear interest at the rate of one percent per month from the date of sale until the date of payment.

(a) In addition to the interest, if the payment of any tax is not received by the department:

(i) Within thirty days of the date due, there shall be assessed a total penalty of five percent of the amount of the tax;

(ii) Within sixty days of the date due, there shall be assessed a total penalty of ten percent of the amount of the tax; and

(iii) Within ninety days of the date due, there shall be assessed a total penalty of twenty percent of the amount of the tax.

(b) The payment of the penalty described in this subsection shall be collectible from the seller only, and RCW 82.45.070 does not apply to the penalties described in this subsection.

(10) **Transfers after tax has been paid.** When there is a transfer or acquisition of a controlling interest in an entity on or after July 1, 1993, and the real estate excise tax is paid on the transfer and there is a subsequent acquisition of an additional interest in the same entity within the same twelve-month period by a person acting in concert with the previous buyer(s), the subsequent seller is liable for its proportional portion of the tax. After payment by the subsequent seller of its proportional share, the person(s) who previously paid the tax may apply to the department for a refund of the amount overpaid because of the new proportional amount paid as a result of the subsequent transfer or acquisition.

(11) **Exemptions.** As the transfer and acquisition of a controlling interest in an entity which owns real estate in this state is statutorily defined as a "sale" of the real property owned by the entity, the exemptions of chapter 82.45 RCW also apply to the sale of a controlling interest.

(a) Example 1. The merger of a wholly owned subsidiary containing real property located in this state with another subsidiary wholly owned by the same parent is a transfer of a controlling interest. However, this transfer is exempt from taxation on two grounds. First, it is exempt because it is a mere change in form or identity (see WAC 458-61-375). Second, it is exempt because it qualifies under the nonrecognition of gain or loss provisions of the Internal Revenue Code for entity formation, liquidation and dissolution, and reorganization (see WAC 458-61-376).

(b) Example 2. X owns 100% of a corporation. X wants child, C, and corporate manager, M, to be co-owners with X in the corporation. X gives 50% of the voting stock to C and sells 33 1/3% to M. While a controlling interest in the corporation has been transferred to and acquired by C, it is not taxed because generally a gift is an exempt transfer not to be counted for purposes of determining whether a controlling interest has transferred. The sale of the 33 1/3% to M is not a sufficient interest to transfer control, and is not taxed.

(c) Example 3. D owns 75% of the voting stock of a corporation which owns real estate located in this state. D pledges all of its corporate stock to secure a loan with a bank. When D defaults on the loan and the bank forecloses on D's stock in the corporation, the transfer and acquisition of control of the entity is not a taxable transaction because foreclosures of mortgages and other security devices are exempt transfers.

(12) **Transition rules.** Transactions occurring prior to July 1, 1993, are exempt from inclusion in any determination of whether a transfer or acquisition of a controlling interest occurred within a twelve-month period. Only transactions occurring on July 1, 1993, or later, may be used to determine whether a transfer or acquisition of a controlling interest occurred within a twelve-month period.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-025, filed 2/1/94, effective 3/4/94.]

WAC 458-61-030 Definitions. (1) This section defines terms for the purposes of chapter 458-61 WAC, unless otherwise required by the context.

(2) "Affidavit" means the real estate excise tax affidavit, DOR Form 84-0001A, which the department shall prescribe and furnish to the county treasurers for use by taxpayers in reporting transfers of real property. Both the grantor and grantee or agents of each shall sign the affidavit under penalty of perjury. See WAC 458-61-080 for further information. See WAC 458-61-025(8) for filing requirements pertaining to the transfers and acquisitions of a controlling interest in an entity owning real property in the state of Washington.

(3) "Consideration" means 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 the sale and includes the amount of any lien, mortgage, contract indebtedness, or other encumbrance, either given to secure the purchase price, or any part thereof, or remaining unpaid on such property at the time of sale.

(a) "Consideration" includes the issuance of an ownership interest in any entity in exchange for a transfer of real property to the entity. In the case of partnerships, consideration includes the increase in the capital account of the partner made as a result of the partner's transfer of real property to the partnership, but notwithstanding the presence of consideration, such a transfer may not be taxable if it is specifically exempt under WAC 458-61-375 or 458-61-376.

(b) "Consideration" does not include the amount of any outstanding lien or encumbrance in favor of the United States, the state, or a municipal corporation for taxes, special benefits, or improvements.

(4) "Department" means the Washington state department of revenue.

(5) "Mortgage" has its ordinary meaning and shall include a "deed of trust" for the purposes of these rules, unless the context clearly indicates otherwise.

(6) "Real estate" or "real property" means any interest, estate or beneficial interest in land or anything affixed to land, including the ownership interest or beneficial interest in any entity which itself owns land or anything affixed to land. The term also includes used mobile homes and used floating homes and improvements constructed upon leased land. (RCW 82.45.032)

(7) "Real estate contract" or "contract" means any written agreement for the sale of real property in which legal title to the property is retained by the seller as security for the payment of the purchase price. The terms "real estate contract" or "contract" do not include earnest money agreements or options to purchase real property.

(8) "Sale" has its ordinary meaning and shall include any conveyance, grant, assignment, quitclaim, exchange, or transfer of the ownership of or title to real property, includ-

ing standing timber, or any estate or interest therein for a valuable consideration.

(a) "Sale" also includes 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 at the purchaser's direction, and title to the property is retained by the vendor as security for the payment of the purchase price. (RCW 82.45.010)

(b) "Sale" also includes the grant, assignment, quitclaim, sale, or transfer of improvements constructed upon leased land.

(c) "Sale" also includes the transfer or acquisition within any twelve-month period of a controlling interest in any entity with an interest in real property located in this state for valuable consideration. For purposes of this chapter, all acquisitions of persons acting in concert shall be aggregated for purposes of determining whether a transfer or acquisition of a controlling interest has taken place.

(d) "Sale" does not include those real property transfers which are excluded from the definition of "sale" and exempted from the real estate excise tax by RCW 82.45.010 and this chapter, including transfers where no valuable consideration is present. See also WAC 458-61-225, Assumption of debt, and WAC 458-61-374, Exemption—Transfers "subject to."

(9) "Seller" means any individual, receiver, assignee, trustee for a deed of trust, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, limited liability 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. The term "grantor" is used interchangeably with the term "seller" in this chapter and has the same meaning provided in this subsection for purposes of the real estate excise tax. (RCW 82.45.020)

(10) "Selling price" means the true and fair value of the property conveyed. A rebuttable presumption exists that the true and fair value is equal to the total consideration paid or contracted to be paid to the transferor or to another for the transferor's benefit.

(a) When the price paid does not accurately reflect the true and fair value of the property, one of the following methods may be used to determine the true and fair value:

(i) A fair market value appraisal of the property; or

(ii) An allocation of assets by the seller and the buyer made pursuant to section 1060 of the Internal Revenue Code of 1986, as amended.

(b) When the true and fair value of the property to be valued at the time of the sale cannot reasonably be determined by either of the methods in (a) of this subsection, the market value assessment for the property maintained on the county property tax rolls at the time of the sale shall be used as the selling price. (RCW 82.45.030)

(c) 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.

(11) "Date of transfer," "date of sale," "conveyance date" and "transaction date" all have the same meaning and may be used interchangeably in this chapter. These terms refer to the date (normally shown on the instrument of conveyance or sale) when ownership of or title to real property, or control of the controlling interest in an entity which has a beneficial interest in real property, is delivered to the transferee in exchange for valuable consideration. This is the date on which the real estate excise tax is due.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-030, filed 2/1/94, effective 3/4/94. 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) This section applies only to sales of real property which are evidenced by conveyance, deed, grant, assignment, quitclaim, or transfer of the ownership of or title to real property. See WAC 458-61-025 for procedures pertaining to the transfers and acquisitions of a controlling interest in an entity owning real property in the state of Washington.

(2) The real estate excise tax is to be paid to and collected by the treasurer of the county where the real property is located. The law requires the county treasurer to act as the department's agent in carrying out the provisions of chapter 82.45 RCW and these rules.

(3) The tax is computed by multiplying the combined state and local tax rates in effect at the time of sale by the selling price.

(4) The county treasurer shall stamp the instrument of sale or conveyance, or the real estate excise tax affidavit in the case of used mobile home sales, prior to its recording as evidence of the payment of the tax imposed or entitlement to exemption. However, a stamp indicating payment of tax or entitlement to exemption will not be conclusive as to the taxpayer's liability and will be subject to audit by the department. The stamp shall refer to the affidavit number, date and amount of the payment and shall be initialed by the person stamping the instrument or affidavit. The county treasurer shall not stamp 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) The transfer is not subject to the compensating or additional taxes referred to in (b) of this subsection.

(5) Delay in either securing the approval of continuance of use or payment of the compensating tax will not prevent the imposition of interest or penalties for delinquent payment imposed by RCW 82.45.100. However, payment of the real

estate excise tax will stop the accrual of additional delinquent interest and penalties.

(6) 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 may be recorded in the manner prescribed for recording the satisfaction of mortgages.

(7) No instrument evidencing a sale subject to the tax shall be accepted by the county auditor for filing or recording until the tax has been paid and the stamp has been affixed as provided in this section.

(a) When no tax is due on the transfer, the instrument shall not be accepted until suitable notation of such fact has been made on the instrument by the county treasurer.

(b) In addition, unless the compensating or additional tax has been paid, or the new owner has signed a notice of continuance which is stated on or attached to the excise tax affidavit, no instrument of conveyance shall be filed or recorded by the county auditor or recorder if such property is:

(i) Classified or designated as forest land under chapter 84.33 RCW;

(ii) Classified as open space land, farm and agricultural land, or timber land under chapter 84.34 RCW; or

(iii) Receiving a special valuation as historic property under chapter 84.26 RCW.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-050, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 87-03-036 (Order PT 87-1), § 458-61-050, filed 1/16/87; 86-16-080 (Order PT 86-3), § 458-61-050, filed 8/6/86; 82-15-070 (Order PT 82-5), § 458-61-050, filed 7/21/82.]

WAC 458-61-060 Disposition of proceeds. (1) The county treasurer shall place one percent of the proceeds of the tax imposed by chapter 82.45 RCW exclusive of any delinquent interest and/or penalties in the county current expense fund to defray costs of collection and shall pay over to the state treasurer and account to the department for the remainder of the proceeds at the same time the county treasurer remits funds to the state under RCW 84.56.280. (RCW 82.45.180)

(2) Any requests from county treasurers for adjustments to the funds which have been distributed to the state treasurer must be sent to the department for approval or denial. The department will forward all such requests which it approves to the state treasurer and return the requests it denies to the county treasurers along with an explanation for such denial.

