

WSR 23-14-002

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed June 21, 2023, 2:30 p.m., effective July 22, 2023]

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

Purpose: The purpose of the proposed rule updates is to correct contact phone numbers referenced in the rules and to make other typographical changes without changing any effect of the rules.

Citation of Rules Affected by this Order: Amending WAC 458-20-10003, 458-20-10004, 458-20-10201, 458-20-10202, 458-20-102A, 458-20-126, 458-20-13601, 458-20-174, 458-20-178, 458-20-180, 458-20-190, 458-20-209, 458-20-210, 458-20-228, 458-20-229, 458-20-235, 458-20-239, 458-20-24001, 458-20-24001A, 458-20-24003, 458-20-240A, 458-20-267A, 458-20-268, and 458-20-278.

Statutory Authority for Adoption: RCW 82.01.060, 82.32.300.

Adopted under notice filed as WSR 23-09-048 on April 17, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 24, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 24, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 21, 2023.

Atif Aziz
Rules Coordinator

OTS-4513.2

AMENDATORY SECTION (Amending WSR 16-13-029, filed 6/6/16, effective 7/7/16)

WAC 458-20-10003 Brief adjudicative proceedings for matters related to suspension, nonrenewal, and nonissuance of licenses to sell spirits. (1) **Introduction.** The department of revenue (department) conducts adjudicative proceedings pursuant to chapter 34.05 RCW, the Administrative Procedure Act (APA). The department adopts in this rule, the procedures as provided in RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings to review the department notice explained in subsection (2) of this rule. The department must provide the notice before it may proceed in requesting that the Washington liquor control board (board) suspend, not renew, or not issue a taxpayer's spirits license(s) as defined in RCW 66.24.010 (3)(c), referred to in this rule as "agency action."

This rule explains the procedure pertaining to the adopted brief adjudicative proceedings.

(2) **Department notice.** If a taxpayer is more than (~~thirty~~) 30 days delinquent in reporting or remitting spirits taxes on a tax return or assessed by the department, including applicable penalties and interest, the department may request that the board suspend the taxpayer's spirits license or licenses and refuse to renew any existing spirits license held by the taxpayer or issue any new spirits license to the taxpayer. Before the department may take agency action, the department must provide the taxpayer with at least seven calendar days prior written notice of the delinquency and inform the taxpayer that the department intends to make the request to the board. The department notice must include:

- (a) A listing of any unfiled tax returns;
- (b) The amount of unpaid spirits taxes as applicable, including any applicable penalties and interest;
- (c) Who to contact to inquire about payment arrangements; and
- (d) Information that the taxpayer may seek administrative review of the department notice, including the deadline for seeking such review.

A taxpayer may seek an administrative review of the department notice as explained under subsection (3) of this rule. Brief adjudicative proceedings under this rule do not include the right to challenge the amount of any spirits taxes assessed by the department.

(3) **Conduct of brief adjudicative proceedings.** To initiate an appeal of a department notice, the taxpayer has seven calendar days from the date on the department notice to request a review of that notice. The taxpayer must file a written notice of appeal explaining why the taxpayer disagrees with the notice of delinquency.

A form notice of appeal is available at dor.wa.gov or by calling (~~1-800-647-7706~~) 360-705-6705. The completed form should be mailed or faxed to the department at:

Washington State Department of Revenue
Compliance Administration
Spirits License Suspension Petition
P.O. Box 47473
Olympia, WA 98504-7473
Fax: 360-586-8816

(a) A presiding officer, who will be either the assistant director of the compliance division or such other person as designated by the director of the department (director), will conduct brief adjudicative proceedings. The presiding officer for brief adjudicative proceedings will have agency expertise in the subject matter but will not otherwise have participated in the specific matter. The presiding officer's review is limited to the written record.

(b) As part of the notice of appeal, the taxpayer or the taxpayer's representative may include written documentation explaining the taxpayer's view of the matter. The presiding officer may also request additional documentation from the taxpayer or the department and will designate the date by which the documents must be submitted.

(c) In addition to the record, the presiding officer for brief adjudicative proceedings may employ agency expertise as a basis for decision.

(d) Within (~~ten~~) 10 days of receipt of the taxpayer's notice of appeal, the presiding officer will enter an initial order including a brief explanation of the decision under RCW 34.05.485. All orders in these brief adjudicative proceedings will be in writing. The initial order will become the department's final order unless a petition for

review is made to the department's administrative review and hearings division under subsection (4) of this rule. If the presiding officer's order invalidates the department notice, the department may in its discretion start new proceedings by sending a new department notice.

(4) **Review of initial order from brief adjudicative proceeding.** A taxpayer that has received an initial order upholding a department notice under subsection (3) of this rule may request a review by the department by filing a written petition for review or by making an oral request for review with the department's administrative review and hearings division within (~~twenty-one~~) 21 days after the service of the initial order on the taxpayer as described in subsection (8) of this rule.

A form petition of review is available at dor.wa.gov. A request for review should state the reasons for the review.

The address, telephone number, and fax number of the administrative review and hearings division are:

Administrative Review and Hearings Division
Spirits License Petition for Review/Spirits Taxes
Washington State Department of Revenue
P.O. Box 47460
Olympia, WA 98504-7460
Telephone Number: 360-534-1335
Fax: 360-534-1340

(a) A reviewing officer, who will be either the assistant director of the administrative review and hearings division or such other person as designated by the director, will conduct a brief adjudicative proceeding and determine whether the initial order was correctly decided. The reviewing officer's review is limited to the written record.

(b) The agency record need not constitute the exclusive basis for the reviewing officer's decision. The reviewing officer will have the authority of a presiding officer.

(c) The order of the reviewing officer will be in writing and include a brief statement of the reasons for the decision, and it must be entered within (~~twenty~~) 20 days of the petition for review. The order will include a notice that judicial review may be available. The order of the reviewing officer represents a final order of the department. If a final order invalidates the department notice, the department may in its discretion start new proceedings by sending a new department notice.

(d) A request for review is deemed denied if the department does not issue an order on review within (~~twenty~~) 20 days after the petition for review is filed.

(5) **Record in brief adjudicative proceedings.** The record with respect to the brief adjudicative proceedings under RCW 34.05.482 through 34.05.494 related to department notice will consist of:

(a) *The record before the presiding officer:* The record before the presiding officer consists of the department notice; the taxpayer's appeal of the department notice; all records relied upon by the department or submitted by the taxpayer related to the department notice; and all correspondence between the taxpayer and the department regarding the department notice.

(b) *The record before the reviewing officer:* The record before the reviewing officer consists of all documents included in the record before the presiding officer; the taxpayer's petition for review; and

all correspondence between the taxpayer and the department regarding the taxpayer's petition for review.

(6) **Court appeal.** Court appeal from the final order of the department is available pursuant to 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 rule and all other administrative remedies have been exhausted. See RCW 34.05.534.

(7) **Computation of time.** In computing any period of time prescribed by this rule or by the presiding officer or reviewing 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. This subsection does not apply with respect to computation of the seven calendar days required for the department notice.

(8) **Service.** All notices and other pleadings or papers filed with the presiding or reviewing officer must be served on the taxpayer, their representatives/agents of record, and the department.

(a) Service is made by one of the following methods:

(i) In person;

(ii) By first-class, registered or certified mail;

(iii) By fax and same-day mailing of copies;

(iv) By commercial parcel delivery company; or

(v) By electronic delivery pursuant to RCW 82.32.135.

(b) Service by mail is regarded as completed upon deposit in the United States mail properly stamped and addressed.

(c) Service by electronic fax is regarded as completed upon the production by the fax machine of confirmation of transmission.

(d) Service by commercial parcel delivery is regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(e) Service by electronic delivery is regarded as completed on the date that the department electronically sends the information to the parties or electronically notifies the parties that the information is available to be accessed by them.

(f) Service to a taxpayer, their representative/agent of record, the department, and presiding officer must be to the address shown on the notice described in subsection (3)(a) of this rule.

(g) Service to the reviewing officer must be to the administrative review and hearings division at the address shown in subsection (4) of this rule.

(h) Where proof of service is required, the proofs of service must include:

(i) An acknowledgment of service;

(ii) A certificate, signed by the person who served the document(s), stating the date of service; that the person did serve the document(s) upon all or one or more of the parties of record in the proceeding by delivering a copy in person to (names); and that the service was accomplished by a method of service as provided in this subsection.

(9) **Continuance.** The presiding officer or reviewing officer may grant, in their sole discretion, a request for a continuance by motion of the taxpayer, the department, or on its own motion.

(10) **Conversion of a brief adjudicative proceeding to a formal proceeding.** The presiding officer or reviewing officer, in their sole discretion, may convert a brief adjudicative proceeding to a formal

proceeding at any time on motion of the taxpayer, the department, or the presiding/reviewing officer's own motion.

(a) The presiding/reviewing officer will 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 may become the presiding officer or may designate a replacement presiding officer to conduct the formal proceedings upon notice to the taxpayer and the department.

(c) In the conduct of the formal proceedings, WAC 458-20-10002 will apply to the proceedings.

(11) **Taking agency action.** The department may initiate agency action as follows:

(a) If the taxpayer does not file a timely appeal under subsection (3) of this rule, the department may proceed with agency action the day following the end of the period for requesting such appeal;

(b) If the taxpayer does not make a petition for review consistent with subsection (4) of this rule, the department may proceed with agency action the day following the end of the period for making such petition of review;

(c) If the department makes a final order adverse to the taxpayer under subsection (4) of this rule, the department may proceed with agency action the day following the date the department issues its final order.

AMENDATORY SECTION (Amending WSR 16-13-029, filed 6/6/16, effective 7/7/16)

WAC 458-20-10004 Brief adjudicative proceedings for matters related to assessments and warrants for unpaid fees issued under chapter 59.30 RCW for manufactured and mobile home communities. (1) Introduction. The department of revenue (department) conducts adjudicative proceedings pursuant to chapter 34.05 RCW, the Administrative Procedure Act (APA). The department adopts in this rule, the procedures as provided in RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings to review the department's actions described in subsection (2) of this rule.

This rule explains the procedure pertaining to the adopted brief adjudicative proceedings.

(2) Department's action. The following actions taken by the department are subject to the brief adjudicative proceeding process described in this rule:

(a) Assessment of the one-time business license application fee or annual renewal application fee in RCW 59.30.050 (3)(a);

(b) Assessment of the annual registration assessment fee in RCW 59.30.050 (3)(b); and

(c) Assessment of the delinquency fee in RCW 59.30.050(4).

The assessment of more than one type of fee against a manufactured/mobile home community owner or landlord in RCW 59.30.050 does not result in the creation of more than one adjudicative proceeding if those fees are issued in the same document, on the same date.

As explained in RCW 59.30.020(4), the terms "landlord" and "community owner" both refer to the owner of the mobile home park or manufactured home community or their agents. For purposes of this rule, the department refers to such persons as "community owners."

(3) Conduct of brief adjudicative proceedings. To initiate an appeal of the department's action, the community owner has (~~twenty-one~~) 21 calendar days from the date on the department's action to request a review of that action. The community owner must file a written notice of appeal explaining why the community owner disagrees with the action.

A (~~form~~) notice of appeal form is available at dor.wa.gov or by calling (~~1-800-647-7706~~) 360-705-6705. The completed form should be mailed or faxed to the department at:

Washington State Department of Revenue
Special Programs
Review of Annual Registration for Manufactured/Mobile Home Communities
P.O. Box 47472
Olympia, WA 98504-7472
Fax: 360-534-1320

(a) A presiding officer, who will be a person designated by the director of the department (director) or the assistant director of special programs division, will conduct brief adjudicative proceedings. The presiding officer for brief adjudicative proceedings will have agency expertise in the subject matter but will not otherwise have participated in the specific matter. The presiding officer's review is limited to the written record.

(b) As part of the notice of appeal, the community owner or the community owner's representative may include written documentation explaining the community owner's view of the matter. The presiding officer may also request additional documentation from the community owner or the department and will designate the date by which the documents must be submitted.

(c) In addition to the record, the presiding officer for brief adjudicative proceedings may employ agency expertise as a basis for decision.

(d) Within (~~twenty-one~~) 21 calendar days of receipt of the community owner's notice of appeal, the presiding officer will enter an initial order including a brief explanation of the decision under RCW 34.05.485. All orders in these brief adjudicative proceedings will be in writing. The initial order will become the department's final order unless a petition for review is made to the department's administrative review and hearings division under subsection (4) of this rule. If the presiding officer's order invalidates the department action, the department may in its discretion initiate another action that corrects the defects in the prior action.

(4) Review of initial order from brief adjudicative proceeding. A community owner that has received an initial order upholding a department action under subsection (3) of this rule may request a review by the department by filing a written petition for review or by making an oral request for review with the department's administrative review and hearings division within (~~twenty-one~~) 21 calendar days after the service of the initial order on the community owner as described in subsection (8) of this rule.

A form petition of review is available at dor.wa.gov. A request for review should state the reasons for the review.

The address, telephone number, and fax number of the administrative review and hearings division are:

Administrative Review and Hearings Division
Manufactured/Mobile Home Community Appeals
Washington State Department of Revenue
P.O. Box 47460
Olympia, WA 98504-7460
Telephone Number: 360-534-1335
Fax: 360-534-1340

(a) A reviewing officer, who will be either the assistant director of the administrative review and hearings division or such other person as designated by the director, will conduct a brief adjudicative proceeding and determine whether the initial order was correctly decided. The reviewing officer's review is limited to the written record.

(b) The agency record need not constitute the exclusive basis for the reviewing officer's decision. The reviewing officer will have the authority of a presiding officer.

(c) The order of the reviewing officer will be in writing and include a brief statement of the reasons for the decision, and it must be entered within (~~thirty~~) 30 calendar days of the petition for review. The order will include a notice that judicial review may be available. The order of the reviewing officer represents a final order of the department. If a final order invalidates the department's action, the department may in its discretion initiate another action that corrects the defects in the prior action.

(5) Record in brief adjudicative proceedings. The record with respect to the brief adjudicative proceedings under RCW 34.05.482 through 34.05.494 will consist of:

(a) The record before the presiding officer: The record before the presiding officer consists of the notice of the department action; the community owner's appeal of the department action; all records relied upon by the department or submitted by the community owner related to the department's action; and all correspondence between the community owner and the department regarding the department's action.

(b) The record before the reviewing officer: The record before the reviewing officer consists of all documents included in the record before the presiding officer; the community owner's petition for review; and all correspondence between the community owner and the department regarding the community owner's petition for review.

(6) Court appeal. Court appeal from the final order of the department is available pursuant to 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 rule and all other administrative remedies have been exhausted. See RCW 34.05.534.

(7) Computation of time. In computing any period of time prescribed by this rule or by the presiding officer or reviewing 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.

(8) Service. All notices and other pleadings or papers filed with the presiding or reviewing officer must be served on the community owner, their representatives/agents of record, and the department.

(a) Service is made by one of the following methods:

- (i) In person;
- (ii) By first-class, registered or certified mail;
- (iii) By fax and same-day mailing of copies;
- (iv) By commercial parcel delivery company; or
- (v) By electronic delivery pursuant to RCW 82.32.135.

(b) Service by mail is regarded as completed upon deposit in the United States mail properly stamped and addressed.

(c) Service by electronic fax is regarded as completed upon the production by the fax machine of confirmation of transmission.

(d) Service by commercial parcel delivery is regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(e) Service by electronic delivery is regarded as completed on the date that the department electronically sends the information to the parties or electronically notifies the parties that the information is available to be accessed by them.

(f) Service to a community owner, their representative/agent of record, the department, and presiding officer must be to the address shown on the form notice of appeal described in subsection (3) of this rule.

(g) Service to the reviewing officer must be to the administrative review and hearings division at the address shown in subsection (4) of this rule.

(h) Where proof of service is required, the proofs of service must include:

(i) An acknowledgment of service;

(ii) A certificate, signed by the person who served the document(s), stating the date of service; that the person did serve the document(s) upon all or one or more of the parties of record in the proceeding by delivering a copy in person to (names); and that the service was accomplished by a method of service as provided in this subsection.

(9) Continuance. The presiding officer or reviewing officer may grant, in their sole discretion, a request for a continuance by motion of the community owner, the department, or on its own motion.

(10) Conversion of a brief adjudicative proceeding to a formal proceeding. The presiding officer or reviewing officer, in their sole discretion, may convert a brief adjudicative proceeding to a formal proceeding at any time on motion of the community owner, the department, or the presiding/reviewing officer's own motion.

(a) The presiding/reviewing officer will 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 may become the presiding officer or may designate a replacement presiding officer to conduct the formal proceedings upon notice to the community owner and the department.

(c) In the conduct of the formal proceedings, WAC 458-20-10002 will apply to the proceedings.

AMENDATORY SECTION (Amending WSR 16-13-029, filed 6/6/16, effective 7/7/16)

WAC 458-20-10201 Application process and eligibility requirements for reseller permits. (1) **Introduction.** Reseller permits, issued by the department of revenue (department), replaced resale certificates as the documentation necessary to substantiate the wholesale nature of a sales transaction effective January 1, 2010. This rule explains the criteria under which the department will automatically issue a reseller permit, the application process for both contractors and taxpayers engaging in other business activities when the department does not automatically issue or renew a reseller permit, and the criteria that may result in the denial of an application for a reseller permit. Unique requirements and provisions apply to contractors. (See Part III of this rule.)

The information in this rule is organized into the following three parts:

- (a) Part I: General Information.
- (b) Part II: Businesses Other than Contractors.
- (c) Part III: Contractors.

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

(a) WAC 458-20-102 (Reseller permits) which explains taxpayers' responsibilities regarding the use of reseller permits, sellers' responsibilities for retaining copies of reseller permits, and the implications for taxpayers not properly using reseller permits and sellers not obtaining copies of reseller permits from taxpayers;

(b) WAC 458-20-10202 (Brief adjudicative proceedings for matters related to reseller permits) which explains the process a taxpayer must use to appeal the department's denial of an application for a reseller permit; and

(c) WAC 458-20-192 (Indian-Indian country) which explains the extent of the state's authority to regulate and impose tax in Indian country.

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

Part I - General Information

(101) Definitions. For the purpose of this rule, the following terms will apply:

(a) **Consumer.** "Consumer" has the same meaning as under RCW 82.04.190.

(b) **Contractor.** A "contractor" is a person whose primary business activity is as a contractor as defined under RCW 18.27.010 or an electrical contractor as defined under RCW 19.28.006.

(c) **Gross income.** "Gross income" means gross proceeds of sales as defined in RCW 82.04.070 and value of products manufactured as determined under RCW 82.04.450.

(d) **Labor.** "Labor" is defined as the work of subcontractors (including personnel provided by temporary staffing companies) hired by a contractor to perform a portion of the construction services in respect to real property owned by a third party. In the case of speculative builders, labor includes the work of any contractor hired by the speculative builder. Labor does not include the work of taxpayer's em-

ployees. Nor does the term include architects, consultants, engineers, construction managers, or other independent contractors hired to oversee a project but who are not responsible for the construction of the project. However, for purposes of the percentage discussed in subsection (303)(a)(iii) of this rule, purchases of labor may include the wages of taxpayer's employees and amounts paid to consultants, engineers, construction managers or other independent contractors hired to oversee a project if all such purchases are commingled in the applicant's records and it would be impractical to exclude such purchases.

(e) **Materials.** "Materials" is defined as tangible personal property that becomes incorporated into the real property being constructed, repaired, decorated, or improved. Materials are the type of tangible personal property that contractors on retail construction projects purchase at wholesale, such as lumber, concrete, paint, wiring, pipe, roofing materials, insulation, nails, screws, drywall, and flooring material. Materials do not include consumable supplies, tools, or equipment, whether purchased or rented, such as bulldozers. However, for purposes of the percentage discussed in subsection (303)(a)(iii) of this rule, purchases of consumable supplies, tools, and equipment rentals may be included with material purchases if all such purchases are commingled in the applicant's records and it would be impractical to exclude such purchases.

(f) **Material misstatement.** "Material misstatement" is a false statement knowingly or purposefully made by the applicant with the intent to deceive or mislead the department.

(g) **Outstanding tax liability.** For the purpose of this rule, "outstanding tax liability" is any issued tax invoice that has not been paid in full on or before its stated due date. The definition excludes an invoice placed on hold by the department or where the department has executed a payment agreement with the taxpayer and the taxpayer is still in compliance with that agreement.

(h) **Reseller permit.** A "reseller permit" is the document issued to a taxpayer by the department, a copy of which the taxpayer provides to a seller to substantiate a wholesale purchase. A wholesale purchase is not subject to retail sales tax. RCW 82.04.060; 82.08.020.

(i) **Retail construction activity.** "Retail construction activity" means the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, on, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and it also includes the sale of services or charges made for the clearing of land and the moving of earth except the mere leveling of land used in commercial farming or agriculture. Retail construction activity generally involves residential and commercial construction performed for others, including road construction for the state of Washington. It generally includes construction activities that are not specifically designated as speculative building, government contracting, public road construction, logging road construction, radioactive waste cleanup on federal lands, or designated hazardous site clean up jobs.

(j) **Wholesale construction activity.** "Wholesale construction activity" means labor and services rendered for persons who are not consumers in respect to real property, if such labor and services are expressly defined as a retail sale by RCW 82.04.050 when rendered to or for consumers.

(102) Can any business obtain a reseller permit? No. The legislature passed the act authorizing reseller permits to address the significant retail sales tax noncompliance problem resulting from both the intentional and unintentional misuse of resale certificates. The department will not issue a reseller permit unless the business substantiates that it is entitled to make wholesale purchases. Some businesses may not receive a reseller permit, and if they make wholesale purchases, they will need to pay retail sales tax to the seller and then claim a "taxable amount for tax paid at source" deduction on their excise tax return or request a refund from the department as discussed in subsection (205) of this rule.

Example 1. BC Interior Design (BC) arranges for its customers to order and pay for furniture, window treatments and other decorative items directly from vendors. As the customers purchase directly from the vendors, and BC does not purchase the items for resale to their customers, BC may not qualify for a reseller permit. BC must meet the criteria as discussed in subsection (203) of this rule, which includes reporting income from retailing, wholesaling, or manufacturing activities.

Part II - Businesses Other than Contractors

(201) How does a business obtain a reseller permit? The department may automatically issue a reseller permit to a business if it appears to the department's satisfaction, based on the nature of the business's activities and any other information available to the department, that the business is entitled to make purchases at wholesale.

Those businesses that do not receive an automatically issued reseller permit may apply to the department to obtain a reseller permit. Applications can be filed using the businesses' "My Account." If a paper application is needed, businesses can obtain one by calling (~~1-800-647-7706~~) 360-705-6705 (taxpayer services) or 360-902-7137 (taxpayer account administration). Completed paper applications should be mailed or faxed to the department at:

Taxpayer Account Administration
Washington State Department of Revenue
P.O. Box 47476
Olympia, WA 98504-7476
Fax: 360-705-6733

(202) When does a business apply for a reseller permit? A business may apply for a reseller permit at any time.

(203) What criteria will the department consider when deciding whether a business will receive a reseller permit?

(a) Except as provided in (b) of this subsection, a business other than a contractor will receive a reseller permit if it satisfies the following criteria (contractors should refer to subsection (303) of this rule for an explanation of the requirements unique to them):

(i) The business has an active tax reporting account with the department;

(ii) The business has reported gross income on its excise tax returns covering a monthly or quarterly period during the immediately preceding six months or, if the business reports on an annual basis, on the immediately preceding annual excise tax return; and

(iii) Five percent or more of the business's gross income reported during the applicable six- or (~~twelve~~) 12-month period described in (a) (ii) of this subsection was reported under a retailing, whole-

salings, or manufacturing business and occupation (B&O) tax classification.

(b) Notwithstanding (a) of this subsection, the department may deny an application for a reseller permit if:

(i) The department determines that an applicant is not entitled to make purchases at wholesale or is otherwise prohibited from using a reseller permit based on the nature of the applicant's business;

(ii) The applicant has been assessed the penalty for the misuse of a resale certificate or a reseller permit;

(iii) The application contains any material misstatement;

(iv) The application is incomplete;

(v) The applicant has an outstanding tax liability due to the department; or

(vi) The department determines that denial of the application is in the best interest of collecting the taxes due under Title 82 RCW.

(c) The department's decision to approve or deny an application may be based on excise tax returns previously filed with the department by the applicant, a current or previous examination of the applicant's books and records by the department, information provided by the applicant in the master application and the reseller permit application, and other information available to the department.

(d) In the event that a business has reorganized, the new business resulting from the reorganization may be denied a reseller permit if the former business would not have qualified for a reseller permit under (a) or (b) of this subsection. For purposes of this subsection, "reorganize" means:

(i) The transfer, however effected, of a majority of the assets of one business to another business where any of the persons having an interest in the ownership or management in the former business maintain an ownership or management interest in the new business, either directly or indirectly;

(ii) A mere change in identity or form of ownership, however effected; or

(iii) The new business is a mere continuation of the former business based on significant shared features such as owners, personnel, assets, or general business activity.

(204) What if I am a new business and don't have a past reporting history? New businesses will generally be issued permits if they indicate they will engage in activity taxable under a retailing, wholesaling, or manufacturing B&O tax classification.

(205) What if I don't get a reseller permit and some of my purchases qualify as wholesale purchases? Some taxpayers that do not qualify for a reseller permit make occasional wholesale purchases. In these circumstances, the taxpayer must pay retail sales tax on these purchases and then claim a "taxable amount for tax paid at source" deduction on its excise tax return. However, such a deduction in respect to the purchase of services is not permitted if the services are not of a type that can be sold at wholesale under the definition of wholesale sale in RCW 82.04.060.

Alternatively, the taxpayer may request a refund from the department of retail sales tax it paid on purchases that are later resold without being used (intervening use) by the taxpayer or for purchases that would otherwise have met the definition of wholesale sale if the taxpayer had provided the seller with a reseller permit or uniform exemption certificate as authorized in RCW 82.04.470. For instructions on requesting a refund see WAC 458-20-229.

Part III - Contractors

(301) How does a contractor obtain a reseller permit? The department may automatically issue a reseller permit to a contractor if the department is satisfied that the contractor is entitled to make purchases at wholesale and that issuing the reseller permit is unlikely to jeopardize collection of sales taxes due based on the criteria discussed in subsection (303) of this rule.

Contractors that do not receive an automatically issued reseller permit may apply to the department to obtain a reseller permit in the same manner as provided in subsection (201) of this rule. However, the application identifies information specific to contractors that must be provided.

(302) When does a contractor apply for a reseller permit? The same guidelines for business applicants as provided in subsection (202) of this rule also apply to contractor applicants.

(303) What are the criteria specific to contractors to receive a reseller permit?

(a) The department may issue a permit to a contractor that:

(i) Provides a completed application with no material misstatement as that term is defined in this rule;

(ii) Demonstrates it is entitled to make purchases at wholesale; and

(iii) Reported on its application at least (~~twenty-five~~) 25 percent of its total dollar amount of material and labor purchases in the preceding (~~twenty-four~~) 24 months were for retail and wholesale construction activities performed by the contractor.

The department may approve an application not meeting these criteria if the department is satisfied that approval is unlikely to jeopardize collection of the taxes due under Title 82 RCW.

(b) If the criteria in (a) of this subsection are satisfied, the department will then consider the following factors to determine whether to issue a reseller permit to a contractor:

(i) Whether the contractor has an active tax reporting account with the department;

(ii) Whether the contractor has reported gross income on its excise tax returns covering a monthly or quarterly period during the immediately preceding six months or, if the contractor reports on an annual basis, on the immediately preceding annual excise tax return;

(iii) Whether the contractor has the appropriate certification and licensing with the Washington state department of labor and industries;

(iv) Whether the contractor has been assessed the penalty for the misuse of a resale certificate or a reseller permit;

(v) Whether the contractor has an outstanding tax liability due to the department; and

(vi) Any other factor resulting in a determination by the department that denial of the contractor's application is in the best interest of collecting the taxes due under Title 82 RCW.

(c) The department's decision to approve or deny an application may be based on the same materials and information as discussed in subsection (203)(c) of this rule.

(d) The provisions of subsection (203)(d) of this rule apply equally to contractors.

Example 2. DC Contracting is a speculative homebuilder and also purchases houses to renovate and sell, sometimes referred to as flipping. A speculative builder is the consumer of all materials incorpo-

rated into the real estate including houses purchased for flipping. Retail sales tax is owed on all supplies and services DC Contracting purchases, unless there is an applicable exemption. DC Contracting would not qualify for a reseller permit under these facts.

(304) What if a contractor does not obtain a reseller permit and some of its purchases do qualify as wholesale purchases? The provisions of subsection (205) of this rule apply equally to contractors.

AMENDATORY SECTION (Amending WSR 16-13-029, filed 6/6/16, effective 7/7/16)

WAC 458-20-10202 Brief adjudicative proceedings for matters related to reseller permits. (1) **Introduction.** The department of revenue (department) conducts adjudicative proceedings pursuant to chapter 34.05 RCW, the Administrative Procedure Act (APA). The department adopts in this rule the brief adjudicative procedures as provided in RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings for the following matters related to reseller permits:

(a) A determination of whether an applicant for a reseller permit meets the criteria for a reseller permit per WAC 458-20-10201;

(b) On the administrative appeal of an initial order denying the taxpayer's application for a reseller permit, a determination as to whether the department's order denying the application was correctly based on the criteria for approving reseller permits as set forth in WAC 458-20-10201;

(c) A determination of whether a reseller permit should be revoked using the criteria per RCW 82.32.780 and WAC 458-20-102; and

(d) On the administrative appeal of an initial order revoking the taxpayer's reseller permit, a determination as to whether the department's order revoking the permit was correctly based on the criteria as set forth in RCW 82.32.780 and WAC 458-20-102.

This rule explains the procedure and process pertaining to the adopted brief adjudicative proceedings.

(2) Record in brief adjudicative proceedings.

(a) The record with respect to a taxpayer's appeal per RCW 34.05.482 through 34.05.485 of the department's denial of an application for a reseller permit will consist of:

(i) The taxpayer's application for the reseller permit, the taxpayer's notice of appeal, the taxpayer's written response, if any, to the reasons set forth in the department's notice of denial of a reseller permit, all records relied upon by the department or submitted by the taxpayer; and

(ii) All correspondence between the taxpayer requesting the reseller permit and the department regarding the application for the reseller permit.

(b) The record with respect to a taxpayer's appeal per RCW 34.05.482 through 34.05.485 of the department's initial order revoking a reseller permit will consist of the department's notice of intent to revoke the reseller permit, the taxpayer's written response to the department's notice of intent to revoke, the taxpayer's notice of appeal, and all records relied upon by the department, or submitted by the taxpayer.

(3) Conduct of brief adjudicative proceedings.

(a) If the department denies an application for a reseller permit, it will notify the taxpayer of the denial in writing, stating the reasons for the denial. To initiate an appeal of the denial of the reseller permit application, the taxpayer must file a written appeal no later than ~~((twenty-one))~~ 21 days after service of the department's written notice that the taxpayer's application has been denied.

(b) If the department proposes to revoke a reseller permit, it will notify the taxpayer of the proposed revocation in writing, stating the reasons for the proposed revocation. To contest the proposed revocation of the reseller permit, the taxpayer must file a written response no later than ~~((twenty-one))~~ 21 days after service of the department's written notice of the proposed revocation of the reseller permit.

(c) A Reseller Permit Appeal Petition form, or form for a response to the proposed revocation of a reseller permit is available at the department's website dor.wa.gov (~~or by calling 1-800-647-7706~~). The completed form (~~should be mailed or faxed to the department at:~~

~~Washington State Department of Revenue~~

~~Taxpayer Account Administration~~

~~P.O. Box 47476~~

~~Olympia, WA 98504-7476~~

~~Fax: 360-705-6733~~) may be sent by mail to the address provided in the form. Alternatively, an appeal for a denial of reseller permit can also be requested online using My DOR. For instructions to appeal online, visit Reseller Permit section on the department's website. For assistance, call 360-705-6217.

(d) A presiding officer, who will be either the assistant director of the taxpayer account administration division or such other person as designated by the director of the department (director), will conduct brief adjudicative proceedings. The presiding officer for brief adjudicative proceedings will have agency expertise in the subject matter but will not otherwise have participated in responding to the taxpayer's application for a reseller permit or in the decision to propose revocation of the taxpayer's reseller permit.

(e) As part of the appeal, the taxpayer or the taxpayer's representative may present written documentation and explain the taxpayer's view of the matter. The presiding officer may request additional documentation from the taxpayer or the department and will designate the date by which the documents must be submitted.

(f) No witnesses may appear to testify.

(g) In addition to the record, the presiding officer for brief adjudicative proceedings may employ agency expertise as a basis for decision.

(h) Within ~~((twenty-one))~~ 21 days of receipt of the taxpayer's appeal of the denial of a reseller permit or proposed revocation of the reseller permit, the presiding officer will enter an initial order, including a brief explanation of the decision per RCW 34.05.485. All orders in these brief adjudicative proceedings will be in writing. The initial order will become the department's final order unless an appeal is filed with the department's administrative review and hearings division in subsection (4) of this rule.

(4) Review of initial orders from brief adjudicative proceeding.

A taxpayer may request a review by the department of an initial order issued per subsection (3) of this rule by filing a petition for review or by making an oral request for review with the department's administrative review and hearings division within ~~((twenty-one))~~ 21 days af-

ter the service of the initial order on the taxpayer. A form for an appeal of an initial order per subsection (3) of this rule is available at dor.wa.gov. A request for review should state the reasons the review is sought. A taxpayer making an oral request for review may at the same time mail a written statement to the address below stating the reasons for the appeal and its view of the matter. The address, telephone number, and fax number of the administrative review and hearings division are:

Administrative Review and Hearings Division, Reseller Permit Appeals

Washington State Department of Revenue
P.O. Box 47460
Olympia, WA 98504-7460
Telephone Number: 360-534-1335
Fax: 360-534-1340

(a) A reviewing officer, who will be either the assistant director of the administrative review and hearings division or such other person as designated by the director, will conduct brief adjudicative proceedings and determine whether the department's initial order issued per subsection (3) of this rule was correctly based on the criteria set forth in RCW 82.32.780, WAC 458-20-102, and 458-20-10201. The reviewing officer will review the record and, if needed, convert the proceeding to a formal adjudicative proceeding.

(b) The agency record need not constitute the exclusive basis for the reviewing officer's decision. The reviewing officer will have the authority of a presiding officer.

(c) The order of the reviewing officer will be in writing and include a brief statement of the reasons for the decision, and it must be entered within (~~twenty~~) 20 days of the petition for review. The order will include a notice that judicial review may be available. The order of the reviewing officer represents the final decision of the department.

(d) A request for administrative review is deemed denied if the department does not issue an order on review within (~~twenty~~) 20 days after the petition for review is filed or orally requested.

(5) **Conversion of a brief adjudicative proceeding to a formal proceeding.** The presiding officer or reviewing officer may convert the brief adjudicative proceeding to a formal proceeding at any time on motion of the taxpayer, the department, or the presiding/reviewing officer's own motion.

(a) The presiding/reviewing officer will 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 may become the presiding officer or may designate a replacement presiding officer to conduct the formal proceedings upon notice to the taxpayer and the department.

(c) In the conduct of the formal proceedings, WAC 458-20-10002 will apply to the proceedings.

(6) **Court appeal.** Court appeal from the final order of the department is available pursuant to 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 rule and all other administrative remedies have been exhausted. See RCW 34.05.534.

(7) **Computation of time.** In computing any period of time prescribed by this rule 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 are excluded in the computation. Service as discussed in subsection (8) of this rule is deemed complete upon mailing.

(8) **Service.** All notices and other pleadings or papers filed with the presiding or reviewing officer must be served on the taxpayer, their representatives/agents of record, and the department.

(a) Service is made by one of the following methods:

(i) In person;

(ii) By first-class, registered or certified mail;

(iii) By fax and same-day mailing of copies;

(iv) By commercial parcel delivery company; or

(v) By electronic delivery pursuant to RCW 82.32.135.

(b) Service by mail is regarded as completed upon deposit in the United States mail properly stamped and addressed.

