

WSR 14-24-109
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed December 3, 2014, 6:51 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-126 (Rule 126) Sales of motor vehicle fuel, special fuel, and nonpolluting fuel.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Mark E. Bohe, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, AND RECEIVED BY Monday, February 2, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend Rule 126 to:

- Recognize provisions of ESSB 6440, sections 301, 304, and 305, chapter 216, Laws of 2014, with respect to natural gas, compressed natural gas, or liquefied natural gas used for transportation fuel;
- Update language on filing and paying retail sales and use tax for motor vehicle fuel, special fuel, and fuels commonly referred to as liquefied natural gas, compressed natural gas, or propane; and
- Clarify language generally such as changing "section" to "rule" throughout.

Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Reasons Supporting Proposal: Recognizes provisions of ESSB 6440, sections 301, 304, and 305, chapter 216, Laws of 2014, and clarifies language generally throughout the rule.

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

Statute Being Implemented: RCW 82.12.022 and 82.14.230.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1574; Implementation: Dylan Waits, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1583; and Enforcement: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

December 3, 2014
 Dylan Waits
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-01-051, filed 12/9/09, effective 1/9/10)

WAC 458-20-126 Sales of motor vehicle fuel, special fuel((s)), and ((nonpollutant)) nonpolluting fuel. (1) **Introduction.** This ((section)) rule explains the retail sales and use taxes for motor vehicle fuel, special fuel((s)), and fuels commonly referred to as liquefied natural gas ((and)), compressed natural gas, or propane. This ((section)) rule also provides documentation requirements to buyers and sellers of fuel for both on and off highway use.

(2) **What are motor vehicle fuel and special fuel((s)), and how are they taxed?** "Motor vehicle fuel" as used in this ((section)) rule 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 fuel((s))" as used in this ((section)) rule 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.

((The)) Retail sales tax or use tax applies to sales and uses of motor vehicle fuel or special fuel, unless an exemption applies, when the taxes of chapter 82.36 or 82.38 RCW have not been paid or have been refunded. Generally ((the)), fuel taxes apply to sales of fuel for highway consumption and ((the)) retail sales or use tax applies to fuel sold for consumption off the highways (e.g., boat fuel, or fuel for farm machinery or construction equipment, etc.).

(3) **What motor vehicle fuel and special fuel((s)) exemptions are available?**

(a) **Passenger-only ferries.** RCW 82.08.0255 and 82.12.0256 provide ((exemptions from the)) retail sales tax and use tax exemptions for motor vehicle fuel or special fuel((, purchased on or after April 27, 2007;)) for use in passenger-only ferry vessels. ((This)) These exemptions ((applies)) apply only to fuel purchased by public transportation benefit areas created under chapter 36.57A RCW, county owned ferries, or county ferry districts created under chapter 36.54 RCW.

(b) **Nonprofit transportation providers.** RCW 82.08.0255 and 82.12.0256 provide retail sales tax and use tax exemptions for ((sales of or uses of)) motor vehicle fuel or special fuel((s)) purchased or used by private, nonprofit transportation providers certified under chapter 81.66 RCW, ((who are)) if the purchaser is entitled to fuel tax refund or exemption under chapter 82.36 or 82.38 RCW.

(c) **Public transportation.** RCW 82.08.0255 and 82.12.0256 provide ((exemptions for the)) retail sales tax and use tax ((when)) exemptions for motor vehicle fuel or special fuel((s are)) purchased or used for the purpose of public transportation, ((and)) if the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080((, (3))).

(d) **Special fuel((s)) used in interstate commerce.** ((The)) RCW 82.08.0255 provides a retail sales tax ((does not apply to)) credit or refund for sales of special fuel((s)) that is delivered in this state ((which are)) but later transported and used outside this state by persons engaged in interstate commerce. ((RCW 82.08.0255(2).) This exemption) The credit or refund also applies to persons hauling their own goods in interstate commerce.