(3) Tax payments made directly to the department shall be remitted to the state treasurer who shall deposit the proceeds of any state tax in the general fund for the support of the common schools. The state treasurer shall deposit the proceeds of any local taxes imposed under chapter 82.46 RCW in the local real estate excise tax account. Monthly the state treasurer shall make distribution from the local real estate excise tax account to the counties, cities, and towns the amount of tax collected on behalf of each taxing authority.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-060, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 84-17-002 (Order PT 84-3), § 458-61-060, filed 8/2/84; 82-15-070 (Order PT 82-5), § 458-61-060, filed 7/21/82.]

WAC 458-61-070 Affidavit batch transmittal. (1) By the fifth business day following the close of the month in which the tax was received, the county treasurers shall send to the department the department's copies of the real estate excise tax affidavits for the entire month. This affidavit batch shall include all affidavits receipted during the month, plus copies of any documents related to refunds made by the county treasurers.

(2) County treasurers will complete the affidavit batch transmittal form, supplied by the department, and send one copy with the affidavit batch to the department. The county treasurer will send a second copy of the affidavit batch transmittal with the monthly cash receipts journal summary to the state treasurer's office as documentation for the remittance of the real estate excise tax deposit. County treasurers shall use the adjustment area provided on the batch transmittal form to reflect any refunds made during the month and shall attach all refund documentation to the batch transmittal form that accompanies the affidavit batch.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-070, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-070, filed 7/21/82.]

WAC 458-61-080 Affidavit requirements. (1) This section applies only to sales of real property which are evidenced by conveyance, deed, grant, assignment, quitclaim, or transfer of the ownership of or title to real property. See WAC 458-61-025(8) for filing requirements pertaining to the transfers and acquisitions of a controlling interest in an entity owning real property in the state of Washington.

(2) The law requires the department to prescribe a form of real estate excise tax affidavit to be completed by taxpayers and filed with the county treasurer of the county where the transferred property is located. Affidavit forms will be furnished by the department to the county treasurers for this purpose.

(a) Each county shall use the affidavit form prescribed and furnished by the department.

(b) The affidavit shall be signed by both the grantor and the grantee, or the agent of either, under oath attesting to all required information.

(3) When affidavit is required. Except for the transfers listed under subsection (4) of this section, the real estate excise tax affidavit is 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 settlement agreement incident to a divorce;

(b) Conveyance made pursuant to an order of sale by the court in any mortgage or lien foreclosure proceeding or for the execution of a judgment;

(c) Conveyance made pursuant to the provisions of a deed of trust;

(d) Conveyance of an easement which is taxable;

(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, water rights, or air rights;

(k) A lease of real property that transfers lessee-owned improvements;

(l) A boundary line adjustment; and

(m) A rerecording of a document.

(4) When affidavit is not required. The real estate excise tax affidavit is not required for the following and county treasurers shall not take affidavits for these specific types of transactions:

(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; or

(vi) To release security;

(c) A lease of real property that does not transfer lessee-owned improvements;

(d) A mortgage or deed of trust or a satisfaction of mortgage or reconveyance of a deed of trust;

(e) Conveyance of an easement which is not taxable (see WAC 458-61-335);

(f) A seller's assignment of deed and contract;

(g) A fulfillment deed pursuant to a real estate contract;

(h) A community property agreement under RCW 26.16.120;

(i) Options to purchase; and

(j) An earnest money agreement.

(5) Claims of exemption from the real estate excise tax must be specific. All affidavits which state claims for tax exemption must show:

(a) Current assessed values of parcels involved as of the date of sale; and

(b) Complete reasons for exemptions, including reference to the specific tax exemption in this chapter, citing the specific WAC section and subsection providing the exemption as well as a brief description of the exemption.

(i) Example 1. A quitclaim deed is a conveyance instrument. It is not, in itself, a reason for tax exemption. A valid tax exemption must be shown on the affidavit. Consider a developer who deeds a street in the development to the homeowners association upon the completion of the development. The developer gives the development a quitclaim deed to the street in order to clear title. WAC 458-61-255 (3)(b) should be cited as the exemption, which could be briefly described as "clearing title." An explanatory narrative, as provided for in that section, should be attached to the affidavit.

(ii) Example 2. A corporation transfers its interest in real property to a wholly owned subsidiary. WAC 458-61-375 (2)(c) should be cited as the exemption, which could be briefly described as "no beneficial ownership change."

(6) 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.

(7) 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.

(8) County treasurers shall not accept incomplete affidavits. Taxpayers must furnish complete and accurate information on affidavits as well as complete documentation for claimed tax exemptions.

(a) The county treasurers have the responsibility to require that taxpayers or their agents furnish proper documentation.

(b) An affidavit is incomplete if any required information is omitted or obviously incorrect, such as the use of a nominal selling price. A nominal selling price is an amount stated on the affidavit which is so low in comparison with the fair market value assessment stated on the property tax rolls so as to cause disbelief by a reasonable person. In the case of a nominal selling price, the county assessed value shall be used as the selling price.

(9) To accommodate the requirement that the affidavit be signed by both the grantor and grantee or agents of each, identical affidavits may be submitted for a transaction, one bearing the grantor's signature or that of their agent and one bearing the grantee's signature or that of their agent. Both affidavits must be complete and have identical information. The county treasurer will receipt the affidavit signed by the taxpayer (grantor or grantee) and the other affidavit will not be receipted but will become an attachment to the first.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-080, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 87-03-036 (Order PT 87-1), § 458-61-080, filed 1/16/87; 86-16-080 (Order PT 86-3), § 458-61-080, filed 8/6/86; 84-17-002 (Order PT 84-3), § 458-61-080, filed 8/2/84; 82-15-070 (Order PT 82-5), § 458-61-080, filed 7/21/82.]

WAC 458-61-090 Interest and penalties—Date of sale. (1) The tax imposed under chapter 82.45 RCW is due and payable to the county treasurer as of the date of sale, whether or not the contract of sale or instrument of conveyance is recorded at that time.

(2) If the tax is paid within thirty days following the date of sale, interest will not be applied. If the tax is not paid within thirty days following the date of sale, the amount of unpaid tax shall bear interest in the amount of one percent per each thirty-day period, or part thereof, beginning with the date of sale to the date of full payment.

(3) In addition to the interest described in subsection (2) of this section, if the payment of any tax is not received by the county treasurer:

(a) Within thirty days of the date of sale, a penalty of five percent of the amount of the tax will be added to the tax due;

(b) Within sixty days of the date of sale, a total penalty of ten percent shall be added to the tax due; and

(c) Within ninety days of the date of sale, a total penalty of twenty percent will be added to the tax due.

(4) Penalties shall be assessed only against the grantor and shall not be included in the lien arising under RCW 82.45.070. See RCW 82.45.100.

(5) When an instrument of sale or conveyance is signed and delivered by the grantor to an escrow agent licensed under chapter 18.44 RCW, a title company, a title insurance company, or an attorney at law acting as an escrow agent, with instructions to deliver the instrument to the grantee upon the fulfillment of one or more conditions, the date of sale will be presumed to be the date that the instrument is presented for recording, subject to the following:

(a) A statement, as provided by WAC 458-61-150, signed by the escrow agent, the title company agent, the title insurance company agent, or attorney, is attached to the affidavit indicating that the instrument was delivered to such person in the capacity of an escrow agent; and

(b) The date shown on the instrument is not more than ninety days prior to the date the affidavit is presented to the county treasurer for filing.

(6) In all other cases the date of sale will be presumed to be the date shown on the instrument. A taxpayer alleging a date of sale other than the instrument date has the burden of proving that delivery of title or ownership of the property in exchange for consideration occurred on the date alleged.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-090, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-090, filed 7/21/82.]

WAC 458-61-100 Refunds of tax paid. (1) Taxpayers who have paid the real estate excise tax or who have received a notice of assessment of tax and who wish to contest the application of the real estate excise tax to a particular transfer may file a petition for refund or correction of assessment as provided in this section. Only the taxpayer or the taxpayer's authorized agent may petition for a refund of tax.

(2) Any person who has overpaid any tax, interest, or penalty, may apply for a refund within four years from the date of sale by petitioning in writing for a refund of the amount overpaid. Claims for refund are to be made on forms prescribed by the department and made available at the county treasurers' offices and at the department.

(a) The taxpayer shall submit the completed form and all documentation supporting the claim for refund to the county treasurer's office in the county where the tax was originally paid.

(b) If the taxpayer originally paid the tax directly to the department, the form and supporting documentation shall be submitted to the department in accordance with the requirements of WAC 458-20-100, appeal procedures.

(3) If the taxpayer submits the petition for refund before the county treasurer has sent to the department the copy of the affidavit which receipted the tax payment now in question, the county treasurer is authorized to void the receipted affidavit copies, based upon the criteria listed in subsection (5) of this section, and issue the refund. If the county treasurer authorizes and issues such refund, the voided copy of the affidavit, with a copy of the refund petition attached, must be included in the monthly affidavit batch sent to the department. If the county treasurer does not authorize such refund, the treasurer shall send the petition for refund, along with a copy of the affidavit and all supporting records, to the department. The procedure for petitions sent to the department shall follow subsection (4) of this section.

(4) If the taxpayer submits the petition for refund after the county treasurer has sent to the department the copy of the affidavit which receipted the payment now in question, the county treasurer shall verify the information on the petition and forward it to the department with a copy of the affidavit and any other supporting records furnished by the taxpayer. The department shall approve or deny the refund. The taxpayer may then appeal the imposition of the tax under the appeal procedures. See WAC 458-61-100, appeals procedures. If such petition is denied, the department will return to the petitioner all supporting documents which are submitted with the petition for refund.

(5) The authority to issue tax refunds under this chapter is limited to:

(a) Transactions that are completely rescinded as defined in WAC 458-61-590;

(b) Sales rescinded by court order. In such case a copy of the court decision must be attached to the department's affidavit copy by the county treasurer (see also WAC 458-61-330: Foreclosure—Deeds in lieu of foreclosure);

(c) Double payment of the tax;

(d) Overpayment of the tax through error of computation; and

(e) Failure of a taxpayer to claim tax exemption for a transfer which was properly exempt.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-100, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-100, filed 8/6/86; 84-17-002 (Order PT 84-3), § 458-61-100, filed 8/2/84; 83-02-022 (Order PT 82-10), § 458-61-100, filed 12/28/82; 82-15-070 (Order PT 82-5), § 458-61-100, filed 7/21/82.]

WAC 458-61-120 Evasion penalty. (1) The department shall apply a penalty of fifty percent of the proper tax due, or remaining due after insufficient payment, to taxable real estate transfers involving an intent to evade the payment of tax. For this purpose, intent to evade means knowingly making false statements or taking actions so as to intentionally fail to pay the proper real estate excise tax due.

(2) Intent to evade the tax is illustrated by, but not limited to, the following examples:

(a) Knowingly stating a false selling price;

(b) Knowingly stating a sale as a gift; or

(c) Knowingly claiming a false reason for tax exemption.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-120, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-120, filed 7/21/82.]