(c) Service by electronic fax is regarded as completed upon the production by the fax machine of confirmation of transmission.

(d) Service by commercial parcel delivery is regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(e) Service by electronic delivery is regarded as completed on the date that the department electronically sends the information to the parties or electronically notifies the parties that the information is available to be accessed by them.

(f) Service to a taxpayer, their representative/agent of record, the department, and presiding officer must be to the address shown on the notice described in subsection (3)(a) of this rule.

(g) Service to the reviewing officer must be to the administrative review and hearings division at the address shown in subsection (4) of this rule.

(h) Where proof of service is required, the proofs of service must include:

(i) An acknowledgment of service;

(ii) A certificate, signed by the person who served the document(s), stating the date of service; that the person did serve the document(s) upon all or one or more of the parties of record in the proceeding by delivering a copy in person to (names); and that the service was accomplished by a method of service as provided in this subsection.

(9) **Continuance.** The presiding officer or reviewing officer may grant a request for a continuance by motion of the taxpayer, the department, or on its own motion.

AMENDATORY SECTION (Amending WSR 11-12-021, filed 5/24/11, effective 6/24/11)

WAC 458-20-102A Resale certificates. (1) **Introduction.** This section provides information regarding the use of resale certificates, which were the documents used to substantiate the wholesale nature of a sales transaction occurring prior to January 1, 2010. Resale certificates cannot be used to substantiate wholesale sales made after December 31, 2009.

This section provides information that applies to periods prior to January 1, 2010. It 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).

(a) **Legislation passed in 2009.** Effective January 1, 2010, reseller permits issued by the department of revenue (department) replace resale certificates as the documentation necessary to substantiate the wholesale nature of a sales transaction (chapter 563, Laws of 2009).

Businesses should consult:

- WAC 458-20-102 (Reseller permits) for more information about the use of reseller permits to substantiate wholesale sales beginning January 1, 2010;
- WAC 458-20-10201 (Application process and eligibility requirements for reseller permits) for more information about the application process and eligibility requirements for obtaining a reseller permit; and
- WAC 458-20-10202 (Brief adjudicative proceedings for matters related to reseller permits) for more information about the procedures for appealing the denial of an application for a reseller permit.

(b) **Legislation passed in 2003.** In 2003, the legislature enacted legislation conforming state law to portions of the national Streamlined Sales and Use Tax Agreement (chapter 168, Laws of 2003), which eliminates the good faith requirement when the seller takes from the buyer a resale certificate and also eliminates signature requirements for certificates provided in a format other than paper. These changes apply to resale certificates taken on and after July 1, 2004.

(c) **Legislation passed in 2007.** Additional Streamlined Sales and Use Tax Agreement legislation was enacted in 2007 (chapter 6, Laws of 2007). It eliminates the provision that resale certificates are only valid for four years from the date they are issued to the seller, as long as there is a recurring business relationship between the buyer and seller. This change is effective on July 1, 2008.

(2) **What is a resale certificate?** The resale certificate is a document or combination of documents that substantiates the wholesale nature of a sale. The resale certificate cannot be used for purchases that are not purchases at wholesale, or where a more specific certificate, affidavit, 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) **What is the scope of a resale certificate?** 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 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~~) 12 consecutive months. 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) **Who may issue and sign certificates?** 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 that 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.

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.** Prior to July 1, 2008, resale certificates must be renewed at least every four years. As of July 1, 2008, the requirement to renew resale certificates at least every four years has been eliminated. The buyer must renew its resale certificate whenever a change in the ownership of the buyer's business requires a new tax registration. (See WAC 458-20-101 Tax registration and tax reporting.) The buyer may not make purchases under the authority of a resale certificate bearing a tax registration number that has been canceled or revoked by the department of revenue (department).

(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 retail sales tax exemptions otherwise provided by law.

(a) **When may a buyer issue a resale certificate?** The buyer may issue a resale certificate only when the property or services purchased are:

(i) For resale in the regular course of the buyer's business without intervening use by the buyer;

(ii) To be used as an ingredient or component part of a new article of tangible personal property to be produced for sale;

(iii) A chemical to be used in processing an article to be produced for sale (see WAC 458-20-113 on chemicals used in processing);

(iv) To be used in processing ferrosilicon that is subsequently used in producing magnesium for sale;

(v) Provided to consumers as a part of competitive telephone service, as defined in RCW 82.04.065;

(vi) 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

(vii) 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 WAC 458-20-210 on sales to and by farmers.)

(b) **Required information.** All resale certificates, whether paper or nonpaper format, must contain the following information:

- (i) The name and address of the buyer;
- (ii) The uniform business identifier or tax registration number of the buyer, if the buyer is required to be registered with the department;
- (iii) The type of business;
- (iv) The categories of items or services to be purchased at wholesale, unless the buyer is in a business classification that may present a blanket resale certificate as provided by the department by rule;
- (v) The date on which the certificate was provided;
- (vi) A statement that the items or services purchased either are purchased for resale in the regular course of business or are otherwise purchased at wholesale; and

(vii) A statement that the buyer acknowledges that the buyer is solely responsible for purchasing within the categories specified on the certificate and that misuse of the resale certificate subjects the buyer to a penalty of (~~fifty~~) 50 percent of the tax due, in addition to the tax, interest, and any other penalties imposed by law.

(c) **Additional requirements for paper certificates.** In addition to the requirements stated in (b) of this subsection, paper certificates must contain the following:

- (i) The name of the individual authorized to sign the certificate, printed in a legible fashion;
- (ii) The signature of the authorized individual; and
- (iii) The name of the seller. RCW 82.04.470.

(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 (~~one hundred twenty~~) 120 days 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, a duplicate copy of an original resale certificate, or a certificate in a format other than paper.

(a) 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) of this section. The department 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. 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 that 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 that would normally be purchased at wholesale by the buyer; and

(iii) 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.

(b) 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 WAC 458-20-229 Refunds.) However, refer to (f) of this subsection in event of an audit situation.

(c) **Timing requirements for single orders with multiple billings.** 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~~) 120 days after the first billing. 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~~) 120 days of the initial construction draw request, even though the construction project may not be completed at that time and additional draw requests will follow.

(d) **Requirements for resale certificates obtained after (~~one hundred twenty~~) 120 days have passed.** If the resale certificate is obtained more than (~~one hundred twenty~~) 120 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 that is not obtained within (~~one hundred twenty~~) 120 days 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.

(e) **Examples.** The following examples explain the seller's documentary requirements in typical situations when obtaining a resale certificate more than (~~one hundred twenty~~) 120 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 year 1, MN Company regularly makes sales to ABC Inc. In June of the same year, 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~~) 120 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 1st of that year. Accompanying the resale certificate is a memo providing a list of the invoice numbers for all past sales transactions through May 15th of that year. 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.

(ii) XYZ Company makes three sales to MP Inc. in October of year 1 and does not charge retail sales tax. In the review of its resale certificate file in April of the following year, 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~~) 120 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 that 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 (a) of this subsection for information on how a seller can prove through other facts and circumstances that a sale is a wholesale sale.) 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~~) 120 days of the sale.

(f) Additional time to secure documentation in audit situation.

If in event of an audit the department discovers that the seller has not secured, as described in this subsection (5), the necessary resale certificates and/or documentation, the seller will generally be allowed (~~one hundred twenty~~) 120 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.

(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 will be assessed a penalty of (~~fifty~~) 50 percent of the tax due on the improperly purchased item or service. This penalty is in addition to all other taxes, penalties, and interest due, and can be imposed even if there was no intent to evade the payment of retail sales tax. The penalty will be assessed by the department and applies only to the buyer. 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 - suggested form. 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 is available on the department's internet site at <http://dor.wa.gov>, or can be obtained by calling the department's telephone information center at (~~1-800-647-7706~~) 360-705-6705 or by writing:

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

A resale certificate may be in any other form that contains substantially the same information and language, except that certificates provided in a format other than paper are not required to include the printed name of the person authorized to sign the certificate, the signature of the authorized individual, or the name of the seller.

Effective July 1, 2008, buyers also have the option of using a Streamlined Sales and Use Tax Agreement Certificate of Exemption, which has been modified for Washington state laws. It can also be found on the department's internet site at <http://dor.wa.gov>.

(a) **Buyer's responsibility to specify products or services purchased at wholesale.** RCW 82.04.470 requires 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 that 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 that 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; and

(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 directly 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 the uncollected sales tax.

(iv) Persons having specific questions regarding the use of terms to describe products or services purchased at wholesale may submit their questions to the department for ruling. The department may be contacted on the internet at <http://dor.wa.gov/> or by writing:

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

(b) **Blanket resale certificates.** 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 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.

(i) 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.

(ii) As of July 1, 2008, renewal or updating of blanket resale certificates is not required 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~~) 12 consecutive months.

To effectively administer this provision during an audit, the department will accept a resale certificate as evidence for wholesale sales that occur within four years of the certificate's effective date without evidence of sales transactions being made once every (~~twelve~~) 12 months. For sales transactions made more than four years after the date of the properly completed resale certificate, the seller must substantiate that a recurring business relationship with the buyer has occurred for any sales outside the period of more than four years after the effective date of the resale certificate.

(c) **Resale certificates for single transactions.** 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. 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 occasionally withdraws 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 tax or use tax must be remitted to the department.

(iii) TM Company is a manufacturer of electric motors. When making purchases from its suppliers, TM issues a paper purchase order. This purchase order contains the 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 that, 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. 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 WAC 458-20-254 Recordkeeping.)

(8) **Other documentary evidence.** Other documentary evidence may be used by the seller and buyer in lieu of the resale certificate form described in this section. 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 resale certificate form in this section. The following are examples of documentary evidence that will be accepted to show that sales were at wholesale:

(a) **Combination of documentary evidence.** 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 required on a resale certificate, including, for paper certificates, 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 acknowledgment of the penalties for the misuse of resale certificate privileges, as generally required of a resale certificate; and

(B) The name and registration number of the buyer/business, and, if a paper certificate, an authorized signature.

(b) **Contracts of sale.** A contract of sale that 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) **Other preapproved documentary evidence.** Any other documentary evidence that has been approved in advance and in writing by the department.

(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 the buyer a resale certificate as described in this section. The seller may accept a resale certificate from an unregistered 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. (See WAC 458-20-101 Tax registration and tax reporting.) When making wholesale sales to farmers (including farmers operating in other states), the seller must take from the farmer a resale certificate as described in this section. Farmers not required to be registered with the department 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 458-20-210 (Sales of tangible personal property for farming—Sales of agricultural products by farmers).

(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 (~~five~~) 50 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 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~~) 80 percent of the tax liability within (~~one hundred twenty~~) 120 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~~) 80 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~~) 80 percent threshold is satisfied.

(ii) The following example illustrates the use of a resale certificate for dual-use purchases. This example 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. BC Contracting operates both as a prime contractor and speculative builder of residential homes. BC Contracting purchases building materials from Seller D that 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 de-

ferred 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)) 50 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 retail sales tax on all articles of tangible personal property and subsequently resells a portion of the articles, 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 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) The following example illustrates the tax paid at source deduction on or after July 1, 2008. This example 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. Seller A is located in Spokane, Washington and purchases equipment parts for dual purposes from a supplier located in Seattle, Washington. The supplier ships the parts to Spokane. Seller A does not issue a resale certificate for the purchase, and remits retail sales tax to the supplier at the Spokane tax rate. A portion of these parts are sold and shipped to Customer B in Kennewick, with retail sales tax collected at the Kennewick 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 Kennewick rate, and code this liability to the location code for Kennewick (0302). 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 Spokane rate, and code this deduction amount to the location code for Spokane (3210).

(iii) Claim for deduction will be allowed only if the taxpayer keeps and preserves records in support of the deduction that 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 that 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 that may be used against future tax liabilities. However, a taxpayer may request in writing a refund from the department.

(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 does not qualify for the waiver or cancella-

tion 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) **Considerations for waiver.** 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~~) 120 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) **One time waiver of penalty for inadvertent or unintentional resale certificate misuse.** The penalty prescribed for the misuse of the resale certificate may be waived or canceled 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 does grant a one time waiver of the penalty, the buyer will be provided written notification at that time.

(c) **Examples.** The following are examples of typical situations where the (~~fifty~~) 50 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~~) 50 percent of the wiring purchases becoming a component of items that 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 wiring it uses as a consumer.

ABC is subsequently audited by the department 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~~) 50 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~~) 80 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 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. The resale certificate contains the information required under RCW 82.04.470.

Upon further investigation, the department finds that the dentist is not engaged in selling jewelry. The department will look to the dentist for payment of the applicable retail sales tax. In addition, the dentist will be assessed the ((fifty)) 50 percent penalty for the misuse of resale certificate privileges. The penalty will not be waived or canceled 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 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)) 50 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 will look to the employee for payment of the taxes and the ((fifty)) 50 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. As a result of a previous investigation by the department, XYZ had been informed in writing that retail sales and/or use tax applied to all such purchases. The ((fifty)) 50 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 that become a component part of the finished structure. The "load" is a powder charge that is used to drive the "pin" into the materials being fastened together. AZ Construction is informed during the course of an audit examination that it is considered the consumer of the "loads" and may not issue a resale certificate for its 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)) 50 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.

AMENDATORY SECTION (Amending WSR 15-04-104, filed 2/3/15, effective 3/6/15)

WAC 458-20-126 Sales of motor vehicle fuel, special fuel, and nonpolluting fuel. (1) **Introduction.** This rule explains the retail sales and use taxes for motor vehicle fuel, special fuel, and fuels commonly referred to as liquefied natural gas, compressed natural gas, or propane. This 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, and how are they taxed?** "Motor vehicle fuel" as used in this 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" as used in this 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.

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, fuel taxes apply to sales of fuel for highway consumption and 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 exemptions are available?**

(a) **Passenger-only ferries.** RCW 82.08.0255 and 82.12.0256 provide retail sales tax and use tax exemptions for motor vehicle fuel or special fuel for use in passenger-only ferry vessels. These exemptions 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 motor vehicle fuel or special fuel purchased or used by private, nonprofit transportation providers certified under chapter 81.66 RCW, 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 retail sales tax and use tax exemptions for motor vehicle fuel or special fuel purchased or used for the purpose of public transportation, if the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080.

(d) **Special fuel used in interstate commerce.** RCW 82.08.0255 provides a retail sales tax credit or refund for sales of special fuel that is delivered in this state but later transported and used outside this state by persons engaged in interstate commerce. The credit or refund also applies to persons hauling their own goods in interstate commerce.

Certificate. Persons selling special fuel to interstate carriers must obtain a completed "Certificate of Special Fuel Sales to Interstate Carriers" from the purchaser to document entitlement to the credit or refund. The certificate 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)) 360-705-6705

The provisions of the 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~~)) 12 consecutive months.

(e) **Farm fuel users of diesel or aircraft fuels.** For the purpose of this 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) RCW 82.08.865 and 82.12.865 provided retail sales tax and use tax exemptions to farm fuel users for diesel, biodiesel, and aircraft fuel purchased for nonhighway use.

(ii) These exemptions 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 may be obtained from the department 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) **Nonpolluting fuels.** Nonpolluting fuels are described as liquefied natural gas, compressed natural gas, or liquefied petroleum gas, commonly called propane. Nonpolluting fuels may be purchased for either highway or "off-highway" use. Nonpolluting fuels purchased for highway use are normally subject to taxes under either chapter 82.36 or 82.38 RCW. 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 encourages the use of nonpolluting fuels by providing for payment of an annual fee by users of 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 nonpolluting fuels.

Fuel dealers should not collect retail sales or use tax on any 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.** 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 nonpolluting fuels into a bulk storage facility rather than into the fuel tanks of motor vehicles. Persons selling nonpolluting fuels to such bulk purchasers must obtain from the purchaser an

exemption certificate to document entitlement to the exemption. The "Certificate for Purchase of Nonpolluting Special Fuels" must certify the amount of fuel that the purchaser will consume in using motor vehicles upon the highways of this state. This procedure is limited 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 Nonpolluting Special Fuel" may be obtained from the department 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. 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) Nonpolluting fuel not placed in motor vehicle fuel tanks by the seller are subject to retail sales tax, unless a "Certificate for Purchase of Nonpolluting Special Fuel" 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 its permanent records. When 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, 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.

(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 have not been paid, have been refunded, or have not been applied, then retail sales tax is due on the out-of-state licensed vehicle owner's purchases of 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 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.

AMENDATORY SECTION (Amending WSR 22-24-096, filed 12/6/22, effective 1/6/23)

WAC 458-20-13601 Manufacturers and processors for hire—Sales and use tax exemptions for machinery and equipment. (1) Introduction.

(a) This rule explains the retail sales and use tax exemptions provided by RCW 82.08.02565 and 82.12.02565 for sales to or use by manufacturers or processors for hire of machinery and equipment (M&E) used directly in a manufacturing operation or research and development operation. This rule explains the requirements that must be met to substantiate a claim of exemption. For information regarding the sales and use tax deferral for manufacturing and research/development activities in high unemployment counties, refer to WAC 458-20-24001 and chapter 82.60 RCW. For the high technology business sales and use tax deferral refer to chapter 82.63 RCW.

(b) Effective June 12, 2014, the retail sales and use tax exemptions provided by RCW 82.08.02565 and 82.12.02565 do not apply to:

(i) Sales of machinery and equipment used directly in the manufacturing, research and development, or testing of cannabis; and

(ii) Sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving such machinery and equipment.

(c) Effective August 1, 2015, an ineligible person, as defined in subsection (2)(e) of this rule, does not qualify for the retail sales and use tax exemptions provided by RCW 82.08.02565 and 82.12.02565, unless the taxpayer first used the qualifying machinery and equipment in this state prior to August 1, 2015.

(2) **Definitions.** For purposes of the manufacturing machinery and equipment tax exemptions, the following definitions apply:

(a) **Affiliated group.** "Affiliated group" means a group of two or more entities that are either:

(i) Affiliated as defined in RCW 82.32.655; or

(ii) Permitted to file a consolidated return for federal income tax purposes.

(b) **Cogeneration.** "Cogeneration" means the simultaneous generation of electrical energy and low-grade heat from the same fuel. See RCW 82.08.02565.

(c) **Device.** "Device" means an item that is not attached to the building or site. Examples of devices are: Forklifts, chainsaws, air compressors, clamps, free standing shelving, software, ladders, wheelbarrows, and pulleys.

(d) **Industrial fixture.** "Industrial fixture" means an item attached to a building or to land. Fixtures become part of the real estate to which they are attached and at the time of attachment are classified as real property, not personal property. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and certain concrete slabs.

(e) **Ineligible person.** "Ineligible person" means all members of an affiliated group if all of the following apply:

(i) At least one member of the affiliated group was registered with the department of revenue (department) to do business in Washington state on or before July 1, 1981;

(ii) As of August 1, 2015, the combined employment in this state of the affiliated group exceeds 40,000 full-time and part-time employees, based on data reported to the employment security department by the affiliated group; and

(iii) The business activities of the affiliated group primarily include development, sales, and licensing of computer software and services.

(f) **Machinery and equipment (M&E).** "Machinery and equipment" means industrial fixtures, devices, and support facilities, and tangible personal property that becomes an ingredient or component thereof, including repair parts and replacement parts. M&E includes pollution control equipment installed and used in a qualifying operation to prevent air pollution, water pollution, or contamination that might otherwise result from the operation.

(g) **Manufacturer.** "Manufacturer" has the same meaning as provided in chapter 82.04 RCW. Manufacturer also includes a person that prints newspapers or other materials; and effective August 1, 2015, a person engaged in the development of prewritten computer software that is not transferred to purchasers by means of tangible storage media. RCW 82.08.02565, chapter 5, Laws of 2015 3rd sp. sess. (ESSB 6138).

(h) **Manufacturing.** "Manufacturing" has the same meaning as "to manufacture" in chapter 82.04 RCW.

(i) **Manufacturing operation.** "Manufacturing operation" means the manufacturing of articles, substances, or commodities for sale as tangible personal property. A manufacturing operation begins at the point where the raw materials enter the manufacturing site and ends at the point where the processed material leaves the manufacturing site. The operation includes storage of raw materials at the site, the storage of in-process materials at the site, and the storage of the processed material at the site. The manufacturing operation is defined in terms of a process occurring at a location. To be eligible as a qualifying use of M&E, the use must take place within the manufacturing operation, unless specifically exempted by law. Storage of raw material or other tangible personal property, packaging of tangible personal property, and other activities that potentially qualify under the "used directly" criterion, and that do not constitute manufacturing in and of themselves, are not within the scope of the exemption unless they take place at a manufacturing site. The statute specifically allows testing to occur away from the site.

The term "manufacturing operation" also includes that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. The term does not include the production of electricity by a light and power business as defined in RCW 82.16.010 or the preparation of food products on the premises of a person selling food products at retail.

(i) Neither duration or temporary nature of the manufacturing activity nor mobility of the equipment determine whether a manufacturing operation exists. For example, operations using portable saw mills or rock crushing equipment are considered "manufacturing operations" if the activity in which the person is engaged is manufacturing. Rock crushing equipment that deposits material onto a roadway is not used in a manufacturing operation because this is a part of the constructing activity, not a manufacturing activity. Likewise, a concrete mixer used at a construction site is not used in a manufacturing operation because the activity is constructing, not manufacturing. Other portable equipment used in nonmanufacturing activities, such as continuous gutter trucks or trucks designed to deliver and combine aggregate, or specialized carpentry tools, do not qualify for the same reasons.

(ii) Manufacturing tangible personal property for sale can occur in stages, taking place at more than one manufacturing site. For exam-

ple, if a taxpayer processes pulp from wood at one site, and transfers the resulting pulp to another site that further manufactures the product into paper, two separate manufacturing operations exist. The end product of the manufacturing activity must result in an article, substance, or commodity for sale.

(j) **Cannabis.** "Cannabis" is any product with a THC concentration greater than .3 percent.

(k) **Processor for hire.** "Processor for hire" has the same meaning as used in chapter 82.04 RCW and as explained in WAC 458-20-136 Manufacturing, processing for hire, fabricating.

(l) **Qualifying operation.** "Qualifying operation" means a manufacturing operation, a research and development operation, or a testing operation.

(m) **Research and development operation.** "Research and development operation" means engaging in research and development as defined in RCW 82.63.010 by a manufacturer or processor for hire. RCW 82.63.010 defines "research and development" to mean: Activities performed to discover technological information, and technical and nonroutine activities concerned with translating technological information into new or improved products, processes, techniques, formulas, inventions, or software. The term includes exploration of a new use for an existing drug, device, or biological product if the new use requires separate licensing by the Federal Food and Drug Administration under chapter 21, C.F.R., as amended. The term does not include adaptation or duplication of existing products where the products are not substantially improved by application of the technology, nor does the term include surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software developed for internal use, and research in areas such as improved style, taste, and seasonal design.

(n) **Sale.** "Sale" has the same meaning as "sale" in chapter 82.08 RCW, which includes by reference RCW 82.04.040. RCW 82.04.040 includes by reference the definition of "retail sale" in RCW 82.04.050. "Sale" includes renting or leasing, conditional sale contracts, leases with option to purchase, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price.

(o) **Site.** "Site" means the location at which the manufacturing or testing takes place.

(p) **Support facility.** "Support facility" means a part of a building, or a structure or improvement, used to contain or steady an industrial fixture or device. A support facility must be specially designed and necessary for the proper functioning of the industrial fixture or device and must perform a function beyond being a building or a structure or an improvement. It must have a function relative to an industrial fixture or a device. To determine if some portion of a building is a support facility, the parts of the building are examined. For example, a highly specialized structure, like a vibration reduction slab under a microchip clean room, is a support facility. Without the slab, the delicate instruments in the clean room would not function properly. The ceiling and walls of the clean room are not support facilities if they only serve to define the space and do not have a function relative to an industrial fixture or a device.

(q) **Tangible personal property.** "Tangible personal property" has its ordinary meaning.

(r) **Testing.** "Testing" means activities performed to establish or determine the properties, qualities, and limitations of tangible personal property.

(s) **Testing operation.** "Testing operation" means the testing of tangible personal property for a manufacturer or processor for hire. A testing operation begins at the point where the tangible personal property enters the testing site and ends at the point where the tangible personal property leaves the testing site. The term also includes that portion of a cogeneration project that is used to generate power for consumption within the site of which the cogeneration project is an integral part. The term does not include the production of electricity by a light and power business as defined in RCW 82.16.010 or the preparation of food products on the premises of a person selling food products at retail. The testing operation is defined in terms of a process occurring at a location. To be eligible as a qualifying use of M&E, the use must take place within the testing operation, unless specifically excepted by law.

(3) **Retail sales and use tax exemptions.** The M&E exemptions provide retail sales and use tax exemptions for machinery and equipment used directly in a manufacturing operation or research and development operation, except for such sales or use relating to cannabis effective June 12, 2014. Sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving qualifying machinery and equipment are also exempt from sales tax, except for such sales or charges relating to cannabis effective June 12, 2014. However, because the exemption is limited to items with a useful life of one year or more, some charges for repair, labor, services, and replacement parts may not be eligible for the exemption. In the case of labor and service charges that cover both qualifying and nonqualifying repair and replacement parts, the labor and services charges are presumed to be exempt. If all of the parts are nonqualifying, the labor and service charge is not exempt, unless the parts are incidental to the service being performed, such as cleaning, calibrating, and adjusting qualifying machinery and equipment.

The exemption may be taken for qualifying machinery and equipment used directly in a testing operation by a person engaged in testing for a manufacturer or processor for hire, with the exception of such testing relating to cannabis effective June 12, 2014.

Sellers remain subject to the retailing B&O tax on all sales of machinery and equipment to consumers if delivery is made within the state of Washington, notwithstanding that the sale may qualify for an exemption from the retail sales tax.

(a) **Sales tax.** The purchaser must provide the seller with an exemption certificate. The exemption certificate must be completed in its entirety. The seller must retain a copy of the certificate as a part of its records. This certificate may be issued for each purchase or in blanket form certifying all future purchases as being exempt from sales tax. Blanket certificates are 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 12 consecutive months. RCW 82.08.050 (7) (c).

The form must contain the following information:

- (i) Name, address, and registration number of the buyer;
- (ii) Name of the seller;
- (iii) Name and title of the authorized agent of the buyer/user;
- (iv) Authorized signature;
- (v) Date; and

(vi) Whether the form is a single use or blanket-use form.

A copy of an M&E certificate form may be obtained from the department's website at 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~~) 360-705-6705

(b) **Use tax.** The use tax complements the retail sales tax by imposing a tax of like amount on 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. For additional information on use tax see chapter 82.12 RCW and WAC 458-20-178. If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the retail sales tax (commonly referred to as "deferred sales tax") or the use tax directly to the department unless the purchase and/or use is exempt from the retail sales and/or use taxes. A qualifying person using eligible machinery and equipment in Washington in a qualifying manner is exempt from the use tax. If an item of machinery and equipment that was eligible for use tax or sales tax exemption fails to overcome the majority use threshold or is entirely put to use in a nonqualifying manner, use tax is due on the fair market value at the time the item was put to nonqualifying use. See subsection (9) of this rule for an explanation of the majority use threshold.

(4) **Who may take the exemption?** The exemption may be taken by a manufacturer or processor for hire who manufactures articles, substances, or commodities for sale as tangible personal property (excluding cannabis), and who, for the item in question, meets the used directly test and overcomes the majority use threshold. (See subsection (8) of this rule for a discussion of the "used directly" criterion and see subsection (9) of this rule for an explanation of the majority use threshold.) However, for research and development operations, there is no requirement that the operation produce tangible personal property for sale. A processor for hire who does not sell tangible personal property is eligible for the exemption if the processor for hire manufactures articles, substances, or commodities that will be sold by the manufacturer. For example, a person who is a processor for hire but who is manufacturing with regard to tangible personal property that will be used by the manufacturer, rather than sold by the manufacturer, is not eligible. For additional information on manufacturing, processing for hire, or fabricating, see WAC 458-20-136 and RCW 82.04.110. Persons who engage in testing for manufacturers or processors for hire are eligible for the exemption. To be eligible for the exemption, the taxpayer need not be a manufacturer or processor for hire in the state of Washington, but must meet the definition of manufacturer provided in subsection (2)(g) of this rule.

(5) **What is eligible for the exemption?** Machinery and equipment used directly in a qualifying operation by a qualifying person is eligible for the exemption, subject to overcoming the majority use threshold.

There are three classes of eligible machinery and equipment: Industrial fixtures, devices, and support facilities. Also eligible is tangible personal property that becomes an ingredient or component of the machinery and equipment, including repair parts and replacement

parts. "Machinery and equipment" also includes pollution control equipment installed and used in a qualifying operation to prevent air pollution, water pollution, or contamination that might otherwise result from the operation.

(6) **What is not eligible for the exemption?** In addition to items that are not eligible because they do not meet the used directly test or fail to overcome the majority use threshold, the following four categories of property are statutorily excluded from eligibility:

(a) **Hand-powered tools.** Screw drivers, hammers, clamps, tape measures, and wrenches are examples of hand-powered tools. Electric powered, including cordless tools, are not hand-powered tools, nor are calipers, plugs used in measuring, or calculators.

(b) **Property with a useful life of less than one year.** All eligible machinery and equipment must satisfy the useful life criterion, including repair parts and replacement parts. For example, items such as blades and bits are generally not eligible for the exemption because, while they may become component parts of eligible machinery and equipment, they generally have a useful life of less than one year. Blades generally having a useful life of one year or more, such as certain sawmill blades, are eligible. See subsection (7) of this rule for thresholds to determine useful life.

(c) **Buildings.** Buildings, other than machinery and equipment that is permanently affixed to or becomes a physical part of a building. Buildings provide work space for people or shelter machinery and equipment or tangible personal property. The building itself is not eligible, however some of its components might be eligible for the exemption. The industrial fixtures and support facilities that become affixed to or part of the building might be eligible. The subsequent real property status of industrial fixtures and support facilities does not affect eligibility for the exemption.

(d) **Building fixtures.** Building fixtures that are not integral to the manufacturing operation, testing operation, or research and development operation that are permanently affixed to and become a physical part of a building, such as utility systems for heating, ventilation, air conditioning, communications, plumbing, or electrical. Examples of nonqualifying fixtures are: Fire sprinklers, building electrical systems, or washroom fixtures. Fixtures that are integral to the manufacturing operation might be eligible, depending on whether the item meets the other requirements for eligibility, such as the used directly test.

(7) **The "useful life" threshold.** RCW 82.08.02565 has a per se exception for "property with a useful life of less than one year." Property that meets this description is not eligible for the M&E exemption. The useful life threshold identifies items that do not qualify for the exemption, such as supplies, consumables, and other classes of items that are not expected or intended to last a year or more. For example, tangible personal property that is acquired for a one-time use and is discarded after use, such as a mold or a form, has a useful life of less than one year and is not eligible. If it is clear from taxpayer records or practice that an item is used for at least one year, the item is eligible, regardless of the answers to the four threshold questions. A taxpayer may work directly with the department to establish recordkeeping methods that are tailored to the specific circumstances of the taxpayer. The following steps should be used to determine whether an item meets the "useful life" threshold. The series of questions progress from simple documentation to complex documentation. To substantiate qualification under any step, a taxpayer

must maintain adequate records or be able to establish by demonstrating through practice or routine that the threshold is overcome. Catastrophic loss, damage, or destruction of an item does not affect eligibility of machinery and equipment that otherwise qualifies. Assuming the machinery and equipment meets all of the other M&E requirements and does not have a single one-time use or is not discarded during the first year, useful life should be determined by answering the following questions for an individual piece of machinery and equipment:

(a) Is the machinery and equipment capitalized for either federal tax purposes or accounting purposes?

- If the answer is "yes," it qualifies for the exemption.
- If the answer is "no,"

(b) Is the machinery and equipment warranted by the manufacturer to last at least one year?

- If the answer is "yes," it qualifies for the exemption.
- If the answer is "no,"

(c) Is the machinery and equipment normally replaced at intervals of one year or more, as established by industry or business practice? (This is commonly based on the actual experience of the person claiming the exemption.)

- If the answer is "yes," it qualifies for the exemption.
- If the answer is "no,"

(d) Is the machinery and equipment expected at the time of purchase to last at least one year, as established by industry or business practice? (This is commonly based on the actual experience of the person claiming the exemption.)

- If the answer is "yes," it qualifies for the exemption.
- If the answer is "no," it does not qualify for the exemption.

(8) **The "used directly" criteria.** Items that are not "used directly" in a qualifying operation are not eligible for the exemption. The statute provides eight descriptions of the phrase "used directly." The manner in which a person uses an item of machinery and equipment must match one of these descriptions. Examples of items that are not used directly in a qualifying operation are cafeteria furniture, safety equipment not part of qualifying M&E, packaging materials, shipping materials, or administrative equipment. Machinery and equipment is "used directly" in a manufacturing operation, testing operation, or research and development operation, if the machinery and equipment meets any one of the following criteria:

(a) **Acts on or interacts with.** It acts on or interacts with an item of tangible personal property. Examples include drill presses, concrete mixers (agitators), ready-mix concrete trucks, hot steel rolling machines, rock crushers, and band saws. Also included is machinery and equipment used to repair, maintain, or install tangible personal property. Computers qualify under this criterion if:

(i) They direct or control machinery or equipment that acts on or interacts with tangible personal property; or

(ii) If they act on or interact with an item of tangible personal property.

(b) **Conveys, transports, handles, or temporarily stores.** It conveys, transports, handles, or temporarily stores an item of tangible personal property at the manufacturing site or the testing site. Examples include wheelbarrows, handcarts, storage racks, forklifts, tanks, vats, robotic arms, piping, and concrete storage pads. Floor space in buildings does not qualify under this criterion. Also not eligible under this criterion are items that are used to ship the product or in

which the product is packaged, as well as materials used to brace or support an item during transport.

(c) **Controls, guides, measures, verifies, aligns, regulates or tests.** It controls, guides, measures, verifies, aligns, regulates, or tests tangible personal property at the site or away from the site. Examples of "away from the site" are road testing of trucks, air testing of planes, or water testing of boats, with the machinery and equipment used off site in the testing eligible under this criterion. Machinery and equipment used to take readings or measurements is eligible under this criterion.

(d) **Provides physical support.** It provides physical support for or access to tangible personal property. Examples include catwalks adjacent to production equipment, scaffolding around tanks, braces under vats, and ladders near controls. Machinery and equipment used for access to the building or to provide a work space for people or a space for tangible personal property or machinery and equipment, such as stairways or doors, is not eligible under this criterion.

(e) **Produces power or lubricates.** It produces power for or lubricates machinery and equipment. A generator providing power to a sander is an example of machinery and equipment that produces such power. An electrical generating plant that provides power for a building is not eligible under this criterion. Lubricating devices, such as hoses, oil guns, pumps, and meters, whether or not attached to machinery and equipment, are eligible under this criterion.

(f) **Produces another item.** It produces another item of tangible personal property for use in the manufacturing operation, testing operation, or research and development operation. Examples include machinery and equipment that make dies, jigs, or molds, and printers that produce camera-ready images.

(g) **Packs.** It places tangible personal property in the container, package, or wrapping in which the tangible personal property is normally sold or transported.

(h) **Is integral to research and development.** It is integral to "research and development" as it is defined in RCW 82.63.010.

(9) **The majority use threshold.**

(a) **M&E used both in a qualifying and nonqualifying manner.** Machinery and equipment used both directly in a qualifying operation and also in a nonqualifying manner is eligible for the exemption only if the qualifying use satisfies the majority use requirement. Examples of situations in which an item of machinery and equipment is used for qualifying and nonqualifying purposes include: The use of machinery and equipment in manufacturing and repair activities, such as using a power saw to make cabinets in a shop versus using it to make cabinets at a customer location; the use of machinery and equipment in manufacturing and constructing activities, such as using a forklift to move finished sheet rock at the manufacturing site versus using it to unload sheet rock at a customer location; and the use of machinery and equipment in manufacturing and transportation activities, such as using a mixer truck to make concrete at a manufacturing site versus using it to deliver concrete to a customer. Majority use can be expressed as a percentage, with the minimum required amount of qualifying use being greater than 50 percent compared to overall use. To determine whether the majority use requirement has been satisfied, the person claiming the exemption must retain records documenting the measurement used to substantiate a claim for exemption or, if time, value, or volume is not the basis for measurement, be able to establish by demonstrating through practice or routine that the requirement

is satisfied. Majority use is measured by looking at the use of an item during a calendar year using any of the following:

(i) **Time.** Time is measured using hours, days, or other unit of time, with qualifying use of the M&E the numerator, and total time used the denominator. Suitable records for time measurement include employee time sheets or equipment time use logs.