~~((Exemption)) Certificate.~~ Persons selling special fuel ~~((s))~~ to interstate carriers must obtain a completed ~~((exemption certificate))~~ "Certificate of Special Fuel Sales to Interstate Carriers" from the purchaser ~~((in order))~~ to document ~~((the))~~ entitlement to the ~~((exemption))~~ credit or refund. The ~~((exemption))~~ certificate ~~((can))~~ may be obtained from the department of revenue (department) on the internet at <http://www.dor.wa.gov/>, or by contacting the department's taxpayer services division at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
1-800-647-7706

The provisions of the ~~((exemption))~~ certificate may be limited to a single sales transaction, or may apply to all sales transactions as long as the seller has a recurring business relationship with the buyer. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months.

(e) **Farm fuel users of diesel or aircraft fuels.** For the purpose of this ~~((section))~~ rule, a "farm fuel user" means either a farmer or a person who provides horticultural services for farmers, such as soil preparation, crop cultivation, or crop harvesting services.

(i) ~~((Effective March 6, 2006,))~~ RCW 82.08.865 and 82.12.865 ~~((exempt))~~ provided retail sales tax and use tax exemptions to farm fuel users ((from retail sales and use taxes)) for diesel, biodiesel, and aircraft fuel purchased for nonhighway use.

(ii) ~~((Substitute Senate Bill (SSB) 5009, chapter 443, Laws of 2007, added biodiesel fuel as exempt from retail sales and use taxes when purchased or used by farm fuel users for nonhighway use. This))~~ These exemptions ~~((, effective May 11, 2007, also applies))~~ also apply to a fuel blend if all the component fuels of the blend would otherwise be exempt under RCW 82.08.865 and 82.12.865 if the component fuels were sold as separate products. The exemptions do not apply to fuel used for residential heating purposes.

(iii) When purchasing an eligible fuel, a farm fuel user must provide the seller with a completed "Farmers' Retail Sales Tax Exemption Certificate," which ~~((can))~~ may be obtained from the department ~~((on the internet at http://www.dor.wa.gov/, or by contacting the department's taxpayer services division at:~~

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
1-800-647-7706)) using the contact information described in (d) of this subsection.

Sellers of eligible fuels to farm fuel users must document the tax exempt sales of red-dyed diesel, biodiesel, or aircraft fuel by accepting the certificate mentioned above and retaining it in their records for five years.

(4) **~~((Nonpollutant)) Nonpolluting fuels.~~** ~~((Nonpollutant))~~ Nonpolluting fuels are described as liquefied natural gas ~~((and)),~~ compressed natural gas, or liquefied petroleum gas,

commonly called propane. ~~((Nonpollutant))~~ Nonpolluting fuels ~~((can))~~ may be purchased for either highway or "off-highway" use. ~~((Sales of nonpollutant))~~ Nonpolluting fuels purchased for highway use are normally subject to taxes under either chapter 82.36 or 82.38 RCW. ~~((Nonpollutant))~~ Nonpolluting fuels purchased for "off-highway" use are subject to retail sales tax or use tax.

(a) **Highway fuel used by Washington licensed vehicle owners.** RCW 82.38.075 ~~((provides))~~ encourages the use of nonpolluting fuels by providing for payment of an annual fee by users of ~~((nonpollutant fuel))~~ nonpolluting fuels, in lieu of the motor vehicle fuel tax. This fee is paid at the time of original and annual renewals of vehicle license registrations. A decal or other identifying device must be displayed as prescribed by the department of licensing as authority to purchase these ~~((nonpollutant))~~ nonpolluting fuels.

Fuel dealers should not collect retail sales or use tax on any ~~((nonpollutant fuel))~~ nonpolluting fuels sold to Washington licensed vehicle owners for highway use when the vehicle displays a valid decal or other identifying device issued by the department of licensing.

(b) **"Off-highway" fuel use.** ~~((Nonpollutant))~~ Nonpolluting fuels purchased for "off-highway" use are not subject to the taxes of chapter 82.36 or 82.38 RCW, and therefore the retail sales tax applies.