WAC 458-61-130 Department audit responsibility. (1) The department shall conduct audits of transactions and determine any underpayment of tax. If the department discovers an underpayment, it shall notify taxpayers and assess the additional tax due as well as all applicable interest and penalties. Deficiency notices will inform taxpayers of the amount owing and set forth reasons for the assessment.

(2) If the taxpayer receiving a notice of deficiency has not answered it within thirty days after the department mailed it, the department shall enforce the collection of the deficient tax through the administrative provisions in chapter 82.32 RCW.

(3) Any person may request from the department a predetermination of real estate excise tax liability pertaining to any proposed transfer of real property or to any proposed transfer or acquisition of the controlling interest of an entity with an interest in real property. Requests for predetermination of liability should be accompanied by sufficient facts to enable the department to ascertain the proper tax liability. The department shall advise the taxpayer in writing of its opinion. The opinion shall be binding upon both the taxpayer and the department under the facts presented in accordance with WAC 458-20-100(9), appeals, small claims and settlements. Address predetermination requests to:

Department of Revenue
Taxpayer Information & Education
P.O. Box 47478
Olympia, WA 98504-7478

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-130, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-130, filed 7/21/82.]

WAC 458-61-150 Supplemental statements. (1) The department shall provide the county treasurer offices with a uniform multi-use supplemental statement form for use in meeting the requirements of the following sections of this chapter:

(a) WAC 458-61-090(5), Interest and penalties—Date of sale

(b) WAC 458-61-410 (3)(a), Gifts

(c) WAC 458-61-375 (2)(g)(iii), Exemption—Mere change in identity or form—Family corporations and partnerships (cited subsection only)

(d) WAC 458-61-480, IRS "tax deferred" exchange

(e) WAC 458-61-550, Nominee

(2) The supplemental statements shall be completed as required by the instructions contained on the form and by each of the sections listed in subsections (1)(a) through (e) of this section.

(3) The county treasurer shall distribute the supplemental statement as follows:

(a) Original attached to original of affidavit;

(b) First copy attached to the department's copy of the affidavit;

(c) Second copy attached to the assessor's copy of the affidavit; and

(d) Third copy attached to the taxpayer's copy of the affidavit.

(4) Except for the notary requirements of WAC 458-61-375 (2)(g) and 458-61-550, supplemental statements are to be unsworn written statements which meet the requirements set forth in RCW 9A.72.085.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-150, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 87-03-036 (Order PT 87-1), § 458-61-150, filed 1/16/87; 86-16-080 (Order PT 86-3), § 458-61-150, filed 8/6/86.]

TAXABILITY OF TRANSFERS

WAC 458-61-200 Apartments. The real estate excise tax applies to the sales of individual apartments by the owner of an apartment building which entitles the grantee to a warranty deed upon completion of payments.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-200, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-200, filed 7/21/82.]

WAC 458-61-210 Assignments—Purchasers. (1) The real estate excise tax does not apply to assignments of a purchaser's interest in an earnest money agreement when neither the earnest money agreement nor its assignment effect a present transfer of the title to or ownership of real property.

(2) The real estate excise tax applies to transfers when the purchaser of real property under a real estate contract assigns the purchaser's interest in the contract and receives valuable consideration for that interest.

(3) The taxable value is all consideration paid or contracted to be paid to the grantor of such assignment, including any unpaid principal balance due on the assigned real estate contract.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-210, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 87-03-036 (Order PT 87-1), § 458-61-210, filed 1/16/87; 86-16-080 (Order PT 86-3), § 458-61-210, filed 8/6/86; 84-17-002 (Order PT 84-3), § 458-61-210, filed 8/2/84; 83-02-022 (Order PT 82-10), § 458-61-210, filed 12/28/82; 82-15-070 (Order PT 82-5), § 458-61-210, filed 7/21/82.]

WAC 458-61-220 Assignments—Sellers. (1) The real estate excise tax does not apply when a seller of real property under a real estate contract assigns any interest in the contract to a third party. The real estate excise tax affidavit is not required.

(2) The instrument of assignment must be stamped by the county treasurer as required by WAC 458-61-050. The stamp shall cross-reference the number of the affidavit relating to the contract being assigned.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-220, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 84-17-002 (Order PT 84-3), § 458-61-220, filed 8/2/84; 82-15-070 (Order PT 82-5), § 458-61-220, filed 7/21/82.]

WAC 458-61-225 Assumption of debt. (1) In addition to other circumstances where valuable consideration passes between the parties, the real estate excise tax applies to transfers of real property when an underlying debt on the property is assumed by the grantee.

(2) The measure of the tax is the combined amount of the debt and any other additional consideration.

(3) See WAC 458-61-374 for the transfers made when the grantor has no personal liability for the underlying debt.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-225, filed 2/1/94, effective 3/4/94.]

WAC 458-61-230 Bankruptcy. (1) The real estate excise tax applies to conveyances of real property by a trustee in bankruptcy when made under either a chapter 7 plan or chapter 13 plan, but not when made under a chapter 11 plan or chapter 12 plan.

(2) The court case and bankruptcy chapter number must be cited on the affidavit when claiming this exemption.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-230, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 90-01-003, § 458-61-230, filed 12/7/89, effective 1/7/90; 86-16-080 (Order PT 86-3), § 458-61-230, filed 8/6/86; 84-17-002 (Order PT 84-3), § 458-61-230, filed 8/2/84; 82-15-070 (Order PT 82-5), § 458-61-230, filed 7/21/82.]

WAC 458-61-235 Boundary line adjustments. (1) The real estate excise tax does not apply to a boundary line adjustment between contiguous parcels of real property if no substantial amount of property is exchanged and no other consideration, other than resolution of the actual or potential boundary dispute, is given for the transfer.

(2) The real estate excise tax applies if a substantial amount of property is exchanged. See WAC 458-61-370, Exchanges—Trades.

(3) An affidavit is required for any transfer evidenced by a conveyance instrument whether or not consideration is present.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-235, filed 2/1/94, effective 3/4/94.]

WAC 458-61-250 Cemetery lots or graves. The real estate excise tax does not apply to the sale of lots or graves in an established cemetery. An established cemetery is one which meets the requirements for ad valorem property tax exemption under RCW 84.36.020.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-250, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-250, filed 7/21/82.]

WAC 458-61-255 Clearing title. (1) **In general.** The real estate excise tax does not apply to quitclaim deeds given for the purpose of clearing title only when no consideration passes otherwise. When any consideration is given for the clearance of title, the real estate excise tax applies to the transaction. A deed given to add a person to title for any purpose does not qualify for treatment under this section.

(2) **Documentation.** A narrative which explains the nature of the clearance of title must be signed by both grantor and grantee, or agents of either, and attached to the real estate excise tax affidavit. The original narrative will be retained with the original affidavit at the county treasurer's office and a copy of the narrative will be attached to the department's affidavit copy.

(3) **Examples.** Real estate excise tax would not apply in the following situations:

(a) An exiting minority partner gives the partnership a quitclaim deed for the purpose of removing any presumptive interest; or

(b) A developer deeds greenbelts, streets or common areas in a development to the homeowners association upon completion of the development and under the terms and covenants of the development.

(c) Parents, who have been on title as co-signors for their child's loan, are now issuing a quitclaim deed to exit title. The narrative accompanying the affidavit for this transfer must state that the co-signor was not a co-purchaser of the property and did not make payments toward the repayment of the loan.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-255, filed 2/1/94, effective 3/4/94.]

WAC 458-61-290 Contract. An owner of real property is subject to payment of the real estate excise tax upon the entry of each successive contract for the sale of the same piece of real property. Each such contract constitutes a "sale" of real property subject to the tax. (See also WAC 458-61-100: Refunds of tax paid.)

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-290, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-290, filed 8/6/86; 82-15-070 (Order PT 82-5), § 458-61-290, filed 7/21/82.]

WAC 458-61-300 Contractor. (1) If land is deeded to a contractor with an agreement to reconvey the property after construction of an improvement, the real estate excise tax does not apply to either the first conveyance or to the reconveyance when:

(a) The land is deeded for the sole purpose of enabling the contractor to obtain financing for the construction of the improvement on the property conveyed; and

(b) The agreement to reconvey is contained in a written statement made prior to the original conveyance.

(2) When the requirements of subsection (1) of this section have been met, the deed to the contractor, although absolute on its face, will be treated as creating a security interest only. However, the sales price of the improvement is subject to retail sales tax under chapter 82.08 RCW and business and occupation tax under chapter 82.04 RCW (see Excise Tax Bulletin 275.08.170). Real estate excise tax affidavits are required for both the original conveyance and the reconveyance. The affidavit must contain wording to the effect that the purpose of the transfers is for construction and security purposes only. The affidavit for reconveyance must refer to the date and number of the original affidavit.

(3) If a contractor, acting under the terms of a contract, purchases land on behalf of a customer for the purposes of constructing an improvement, the later conveyance of the property to the customer is not subject to the real estate excise tax provided the requirements of WAC 458-61-550, Nominee, are met. The sales price of the improvement is subject to retail sales tax under chapter 82.08 RCW and business and occupation tax under chapter 82.04 RCW.

(4) When the owner of a lot contracts to have an improvement built upon the lot and retains title to the land, or when a lessee contracts to have an improvement built upon the lot and retains the leasehold interest, the real estate excise tax does not apply to the purchase of the improvement.

(5) When a speculative builder owns a lot and builds an improvement upon it, the subsequent sale of land and improvement is subject to the real estate excise tax. When a speculative builder sells a parcel of property with a partially constructed improvement on the understanding that the builder will complete the improvement, the real estate excise tax applies to the percentage of the project complete

at the time of transfer. The retail sales tax applies to that portion of the selling price representing the construction to be completed after transfer.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-300, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-300, filed 7/21/82.]

WAC 458-61-330 Foreclosure—Deeds in lieu of foreclosure. (1) The real estate excise tax does not apply to any transfer or conveyance made pursuant to an order of sale by a court in any mortgage or lien foreclosure proceeding or upon execution of a judgment. This exemption includes a court ordered sale of real property by a trustee under the terms of a deed of trust. Real estate excise tax affidavits which state claims for this tax exemption must cite the cause number of the foreclosure proceeding on the affidavit and the conveyance document. A copy of the court decision must be attached to the department's affidavit copy by the county treasurer.

(2) The real estate excise tax does not apply to the following transfers where no additional consideration passes:

(a) A transfer of real estate by deed from a mortgagor to the mortgagee in lieu of foreclosure; or

(b) A transfer from a contract purchaser to the contract holder in lieu of forfeiture of a contract of sale upon default of the underlying obligation; or

(c) A transfer occurring through the cancellation or forfeiture of a vendee's interest in a contract for the sale of real property, whether or not such contract contains a forfeiture clause, such as a declaration of forfeiture made under the provisions of RCW 61.30.070.