(ii) **Value.** Value means the value to the person, measured by revenue if both the qualifying and nonqualifying uses produce revenue. Value is measured using gross revenue, with revenue from qualifying use of the M&E the numerator, and total revenue from use of the M&E the denominator. If there is no revenue associated with the use of the M&E, such as in-house accounting use of a computer system, the value basis may not be used. Suitable records for value measurement include taxpayer sales journals, ledgers, account books, invoices, and other summary records.

(iii) **Volume.** Volume is measured using amount of product, with volume from qualifying use of the M&E the numerator and total volume from use of the M&E the denominator. Suitable records for volume measurement include production numbers, tonnage, and dimensions.

(iv) **Other comparable measurement for comparison.** The department may agree to allow a taxpayer to use another measure for comparison, provided that the method results in a comparison between qualifying and nonqualifying uses. For example, if work patterns or routines demonstrate typical behavior, the taxpayer with the department's approval can satisfy the majority use test using work site surveys as proof.

(b) **Bundling similar M&E into classes.** Each piece of M&E does not require a separate record if the taxpayer can establish that it is reasonable to bundle M&E into classes. Classes may be created only from similar pieces of machinery and equipment and only if the uses of the pieces are the same. For example, forklifts of various sizes and models can be bundled together if the forklifts are doing the same work, as in moving wrapped product from the assembly line to a storage area. An example of when not to bundle classes of M&E for purposes of the majority use threshold is the use of a computer that controls a machine through numerical control versus use of a computer that creates a camera ready page for printing.

(c) **Industry-wide standards.** Typically, whether the majority use threshold is met is decided on a case-by-case basis, looking at the specific manufacturing operation in which the item is being used. However, for purposes of applying the majority use threshold, the department may develop industry-wide standards. For instance, the aggregate industry uses concrete mixer trucks in a consistent manner across the industry. Based on a comparison of selling prices of the processed product picked up by the customer at the manufacturing site and delivery prices to a customer location, and taking into consideration the qualifying activity (interacting with tangible personal property) of the machinery and equipment compared to the nonqualifying activity (delivering the product) of the machinery and equipment, the department has determined that concrete trucks qualify under the majority use threshold. Only in those limited instances where it is apparent that the use of the concrete truck is atypical for the industry would the taxpayer be required to provide recordkeeping on the use of the truck to support the exemption.

AMENDATORY SECTION (Amending WSR 15-15-028, filed 7/7/15, effective 8/7/15)

WAC 458-20-174 Sales of motor vehicles, trailers, and parts to motor carriers operating in interstate or foreign commerce. (1) **Introduction.** This rule explains the application of the business and occupation tax on sales to for hire motor carriers operating in interstate or foreign commerce.

This rule also explains the retail sales tax exemptions provided by RCW 82.08.0262 and 82.08.0263 for sales to for hire motor carriers operating in interstate or foreign commerce, and addresses the requirements that must be met and the documents that 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. Use tax complements the retail sales tax, and in most but not all cases mirrors the retail sales tax. Purchases of tangible personal property used or certain services purchased in Washington are subject to use tax if the retail sales tax has not been paid, or where an exemption for sales and use taxes are not available.

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

(a) **Component parts** mean any tangible personal property that 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, paint, permanently affixed decals, and tires.

(i) Component parts include the axle and wheels, referred to as a "converter gear" or "dolly," that is used to connect a trailer behind a tractor and trailer. Component parts also include tangible personal property that 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 includes cellular telephones, communication equipment, fire extinguishers, and other such items, whether they are permanently attached to the vehicle or held by brackets that 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.

(ii) Component parts do not include antifreeze, oil, grease, and other lubricants that are considered consumed at the time they are placed into the vehicle, even though they are required for operation of the vehicle. It does include items such as spark plugs, oil filters, air filters, hoses, and belts.

(b) **Primary property location** is the address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The primary property location is not altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(3) **Business and occupation tax.** Business and occupation (B&O) tax is due on all sales to motor carriers that are sourced to 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 B&O tax classification.** The retailing of interstate transportation equipment B&O tax classification (see RCW 82.04.250) applies to the following if 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) Leases 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.

(b) **Retailing B&O tax classification.** The retailing B&O tax classification applies to the following:

(i) Sales and services as described in (a)(i) through (iii) of this subsection, that 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) **Allocation of income.** Except as provided in (d) of this subsection, all income from sales to motor carriers is allocated to where the sales are sourced under the general sourcing provisions of RCW 82.32.730. This includes leases to motor carriers that do not require recurring periodic payments.

(d) **Periodic lease payments.**

(i) Recurring periodic lease payments of leasing transactions described in (a) of this subsection are sourced as follows:

(A) The first payment is sourced to the location where the lessee takes possession of the transportation equipment. This is often the lessor's store location or a delivery location.

(B) Periodic payments made after the first payment are sourced for each period covered by the payment to the primary property location.

(ii) All recurring periodic lease payments of leasing transactions described in (b) of this subsection are sourced to the primary property location provided by the lessee to the lessor. The location where the lessee takes delivery of this type of equipment is immaterial.

(4) **Retail sales tax.** RCW 82.08.0262 and 82.08.0263 provide retail sales tax exemptions for certain sales to motor carriers when the sale is sourced to Washington.

(a) **Sales or leases of motor vehicles and trailers.** RCW 82.08.0263 provides an exemption from the retail sales tax for sales and leases of motor vehicles and trailers to be used for transporting 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 for hire carrier must hold a carrier permit issued by the Interstate Commerce Commission (ICC) or its successor agency to qualify for this exemption. The seller, at the time of the sale, must retain as a part of its records an exemption certificate that must be completed in its entirety. The buyers' retail sales tax exemption certificate is available on the department's web-

site at dor.wa.gov, or can be obtained by contacting the department at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
((1-800-647-7706)) 360-705-6705

If the department's buyers' retail sales tax exemption certificate is not used, the form used 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 or its successor agency, and that the vehicle this date purchased from you being a (specify truck or trailer and make) , Motor No., Serial No. is entitled to exemption from the Retail Sales Tax under RCW 82.08.0263. This certificate is given with full knowledge of, and subject to, the legally prescribed penalties for fraud and tax evasion.

Dated
(name of carrier-purchaser)
By
(title)
(address)

The lease of motor vehicles and trailers to motor carriers, with or 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 as provided in (c) of this subsection.

(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 ICC or its successor agency that authorizes transportation by motor vehicle across the boundaries of Washington. Because carriers are required to obtain these permits only when the carrier is hauling for hire, the exemption applies only to parts and repairs purchased for vehicles that 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 for hire hauling.

(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 exemption certificates are 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.

(iii) The buyers' retail sales tax exemption certificate is available on the department's website at dor.wa.gov, or can be obtained from the department using the address provided in (a) of this subsection.

If the department's buyers' retail sales tax exemption certificate is not used, the form used 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 a carrier permit, No., issued by the Interstate Commerce Commission or its successor agency 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 RCW 82.08.0262. This certificate is given with full knowledge of, and subject to, the legally prescribed penalties for fraud and tax evasion.

Dated.

.....
(name of carrier-purchaser)

.....
(address)

By.....
(title)

(c) **Taxable sales.** Sales that do not qualify for exemption under the provisions of RCW 82.08.0262 or 82.08.0263, are subject to the retail sales tax or deferred sales tax when sourced to Washington as follows.

(i) Sales, including single payment leases, are sourced under the general sourcing provision of RCW 82.32.730.

(ii) All recurring periodic lease payments are sourced to the primary property location provided by the lessee to the lessor.

AMENDATORY SECTION (Amending WSR 15-02-017, filed 12/29/14, effective 1/29/15)

WAC 458-20-178 Use tax and the use of tangible personal property. (1) **Introduction.** This rule provides general use tax-reporting information for consumers. It discusses who is responsible for remitting use tax, and when and how to remit the tax. The rule also explains the imposition of use tax as it applies to the use of tangible personal property within this state when the acquisition of the tangi-

ble personal property was not subject to retail sales or deferred sales tax.

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

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

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

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

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

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

(v) WAC 458-20-190, Sales to and by the United States—Doing business on federal reservations—Sales to foreign governments, provides tax reporting information for businesses doing business with the United States.

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

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

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

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

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

(b) **Example 2.** Mary is a music instructor that teaches adults how to play the piano. Mary does not charge her students retail sales tax on the costs of the weekly piano lessons. Use tax is not due on the

lessons, as the lessons are not a retail sales taxable service. See WAC 458-20-224, Service and other business activities.

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

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

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

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

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

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

(ii) Some arm's length sales transactions involve multiple pieces of property or different types of property (such as when both real and

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

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

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

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

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

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

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

(f) **Bailment.** For property acquired by bailment, the "value of the article used" for the bailee is an amount representing a reasonable rental for the use of the bailed article, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character. (See RCW 82.12.010.) If the nature of the article is such that it can only be used once, the reasonable rental value is the full value of the article used. See also WAC 458-20-211, Leases or rentals of tangible personal property, bailments.

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

- The retail selling price of such new or improved product when first offered for sale; or
- The value of materials incorporated into the prototype in cases where the new or improved product is not offered for sale. (See RCW 82.12.010.)

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

(i) **Property temporarily brought into Washington for business use.** In the case of articles owned by a user engaged in business outside the state which are brought into the state for no more than (~~one hundred eighty~~) 180 days in any period of (~~three hundred sixty-five~~) 365 consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used must be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under chapter 82.08 or 82.12 RCW upon the full value of the article used.

However, this measure of "value of article used" is a separate provision from RCW 82.12.0251 use tax exemption. The use tax exemption is provided to nonresidents bringing property into Washington for his or her use or enjoyment while temporarily within the state, unless the property is used in conducting a nontransitory business activity. The term "nontransitory business activity," for the purposes of this exemption, means and includes the business of extracting, manufacturing, selling tangible and intangible property, printing, publishing, and performing contracts for the constructing or improving of real or personal property. It does not include the business of conducting a circus or other form of amusement when the personnel and property of such business regularly moves from one state into another, nor does it include casual or incidental business done by a nonresident lawyer, doctor or accountant.

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

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

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

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

(5) **Who is liable for the tax?** RCW 82.12.020 imposes use tax upon every person using tangible personal property or certain retail services as a consumer in the state of Washington. The law does not distinguish between persons using property (or certain retail services) for business or personal use. Thus, a Washington resident purchasing personal items via the internet or through a mail-order catalog has the same legal responsibility to report and remit use tax as does a corporation purchasing office supplies. The rate of the use tax is the same as the retail sales tax rate in the location where the property is used. Refer to WAC 458-20-145, Local sales and use tax for further discussion about determining where use occurs.

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

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

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

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

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

(B) Calling the department's telephone information center at (~~1-800-647-7706~~) 360-705-6705; or

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

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

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

(6) **How does use tax differ from the retail sales tax?** There are circumstances where the law does not provide a use tax exemption to complement a retail sales tax exemption. Where there is no complemen-

tary use tax exemption, the buyer/user is still responsible for remitting use tax on his or her use of the purchased property.

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

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

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

(i) **Example 4.** AA Computer Software (AA) has some obsolete inventory that will no longer sell as an updated version of the software is now available for purchase. AA decides to throw away this inventory even though it has never been used. As the software was never used, use tax is not owed on the destroyed inventory.

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

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

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

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

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

idents—Use of watercraft in Washington by nonresidents for a detailed explanation of the exemption requirements.) However, use tax is due if the nonresident exceeds the temporary use threshold or the nonresident subsequently becomes a Washington resident.

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

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

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

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

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

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

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

See subsection (4)(f) of this section for the measure of tax on bailed articles.

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

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

(a) This use tax credit is available only if the present user, or his or her bailor or donor, has documentation that shows the retail sales or use tax was paid with respect to such property, extended warranty, digital products, digital codes, or service defined as a retail sale in RCW 82.04.050 to the other taxing jurisdiction.

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 16-01-037, filed 12/9/15, effective 1/9/16)

WAC 458-20-180 Motor carriers. (1) **Introduction.** This rule explains the tax reporting responsibilities of persons engaged in the business of transporting by motor vehicle persons or property for hire. It explains transportation business and the application of pub-

lic utility tax (PUT), business and occupation (B&O), and retail sales taxes to persons engaged in the business.

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

(b) **References to related rules.** The department of revenue (department) has adopted other rules that relate to the application of the PUT. Readers may want to refer to the rules in the following list:

(i) WAC 458-20-104 Small business tax relief based on income of business;

(ii) WAC 458-20-13501 Timber harvest operations;

(iii) 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;

(iv) WAC 458-20-174 Sales of motor vehicles, trailers, and parts to motor carriers operating in interstate or foreign commerce;

(v) 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;

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

(vii) WAC 458-20-179 Public utility tax; and

(viii) WAC 458-20-193D Transportation, communication, public utility activities, or other services in interstate or foreign commerce.

(2) **What is a motor transportation business?** A "motor transportation business" is a business operating any motor propelled vehicle transporting persons or property of others for hire and includes, but is not limited to, the operation of any motor propelled vehicle as an auto transportation company, common carrier, or contract carrier as defined by RCW 81.68.010 and 81.80.010. See RCW 82.16.010. The term "motor transportation business" does not include any "urban transportation business" as described in subsection (4) of this rule.

(a) It includes hauling for hire any extracted or manufactured material, over the state's highways and over private roads but does not include:

(i) The transportation of logs or other forest products exclusively on private roads or private highways (which is subject to the service B&O tax, e.g., see WAC 458-20-13501 Timber harvest operations); and

(ii) A log transportation business as described in subsection (3) of this rule.

(b) 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 public road construction B&O tax classification, regardless of whether or not the earth moving portion is separately stated. See WAC 458-20-171 for more information.

(3) **What is a log transportation business?** A "log transportation business" means the business of transporting logs by truck, except when such transportation meets the definition of urban transportation business or occurs exclusively on private roads. See RCW 82.16.010. Effective August 1, 2015, RCW 82.16.020 provides a preferential public utility tax rate for log transportation businesses.

(4) **What is an urban transportation business?** An "urban transportation business" is a business operating any vehicle for public use in the transportation of persons or property for hire, when:

- Operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof; or
- 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.

(a) **The five mile standard.** "Operating entirely within five miles of the corporate limits thereof" means the five-mile standard is applied on a straight line from the corporate limits and not based on road mileage. It is immaterial how many miles the carrier travels from the origin to the termination of the haul as long as the origin and the termination of the haul are within five miles of the corporate limits. See RCW 82.16.010.

(b) **What is included in urban transportation?** Urban transportation includes, but is not limited to, the business of operating passenger vehicles of every type and also the business of operating cartage, pickup or delivery services, including 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. See subsection (7)(d) of this rule for deduction information for interstate transportation of persons or property.

(c) **What is not urban transportation?** Urban transportation does not include the business of operating any vehicle for transporting persons or property for hire when the origin or termination is 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. This is true even if the route is through intermediate cities that enable the vehicle to always be within five miles of a city's corporate limits. See subsection (2) of this rule for "What is a motor transportation business?"

(5) **What does "motor transportation" and "urban transportation" include?** Motor and urban transportation include the business of operating motor-driven vehicles, on public roads, used in transporting persons or property belonging to others, on a for-hire basis. These terms include the business of:

(a) 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 under RCW 82.04.050), school buses, ambulances, nor the collection and disposal of solid waste (taxable under the service and other activities B&O tax classification); and

(b) Renting or leasing trucks, trailers, buses, 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.

(6) **Why is the distinction between the motor and urban transportation classifications important?** These tax classifications have different tax rates and it is important to segregate the gross income of each activity. The gross income of persons engaged in the business of motor transportation is taxed under the motor transportation PUT classification. The gross income of persons engaged in the business of urban transportation is taxed under the urban transportation PUT classification. The gross income of persons engaged in both urban and motor

transportation is taxed under the motor transportation classification, unless the revenue is segregated as shown by their records.

(7) **Are deductions available?** Income, as described below, may be deducted from the taxable amounts reported, provided the amounts were originally included in the gross income. See WAC 458-20-179 for generally applicable deductions for PUT, such as bad debt and cash discount.

(a) **Fees and charges for public transportation services.** RCW 82.16.050 provides a deduction for amounts derived from fees or charges imposed on persons for transit services provided by a public transportation agency. Public transportation agencies must spend an amount equal to the tax reduction provided by this deduction solely to:

- Adjust routes to improve access for citizens using food banks and senior citizen services; or
- To extend or add new routes to assist low-income citizens and seniors.

(b) **Services furnished jointly.** In general, costs of doing business are not deductible under the public utility tax (PUT). However, RCW 82.16.050 does allow a deduction for amounts actually paid by a taxpayer to another person taxable under the PUT as the latter's portion of the consideration due for services furnished jointly by both, provided the full amount paid by the customer for the service is received by the taxpayer and reported as gross income subject to the PUT.

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 the vehicle is carrying freight or passengers for hire and is being operated by a person engaged in the business of motor or urban transportation. This does not include amounts paid for transporting such vehicles over toll bridges.

Example 1. A customer hires ABC Transport (ABC) to haul goods from Tacoma to a manufacturing facility in Bellingham. ABC subcontracts part of the haul to XYZ Freight (XYZ) and has XYZ haul the goods from Tacoma to Everett where the goods are loaded into ABC's truck and transported to Bellingham. Assuming all other requirements of the deduction are met, ABC may deduct the payments it makes to XYZ from its gross income as XYZ's portion of the consideration paid by the customer for transportation services furnished jointly by ABC and XYZ.

(c) **Transportation of commodities to export facilities.** Income received from transporting commodities from points of origin in this state to an export elevator, wharf, dock, or ship side on tidewater or its navigable tributaries is deductible under RCW 82.16.050. The deduction is only available when the commodities are forwarded, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations. However, this deduction is not available when the point of origin and the point of delivery to the export elevator, wharf, dock, or ship side are located within the corporate limits of the same city or town.

(i) **Example 2.** AB Transport moves freight by tug and barge from points in Washington to terminal facilities at tidewater ports in Washington. The freight is subsequently shipped from the ports by vessel to interstate and foreign destinations. AB Transport may deduct the gross income from these shipments under RCW 82.16.050.

(ii) **Example 3.** ABC Trucking hauls widgets from the manufacturing plant to a storage area that is adjacent to the dock. The storage area is quite large and the widgets are moved from the storage area to

alongside the ship in time for loading. The widgets are loaded on the ship and then transported to a foreign country. ABC Trucking may take a deduction for the amounts received for transporting the widgets from the manufacturer to the storage area. The movement of the widgets within the storage area is not considered "intervening transportation," but is part of the stevedoring activity.

(iii) **Example 4.** ABC Trucking hauls several types of widgets from the manufacturing plant to a "staging area" where the widgets are sorted. After sorting, XY Hauling transports some of the widgets from the staging area to local buyers and other widgets to the dock that is located approximately five miles from the staging area where the widgets are immediately 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 widgets to the staging area. Even though some of the widgets ultimately were exported, ABC Trucking did not deliver the widgets to the dock where the widgets were loaded on a vessel.

However, XY Hauling may take a deduction for the gross income for hauls from the staging area to the dock. The widgets were loaded on the vessel 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.

(d) **Interstate transportation of persons or property.** Income received from transporting persons or property by motor transportation equipment where either the origin or destination of the haul is outside the state of Washington is deductible. The interstate movement originates or terminates at the point where the transport obligation of the interstate carrier begins or ends. See WAC 458-20-193D for additional information on interstate activities. Transportation provided within the state prior to the point of origin of the interstate movement or subsequent to the point of destination within this state is wholly intrastate and not deductible.

Example 5. Airport B Shuttle provides transportation to and from the airport for persons departing or arriving from destinations that may or may not be out of state. This service is not incidental to any interstate movement and thus gross income is taxable under either motor or urban transportation.

(e) **Interstate transportation of commodities.** Income received 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 are deductible under RCW 82.16.050 where 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) **Transportation of agricultural commodities.** Certain income received from the transportation of agricultural commodities can be deducted when the commodities do not include manufactured substances or articles. For the income to be deducted, the commodities must be transported from points of origin in the state to interim storage facilities in this state for transshipment, without intervening transportation, to an export elevator, wharf, dock, or ship side on tidewater or its navigable tributaries to be forwarded, without intervening transportation, by vessel, in their original form, to interstate or

foreign destinations. If agricultural commodities are transshipped from interim storage facilities in this state to storage facilities at a port on tidewater or its navigable tributaries, the same agricultural commodity dealer must operate both the interim storage facilities and the storage facilities at the port. RCW 82.16.050.

(i) The deduction under this subsection is available only when the person claiming the deduction obtains a completed "Certificate of Agricultural Commodity Shipped to Interstate and Foreign Destinations" from the agricultural commodity dealer operating the interim storage facilities.

(ii) A blank certificate can be found on the department's website at dor.wa.gov. The form may also be obtained by contacting the department's telephone information center at ((1-800-647-7706)) 360-705-6705, or by writing the department at:

Taxpayer Information and Education
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478

(8) **Exemption for income from persons with special transportation needs.** RCW 82.16.047 provides an exemption from PUT for amounts received for providing commuter share riding or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010. Transportation must be provided by a public social service agency or a private, nonprofit transportation provider as defined in RCW 81.66.010.

(9) **Business activities other than hauling.** Persons engaged in the business of motor or urban transportation may also receive income from other business activities. The tax consequences of this income is generally based on whether or not these services are performed as a part of or are incidental to the hauling activity, or are services where the taxpayer does not haul the shipment.

(a) **Handling and other services that are a part of or incidental to the hauling activity.** When a person performs activities such as packing, crating, loading or unloading of goods that the person is hauling for the customer, those services are considered to be performed as a part of the hauling activity, or are services incidental to the haul itself. The gross income from those services is taxed in the same manner as the hauling activity, e.g., motor or urban transportation.

Example 6. Mary hires Luke's Packing & Hauling Co. (Luke's) to load, haul, and unload her belongings at a local storage facility just a couple of miles down the street from the city apartment she is vacating. Luke's will report the gross income from Mary under the urban transportation PUT classification.

(b) **Handling and other services that are not a part of or incidental to the hauling activity.**

(i) If a person engaged in hauling activities packs, crates, loads, or unloads goods that the person is not also hauling for the customer, the gross income from these activities will generally be subject to service and other activities B&O tax.

Example 7. James hires Luke's Packing & Hauling (Luke's) to wrap, pack, and crate his belongings in preparation for long-term storage. Luke's will not be hauling James' belongings as Haul and Storage Inc. has been hired to pick up the belongings and put them in their storage facility. Luke's will report the gross income for wrapping, packing,

and crating James' belongings under the service and other activities B&O tax classification.

(ii) A person engaged in hauling activities may also perform services that are not a part of or are separate from the hauling activity. The gross income from these activities is not subject to the motor or urban transportation PUT, but is instead subject to tax based on the nature of the activity and other provisions of the law.

Example 8. Affordable Hauling and Storage (Affordable) hauls products for hire and also operates a warehouse. Big Manufacturing Company (Big) hires Affordable to pick-up and deliver products to and from Affordable's warehouse for long-term storage. Affordable charges Big for the hauling services as they occur and also separately invoices Big a monthly fee for storing the products. The income from the hauling services is subject to the motor transportation or urban transportation PUT classification, as the case may be. The monthly storage charges are subject to the warehousing B&O tax classification. See WAC 458-20-182 for an explanation of the tax-reporting responsibilities of warehouse businesses.

(c) **Sales, leases, or rentals of tangible personal property by motor carriers.** Persons engaged in either motor or urban transportation may also sell, lease, or rent tangible personal property, such as forklifts or trailers. Gross income from the sale, lease, or rental of tangible personal property without an operator to a consumer, is subject to retailing B&O and retail sales taxes, unless a specific exemption applies. If the sale is a sale for resale, the sale is subject to the wholesaling B&O tax classification. For information regarding the tax reporting responsibilities of persons that lease or rent tangible personal property see WAC 458-20-211.

If the sale, lease, or rental of the property qualifies for one of the retail sales tax exemptions for equipment used in interstate commerce provided by RCW 82.08.0262 or 82.08.0263 (e.g., as may be the case with a trailer used in interstate commerce), the retailing of interstate transportation equipment B&O tax classification applies. Refer to WAC 458-20-174 for information on limited exemptions that may apply to motor carriers operating in interstate or foreign commerce.

(10) **Purchases of tangible personal property.** Persons engaged in the business of motor or urban transportation must pay retail sales tax to their vendors when purchasing motor vehicles, trailers, parts, equipment, tools, supplies, and other tangible personal property for use in conducting their business. Refer to WAC 458-20-174 for limited exemptions that may apply to motor carriers operating in interstate or foreign commerce.

(11) **Purchases made for rental or lease to others.** 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. The seller must obtain a copy of the buyer's reseller permit from the buyer to document the wholesale nature of any sale as provided in WAC 458-20-102 Reseller permits.

AMENDATORY SECTION (Amending WSR 16-16-003, filed 7/20/16, effective 8/20/16)

WAC 458-20-190 Sales to and by the United States and certain entities created by the United States—Doing business on federal reser-

vations—Sales to foreign governments. (1) **Introduction.** Federal law prohibits states from directly imposing taxes on the United States. Persons doing business with the United States, however, are subject to the taxes imposed by the state of Washington, unless specifically exempt. This rule explains the tax reporting responsibilities of persons making sales to the United States and to foreign governments. The rule also explains the tax reporting responsibilities of persons engaging in business activities within federal reservations and cleaning up radioactive waste and other by-products of weapons production for the United States.

(a) **Other rules that may be relevant.**

(i) WAC 458-20-17001 Government contracting—Construction, installations, or improvements to government real property.

(ii) 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.

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

(iv) WAC 458-20-186 Tax on cigarettes.

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

(2) **"United States" defined.**

(a) For the purposes of this rule, the term "United States" means the federal government, including the executive, legislative, and judicial branches, its departments, and federal entities exempt from state or local taxation by specific federal statutory exemption.

The mere fact that an entity is a federal entity, such as an instrumentality or a federal corporation, does not mean that the entity is immune from tax. The taxability of a federal entity and whether the entity is required to collect and remit retail sales/use tax depends on the benefits and immunities conferred on it by Congress. Thus, to determine the current taxable status of federal entities, the relevant portion of the federal law should be examined.

(b) "United States" does not include entities associated with but not a part of the United States, such as the National Guard (an instrumentality of the state of Washington). Nor does it include entities contracting with the United States government to administer its programs.

(3) **Prohibition against taxing the United States.** The state of Washington is prohibited from imposing taxes directly on the United States.

(a) This prohibition applies to taxes imposed for the privilege of engaging in business such as business and occupation (B&O) (chapter 82.04 RCW) and public utility (chapter 82.16 RCW) taxes.

It also applies to taxes imposed on a buyer or user of goods or services including, but not limited to, the:

(i) State and local retail sales and car rental taxes (chapters 82.08 and 82.14 RCW);

(ii) State and local use tax (chapters 82.12 and 82.14 RCW);

(iii) Solid waste collection tax (chapter 82.18 RCW); and

(iv) Local government taxes such as the special hotel/motel (chapter 67.28 RCW) and convention and trade center (chapter 67.40 RCW) taxes.

(b) The state is also prohibited from requiring the United States to collect taxes imposed on the buyer (e.g., the retail sales tax) as an agent for the state. However, buyers must pay use tax on retail purchases from the United States, unless specifically exempt by law.

(c) In addition, federal law exempts certain nongovernmental entities from state taxes (for which Congress has given specific federal statutory tax exemptions). These specific federal statutory exemptions may not be absolute and may be limited to specific activities of an entity.

(d) The American Red Cross is an instrumentality of the United States. As a federal corporation providing aid and relief, it is exempt from retail sales, use, and B&O taxes under state law. RCW 82.08.0258, 82.12.0259, and 82.04.380.

The Red Cross provides some victims of natural disasters assistance by check, voucher, and/or direct deposits to the individuals' personal bank accounts. Assistance may also be provided with "client assistance cards" that may be used by the recipients at locations where bankcards are accepted or at automated teller machines (ATM). The retail sales tax treatment of purchases made using these payment methods is:

(i) Electronic funds transfers and checks. Purchases made by an individual using funds that have been transferred into the individual's bank account or received in the form of a check are subject to retail sales tax in the same manner as any other purchase made by that individual, unless specifically exempt by law.

(ii) Vouchers. A voucher is a certificate issued by the Red Cross to an individual that may be exchanged for a specific good or service. As the goods and services will be paid for directly by the Red Cross, the sales are not subject to retail sales tax. A vendor who accepts a voucher will send it and/or other proof of sale to the Red Cross, which will then send a check to the vendor to pay for the purchase.

(iii) Client assistance cards. Sales to individuals who use client assistance cards issued by the Red Cross, or who pay with cash withdrawn from an ATM using the card, are subject to retail sales tax, unless otherwise exempt from tax. These sales are not direct sales to the federal government or one of its instrumentalities.

(e) The Federal Emergency Management Administration (FEMA) is an agency of the federal government. As a federal corporation providing aid and relief, it is exempt from retail sales, use, and B&O taxes under state law. RCW 82.08.0258, 82.12.0259, and 82.04.380.

FEMA provides some victims of natural disasters assistance by check, voucher, and/or direct deposits to the individuals' personal bank accounts. Assistance may also be provided with emergency debit cards that can be used by the recipients at locations where bankcards are accepted or at ATMs. The retail sales tax treatment of purchases made using these payment methods is:

(i) Electronic funds transfer and checks. Sales are subject to retail sales tax as described in (d)(i) of this subsection.

(ii) Vouchers. Sales are not subject to retail sales tax. As with the Red Cross, the goods and services will be paid for directly by FEMA. See (d)(ii) of this subsection.

(iii) Emergency debit cards. As with the Red Cross, "client assistance cards" purchases made with these cards, or with cash withdrawn from an ATM using these cards, are subject to retail sales tax. See (d)(iii) of this subsection.

(4) **Persons doing business with the United States.** Persons selling goods or services to the United States are subject to taxes im-

posed on the seller, such as the B&O and public utility taxes, unless a specific tax exemption applies. Persons receiving income from contracting with the United States government to administer its programs, either in whole or in part, are also subject to tax, unless a specific tax exemption applies.

(a) **Certain invoiced amounts not included in gross income.** Persons who contract with the United States may, for federal accounting purposes, be contractually required to invoice goods or services provided to the United States by third parties. The purpose of the invoices is to match the expenditures with the appropriate category of congressional funding. Amounts received under such invoices should be excluded from the person's gross income when reporting on the excise tax return if all of the following conditions are met with respect to the goods or services:

(i) The third party directly invoices the United States;

(ii) The United States directly pays the third party; and

(iii) The person has no liability, either primarily or secondarily, for making payment to the third party or for remitting payment to the third party.

(b) **Tax obligation with respect to the use of tangible personal property.** Persons performing services for the United States are also subject to the retail sales or use tax on property they use or consume when performing services for the United States, unless specifically exempt.

(i) **Manufacturing articles for commercial or industrial use.** In the case of products manufactured or produced by the person using the products as a consumer, the measure of the use tax is generally the value of the products as explained in WAC 458-20-112. If the articles manufactured or produced by the user are used in the manufacture or production of products sold or to be sold to the department of defense of the United States, the value of articles used is the value of the ingredients of such articles. The manufacturing B&O tax also applies to the value of articles manufactured for commercial or industrial use.

(ii) **Use of government provided property.** When articles or goods used are acquired by bailment, the measure of the use tax to the bailee 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. For more information on leases or rentals of tangible personal property see WAC 458-20-211. Thus, if a person has a contract to provide services for the United States and uses government supplied tangible personal property to perform the services, the person must pay use tax on the fair market rental value of the government supplied tangible personal property.

Persons who incorporate government provided articles into construction projects or improvements made to real property of or for the United States should refer to WAC 458-20-17001 for more specific tax-reporting information.

(c) **Exemption for certain machinery and equipment.** Manufacturers or processors for hire may be eligible for the retail sales or use tax exemption provided by RCW 82.08.02565 and 82.12.02565 on machinery and equipment used directly in a manufacturing or research and development operation. For information on the sales and use tax exemptions see WAC 458-20-13601.

(5) **Documenting exempt sales to the United States.** Only sales made directly to the United States are exempt from retail sales tax or other tax imposed on the buyer. To be entitled to the exemption, the

purchase must be paid for using a qualified U.S. government credit card, a check from the United States payable to the seller, a United States voucher, or by electronic funds transfer made by the United States.

Sales to employees or representatives of the United States are subject to tax, even though the United States may reimburse the employee or representative for all or a part of the expense. Purchases by any other person, whether with federal funds or through a reimbursement arrangement, are subject to tax unless specifically exempt by law.

(a) **Documenting tax-exempt sales.** Sellers must document the tax-exempt nature of sales made to the United States by keeping a copy of the United States credit card receipt, a copy of the check from the United States, a copy of the federal government voucher, or a copy of documentation clearly indicating payment was made by the United States through electronic funds transfer. For information on how to determine whether purchases made with a U.S. government credit card are exempt from retail sales tax, refer to the department's website at dor.wa.gov.

(b) **Payment made by government contracted credit card.** Various United States government contracted credit cards are used to make payment for purchases of goods and services by or for the United States government. Sole responsibility for payment of these purchases may rest with the United States government or with the employee. The United States government's system of issuing government contracted credit cards is subject to change. For specific information about determining when payment is the direct responsibility of the United States government or the employee, contact the department's taxpayer services division at:

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

or call the department's telephone information center at (~~1-800-647-7706~~) [360-705-6705](tel:360-705-6705) or visit the department's website at dor.wa.gov.

(6) **Doing business on federal reservations.** The state of Washington has jurisdiction and authority to levy and collect taxes from persons residing within, or with respect to business transactions conducted on, federal reservations. 4 U.S.C. §§ 105-110. The term "federal reservation," as used in this rule, means any land or premises within the exterior boundaries of the state of Washington that are held or acquired by and for the use of the United States, its departments, institutions or entities. This means that a concessionaire operating within a federal reservation under a grant or permit issued by the United States or by a department or entity of the United States is taxable to the same extent as any private operator engaging in a similar business outside a federal reservation and without specific authority from the United States.

(a) **Sales tax collection requirements.** Persons making retail sales to members of the armed forces or others residing within or conducting business on federal reservations are required to collect and remit retail sales tax from the buyer.

(b) **Cigarette tax stamps.** Washington cigarette tax stamps must generally be affixed to all cigarettes sold to persons residing within or conducting business on federal reservations. However, such stamps

need not be affixed to cigarettes sold to the United States or any of its entities 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 of its entities to authorized purchasers, for use on such reservation. For additional information on cigarette stamps, rates, and refunds see WAC 458-20-186.

(7) **Sales made to authorized purchasers of the United States.** As explained in subsection (3)(b) of this rule, while sales by the United States are exempt of retail sales tax the purchaser is generally responsible for remitting use tax directly to the department. Federal law prohibits the imposition of use tax on tangible personal property sold to authorized purchasers by the United States, its entities, or voluntary unincorporated organization of armed forces personnel. 4 U.S.C. § 107(a).

(a) **Who is an "authorized purchaser"?** A person is an "authorized purchaser" only with respect to purchases he or she is permitted to make from commissaries, ships' stores, or voluntary unincorporated organizations of personnel of any branch of the armed forces of the United States, under regulations promulgated by the departmental secretary having jurisdiction over such branch. 4 U.S.C. § 107(b).

(b) **What is a "voluntary unincorporated organization"?** "Voluntary unincorporated organizations" are those organizations comprised of armed forces personnel operated under regulations promulgated by the departmental secretary having jurisdiction over such branch. Examples of voluntary unincorporated organizations are post flying clubs, officers or noncommissioned officers open messes, and recreation associations.

