

WSR 22-20-103

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed October 4, 2022, 2:44 p.m.]

Title of Rule and Other Identifying Information: WAC 458-20-262 Retail sales and use tax exemptions for agricultural employee housing.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is updating WAC 458-20-262 to reflect the changes made to RCW 82.12.02685 and 82.08.02745 from 2021 and 2022 legislation.

Reasons Supporting Proposal: This is an expedited update to WAC 458-20-262 to reflect changes made to RCW 82.12.02685 from ESB 5800 from the 2022 legislative session and updates to RCW 82.08.02745 and 82.12.02685 from 2SSB 5396 from the 2021 legislative session.

Statutory Authority for Adoption: RCW 82.01.060, 82.32.300.

Statute Being Implemented: RCW 82.12.02685, 82.08.02745.

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: Nikki Bizzarri, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1582; Implementation and Enforcement: Heidi Geathers, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1615.

This notice meets the following criteria to use the expedited adoption process for these rules:

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The revisions to the rule follow the wording in corresponding statutory additions and revisions as a result of 2021 and 2022 legislation. The rule does not contain any new interpretations.

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 Nikki Bizzarri, Department of Revenue, P.O. Box 47453, Tumwater, WA 98504, phone 360-534-1582, fax 360-534-1606, email NikkiB@dor.wa.gov, AND RECEIVED BY December 5, 2022.

October 4, 2022
Atif Aziz
Rules Coordinator

OTS-4145.1

AMENDATORY SECTION (Amending WSR 08-14-017, filed 6/20/08, effective 7/21/08)

WAC 458-20-262 Retail sales and use tax exemptions for (~~agricultural employee~~) farmworker housing. (1) **Introduction.** RCW 82.08.02745 and 82.12.02685 provide a retail sales and use tax exemption for (~~agricultural employee~~) farmworker housing. This section also explains the exemptions, who is entitled to the exemptions and how to obtain an exemption certificate.

(2) **Definitions.** The following definitions apply throughout this section.

(a) (~~"Agricultural employee"~~) "Farmworker" means (~~any person who renders personal services to, or under the direction of, an agricultural employer in connection with the employer's agricultural activity (RCW 19.30.010)~~) a single person, or all members of a household, whether such persons are related or not, if the combined household income earned from farm work is at least \$3,000 per calendar year.

(b) "Farm work" means services relating to:

(i) Cultivating the soil, raising or harvesting, or catching, netting, handling, planting, drying, packing, grading, storing, or preserving in its unmanufactured state any agricultural or aquacultural commodity;

(ii) Delivering to storage, market, or a carrier for transportation to market or to processing any agricultural or aquacultural commodity; or

(iii) Working in a processing plant and directly handling agricultural or aquacultural product.

(c) "Agricultural employer" means any person engaged in agricultural activity, including the growing, producing, or harvesting of farm or nursery products, or engaged in the forestation or reforestation of lands, which includes but is not limited to the planting, transplanting, tubing, precommercial thinning, and thinning of trees and seedlings, the clearing, piling and disposal of brush and slash, the harvest of Christmas trees, and other related activities (~~(+)~~) as defined in RCW 19.30.010 (+); and including any employer engaged in aquaculture as defined in RCW 15.85.020.

(~~(e) "Agricultural employee"~~) (d) "Farmworker housing" means all facilities provided by an agricultural employer, housing authority, local government, state or federal agency, nonprofit community or neighborhood-based organization that is exempt from income tax under section 501(c) of the Internal Revenue Code of 1986 (26 U.S.C. sec. 501(c)), or for-profit provider of housing for housing (~~agricultural employees~~) farmworkers on a year-round or seasonal basis, including bathing, food handling, hand washing, laundry, and toilet facilities, single-family and multifamily dwelling units and dormitories (~~(, and includes)~~); and including labor camps as defined under RCW 70.114A.110.