(3) The real estate excise tax does not apply to the foreclosure sale of real property by the trustee under the terms of a deed of trust, whether to the beneficiary listed on that deed or to a third party.

(4) A copy of the recorded original mortgage, deed of trust or contract of sale must be attached to the real estate excise tax affidavit provided to the department.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-330, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-330, filed 7/21/82.]

WAC 458-61-335 Easements, development rights, water rights and air rights. (1) The real estate excise tax applies to the conveyance of an easement for the use of real property in return for valuable consideration. A taxable sale has not occurred if valuable consideration does not pass, if the easement is transferred to a governmental entity under the threat of exercise of eminent domain, or if any other exemption applicable under this chapter applies. An affidavit is required only if the transfer is taxable. No affidavit is required when the transfer is exempted from the tax.

(2) The real estate excise tax applies to the sale of development rights, water rights and air rights. The real estate excise tax affidavit must be completed for the transfer of development rights, water rights and air rights whether or not a taxable sale has occurred.

(3) "Development rights" means transferable rights to the unused development on a parcel of land measured by the difference between the existing development density on the parcel and the density allowed by applicable zoning laws.

(4) "Water rights" means transferable rights to the diversion, extraction or use of water arising by virtue of the ownership of land located contiguous to surface water or the issuance of a water permit by the department of ecology.

(5) "Air rights" means the exclusive undisturbed use and control of a designated air space within the perimeter of a stated land area and within stated elevations.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-335, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 87-03-036 (Order PT 87-1), § 458-61-335, filed 1/16/87.]

WAC 458-61-340 Community property—Dissolution of marriage/divorce. (1) Transfers from one spouse to the other which either establish or separate community property are not subject to the real estate excise tax.

(2) The real estate excise tax does not apply to any transfer, conveyance, or assignment of property or interest in property from one spouse to the other in fulfillment of a settlement agreement incident to a divorce. (RCW 82.45.010)

(3) The real estate excise tax applies to a sale of real property by either one or both spouses to a third party regardless of whether the sale is in accordance with the terms of a decree of divorce or settlement agreement.

(4) The real estate excise tax applies to transfers between ex-spouses which are independent of any settlement agreement incident to a divorce.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-340, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-340, filed 7/21/82.]

WAC 458-61-370 Exchanges—Trades. (1) The real estate excise tax applies when real property is exchanged for other real property or any other valuable property, either tangible or intangible. When real property is exchanged for other real property, the transfer of each property is individually subject to the tax.

(2) The gross taxable value of each property is the fair market value of each property at the time of transfer - not the equity that each owner has vested in the properties. When the true and fair value of a parcel of property is not reasonably ascertainable, the assessed value of the property on the assessment rolls of the county assessor may be used.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-370, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-370, filed 7/21/82.]

WAC 458-61-374 Exemption—Transfers made "subject to." (1) A transfer of real property subject to an underlying debt when the grantor is not personally liable for the debt and when no other consideration is given for the transfer is exempt from the real estate excise tax.

(a) Example 1. Y purchases Oakacre with funds obtained from YES Corporation and secured only by Oakacre. Y has no personal liability for this debt. If Y fails to make payments on the debt, YES may foreclose on

Oakacre, but it may not obtain any judgment against Y because Y has no personal liability for the debt. Y transfers Oakacre to Z subject to the underlying debt owed by Y to YES. Z gives no other consideration for Oakacre. Z takes Oakacre subject to the underlying debt but has no personal liability for the debt. If Z fails to make payments, YES may foreclose on Oakacre, but it may not obtain a judgment against Z (who, like Y before, has no personal liability for the debt). Because Y is not personally liable for the debt, Z's payments on the underlying debt to YES do not relieve Y of any liability for the debt. The real estate excise tax does not apply to this transfer.

(b) Example 2. Y transfers Oakacre to Z subject to an underlying mortgage owed to Bank. Y is personally liable for the mortgage to Bank. If the mortgage payments are not made, Bank may foreclose on Oakacre and obtain a judgment against Y if the value of the property is insufficient to pay the mortgage. Z gives no other consideration for Oakacre, but Z agrees with Y to make all future payments on the underlying mortgage. The real estate excise tax applies to this transfer for two reasons: First, Y remains personally liable for the mortgage. Second, Z's payments on the underlying mortgage relieve Y's debt obligation each time a payment is made. Note that even if Z were to assume the loan, the real estate excise tax would apply because an assumption of debt is included in the definition of consideration (see subsection (3) of this section) and a transfer for consideration is subject to the real estate excise tax (see WAC 458-61-225).

(2) A copy of the debt instrument verifying the debt's character and the absence of any personal liability of the grantor shall be provided by the taxpayer as an attachment to the department's copy of the real estate affidavit.

(3) See WAC 458-61-225 for transfers when the grantor does have personal liability for the underlying debt on the property transferred.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-374, filed 2/1/94, effective 3/4/94.]

WAC 458-61-375 Exemption—Mere change in identity or form—Family corporations and partnerships. (1) **Introduction**. Any transfer of real property is exempt from the real estate excise tax if it consists of a mere change in identity or form of ownership of an entity. This exemption is not limited to transfers involving corporations and partnerships and includes transfers of trusts, estates, associations and other entities. Except as provided in subsection (3) of this section, this exemption is limited to those transfers where no change in beneficial ownership interest is made.

(2) **Exempt transactions**. A mere change in form or identity where no change in beneficial ownership has occurred includes, but is not limited to:

(a) The transfer by tenants-in-common of their interest in real property to a partnership or a corporation with the partnership or corporation interests received being in the same pro rata shares as the tenants-in-common held prior to the transfer. (See also: WAC 458-61-376, Exemption—Transfers where gain is not recognized under the Internal Revenue Code.)

(b) The transfer by a corporation of its interest in real property to its shareholders who will hold the real property either as individuals or as tenants-in-common in the same pro rata share as they owned the corporation.

(c) The transfer by a corporation of its interest in real property to its wholly owned subsidiary, the transfer of real property from a wholly owned subsidiary to its parent, or the transfer of real property from one wholly owned subsidiary to another.

(d) The transfer by a corporation of its interest in real property to its sole owner or the transfer by a sole incorporator of the incorporator's interest in real property to the incorporator's corporation.

(e) A transfer of real property to a corporation or a partnership in exchange for stock in the corporation or a partnership interest would qualify under this section and WAC 458-61-376, Exemption—Transfers where gain is not recognized under the Internal Revenue Code, if the transferor received all of the stock in the corporation or a pro rata partnership interest. However, if a nonfamily member receives 5% or more of the stock in the corporation, or, if the transferor does not receive a pro rata partnership interest, the transfer may continue to qualify under WAC 458-61-376, but would not qualify under this section because a change in beneficial ownership has been made.

(f) Corporate mergers and consolidations which are accomplished by transfers of stock or membership, and, mergers between corporations and limited partnerships as provided in chapters 25.10 and 24.03 RCW.

(g) A transfer of real property to a newly-formed, beneficiary corporation from an incorporator to the newly-formed corporation, subject to the following:

(i) The proper real estate excise tax was paid on the original transfer to the incorporator;

(ii) It was documented on or before the original transfer that the incorporator was receiving title to the property on behalf of that corporation during its formation process; and

(iii) A notarized statement, as provided in WAC 458-61-150, is attached to the affidavit for the second transaction. This tax exemption does not apply where a real property owner had acquired title in his or her own name and later transferred title to the corporation upon formation.

(h) The distribution of partnership real property to the partners so long as the property distributed vests in each of the partners in proportion to the partner's interest in the partnership. The tax will apply to the extent a distribution of any real property is disproportionate to the interest in the partnership of a grantee partner.

(i) A transfer into any revocable trust. The tax does not apply to a conveyance from a trustee of a revocable trust to the original grantor because there is no change in the beneficial ownership. The tax does not apply to a conveyance from a trustee of a revocable trust to a beneficiary where no valuable consideration passes or the gift or inheritance exemption applies. The real estate excise tax applies to the sale of real property by the trustee to a third party or a beneficiary for valuable consideration. For transfers to irrevocable trusts, see WAC 458-61-411, Irrevocable trusts.

(3) **Family corporations and partnerships**. Notwithstanding a change in beneficial ownership, the exemption includes transfers to a corporation or partnership which is wholly owned by the transferor and/or the transferor's spouse or children: *Provided,* That if thereafter such

transferee corporation or partnership voluntarily transfers such real property, or such transferor, spouse, or children voluntarily transfer stock in the transferee corporation or interest in the transferee partnership capital, as the case may be, to other than:

(a) The transferor and/or the transferor's spouse or children;

(b) A trust having the transferor and/or the transferor's spouse or children as the only beneficiaries at the time of the transfer to the trust; or

(c) A corporation or partnership wholly owned by the original transferor and/or the transferor's spouse or children, within three years of the original transfer to which this exemption applies, and the tax on the subsequent transfer has not been paid within sixty days of becoming due, excise taxes shall become due and payable on the original transfer as otherwise provided by law.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-375, filed 2/1/94, effective 3/4/94.]

WAC 458-61-376 Exemption—Transfers where gain is not recognized under the Internal Revenue Code. (1) **Introduction.** An exemption from the real estate excise tax is allowed for a transfer that for federal income tax purposes does not involve the recognition of gain or loss for entity formation, liquidation or dissolution, and reorganization, including but not limited to nonrecognition of gain or loss because of application of section 332, 337, 351, 368 (a)(1), 721, or 731 of the Internal Revenue Code of 1986, as amended.

(2) **Internal Revenue Code sections.**

(a) Section 332 - Corporate liquidations - Complete liquidations of subsidiaries.

(b) Section 337 - Corporate liquidations - Nonrecognition for property distributed to parent in complete liquidation of subsidiary.

(c) Section 351 - Corporate organizations and reorganizations - Transfer to corporation.

(d) Section 368 (a)(1) - Corporate organizations and reorganization - Definitions relating to corporate reorganizations - Reorganizations - In general.

(e) Section 721 - Partners and Partnerships - Nonrecognition of gain or loss on contribution.

(f) Section 731 - Partners and Partnerships - Extent of recognition of gain or loss on distribution.

(3) **Extent of exemption.** The exemption applies only to transfers which qualify as nonrecognition of gain or loss transactions under the Internal Revenue Code for entity formation, liquidation or dissolution, and reorganization.

(a) The exemption does not apply to transactions under Internal Revenue Code section 1031 - Exchange of property held for productive use or investment. This Internal Revenue Code section does not deal with entity formation, liquidation or dissolution, or reorganization. (See: WAC 458-61-480, IRS "tax deferred" exchanges.)

(b) The exemption does not apply to sales under Internal Revenue Code section 1034 - Rollover of gain on sale of principal residence. This Internal Revenue Code section does not deal with entity formation, liquidation or dissolution, or reorganization.