(c) **Bulk purchases of fuel.** The department recognizes that certain licensed special fuel users may find it more practical to accept deliveries of ~~((nonpollutant))~~ nonpolluting fuels into a bulk storage facility rather than into the fuel tanks of motor vehicles. Persons selling ~~((nonpollutant))~~ nonpolluting fuels to such bulk purchasers must obtain from the purchaser an exemption certificate ~~((in order))~~ to document entitlement to the exemption. The "Certificate for Purchase of ~~((Nonpollutant))~~ Nonpolluting Special Fuels" must certify the amount of fuel ~~((which will be consumed by the purchaser))~~ that the purchaser will consume in using 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 for Purchase of ~~((Nonpollutant))~~ Nonpolluting Special ((Fuels" can)) Fuel" may be obtained from the department ~~((on the internet at http://www.dor.wa.gov/, or by contacting the department's taxpayer services division at:~~

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
1-800-647-7706)) using the contact information described in subsection (3)(d) of this rule.

(i) When fuel is purchased for both on and off highway use, and it is not possible for a special fuel user licensee to determine the exact proportion purchased for highway use in this state, the amount of the off-highway use special fuel may be estimated. ~~((In the event such))~~ If an estimate is used and retail sales tax is not paid, the purchaser must make an adjustment on the next excise tax return and remit use tax on the portion of the fuel used for off-highway purposes.

(ii) ~~((Nonpollutant))~~ Nonpolluting fuel not placed in motor vehicle fuel tanks by the seller are subject to retail sales tax, unless a "Certificate for Purchase of ~~((Nonpollutant))~~ Nonpolluting Special Fuel((s))" is obtained from the purchaser. The seller must collect and remit the retail sales tax to the department, or retain the certificate as part of ~~((his))~~ its permanent records. When ~~((nonpollutant))~~ nonpolluting 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 where it is not delivered into the fuel tanks of motor vehicles, ~~((it will be presumed))~~ the department will presume that the entire amount of fuel sold is subject to retail sales tax unless the seller has obtained a completed certificate.

(d) **Vehicles licensed outside the state of Washington.** Owners of out-of-state licensed vehicles are exempt from the requirement to purchase an annual license as provided in RCW 82.38.075. ~~((In lieu of))~~

(i) Therefore, the fuel taxes of chapters 82.36 and 82.38 RCW generally apply to the out-of-state licensed vehicle owner's purchases of nonpolluting fuel for highway use.

(ii) Retail sales tax applies to the out-of-state licensed vehicle owner's purchases of nonpolluting fuel for off-highway use.

(iii) If the fuel taxes of chapters 82.36 and 82.38 RCW ~~((s))~~ have not been paid, have been refunded, or have not been applied, then retail sales tax is due on ~~((their))~~ the out-of-state licensed vehicle owner's purchases of ~~((nonpollutant))~~ nonpolluting fuel, for either highway or off-highway use.

(e) Any person selling or dispensing liquefied natural gas, compressed natural gas, or propane into a tank of a motor vehicle powered by this fuel that does not comply with the provisions in chapter 82.38 RCW described in this rule, is subject to the penalty provisions in chapter 82.38 RCW.

(5) **Refunds are available for fuel taxes paid when fuel is consumed off the highway.** If a person purchases motor vehicle fuel or special fuel~~((s))~~ and pays the fuel taxes of chapter 82.36 or 82.38 RCW, and then consumes the fuel off the highway, the person is entitled to a refund of these taxes under the procedures of chapter 82.36 or 82.38 RCW. However, a person receiving a refund of vehicle fuel taxes because of the off-highway consumption of the fuel in this state is subject to use tax on the value of the fuel. The department of licensing administers the fuel tax refund provisions and will deduct from the amount of a refund the amount of use tax due.

WSR 14-24-110

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed December 3, 2014, 6:54 a.m.]

Title of Rule and Other Identifying Information: WAC 458-29A-400 (Rule 29A-400) Leasehold excise tax—Exemptions.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Mark E. Bohe, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, AND RECEIVED BY Monday, February 2, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend Rule 29A-400 to:

- Recognize provisions of ESSB 5882, sections 1701, and 1717, chapter 13, Laws of 2013, establishing expiration dates for new tax preferences for the leasehold excise tax; and
- Clarify language throughout the rule.

Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Reasons Supporting Proposal: Recognizes provisions of ESSB 5882, sections 1701, and 1717, chapter 13, Laws of 2013, and clarifies language.