(8) **Purchases by persons using federal funds.** Retail sales or use tax applies to retail purchases made by any buyer, other than the United States, including the state of Washington and all of its political subdivisions, irrespective of whether or not the buyer uses or is reimbursed with federal funds, unless the purchase is specifically exempt by law.

(9) **Cleaning up radioactive waste and other by-products of weapons production and nuclear research and development.** RCW 82.04.263 provides a preferential tax rate for the gross income derived from cleaning up for the United States, or its instrumentalities, radioactive waste and other by-products of weapons production and nuclear research and development. This tax rate applies whether the person performing these activities is a general contractor or subcontractor.

(a) **What activities are entitled to the preferential tax rate?** Only those activities that meet the definition of "cleaning up radioactive waste and other by-products of weapons production and nuclear research and development" are entitled to the preferential tax rate. The statute defines "cleaning up radioactive waste and other by-products of weapons production and nuclear research and development" to mean:

(i) The handling, storing, treating, immobilizing, stabilizing, or disposing of radioactive waste, radioactive tank waste and capsules, nonradioactive hazardous solid and liquid wastes, or spent nuclear fuel;

(ii) Conditioning of spent nuclear fuel;

(iii) Removing contamination in soils and groundwater;

(iv) Decontaminating and decommissioning of facilities; and

(v) Services supporting the performance of cleanup. A service supports the performance of cleanup if it:

(A) Is within the scope of work under a clean-up contract with the United States Department of Energy; or

(B) Assists in the accomplishment of a requirement of a clean-up project undertaken by the United States Department of Energy under a subcontract entered into with the prime contractor or another subcontractor in furtherance of a clean-up contract between the United States Department of Energy and a prime contractor.

(b) **When does a service not assist in the accomplishment of a requirement of a clean-up project?** Subject to specific exceptions provided by law, a service does not assist in the accomplishment of a clean-up project when the same services are routinely provided to businesses not engaged in clean-up activities.

The following exceptions are always deemed to contribute to the accomplishment of a requirement of a clean-up project undertaken by the United States Department of Energy:

- Information technology and computer support services;
- Services rendered in respect to infrastructure; and
- Security, safety, and health services.

(c) **Guideline examples.** The following examples are to be used as a guideline when determining whether a service is "routinely provided to businesses not engaged in clean-up activities."

(i) **Accounting services.** The classification does not apply to general accounting services but does apply to performance audits performed for persons cleaning up radioactive waste.

(ii) **Legal services.** The classification does not apply to general legal services but does apply to those legal services that assist in the accomplishment of a requirement of a clean-up project undertaken by the United States Department of Energy. Thus, legal services provided to contest any local, state, or federal tax liability or to defend a company against worker's compensation claim arising from a worksite injury do not qualify for the classification. However, legal services related to the resolution of contractual dispute between the parties to a clean-up contract between the United States Department of Energy and a prime contractor do qualify.

(iii) **General office janitorial.** General office janitorial services do not qualify for the radioactive waste clean-up classification, but the specialized cleaning of equipment exposed to radioactive waste does qualify.

(d) **Clean-up examples.**

(i) Company C is a land excavation contractor that contracts with Prime Contractor to dig trenches where waste will be reburied after processing. Company C's contract for digging trenches qualifies for the preferential tax rate under RCW 82.04.263 because the activity of digging trenches is one of the physical acts of cleaning up.

(ii) Company D contracts with Company C from the previous example to provide payroll and accounting services. Company D's activity does not qualify for the preferential tax rate under RCW 82.04.263 because the activity of general accounting is not an activity involving the physical act of cleaning up, nor is it a service supporting the performance of cleanup as defined in (a)(v) of this subsection.

(iii) Company E is an environmental engineering company that contracts with Prime Contractor to develop a plan on how best to decontaminate the soil at a tank farm and will monitor the cleanup/decontamination as it progresses. Company E's activities qualify for the preferential tax rate under RCW 82.04.263 because the activities are services supporting the performance of cleanup.

(iv) Company F is a security company that contracts with Prime Contractor to provide overall security to the federal reservation, including providing security at clean-up sites. Security services at clean-up sites are services that support the performance of cleanup.

(e) **Taxability of tangible personal property used or consumed in cleaning up radioactive waste and other by-products of weapons production and nuclear research and development.** Persons cleaning up radioactive waste and other by-products of weapons production and nuclear research and development for the United States, or its instrumentalities, are consumers of any property they use or consume when performing these services. RCW 82.04.190. Therefore, tangible personal property used or consumed in the cleanup is subject to retail sales or use tax. If the seller does not collect retail sales tax on a retail sale, the buyer is required to pay the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department, unless specifically exempt by law. The "excise tax return" does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's excise tax return. For detailed information on the use tax, see WAC 458-20-178.

(10) **Sales to foreign governments or foreign diplomats.** Purchases by foreign governments are not subject to retail sales tax. Documentation, such as purchase orders and receipts, must be maintained by the seller to verify the exempt nature of the sale. Purchases by foreign diplomats are generally not subject to retail sales tax if a valid Diplomatic Tax Exemption Card issued by the United States Department of State is used. For specific information concerning the taxability of sales of goods and services to foreign missions and diplomats, contact the department's taxpayer services division at:

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

or call the department's telephone information center at (~~1-800-647-7706~~) 360-705-6705 or visit the department's website at dor.wa.gov.

AMENDATORY SECTION (Amending WSR 22-24-096, filed 12/6/22, effective 1/6/23)

WAC 458-20-209 Farming for hire and horticultural services performed for farmers. (1) **Introduction.** This rule 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 (Landscape and horticultural services). Farmers and persons making sales to farmers may also want to refer to the following rules:

(a) WAC 458-20-210 (Sales of tangible personal property for farming—Sales of agricultural products by farmers); and

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

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

(a) "Farmer" means any person engaged in the business of growing, raising, 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 to be sold. "Farmer" does not include a person growing, raising, or producing such products for the person's own consumption; a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard or a slaughter or packing house; or a 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, viticulture, or aquaculture as defined in RCW 15.85.020; plantation Christmas trees; short-rotation hardwoods as defined in RCW 84.33.035; turf; or any animal including, but not limited to, an animal that is a private sector cultured aquatic product as defined in RCW 15.85.020, or a bird, or insect, or the substances obtained from such an animal. "Agricultural product" does not include animals defined as pet animals under RCW 16.70.020. Effective June 12, 2014, "agricultural product" may not be construed to include cannabis. Cannabis is any product with a THC concentration greater than .3 percent. RCW 82.04.213.

(c) "Horticultural services" include services related to the cultivation of vegetables, fruits, grains, field crops, ornamental floriculture, and nursery products.

(i) The term "horticultural services" includes, but is not limited to, the following:

(A) Soil preparation services such as plowing or weed control before planting;

(B) Crop cultivation services such as planting, thinning, pruning, or spraying; and

(C) Crop harvesting services such as threshing grain, mowing and baling hay, or picking fruit.

(ii) Effective June 12, 2014, horticultural services does not include services related to the cultivation of cannabis. Cannabis is any product with a THC concentration greater than .3 percent.

(3) **Business and occupation (B&O) 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 458-20-210 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 (department) for a specific ruling. The department may be contacted using the website dor.wa.gov and selecting "contact us"; or by telephone at ((~~1-800-647-7706~~)) 360-705-6705.

(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 it is properly documented by a reseller permit. Reseller permits replaced resale certificates effective January 1, 2010. For additional

information on reseller permits see WAC 458-20-102. Z Flying's purchase of the pesticides is a purchase for resale and not subject to the retail sales tax. Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by Z Flying for five years from the date of last use or December 31, 2014, whichever first occurs.

AMENDATORY SECTION (Amending WSR 22-24-096, filed 12/6/22, effective 1/6/23)

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

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

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

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

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

(iii) WAC 458-20-222 Veterinarians;

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

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

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

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

(3) **What is an agricultural product?** An "agricultural product" is any product of plant cultivation or animal husbandry including, but not limited to: A product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as defined in RCW 15.85.020; plan-

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

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

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

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

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

(a) **Documenting wholesale sales.** A seller must take and retain from the buyer a copy of the buyer's reseller permit, or a completed "Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions" to document the wholesale nature of any transaction.

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

The Consumer Use Tax Return may be obtained by calling the department's telephone information center at ((1-800-647-7706)) 360-705-6705. The return may also be obtained from the department's website at dor.wa.gov.

(c) **Feed, seed, seedlings, fertilizer, spray materials, and agents for enhanced pollination.** Sales to farmers of feed, seed, seedlings, fertilizer, spray materials, and agents for enhanced pollination, including insects such as bees, to be used for the purpose of

producing an agricultural product, whether for wholesale or retail sale, are wholesale sales.

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

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

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

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

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

(iv) **What are spray materials?** "Spray materials" are any substance or mixture of substances in liquid, powder, granular, dry flowable, or gaseous form, which is intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mite, mollusk, fungus, weed, and any other form of plant or animal life normally considered to be a pest. The term includes treated materials, such as grains, that are intended to destroy, control, or repel such pests. "Spray materials" also include substances that act as plant regulators, defoliants, desiccants, or spray adjuvants.

(v) **Examples.**

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

(B) **Example 2.** WG Vineyards (WG) grows grapes that it uses to manufacture wine for sale. WG purchases pesticides and fertilizers that are applied to its vineyards. WG may purchase these pesticides

and fertilizers at wholesale, provided WG gives the seller a copy of their reseller permit, or a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions.

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

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

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

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

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

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

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

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

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

(i) **Machinery and equipment used directly in a manufacturing operation.** Machinery and equipment used directly in a manufacturing operation by a manufacturer or processor for hire is exempt from sales and use taxes provided that all requirements for the exemptions are met. RCW 82.08.02565 and 82.12.02565. These exemptions are commonly referred to as the M&E exemption. Farmers who use agricultural products that they have grown, raised, or produced as ingredients in a manufacturing process may be entitled to the M&E exemption on the acquisition of machinery and equipment used directly in their manufacturing operation. For more information on the M&E exemption see WAC 458-20-13601.

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

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

od is under a certain amount. For more information about the small business B&O tax credit see WAC 458-20-104.

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

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

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

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

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

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

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

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

The exemption also applies to persons selling manufactured dairy products to purchasers who transport the goods out of Washington state in the ordinary course of business. Unlike the exemption for certain wholesale sales of fresh fruits or vegetables (see (b)(i) of this subsection), the exemption for sales of qualifying dairy products does not require that the sales be made at wholesale.

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

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

(B) RCW 82.04.4268 is scheduled to expire July 1, 2025, at which time the preferential B&O tax rate under RCW 82.04.260 will apply.

(C) Effective October 1, 2013, the exemption provided by RCW 82.04.4268 expanded to include wholesale sales by a dairy product manufacturer to a purchaser who uses the dairy products as an ingredient or component in the manufacturing in Washington of another dairy product. The definition of dairy products was expanded to include products comprised of not less than 70 percent dairy products measured by weight or volume.

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

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

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

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

Example 7. A farmer is engaged in the business of raising cattle owned by others (commonly referred to as "custom feeding"). After the cattle attain a good market condition, the owner sells them. Amounts

received by the farmer for custom feeding are exempt from B&O tax under RCW 82.04.330, provided that the farmer held the cattle for at least 60 days. Farmers are not considered to be engaging in the activity of raising cattle for sale unless the cattle are held for at least 60 days while the cattle are prepared for market. (See (c) of this subsection.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Example 10. ABC Farms raises and sells quarter horses registered in the American Quarter Horse Association (AQHA). Quarter horses are generally recognized as a definite breed of horse, and the AQHA is a nationally recognized breed association. Therefore, ABC Farms is not required to collect sales tax on retail sales of quarter horses for breeding purposes, provided it receives and retains a completed exemption certificate from the buyer.

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

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

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

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

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

used exclusively to house chickens that are sold as agricultural products.

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

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

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

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

(1) **Farm fuel used for agricultural purposes.**

(i) **Diesel, biodiesel and aircraft fuels.** RCW 82.08.865 and 82.12.865 exempt from retail sales and use taxes the sale and use of diesel fuel, biodiesel fuel, and aircraft fuel, to farm fuel users for agricultural purposes. The exemptions apply to a fuel blend if all of the component fuels of the blend would otherwise be exempt if the component fuels were sold as separate products. The buyer must provide the seller with a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. See subsection (10) of this rule for where to find an exemption certificate. The seller must retain a copy of the exemption certificate for its records.

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

- (I) Soil preparation services;
- (II) Crop cultivation services;
- (III) Crop harvesting services.

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

- (I) Heating space for human habitation or water for human consumption; or
- (II) Transporting on public roads individuals, agricultural products, farm machinery or equipment, or other tangible personal property, except when the transportation is incidental to transportation on private property and the fuel used for such transportation is not subject to tax under chapter 82.38 RCW.

(ii) **Propane and natural gas used in distilling mint on a farm.** Effective October 1, 2013, RCW 82.08.220 and 82.12.220 exempt from retail sales and use taxes sales to and use by farmers of propane or natural gas used exclusively to distill mint on a farm. The buyer must provide the seller with a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. The seller must retain a copy of the exemption certificate for its records. See subsection (10) of this

rule for where to find an exemption certificate. The seller must also report amounts claimed for exemption when electronically filing excise tax returns. This exemption is scheduled to expire July 1, 2017.

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

(i) Qualifying livestock nutrient management equipment;

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

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

(iv) Nonqualifying labor and services. This subsection

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

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

(A) Certified under chapter 90.64 RCW;

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

(C) Approved by a conservation district and who qualifies for the exemption provided under RCW 82.08.855. Effective June 12, 2014, the requirement for the department to issue exemption certificates was removed. A Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions should be completed and provided to the seller.

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

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

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

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

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

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

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

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

- Who owns an animal feeding operation and has a nutrient management plan approved by a conservation district as meeting natural re-

source conservation service field office technical guide standards and who qualifies for the exemption provided under RCW 82.08.855.

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

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

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

- Aerators
- Agitators
- Augers
- Conveyers
- Gutter cleaners
- Hard-hose reel traveler irrigation systems
- Lagoon and pond liners and floating covers
- Loaders
- Manure composting devices
- Manure spreaders
- Manure tank wagons
- Manure vacuum tanks
- Poultry house cleaners
- Poultry house flame sterilizers
- Poultry house washers
- Poultry litter saver machines
- Pipes
- Pumps
- Scrapers
- Separators
- Slurry injectors and hoses
- Wheelbarrows, shovels, and pitchforks.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Sheep and other livestock raised as pets;

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

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

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

(q) **Replacement parts for qualifying farm machinery and equipment.** RCW 82.08.855 and 82.12.855 exempt from retail sales and use taxes sales to and uses by eligible farmers of replacement parts for qualifying farm machinery and equipment. Also included are: Labor and services rendered during the installation of repair parts; and labor and services rendered during repair as long as no tangible personal property is installed, incorporated, or placed in, or becomes an ingredient or component of the qualifying equipment other than replacement parts.

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

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

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

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

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

- Aircraft;

- Hand tools and hand-powered tools; and

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 16-13-039, filed 6/7/16, effective 7/8/16)

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

(a) **Where can I get my questions answered, or learn more about what I owe and how to report it?** Washington's tax system is based largely on voluntary compliance. Taxpayers have a legal responsibility to become informed about applicable tax laws, to register with the department, to seek instruction from the department, to file accurate returns, and to pay their tax liability in a timely manner (chapter 82.32A RCW, Taxpayer rights and responsibilities). The department has a taxpayer services program to provide taxpayers with accurate tax-reporting assistance and instructions. The department staffs local district offices, maintains a (~~toll-free~~) question and information phone line (~~((1-800-647-7706))~~ 360-705-6705), provides information and electronic forms on the internet (<http://dor.wa.gov>), and conducts free public workshops on tax reporting. The department also publishes notices, interpretive statements, and rules discussing important tax issues and changes.

(b) **What is electronic filing (or e-file), and how can it help me?** E-file is an internet-based application that provides a secure and encrypted way for taxpayers to file and pay many of Washington state's

business related excise taxes online. The e-file system automatically performs math calculations and checks for other types of reporting errors. **Using e-file to file electronically will help taxpayers avoid penalties and interest related to unintentional underpayments and delinquencies.** E-file can be accessed on the department's internet site <http://dor.wa.gov>. Open the page for electronic filing. The page contains additional links to pages answering frequently asked questions, and explains the registration process for e-file. Taxpayers may also call the department's toll-free electronic filing help desk for more information, during regular business hours.

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

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

Topic—Description	See subsection
Where can I get my questions answered, or learn more about what I owe and how to report it? - By phone or online, the department provides a number of free and easy resources to help you find answers.	(1)(a) of this rule, (see above)
What is electronic filing (or e-file), and how can it help me? - E-filing guides you through the return and helps you avoid many common mistakes.	(1)(b) of this rule, (see above)
Do I need to file a return? - How do I access returns and file them?	(2) of this rule
What methods of payment can I use? - What can I use to pay my taxes?	(3) of this rule
When is my tax payment due? - Different reporting frequencies can have different due dates. What if the due date is a weekend or a holiday? If my payment is in the mail on the due date, am I late or on time?	(4) of this rule
Penalties - What types of penalty exist? How big are they? When do they apply?	(5) of this rule
Statutory restrictions on imposing penalties - More than one penalty can apply at the same time, but there are restrictions. Which penalties can be combined?	(6) of this rule
Interest - In most cases interest is required. What interest rates apply? How is interest applied?	(7) of this rule
Application of payment towards liability - Interest, penalties, and taxes are paid in a particular order. If my payment doesn't pay the entire liability, how can I determine what parts have been paid?	(8) of this rule

Topic—Description	See subsection
Waiver or cancellation of penalties - I think I was on time, or I had a good reason for not paying the tax when I should have. What reasons qualify me for a waiver of penalty? How can I get a penalty removed?	(9) of this rule
Waiver or cancellation of interest - Interest will only be waived in two limited situations. What are they?	(10) of this rule
Interest and penalty waiver for active duty military personnel - Is a majority owner of the business on active duty with the military? BOTH interest and penalty can be waived if all the statutory requirements are met. What are the requirements?	(11) of this rule
Stay of collection - Revenue will sometimes temporarily delay collection action on unpaid taxes. When can this happen? Can I request that revenue delay collection?	(12) of this rule
Extensions - Can I get an extension of my due date? How long does an extension last? A special extension may be available if the governor proclaims a state of emergency in your area.	(13) of this rule

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

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

E-file taxpayers do not receive paper returns. However, if an e-file taxpayer specifically requests it, the department will send an electronic reminder for each upcoming return as the time to file approaches.

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

(c) Some consumers may not be required to register with the department and obtain a tax registration endorsement. (Refer to WAC 458-20-101 for detailed information about tax registration and when it is required.) But even if they do not have to be registered, consumers may be required to pay use tax directly to the department if they have purchased items without paying Washington's sales tax. An unregistered consumer must report and pay their use tax liability directly to the department. Use tax can be reported and paid on a "Consumer Use Tax Return" or the consumer can create an online account at the department's website to conveniently report and pay use tax electronically.

Consumer use tax returns are available from the department at any of the local district offices. A consumer may also call the department's (~~toll free number 1-800-647-7706~~) telephone information center at 360-705-6705 to request a consumer use tax return by fax or mail. Finally, the consumer use tax return is available for download from the department's internet site at <http://dor.wa.gov>, along with a number of other returns and forms which are available there.

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

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

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

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

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

(4) **When is my tax payment due?** RCW 82.32.045 provides that payment of the taxes due with the excise tax return must be made monthly and within (~~twenty-five~~) 25 days after the end of the month in which taxable activities occur, unless the department assigns the taxpayer a longer reporting frequency. Payment of taxes due with returns covering a longer reporting frequency is due on or before the last day of the month following the period covered by the return. (For example, payment of the tax liability for a first quarter tax return is due on April 30th.) WAC 458-20-22801 (Tax reporting frequency—Forms) explains the department's procedure for assigning a quarterly or annual reporting frequency.

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

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

payer to mail the tax return or payment sufficiently in advance of the due date to assure that the postmark date is timely.

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

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

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

The penalty types and rates addressed in this subsection are:

Penalty Type—Description	Penalty Rate	See subsection
Late payment of a return - Nine percent added when payment is not received by the due date, and increases if the tax due remains unpaid.	9/19/29%	(5)(a) of this rule
Unregistered taxpayer - Five percent added against unpaid tax when revenue discovers a taxpayer who has taxable activity but is not registered.	5%	(5)(b) of this rule
Assessment - Five percent added when a tax assessment is issued if the tax was "substantially underpaid," and increases if the tax due remains unpaid.	5/15/25% or 0/15/25%	(5)(c) of this rule
Issuance of a warrant - Ten percent added when a warrant is issued to collect unpaid tax, and does not require actual filing of a lien.	10%	(5)(d) of this rule
Disregard of specific written instructions - Ten percent added when the department has provided specific, written reporting instructions and tax is underpaid because the instructions are not followed.	10%	(5)(e) of this rule
Evasion - Fifty percent added when tax is underpaid and there is an intentional effort to hide that fact.	50%	(5)(f) of this rule

Penalty Type—Description	Penalty Rate	See subsection
Misuse of resale certificates or a reseller permit - Fifty percent added against unpaid sales tax when a buyer uses a resale certificate or reseller permit, but should not have.	50%	(5)(g) of this rule
Failure to remit sales tax to seller - Ten percent added against sales tax when the department proceeds directly against a buyer who fails to pay sales tax to the seller as part of a sales taxable retail purchase.	10%	(5)(h) of this rule
Failure to obtain the contractor's unified business identifier (UBI) number - A two hundred fifty dollar maximum penalty (does not require any tax liability) when specified businesses hire certain contractors but do not obtain and keep the contractor's UBI number.	\$250 (max)	(5)(i) of this rule
Disregarded transaction - A thirty-five percent penalty of the additional tax found to be due as a result of engaging in a disregarded transaction.	35%	(5)(j) of this rule

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

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

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

(ii) **What if my account is given an active nonreporting status, but I later have taxes I need to report and pay?** WAC 458-20-101 provides information about the active nonreporting status available for tax reporting accounts. In general, the active nonreporting status allows persons, under certain circumstances, to engage in business activities subject to the Revenue Act without filing excise tax returns.

Persons placed on an active nonreporting status by the department are required to timely notify the department if their business activities no longer meet the conditions to be in active nonreporting status. One of the conditions is that the person is not required to collect or pay a tax the department is authorized to collect. The late payment of return penalty will be imposed if a person on active nonreporting status incurs a tax liability that is not paid by the due date for taxpayers that are on an annual reporting basis (i.e., the last day of January next succeeding the year in which the tax liability accrued).

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

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

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

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

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

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

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

(c) **Assessment.** If the department issues an assessment for substantially underpaid tax, a five percent penalty will be added to the assessment when it is issued. If any tax included in the assessment is not paid by the due date, or by any extended due date, the penalty will increase to a total of ((fifteen)) 15 percent against the amount

of tax that remains unpaid. If any tax included in the assessment is not paid within (~~thirty~~) 30 days of the original or extended due date, the penalty will further increase to a total of (~~twenty-five~~) 25 percent against the amount of tax that remains unpaid. The minimum for this penalty is five dollars. RCW 82.32.090(2).

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

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

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

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

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

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

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

(ii) **What if I try to follow the written instructions, but I still don't get it quite right?** The penalty will not be applied if the

taxpayer has made a good faith effort to comply with specific written instructions.

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

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

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

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

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

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

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

(h) **Failure to remit sales tax to seller.** The department may assert an additional (~~ten~~) 10 percent penalty against a buyer who has failed to pay the seller the retail sales tax on taxable purchases, if the department proceeds directly against the buyer for the payment of

the tax. This penalty is in addition to any other penalties or interest prescribed by law. RCW 82.08.050.

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

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

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

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

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

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

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

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

interest continues at the annual variable interest rates described below in (c) of this subsection.

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

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

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

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

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

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

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

- Interest((τ))i
- Penalties((τ))i
- Fees((τ))i
- Other nontax amounts((τ))i
- Tax, except spirits tax((τ))i
- Spirits tax((τ))i

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

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

tax for YEAR 2, (~~two thousand dollars~~) \$2,000 of other taxes for YEAR 1, and (~~seven thousand dollars~~) \$7,000 of other taxes for YEAR 2. The order of application of any payments will be first against the (~~five hundred dollars~~) \$500 of total interest and penalties, second against the (~~four hundred dollars~~) \$400 retail sales tax in YEAR 1, third against the (~~two thousand dollars~~) \$2,000 of other taxes in YEAR 1, fourth against the (~~six hundred dollars~~) \$600 retail sales tax of YEAR 2, and finally against the (~~seven thousand dollars~~) \$7,000 of other taxes in YEAR 2.

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

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

(i) A request for a waiver or cancellation of penalties should contain all pertinent facts and be accompanied by such proof as may be available. The taxpayer bears the burden of establishing that the circumstances were beyond its control and directly caused the late payment. The request should be made in the form of a letter; however, verbal requests may be accepted and considered at the discretion of the department. Any petition for correction of assessment submitted to the department's administrative review and hearings division for waiver of penalties must be made within the period for filing under RCW 82.32.160 (within (~~thirty~~) 30 days after the issuance of the original notice of the amount owed or within the period covered by any extension of the due date granted by the department), and must be in writing, as explained in WAC 458-20-100 (Informal administrative reviews). Refund requests must be made within the statutory limitation period.

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

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

(B) Erroneous written information given to the taxpayer by a department officer or employee caused the delinquency. A penalty generally will not be waived when it is claimed that erroneous oral information was given by a department employee. The reason for not cancel-

ing the penalty in cases of oral information is because of the uncertainty of the facts presented, the uncertainty of the instructions or information imparted by the department employee, and the uncertainty that the taxpayer fully understood the information given. Reliance by the taxpayer on incorrect advice received from the taxpayer's legal or accounting representative is not a basis for cancellation of a penalty.

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

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

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

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

(G) The department does not respond to the taxpayer's request for a tax return (or other forms necessary to compute the tax) within a reasonable period of time, which directly causes delinquent filing and payment on the part of the taxpayer. This assumes that, given the same situation, if the department had provided the requested form(s) within a reasonable period of time, the taxpayer would have been able to meet its obligation for timely payment of the tax. In any case, the taxpayer has responsibility to insure that its return is filed in a timely manner (e.g., by keeping track of pending due dates) and must anticipatively request a return for that purpose, if one is not received.

(Note: Tax returns and other forms are available at no cost from the department's website, dor.wa.gov. When good cause exists, taxpayers are advised to contact the department and request an extension of the due date for filing, before the due date of concern has passed. See subsection (12) of this rule. Taxpayers who have registered to file electronically with e-file will avoid potential penalties relating to paper returns not received. See subsection (1)(b) of this rule.)

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

(A) Financial hardship;

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

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

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

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

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

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

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

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

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

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

(ii) A return will be considered timely for purpose of the waiver if there is no tax liability on it when it is filed. Also, a return will be considered timely if any late payment penalties assessed on it were waived or canceled due to circumstances beyond the control of the taxpayer (see (a) of this subsection). The number of times penalty has been waived due to circumstances beyond the control of the taxpayer does not influence whether the waiver in this subsection will be granted. A taxpayer may receive more than one of the waivers in this subsection within a (~~twenty-four~~) 24 month period if returns for more than one of the listed tax programs are filed, but no more than one waiver can be applied to any one tax program in a (~~twenty-four~~) 24 month period.

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

the previous (~~twenty-four~~) 24 month period, the taxpayer may still qualify for a penalty waiver for the timber tax program.

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

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

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

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

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

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

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

(a) The majority owner of the business is:

(i) On active duty in the military;

(ii) Participating in an armed conflict;

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

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

Interest and penalty may not be waived or canceled for a period longer than (~~twenty-four~~) 24 months. The waiver applies to interest or penalty based on the date they are imposed, which must be within the (~~twenty-four~~) 24 month waiver period.

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

(12) **Stay of collection.** RCW 82.32.190 allows the department to initiate a stay of collection, without the request of the taxpayer and without requiring any bond, for certain tax liabilities when they may be affected by the outcome of a question pending before the courts (see (a) of this subsection). RCW 82.32.200 provides conditions under

which the department, at its discretion, may allow a taxpayer to file a bond in order to obtain a stay of collection on a tax assessment (see (b) of this subsection). The department will grant a taxpayer's stay of collection request, as described in RCW 82.32.200, only when the department determines that a stay is in the best interests of the state.

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

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

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

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

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

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

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

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

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

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

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

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

(a) Any permanent extension more than (~~ten~~) 10 days beyond the due date, and any temporary extension in excess of (~~(thirty)~~) 30 days, must be conditional upon deposit by the taxpayer with the department of an amount equal to the estimated tax liability for the reporting period or periods for which the extension is granted. This deposit is credited to the taxpayer's account and may be applied to the taxpayer's liability upon cancellation of the permanent extension or upon reporting of the tax liability where a temporary extension of more than (~~(thirty)~~) 30 days has been granted.

The amount of the deposit is subject to departmental approval. The amount will be reviewed from time to time, and a change may be required at any time that the department concludes that such amount does not approximate the tax liability for the reporting period or periods for which the extension was granted.

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

AMENDATORY SECTION (Amending WSR 16-12-075, filed 5/27/16, effective 6/27/16)

WAC 458-20-229 Refunds. (1) **Introduction.** This rule explains the procedures relating to refunds or credits for the overpayment of taxes, penalties, or interest. It describes the statutory time limits for refunds and the interest rates that apply to those refunds.

References to a "refund application" in this rule include a request for a credit against future tax liability as well as a refund to the taxpayer.

Examples provided in this rule should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(2) **What are the time limits for a tax refund or credit?**

(a) **Time limits.** No refund or credit may be made for taxes, penalties, or interest paid more than four years before the beginning of the calendar year in which a refund application is made or examination of records by the department is completed. See RCW 82.32.060. This is a nonclaim statute rather than a statute of limitations. This means a valid application must be filed within the statutory period, which may not be extended or tolled, unless a waiver extending the time for assessment has been entered into as described in (c) of this subsection.

For example, a refund or credit may be granted for any overpayment made in a shaded year in the following chart:

<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>	<u>Year 6</u>
					<u>Refund application is filed no later than December 31st</u>

(b) **Relation back to date paid.** Because the time limits relate to the date the taxes, penalties, or interest is paid, a refund application can be timely even though the payment concerned liabilities for a tax year normally outside the time limits. For example, Taxpayer P owes \$1,000 in B&O tax for activity undertaken in December 2000. In

January 2001, Taxpayer P makes an arithmetic error and submits a payment of \$1,500 with its December 2000 tax return. In December 2005, Taxpayer P requests a refund of \$500 for the overpayment of taxes for the December 2000 period. This request is timely because the overpayment occurred within the time limits, even though the payment concerned tax liabilities incurred (December 2000) outside the time limits.

Fact situations can be complicated. For example, Taxpayer P pays B&O taxes in Years 1 through 4. The department subsequently conducts an audit of Taxpayer P that includes Years 1-4. The audit is completed in Year 5. As a result of the audit, the department issues an assessment in Year 5 for \$50,000 in additional retail sales taxes that were due from Years 1-4. Taxpayer P pays the assessment in full in Year 6. In Year 10, Taxpayer P files an application requesting a refund of B&O taxes. Taxpayer P's application is timely because it relates to a payment (payment of the assessment in Year 6) made no more than four years before the year in which the application is filed. It does not matter that the taxes relate to years outside the time limits; the actual payment occurred within four years before the refund application. Nor does it matter that the refund is based on an overpayment of B&O taxes while the assessment involved retail sales taxes, because both taxes relate to the same tax years. However, the amount of any refund is limited to \$50,000 - the amount of the payment that occurred within the time limits.

Assume the same facts as described above. When the department reviews Taxpayer P's refund application, it determines that the refund is valid. After reviewing the new information, however, the department also determines that Taxpayer P should have paid \$20,000 in additional B&O taxes during Years 1-4. Because Taxpayer P paid \$30,000 more than the amount properly due (\$50,000 overpayment less \$20,000 underpayment), the amount of the refund will be \$30,000.

(c) **Waiver.** Under RCW 82.32.050 or 82.32.100, a taxpayer may agree to waive the time limits and extend the time for the assessment of taxes, penalties and interest. If the taxpayer executes such a waiver, the time limits for a refund or credit are extended for the same period.

(3) **How do I get a refund or credit?**

(a) **Departmental examination of returns.** If the department performs an examination of the taxpayer's records and determines that the taxpayer has overpaid taxes, penalties, or interest, the department will issue a refund or a credit, at the taxpayer's option. In this situation, the taxpayer does not need to apply for a refund.

(b) **Taxpayer application.**

(i) If a taxpayer discovers that it has overpaid taxes, penalties, or interest, it may apply for a refund or credit. Refund application forms are available from the following sources:

- The department's internet website at <http://dor.wa.gov>
- By facsimile by calling Fast Fax at 360-705-6705 (~~☎~~ ~~800-647-7706~~ (using menu options))
- By writing to:

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

The application form should be submitted to the department at the following location:

Taxpayer Account Administration
P.O. Box 47476
Olympia, WA 98504-7476.

Taxpayers are encouraged to use the department's refund application form to ensure that all necessary information is provided for a timely valid application. However, while use of the department's application form is encouraged, it is not mandatory and any written request for refund or credit meeting the requirements of this rule shall constitute a valid application. Filing an amended return showing an overpayment will also constitute an application for refund or credit, provided that the taxpayer also specifically identifies the basis for the refund or credit.

(ii) A taxpayer must submit a refund application within the time limits described in subsection (2)(a) of this rule. An application must contain the following five elements:

(A) The taxpayer's name and UBI/TRA number must be on the application.

(B) The amount of the claim must be stated. Where the exact amount of the claim cannot be specifically ascertained at time of filing, the taxpayer may submit an application containing an estimated claim amount. Taxpayers must explain why the amount of the claim cannot be stated with specificity and how the estimated amount of the claim was determined.

(C) The tax type and taxable period must be on the application.

(D) The specific basis for the claim must be on the application. Any basis for a refund or credit not specifically identified in the initial refund application will be considered untimely, except that an application may be refiled to add additional bases at any time before the time limits in subsection (2) of this rule expire.

(E) The signature of the taxpayer or the taxpayer's representative must be on the application. If the taxpayer is represented, the confidential taxpayer information waiver signed by the taxpayer specifically for that refund claim must be received by the department by the date the substantiation documents are first required, without regard to any extensions. If the signed confidential taxpayer information waiver for the refund claim lists the representative as an entity, every member or employee of that entity is authorized to represent the taxpayer. If the signed confidential taxpayer information waiver for the refund claim lists the representative as an individual, only that individual is authorized to represent the taxpayer.

(iii) If the nonclaim statute has run prior to the filing of the application, the department will deny the application and notify the taxpayer.

(iv) If the department determines that the taxpayer is not entitled to a refund as a matter of law, the application may be denied without requiring substantiation. The taxpayer shall be responsible for maintaining substantiation as may eventually be needed should taxpayer seek review.

(v) The taxpayer is encouraged to file substantiation documents at the time of filing the application. However, once an application is filed, the taxpayer must submit sufficient substantiation to support the claim for refund or credit before the department can determine whether the claim is valid. The department will notify the taxpayer if additional substantiation is required. The taxpayer must provide the necessary substantiation within (~~ninety~~) 90 days after such notice is sent, unless the documentation is under the control of a third par-

ty, not affiliated with or under the control of the taxpayer, in which case the taxpayer will have (~~one hundred eighty~~) 180 days to provide the documentation. The department may request any other books, records, invoices or electronic equivalents and, where appropriate, federal and state tax returns to determine whether to accept or deny the claimed refund and to assess an existing deficiency.

(vi) In its discretion and upon good cause shown, the department may extend the period for providing substantiation upon its own or the taxpayer's request, which may not be unreasonably denied.

(vii) If the department does not receive the necessary substantiation within the applicable time period, the department shall deny the claim for lack of adequate substantiation and shall so notify the taxpayer. Any application denied for lack of adequate substantiation may be filed again with additional substantiation at any time before the time limits in subsection (2) of this rule expire. Once the department determines that substantiation is sufficient, the department shall process the refund claim within (~~ninety~~) 90 days, except that the department may extend the time of processing such claim upon notice to the taxpayer and explanation of why the claim cannot be completed within such time.