(4) **Treatment when gain is partially recognized in an otherwise exempt transaction.** In the event a transaction qualifies for the exemption under this section as a nonrecognition of gain or loss transaction for entity formation, liquidation or dissolution, or reorganization, but gain is partially recognized under the Internal Revenue Code provisions, the real estate excise tax applies to the amount of the transaction for which gain is recognized.

(a) Example 1. In an otherwise nontaxable Internal Revenue Code section 351 transaction, A transfers to ZULU Corporation real property which has a true and fair value of $100,000 (in which A has a basis of $50,000 for federal income tax purposes). A receives, in exchange, ZULU stock worth $80,000, cash of $10,000 and a promissory note from ZULU to pay A $10,000, payable monthly, starting at closing, for 36 months at 6% interest. The $10,000 cash received and the $10,000 promissory note constitute "boot" under the provisions of Sec. 351 and gain is recognized to the extent of the "boot." For real estate excise tax purposes, the nonexempt portion is 20% ($20,000/$100,000) and the real estate excise tax applies to 20% of the true and fair value of the real property transferred, $20,000, with 80% or $80,000 of the true and fair value of the property being exempt.

(b) Example 2. In an otherwise nontaxable Internal Revenue Code section 351 transaction, B transfers real property with a true and fair value of $50,000, machinery worth $250,000, to ECHO Corporation. In exchange, B receives ECHO stock worth $275,000 and cash of $25,000. The cash received constitutes "boot" and gain is recognized. For real estate excise tax purposes, the nonexempt portion of the transaction is 8.3% ($25,000/$300,000). The nonexempt percentage (8.3%) is applied to the true and fair value of the real property ($50,000) to arrive at the amount ($4,167) to which the real estate excise tax is applied.

(c) Example 3. A and B are partners in LIMA Partnership. In a nontaxable Internal Revenue Code section 721 transaction, C transfers real property to LIMA Partnership in exchange for a partnership interest in LIMA partnership. No consideration, other than the partnership interest in LIMA partnership, is given to C in exchange for C's transfer of real property. Because the transfer is exempt under Code section 721, the real estate excise tax does not apply to C's transfer of real property to LIMA partnership.

(d) Example 4. A and B are partners in GOLF Partnership. In a nontaxable Internal Revenue Code Section 721 transaction, C contributes cash to GOLF Partnership in exchange for a 60% partnership interest in GOLF Partnership. The cash is used by the Partnership to develop real property owned by the GOLF Partnership. Because the transfer is exempt under Internal Revenue Code Section 721, the real estate excise tax does not apply to C's acquisition of a partnership interest in GOLF Partnership.

(5) **Rules of construction.** In determining whether a transfer qualifies as an exemption under this section, the law, regulations, bulletins, technical memoranda, letter rulings, etc., of the Internal Revenue Code and the Internal Revenue Service, as interpreted by the courts, shall be considered by the department. If a transfer has been determined under this chapter and the same transfer is examined and determined for federal tax purposes with the determination becoming fixed under federal law either by agreement with the

taxpayer or through final determination in the federal court, then the determination as fixed under this chapter shall be the same as the final federal tax determination.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-376, filed 2/1/94, effective 3/4/94.]

WAC 458-61-400 Creation, assignment and release of security interests. (1) A mortgage or other transfer of an interest in real property merely to secure a debt, or the assignment of the security interest, is not a taxable transaction and completion of the affidavit is not necessary.

(2) A deed given to a purchaser under a real estate contract upon fulfillment of the terms of the contract is not subject to the real estate excise tax, provided that the proper tax was paid on the original transaction. Similarly, the real estate excise tax is not due upon the delivery of a release of security interest, satisfaction of mortgage, or reconveyance under the terms of a mortgage or deed of trust. The real estate excise tax affidavit is not required for any of the preceding transfers. The fulfillment deed must be stamped by the county treasurer as required by WAC 458-61-050. In the case of a fulfillment deed, the stamp shall show the affidavit number of the sale which the deed is fulfilling.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-400, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 84-17-002 (Order PT 84-3), § 458-61-400, filed 8/2/84; 82-15-070 (Order PT 82-5), § 458-61-400, filed 7/21/82.]

WAC 458-61-410 Gifts. (1) In general. Transfers of real property as gifts are not subject to the real estate excise tax provided that the transfer is without consideration or that love and affection is the only consideration.

(2) **Consideration.** When any consideration other than love and affection is present in the transfer, the transaction is taxable to the extent of the consideration present. Consideration includes the indebtedness balance of any real property transferred which is encumbered by a lien securing an indebtedness. See WAC 458-61-030(3) for the full definition of "consideration."

(a) Examples. Mother, A, conveys lakefront cabin valued at $200,000 to daughter, B. The tax consequences will vary dependent on whether B tenders consideration and the amount and the extent of A's equity. Consider:

(i) Example 1. No consideration given by B and A owns property outright. This is a gift by A to B of $200,000 and exempt from the real estate excise tax.

(ii) Example 2. No payment given to A by B. A has $175,000 equity and an underlying mortgage of $25,000. The $175,000 in equity is a gift, but the real estate excise tax applies to the $25,000 owing on the mortgage.

(iii) Example 3. No consideration is given by B. A has $175,000 equity and an underlying mortgage of $25,000, on which A continues to make the payments. This is a gift by A to B of the $175,000 and the payments on the underlying debt. It is exempt from the real estate excise tax.

(iv) Example 4. B gives A $10,000 and A owns property outright. A has made a gift of $190,000 in equity and real estate excise tax applies only to the $10,000 paid by B for the property.

(v) Example 5. B gives A $10,000 and A has $175,000 in equity and an underlying mortgage of $25,000. A has made a gift of $165,000 in equity, but the real estate excise tax applies only to $35,000: The $10,000 paid by B to A for the property and the $25,000 remaining on the mortgage.

(3) **Documentation.** Completion of the real estate excise tax affidavit is required for transfers by gift.

(a) A supplemental statement (see WAC 458-61-150) shall be signed by both grantor and grantee and attached to the real estate excise tax affidavit. The statement shall attest to the existence or absence of underlying debt on the property transfers made by gift.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-410, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-410, filed 8/6/86; 83-02-022 (Order PT 82-10), § 458-61-410, filed 12/28/82; 82-15-070 (Order PT 82-5), § 458-61-410, filed 7/21/82.]

WAC 458-61-411 Exemption—Irrevocable trusts. (1) **Introduction.** The real estate excise tax applies to the transfer of real property to an irrevocable trust when the transfer results in a change in beneficial interest and not a mere change in identity or form and valuable consideration is present in the transfer.

(a) Example 1. Husband and wife as grantors transfer real property having a true and fair value of $500,000 with a deed of trust indebtedness of $300,000 to an irrevocable trust. The trustee is required to pay all the income annually to the grantors or the surviving grantor should one die. Upon the death of both grantors, the property is to be divided equally between the grantors' children. The real estate excise tax does not apply to the transfer to the irrevocable trust, even if the trust pays the indebtedness, because the transfer has no present change in beneficial interest, and the grantors have not received consideration in the form of a relief of the liability.

(b) Example 2. Upon the death of a spouse, the deceased spouse's 1/2 interest in real property is transferred to a testamentary trust. The trustee has the sole discretion to either accumulate income or pay the income to the surviving spouse and/or children and/or grandchildren. Real estate excise tax does not apply to this transfer. Assume the surviving spouse makes a gift of the remaining 1/2 interest in the real property, valued at $150,000 with a $30,000 indebtedness for which the surviving spouse is personally liable, to the testamentary trust of the deceased spouse, and the trust pays or is obligated to pay the indebtedness. The real estate excise tax applies to this transfer because a present change in beneficial interest in the property has occurred and the surviving spouse has received consideration in the form of the relief of liability from the payment of the indebtedness. $30,000 is the taxable value for real estate excise tax purposes. Note that when the property transferred by the surviving spouse has no underlying debt for which the surviving spouse has a personal liability, the real estate excise tax would not apply because no consideration for the transfer would be received. Instead, the transfer would be a gift and exempt from the real estate excise tax as explained in WAC 458-61-410, Gifts.

(2) The real estate excise tax does not apply to the distribution of real property to the beneficiaries of an irrevocable trust when no valuable consideration is given and the distribution is made according to the trust instrument.

(3) **Documentation**. A copy of the trust instrument must be attached to the real estate excise tax affidavit provided to the department if an exemption from the real estate excise tax is claimed.

(4) **Revocable trusts**. For the taxability of transfers into a revocable trust, see WAC 458-61-375 (2)(i), Exemption—Mere change in identity or form—Family corporations and partnerships.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-411, filed 2/1/94, effective 3/4/94.]

WAC 458-61-412 Exemption—Inheritances. (1) **Introduction**. Transfers of real property by inheritance are not subject to the real estate excise tax.

(2) **Nonpro rata distributions**. A nonpro rata distribution by a personal representative of a probate estate or by the trustee of a trust is not taxable so long as the transfer is authorized under the nonintervention powers of a personal representative pursuant to RCW 11.68.090 or under the nonpro rata distribution powers of a trustee pursuant to RCW 11.98.070(15), and no consideration passes between the grantee beneficiary and the personal representative or trustee.

(3) **Consideration**. If consideration is given by the grantee beneficiary, the transfer will be taxable to the extent of the consideration. For purposes of this subsection, consideration shall not include the indebtedness balance of any real property transferred which is encumbered by a lien securing an indebtedness.

(4) **Documentation**. Completion of the real estate excise tax affidavit is required for transfers by inheritance.

A copy of the trust instrument, will, or court order must be attached to the real estate excise tax affidavit provided to the department if an exemption from the real estate excise tax is claimed.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-412, filed 2/1/94, effective 3/4/94.]

WAC 458-61-420 Government transfers. (1) The real estate excise tax does not apply to transfers of real property from the United States, any agency or instrumentality thereof, the state of Washington, any political subdivision thereof, or municipal corporation of this state. Furthermore, the tax does not apply to:

(a) Transfers to the federal housing administration or veteran's administration by an authorized mortgagee made pursuant to a contract of insurance or guaranty with the federal housing administration or veteran's administration.

(b) Transfers for a public use in connection with the development of real property by a developer when such transfer is required for plat approval and when made to: The United States, the state of Washington or any political subdivision thereof, or a municipal corporation.

(c) Transfers to the United States, the state of Washington or any political subdivision thereof, or a municipal corporation, either under threat of the exercise of eminent domain or as a result of the actual exercise of eminent domain.

(i) The threat of exercise of eminent domain by a government or political subdivision must be imminent in order to exempt a transfer from the real estate excise tax. To be imminent, the power must not only be available for immediate use, but the appropriate situation to allow for its use must also be in place. If the government or political subdivision does not yet have the authority to exercise eminent domain at the time of the transfer, the transfer cannot be exempt under the threat of eminent domain.