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

Statute Being Implemented: RCW 82.32.805 and 82.29A.025.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1574; Implementation: Dylan Waits, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1583; and Enforcement: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

December 3, 2014

Dylan Waits

Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-18-034, filed 8/25/10, effective 9/25/10)

WAC 458-29A-400 Leasehold excise tax—Exemptions. (1) Introduction.

(a) This rule explains the exemptions from leasehold excise tax provided by RCW 82.29A.130, 82.29A.132, 82.29A.134, and 82.29A.136. To be exempt from the leasehold excise tax, the property subject to the leasehold interest must be used exclusively for the purposes for which the exemption is granted.

~~((2))~~ (b) This rule also explains the expiration date for new tax preferences for the leasehold excise tax pursuant to the language found at RCW 82.32.805.

(c) Rule examples. This rule includes a number of examples that identify a set of facts and then states a conclusion. The examples should be used only as a general guide. The department will evaluate each case on its particular facts and circumstances and apply both this rule and other statutory and common law authority.

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

(a) "New tax preference" means a tax preference that initially takes effect after August 1, 2013, or a tax preference in effect as of August 1, 2013, that is expanded or extended after August 1, 2013, even if the expanding or extending legislative amendment includes any other changes to the tax preference.

(b) "Tax preference" has the same meaning as in RCW 43.136.021 with respect to any state tax administered by the department of revenue (department), except does not include the Washington estate and transfer tax in chapter 83.100 RCW.

(3) Operating properties of a public utility.

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

~~((For example,))~~ (b) Example. Assume ABC Railroad Company is a public utility. Tracks leased to ABC Railroad Company ~~((at the Port of Seaside))~~ are exempt from leasehold excise tax because ~~((the))~~ ABC Railroad Company is a public utility assessed and taxed under chapter 84.12 RCW and the tracks are part of the railroad's operating properties.

~~((3))~~ (4) Student housing at public and nonprofit schools and colleges.

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

~~((For example,))~~ (b) Example. Assume State Public University leases a building to use as a dormitory for its students. The leasehold interest associated with ~~((a))~~ this building ~~((used as a))~~ is exempt from the leasehold excise tax. This is because the dormitory ~~((for))~~ is used to house State Public ~~((University))~~ University's students ~~((is exempt from the leasehold excise tax)).~~

~~((4))~~ (5) Subsidized housing.

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

~~((For example, a leasehold interest in an apartment house that is subsidized by))~~ (b) Example. Assume an apartment building and the property on which it is located is:

- Owned in fee simple by the state of Washington; and
- Used as subsidized housing for residents subject to income qualification requirements.

If the United States Department of Housing and Urban Development holds the leasehold interest on the property it is exempt from leasehold excise tax ~~((if))~~. This is because the

property is owned in fee simple by the state of Washington, used for subsidized housing, and the residents are subject to income qualification requirements.

~~((5))~~ (6) Nonprofit fair associations.

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

~~((For example,))~~ (b) Example. Assume a leasehold interest held by ~~((the))~~ Local Nonprofit Fair Association is ~~((considered))~~ exempt from leasehold excise tax. ~~((However, if))~~ Local Nonprofit Fair Association subleases some of the buildings on the fairgrounds ~~((are rented))~~ to private parties for storage during the winter~~((s))~~. ~~((These (rentals may be) subleases are subject to the leasehold excise tax.~~

~~((6))~~ (7) Public employee housing.

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

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

~~((a))~~ (b) Examples.

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

~~((b))~~ (ii) An employee of the Washington department of fish and wildlife resides in a house furnished by the agency at a fish hatchery although, under the terms of a collective bargaining agreement, the agency may not compel the employee to live in the residence as a condition of employment. In exchange for receiving use of the housing provided by the agency, the employee is required to perform additional duties, including regularly monitoring certain equipment at the hatchery during nights and on weekends and escorting public visitors on tours of the hatchery on weekends. The use

of the house is exempt from leasehold excise tax because the lodging enables the employee to properly perform the duties of his employment. The use is exempt even though the employee would continue to be employed by the agency if the additional duties were not performed and even though state employees of an equal job classification are not required to perform the additional duties.