(~~The term also includes but is not limited to~~) (i) "Farmworker housing" may include the following:

(A) Mobile homes, travel trailers, mobile bunkhouses, modular homes, fabricated components of a house, and tents (~~(. Agricultural employee)~~); and

(B) Housing occupied by a household with at least one member who is a farmworker; and

(C) Housing occupied by a farmworker on a seasonal basis, where the housing is not used as farmworker housing for a portion of the year, such as when it is rented to the general public when not being used for farmworker housing.

(ii) "Farmworker housing" does not include:

(A) Housing regularly provided on a commercial basis to the general public (~~(. Agricultural employee housing does not include~~); and

(B) Housing provided by a housing authority unless at least ~~(eighty)~~ 80 percent of the occupants are ~~(agricultural employees)~~ farmworkers whose adjusted income is less than ~~(fifty)~~ 50 percent of median family income, adjusted for household size, for the county where the housing is provided; and

(C) Housing provided to farmworkers providing services related to the growing, raising, or producing of cannabis.

~~((d))~~ (e) "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, limited liability company, 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. ((+)RCW 82.04.030((+)).

~~((e))~~ (f) "Agricultural land" has the same meaning as "farm and agricultural ~~(and farm)~~ land" in RCW 84.34.020(2).

(3) Retail sales and use tax exemptions for ~~(agricultural employee)~~ farmworker housing. RCW 82.08.02745 and 82.12.02685, respectively, provide retail sales tax and use tax exemptions for the purchase, construction, and use of ~~(agricultural employee)~~ farmworker housing. ~~((Both exemptions require that agricultural employee housing provided to year-round employees of the agricultural employer must be built to the current building code for single-family or multifamily dwellings according to the state building code, chapter 19.27 RCW. Neither of these exemptions apply to housing built for the occupancy of an employer, family members of an employer, or persons owning stock or shares in a farm partnership or corporation business.))~~

(a) ((The)) Retail sales tax levied under RCW 82.08.020 does not apply to charges for labor and services rendered by any person in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures, in which at least 50 percent of housing units in the development are used as ~~(agricultural employee)~~ farmworker housing (~~(. Also exempt are sales of tangible personal property that becomes an ingredient or component of the buildings or other structures, including but not limited to septic tanks, pump houses, cisterns, and driveways.)~~), or to sales of tangible personal property that becomes an ingredient or component of the buildings or other structures during the course of the constructing, repairing, decorating, or improving the buildings or other structures.

(b) Use tax levied under RCW 82.12.020 does not apply to the use of tangible personal property that becomes an ingredient or component of buildings or other structures, in which at least 50 percent of the housing units in the development are used as farmworker housing, during the course of constructing, repairing, decorating, or improving the buildings or other structures by any person.

(i) The use tax exemption for tangible personal property incorporated into buildings or other structures used as farmworker housing

also applies to persons/consumers constructing these buildings or structures for the federal government or county housing authorities. See also WAC 458-20-17001 on government contracting.

(ii) An agricultural employer claiming the exemption who retitles a used mobile home or titles a new mobile home acquired from an out-of-state seller must provide a completed exemption certificate to the department of licensing or its agent to substantiate the exempt nature of the home.

(c) Both exemptions require that farmworker housing provided on a year-round basis only applies if that housing is built to the current building code for single-family or multifamily dwellings according to the state building code, chapter 19.27 RCW.

(d) Any farmworker housing built under this section must be used according to this section for at least five consecutive years from the date the housing is approved for occupancy.

(e) Neither of these exemptions apply to housing built for the occupancy of an employer, family members of an employer, or persons owning stock or shares in a farm partnership or corporation business.

(f) The exemption does not apply to housing built exclusively for workers in the United States on an H-2A visa under the United States citizenship and immigration services. If during any agricultural season in the qualifying five years the housing is occupied by a farmworker who does not have an H-2A visa, then the housing will be considered not to be exclusively built for workers on an H-2A visa.

(g) The exemption is provided for all housing units in the development and is available only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department by rule.

(h) Examples of tangible personal property that may become ingredients or components of buildings or other structures include, but are not limited to, cement, lumber, nails, paint, and wallpaper.