(ii) Example 1. A school district wishes to purchase land for a new school. The election has been held to authorize the use of public funds for the purchase and the general area has been chosen. The district has been granted authority to use eminent domain to obtain the land if required. So long as the land transferred to the district is in the authorized area and will be used for building the school, the transfer will be exempt from the real estate excise tax because it was made "under threat of eminent domain."

(iii) Example 2. A state agency is authorized by statute to use powers of eminent domain as required to obtain oceanfront property to build parks. It may not simply condemn all oceanfront property under its powers. The state must act in accordance with a plan or other documentation outlining the reasons for acquiring specific areas in order to exempt a transfer made to the agency from real estate excise tax as having been made under the threat of exercise of eminent domain. The plan shall be made available to the department upon request.

(2) The tax applies to sales of real property to governmental entities from nongovernmental entities except as provided in subsections (1)(a) through (c) of this section. (RCW 82.45.010)

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-420, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-420, filed 7/21/82.]

WAC 458-61-425 Growing crops. The real estate excise tax applies to the value of growing crops when sold with the land upon which they are growing. The value of the growing crops is not a deduction from the sales price of the real property.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-425, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-425, filed 8/6/86.]

WAC 458-61-430 Sale of improvements to land. (1) The sale of an improvement constructed on real property is subject to the real estate excise tax if the contract of sale does not require that the improvements be removed at the time of sale.

(2) The transfer of a lessee's interest in a leasehold for a valuable consideration is taxable to the extent the transfer includes any improvement constructed on leased land.

(3) If the selling price of an improvement is not separately stated, or cannot otherwise be reasonably determined, the assessed value of the improvement as entered on the assessment rolls of the county assessor will be used. See WAC 458-61-030(2).

(4) The real estate excise tax does not apply to the sale of improvements if the terms of the sales contract require that the improvements be removed from the land. In this case the improvements are considered personal property and their use by the purchaser is subject to the use tax under chapter 82.12 RCW.

(5) Completion of the affidavit is required for all of the above transfers except a transfer described in subsection (4) of this section in which case the purchaser must file a use tax return with the department.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-430, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-430, filed 7/21/82.]

WAC 458-61-450 Indian (American), transfers to or from. (1) The real estate excise tax does not apply to transfers to or from individual Indians or Indian tribes when the United States government acts as trustee on behalf of that individual Indian or tribe. Because the United States government is acting as grantor or grantee (as trustee) no affidavit is required for such transaction.

(2) The tax exemption in subsection (1) of this section does not apply to transfers where enrolled Indians, whether as individuals, groups, or tribes, grant or receive real property without the United States government acting as trustee on their behalf and the property is on the reservation.

(3) The real estate excise tax does not apply to sales of timber made by Indians holding trust allotments where, after the execution of the contracts, the Indians have received fee patents to their lands.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-450, filed 7/21/82.]

WAC 458-61-470 Irrigation equipment. (1) Any part of a center pivot irrigation system, or any part of an irrigation system that is underground, is considered real property and its sale is subject to the real estate excise tax.

(2) Any irrigation equipment that is above ground, other than a center pivot irrigation system, is considered personal property and its sale is not subject to the real estate excise tax, but is subject to the use tax.

(3) The transfer of irrigation equipment constituting personal property which accompanies a sale of real property should be listed separately as personal property on the real estate excise tax affidavit.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-470, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-470, filed 7/21/82.]

WAC 458-61-480 IRS "tax deferred" exchange. (1) The real estate excise tax applies to the transfer or exchange of real property whether or not federal income tax or capital gains tax is "deferred" or "exempted" under Internal Revenue Code section 1031. The real estate excise tax applies to each property transferred in a section 1031 exchange, see WAC 458-61-370, Exchanges—Trades).

(2) Acquisition of property by an exchange facilitator in connection with a section 1031 tax deferred exchange is subject to the real estate excise tax. The later transfer of the property by the facilitator in completion of the exchange will also be subject to the real estate excise tax unless the following requirements are met:

(a) The proper tax was paid on the initial transaction;

(b) A supplemental statement signed by the exchange facilitator, as provided by WAC 458-61-150, is attached to the real estate excise tax affidavit indicating that the facilitator originally took title to the property for the sole purpose of effecting a section 1031 federal tax deferred exchange; and

(c) The funds used by the exchange facilitator to acquire the property were provided by the grantee and/or received from the proceeds of the sale of real property owned by the grantee. If the deeds for both transactions to and from the facilitator are being recorded at the same time, the proper tax can be paid on either the first or the second transaction at the discretion of the facilitator;

(3) A real estate excise tax affidavit is required for each transfer in a section 1031 exchange including the transfers to and from an exchange facilitator. The affidavit reflecting the claim for tax exemption must show the affidavit number and date of the tax payment, and have attached the supplemental statement as provided by WAC 458-61-150 and subsection (2)(b) of this section.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-480, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 83-02-022 (Order PT 82-10), § 458-61-480, filed 12/28/82; 82-15-070 (Order PT 82-5), § 458-61-480, filed 7/21/82.]

WAC 458-61-510 Leases. (1) The real estate excise tax applies to a lease with option to purchase at the time the purchase option is exercised and the property is transferred.

The measure of the tax is the true and fair value of the property conveyed at the time the option is exercised.

(2) The real estate excise tax does not apply to the assignment of the lessee's interest in the leasehold except to the extent that the assignment includes the grant, assignment, quitclaim, sale or transfer of improvements constructed upon leased land. See WAC 458-61-430.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-510, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 84-17-002 (Order PT 84-3), § 458-61-510, filed 8/2/84; 82-15-070 (Order PT 82-5), § 458-61-510, filed 7/21/82.]

WAC 458-61-520 Mineral rights and mining claims. (1) The real estate excise tax applies to the sale of mineral rights in private property. "Mining property" is property containing or believed to contain metallic or nonmetallic minerals and sold or leased under terms which require the grantee or lessee to conduct exploration or mining work thereon and for no other use. (RCW 82.45.035)

(2) A conditional sale of mining property in which the grantee has the right to terminate the contract at any time, and a lease and option to buy mining property in which the lessee-grantee has the right to terminate the lease and option at any time, shall be taxable at the time of execution only on the consideration received by the grantor or lessor for execution of such contract. The tax due on any additional consideration paid by the grantee and received by the grantor shall be paid to the county treasurer at the first time any event below occurs:

(a) The time of termination;

(b) The time that all of the consideration due to the grantee has been paid and the transaction is completed except for the delivery of the deed to the grantee; or

(c) The time when the grantee unequivocally exercises an option to purchase the property.

(3) A mining lease which grants the lessee the right to conduct mining exploration upon or under the surface of real property and to remove minerals from the property in exchange for a royalty is not subject to the real estate excise tax when the lease does not transfer ownership of the minerals to the lessee prior to severance from the real property.

(4) Patented mining claims are real property and their sale is subject to the real estate excise tax.

(5) Unpatented mining claims are intangible personal property and therefore not subject to the real estate excise tax.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-520, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-520, filed 7/21/82.]

WAC 458-61-540 Mobile and floating home sales. (1) The application of the real estate excise tax versus retail sale or use tax upon the transfer of a mobile home is dependent on the characteristics of the transfer, not the classification of a mobile home as real or personal property on the assessment rolls. "Mobile home" means a mobile home as defined by RCW 46.04.302.

(2) The real estate excise tax applies to transfers of used mobile homes. Used mobile homes are mobile homes that:

(a) Have become affixed to land by being placed upon a foundation (post or blocks) with fixed pipe connections with sewer, water, and other utilities;

(b) The mobile home's removal from the land is not a condition of sale; and

(c) The retail sales or use tax has been paid on a previous sale or use of the home.

(3) The retail sales or use tax applies to any of the following mobile home sales:

(a) Initial retail sale;

(b) Sale from a dealer's lot of either a new or used unit;

(c) Sale conditional on removal of the unit from its fixture to land; or

(d) Sale of a unit that is not affixed to land by virtue of its placement upon a foundation (posts or blocks) with fixed pipe connections with sewer, water, and other utilities.

(4) The sale of a new or used mobile home is subject either to the real estate excise tax as set forth in subsection (2) of this section, or to the retail sales or use tax as set forth in subsection (3) of this section. A single sale of a mobile home is not subject to both taxes.

(5) Floating homes. The real estate excise tax applies to sales of used floating homes. A used floating home is a building which is:

(a) Constructed on a float used in whole or in part for human habitation as a single-family dwelling;

(b) Not designed for self propulsion by mechanical means or for propulsion by means of wind; and

(c) Listed on the real 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.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-540, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-540, filed 8/6/86; 82-15-070 (Order PT 82-5), § 458-61-540, filed 7/21/82.]

WAC 458-61-545 Mortgage insurers. (1) The real estate excise tax does not apply to the conveyance of real property from the mortgage lender to the veterans administration or the federal housing authority as a mortgage insurer or guarantor.

(2) The tax does apply to the conveyance of real property from the mortgage lender to any other mortgage insurer or guarantor in settlement of the insurance claim.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-545, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-545, filed 8/6/86.]

WAC 458-61-550 Nominee. (1) This section describes the operation of the real estate excise tax in transfers involving a nominee. A "nominee" is a person who acts as an agent on behalf of another person in the purchase of real property.

(2) When a nominee has received title to or interest in real property on behalf of a third-party principal, the real estate excise tax does not apply to the subsequent transfer of the property from the nominee to the third party, provided that:

(a) The proper tax was paid on the initial transaction;

(b) A notarized statement, as provided in WAC 458-61-150, is attached to the affidavit for the second transaction (such notarized statement must be dated on or prior to the first transaction);

(c) The third-party principal was in legal existence at the time of the initial transaction;

(d) The funds used by the nominee to initially acquire the property were provided by the third-party principal; and

(e) The subsequent transfer from the nominee to the third-party principal is not for a greater consideration than that of the initial acquisition, or, in the case where the nominee is a licensed contractor and the subsequent transfer to the principal (customer) reflects the completed construction contract, the retail sales tax is collected on the construction contract and remitted to the department. See also WAC 458-61-300.

(3) If property is transferred from the nominee to the third-party principal and one or more of the requirements in subsection (2) of this section are not met, the transaction is not exempt and is taxable to the extent of the entire selling price.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-550, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-550, filed 8/6/86; 83-02-022 (Order PT 82-10), § 458-61-550, filed 12/28/82; 82-15-070 (Order PT 82-5), § 458-61-550, filed 7/21/82.]

WAC 458-61-553 Nonprofit organizations. Transfers to or from an organization exempt from ad valorem property taxes under chapter 84.36 RCW, or from federal income tax, by virtue of the organization's nonprofit or charitable status are nevertheless subject to the real estate excise tax unless specifically exempt under chapter 82.45 RCW or these rules.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-553, filed 2/1/94, effective 3/4/94.]