(viii) The following examples illustrate the refund application process:

(A) A taxpayer discovers in January 2005 that its June 2004 excise tax return was prepared using incorrect figures that overstated its sales, resulting in an overpayment of tax. The taxpayer files an amended June 2004 tax return with the department's taxpayer account administration division. The department will treat the taxpayer's amended June 2004 tax return as an application for a refund or credit of the amounts overpaid during that tax period, except that the taxpayer must also specifically identify the basis for the refund or credit and provide sufficient substantiation to support the claim for refund or credit. The taxpayer may satisfy this obligation by submitting a completed refund application form with its amended return or providing the additional required substantiation by other means.

(B) On December 31, 2005, a taxpayer files an amended return for the 2001 calendar year. The return includes changed figures indicating that an overpayment occurred, but does not provide any supporting substantiation. No written waiver of the time limits, under subsection (2)(c) of this rule, for this time period exists. The department sends a letter notifying the taxpayer that the taxpayer's application is not complete and substantiation must be provided within (~~ninety~~) 90 days or the application will be denied. If the taxpayer does not provide the necessary substantiation by the stated date, the claim will be denied and, if refiled, will not be granted because it is then past the nonclaim limit of the statute.

(C) Taxpayer submits a refund application on December 31, 2004, claiming that taxpayer overpaid use tax in 2000 on certain machinery and equipment obtained by the taxpayer at that time. No substantiation is provided with the application and no written waiver of the time limit, under subsection (2)(c) of this rule, for this taxable period exists. The department sends a letter notifying the taxpayer that the taxpayer's application is not complete and substantiation must be provided within (~~ninety~~) 90 days or the application will be denied. The taxpayer does not respond by the stated date. The claim will be denied and, if refiled, will not be granted since it is then past the nonclaim limit of the statute.

(D) Assume the same facts as in (b) (viii) (B) and (C) of this subsection, except that within (~~ninety~~) 90 days from the date the department sent the letter the taxpayer submits substantiation, which the department deems sufficient. The taxpayer's claim is valid, notwithstanding that the substantiation was provided after the nonclaim limit expired.

(E) Assume the same facts as in (b) (viii) (B) and (C) of this subsection, except that before the (~~ninety~~) 90-day period expires, the taxpayer requests an additional (~~fifteen~~) 15 days in which to respond, explaining why the substantiation will require the additional time to assemble. The department agrees to the extended deadline. If the taxpayer submits the requested substantiation within the resulting (~~one hundred five~~) 105-day period, the department will not deny the claim for failure to provide timely substantiation.

(F) Assume the same facts as in (b) (iii) (B) and (C) of this subsection, except that the taxpayer submits substantiation within (~~ninety~~) 90 days. The department reviews the substantiation and finds that it is still insufficient. The department, in its discretion, may extend the deadline and request additional substantiation from the taxpayer or may deny the refund claim as not substantiated.

(4) May I get a refund of retail sales tax paid in error?

(a) **Refund from seller.** Except as provided for in RCW 82.08.130 regarding deductions for tax paid at source, if a buyer pays retail sales tax on a transaction that the buyer later believes was not taxable, the buyer 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 buyer, the seller may seek its own refund from the department. It is better for a buyer to seek a retail sales tax refund directly from the seller. This is because the seller has the records to know if retail sales tax was collected on the original sale, knows the buyer, knows the circumstances surrounding the original sale, is aware of any disputes between itself and the buyer concerning the product, and may already be aware of the circumstances as to why a refund of sales tax is or is not appropriate. If a seller questions whether he or she should refund sales tax to a buyer, the seller may request advice from the department's telephone information center at (~~1-800-647-7706~~) 360-705-6705.

(b) **Refund from department.** In certain situations where the buyer has not received a refund from the seller, the department will refund retail sales tax directly to a buyer. The buyer must file a complete refund application as described in subsection (3) (b) of this rule and either a seller's declaration or a buyer's declaration, under penalty of perjury, must be provided for each seller.

(i) If the buyer is able to obtain a waiver from the seller of the seller's right to claim the refund, the buyer should file a seller's declaration, under penalty of perjury, with the refund application. A seller's declaration substantiates that:

(A) Retail sales tax was collected and paid to the department on the purchase for which a refund is sought;

(B) The seller has not refunded the retail sales tax to the buyer or claimed a refund from the department; and

(C) The seller will not seek a refund of the sales tax from the department.

(ii) If the seller no longer exists, the seller refuses to sign the declaration, under penalty of perjury, or the buyer is unable to locate the seller, the buyer should file a buyer's declaration, under penalty of perjury, with the refund application. The buyer's declara-

tion explains why the buyer is unable to obtain a seller's declaration and provides information about the seller and declares that the buyer has not obtained and will not in the future seek a refund from the seller for that claim.

(iii) Seller's declaration, under penalty of perjury, and buyer's declaration, under penalty of perjury, forms are available from the following sources:

- The department's internet website at <http://dor.wa.gov>
- By facsimile by calling Fast Fax at 360-705-6705 ((~~☎~~ ~~800-647-7706~~ (using menu options)))
- By writing to:

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

(5) **May I use statistical sampling to substantiate a refund?** Sampling will only be used when a detailed audit is not possible. However, if your applications for refund or credit involve voluminous documents, the preferred method for substantiating your application is the use of statistical sampling. Alternative methods of sampling, including but not limited to, random sampling, time period sampling, transaction sampling, and block sampling, may be used when the department agrees that such methods are appropriate.

When using statistical sampling or an alternative method to substantiate an application for refund or credit, the applicant must contact the department prior to preparing the sampling to obtain the department's approval of the sampling plan. The sampling plan will describe the following:

- Population and sampling frame;
- Sampling unit;
- Source of the random numbers;
- Who will physically locate the sample units and how and where they will be presented for review;
- Any special instructions to those who were involved in reviewing the sample units;
- Special valuation guidelines to any of the sample units selected in the sample;
- How the sample will be evaluated, including the precision and confidence levels; and
- The applicant must obtain a seller's declaration from those sellers identified in the sample and separately certify, under penalty of perjury, that applicant will not otherwise request or accept a refund or credit for sales or deferred sales tax paid to any seller or any use tax remitted during the taxable period covered by the audit.

Failure to contact the department before preparing the sampling may result in the department rejecting the application on the grounds that the results are not statistically valid.

Contact the department prior to performing a statistical sampling at these locations:

- The department's internet website at <http://dor.wa.gov>
- By facsimile by calling Fast Fax at 360-705-6705 ((~~☎~~ ~~800-647-7706~~ (using menu options)))
- By writing to:

Taxpayer Services
Washington State Department of Revenue

P.O. Box 47478
Olympia, WA 98504-7478.

(6) **Is my refund final?** The department may review a refund or credit provided on the basis of a taxpayer application without an examination by audit. If the refund or credit is granted and the department subsequently determines that the refund or credit exceeded the amount properly due the taxpayer, the department may issue an assessment to recover the excess amount. This assessment must be made within the time limits of RCW 82.32.050.

(7) **Refunds made as a result of a court decision.** The department will grant refunds or credits required by a court or Board of Tax Appeals decision, if the decision is not under appeal.

If the court action requires the refund or credit of retail sales taxes, the department will not require that buyers attempt to obtain a refund directly from the seller if it would be unreasonable and an undue burden on the buyer. In such a case, the department may refund the retail sales tax directly to the buyer and may use the public media to notify persons that they may be entitled to refunds or credits. The department will make available special refund application forms that buyers must use for these situations. The application will request the appropriate information needed to identify the buyer, item purchased, amount of sales tax to be refunded, and the seller. The department may, at its discretion, request additional documentation that the buyer could reasonably be expected to retain, based on the particular circumstances and value of the transaction. The department will approve or deny such refund requests within (~~ninety~~) 90 days after the buyer has submitted all documentation.

(8) **What interest is due on my refund?** Interest is due on a refund or credit granted to a taxpayer as provided in this subsection.

(a) **Rate for overpayments made between 1992 through 1998.** For amounts overpaid by a taxpayer between January 31, 1991 and December 31, 1998, the rate of interest on refunds and credits is:

(i) Computed the same way as the rate provided under (b) of this subsection minus one percent, for interest allowed through December 31, 1998; and

(ii) Computed the same way as the rate provided under (b) of this subsection, for interest allowed after December 31, 1998.

(b) **Rate for overpayments after 1998.** For amounts overpaid by a taxpayer after December 31, 1998, 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 two percentage points. The rate is 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 and July of the immediately preceding calendar year and October of the previous preceding year, as published by the United States Secretary of Treasury.

(c) **Start date for the calculation of interest.** If the taxpayer made all overpayments for each calendar year and all reporting periods ending with the final month included in a credit notice or refund on or before the due date of the final return for each calendar year or the final reporting period included in the notice or refund, interest is computed from either:

(i) January 31st following each calendar year included in a notice or refund; or

(ii) The last day of the month following the final month included in a notice or refund.

If the taxpayer did not make all overpayments for each calendar year and all reporting periods ending with the final month included in the notice or refund, interest is computed from the last day of the month following the date on which payment in full of the liabilities was made for each calendar year included in a notice or refund, and the last day of the month following the date on which payment in full of the liabilities was made if the final month included in a notice or refund is not the end of a calendar year.

(d) **Calculation of interest on credits.** 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. If a taxpayer requests that a credit notice be converted to a refund, interest is re-computed to the date the refund (warrant) is issued, but not to exceed the interest that would have been granted through the credit notice.

(9) **May the department apply my refund against other taxes I owe?** The department may apply overpayments against existing deficiencies and/or future assessments for the same legal entity. However, if preliminary schedules have not been issued regarding existing deficiencies or future assessments and the taxpayer is not presently under audit, the refund of an overpayment may not be delayed when the department determines a refund is due. The following examples illustrate the application of overpayments against existing deficiencies:

(a) The taxpayer's records are audited for the period Year 1 through Year 4. The audit disclosed underpayments in Year 2 and overpayments in Year 4. The department will apply the overpayments in Year 4 to the deficiencies in Year 2. The resulting amount will indicate whether a refund or credit is owed the taxpayer or whether the taxpayer owes additional tax.

(b) The department has determined that the taxpayer has overpaid its real estate excise tax. 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 refund of the real estate excise tax while it schedules and performs 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 audit disclosed underpayments of B&O tax and overpayments of timber tax. Separate assessments were issued on the same date, one showing additional taxes due and the other overpayments. The department may apply the overpayment against the tax deficiency assessment since both the underpayment and overpayment have been established.

(10) **How do I seek review of the department's decision?** The taxpayer may seek review of the denial of: A refund claim (or any part thereof, including tax, penalties, or interest overpayments), a request for an extension for providing substantiation, or a request to use a specific sampling technique. Taxpayer may seek review to either:

(a) The department as provided in WAC 458-20-100 (Informal administrative reviews); or

(b) Directly to Thurston County superior court.

(11) **Application.** This rule applies to refund applications or amended returns showing overpayments, where the taxpayer has also specifically identified the basis for the refund or credit, that are received by the department on or after the effective date of this rule.

AMENDATORY SECTION (Amending WSR 10-07-135, filed 3/23/10, effective 4/23/10)

WAC 458-20-235 Effect of rate changes on prior contracts and sales agreements. (1) **Introduction.** This section explains the principals that determine the applicability of changes in the rates of tax imposed under the Revenue Act, with respect to contracts, sales agreements, and installment sales made prior to the effective date of the change.

(2) **Unconditional sales contracts.**

- When an unconditional sales contract to sell tangible personal property is entered into prior to the effective date of a rate change, and the property is delivered after the rate change date, the new tax rate applies to the transaction.

- When an unconditional sales contract to sell tangible personal property is entered into prior to the effective date, and the property is delivered prior to the rate change date, the tax rate in effect for the prior period applies.

- When a contract to sell tangible personal property contains a specific provision to pass title at some time prior to delivery of the property, such a specific provision is controlling and the tax rate in effect at that time applies.

(3) **Conditional and installment sales.** The taxes due on conditional and installment sales must be wholly reported during the period in which the sale is made (see WAC 458-20-198 Installment sales, method of reporting), even when the seller receives payment in installments. Sellers who receive installment payments after the effective date of a rate change on conditional and installment sales made prior to that date do not need to adjust the installment payment amounts to reflect the rate change.

(4) **Leasing or rental of tangible personal property.** Lessors who lease tangible personal property are required to collect from their lessees the retail sales tax measured by the gross income from leases or rentals as of the time the lease or rental payments are due (WAC 458-20-211 Leases or rentals of tangible personal property, bailments). Lessors must collect and remit taxes to the department of revenue (department) at the new rates on all lease or rental payments due on and after the effective date of a rate change, including lease or rental payments on contracts entered into prior to that date.

(5) **Repairing or improving tangible personal or real property.** When persons install, repair, clean, alter, imprint, or improve tangible person property for others, or improve buildings or other structures upon real property of others:

- Sales and use tax rate increases apply to the first billing period starting on or after the effective date of the increase; and

- Sales and use tax rate decreases apply when bills are rendered on or after the effective date of the decrease. (RCW 82.08.064)

The new tax rate applies to the full contract amount if the contract was executed prior to the effective date of the rate change, unless the contract work is completed and accepted prior to the effective date.

If 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 seller is entitled to receive the payments.

(6) **Do you have questions on rate changes?** If you have questions on how a rate change may affect you, please contact the Telephone Information Center at (~~1-800-647-7706~~) 360-705-6705, or write the department at:

Taxpayer Information and Education
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478.

AMENDATORY SECTION (Amending WSR 09-15-057, filed 7/10/09, effective 8/10/09)

WAC 458-20-239 Sales to nonresidents of farm machinery or implements, and related services. (1) **Introduction.** This section explains the retail sales tax exemption provided by RCW 82.08.0268 for sales to nonresidents of farming machinery and implements, parts for farming machinery and implements, and related labor and services. This section also explains the documents that must be preserved to substantiate a claim of exemption. Sellers should refer to WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property) if they deliver farm machinery or implements to the purchaser at an out-of-state location.

(2) **Tax-reporting requirements.** Retailing B&O and retail sales taxes generally apply to all sales of tangible personal property, parts, and repair labor in Washington.

(a) RCW 82.08.0268 provides an exemption from retail sales tax for sales to nonresidents of the following when used in conducting a farm activity outside the state of Washington:

(i) Machinery and implements;
(ii) Parts for machinery and implements; and
(iii) Labor and services for repair of machinery, implements, and parts.

(b) To qualify for the exemption, the machinery, implements, or parts must be transported outside the state immediately after sale or completion of the repair or service.

(c) This exemption is allowed even though the property sold or serviced is delivered to the purchaser in this state, but only when the seller receives from the buyer an exemption certificate, and examines acceptable proof such as a driver's license that the buyer is a resident of a state or country other than the state of Washington.

(d) The exempt nature of the transaction must be documented by using the department's "Farmers' Retail Sales Tax Exemption Certificate," or another certificate with substantially the same information as it relates to the exemption provided by RCW 82.08.0268. The certificate must be completed in its entirety, and retained by the seller.

The "Farmers' Retail Sales Tax Exemption Certificate" can be obtained via the internet at <http://dor.wa.gov>. The form may also be obtained by contacting the department's telephone information center at (~~1-800-647-7706~~) 360-705-6705, or by writing the department at:

Taxpayer Information and Education
Department of Revenue
P.O. Box 47478

Olympia, WA 98504-7478

If, prior to completion of the sale, the seller becomes aware of any information inconsistent with the purchaser's claim of residency, such as a Washington address on a credit application, the seller should not accept an exemption certificate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) **"Eligible investment project"** means an investment project that is located, as of the date the application required by RCW 82.60.030 is received by the department, in an eligible area. "Eligible investment project" does not include any portion of an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site where the cogeneration project is an integral part. It also does not include investment projects that have already received deferrals under chapter 82.60 RCW. RCW 82.60.020 and 82.60.049.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Qualified buildings" does not include construction of landscap-ing or most other work outside the building itself, even though the

landscaping or other work outside the building may be required by the city or county government in order for the city or county to issue a permit for the construction of a building.

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

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

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

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

(u) **"Research and development"** means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun, but only when such activities are intended to ultimately result in the production of a new, different, or useful substance or article of tangible personal property for sale. For purposes of this rule, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed (~~one million dollars~~) \$1,000,000.

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

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

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

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

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

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

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

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

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

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

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

Example 1. Prior to the initiation of construction, Owner/Lessor AA enters into an agreement with Lessee BB, a company engaged in qualified manufacturing or research and development. Under the agreement, AA will build a building to house BB's research and development activities, will apply for a tax deferral on construction of the building, will lease the building to BB, and will pass on the economic benefit in the amount of the deferral to BB. BB agrees in writing with the department to complete annual tax performance reports. AA applies for the deferral before the initiation of construction that is prior to the date the building permit is issued. AA is entitled to a deferral on building construction costs assuming all eligibility qualifications are met.

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

if they are legally responsible and actually pay contractors for the improvements, rather than merely reimbursing lessors for the costs.

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

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

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

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

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

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

Apportionment formula:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Based on the apportionment formula: 78% of common area costs are eligible. Multiply the common area costs of \$260,000 by 78% to determine that \$202,800 of common area costs are eligible for deferral. Therefore the \$850,000 for the manufacturing portion of the building

plus the \$202,800 for common areas total \$1,052,800 of eligible project costs. Multiply the eligible project costs of \$1,052,800 by the tax rate of 8.8% to determine a sales/use tax deferral of \$92,646.

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

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

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

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

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

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

(7) **What are the application and review processes?** An application for sales and use tax deferral under this program must be made prior to the initiation of construction, prior to taking possession of machinery and equipment, and prior to the filling of qualified employment positions. Persons, applying after construction is initiated or finished or after taking possession of machinery and equipment, are not eligible for the program. When an application for sales and use tax deferral is timely submitted, costs incurred before the applica-

tion date are allowable, if they otherwise qualify. Applications for persons subject to hiring requirements must include information regarding the estimated total project cost and the qualified employment positions.

(a) **How does a taxpayer obtain an application form?** Application forms may be obtained (~~(at department district offices, by downloading)~~) from the department's website at dor.wa.gov, or by (~~(telephoning the telephone information center at 800-647-7706, or by)~~) contacting the (~~(department's special programs division at:~~

~~Special Programs Division
Department of Revenue
P.O. Box 47477
Olympia, WA 98504-7477
Fax: 360-534-1498
Email: DORdeferrals@dor.wa.gov.~~

~~Applicants must mail, email, or fax applications to the special programs division at the address, email address, or fax number given above)~~ department at 360-705-6705. Applications approved by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. RCW 82.60.100.

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

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

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

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

(B) Itemized reasons for the proposed construction;

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

(D) Building permits.

Similarly, after an application has been granted, a deferral certificate is no longer valid and should not be used if construction has not begun within one year from the date of application or there is not a specific and active program to begin construction within two years from the date of application. However, the department will grant requests to extend the period for which the certificate is valid if the holder of the certificate can demonstrate that the delay in starting construction is due to circumstances beyond the certificate holder's control such as the acquisition of building permit(s). Refer to subsection (9) of this rule for more information on the use of tax deferral certificates.

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

(d) **May an applicant request a review of department disapproval of the deferral application?** The applicant may request administrative review of the department's disapproval of an application, within

((thirty)) 30 days from the date of notice of the disallowance, pursuant to the provisions of WAC 458-20-100, Appeals. The filing of a petition for review with the department starts a review of departmental action.

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

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

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

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

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

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

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

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

- (i) The project will exceed the costs originally stated;
- (ii) The project will take more time to complete than originally stated;
- (iii) The original application is no longer accurate because of changes in the project;
- (iv) The project location changes (only applicable to machinery and equipment); and
- (v) Transfer of ownership of the project.

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

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

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

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

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

(c) **What should a certificate holder do when its investment project is operationally complete?** The certificate holder must notify the department in writing when the investment project is operationally complete. The project is operationally complete once it can be used for its intended purpose as described in the application. The department will certify the qualifying costs and the date when the project became operationally complete. The certificate holder of the deferral must maintain the manufacturing or research and development activity beginning the year the project is operationally complete and the following seven calendar years. It is important to remember that annual tax performance report reporting requirements begin the year following the operationally complete date, even though the audit certification may not be complete. For information on submitting annual tax performance reports, see subsection (13) of this rule.

Example 7. Taxpayer estimated a project end date of June 2018, but the project was actually operationally complete in November 2017. Taxpayer must submit the 2017 annual tax performance report by May 31, 2018. Taxpayer is responsible for notifying the department when the project is operationally complete regardless of the estimated comple-

tion date. If the 2017 annual tax performance report is not submitted timely, taxpayer will be assessed 12.5% of the deferred sales/use tax for this project.

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

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

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

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

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

The following describes the various circumstances under which repayment of the deferral may occur. Outstanding taxes are determined as of December 31st of each year by reference to the following table. No proration is allowed for completing a partial year of the deferral use requirement.

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

Repayment Year	Percentage of Deferred Tax Waived
8	30%

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

(a) Failure of investment project to satisfy general conditions.

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 16-12-075, filed 5/27/16, effective 6/27/16)

WAC 458-20-24001A Sales and use tax deferral—Manufacturing and research/development activities in rural counties—Applications filed prior to July 1, 2010. (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 areas of the state. The legislature established this program to be effective solely in those areas and for those circumstances where the deferral is for investments that result in the creation of a specified minimum number of jobs or investment for a qualifying project.

The program applies to sales and use taxes on materials and labor and services rendered in the construction of qualified buildings or acquisition of qualified machinery and equipment and requires the recipient of the deferral to maintain the manufacturing or research and development activity for an eight-year period. This rule does not address RCW 82.08.02565 and 82.12.02565, which provide a statewide sales and use tax exemption for machinery and equipment used directly in a manufacturing operation. Refer to WAC 458-20-13601 for more information regarding the statewide exemption.

(2) **Program background.** This program was enacted in 1985. The legislature made major revisions to program criteria in 1993, 1994, 1995, 1996, 1999, 2004, 2009, and 2010, specifically to the definitions of "eligible area," "eligible investment project," "qualified building," and "qualifying county." Each revision created additional criteria for prospective applicants. This rule is written in five parts and covers applications made prior to July 1, 2010. Each part sets forth the requirements on the basis of the period of time in which application is made. Refer to the year during which application was made for information on an individual application. For applications made after June 30, 2010, see WAC 458-20-24001.

The employment security department and the department of community, trade, and economic development administer additional programs for distressed areas and job training and should be contacted directly for information concerning these programs.

PART I

Applications from March 31, 2004, to June 30, 2010

(101) Who is eligible for the sales and use tax deferral program?

A person engaged in manufacturing or research and development activity is eligible for this deferral program for its eligible investment project.

(a) What does the term "person" mean for purposes of this rule?

"Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual in-

vestment projects at the same site, if they comply with the other requirements of chapter 82.60 RCW.

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

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

(B) All of the following conditions are met:

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

(II) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual survey required under RCW 82.60.070;

(III) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor; and

(IV) Upon request, the lessor must provide the department with written documentation to support the eligibility of the deferral, including any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee.

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

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

(b) **What is "manufacturing" for purposes of this rule?** "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing, in addition, includes:

(i) Computer programming, the production of computer software, and other computer-related services, but only when the computer programming, production of computer software, or other computer-related services are performed by a manufacturer as defined in RCW 82.04.110 and contribute to the production of a new, different, or useful substance or article or tangible personal property for sale (chapter 16, Laws of 2010);

(ii) The activities performed by research and development laboratories and commercial testing laboratories; and

(iii) Effective July 1, 2006, manufacturing also includes the conditioning of vegetable seeds.

For purposes of this rule, both manufacturers and processors for hire may qualify for the deferral program as being engaged in manufacturing activities. Refer to WAC 458-20-136 (Manufacturing, processing for hire, fabricating) for more information on processors for hire.

For purposes of this rule, "computer-related services" means activities such as programming for the manufactured product. It includes creating operating systems, software, and other similar goods that will be copied and sold as canned software. "Computer-related services" does not include information services, such as data or information processing. The activities performed by the manufacturer to test, correct, revise, or upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services.

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

(c) **What is "research and development" for purposes of this rule?** "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun, but only when such activities are intended to ultimately result in the production of a new, different, or useful substance or article of tangible personal property. (Chapter 16, Laws of 2010.) For purposes of this rule, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed (~~one million dollars~~) \$1,000,000.

(102) **What is eligible for the sales and use tax deferral program?** This deferral program applies to an eligible investment project for sales and use taxes imposed on the construction, expansion, or renovation of qualified buildings and acquisition of qualified machinery and equipment.

(a) **What is an "eligible investment project" for purposes of this rule?** "Eligible investment project" means an investment project in an eligible area. Refer to (g) of this subsection for more information on eligible area. "Eligible investment project" does not include an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. It also does not include an investment project that has already received a deferral under chapter 82.60 RCW.

(b) **What is an "investment project" for purposes of this rule?** "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

(c) **What is "qualified buildings" for purposes of this rule?** "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for manufacturing or research and development activities.

(i) "Qualified buildings" is limited to structures used for manufacturing and research and development activities. "Qualified buildings" includes plant offices and warehouses if such facilities are essential to or an integral part of a factory, mill, plant, or laboratory used for manufacturing or research and development.

(A) "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building

its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. An office may be located in a separate building from the building used for manufacturing or research and development activities, but the office must be located at the same site as the qualified building in order to qualify. Each individual office may only qualify or disqualify in its entirety.

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

(C) A site is one or more immediately adjacent parcels of real property. Adjacent parcels of real property separated only by a public road comprise a single site.

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

However, "qualified buildings" includes construction of specialized sewerage pipes connected to a qualified building that are specifically designed and used exclusively for manufacturing or research and development.

Also, "qualified buildings" includes construction of parking lots connected to or adjacent to the building if the parking lots are for the use of workers performing manufacturing or research and development in the building. Parking lots may be apportioned based upon its qualifying use.

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

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

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

Apportionment formula:

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

Percent Eligible x Total Project Costs = Eligible Costs.

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways, bathrooms, and conference rooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

Eligible Costs x Tax Rate = Eligible Tax Deferred.

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

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

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

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

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

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

For purposes of this rule, "industrial fixture" means an item attached to a building or to land. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and improvements to land such as concrete slabs.

(i) **Are qualified machinery and equipment subject to apportionment?** Qualified machinery and equipment are not subject to apportionment.

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

(g) **What is an "eligible area" for purposes of this rule?** "Eligible area" means:

(i) **Rural county.** A rural county is a county with fewer than ~~((one hundred))~~ 100 persons per square mile or a county smaller than ~~((two hundred twenty-five))~~ 225 square miles as determined annually by the office of financial management and published by the department of revenue effective for the period July 1st through June 30th; or

(ii) **Community empowerment zone (CEZ).** A "community empowerment zone" means an area meeting the requirements of RCW 43.31C.020 and officially designated as a CEZ by the director of the department of commerce, or a county containing a CEZ.

(h) **What if an investment project is located in an area that qualifies both as a rural county and as a CEZ?** If an investment project is located in an area that qualifies under more than one type of eligible area, the department will automatically assign the project to the eligible area that imposes the least burden on the taxpayer and with the greatest benefit to the taxpayer. If the applicant elects to be bound by the requirements of the other potential eligible area, the applicant must make a written statement to that effect. For example, on October 1, 2004, the city of Yakima qualifies as a CEZ, and the entire county of Yakima has fewer than ~~((one hundred))~~ 100 persons per square mile. The CEZ requirements are more restrictive than counties containing fewer than ~~((one hundred))~~ 100 persons per square mile. The department will assign the project to the "fewer than ~~((one hundred))~~ 100 persons per square mile designation" unless the applicant elects to be bound by the CEZ requirements. Refer to subsection (104) of this rule for more information on the application process.

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

(i) **Rural county.** There are no hiring requirements for qualifying projects located in rural counties.

(ii) **Community empowerment zone (CEZ).** There are hiring requirements for qualifying projects located in CEZs or in counties containing CEZs. The applicant applies for a deferral of investment that correlates to the estimated number of persons to be hired based on the following formula:

$$\frac{\text{Number of qualified employment positions to be hired}}{\$750,000} = \text{amount of investment eligible for deferral}$$

Applicants must make good faith estimates of anticipated hiring. Refer to subsection (104) of this rule for more information on the application process. The recipient must fill the positions by persons who at the time of hire are residents of the CEZ. The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's (~~internet~~) website at (~~http://www.dor.wa.gov~~) dor.wa.gov. A recipient

must fill the qualified employment positions by the end of the calendar year following the year in which the project is certified as operationally complete and retain the position during the entire tax year. Refer to subsection (107) of this rule for more information on certification of an investment project as operationally complete. If the recipient does not fill the qualified employment positions by the end of the second calendar year following the year in which the project is certified as operationally complete, all deferred taxes are immediately due.

(A) **What is a "qualified employment position" for purposes of this rule?** "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of ~~((twelve))~~ 12 consecutive months. "Full-time" means at least ~~((thirty-five))~~ 35 hours a week, ~~((four hundred fifty-five))~~ 455 hours a quarter, or ~~((one thousand eight hundred twenty))~~ 1,820 hours a year.

(B) **Who are residents of the CEZ?** "Resident" means the person who fills the qualified employment position makes his or her home in the CEZ. A mailing address alone is insufficient to establish that a person is a resident.

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

(a) **What is "initiation of construction" for purposes of this rule?** "Initiation of construction," in regards to the construction, expansion, or renovation of buildings, means the commencement of on-site construction work. Neither planning nor land clearing prior to excavation of the building site constitutes the commencement of on-site construction work.

(b) **What is "acquisition of machinery and equipment" for purposes of this rule?** "Acquisition of machinery and equipment" means the machinery and equipment is under the dominion and control of the recipient or its agent.

(c) **How may a taxpayer obtain an application form?** Application forms may be obtained ~~((at department of revenue district offices, by downloading))~~ from the department's website ~~((dor.wa.gov), by telephoning the telephone information center at 1-800-647-7706, or by))~~ at dor.wa.gov, or by contacting the ((department's special programs division at:

~~Washington State Department of Revenue
Special Programs Division
Post Office Box 47477
Olympia, WA 98504-7477
Fax 360-586-2163~~

~~Applicants must mail or fax applications to the special programs division at the address or fax number given above))~~ department at 360-705-6705. Applications received by the department under chapter

82.60 RCW are not confidential and are subject to disclosure. RCW 82.60.100.

For purposes of this rule, "applicant" means a person applying for a tax deferral under chapter 82.60 RCW, and "department" means the department of revenue.

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

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

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

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

(B) Itemized reasons for the proposed construction;

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

(D) Building permits.

Similarly, after an application has been granted, a deferral certificate is no longer valid and should not be used if construction has not begun within one year from the date of application or there is not a specific and active program to begin construction within two years from the date of application. However, the department will grant requests to extend the period for which the certificate is valid if the holder of the certificate can demonstrate that the delay in starting construction is due to circumstances beyond the certificate holder's control such as the acquisition of building permit(s). Refer to subsection (106) of this rule for more information on the use of tax deferral certificate.

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

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

(g) **May an applicant request a review of department disapproval of the deferral application?** The applicant may seek administrative review of the department's disapproval of an application within (~~thirty~~) 30 days from the date of notice of the disallowance pursuant to the provisions of WAC 458-20-10001 (Adjudicative proceedings—Brief adjudicative proceedings—Certificate of registration (tax registration endorsement) revocation). The filing of a petition for review with the department starts a review of departmental action.

(104) **What happens after the department approves the deferral application?** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral

for which the recipient is eligible. Recipients must keep track of how much tax is deferred.

For purposes of this rule, "recipient" means a person receiving a tax deferral under this program.

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

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

For purposes of this rule, "certificate holder" means an applicant to whom a tax deferral certificate has been issued.

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

For purposes of this rule, "operationally complete" means the project is capable of being used for its intended purpose as described in the application.

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

(b) **What should a certificate holder do when its investment project is operationally complete?** The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project is operationally complete. The certificate holder of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

(107) **Is a recipient of tax deferral required to submit annual surveys?** Each recipient of a tax deferral granted under chapter 82.60 RCW after June 30, 1994, must complete an annual survey. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.020(4), the lessee must agree to complete the annual survey and the applicant is not required to complete the annual survey. Refer

to WAC 458-20-268 (Annual surveys for certain tax adjustments) for more information on the requirements to file annual surveys.

(108) **Is a recipient of tax deferral required to repay deferred taxes?** Repayment of tax deferred under chapter 82.60 RCW is excused, except as otherwise provided in RCW 82.60.070 and this subsection.

(a) **Is repayment required for machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565?** Repayment of tax deferred under chapter 82.60 RCW is not required, and interest and penalties under RCW 82.60.070 will not be imposed, on machinery and equipment that qualifies for exemption under RCW 82.08.02565 or 82.12.02565.

(b) **When is repayment required?** The following subsections describe the various circumstances under which repayment of the deferral may occur. Outstanding taxes are determined by reference to the following table. The table presumes the taxpayer maintained eligibility for the entire year.

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

Any action taken by the department to disqualify a recipient for tax deferral or assess interest will be subject to administrative review pursuant to the provisions of WAC 458-20-10001 (Adjudicative proceedings—Brief adjudicative proceedings—Certificate of registration (tax registration endorsement) revocation). The filing of a petition for review with the department starts a review of departmental action.

(i) **Failure of investment project to satisfy general conditions.** If, on the basis of the recipient's annual survey or other information, including that submitted by the employment security department, the department of revenue finds that an investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, the department will declare the amount of deferred taxes outstanding to be immediately due. An example of a disqualification under this rule is a facility not being used for a manufacturing or research and development operation. No penalties or interest will be assessed on the deferred sales/use tax; however, all other penalties and interest applicable to excise tax assessments may be assessed and imposed.

(ii) **Failure of investment project to satisfy required employment positions conditions.** If, on the basis of the recipient's annual survey or other information, the department finds that an investment project has been operationally complete and has failed to create the required number of qualified employment positions under subsection (102)(i) of this rule, the amount of taxes deferred will be immediately due. There is no proration of the amount owed under this subsection. No penalties or interest will be assessed on the deferred sales/use tax; however, all other penalties and interest applicable to excise tax assessments may be assessed and imposed.

(109) **When will the tax deferral program expire?** No applications for deferral of taxes will be accepted after June 30, 2010.

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

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

PART II

Applications from August 1, 1999, to March 31, 2004

(201) **Definitions.** The following definitions apply to applications made on and after August 1, 1999, and before April 1, 2004:

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

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

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

(d) "Computer-related services" means activities such as programming for the manufactured product. It includes creating operating systems, software, and other similar goods that will be copied and sold as canned software. "Computer-related services" does not include information services, such as data or information processing. The activities performed by the manufacturer to test, correct, revise, or upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services.

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

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

(g) "Eligible area" means:

(i) Rural county. A rural county is a county with fewer than (~~one hundred~~) 100 persons per square mile as determined annually by the office of financial management and published by the department of revenue effective for the period July 1st through June 30th; or

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

(h) "Eligible investment project" means an investment project in an eligible area. "Eligible investment project" does not include an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. It also does not include an investment project that has already received a deferral under chapter 82.60 RCW.

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

(j) "Initiation of construction," in regards to the construction, expansion, or renovation of buildings, means the commencement of on-site construction work. Neither planning nor land clearing prior to excavation of the building site constitutes the commencement of on-site construction work.

(k) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project. When an application for sales and use tax deferral is timely submitted, costs incurred before the application date are allowable, if they otherwise qualify.

(l) "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing also includes computer programming, the production of computer software, and other computer-related services, but only when the computer programming, production of computer software, or other computer-related services are performed by a manufacturer as defined in RCW 82.04.110 and contribute to the production of a new, different, or useful substance or article of tangible personal property for sale; and the activities performed by research and development laboratories and commercial testing laboratories. (Chapter 16, Laws of 2010.)

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

(n) "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of chapter 82.60 RCW. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, or equipment vests in the lessor/owner, or unless the lessor has by written contract agreed to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(o) "Qualified buildings" means construction of new structures and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for manufacturing and research and development activities.

"Qualified buildings" are limited to structures used for manufacturing and research and development activities. "Qualified buildings" include plant offices and warehouses if such facilities are essential to or an integral part of a factory, mill, plant, or laboratory. "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. "Warehouse" means buildings or facilities used for the storage of raw materials or finished goods.