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

~~((7))~~ (8) **Interests held by enrolled Indians.**

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

(b) Any leasehold interest held by an enrolled Indian or a tribe, where the leasehold is located within the boundaries of an Indian reservation, on trust land, on Indian country, or is associated with the treaty fishery or some other treaty right, is not subject to leasehold excise tax.

~~(For example, if)~~ (c) Example. Assume an enrolled member of the Puyallup Tribe leases port land at which the member keeps his or her boat, and the boat is used in a treaty fishery~~(s)~~. The leasehold interest is exempt from the leasehold tax. For more information on excise tax issues related to enrolled Indians, see WAC 458-20-192 (Indians—Indian country).

~~((8))~~ (9) **Leases on Indian lands to non-Indians.**

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

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

~~((9))~~ (10) **Annual taxable rent is less than two hundred fifty dollars.**

(a) Leasehold interests for which the taxable rent is less than \$250 per year are exempt from leasehold excise tax. For the purposes of this exemption, if the same lessee has a leasehold interest in two or more contiguous parcels of property owned by the same lessor, the taxable rent for each contiguous parcel will be combined and the combined taxable rent will determine whether the threshold established by this exemption has been met. To be considered contiguous, the parcels must be in closer proximity than merely within the boundaries of one piece of property. When determining the annual leasehold rent, the department will rely upon the actual substantive agreement between the parties. Rent payable pursuant to successive leases between the same parties for the same property within a twelve-month period will be combined to determine annual rent; however, a single lease for a period of less than one year will not be projected on an annual basis.

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

~~(a))~~ (b) Examples.

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

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

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

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

~~((10))~~ (11) **Leases for a continuous period of less than thirty days.** Leasehold interests that provide use and

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

~~((11))~~ **(12) Month-to-month leases in residential units to be demolished or removed.**

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

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

~~((12))~~ **(13) Public works contracts.**

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

~~(For example,)~~ (b) **Example.** Assume Tinker Construction is a contractor performing work to construct a second deck on the Nisqually Bridge pursuant to a public works contract between the state of Washington and Tinker Construction. During construction of ~~((a))~~ the second deck on the Nisqually Bridge ~~((pursuant to a public works contract between the state of Washington and Tinker Construction,))~~ any leasehold interest in real or personal property created for Tinker Construction solely for the purpose of performing the

work necessary under the terms of the contract is exempt from leasehold excise tax.

~~((13))~~ **(14) Correctional industries in state adult correctional facilities.**

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

~~(For example, a profit or nonprofit organization operating and managing)~~ (b) **Examples.**

(i) Assume ABC Retail Company, a for-profit corporation, operates and manages a business within a state prison under an agreement between it and the department of corrections. ABC Retail Company is exempt from leasehold excise tax for its use and possession of state property.

~~((14))~~ (ii) Assume ABC Charitable Society, a nonprofit organization, operates and manages a business within a state prison under an agreement between it and the department of corrections. ABC Charitable Society is exempt from leasehold excise tax for its use and possession of state property.

(15) Camp facilities for persons with disabilities.

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

~~(For example,)~~ (b) **Example.** Assume a county park with camping facilities is leased to Charity Campgrounds, a nonprofit charitable organization that allows the property to be used by the general public for recreational activities throughout the year and as a camp for disabled persons for two weeks during the summer. Charity Campgrounds is exempt from leasehold excise tax ~~((#))~~ because the nonprofit allows the property to be used by the general public for recreational activities throughout the year, and to be used as a camp for disabled persons for two weeks during the summer.

~~((15))~~ **(16) Public or entertainment areas of certain baseball stadiums.**

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

(b) "Public or entertainment areas" for the purposes of this ~~((exemption))~~ subsection include ticket sales areas, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality and stadium club areas, kitchens or other work areas primarily servicing other public areas, public rest rooms, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas and suites, the playing field, and any other areas to which the public has access or that are used for the production of the entertainment event or other public usage, and any other personal property used for such purposes. "Public or

entertainment areas" does not include locker rooms or private offices used exclusively by the lessee.