WAC 458-61-555 Option to purchase. (1) The real estate excise tax applies to a conveyance of real property upon the exercise of an option to purchase.

(2) The tax does not apply to the grant of the option and the real estate excise tax affidavit is not required.

(3) Example 1. J takes out options at a cost of $1000 to purchase ten parcels of land for $10,000. As individual parcels, these plots of land are uneconomical to develop. J "packages" the land, making it economically feasible to develop by either obtaining sufficient acreage or required studies. Buildup, a real estate development and construction company, purchases J's options on the property for $10,000 and subsequently exercises the options, paying $10,000 for the land. The real estate excise tax does not apply to the transfer of the options. However, the real estate excise tax does apply to the exercise of the options. The measure of the tax is the $10,000 purchase price.

(4) Example 2. Consider the same initial facts as in the example in subsection (3) of this section, but instead, J exercises the options, then sells the land to Buildup. The real estate excise tax applies to both the transfer to J and the subsequent transfer from J to Buildup.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-555, filed 2/1/94, effective 3/4/94. 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 458-61-590 Rescission of sale. (1) The real estate excise tax does not apply to a reconveyance of property pursuant to a rescission.

(2) In order to qualify for exemption under this section, all consideration paid toward the selling price must be returned by the grantor to the grantee.

(a) A grantor may retain interest paid by the grantee without disqualifying the rescission.

(b) The payment of a reasonable reimbursement for site improvements will not disqualify the rescission.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-590, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-590, filed 8/6/86; 84-17-002 (Order PT 84-3), § 458-61-590, filed 8/2/84; 82-15-070 (Order PT 82-5), § 458-61-590, filed 7/21/82.]

WAC 458-61-600 Relocation service. (1) The real estate excise tax applies to a deed naming no grantee which is given to a purchaser for a consideration and which vests equitable title in the purchaser.

(2) Subsequent delivery of the deed by such purchaser to a third person named as grantee in the deed for consideration is also a taxable sale.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-600, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-600, filed 7/21/82.]

WAC 458-61-610 Rerecord. (1) The real estate excise tax does not apply to the rerecording of documents to correct legal description, change of contract terms, or spelling of name of party to the transaction.

(2) An affidavit is required for the rerecording and must refer to the prior affidavit number and the recorded document number for the prior transaction and a complete explanation of why such rerecording is necessary must be attached to the affidavit.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-610, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-610, filed 7/21/82.]

WAC 458-61-640 Sheriff's sale. (1) The real estate excise tax does not apply to any sale of real property made by a county sheriff pursuant to a court decree. A real estate excise tax affidavit must be filed with the county treasurer.

(2) The real estate excise tax applies to a subsequent sale or assignment of the right of redemption and the certificate of purchase that result from the sheriff's sale.

In the case of a subsequent sale or assignment of right of redemption, the taxable consideration includes any payment given or promised to be given. It also includes the amount of underlying encumbrance, the payment of which is necessary for the exercise of the right of redemption.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-640, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-640, filed 7/21/82.]

WAC 458-61-650 Tenants in common and joint tenants. (1) The real estate excise tax does not apply to the transfer of real property which results in the creation of a tenancy in common when no consideration passes otherwise. Gifts are generally exempt from the real estate excise tax. Cite WAC 458-61-410, Gifts, on the real estate affidavit to claim an exemption from the real estate excise tax for such a transfer.

(a) Example 1. A owns a parcel of property outright. A creates a tenancy in common with B. B gives no consideration for the creation. A has given a gift of equity in the property to B and the real estate excise tax does not apply.

(b) Example 2. A owns a home with an underlying mortgage. A creates a tenancy in common with B. B gives no consideration for the creation, but agrees to and makes partial payments on the mortgage. A has given a gift of the equity owned, but has received a relief of debt from B to the extent B makes payments on the mortgage. Real estate excise tax applies to the relief of debt received by A. See also, WAC 458-61-410, Gifts.

(2) The partition of real property by tenants in common or joint tenants by agreement or as the result of a court decree is not a taxable transaction. A partition of property occurs upon the division of the property in proportion to the owners' interests. In order to qualify for this exemption, the partition must be in proportion to the tenants' interests in the property.

Example 1. A, B, and C own five riverfront parcels as tenants in common. One parcel is worth twice as much as any of the others, which are all equivalent in value. The property is partitioned. A receives the especially valuable parcel; B and C receive two parcels each. Because the parcels have been partitioned in accordance with their interests in the property (here, one-third), the real estate excise tax does not apply to the transfer.

(3) The real estate excise tax does not apply to the transfer of real property which results in the creation of a joint tenancy with right of survivorship when no consider-

ation passes otherwise. Gifts are generally exempt from the real estate excise tax. Cite WAC 458-61-410, Gifts, on the real estate affidavit to claim an exemption from the real estate excise tax for such a transfer.

Example 1. Consider friends, G and H. G creates a joint tenancy with right of survivorship with H for estate planning purposes. H gives no consideration to G for the creation of the joint tenancy. The real estate excise tax does not apply to this transfer.

(4) The transfer of property upon the death of a joint tenant to the remaining joint tenants under a right of survivorship is not subject to the real estate excise tax. Transfers of real property by inheritance are not subject to the real estate excise tax. Cite WAC 458-61-412, Inheritances, on the real estate excise tax affidavit to claim an exemption from the real estate excise tax for such a transfer.

Example 1. Reconsider Example 1 in (3)(a) above. On G's death, H is the surviving joint tenant and now owns the property outright. The real estate excise tax does not apply to this transfer. See also WAC 458-61-412, Inheritances.

(5) The sale of the interest in real property from one or more joint tenants or tenants in common to remaining tenants or to a third party is a taxable transaction. The taxable amount of the sale is the total of the following:

(a) Any consideration given;

(b) Any consideration promised to be given including 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 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-650, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-650, filed 8/6/86; 82-15-070 (Order PT 82-5), § 458-61-650, filed 7/21/82.]

WAC 458-61-660 Timber, standing. (1) The real estate excise tax applies to the sale of timber if the ownership of the timber is transferred while the timber is standing. The tax applies to the sale of standing timber whether the sale is accomplished by deed or by contract. See WAC 458-61-548, Native American, when the timber is standing within the borders of a Native American Reservation. See also chapter 84.33 RCW and chapter 458-40 WAC for specific regulations and rules regarding the taxation of timber and forest land.

(2) The grantor's irrevocable agreement to sell timber and pass ownership to it as it is cut is a taxable transaction if the total amount of the sale is specified in the original contract.

(3) A contract to transfer the ownership of timber after it has been cut and removed from land by the grantee is not a taxable transaction.

(4) A contract between a timber owner and a harvester when the harvester provides the service of cutting the timber and transporting it to the mill is not subject to the real estate excise tax if the timber owner retains ownership of the timber until it is delivered to and purchased by the mill.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-660, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-660, filed 7/21/82.]

WAC 458-61-670 Trade-in credit. (1) When a single family residential dwelling is being transferred as the entire or part consideration for the purchase of another single family residential dwelling and a licensed real estate broker or one of the parties to the transaction accepts transfer of said property, a credit for the amount of the tax paid at the time of the transfer to the broker or party shall be allowed toward the amount of the tax due upon a subsequent transfer of the same property by the broker or party.

(2) The subsequent transfer must be made within nine months of the original transfer for the credit to be allowed. If the tax which would be due on the subsequent transfer from the broker or party is greater than the tax paid for the prior transfer to said broker or party, the difference shall be paid, but if the tax initially paid is greater, no refund shall be allowed.

(3) The affidavit upon which the trade-in credit is claimed must show all of the following:

(a) The prior affidavit number where the tax was paid on the original (trade-in) transaction;

(b) The county auditor's recorded document number for the original transaction, if such was recorded;

(c) The transaction date of the original transaction; and

(d) The disclosure that both properties involved in the original trade-in transaction are single family dwellings.

(4) The trade-in credit is allowed toward the subsequent sale of the residence "brought in" on trade - not toward the tax liability of the sale of the residence for which it was traded.

[Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-670, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-670, filed 8/6/86; 82-15-070 (Order PT 82-5), § 458-61-670, filed 7/21/82.]

Chapter 458-65 WAC
ABANDONED PROPERTY

WAC 458-65-010 Time limitations. The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property shall not prevent the money or property from being presumed abandoned property under chapter 63.28 RCW, nor affect any duty to file a report required by that chapter or to pay or deliver abandoned property to the department of revenue. This rule shall not apply to property presumed abandoned prior to June 9, 1955.

[Rule UCP 1, § 458-65-010, filed 1/17/68.]

Reviser's note: WAC 458-65-010 declared invalid: *Pacific Northwest Bell Telephone Co. v. Department of Revenue,* 78 Wn.2d 961 (1971).

WAC 458-65-020 Use of department forms. (1) The report of unclaimed property required by the Uniform

Unclaimed Property Act of 1983 must be on forms provided by or approved by the department.

(2) The report, entitled report of unclaimed property, is to be filed with the department prior to November 1 each year (prior to May 1 by life insurance companies), and it becomes delinquent on that date if it has not been filed and an extension of time to file has not been given written approval by the department. Each report filed must be verified, which is accomplished by simultaneously filing the department supplied verification and checklist.

(3) In some instances, computer printouts can be accepted in place of the department supplied report of unclaimed property. However, essentially the same format must be used and prior written approval by the department is required. It should be emphasized that the filing of a verification and checklist form is required even if the report is made via computer printout.

(4) Because of the necessity of submitting a remittance report several months after the annual report is filed, the remittance report must duplicate the first report in every respect; however, interlineations or annotations may be added to indicate adjustments to the initial report. In other words, the line number of the entry on the form, the identifying number, the owner's last name and address, and all other information shown on the annual report must also be shown on the remittance report submitted subsequently. Where changes are indicated because of payment to the owner, etc., a line may be drawn through the entire line item, or brief explanatory comments may be added to explain the difference between the initially reported amount and the amount eventually remitted.

[Statutory Authority: 1983 c 179 § 38. 83-17-098 (Order IT 83-3), § 458-65-020, filed 8/23/83.]

WAC 458-65-030 Simultaneous reporting and remittance of unclaimed property. Unclaimed property reported to the department for which the reporting holder is not required to report the name of the apparent owner must be delivered to the department at the time of filing the report. Thus, if the holder does not know the owner's name, or if the value of the property belonging to an individual owner is less than $25, then the property must be turned over to the department at the time of filing the annual report of unclaimed property—before November 1 (before May 1 for life insurance companies). When a remittance is to accompany the annual report of unclaimed property, both the report form and the remittance form must be submitted at the same time. Should the holder have other unclaimed property that does not require remittance with the initial report, he must complete an entirely separate report of unclaimed property which is also to be sent to the department before November 1 (May 1 for life insurance companies), but the remittance for this latter report need not be forwarded until six months after the final date for filing the report.