(p) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of (~~twelve~~) 12 consecutive months. Full-time means at least (~~thirty-five~~) 35 hours a week, (~~four hundred fifty-five~~) 455

hours a quarter, or (~~one thousand eight hundred twenty~~) 1,820 hours a year.

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

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

(s) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed (~~one million dollars~~) \$1,000,000.

(t) "Resident" means the person who fills the qualified employment position makes his or her home in the CEZ. A mailing address alone is insufficient to establish that a person is a resident.

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

(203) **Eligible investment amount.** There may or may not be a hiring requirement, depending on the location of the project.

(a) **No hiring requirements.** There are no hiring requirements for qualifying projects located in counties with fewer than (~~one hundred~~) 100 persons per square mile. Monitoring and reporting procedures are explained in subsection (210) of this rule. Buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (204) of this rule explains the procedure for apportionment.

(b) **Hiring requirements.** There are hiring requirements for qualifying projects located in CEZs or in counties containing CEZs. The applicant applies for a deferral of investment that correlates to the estimated number of persons to be hired based on the following formula:

$$\frac{\text{Number of qualified employment positions to be hired}}{\$750,000} = \text{amount of investment eligible for deferral}$$

Applicants must make good faith estimates of anticipated hiring. The recipient must fill the positions by persons who at the time of hire are residents of the CEZ. The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ.

The system is available on the department's internet website at <http://www.dor.wa.gov>. A recipient must fill the qualified employment positions by the end of the calendar year following the year in which the project is certified as operationally complete and retain the position during the entire tax year. If the recipient does not fill the qualified employment positions by the end of the second calendar year following the year in which the project is certified as operationally complete, all deferred taxes are immediately due.

(204) **Apportionment of costs between qualifying and nonqualifying investments.** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of existing buildings used in manufacturing, research and development, or commercial testing laboratories.

(a) Where a building(s) is used partly for manufacturing or research and development and partly for purposes that do not qualify for deferral under this rule, the deferral will be determined by one of the following apportionment methods. The first method of apportionment is based on square footage and does not require tracking the costs of materials for the qualifying/nonqualifying areas of a building. The second method of apportionment tracks the costs of materials used in the qualifying/nonqualifying areas and is primarily used by those industries with specialized building requirements.

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

Apportionment formula:

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

Percent Eligible x Total Project Costs = Eligible Costs.

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways and bathrooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

Eligible Tax Deferred = Eligible Cost x Tax Rate.

(ii) If a building is used partly for manufacturing, research and development, or commercial testing and partly for other purposes, the applicable tax deferral shall be determined as follows:

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

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

(C) Tax on the cost of construction of areas used in common for manufacturing, research and development, or commercial testing and for other purposes, such as hallways, bathrooms, and conference rooms, may be deferred by apportioning the costs of construction on a square footage basis. The apportioned costs of construction eligible for deferral are established by using the ratio, expressed as a percentage,

of the square feet of the construction, expansion, or renovation devoted to manufacturing, research and development, or commercial testing, excluding areas used in common to the total square feet of the construction, expansion, or renovation, excluding areas used in common. That percentage is applied to the cost of construction of the common areas to determine the costs of construction eligible for tax deferral. Expressed as a formula, apportionment of the cost of the common areas is determined by:

Square feet devoted to manufacturing, research and development, or commercial testing, excluding square feet of common areas	=	Percentage of total cost of construction of common areas eligible for deferral
Total square feet, excluding square feet of common areas		

(b) Qualified machinery and equipment is not subject to apportionment.

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

(206) **Application procedure and review process.** An application for sales and use tax deferral under this program must be made prior to the initiation of construction, prior to the acquisition of machinery and equipment, and prior to the filling of qualified employment positions. Persons who apply after construction is initiated or finished or after acquisition of machinery and equipment are not eligible for the program. Applications for persons subject to hiring requirements must include information regarding the estimated total project cost and the qualified employment positions.

(a) Application forms (~~will be supplied to the applicant by the department upon request. The completed application may be sent by fax to 360-586-2163 or mailed to the following address:~~

~~Washington State Department of Revenue
Special Programs
P.O. Box 47477~~

~~Olympia, WA 98504-7477)) may be obtained from the department's website at dor.wa.gov, or by contacting the department at 360-705-6705.~~

Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.)

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

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

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

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

- (B) Itemized reasons for the proposed construction;
- (C) Clearly established plans for financing the construction; or
- (D) Building permits.

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

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

(d) The applicant may seek administrative review of the department's disapproval of an application within (~~thirty~~) 30 days from the date of notice of the disallowance pursuant to the provisions of WAC 458-20-100 (Informal administrative reviews). The filing of a petition for review with the department starts a review of departmental action.

(207) **Eligible area criteria.** The office of financial management will determine annually the counties with fewer than (~~one hundred~~) 100 persons per square mile. The department will update and distribute the list each year. The list will be effective on July 1 of each year.

If an investment project is located in an area that qualifies under more than one type of eligible area, the department will automatically assign the project to the eligible area that imposes the least burden on the taxpayer and with the greatest benefit to the taxpayer. If the applicant elects to be bound by the requirements of the other potential eligible area, the applicant must make a written statement to that effect. For example, on October 1, 1999, the city of Yakima qualifies as a CEZ, and the entire county of Yakima has fewer than (~~one hundred~~) 100 persons per square mile. The CEZ requirements are more restrictive than counties containing fewer than (~~one hundred~~) 100 persons per square mile. The department will assign the project to the "fewer than (~~one hundred~~) 100 persons per square mile designation" unless the applicant elects to be bound by the CEZ requirements.

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

The tax deferral certificate is to be used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102, Resale certificates. The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller will be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its perma-

ment records for a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales.

(209) **Project operationally complete.** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral taxes are requested. Requests must be mailed or faxed to the department.

(b) The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project is operationally complete. The recipient of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

(210) **Reporting and monitoring procedure.**

(a) **Requirement to submit annual reports.** Each recipient of a tax deferral under chapter 82.60 RCW must submit a report on December 31st of the year in which the investment project is certified by the department as having been operationally completed and on December 31st of each of the seven succeeding calendar years. The report must be made to the department in a form and manner prescribed 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 due and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

(b) **Requirement to submit annual surveys.** Effective April 1, 2004, each recipient of a tax deferral granted under chapter 82.60 RCW after June 30, 1994, must complete an annual survey **instead of an annual report**. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.020(4), the lessee must agree to complete the annual survey and the applicant is not required to complete the annual survey. Refer to WAC 458-20-268 (Annual surveys for certain tax adjustments) for more information on the requirements to file annual surveys.

(211) **Repayment of deferred taxes.** Repayment of tax deferred under chapter 82.60 RCW is excused, except as otherwise provided in RCW 82.60.070 and this subsection.

(a) Repayment of tax deferred under chapter 82.60 RCW is not required, and interest and penalties under RCW 82.60.070 will not be imposed, on machinery and equipment that qualifies for exemption under RCW 82.08.02565 or 82.12.02565.

(b) The following subsections describe the various circumstances under which repayment of the deferral may occur. Outstanding taxes are determined by reference to the following table. The table presumes the taxpayer maintained eligibility for the entire year.

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

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

(c) **Failure of investment project to satisfy general conditions.** If, on the basis of the recipient's annual report or other information, including that submitted by the employment security department, the department of revenue finds that an investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, the department will declare the amount of deferred taxes outstanding to be immediately due. An example of a disqualification under this rule is a facility not being used for a manufacturing or research and development operation.

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

(212) **Debt not extinguished because of insolvency or sale.** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of chapter 82.60 RCW, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient of the deferral.

(213) **Disclosure of information.** Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.) Effective April 1, 2004, all information collected in annual surveys, except the amount of tax deferral taken, is confidential and not subject to disclosure. Information on the amount of tax deferral taken in annual surveys is not confidential and may be disclosed to the public upon request.

PART III

Applications from July 1, 1995, to July 31, 1999

(301) **Definitions.** For the purposes of this part, the following definitions apply for applications made on and after July 1, 1995, and before August 1, 1999:

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

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

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

(d) "Computer-related services" means services that are connected or interact directly in the manufacture of computer hardware or software or the programming of the manufactured hardware. This includes the manufacture of hardware such as chips, keyboards, monitors, any other hardware, and the components of these items. It includes creating operating systems and software that will be copied and sold as canned software. "Computer-related services" does not include information services. The activities performed by the manufacturer to test, correct, revise, or upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services.

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

(f) "Eligible area" means one of the areas designated according to the following classifications:

(i) Unemployment county. 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~~) 20 percent. In making this calculation, the department will compare the county's average unemployment rate in the prior three years to (~~one hundred twenty~~) 120 percent of the state's average unemployment rate based on official unemployment figures published by the department of employment security;

(ii) Median income county. On and after June 6, 1996, a county that has a median household income that is less than (~~seventy-five~~) 75 percent of the state median income for the previous three years;

(iii) MSA. 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 chapter 82.60 RCW exceeds the average state unemployment for such calendar year by (~~twenty~~) 20 percent;

(iv) CEZ and county containing a CEZ. A designated community empowerment zone (CEZ) approved under RCW 43.63A.700 or a county containing such a community empowerment zone;

(v) Timber impact area towns. A town with a population of less than (~~twelve hundred~~) 1,200 persons that is located in a county that is a timber impact area, as defined in RCW 43.31.601, but that is not an unemployment county as defined in Part I;

(vi) Governor's designation county. A county designated by the governor as an eligible area under RCW 82.60.047; or

(vii) Contiguous county. A county that is contiguous to an unemployment county or a governor's designation county.

(g) (i) "Eligible investment project" means:

(A) An investment project in an unemployment county, a median income county, an MSA, a timber impact area town, or a governor's designation county; or

(B) That portion of an investment project in a CEZ, a county containing a CEZ, or a contiguous county, that is directly utilized to

create at least one new full-time qualified employment position for each (~~seven hundred fifty thousand dollars~~) \$750,000 of investment.

(ii) "Eligible investment project" does not include an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. It also does not include an investment project that has already received a deferral under chapter 82.60 RCW.

(h) "Industrial fixture" means an item attached to a building or to land. Fixtures become part of the real estate to which they are attached and upon attachment are classified as real property, not personal property. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and certain concrete slabs.

(i) "Initiation of construction," in regards to the construction, expansion, or renovation of buildings, means the commencement of on-site construction work. Land clearing prior to excavation of the building site does not commence construction nor does planning commence construction.

(j) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project. When an application for sales and use tax deferral is timely submitted, costs incurred before the application date are allowable, if they otherwise qualify.

(k) "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing, for purposes of the distressed area deferral program, also includes computer programming, the production of computer software, and other computer-related services, but only when the computer programming, production of computer software, or other computer-related services are performed by a manufacturer as defined under RCW 82.04.110 and contribute to the production of a new, different, or useful substance or article of tangible personal property for sale; and the activities performed by research and development laboratories and commercial testing laboratories. (Chapter 16, Laws of 2010.)

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

(m) "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of chapter 82.60 RCW. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, or equipment vests exclusively in the lessor/owner, or unless the lessor has by written contract agreed to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(n) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for manufacturing and research and development activities.

"Qualified buildings" are limited to structures used for manufacturing and research and development activities. "Qualified buildings" include plant offices and warehouses if such facilities are essential or an integral part of a factory, mill, plant, or laboratory. "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building its use must be es-

sential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. "Warehouse" means facilities used for the storage of raw materials or finished goods.

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

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

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

(r) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed (~~one million dollars~~) \$1,000,000.

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

(303) **Eligible investment amount.** There may or may not be a hiring requirement, depending on the location of the project.

(a) **No hiring requirements.** There are no hiring requirements for qualifying projects located in distressed counties, MSAs, median income counties, governor-designated counties, or timber impact towns. Monitoring and reporting procedures are explained in subsection (310) of this rule. Buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (304) of this rule explains the procedure for apportionment.

(b) **Hiring requirements.** There are hiring requirements for qualifying projects located in CEZs, in counties containing CEZs, or in contiguous counties. Total qualifying project costs, including any part of the project that would qualify under RCW 82.08.02565 and 82.12.02565, must be examined to determine the number of positions associated with the project. An applicant who knows at the time of application that he or she will not fill the required qualified employment positions is not eligible for the deferral. Applicants must make good faith estimates of anticipated hiring. The applicant applies for

a deferral of investment that correlates to the estimated number of persons to be hired. The investment must include the sales price of machinery and equipment eligible for the sales and use tax exemption under RCW 82.08.02565 and 82.12.02565. An applicant can amend the number of persons hired until completion of the project. The qualified employment positions filled by December 31 of the year of completion are the benchmark to be used during the next seven years in determining hiring compliance.

(i) Total qualifying project costs are divided by (~~seven hundred fifty thousand~~) 750,000, the result being the qualified employment positions.

(ii) In addition, the number of qualified employment positions created by an investment project will be reduced by the number of full-time employment positions maintained by the recipient in any other community in this state that are displaced as a result of the investment project. This reduction requires a reexamination of whether the (~~seventy-five~~) 75 percent hiring requirement (as explained below) is met.

(iii) This number, which is the result of (i) and (ii) of this subsection, is the number of positions used as the benchmark over the life of the deferral. For recipients locating in a CEZ or a county containing a CEZ, (~~seventy-five~~) 75 percent of the new positions must be filled by residents of a CEZ located in the county where the project is located. The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's internet website at <http://www.dor.wa.gov>. For recipients located in a contiguous county, residents of an adjacent unemployment or governor-designated county must fill (~~seventy-five~~) 75 percent of the new positions.

(iv) The qualified employment positions are reviewed each year, beginning December 31st of the year the project is operationally complete and each year for seven years. If the recipient has failed to create the requisite number of positions, the department will issue an assessment as explained under subsection (311) of this rule.

(v) In addition to the hiring requirements for new positions under (b) of this subsection, the recipient of a deferral for an expansion or diversification of an existing facility must ensure that he or she maintains the same percentage of employment positions filled by residents of the contiguous county or the CEZ that existed prior to the application being made. This percentage must be maintained for seven years.

(vi) Qualified employment positions do not include those positions filled by persons hired in excess of the ratio of one employee per required dollar of investment for which a deferral is granted. 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~~) 30 consecutive days.

(304) Apportionment of costs between qualifying and nonqualifying investments. The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of existing buildings used in manufacturing, research and development, or commercial testing.

(a) Where a building(s) is used partly for manufacturing, research and development, or commercial testing and partly for purposes that do not qualify for deferral under this rule, the deferral will be determined by apportionment of the total project costs. The applicable tax deferral will be determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing, research and development, or commercial testing purposes bears to the square footage of the total building(s).

Apportionment formula:

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

Percent Eligible x Total Project Costs = Eligible Costs.

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways and bathrooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

Eligible Tax Deferred = Eligible Cost x Tax Rate.

(b) Qualified machinery and equipment is not subject to apportionment.

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

(306) **Application procedure and review process.** An application for sales and use tax deferral under this program must be made prior to the initiation of construction and the acquisition of machinery and equipment. Persons who apply after construction is initiated or after acquisition of machinery and equipment are not eligible for the program. Applications for persons subject to hiring requirements must include information regarding the estimated total project cost and the qualified employment positions.

(a) Application forms (~~will be supplied to the applicant by the department upon request. The completed application may be sent by fax to 360-586-2163 or mailed to the following address:~~

~~Washington State Department of Revenue
Special Programs
P.O. Box 47477~~

~~Olympia, WA 98504-7477)) may be obtained from the department's website at dor.wa.gov, or by contacting the department at 360-705-6705.~~

(b) The department will verify the information contained in the application and approve or disapprove the application within (~~sixty~~) 60 days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval. The U.S. Post Office postmark or fax date will be used as the date of application.

(c) The applicant may seek administrative review of the department's disapproval of an application within (~~(thirty)~~) 30 days from the date of notice of disallowance pursuant to the provisions of WAC 458-20-100 (Informal administrative reviews). The filing of a petition for review with the department starts a review of departmental action.

(307) **Eligible area criteria.** The statewide and county unemployment statistics last published by the department will be used to determine eligible areas based on unemployment. Median income county designation is based on data produced by the office of financial management and made available to the department on November 1 of each year. The timber impact town designation is based on information provided by the department of employment security.

If an investment project is located in an area that qualifies under more than one type of eligible area, the department will automatically assign the project to the eligible area that imposes the least burden on the taxpayer and with the greatest benefit to the taxpayer. If the applicant elects to be bound by the requirements of the other potential eligible area, the applicant must make a written statement to that effect. For example, on May 1, 1998, the city of Yakima qualifies as a CEZ, and the entire county of Yakima qualifies as an unemployment county. The CEZ requirements are more restrictive than the unemployment county requirements. The department will assign the project to the distressed area eligible area unless the applicant elected to be bound by the CEZ requirements.

(308) **Use of the certificate.** A tax deferral certificate issued under this program is for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified building or qualified machinery and equipment as defined in subsection (301) of this rule. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment. In addition, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

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

(309) **Project operationally complete.** 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 deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral is requested. Requests must be mailed or faxed to the department.

(b) The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project was operationally complete. The recipient of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

(310) Reporting and monitoring procedure.

(a) Requirement to submit annual reports. Each recipient of a deferral granted after July 1, 1995, must submit a report to the department on December 31st of the year in which the investment project is certified by the department as having been operationally completed, and on December 31st of each of the seven succeeding calendar years. The report must be made to the department in a form and manner prescribed by the department. The report must contain information regarding the actual employment 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 due and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

(b) **Requirement to submit annual surveys.** Effective April 1, 2004, each recipient of a tax deferral granted under chapter 82.60 RCW after June 30, 1994, must complete an annual survey **instead of an annual report.** If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.020(4), the lessee must agree to complete the annual survey and the applicant is not required to complete the annual survey. Refer to WAC 458-20-268 (Annual surveys for certain tax adjustments) for more information on the requirements to file annual surveys.

(311) Repayment of deferred taxes. Repayment of tax deferred under chapter 82.60 RCW is excused, except as otherwise provided in RCW 82.60.070 and this subsection, on an investment project for which a deferral has been granted under chapter 82.60 RCW after June 30, 1994.

(a) Taxes deferred under this chapter need not be repaid on machinery and equipment for lumber and wood product industries, and sales of or charges made for labor and services, of the type which qualified for exemption under RCW 82.08.02565 or 82.12.02565.

(b) The following describes the various circumstances under which repayment of the deferral may be required. Outstanding taxes are determined by reference to the following table. The table presumes the taxpayer maintained eligibility for the entire year.

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

Any action taken by the department to disqualify a recipient for tax deferral or require payment of all or part of deferred taxes is subject to administrative review pursuant to the provisions of WAC

458-20-100 (Informal administrative reviews). The filing of a petition for review with the department starts a review of departmental action. See subsection (24)(d) of this rule for repayment and waiver for deferrals with hiring requirements.

(c) **Failure of investment project to satisfy general conditions.** 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 for reasons other than failure to create the required number of qualified employment positions, the department will declare the amount of deferred taxes outstanding to be immediately due. For example, a reason for disqualification would be that the facilities are not used for a manufacturing or research and development operation.

(d) **Failure of investment project to satisfy required employment positions conditions.** If, on the basis of the recipient's annual report or other information, 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 amount of taxes deferred will be immediately due. The department will assess interest at the rate and as provided for delinquent excise taxes under RCW 82.32.050 (retroactively to the date the application was filed). There is no proration of the amount owed under this subsection. No penalties will be assessed.

(e) **Failure of investment project to satisfy employee residency requirements.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project under RCW 82.60.040 (1)(b) or (c) has failed to comply with any requirement of RCW 82.60.045 for any calendar year for which reports are required under this subsection, (~~twelve and one-half~~) 12.5 percent of the amount of deferred taxes will be immediately due. For each year a deferral's requirements are met (~~twelve and one-half~~) 12.5 percent of the amount of deferred taxes will be waived. The department will assess interest at the rate provided for delinquent excise taxes under RCW 82.32.050, retroactively to the date the application was filed. Each year the employment requirement is met, (~~twelve and one-half~~) 12.5 percent of the deferred tax will be waived, if all other program requirements are met. No penalties will be assessed.

(f) The department of employment security makes and certifies to the department all determinations of employment and wages required under this subsection.

(312) **Debt not extinguished because of insolvency or sale.** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient.

(313) **Disclosure of information.** Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.) Effective April 1, 2004, all information collected in annual surveys, except the amount of tax deferral taken, is confidential and not subject to disclosure.

Information on the amount of tax deferral taken in annual surveys is not confidential and may be disclosed to the public upon request.

PART IV

Applications from July 1, 1994, to June 30, 1995

(401) **Definitions.** For the purposes of this part, the following definitions apply for applications made on and after July 1, 1994, and before July 1, 1995.

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

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

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

(d) "Computer-related services" means services that are connected or interact directly in the manufacture of computer hardware or software or the programming of the manufactured hardware. This includes the manufacture of hardware such as chips, keyboards, monitors, any other hardware, and the components of these items. It includes creating operating systems and software that will be copied and sold as canned software. "Computer-related services" does not include information services. The activities performed by the manufacturer to test, correct, revise, and upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services in this instance.

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

(f) "Eligible area" means:

(i) Unemployment county. 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~~) 20 percent. The department may compare the county's average unemployment rate in the prior three years to (~~one hundred twenty~~) 120 percent of the state's average unemployment rate based on official unemployment figures published by the department of employment security;

(ii) MSA. 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 chapter 82.60 RCW exceeds the average state unemployment for such calendar year by (~~twenty~~) 20 percent;

(iii) CEZ. A designated community empowerment zone approved under RCW 43.63A.700;

(iv) Timber impact area towns. A town with a population of less than (~~twelve hundred~~) 1,200 persons that is located in a county that is a timber impact area, as defined in RCW 43.31.601, but that is not an unemployment county as defined in this subsection;

(v) Contiguous county. A county that is contiguous to an unemployment county or a governor's designation county; or

(vi) Governor's designation county. A county designated by the governor as an eligible area under RCW 82.60.047.

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

(A) Is directly utilized to create at least one new full-time qualified employment position for each (~~seven hundred fifty thousand dollars~~) \$750,000 of investment on which a deferral is requested; and

(B) Either initiates a new operation, or expands or diversifies a current operation by expanding, equipping, or renovating an existing facility with costs in excess of (~~twenty-five~~) 25 percent of the true and fair value of the facility prior to improvement. "Improvement" means the physical alteration by significant expansion, modernization, or renovation of an existing facility, excluding land, where the cost of such expansion, etc., exceeds (~~twenty-five~~) 25 percent of the true and fair value of the existing facility prior to the initiation of the expansion or renovation. The term "improvement" is further defined to include those portions of an existing facility 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~~) 25 percent test may be satisfied by considering the value of both the building and machinery and equipment; however, at least (~~forty~~) 40 percent of the total renovation costs must be attributable to the physical renovation of the building structure alone. "True and fair value" means the value listed on the assessment rolls as determined by the county assessor for the buildings or equipment for ad valorem property tax purposes at the time of application.

(ii) "Eligible investment project" does not include either an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than cogeneration projects that are both an integral part of a manufacturing facility and owned at least (~~fifty~~) 50 percent by the manufacturer, or investment projects that have already received deferrals under chapter 82.60 RCW.

(h) "Industrial fixture" means an item attached to a building or to land. Fixtures become part of the real estate to which they are attached and upon attachment are classified as real property, not personal property. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and certain concrete slabs.

(i) "Initiation of construction," in regards to the construction of new buildings, means the commencement of on-site construction work.

(j) "Initiation of construction," in regards to the construction of expanding or renovating existing structures for the purpose of increasing floor space or production capacity used for manufacturing and research and development, means the commencement of the new construction by renovation, modernization, or expansion, by physical alteration.

(k) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project. A person who does not build or remodel his or her own building, but leases from a third party, is eligible for sales and use tax deferral on the machinery and equipment 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.

(l) "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing, for purposes of the distressed area deferral program, also includes computer programming, the production of computer software, and other computer-related services, but only when the computer programming, production of computer software, or other computer-related services are performed by a manufacturer as defined in RCW 82.04.110 and contribute to the production of a new, different, or useful substance or article of tangible personal property for sale; and the ac-

tivities performed by research and development laboratories and commercial testing laboratories. (Chapter 16, Laws of 2010.)

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

(n) "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of chapter 82.60 RCW. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, or equipment vests exclusively in the lessor/owner, or unless the lessor has by written contract agreed to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(o) "Qualified buildings" are limited to structures used for manufacturing and research and development activities. "Qualified buildings" include plant offices and warehouses if such facilities are essential or an integral part of a factory, mill, plant, or laboratory. "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. "Warehouse" means facilities used for the storage of raw materials or finished goods.

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

(q) "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 or research and development operation. "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 machinery. It also includes machinery and equipment acquired under the terms of a lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

(r) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed (~~one million dollars~~) \$1,000,000.

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

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

(403) Eligible investment amount.

(a) Projects located in unemployment counties, MSAs, governor-designated counties, or timber impact towns are eligible for a deferral on the portion of the investment project that represents one new qualified employment position for each (~~(seven hundred fifty thousand dollars)~~) \$750,000 of investment. The eligible amount is computed by dividing the total qualifying project costs by (~~(seven hundred fifty thousand)~~) 750,000, the result being the qualified employment positions. In addition, the number of qualified employment positions created by an investment project will be reduced by the number of full-time employment positions maintained by the recipient in any other community in this state that are displaced as a result of the investment project. This is the number of positions used as the hiring benchmark. The qualified employment positions must be filled by the end of year three. Monitoring and reporting procedures are set forth in subsection (410) of this rule. In addition, buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (404) of this rule explains the procedure for apportionment.

(b) Projects located in CEZs, counties containing CEZs, or counties contiguous to an eligible county, are eligible for a deferral if the project meets specific hiring requirements. The recipient is eligible for a deferral on the portion of the investment project that represents one new qualified employment position for each (~~(seven hundred fifty thousand dollars)~~) \$750,000 of investment. The eligible amount is computed by dividing the total qualifying project costs by (~~(seven hundred fifty thousand)~~) 750,000, the result being the qualified employment positions. This is the number of positions used as the hiring benchmark over the life of the deferral. The qualified employment positions are reviewed each year, beginning December 31st of the year the project is operationally complete and each year for seven years. Monitoring and reporting procedures are set forth in subsection (410) of this rule. In addition, buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (404) of this rule explains the procedure for apportionment.

(c) In addition to the hiring requirements for new positions under (b) of this subsection, the recipient of a deferral for an expansion or diversification of an existing facility must ensure that he or she maintains the same percentage of employment positions filled by residents of the contiguous county or the CEZ that existed prior to the application being made. This percentage must be maintained for seven years. The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's internet website at www.dor.wa.gov.

(d) Qualified employment positions does not include those persons hired in excess of the ratio of one employee per required dollar of investment for which a deferral is granted. 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)~~) 30 consecutive days.

(404) **Apportionment of costs between qualifying and nonqualifying investments.** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of existing buildings used in manufacturing, research and development.

(a) Where a building(s) is used partly for manufacturing or research and development and partly for purposes which do not qualify for deferral under this rule, the deferral will be determined by apportionment of the total project costs. The applicable tax deferral will be determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing or research and development purposes bears to the square footage of the total building(s).

Apportionment formula:

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

Percent Eligible x Total Project Costs = Eligible Costs.

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways and bathrooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

Eligible Tax Deferred = Eligible Cost x Tax Rate.

(b) Qualified machinery and equipment is not subject to apportionment.

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

(406) **Application procedure and review process.** An application for sales and use tax deferral under this program must be made prior to the initiation of construction and the acquisition of machinery and equipment. Persons who apply after construction is initiated or after acquisition of machinery and equipment are not eligible for the program.

(a) Application forms (~~will be supplied to the applicant by the department upon request. The completed application may be sent by fax to 360-586-2163 or mailed to the following address:~~

~~Washington State Department of Revenue
Special Programs
P.O. Box 47477~~

~~Olympia, WA 98504-7477)) may be obtained from the department's website at dor.wa.gov, or by contacting the department at 360-705-6705.~~

(b) The department will verify the information contained in the application and approve or disapprove the application within ~~((sixty))~~ 60 days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to

the reason(s) for disapproval. The U.S. Post Office postmark or fax date will be used as the date of application.

(c) The applicant may seek administrative review of the department's disapproval of an application within (~~(thirty)~~) 30 days from the date of notice of disallowance pursuant to the provisions of WAC 458-20-100 (Informal administrative reviews). The filing of a petition for review with the department starts a review of departmental action.

(407) **Eligible area criteria.** The department will use the state-wide and county unemployment statistics as last published by the department. Timber impact town designation is based on information provided by the department of employment security. The department will update the list of eligible areas by county, annually.

(408) **Use of the certificate.** A tax deferral certificate issued under this program will be for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified buildings or qualified machinery and equipment as defined in subsection (401) of this rule. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment. In addition, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient. The tax deferral certificate is to be used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102, Resale certificates. The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller will be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales.

(409) **Project operationally complete.** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral of sales and use taxes is requested. Requests must be mailed or faxed to the department.

(b) The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project was operationally complete. The recipient of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

(c) The recipient will be notified in writing of the total amount of deferred taxes, the date(s) upon which the deferred taxes must be paid, and any reports required to be submitted in the subsequent years. If the department disallows any portion of the amount of sales and use taxes requested for deferral, the recipient may seek administrative review of the department's action within (~~(thirty)~~) 30 days from the date of the notice of disallowance pursuant to the provisions

of WAC 458-20-100 (Informal administrative reviews). The filing of a petition for review with the department starts a review of departmental action.

(410) **Reporting and monitoring procedure.**

(a) Requirement to submit annual reports. Each recipient of a sales and use tax deferral must submit a report to the department on December 31st of the year in which the investment project is certified by the department as having been operationally completed, and on December 31st of each of the seven succeeding calendar years. The report must be made to the department in a form and manner prescribed by the department. The report must contain information regarding the actual employment 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 due and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

(b) Requirement to submit annual surveys. Effective April 1, 2004, each recipient of a tax deferral granted under chapter 82.60 RCW after June 30, 1994, must complete an annual survey **instead of an annual report**. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.020(4), the lessee must agree to complete the annual survey and the applicant is not required to complete the annual survey. Refer to WAC 458-20-268 (Annual surveys for certain tax adjustments) for more information on the requirements to file annual surveys.

(411) **Repayment of deferred taxes.** Repayment of tax deferred under chapter 82.60 RCW is excused, except as otherwise provided in RCW 82.60.070 and this subsection on an investment project for which a deferral has been granted under chapter 82.60 RCW after June 30, 1994.

(a) The following describes the various circumstances under which repayment of the deferral may be required. Outstanding taxes are determined by reference to the following table. The table presumes the taxpayer maintained eligibility for the entire year. See subsection (c) for repayment and waiver for deferrals with hiring requirements.

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

Any action taken by the department to disqualify a recipient for tax deferral or require payment of all or part of deferred taxes is subject to administrative review pursuant to the provisions of WAC 458-20-100 (Informal administrative reviews). The filing of a petition for review with the department starts a review of departmental action.

(b) **Failure of investment project to satisfy general conditions.** 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, other than failure to create the required number of positions, the department will declare the amount of deferred taxes outstanding to be immediately due. For example, a reason for disqualification would be that the facility is not used for manufacturing or research and development operations.

(c) **Failure of investment project to satisfy employment positions conditions.** If, on the basis of the recipient's annual report or other information, 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 amount of taxes deferred will be immediately due. The department will assess interest at the rate and as provided for delinquent excise taxes under RCW 82.32.050 (retroactively to the date of deferral). No penalties will be assessed.

(d) **Failure of investment project to satisfy employee residency requirements.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project under RCW 82.60.040 (1)(b) or (c) has failed to comply with the special hiring requirements of RCW 82.60.045 for any calendar year for which reports are required under this subsection, (~~twelve and one-half~~) 12.5 percent of the amount of deferred taxes will be immediately due. For each year a deferral's requirements are met (~~twelve and one-half~~) 12.5 percent of the amount of deferred taxes will be waived. The department will assess interest at the rate provided for delinquent excise taxes under RCW 82.32.050, retroactively to the date of deferral. No penalties will be assessed.

(e) The department of employment security makes and certifies to the department all determinations of employment and wages required under this subsection, per request.

(412) **Debt not extinguished because of insolvency or sale.** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient.

(413) **Disclosure of information.** Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.) Effective April 1, 2004, all information collected in annual surveys, except the amount of tax deferral taken, is confidential and not subject to disclosure. Information on the amount of tax deferral taken in annual surveys is not confidential and may be disclosed to the public upon request.

PART V

Applications from July 1, 1992, to June 30, 1994

(501) **Definitions.** For the purposes of this part, the following definitions apply for applications made after July 1, 1992, but before July 1, 1994:

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

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

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

(d) "Computer-related services" means services that are connected or interact directly in the manufacture of computer hardware or software or the programming of the manufactured hardware. This includes the manufacture of hardware such as chips, keyboards, monitors, any other hardware, and the components of these items. It includes creating operating systems and software that will be copied and sold as canned software. "Computer-related services" does not include information services. The activities performed by the manufacturer to test, correct, revise, and upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services in this instance.

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

(f) "Eligible area" means:

(i) Unemployment county. 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~~) 20 percent. The department may compare the county's average unemployment rate in the prior three years to (~~one hundred twenty~~) 120 percent of the state's average unemployment rate based on official unemployment figures published by the department of employment security;

(ii) MSA. 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 chapter 82.60 RCW exceeds the average state unemployment for such calendar year by (~~twenty~~) 20 percent; or

(iii) CEZ. Beginning July 1, 1993, a designated community empowerment zone approved under RCW 43.63A.700.

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

(A) Is directly utilized to create at least one new full-time qualified employment position for each (~~three hundred thousand dollars~~) \$300,000 of investment on which a deferral is requested; and

(B) Either initiates a new operation, or expands or diversifies a current operation by expanding, or renovating an existing building with costs in excess of (~~twenty-five~~) 25 percent of the true and fair value of the plant complex prior to improvement. "Improvement" means 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~~) 25 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~~) 25 percent test may be satisfied by considering the value of both the building and machinery and equipment; however, at least (~~forty~~) 40 percent of the total renovation costs must be attributable to the physical renovation of the building structure alone. "True and fair value" means the value listed on the assessment rolls as determined by the county assessor for the land, buildings, or equipment for ad valorem property tax purposes at the time of application; or

(C) Acquires machinery and equipment to be used for either manufacturing or research and development. The lessor/owner of the structure is not eligible for a deferral unless the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person.

(ii) "Eligible investment project" does not include any portion of an investment project undertaken by a light and power business as defined in RCW 82.16.010 or investment projects that have already received deferrals under chapter 82.60 RCW.

(h) "Industrial fixture" means an item attached to a building or to land. Fixtures become part of the real estate to which they are attached and upon attachment are classified as real property, not personal property. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and certain concrete slabs.

(i) "Initiation of construction," in regards to the construction of new buildings, means the commencement of on-site construction work.

(j) "Initiation of construction," in regards to the construction of expanding or renovating existing structures for the purpose of increasing floor space or production capacity used for manufacturing and research and development, means the commencement of new construction by renovation, modernization, or expansion, by physical alteration.

(k) "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.

(l) "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing, for purposes of the distressed area deferral program, also includes computer programming, the production of computer software, and other computer-related services, but only when the computer programming, production of computer software, or other computer-related services are performed by a manufacturer as defined in RCW 82.04.110 and contribute to the production of a new, different, or useful substance or article of tangible personal property for sale; and the activities performed by research and development laboratories and commercial testing laboratories. (Chapter 16, Laws of 2010.)

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

(n) "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of this chapter. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, or equipment vests in the lessor/owner.

(o) "Qualified buildings" are limited to structures used for manufacturing and research and development activities. "Qualified buildings" include plant offices and warehouses if such facilities are essential or an integral part of a factory, mill, plant, or laboratory. "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building, its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. "Warehouse" means facilities used for the storage of raw materials or finished goods.

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

(q) "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 or research and development operation. "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 machinery. It also includes machinery and equipment acquired under the terms of a long- or short-term lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

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

(s) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed (~~one million dollars~~) \$1,000,000.