(i) Appliances and furniture including, but not limited to, stoves, refrigerators, bed frames, lamps and television sets, bolted or strapped directly to the building or structure are considered components of the building or structure. Additionally, appliances and furniture bolted or strapped to another item that is bolted or strapped directly to the building or structure (e.g., a television set bolted to a refrigerator that is strapped to the structure) are considered components of the building or structure.

(ii) Items that are not bolted or strapped directly to the building or structure, or to another item similarly bolted or strapped, do not qualify for this exemption. These items include, but are not limited to, kitchen utensils, mattresses, bedding, portable heating units, and throw rugs. Stoves, refrigerators, bed frames, lamps and television sets that are not bolted or strapped as discussed in (a)(i) of this subsection, also do not qualify as components of the building or structure.

(iii) Purchases of labor and transportation charges necessary to move and set up mobile homes, mobile bunkhouses, and other property and component parts as ~~((agricultural employee))~~ farmworker housing are exempt ~~((of))~~ from retail sales tax.

(iv) As a condition for exemption, the seller must take from the buyer an exemption certificate completed by the buyer to document the exempt nature of the sale. This requirement may be satisfied by using the department of revenue's "Farmers' ~~((Retail))~~ Certificate for Wholesale Purchases and Sales Tax Exemptions ~~((Certificate))" which can be obtained through the following means:~~

(A) From the department's internet site at <http://dor.wa.gov>;

(B) By calling taxpayer services at ((1-800-647-7706))

360-705-6705; or

(C) By writing to:

Taxpayer Services
Washington State Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478

The seller may accept a legible fax or duplicate copy of an original exemption certificate. In all cases, the exemption certificate must be retained by the seller for a period of at least five years. An exemption certificate may be provided for a single purchase or for multiple purchases over a period of time. If the certificate is provided for multiple purchases over a period of time, the certificate is valid for as long as the buyer and seller have a recurring business relationship. A "recurring business relationship" means at least one sale transaction within a period of ((twelve)) 12 consecutive months. RCW 82.08.050 (7)(c). Failure to comply with the provisions in this section may result in a denial of the exemption and the agricultural employer may be subject to use tax plus penalties and interest.

~~((b) The use tax exemption is available for the use of tangible personal property that becomes an ingredient or component of buildings or other structures used as agricultural employee housing during the course of constructing, repairing, decorating, or improving the buildings or other structures by any person. Again, appliances and furniture that are bolted or strapped to the actual building or structure are considered components of the building or structure.~~

~~(i) The exemption for materials incorporated into buildings or other structures used as agricultural employee housing also applies to persons/consumers constructing these buildings or structures for the federal government or county housing authorities. (See also WAC 458-20-17001 on government contracting.)~~

~~(ii) An agricultural employer claiming the exemption who retitles a used mobile home or titles a new mobile home acquired from an out-of-state seller must provide a completed exemption certificate to the department of licensing or its agent to substantiate the exempt nature of the home.)~~

(4) Requirement to remit payment of tax if ((agricultural)) farmworker housing fails to continue to satisfy the conditions of exemption. ((The agricultural employee))

(a) Farmworker housing must be used for that purpose at least five consecutive years from the date the housing is approved for occupancy to retain the retail sales and use tax exemption. If this condition is not satisfied, the full amount of tax otherwise due ((shall be)) is immediately due and payable together with interest, but not penalties, from the date the housing ((is approved for occupancy)) ceases to be used as farmworker housing until the date of payment.

(b) If at any time ((agricultural employee)) farmworker housing ((that is not located on agricultural land)) ceases to ((be used as agricultural employee housing)) comply with the state's current building codes for single-family or multifamily dwellings, the full amount of tax otherwise due ((shall be)) is immediately due and payable with interest, but not penalties, from the date the housing ((ceased)) ceases to be used as ((agricultural employee)) farmworker housing until the date of payment.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.08.02745 and 82.12.02685. WSR 08-14-017, § 458-20-262, filed 6/20/08, effective 7/21/08. Statutory Authority: RCW 82.32.300 and 82.08.02745. WSR 98-24-069, § 458-20-262, filed 11/30/98, effective 12/31/98.]