~~((16))~~ **(17) Public or entertainment areas of certain football stadiums and exhibition centers.** Leasehold interests in the public or entertainment areas of an open-air stadium suitable for national football league football and for Olympic and world cup soccer, with adjacent exhibition facilities, parking facilities, and other ancillary facilities constructed on or after January 1, 1998, are exempt from leasehold excise tax. For the purpose of this ~~((exemption))~~ subsection, the term "public and entertainment areas" has the same meaning as set forth in subsection ~~((15) above)~~ (16) of this rule.

~~((17))~~ **(18) Public facilities districts.** All leasehold interests in public facilities districts, as provided in chapter 36.100 or 35.57 RCW are exempt from leasehold excise tax.

~~((18))~~ **(19) State route 16 corridor transportation systems.** All leasehold interests in the state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW are exempt from leasehold excise tax. RCW 82.29A.132.

~~((19))~~ **(20) Sales/leasebacks by regional transit authorities.** All leasehold interests in property of a regional transit authority or public corporation created under RCW 81.112.320 under an agreement under RCW 81.112.300 are exempt from leasehold excise tax. ~~((This exemption is effective July 28, 2000.))~~ RCW 82.29A.134.

~~((20))~~ **(21) Interests consisting of three thousand or more residential and recreational lots.** All leasehold interests consisting of three thousand or more residential and recreational lots that are or may be subleased for residential and recreational purposes are exempt from leasehold excise tax. Any combination of residential and recreational lots totaling at least three thousand satisfies the requirement of this exemption. ~~((This exemption is effective January 1, 2002.))~~ RCW 82.29A.136.

~~((21))~~ **(22) Historic sites owned by the United States government or municipal corporations.** All leasehold interests in property listed on any federal or state register of historical sites are exempt from leasehold excise tax if the property is:

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

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

~~((22))~~ **(23) Amphitheaters.**

(a) All leasehold interests in the public or entertainment areas of an amphitheater are exempt from leasehold excise tax if a private entity is responsible for one hundred percent of the cost of constructing the amphitheater which is not reimbursed by the public owner, both the public owner and the private lessee sponsor events at the facility on a regular basis, the lessee is responsible under the lease or agreement to operate and maintain the facility, and the amphitheater has a seating capacity of over seventeen thousand reserved and general admission seats and is in a county that had a population of over three hundred fifty thousand, but less than four hundred twenty-five thousand when the amphitheater first opened to the public.

(b) For the purposes of this subsection, "public or entertainment areas" include box offices or other ticket sales areas, entrance gates, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas including lawn seating areas and suites, stages, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" do not include office areas used predominately by the lessee.

~~((23))~~ **(24) Military housing.**

(a) All leasehold interests in real property used for the placement of housing that consists of military housing units and ancillary supporting facilities are exempt from leasehold excise tax if the property is situated on land owned in fee by the United States, is used for the housing of military personnel and their families, and is a development project awarded under the military housing privatization initiative of 1996, 10 U.S.C. Sec. 2885, as existing on June 12, 2008.

(b) For the purposes of this subsection, "ancillary supporting facilities" means facilities related to military housing units, including facilities to provide or support elementary or secondary education, child care centers, day care centers, child development centers, tot lots, community centers, housing offices, dining facilities, unit offices, and other similar facilities for the support of military housing.

(25) Expiration date for new tax preferences.

(a) RCW 82.29A.025 incorporates the language found at RCW 82.32.805 establishing the expiration date of new tax preferences for the leasehold excise tax.

(i) Generally, every new tax preference expires on the first day of the calendar year that is subsequent to the calendar year that is ten years from the effective date of the tax preference.

(ii) A future legislative amendment that expands a tax preference does not extend the tax preference beyond the period provided in this subsection unless an extension is expressly and unambiguously stated in the legislative amendment.

(b) This subsection does not apply if legislation creating a new tax preference includes an expiration date for the new tax preference.

(c) This subsection does not apply to an existing tax preference that is amended to clarify an ambiguity or correct a technical inconsistency. Future enacted legislation intended to make such clarifications or corrections must explicitly indicate that intent.