(502) **Issuance of deferral certificate.** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral for which the recipient is eligible. Recipients must keep track of how much deferral is taken.

(503) **Eligible investment amount.** Recipients are eligible for a deferral on investment used to create employment positions.

(a) Total qualifying project costs must be examined to determine the number of positions associated with the project. Total qualifying project costs are divided by (~~three hundred thousand~~) 300,000, the result being the qualified employment positions. This is the number of positions used as the hiring benchmark at the end of year three. The qualified employment positions are reviewed in the third year, following December 31st of the year the project is operationally complete. If the recipient has failed to create the requisite number of positions, the department will issue an assessment under subsection (511) of this rule. Buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (504) of this rule explains the procedure for apportionment.

(b) Qualified employment positions does not include those persons hired in excess of the ratio of one employee per required dollar of investment for which a deferral is granted. 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~~) 30 consecutive days.

(504) **Apportionment of costs between qualifying and nonqualifying investments.** The deferral is allowable only in respect to investment

in the construction of a new building or the expansion or renovation of existing buildings directly used in manufacturing, research and development, or commercial testing laboratories.

(a) Where a building(s) is used partly for manufacturing or research and development, or commercial testing and partly for purposes, which do not qualify for deferral under this rule, the deferral will be determined by apportionment of the total project costs. The applicable tax deferral will be determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing or research and development purposes bears to the square footage of the total building(s).

Apportionment formula:

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

Percent Eligible x Total Project Costs = Eligible Costs.

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways and bathrooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

Eligible Tax Deferred = Eligible Cost x Tax Rate.

(b) Qualified machinery and equipment is not subject to apportionment.

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

(506) **Application procedure and review process.** An application for sales and use tax deferral under this program must be made prior to the initiation of construction and the acquisition of equipment or machinery. Persons who apply after construction is initiated or finished or after acquisition of machinery and equipment are not eligible for the program.

(a) Application forms (~~will be supplied to the applicant by the department upon request. The completed application may be sent by fax to 360-586-2163 or mailed to the following address:~~

~~Washington State Department of Revenue
Special Programs
P.O. Box 47477~~

~~Olympia, WA 98504-7477)) may be obtained from the department's website at dor.wa.gov, or by contacting the department at 360-705-6705.~~

(b) The department will verify the information contained in the application and either approve or disapprove the application within (~~sixty~~) 60 days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the appli-

cant as to the reason(s) for disapproval. The U.S. Post Office postmark or fax date will be used as the date of application.

(c) The applicant may seek administrative review of the department's refusal to issue a certificate pursuant to the provisions of WAC 458-20-100 (Informal administrative reviews), within (~~(thirty)~~) 30 days from the date of notice of the department's refusal, or within any extension of such time granted by the department. The filing of a petition for review with the department starts a review of departmental action.

(507) **Unemployment criteria.** For purposes of making application for tax deferral and of approving such applications, the statewide and county unemployment statistics last published by the department will be used to determine eligible areas. The department will update the list of eligible areas by county, on an annual basis.

(508) **Use of the certificate.** A tax deferral certificate issued under this program is for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified buildings or qualified machinery and equipment as defined in subsection (501) of this rule. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment.

The tax deferral certificate is to be used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102, Resale certificates. The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller will be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales. The deferral certificate is to defer the taxes of the recipient. For example, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

(509) **Project operationally complete.** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral of sales and use taxes is requested. Requests must be mailed or faxed to the department.

(b) The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project was operationally complete. The recipient of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

(c) The recipient will be notified in writing of the total amount of deferred taxes, the date(s) upon which the deferred taxes must 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 (~~thirty~~) 30 days from the date of the notice of disallowance.

(510) **Reporting and monitoring procedure.** Requirement to submit annual reports. Each recipient of a sales and use tax deferral must submit a report to the department on December 31st of each year during the repayment period until the tax deferral is repaid. The report must be made to the department in a form and manner prescribed by the department. The report must contain information regarding the actual employment 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.

(511) **Repayment of deferred taxes.** The recipient must begin paying the deferred taxes in the third year after the date certified by the department as the date on which the construction project has been operationally completed.

(a) 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	0%
2	0%
3	0%
4	10%
5	15%
6	20%
7	25%
8	30%

(b) The department may authorize an accelerated repayment schedule upon request of the recipient. Interest will not be charged on any taxes deferred under this part 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.

(c) Taxes deferred on the sale or use of labor directly applied in the construction of an investment project for which deferral has been granted need not be repaid, provided eligibility for the granted tax deferral has been perfected by meeting all of the eligibility requirements, based upon the recipient's annual December 31st reports and any other information available to the department. 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. This information must be maintained in the recipient's permanent records for the department's review and verification. 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~~) 30 percent of its gross construction or installation contract charges. 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.

(d) **Failure of investment project to satisfy general conditions.** 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 for reasons other than failure to create the required number of qualified employment positions, the department will declare the amount of deferred taxes outstanding to be immediately due. For example, a reason for disqualification would be the facility is not used for a manufacturing or research and development operation.

(e) **Failure of investment project to satisfy required employment positions.** If, on the basis of the recipient's annual report or other information, 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 will assess interest but not penalties, on the deferred taxes for the project. The department will assess interest at the rate provided for delinquent excise taxes under RCW 82.32.050, retroactively to the date of the date of deferral. No penalties will be assessed.

(f) The department of employment security makes and certifies to the department all determinations of employment and wages required under this subsection, per request.

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

(512) **Debt not extinguished because of insolvency or sale.** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project will be liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient.

(513) **Disclosure of information.** Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.)

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

WAC 458-20-24003 Tax incentives for high technology businesses.

(1) **Introduction.** This rule explains the tax incentives, contained in chapter 82.63 RCW and RCW 82.04.4452, which apply to businesses engaged in research and development or pilot scale manufacturing in Wash-

ington in five high technology areas: Advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology. Eligibility for high technology or research and development tax incentives offered by the federal government or any other jurisdiction does not establish eligibility for Washington's programs.

This rule contains examples that identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results in all situations must be determined after a review of all facts and circumstances. Assume all the examples below occur on or after June 10, 2004, unless otherwise indicated.

(2) **Organization of the rule.** The information provided in this rule is divided into three parts.

(a) Part I provides information on the sales and use tax deferral program under chapter 82.63 RCW.

(b) Part II provides information on the sales and use tax exemption available for persons engaged in certain construction activities for the federal government under RCW 82.04.190(6).

(c) Part III provides information on the business and occupation tax credit on research and developing spending under RCW 82.04.4452.

PART I

SALES AND USE TAX DEFERRAL PROGRAM

(3) **Who is eligible for the sales and use tax deferral program?** A person engaged in qualified research and development or pilot scale manufacturing in Washington in the five high technologies areas is eligible for this deferral program for its eligible investment project.

(a) **What does the term "person" mean for purposes of this deferral program?** "Person" has the meaning given in RCW 82.04.030. Effective June 10, 2004, "person" also includes state universities as defined in RCW 28B.10.016. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of chapter 82.63 RCW.

(i) Effective June 10, 2004, the lessor or owner of the qualified building is not eligible for a deferral unless:

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

(B) All of the following conditions are met:

(I) The lessor by written contract agrees to pass the economic benefit of the deferral to the lessee;

(II) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual tax performance report required under RCW 82.63.020(2);

(III) The lessee must receive an economic benefit from the lessor no less than the amount of tax deferred by the lessor; and

(IV) Upon request, the lessor must provide the department with written documentation to support the eligibility of the deferral, including any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee.

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

(ii) Prior to June 10, 2004, the lessor or owner of the qualified building is not eligible for a deferral unless the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(iii) The lessor of the qualified building who receives a letter of intent from a qualifying lessee may be eligible for deferral, assuming that all other requirements of chapter 82.63 RCW are met. At the time of application, the lessor must provide to the department a letter of intent by the lessee to lease the qualified building and any other information to prove that the lessee will engage in qualified research and development or pilot scale manufacturing once the building construction is complete. After the investment project is certified as operationally complete, the lessee must actually occupy the building as a lessee and engage in qualified research and development or pilot scale manufacturing. Otherwise, deferred taxes will be immediately due to the lessor, and interest will be assessed retroactively from the date of deferral.

(b) **What is "qualified research and development" for purposes of this rule?** "Qualified research and development" means research and development performed within this state in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology.

(c) **What is "research and development" for purposes of this rule?** "Research and development" means activities performed to discover technological information, and technical and nonroutine activities concerned with translating technological information into new or improved products, processes, techniques, formulas, inventions, or software.

The term includes exploration of a new use for an existing drug, device, or biological product if the new use requires separate licensing by the Federal Food and Drug Administration under chapter 21 C.F.R., as amended.

The term does not include adaptation or duplication of existing products where the products are not substantially improved by application of the technology, nor does the term include surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software developed for internal use, and research in areas such as improved style, taste, and seasonal design.

(i) A person need not both discover technological information and translate technological information into new or improved products, processes, techniques, formulas, inventions, or software in order to engage in research and development. A person may perform either activity alone and be engaged in research and development.

(ii) To discover technological information means to gain knowledge of technological information through purposeful investigation. The knowledge sought must be of something not previously known or, if known, only known by persons who have not made the knowledge available to the public.

(iii) Technological information is information related to the application of science, especially with respect to industrial and commercial objectives. Industrial and commercial objectives include both sale and internal use (other than internal use software). The translation of technological information into new or improved products, processes, techniques, formulas, inventions, or software does not require

the use of newly discovered technological information to qualify as research and development.

(iv) The translation of technological information requires both technical and nonroutine activities.

(A) An activity is technical if it involves the application of scientific, engineering, or computer science methods or principles.

(B) An activity is nonroutine if it:

(I) Is undertaken to achieve a new or improved function, performance, reliability, or quality; and

(II) Is performed by engineers, scientists, or other similarly qualified professionals or technicians; and

(III) Involves a process of experimentation designed to evaluate alternatives where the capability or the method of achieving the new or improved function, performance, reliability, or quality, or the appropriate design of the desired improvement, is uncertain at the beginning of the taxpayer's research activities. A process of experimentation must seek to resolve specific uncertainties that are essential to attaining the desired improvement.

(v) A product is substantially improved when it functions fundamentally differently because of the application of technological information. This fundamental difference must be objectively measured. Examples of objective measures include increased value, faster operation, greater reliability, and more efficient performance. It is not necessary for the improvement to be successful for the research to qualify.

(vi) Computer software development may qualify as research and development involving both technical and nonroutine activities concerned with translating technological information into new or improved software, when it includes the following processes: Software concept, software design, software design implementation, conceptual freeze, alpha testing, beta testing, international product localization process, and other processes designed to eliminate uncertainties prior to the release of the software to the market for sale. Research and development ceases when the software is released to the market for sale.

Postrelease software development may meet the definition of research and development under RCW 82.63.010(16), but only if it involves both technical and nonroutine activities concerned with translating technological information into improved software. All facts and circumstances are considered in determining whether postrelease software development meets the definition of research and development.

(vii) Computer software is developed for internal use if it is to be used only by the person by whom it is developed. If it is to be available for sale, lease, or license, it is not developed for internal use, even though it may have some internal applications. If it is to be available for use by persons, other than the person by whom it is developed, who access or download it remotely, such as through the internet, it is not usually deemed to be developed for internal use. However, remotely accessed software is deemed to be developed for internal use if its purpose is to assist users in obtaining goods, services, or information provided by or through the person by whom the software is developed. For example, software is developed for internal use if it enables or makes easier the ordering of goods from or through the person by whom the software is developed. On the other hand, a search engine used to search the world wide web is an example of software that is not developed for internal use because the search engine itself is the service sought.

(viii) Research and development is complete when the product, process, technique, formula, invention, or software can be reliably reproduced for sale or commercial use. However, the improvement of an existing product, process, technique, formula, invention, or software may qualify as research and development.

(d) **What is "pilot scale manufacturing" for purposes of this rule?** "Pilot scale manufacturing" means design, construction, and testing of preproduction prototypes and models in the fields of biotechnology, advanced computing, electronic device technology, advanced materials, and environmental technology other than for commercial sale. "Commercial sale" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed (~~one million dollars~~) \$1,000,000.

(e) **What are the five high technology areas?** The five high technology areas are as follows:

(i) **Advanced computing.** "Advanced computing" means technologies used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to super computers, and peripheral equipment.

(ii) **Advanced materials.** "Advanced materials" means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials.

(iii) **Biotechnology.** "Biotechnology" means the application of technologies, such as recombinant DNA techniques, biochemistry, molecular and cellular biology, genetics, including genomics, gene expression and genetic engineering, cell fusion techniques, and new bioprocesses, using living organisms, or parts of organisms, to produce or modify products, to improve plants or animals, to develop microorganisms for specific uses, to identify targets for small molecule pharmaceutical development, or to transform biological systems into useful processes and products or to develop microorganisms for specific uses.

(iv) **Electronic device technology.** "Electronic device technology" means technologies involving microelectronics; semiconductors; electronic equipment and instrumentation; radio frequency, microwave, and millimeter electronics; optical and optic-electrical devices; and data and digital communications and imaging devices.

(v) **Environmental technology.** "Environmental technology" means assessment and prevention of threats or damage to human health or the environment, environmental cleanup, and the development of alternative energy sources.

(A) The assessment and prevention of threats or damage to human health or the environment concerns assessing and preventing potential or actual releases of pollutants into the environment that are damaging to human health or the environment. It also concerns assessing and preventing other physical alterations of the environment that are damaging to human health or the environment.

For example, a research project related to salmon habitat restoration involving assessment and prevention of threats or damages to the environment may qualify as environmental technology, if such project is concerned with assessing and preventing potential or actual releases of water pollutants and reducing human-made degradation of the environment.

(I) Pollutants include waste materials or by-products from manufacturing or other activities.

(II) Environmental technology includes technology to reduce emissions of harmful pollutants. Reducing emissions of harmful pollutants can be demonstrated by showing the technology is developed to meet governmental emission standards. Environmental technology also includes technology to increase fuel economy, only if the taxpayer can demonstrate that a significant purpose of the project is to increase fuel economy and that such increased fuel economy does in fact significantly reduce harmful emissions. If the project is intended to increase fuel economy only minimally or reduce emissions only minimally, the project does not qualify as environmental technology. A qualifying research project must focus on the individual components that increase fuel economy of the product, not the testing of the entire product when everything is combined, unless the taxpayer can separate out and identify the specific costs associated with such testing.

(III) Environmental technology does not include technology for preventive health measures for, or medical treatment of, human beings.

(IV) Environmental technology does not include technology aimed to reduce impact of natural disasters such as floods and earthquakes.

(V) Environmental technology does not include technology for improving safety of a product.

(B) Environmental cleanup is corrective or remedial action to protect human health or the environment from releases of pollutants into the environment.

(C) Alternative energy sources are those other than traditional energy sources such as fossil fuels, nuclear power, and hydroelectricity. However, when traditional energy sources are used in conjunction with the development of alternative energy sources, all the development will be considered the development of alternative energy sources.

(4) **What is eligible for the sales and use tax deferral program?** This deferral program applies to an eligible investment project for sales and use taxes imposed on the construction, expansion, or renovation of qualified buildings and acquisition of qualified machinery and equipment.

(a) **What is an "eligible investment project" for purposes of this rule?** "Eligible investment project" means an investment project which either initiates a new operation, or expands or diversifies a current operation by expanding, renovating, or equipping an existing facility.

(b) **What is an "investment project" for purposes of this rule?** "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction or improvement of the project. When an application for sales and use tax deferral is timely submitted, costs incurred before the application date are allowable, if they otherwise qualify.

(c) **What is "qualified buildings" for purposes of this rule?** "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for pilot scale manufacturing or qualified research and development.

(i) "Qualified buildings" is limited to structures used for pilot scale manufacturing or qualified research and development. "Qualified buildings" includes plant offices and other facilities that are an essential or an integral part of a structure used for pilot scale manufacturing or qualified research and development.

(A) "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building, its use must be essential or integral to pilot scale manufacturing or qualified research and development. An office may be located in a separate building from the building used for pilot scale manufacturing or qualified research and development, but the office must be located at the same site as the qualified building in order to qualify. Each individual office may only qualify or disqualify in its entirety.

(B) A site is one or more immediately adjacent parcels of real property. Adjacent parcels of real property separated only by a public road comprise a single site.

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

However, "qualified buildings" includes construction of specialized sewerage pipes connected to a qualified building that are specifically designed and used exclusively for pilot scale manufacturing or qualified research and development.

Also, "qualified buildings" includes construction of parking lots connected to or adjacent to the building if the parking lots are for the use of workers performing pilot scale manufacturing or qualified research and development in the building. Parking lots may be apportioned based upon its qualifying use.

(d) **What is "multiple qualified buildings" for purposes of this rule?** "Multiple qualified buildings" means "qualified buildings" leased to the same person when such structures:

(i) Are located within a five-mile radius; and

(ii) The initiation of construction of each building begins within a ~~((sixty))~~ 60-month period.

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

(f) **What is the apportionment method?** The applicable tax deferral will be determined as follows:

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

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

(iii) Tax on the cost of construction of areas used in common for pilot scale manufacturing or qualified research and development and for other purposes, such as hallways, bathrooms, and conference rooms, may be deferred by apportioning the costs of construction on a square footage basis. The apportioned costs of construction eligible for deferral are established by using the ratio, expressed as a percentage, of the square feet of the construction, expansion, or renovation devoted to pilot scale manufacturing or qualified research and development, excluding areas used in common to the total square feet of the construction, expansion, or renovation, excluding areas used in com-

mon. That percentage is applied to the cost of construction of the common areas to determine the costs of construction eligible for tax deferral. Expressed as a formula, apportionment of the cost of the common areas is determined by:

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

(iv) The apportionment method described in (f) (i), (ii), and (iii) of this subsection must be used unless the applicant or recipient can demonstrate that another method better represents a reasonable apportionment of costs, considering all the facts and circumstances. An example is to use the number of employees in a qualified building that is engaged in pilot scale manufacturing or qualified research and development as the basis for apportionment, if this method is not easily manipulated to reflect a desired outcome, and it otherwise represents a reasonable apportionment of costs under all the facts and circumstances. This method may take into account qualified research and development or pilot scale manufacturing activities that are shifted within a building or from one building to another building. If assistance is needed to a tax-related question specific to your business under this subsection, you may request a tax ruling. To make a tax ruling request contact the department (~~'s taxpayer information and education division at:~~

~~Washington State Department of Revenue
Taxpayer Information and Education
P.O. Box 47478
Olympia, WA 98504-7478
fax 360-586-2463)~~ at 360-705-6705 or go to the department's website at dor.wa.gov.

(v) Example. A building to be constructed will be partially devoted to research and development and partially devoted to marketing, a nonqualifying purpose. The total area of the building is 100,000 square feet. Sixty thousand square feet are used only for research and development, 20,000 square feet are used only for marketing, and the remaining 20,000 square feet are used in common by research and development employees and marketing employees. Tax on the cost of constructing the 60,000 square feet used only for research and development may be deferred. Tax on the cost of constructing the 20,000 square feet used only for marketing may not be deferred. Tax on 75% of the cost of constructing the common areas may be deferred. (Sixty thousand square feet devoted solely to research and development divided by 80,000 square feet devoted solely to research and development and marketing results in a ratio expressed as 75%.)

(g) **What is "qualified machinery and equipment" for purposes of this rule?** "Qualified machinery and equipment" means fixtures, equipment, and support facilities that are an integral and necessary part of a pilot scale manufacturing or qualified research and development operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment, instrumentation, and other devices used in a process of experimentation to develop a new or improved pilot model, plant process, product, formula, invention, or similar property; manufacturing components such as

belts, pulleys, shafts, and moving parts; molds, tools, and dies; vats, tanks, and fermenters; operating structures; and all other equipment used to control, monitor, or operate the machinery. For purposes of this rule, qualified machinery and equipment must be either new to the taxing jurisdiction of the state or new to the certificate holder, except that used machinery and equipment may be treated as qualified machinery and equipment if the certificate holder either brings the machinery and equipment into Washington or makes a retail purchase of the machinery and equipment in Washington or elsewhere.

(i) **What are "integral" and "necessary"?** Machinery and equipment is an integral and necessary part of pilot scale manufacturing or qualified research and development if the pilot scale manufacturing or qualified research and development cannot be accomplished without it. For example, a laboratory table is integral and necessary to qualified research and development. Likewise, telephones, computer hardware (e.g., cables, scanners, printers, etc.), and computer software (e.g., Word, Excel, Windows, Adobe, etc.) used in a typical workstation for an R&D personnel are integral and necessary to qualified research and development. Decorative artwork, on the other hand, is not integral and necessary to qualified research and development.

(ii) **Must qualified machinery and equipment be used exclusively for qualifying purposes in order to qualify?** Qualified machinery and equipment must be used exclusively for pilot scale manufacturing or qualified research and development to qualify for the deferral. Operating system software shared by accounting personnel, for example, is not used exclusively for qualified research and development. However, *de minimis* nonqualifying use will not cause the loss of the deferral. An example of *de minimis* use is the occasional use of a computer for personal email.

(iii) **Is qualified machinery and equipment subject to apportionment?** Unlike buildings, if machinery and equipment is used for both qualifying and nonqualifying purposes, the costs cannot be apportioned. Sales or use tax cannot be deferred on the purchase or use of machinery and equipment used for both qualifying and nonqualifying purposes.

(iv) **To what extent is leased equipment eligible for the deferral?** In cases of leases of qualifying machinery and equipment, deferral of tax is allowed on payments made during the initial term of the lease, but not for extensions or renewals of the lease. Deferral of tax is not allowed for lease payments for any period after the seventh calendar year following the calendar year for which the project is certified as operationally complete.

(5) **What are the application and review processes?** Applicants must apply for deferral to the department of revenue before the initiation of construction of, or acquisition of equipment or machinery for the investment project. When an application for sales and use tax deferral is timely submitted, costs incurred before the application date are allowable, if they otherwise qualify. In the case of an investment project consisting of "multiple qualified buildings," applications must be made for, and before the initiation of construction of, each qualified building.

(a) **What is "initiation of construction" for purposes of this rule?**

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

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

(B) Construction of the qualified building, if a lessor passes the economic benefits of the deferral to a lessee as provided in RCW 82.63.010(7); or

(C) Tenant improvements for a qualified building, if a lessor passes the economic benefits of the deferral to a lessee as provided in RCW 82.63.010(7).

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

(iii) If the investment project is a phased project, initiation of construction must apply separately to each building. For purposes of this rule, a "phased project" means construction of multiple buildings in different phases over the life of a project. A taxpayer may file a separate application for each qualified building, or the taxpayer may file one application for all qualified buildings. If a taxpayer files one application for all qualified buildings, initiation of construction must apply separately to each building.

(b) **What is "acquisition of machinery and equipment" for purposes of this rule?** "Acquisition of machinery and equipment" means the machinery and equipment is under the dominion and control of the recipient or its agent.

(c) **Lessor and lessee examples.**

(i) Prior to the initiation of construction, Owner/Lessor A enters into an agreement with Lessee B, a company engaged in qualified research and development. Under the agreement, A will build a building to house B's research and development activities, will apply for a tax deferral on construction of the building, will lease the building to B, and will pass on the entire value of the deferral to B. B agrees in writing with the department to complete annual tax performance reports. A applies for the deferral before the date the building permit is issued. A is entitled to a deferral on building construction costs.

(ii) After construction has begun, Lessee C asks that certain tenant improvements be added to the building. Lessor D and Lessee C each agree to pay a portion of the cost of the improvements. D agrees with C in a written agreement that D will pass on the entire value of D's portion of the tax deferral to C, and C agrees in writing with the department to complete annual tax performance reports. C and D each apply for a deferral on the costs of the tenant improvements they are legally responsible for before the date the building permit is issued for such tenant improvements. Both applications will be approved. While construction of the building was initiated before the applications were submitted, tenant improvements on a building under construction are deemed to be the expansion or renovation of an existing structure. Also, lessees are entitled to the deferral only if they are legally responsible and actually pay contractors for the improvements, rather than merely reimbursing lessors for the costs.

(iii) After construction has begun but before machinery or equipment has been acquired, Lessee E applies for a deferral on machinery and equipment. The application will be approved, and E is required to complete annual tax performance reports. Even though it is too late to apply for a deferral of tax on building costs, it is not too late to apply for a deferral for the machinery and equipment.

(d) **How may a taxpayer obtain an application form?** Application forms may be obtained (~~(at department of revenue district offices, by downloading)~~) from the department's website (~~((+) at dor.wa.gov((+)), or by ((telephoning the telephone information center (800-647-7706), or by))~~) contacting the department(~~(('s special programs division at:~~

~~Washington State Department of Revenue
Special Programs Division
Post Office Box 47477
Olympia, WA 98504-7477
fax 360-586-2163~~

~~Applicants must mail or fax applications to the special programs division at the address or fax number given above.)~~ at 360-705-6705. Only those applications which are approved by the department in connection with the deferral program are not confidential and are subject to public disclosure.

For purposes of this rule, "applicant" means a person applying for a tax deferral under chapter 82.63 RCW, and "department" means the department of revenue.

(e) **What should an application form include?** The application form should include information regarding the location of the investment project, the applicant's average employment in Washington for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, and time schedules for completion and operation. The application form may also include other information relevant to the project and the applicant's eligibility for deferral.

(f) **What is the date of application?** The date of application is the earlier of the postmark date or the date of receipt by the department.

(g) **When will the department notify approval or disapproval of the deferral application?** The department must rule on an application within (~~(sixty))~~ 60 days. If an application is denied, the department must explain in writing the basis for the denial. An applicant may seek review of a denial within (~~(thirty))~~ 30 days under WAC 458-20-100 (Informal administrative reviews).

(6) **Can a lessee leasing "multiple qualified buildings" elect to treat the "multiple qualified buildings" as a single investment project?** Yes. If a lessee will conduct qualified research and development or pilot scale manufacturing within the "multiple qualified buildings" and desires to treat the "multiple qualified buildings" as a single investment project, the lessee may do so by making both a preliminary election and a final election therefore.

(a) **When must the lessee make the preliminary election to treat the "multiple qualified buildings" as a single investment project?** The lessee must make the preliminary election before a temporary certificate of occupancy, or its equivalent, is issued for any of the buildings within the "multiple qualified buildings."

(b) **When must the lessee make the final election to treat the "multiple qualified buildings" as a single investment project?** All buildings included in the final election must have been issued a temporary certificate of occupancy or its equivalent. The lessee must then make the final election for such buildings by the date that is the earlier of:

(i) Sixty months following the date that the lessee made the preliminary election; or

(ii) Thirty days after the issuance of the temporary certificate of occupancy, or its equivalent, for the last "qualified building" to be completed that will be included in the final election.

(c) **What occurs if the final election is not made by the deadline?** When a final election is not made by the deadline in (b) (i) or (ii) of this subsection, the qualified buildings will each be treated as individual investment projects under the original applications for those buildings.

(d) **How are preliminary and final elections made?** The preliminary and final elections must be made in the form and manner prescribed by the department. For information concerning the form and manner for making these elections contact the department (~~its special programs division at:~~

~~Washington State Department of Revenue
Special Programs Division
Post Office Box 47477
Olympia, WA 98504-7477
fax 360-586-2163) at 360-705-6705.~~

(e) **Before the final election is made, can the lessee choose to exclude one or more of the buildings included in its preliminary election?** Yes. Before the final election is made, the lessee may remove one or more of the qualified buildings included in the preliminary election from the investment project. When a qualified building under the preliminary election is, for any reason, not included in the final election, the qualified building will be treated as an individual investment project under the original application for that building.

(f) **Application.** This subsection (6) applies to deferral applications received by the department after June 30, 2007.

(7) **What happens after the department approves the deferral application?** If an application is approved, the department must issue the applicant a sales and use tax deferral certificate.

The certificate provides for deferral of state and local sales and use taxes on the eligible investment project. The certificate will state the amount of tax deferral for which the recipient is eligible. It will also state the date by which the project will be operationally complete. The deferral is limited to investment in qualified buildings or qualified machinery and equipment. The deferral does not apply to the taxes of persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

For purposes of this rule, "recipient" means a person receiving a tax deferral under chapter 82.63 RCW.

(8) **How should a tax deferral certificate be used?** A successful applicant, hereafter referred to as a recipient, must present a copy of the certificate to sellers of goods or retail services provided in connection with the eligible investment project in order to avoid paying sales or use tax. Sellers who accept these certificates in good faith are relieved of the responsibility to collect sales or use tax on transactions covered by the certificates. Sellers must retain copies of certificates as documentation for why sales or use tax was not collected on a transaction.

The certificate cannot be used to defer tax on repairs to, or replacement parts for, qualified machinery and equipment.

(9) **May an applicant apply for new deferral at the site of an existing deferral project?**

(a) The department must not issue a certificate for an investment project that has already received a deferral under chapter 82.60,

82.61, or 82.63 RCW. For example, replacement machinery and equipment that replaces qualified machinery and equipment is not eligible for the deferral. Also, if renovation is made from an existing building that has already received a deferral under chapter 82.60, 82.61, or 82.63 RCW for the construction of the building, the renovation is not eligible for the deferral.

(b) If expansion is made from an existing building that has already received a deferral under chapter 82.60, 82.61, or 82.63 RCW for the construction of the building, the expanded portion of the building may be eligible for the deferral. Acquisition of machinery and equipment to be used for the expanded portion of the qualified building may also be eligible.

(c) An investment project for qualified research and development that has already received a deferral may also receive an additional deferral certificate for adapting the investment project for use in pilot scale manufacturing.

(d) A certificate may be amended or a certificate issued for a new investment project at an existing facility.

(10) May an applicant or recipient amend an application or certificate? Applicants and recipients may make written requests to the special programs division to amend an application or certificate.

(a) Grounds for requesting amendment include, but are not limited to:

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

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

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

(iv) Transfer of ownership of the project.

(b) The department must rule on the request within (~~sixty~~) 60 days. If the request is denied, the department must explain in writing the basis for the denial. An applicant or recipient may seek review of a denial within (~~thirty~~) 30 days under WAC 458-20-100 (Informal administrative reviews).

(11) What should a recipient of a tax deferral do when its investment project is operationally complete?

(a) When the building, machinery, or equipment is ready for use, or when a final election is made to treat "multiple qualified buildings" as single investment project, the recipient must notify the special programs division in writing that the eligible investment project is operationally complete. The department must, after appropriate investigation: Certify that the project is operationally complete; not certify the project; or certify only a portion of the project. The certification will include the year in which the project is operationally complete. If the department certifies as an operationally complete investment project consisting of "multiple qualifying buildings," the certification is deemed to have occurred in the calendar year in which the final election is made.

(b) If all or any portion of the project is not certified, the recipient must repay all or a proportional part of the deferred taxes. The department will notify the recipient of the amount due, including interest, and the due date.

(c) The department must explain in writing the basis for not certifying all or any portion of a project. The decision of the department to not certify all or a portion of a project may be reviewed under WAC 458-20-100 (Informal administrative reviews) within (~~thirty~~) 30 days.

(d) An investment project consisting of "multiple qualifying buildings" may not be certified as operationally complete unless the lessee furnishes the department with a bond, letter of credit, or other security acceptable to the department in an amount equal to the repayment obligation as determined by the department. The department may decrease the secured amount each year as the repayment obligation decreases under the provisions of RCW 82.63.045. If the lessee does not furnish the department with a bond, letter of credit, or other acceptable security equal to the amount of deferred tax, the qualified buildings will each be treated as individual investment projects under the original applications for those buildings.

(12) **Is a recipient of a tax deferral required to submit annual tax performance reports?** Each recipient of a tax deferral granted under chapter 82.63 RCW must complete an annual tax performance report. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.63.010(7), the lessee must agree to complete the annual tax performance report and the applicant is not required to complete the annual tax performance report. See WAC 458-20-267 (Annual tax performance reports for certain tax preferences) for more information on the requirements to file annual tax performance reports.

(13) **Is a recipient of tax deferral required to repay deferred taxes?**

(a) **When is repayment required?** Deferred taxes must be repaid if an investment project is used for purposes other than qualified research and development or pilot scale manufacturing during the calendar year for which the department certifies the investment project as operationally complete or at any time during any of the succeeding seven calendar years. Taxes are immediately due according to the following schedule:

Year in which nonqualifying use occurs	% of deferred taxes due
1	100%
2	87.5%
3	75%
4	62.5%
5	50%
6	37.5%
7	25%
8	12.5%

Interest on the taxes, but not penalties, must be paid retroactively to the date of deferral. For purposes of this rule, the date of deferral is the date tax-deferred items are purchased.

The lessee of an investment project consisting of "multiple qualified buildings" is solely liable for payment of any deferred tax determined to be due and payable beginning on the date the department certifies the product as operationally complete. This does not relieve any lessor of its obligation under RCW 82.63.010(7) and subsection (3)(a) of this rule to pass the economic benefit of the deferral to the lessee.

(b) **When is repayment not required?**

(i) Deferred taxes need not be repaid if the investment project is used only for qualified research and development or pilot scale manufacturing during the calendar year for which the department certi-

fies the investment project as operationally complete and during the succeeding seven calendar years.

(ii) Deferred taxes need not be repaid on particular items if the purchase or use of the item would have qualified for the machinery and equipment sales and use tax exemptions provided by RCW 82.08.02565 and 82.12.02565 (discussed in WAC 458-20-13601) at the time of purchase or first use.

(iii) Deferred taxes need not be repaid if qualified machinery and equipment on which the taxes were deferred is destroyed, becomes inoperable and cannot be reasonably repaired, wears out, or becomes obsolete and is no longer practical for use in the project. The use of machinery and equipment which becomes obsolete for purposes of the project and is used outside the project is subject to use tax at the time of such use.

(14) **When will the tax deferral program expire?** The authority of the department to issue deferral certificates expires January 1, 2015.

(15) **Is debt extinguishable because of insolvency or sale?** The debt for deferred taxes will not be extinguished by the insolvency or other failure of the recipient.

(16) **Does transfer of ownership terminate tax deferral?** Transfer of ownership does not terminate the deferral. The deferral may be transferred to the new owner if the new owner meets all eligibility requirements for the remaining periods of the deferral. The new owner must apply for an amendment to the deferral certificate. If the deferral is transferred, the new owner is liable for repayment of deferred taxes under the same terms as the original owner. If the new owner is a successor to the previous owner under the terms of WAC 458-20-216 (Successors, quitting business) and the deferral is not transferred, the new owner's liability for deferred taxes is limited to those that are due for payment at the time ownership is transferred.

PART II

SALES AND USE TAX EXEMPTION FOR PERSONS ENGAGED IN CERTAIN CONSTRUCTION ACTIVITIES FOR THE FEDERAL GOVERNMENT

(17) **Persons engaged in construction activities for the federal government.** Effective June 10, 2004, persons engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, or any instrumentality thereof, are not liable for sales and use tax on tangible personal property incorporated into, installed in, or attached to such building or other structure, if the investment project would qualify for sales and use tax deferral under chapter 82.63 RCW if undertaken by a private entity. RCW 82.04.190(6).

PART III

BUSINESS AND OCCUPATION TAX CREDIT FOR RESEARCH AND DEVELOPMENT SPENDING

(18) **Who is eligible for the business and occupation tax credit?** RCW 82.04.4452 provides for a business and occupation tax credit for persons engaging in research and development in Washington in five areas of high technology: Advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology.

A person is eligible for the credit if its research and development spending in the calendar year for which credit is claimed exceeds

0.92 percent of the person's taxable amount for the same calendar year.

(a) **What does the term "person" mean for purposes of this credit?** "Person" has the meaning given in RCW 82.04.030.

(b) **What is "research and development spending" for purposes of this rule?** "Research and development spending" means qualified research and development expenditures plus (~~eighty~~) 80 percent of amounts paid to a person other than a public educational or research institution to conduct qualified research and development.

(c) **What is "taxable amount" for purposes of this rule?** "Taxable amount" means the taxable amount subject to business and occupation tax required to be reported on the person's combined excise tax returns for the year for which the credit is claimed, less any taxable amount for which a multiple activities tax credit is allowed under RCW 82.04.440. See WAC 458-20-19301 (Multiple activities tax credits) for information on the multiple activities tax credit.