Thus, it is probable that most holders of unclaimed property will submit two completely separate reports of unclaimed property each year: One (to be accompanied by remittance) for all of those accounts under $25 or for those accounts where the name of the owner is missing and one for all other instances where in the remittance may be forwarded six months after filing the annual report.

[Statutory Authority: 1983 c 179 § 38. 83-17-098 (Order IT 83-3), § 458-65-030, filed 8/23/83.]

WAC 458-65-040 Maturity of automatically renewable instruments. Automatically renewable property, such as a time deposit, is matured for purpose of abandonment upon the expiration of its initial time period or after one year if the initial period is less than one year, unless the owner of the property takes some specific action relative to the property before that time. Such action may include communicating in writing with the holding institution or otherwise indicating an interest in the property as evidenced by a memorandum or other record on file prepared by an employee of the financial organization holding the subject property.

For purposes of reporting unclaimed property which is automatically renewable, the abandonment period commences upon the first expiration of its time period subsequent to August 31, 1979. However, if the initial period of automatic renewal is less than one year, then the abandonment period commences after one year or September 1, 1979, whichever date is later.

Property unclaimed by its owner during the specified abandonment period is reportable as of June 30th in the fiscal year (the 12 month period running from July 1 to June 30 of the following calendar year) in which its full abandonment period is completed.

EXAMPLE: A 12 month certificate of deposit is automatically renewable and its 12 month period expired on September 1, 1979. If no contact is had with the owner, the certificate of deposit is considered abandoned after five years—September 1, 1984. It must then be included in the report covering property abandoned as of the next June 30th (1985). The annual report of unclaimed property for 1985, to be submitted prior to November 1, should thus include the value of this certificate of deposit abandoned on September 1, 1979, as well as all other similar property whose initial period of abandonment commenced between September 1, 1979 and June 30, 1980.

The interest rate the certification of deposit earned while in the possession of the holder must be shown in column 9 of the annual report.

[Statutory Authority: 1983 c 179 § 38. 83-17-098 (Order IT 83-3), § 458-65-040, filed 8/23/83.]

Chapter 458-276 WAC
ACCESS TO PUBLIC RECORDS

WAC 458-276-010 Declaration of purpose. This chapter is promulgated by the department of revenue in compliance with RCW 42.17.250 and to set out procedures by which public records of the department will be made available to the public for inspection and copying.

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-010, filed 1/23/78.]

WAC 458-276-020 Definitions. (1) Public records. "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

(2) Writing. "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents.

(3) Department of revenue. The department of revenue is an agency headed by a director appointed by the governor subject to conformation by the state senate. The powers and duties of the director are, inter alia, those prescribed by RCW 82.01.060. The department of revenue will hereinafter be referred to as the "department," and the director will hereinafter be referred to as the "director." Where appropriate, the term department also refers to the staff and employees of the department of revenue.

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-020, filed 1/23/78.]

WAC 458-276-030 Description of central and field organization of the department. The department of revenue administers state tax laws, acts as advisor on revenue matters to the governor, the legislature, and other state and local agencies, and supervises and assists in the administration of property tax laws at state and local levels. The central administrative offices of the department and its staff are located at General Administration Building, Fourth Floor, Olympia, Washington 98504. Operating divisions of the department are: Field Operations, Interpretation and Appeals, Research and Information, Office Operations, Inheritance Tax, Property Tax, Administrative Services, and Forest Tax.

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-030, filed 1/23/78.]

WAC 458-276-040 Operations and procedures. Each of the major operating divisions of the department is the immediate responsibility of an assistant director of the department who is designated as director of that division.

(1) Field operations. The director of field operations directs employees engaged in field audits, enforcement, audit review and taxpayer assistance through 16 branch offices, 4 regional offices, and several out-of-state auditors.

(2) Interpretation and appeals. The director of interpretation and appeals and his hearing officers conduct tax hearings, publish excise tax bulletins and guidelines, issue formal and informal interpretations, and provide advice to the legislature on excise tax matters. The division administers rules published under the Washington Administrative Code, and makes written determinations on appeals involving disputed tax liability.

(3) Research and information. The director of research directs the preparation of revenue forecasts for state government and develops other statistical analyses used in the preparation of the governor's budget. The division is responsible for the analysis of proposed legislation, and advises both the executive and legislative branches of the fiscal impact of proposed tax measures.

The director of research also is in charge of informational services and the publication of official state and local statistical documents. His staff also provides supportive data, analyses, and advice to the other divisions.

(4) Office operations. The director of office operations supervises employees assigned to taxpayer registration, accounts receivable, taxpayer office audits and investigation, miscellaneous tax processing, and records maintenance.

(5) Inheritance tax. The director of inheritance tax administers the collection of gift and inheritance taxes and supervises escheats and unclaimed property.

(6) Property tax. The director of property taxes oversees the administration of property taxation at the state and local level, including the development of guidelines and regulations affecting the operation of assessors in the 39 counties. The division directly appraises the intercounty operating properties of railroad, power, gas, transportation, communications, and water companies.

Activities include assessment ratio studies used, in part, as a basis for allocating state funds to local taxing districts; tax mapping, coding, and appraisal assistance to the counties; appraisal manuals and tax reporting forms; motor vehicle excise tax valuations; statewide supervision of property tax exemptions and determination of eligibility for property tax exemptions for nonprofit organizations; rules for open space taxation; and supervision of county boards of equalization.

(7) Administrative services. The director of administrative services directs employees engaged in budget and fiscal controls, centralized word processing, office services, systems and procedures, and automated data processing.

(8) Forest tax. The director of forest tax is responsible for developing semi-annual timber stumpage value rates used in determining the tax liability for all timber harvested from private lands, and for the timely collection of the forest excise tax, and computation of the distribution of revenues to the state and local taxing districts. The division also develops forest land values annually to be used by the county assessors for the assessment of all classified and designated forest lands for property tax purposes. Field inspections of harvest sites, timber sales, and forest land sales are also performed by the division for audit, compliance, and valuation purposes.

(9) Director of personnel. The personnel officer coordinates departmental employment, personnel relations and labor relations, and also is in charge of personnel administration, employee development, employee benefits, services and safety, and affirmative action.

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-040, filed 1/23/78.]

WAC 458-276-050 Public records available. All public records of the department, as defined in WAC 458-276-020(1) are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 42.17.310, 42.17.330, WAC 458-276-100, and other applicable laws.

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-050, filed 1/23/78.]

WAC 458-276-060 Public records officer. The department's public records are in the charge of the public records officer designated by the director. The person so designated will be located in the central administrative office, research and information division, of the department. The public records officer is responsible for the following: The implementation of the department's rules and regulations regarding release of public records, coordinating the staff of the department in this regard, and generally ensuring compliance by the department with the public records disclosure requirements of chapter 42.17 RCW.

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-060, filed 1/23/78.]

WAC 458-276-070 Hours for records inspection and copying. Public records maintained in the central administrative offices will be available for inspection and copying at the administrative office during the customary office hours of the department. For the purposes of this chapter, the customary office hours are 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding legal holidays. Specific records not available in the central administrative offices will be made available pursuant to the procedures described in WAC 458-276-080(3).

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-070, filed 1/23/78.]

WAC 458-276-080 Requests for public records. (1) Chapter 42.17 RCW requires that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency. Accordingly, whenever the department believes these or other provisions of law would be violated by immediate disclosure of records, requests for inspection or copying by members of the public shall be in writing upon a form prescribed by the department which will be available at its administrative and all branch offices. The form shall be presented either to the public records officer at the central administrative offices of the department or to any tax service representative of the department at the administrative or any branch office of the department during customary office hours. Customary office hours at branch offices may vary from those of the department's administrative offices. If a tax service representative is not available at a branch office the request form may be completed and presented to the person in charge of the office at the time the request is made or mailed to the Public Records Officer, Research and Information Division, Department of Revenue, 414 General Administration Building, Olympia, Washington 98504. The request shall include the following information:

(a) The name of the person requesting the record;

(b) The time of day and calendar date on which the request is made;

(c) The nature of the request;

(d) If the matter requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in such current index;

(e) If the requested matter is not identifiable by reference to the department's current index, an appropriate description of the record requested.

(2) In all cases in which a member of the public is making a request, it is the obligation of the public records officer, or staff member to whom the request is made, to assist the member of the public in appropriately identifying the public record requested.

(3) If the record is not maintained in the central administrative offices of the department, after approval of the request, the public records officer will retrieve the record and advise the person making the request by telephone or mail of the time and place the record will be available, which time will be as reasonably soon after the request is made as possible.

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-080, filed 1/23/78.]

WAC 458-276-090 Copying. There is no fee for the inspection of public records. The department will charge a fee of twenty-five cents per page of copy for providing copies of public records and for use of the department's copy equipment. This charge is to reimburse the department for its costs incident to such copying.

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-090, filed 1/23/78.]

WAC 458-276-100 Exemptions. (1) The department reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 458-276-080 is exempt under the provisions of RCW 42.17.310, and other applicable laws.

(2) In addition, pursuant to RCW 42.17.260, the department reserves the right to delete identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosure of such details would be an invasion of privacy protected by chapter 42.17 RCW. The public records officer will fully justify such deletion in writing.

(3) All denials of written requests for public records will be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

(4) The department reserves the right provided by RCW 42.17.330 to move the various superior courts to enjoin the examination of any specific public record when it believes such examination would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions.

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-100, filed 1/23/78.]

WAC 458-276-110 Review of denials of public records requests. (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request will refer it to the director. The petition will be reviewed promptly and the action of the public records officer approved or disapproved. Such approval or disapproval shall constitute final department action for purposes of judicial review under RCW 42.17.340.

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-110, filed 1/23/78.]

WAC 458-276-120 Limitations on disclosure. The department will give due regard in considering requests for public records to RCW 82.32.330, 83.36.020, and other applicable limitations on disclosure.

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-120, filed 1/23/78.]

WAC 458-276-130 Records index. The department will maintain and make available for public inspection and copying an appropriate index or indices in accordance with RCW 42.17.260.

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-130, filed 1/23/78.]

WAC 458-276-140 Administrative offices. All communications with the department regarding administration or enforcement of chapter 42.17 RCW and these rules, and requests for copies of the department's decisions and other matters, shall be addressed as follows: Public Records Officer, Research and Information Division, Department of Revenue, 414 General Administration Building, Olympia, Washington 98504.

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-140, filed 1/23/78.]

WAC 458-276-150 Adoption of form. The department hereby adopts for use by all persons making written request for inspection and/or copying or copies of its records under WAC 458-276-080, the Form S.F. 276 as it exists or may hereafter be revised.

[Statutory Authority: RCW 42.17.250. 78-02-064 (Order GT 78-1), § 458-276-150, filed 1/23/78.]