(d) **What are "qualified research and development expenditures" for purposes of this rule?** "Qualified research and development expenditures" means operating expenses, including wages, compensation of a proprietor or a partner in a partnership, benefits, supplies, and computer expenses, directly incurred in qualified research and development by a person claiming the business and occupation tax credit provided by RCW 82.04.4452. The term does not include amounts paid to a person other than a public educational or research institution to conduct qualified research and development. Nor does the term include capital costs and overhead, such as expenses for land, structures, or depreciable property.

(i) In order for an operating expense to be a qualified research and development expenditure, it must be directly incurred in qualified research and development. If an employee performs qualified research and development activities and also performs other activities, only the wages and benefits proportionate to the time spent on qualified research and development activities are qualified research and development expenditures under this rule. The wages of employees who supervise or are supervised by persons performing qualified research and development are qualified research and development expenditures to the extent the work of those supervising or being supervised involves qualified research and development.

(ii) The compensation of a proprietor or a partner is determined in one of two ways:

(A) If there is net income for federal income tax purposes, the amount reported subject to self-employment tax is the compensation.

(B) If there is no net income for federal income tax purposes, reasonable cash withdrawals or cash advances are the compensation.

(iii) Depreciable property is any property with a useful life of at least a year. Expenses for depreciable property will not constitute qualified research and development expenditures even if such property may be fully deductible for federal income tax purposes in the year of acquisition.

(iv) Computer expenses do not include the purchase, lease, rental, maintenance, repair or upgrade of computer hardware or software. They do include internet subscriber fees, run time on a mainframe computer, and outside processing.

(v) Training expenses for employees are qualified research and development expenditures if the training is directly related to the research and development being performed. Training expenses include registration fees, materials, and travel expenses. Although the re-

search and development must occur in Washington, training may take place outside of Washington.

(vi) Qualified research and development expenditures include the cost of clinical trials for drugs and certification by Underwriters Laboratories.

(vii) Qualified research and development expenditures do not include legal expenses, patent fees, or any other expense not incurred directly for qualified research and development.

(viii) Stock options granted as compensation to employees performing qualified research and development are qualified research and development expenditures to the extent they are reported on the W-2 forms of the employees and are taken as a deduction for federal income tax purposes by the employer.

(ix) Preemployment expenses related to employees who perform qualified research and development are qualified research and development expenditures. These expenses include recruiting and relocation expenses and employee placement fees.

(e) **What does it mean to "conduct" qualified research and development for purposes of this rule?** A person is conducting qualified research and development when:

(i) The person is in charge of a project or a phase of the project; and

(ii) The activities performed by that person in the project or the phase of the project constitute qualified research and development.

(iii) Examples.

(A) Company C is conducting qualified research and development. It enters into a contract with Company D requiring D to provide workers to perform activities under the direction of C. D is not entitled to the credit because D is not conducting qualified research and development. Its employees work under the direction of C. C is entitled to the credit if all other requirements of the credit are met.

(B) Company F enters into a contract with Company G requiring G to perform qualified research and development on a phase of its project. The phase of the project constitutes qualified research and development. F is not entitled to the credit because F is not conducting qualified research and development on that phase of the project. G, however, is entitled to the credit if all other requirements of the credit are met.

(f) **What is "qualified research and development" for purposes of this rule?** "Qualified research and development" means research and development performed within this state in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology.

(g) **What is "research and development" for purposes of this rule?** See subsection (3)(c) of this rule for more information on the definition of research and development.

(i) Example. A company that engages in environmental cleanup contracted to clean up a site. It had never faced exactly the same situation before, but guaranteed at the outset that it could do the job. It used a variety of existing technologies to accomplish the task in a combination it had never used before. The company was not engaged in qualified research and development in performing this contract. While the company applied existing technologies in a unique manner, there was no uncertainty to attain the desired or necessary specifications, and therefore the outcome of the project was certain.

(ii) Example. Same facts as (g)(i) of this subsection, except that the company performed research on a technology that had been applied in other contexts but never in the context where the company was attempting to use it, and it was uncertain at the outset whether the technology could achieve the desired outcome in the new context. If the company failed, it would have to apply an existing technology that is much more costly in its cleanup effort. The company was engaged in qualified research and development with respect to the research performed in developing the technology.

(iii) Example. Company A is engaged in research and development in biotechnology and needs to perform standard blood tests as part of its development of a drug. It contracts with a lab, B, to perform the tests. The costs of the tests are qualified research and development expenditures for A, the company engaged in the research and development. Although the tests themselves are routine, they are only a part of what A is doing in the course of developing the drug. B, the lab contracted to perform the testing, is not engaged in research and development with respect to the drug being developed. B is neither discovering technological information nor translating technological information into new or improved products, processes, techniques, formulas, inventions, or software. B is not entitled to a credit on account of the compensation it receives for conducting the tests.

(h) **What are the five high technology areas?** See subsection (3)(e) of this rule for more information.

(19) **How is the business and occupation tax credit calculated?**

(a) **On or after July 1, 2004.** The amount of the credit is calculated as follows:

(i) A person must first determine the greater of:

The person's qualified research and development expenditures;

or

Eighty percent of amounts received by a person other than a public educational or research institution as compensation for conducting qualified research and development.

(ii) Then the person subtracts, from the amount determined under (a)(i) of this subsection, 0.92 percent of its taxable amount. If 0.92 percent of the taxable amount exceeds the amount determined under (a)(i) of this subsection, the person is not eligible for the credit.

(iii) The credit is calculated by multiplying the amount determined under (a)(ii) of this subsection by the following:

(A) For the periods of July 1, 2004, to December 31, 2006, the person's average tax rate for the calendar year for which the credit is claimed;

(B) For the periods of January 1, 2007, to December 31, 2007, the greater of the person's average tax rate for the calendar year or 0.75 percent;

(C) For the periods of January 1, 2008, to December 31, 2008, the greater of the person's average tax rate for the calendar year or 1.0 percent;

(D) For the periods of January 1, 2009, to December 31, 2009, the greater of the person's average tax rate for the calendar year or 1.25 percent; and

(E) For the periods after December 31, 2009, 1.50 percent.

(iv) For the purposes of this rule, "average tax rate" means a person's total business and occupation tax liability for the calendar year for which the credit is claimed, divided by the person's total taxable amount for the calendar year for which the credit is claimed.

(v) For purposes of calculating the credit, if a person's reporting period is less than annual, the person may use an estimated average tax rate for the calendar year for which the credit is claimed, by using the person's average tax rate for each reporting period. When the person files its last return for the calendar year, the person must make an adjustment to the total credit claimed for the calendar year using the person's actual average tax rate for the calendar year.

(vi) Examples.

(A) A business engaging in qualified research and development has a taxable amount of \$10,000,000 in a year. It pays \$80,000 in that year in wages and benefits to employees directly engaged in qualified research and development. The business has no other qualified research and development expenditures. Its qualified research and development expenditures of \$80,000 are less than \$92,000 (0.92 percent of its taxable amount of \$10,000,000). If a business's qualified research and development expenditures (or ~~((eighty))~~ 80 percent of amounts received for the conduct of qualified research and development) are less than 0.92 percent of its taxable amount, it is not eligible for the credit.

(B) A business engaging in qualified research and development has a taxable amount of \$10,000,000 in 2005. Seven million dollars of this amount is taxable at the rate of 0.015 under the B&O tax classification for services and \$3,000,000 is taxable at the rate of 0.00484 under the B&O tax classification for royalties. The business pays \$119,520 in B&O tax for this reporting period. It pays \$200,000 in that year to employees directly engaged in qualified research and development. The business has no other qualified research and development expenditures.

In order to determine the amount of its credit, the business subtracts \$92,000 (0.92 percent of its taxable amount of \$10,000,000) from \$200,000, its qualified research and development expenditures. The resulting amount of \$108,000 multiplied by the business's average tax rate equals the amount of the credit.

The business's average tax rate in 2005 is determined by dividing its B&O tax of \$119,520 by its taxable amount of \$10,000,000. The result, 0.01195, is multiplied by \$108,000 to determine the amount of the credit. The credit is \$1,291 (\$1,290.60 rounded to the nearest whole dollar).

(b) **From July 1, 1998 to June 30, 2004.** The amount of the credit is equal to the greater of:

The person's qualified research and development expenditures;

or

Eighty percent of amounts received by a person other than a public educational or research institution as compensation for conducting qualified research and development

multiplied by 0.00484 in the case of a nonprofit corporation or association; and multiplied by 0.015 in the case of all other persons.

(c) **Prior to July 1, 1998.** The amount of the credit is equal to the greater of:

The person's qualified research and development expenditures;

or

Eighty percent of amounts received by a person other than a public educational or research institution as compensation for conducting qualified research and development

multiplied by 0.00515 in the case of a nonprofit corporation or association; and multiplied by 0.025 in the case of all other persons.

(d) The credit for any calendar year may not exceed the lesser of (~~two million dollars~~) \$2,000,000 or the amount of business and occupation tax otherwise due for the calendar year.

(e) Credits may not be carried forward or carried back to other calendar years.

(20) **Is the person claiming the business and occupation tax credit required to submit annual tax performance reports?** Each person claiming the credit granted under RCW 82.04.4452 must complete an annual tax performance report. See WAC 458-20-267 (Annual tax performance reports for certain tax preferences) for more information on the requirements to file annual tax performance reports.

(21) **Is the business and occupation tax credit assignable?** A person entitled to the credit because of qualified research and development conducted under contract for another person may assign all or a portion of the credit to the person who contracted for the performance of the qualified research and development.

(a) Both the assignor and the assignee must be eligible for the credit for the assignment to be valid.

(b) The total of the credit claimed and the credit assigned by a person assigning credit may not exceed the lesser of (~~two million dollars~~) \$2,000,000 or the amount of business and occupation tax otherwise due from the assignor in any calendar year.

(c) The total of the credit claimed, including credit received by assignment, may not exceed the lesser of (~~two million dollars~~) \$2,000,000 or the amount of business and occupation tax otherwise due from the assignee in any calendar year.

(22) **What happens if a person has claimed the business and occupation tax credit earlier but is later found ineligible?** If a person has claimed the credit earlier but is later found ineligible for the credit, then the department will declare the taxes against which the credit was claimed to be immediately due and payable. Interest on the taxes, but not penalties, must be paid retroactively to the date the credit was claimed.

(23) **When will the business and occupation tax credit program expire?** The business and occupation tax credit program for high technology businesses expires January 1, 2015.

(24) **Do staffing companies qualify for the business and occupation tax credit program?** A staffing company may be eligible for the credit if its research and development spending in the calendar year for which credit is claimed exceeds 0.92 percent of the person's taxable amount for the same calendar year.

(a) **Qualifications of the credit.** In order to qualify for the credit, a staffing company must meet the following criteria:

(i) It must conduct qualified research and development through its employees;

(ii) Its employees must perform qualified research and development activities in a project or a phase of the project, without considering any activity performed:

(A) By the person contracting with the staffing company for such performance; or

(B) By any other person;

(iii) It must complete an annual tax performance report by March 31st following any year in which the credit was taken; and

(iv) It must document any claim of the B&O tax credit.

(b) Examples.

(i) Company M, a staffing company, furnishes three employees to Company N for assisting a research project in electronic device technology. N has a manager and five employees working on the same project. The work of M's employees and N's employees combined as a whole constitutes qualified research and development. M's employees do not perform sufficient activities themselves to be considered performing qualified research and development. M does not qualify for the credit.

(ii) Company V, a staffing company, furnishes three employees to Company W for performing a phase of a research project in advanced materials. W has a manager and five employees working on other phases of the same project. V's employees are in charge of a phase of the project that results in discovery of technological information. The work of V's employees alone constitutes qualified research and development. V qualifies for the credit if all other requirements of the credit are met.

(iii) Same as (b) (ii) of this subsection, except that the phase of the research project involves development of computer software for W's internal use. The work of V's employees alone constitutes qualified research and development. V qualifies for the credit if all other requirements of the credit are met.

AMENDATORY SECTION (Amending WSR 10-23-035, filed 11/9/10, effective 12/10/10)

WAC 458-20-240A Manufacturer's new employee tax credits—Applications filed prior to July 1, 2010. (1) **Introduction.** Chapter 82.62 RCW provides business and occupation (B&O) tax credits to certain persons engaged in manufacturing and research and development activities. These credits are intended to stimulate the economy by creating employment opportunities in specific rural counties and community empowerment zones of this state. The credits are as much as \$4,000 per qualified employment position. This rule explains the eligibility requirements and application procedures for this program. It is important to note that an application for the tax credits must be submitted to the department of revenue before the actual hiring of qualified employment positions. See subsection (6) of this rule for additional information regarding this application requirement. This tax credit program is a companion to the tax deferral program under chapter 82.60 RCW; however, the eligible geographic areas in the two programs are not identical.

The department of employment security and the department of commerce administer programs for rural counties and job training. These agencies should be contacted directly for information concerning those programs.

(2) **Who is eligible for these tax credits?** Subject to certain qualifications, an applicant (person applying for a tax credit under chapter 82.62 RCW) who is engaged in an eligible business project is entitled to the tax credits provided by chapter 82.62 RCW.

(a) **What is an eligible business project?** An "eligible business project" means manufacturing, commercial testing, or research and development activities conducted by an applicant in an eligible area at a specific facility, subject to the restriction noted in the following

paragraph. An "eligible business project" does not include any portion of a business project undertaken by a light and power business or any portion of a business project creating employment positions outside an eligible area.

To be considered an "eligible business project," the applicant's number of average full-time qualified employment positions at the specific facility must be at least (~~fifteen~~) 15 percent greater in the calendar year for which credit is being sought than the number of positions at the same facility in the immediately preceding calendar year. Subsection (4) of this rule explains how to determine whether this threshold is satisfied.

(b) **What is an eligible area?** As noted above, the facility must be located in an eligible area to be considered an eligible business project. An "eligible area" is:

(i) A rural county, which is a county with fewer than (~~one hundred~~) 100 persons per square mile or, on and after April 1, 2004, a county smaller than (~~two hundred twenty-five~~) 225 square miles, as determined annually by the office of financial management and published by the department of revenue effective for the period of July 1st through June 30th (see RCW 82.62.010(3)); or

(ii) A community empowerment zone (CEZ). CEZ means an area meeting the requirements of RCW 43.31C.020 and officially designated by the director of the department of commerce.

(iii) **How to determine whether an area is an eligible area.** Rural county designation information can be obtained from the office of financial management internet website at www.ofm.wa.gov/popden/rural.htm. The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's internet website at www.dor.wa.gov.

(c) **What are manufacturing and research and development activities?** Manufacturing or research and development activities must be conducted at the facility to be considered an eligible business project.

(i) **Manufacturing.** "Manufacturing" has the meaning given in RCW 82.04.120. In addition, for the purposes of chapter 82.62 RCW "manufacturing" also includes computer programming, the production of computer software, other computer-related services, but only when the computer-related services are performed by a manufacturer as defined under RCW 82.04.110 and contribute to the production of a new, different, or useful substance or article of tangible personal property for sale; and the activities performed by research and development laboratories and commercial testing laboratories. (Chapter 16, Laws of 2010.)

(ii) **Research and development.** "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. "Commercial sales" does not include sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed (~~one million dollars~~) \$1,000,000.

(iii) **Computer-related services.** "Computer-related services" for the purposes of chapter 82.62 RCW, the definition of "manufacturing" means services that are connected with or interact directly in the manufacture of computer hardware or software or the programming of the manufactured hardware. "Computer-related services" includes the manu-

facture of hardware such as chips, keyboards, monitors, and any other hardware, and the components of these items. "Computer-related services" also includes creating operating systems and software that will be copied and sold as canned software. The activities performed by the manufacturer to test, correct, revise, or upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services. "Computer-related services" does not include services such as information services.

(3) **What are the hiring requirements?** The average full-time qualified employment positions at the specific facility during the calendar year for which credits are claimed must be at least (~~(fifteen)~~) 15 percent greater than the average full-time qualified employment positions at the same facility for the preceding calendar year.

(a) **What is a qualified employment position?** A "qualified employment position" means a position filled by a permanent full-time employee employed at an eligible business project for (~~(twelve)~~) 12 consecutive months. Once a full-time position is established and filled it will continue to qualify for (~~(twelve)~~) 12 consecutive periods so long as any person fills the position. The position is considered "filled" even during periods of vacancy, provided these periods do not exceed (~~(thirty)~~) 30 consecutive days and the employer is training or actively recruiting a replacement employee.

(b) **What is a "permanent full-time employee"?** A "permanent full-time employee" is a position that is filled by an employee who satisfies any one of the following minimum thresholds:

(i) Works (~~(thirty-five)~~) 35 hours per week for (~~(fifty-two)~~) 52 consecutive weeks;

(ii) Works (~~(four hundred fifty-five)~~) 455 hours, excluding overtime, each quarter for four consecutive quarters; or

(iii) Works (~~(one thousand eight hundred twenty)~~) 1,820 hours, excluding overtime, during a period of (~~(twelve)~~) 12 consecutive months.

(c) **"Permanent full-time employee" - Seasonal operations.** For applicants that regularly operate on a seasonal basis only and that employ more than (~~(fifty)~~) 50 percent of their employees for less than a full (~~(twelve)~~) 12 month continuous period, a "permanent full-time employee" is a permanent full-time employee as described above or an equivalent in full-time equivalent (FTE) work hours.

(4) **How to determine if the (~~(fifteen)~~) 15 percent employment increase requirement is met.** Qualification for tax credits depends upon whether the applicant hires enough new positions to meet the (~~(fifteen)~~) 15 percent average increase requirement.

(a) **Determining the (~~(fifteen)~~) 15 percent increase.** To determine the projected number of permanent full-time qualified employment positions necessary to satisfy the (~~(fifteen)~~) 15 percent employment increase requirement:

(i) Determine the average number of permanent full-time qualified employment positions that existed at the facility during the calendar year prior to the year in which tax credit is being claimed.

(ii) Multiply the average number of full-time positions from subsection (i) by .15 or (~~(fifteen)~~) 15 percent. The resulting number equals the number of positions that must be filled to meet the (~~(fifteen)~~) 15 percent increase. Numbers are rounded up to the nearest whole number at point five (.5).

(b) **When does hiring have to occur?** All hiring increases must occur during the calendar year for which credits are being sought for purposes of meeting the (~~(fifteen)~~) 15 percent threshold test. Posi-

tions hired in a calendar year prior to making an application are not eligible for a credit but the positions are used to calculate whether the ((fifteen)) 15 percent threshold has been met.

(c) **The department will assist applicants to determine their hiring requirements.** Accompanying the tax credit application is a worksheet to assist the applicant in determining if the ((fifteen)) 15 percent qualified employment threshold is satisfied. Based upon the information provided in the application, the department will advise applicants of their minimum number of hiring needs for which credits are being sought.

(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 tax status of each situation must be determined after a review of all of the facts and circumstances.

(i) ABC Company anticipates increasing employment during the 2001 calendar year at a manufacturing facility by an average of 15 full-time qualified employment positions for a total of 113 positions. The average number of full-time qualified employment positions during the 2000 calendar year was 98. To qualify for the tax credit program the minimum average number of full-time qualified employment positions required for the 2001 calendar year is $98 \times .15 = 14.7$ (rounding up to 15 positions). Therefore, ABC Company's plan to hire 15 full-time qualified employment positions for 2001 meets the 15% employment increase requirement.

(ii) ABC anticipates increasing employment at this same manufacturing facility by an average of 15 additional full-time qualified employment positions during the 2002 calendar year to a total of 128 positions. To qualify for the tax credit program the minimum average number of full-time qualified employment positions required for the 2002 calendar year is 17 ($113 \times .15 = 16.95$, rounding up to 17). Therefore, ABC Company's plan to hire 15 full-time qualified employment positions for 2002 does not meet the 15% employment increase requirement.

(5) **Restriction against displacing existing jobs within Washington.** 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 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 other locations in Washington but 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.

(6) **Application procedures.** A taxpayer must file an application with and obtain approval from the department of revenue to receive tax credits under this program. A separate application must be submitted for each calendar year for which credits are claimed. RCW 82.62.020 requires that application for the tax credits be made prior to the actual hiring of qualified employment positions. Applications failing to satisfy this statutory requirement will be disapproved.

(a) **How to obtain and file applications.** (~~Application forms will be provided by the department upon request either by calling 360-902-7175 or via~~) Rural Area Application for New Employee B&O Tax

Credit form is available at the department's internet website (~~at www.dor.wa.gov under forms~~), dor.wa.gov. The completed application may be sent by fax (~~to 360-586-0527~~ or mailed to the following address):

~~State of Washington
Department of Revenue
Taxpayer Account Administration
P.O. Box 47476~~

~~Olympia, WA 98504-7476~~) or mail to the address provided in the application.

The U.S. Post Office postmark or fax date will be used as the date of application. For questions and assistance with the application, call 360-705-6214.

(b) **Confidentiality.** Applications, reports, or any other information received by the department in connection with this tax credit program, except applications not approved by the department, are not confidential and are subject to disclosure. All other taxpayer information is subject to the confidentiality provisions in RCW 82.32.330.

(c) **Department to act upon application within ((sixty)) 60 days.** The department will determine if the applicant qualifies for tax credits on the basis of the information provided in the application and will approve or disapprove the application within ((sixty)) 60 days. If approved, the department will issue a credit approval notice containing the dollar amount of tax credits available for use and the procedures for taking the credit. If disapproved, the department will notify the applicant in writing of the specific reasons for disapproval. The applicant may seek administrative review of the department's disapproval of an application by filing a petition for review with the department. The petition must be filed within ((thirty)) 30 days from the date of notice of the disallowance pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements.

(d) **No adjustment of credit after approval.** After an application is approved and tax credits are granted, no upward adjustment or amendments of the application will be made for that calendar year.

(7) **How much is the tax credit?** The amount of tax credit is based on the number of and the wages and benefits paid to qualified employment positions created.

(a) **How much tax credit may I claim for each qualified employment position?** The amount of tax credit that may be claimed for each position created is as follows:

(i) Two thousand dollars for each qualified employment position that pays ((forty thousand dollars)) \$40,000 or less in wages and benefits annually and is employed in an eligible business project; and

(ii) Four thousand dollars for each qualified employment position that pays more than ((forty thousand dollars)) \$40,000 in wages and benefits annually and is employed in an eligible business project.

(b) **What qualifies as wages and benefits?** For the purposes of chapter 82.62 RCW, "wages" means compensation paid to an individual for personal services, whether denominated as wages, salary, commission, bonus, or otherwise. "Benefits" means compensation not paid as wages and includes Social Security, retirement, health care, life insurance, industrial insurance, unemployment compensation, vacation, holiday, sick leave, military leave, and jury duty. "Benefits" does not include any amount reported as wages.

(8) **How to claim approved credits.** The recipients must take the tax credits approved under this program on their regular combined ex-

cise tax return for their regular assigned tax reporting period. These tax credits may not exceed the B&O tax liability. The amount of credit taken should be entered into the "credit" section of the return form, with a copy of the credit approval notice issued to the recipient attached to the return.

(a) **When can credits be used?** The credits may be used as soon as hiring of the projected qualified employment positions begins or may accrue until they are most beneficial for the recipient's use. For example, if a recipient has been approved for \$12,000 of tax credits based upon projections to hire five new positions, that recipient may use \$2,000 or \$4,000 of tax credit at the time it hires each new employee, depending on the wage/benefit level of the position filled.

(b) **No refunds for unused credits.** No tax refunds will be made for any tax credits which exceed tax liability during the life of this program. 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(s), until used.

(9) **Annual report to be filed by recipient.** A recipient of tax credits under this program must complete and submit an annual report of employment activities to substantiate that he or she has complied with the hiring and retention requirements for approved credits. RCW 82.62.050. This report must be filed with the department by January 31st of the year following the calendar year for which credit was approved by the department. Based upon this report the department will verify that the recipient is entitled to the tax credits approved by the department when the application was reviewed. Rural Area Annual Report for New Employee B&O Tax Credit form is provided by the department at the department's website, dor.wa.gov. The completed annual report may be sent by fax (~~to 360-586-0527 or mailed to the following address:~~

~~State of Washington
Department of Revenue
Taxpayer Account Administration
P.O. Box 47476~~

~~Olympia, WA 98504-7476))~~ or mail to the address provided in the report form.

The U.S. Post Office postmark or fax date will be used as the date of filing. For questions or assistance with filing the annual report, call 360-705-6214.

(a) **Verification of annual report.** The department will use the same report the recipient provides to the department of employment security, which is known as the quarterly employment security report, to verify the recipient's eligibility for tax credits. The recipient must maintain copies of the quarterly employment report for the year prior to the year for which credits are claimed, the year credits are claimed, and for the four quarters following the hiring of persons to fill the qualified employment positions. (The recipient does not have to forward copies of the quarterly employment report to the department each quarter.) The department may use other wage information provided to the department by the department of employment security. The taxpayer must provide additional information to the department, as the department finds necessary to calculate and verify wage eligibility.

(b) **Failure to file report.** 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 due and payable. An inadequate report is one which fails to provide information necessary to confirm that the requisite number of employment positions has been created and maintained for (~~twelve~~) 12 consecutive months.

(10) **What if the required number of positions is not created?** 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 will be immediately due. No interest or penalty will be assessed in such cases. However, if the department finds that a recipient has failed to create the specified number of qualified employment positions, the department will assess interest, but not penalties, on the taxes against which the credit has been used. This interest on the 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. The interest will accrue until the taxes for which the credit was used are fully repaid. RCW 82.32.050. The interest rates under RCW 82.32.050 can be obtained from the department's internet website at www.dor.wa.gov or by calling the department's information center at (~~1-800-647-7706~~) 360-705-6705.

(11) **Program thresholds.** The department cannot approve any credits that will cause the total credits approved to exceed (~~seven million five hundred thousand dollars~~) \$7,500,000 in any fiscal year. RCW 82.62.030. A "fiscal year" is the (~~twelve~~) 12-month period of July 1st through June 30th. If all or part of an application for credit is disallowed due to cap limitations, the disallowed portion will be carried over for approval the next fiscal year. However, the applicant's carryover into the next fiscal year is only permitted if the total credits approved for the next fiscal year does not exceed the cap for that fiscal year as of the date on which the department has disallowed the application.

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

WAC 458-20-267A Annual reports for certain tax preferences. (1)

Introduction. Effective for calendar years in which a taxpayer claims a tax preference beginning January 1, 2018, Washington changed its annual reporting requirements. This rule addresses how taxpayers taking certain tax preferences must file an annual report with the department of revenue (department) providing information about their business for tax periods through December 31, 2017, only. See WAC 458-20-267 Annual tax performance reports for certain tax preferences for the proper way to report tax preferences for periods beginning January 1, 2018.

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

(i) **Person.** "Person" has the meaning under RCW 82.04.030 and also includes the state and its departments and institutions.

(ii) **Tax preference.** As defined under RCW 43.136.021, "tax preference" means:

(A) An exemption, exclusion, or deduction from the base of a state tax; a credit against a state tax; a deferral of a state tax; or a preferential state tax rate; and

(B) Includes only the tax preferences requiring a report under RCW 82.32.534.

(b) **Annual survey.** Taxpayers taking certain tax preferences may be required to complete both an annual report and an annual survey. For information on the annual survey requirements, refer to RCW 82.32.585 and WAC 458-20-268.

(c) **Examples.** This rule includes examples that identify a set of facts and then state a conclusion. These examples should only be used as a general guide. The department will evaluate each case on its particular facts and circumstances.

(2) **Tax preferences requiring an annual report.** Taxpayers may refer to the department's website at dor.wa.gov for the "Annual Tax Incentive Report for Preferential Tax Rates/Credits/Exemptions/Deferrals Worksheet." This worksheet lists tax preferences that require an annual report. Taxpayers may also contact the telephone information center at ((800-647-7706)) 360-705-6705 to determine whether they must file an annual report.

(3) **How to file annual reports.**

(a) **Electronic filing.** Reports must be filed electronically unless the department waives this requirement upon a showing of good cause. A report is filed electronically when the department receives the report in an electronic format. A person accesses electronic filing through their department "My Account" at dor.wa.gov.

(b) **Required paper form.** If the department waives the electronic filing requirement for a person who shows good cause, that person must use the annual report form developed by the department unless that person obtains prior written approval from the department to file an annual report in an alternative format.

(c) **How to obtain the form.** Persons who have received a waiver of the electronic filing requirement from the department or who otherwise would like a paper copy of the report may obtain the annual report form from the department's website at dor.wa.gov. It may also be obtained by calling the telephone information center at ((800-647-7706)) 360-705-6705, or by contacting the department at:

Attn: Tax Incentive Team
Taxpayer Account Administration
Department of Revenue
Post Office Box 47476
Olympia, WA 98504-7476

(d) **Special requirement for persons who did not file an annual report during the previous calendar year.** If a person is a first-time filer or otherwise did not file an annual report with the department during the previous calendar year, the report must include information on employment, wages, and employer-provided health and retirement benefits for the two calendar years immediately preceding the due date of the report.

(e) **Due date of annual report.** Every person claiming a tax preference that requires a report under RCW 82.32.534 must file the report annually with the department in the year following the calendar year in which the person becomes eligible to claim the tax preference. The due date for filing the report is as follows:

(i) April 30th for reports due prior to 2017.

(ii) May 31st for reports due in or after 2017.

(f) **Due date extensions.** The department may extend the due date for filing annual reports as provided in subsection (18) of this rule.

(g) **Example 1.** An aerospace firm first claimed the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts on April 1, 2015. By

April 30, 2016, the aerospace firm must submit an annual report covering calendar years 2014 and 2015. If the aerospace firm continues to claim the B&O tax rate provided by RCW 82.04.260(11) during calendar year 2016, an annual report is due by May 31, 2017, covering calendar year 2016.

(h) **Example 2.** An aluminum smelter first claimed the B&O tax rate provided by RCW 82.04.2909 for aluminum smelters on July 31, 2015. By April 30, 2016, the aluminum smelter must provide an annual report covering calendar years 2014 and 2015. If the aluminum smelter continues to claim the B&O tax rate provided by RCW 82.04.2909 during calendar year 2016, an annual report is due by May 31, 2017, covering calendar year 2016.

(4) **What employment positions are included in the annual report?**

(a) **General rule.** Except as provided in (b) of this subsection, the report must include information detailing employment positions in the state of Washington.

(b) **Alternative method.** Persons engaged in manufacturing commercial airplanes or their components may report employment positions per job at the manufacturing site.

(i) **What is a "manufacturing site"?** For purposes of the annual report, a "manufacturing site" is one or more immediately adjacent parcels of real property located in Washington state on which manufacturing occurs that support activities qualifying for a tax preference. Adjacent parcels of real property separated only by a public road comprise a single site. A manufacturing site may include real property that supports the qualifying activity, such as administration offices, test facilities, warehouses, design facilities, and shipping and receiving facilities. It may also include portions of the manufacturing site that support nonqualifying activities.

(ii) **If the person files per job at the manufacturing site, which manufacturing site is included in the annual report for the aerospace manufacturing industry tax preferences?** The location(s) where a person is manufacturing commercial airplanes or components of such airplanes within this state is the manufacturing site(s) included in the annual report. A "commercial airplane" has its ordinary meaning, which is an airplane certified by the Federal Aviation Administration (FAA) for transporting persons or property, and any military derivative of such an airplane. A "component" means a part or system certified by the FAA for installation or assembly into a commercial airplane.

(iii) **Are there alternative methods for reporting separately for each manufacturing site?** For purposes of completing the annual report, the department may agree to allow a person whose manufacturing sites are within close geographic proximity to consolidate its manufacturing sites onto a single annual report provided that the jobs located at the manufacturing sites have equivalent employment positions, wages, and employer-provided health and retirement benefits. A person may request written approval to consolidate manufacturing sites by contacting the department at:

Attn: Tax Incentive Team
Taxpayer Account Administration
Department of Revenue
Post Office Box 47476
Olympia, WA 98504-7476

(c) **Example 3.** ABC Airplanes, a company manufacturing FAA certified airplane landing gear, conducts activities at three locations in Washington state. ABC Airplanes is reporting tax under the B&O tax

rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. In Seattle, WA, ABC Airplanes maintains its corporate headquarters and administrative offices. In Spokane, WA, ABC Airplanes manufactures the brake systems for the landing gear. In Vancouver, WA, ABC Airplanes assembles the landing gear using the components manufactured in Spokane, WA. If filing per manufacturing site, ABC Airplanes must file separate annual reports for employment positions at its manufacturing sites in Spokane and Vancouver because these are the Washington state locations in which manufacturing occurs that supports activities qualifying for a tax preference.

(d) **Example 4.** Acme Engines, a company manufacturing engine parts, conducts manufacturing in five locations in Washington state. Acme Engines is reporting tax under the B&O tax rate provided by RCW 82.04.260 (11) for manufacturers and processors for hire of commercial airplanes and component parts. It manufactures FAA certified engine parts at its Puyallup, WA location. Acme Engines' four other locations manufacture non-FAA certified engine parts. If filing per manufacturing site, Acme Engines must file an annual report for employment positions at its manufacturing site in Puyallup because it is the only location in Washington state in which manufacturing occurs that supports activities qualifying for a tax preference.

(e) **Example 5.** Tacoma Rivets, with one in-state manufacturing site located in Tacoma, WA, manufactures rivets used in manufacturing airplanes. Half of the rivets Tacoma Rivets manufactures are FAA certified to be used on commercial airplanes. The remaining rivets Tacoma Rivets manufactures are not FAA certified and are used on military airplanes. Tacoma Rivets is reporting tax on its sales of FAA certified rivets under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. If filing per manufacturing site, Tacoma Rivets must file an annual report for employment positions at its manufacturing site in Tacoma because it is the location in Washington state in which manufacturing occurs that supports activities qualifying for a tax preference.

(f) **Example 6.** Dynamic Aerospace Composites is a company that manufactures only FAA certified airplane fuselage materials. Dynamic Aerospace Composites conducts activities at three separate locations within Kent, WA. Dynamic Aerospace Composites is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. If filing per manufacturing site, Dynamic Aerospace Composites must file separate annual reports for each of its three manufacturing sites.

(g) **Example 7.** Worldwide Aerospace, an aerospace company, manufactures wing systems for commercial airplanes in (~~twenty~~) 20 locations around the world, but none located in Washington state. Worldwide Aerospace manufactures wing surfaces in San Diego, CA. Worldwide Aerospace sells the wing systems to an airplane manufacturer located in Moses Lake, WA and is reporting tax on these sales under the B&O tax rate provided by RCW 82.04.260(11) for sales, at retail or wholesale, of commercial airplanes, or components of such airplanes, manufactured by that person. Worldwide Aerospace is required to complete the annual report for any employment positions in Washington that are directly related to the qualifying activity.

(5) **What jobs are included in the annual report?** The annual report covers all full-time, part-time, and temporary jobs in this state or, for persons filing as provided in subsection (4) (b) of this rule,

at the manufacturing site as of December 31st of the calendar year for which an applicable tax preference is claimed. Jobs that support non-qualifying activities or support both nonqualifying and qualifying activities for a tax preference are included in the report if the job is located in Washington state or, for persons filing as provided in subsection (4)(b) of this rule, at the manufacturing site.

(a) **Example 8.** XYZ Aluminum, an aluminum smelter company, manufactures aluminum in Tacoma, WA. The company is reporting tax under the B&O tax rate provided by RCW 82.04.2909 for aluminum smelters. XYZ Aluminum's annual report for its Tacoma, WA location will include all of its employment positions in this state, including its nonmanufacturing employment positions.

(b) **Example 9.** AAA Tire Company manufactures tires at one manufacturing site located in Centralia, WA. The company is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. FAA certified tires comprise only 20% of the products it manufactures and are manufactured in a separate building at the manufacturing site. If filing under the method described in subsection (4)(b) of this rule, AAA Tire Company must report all jobs at the manufacturing site, including the jobs engaged in the nonqualifying activities of manufacturing non-FAA certified tires.

(6) **How is employment detailed in the annual report?** The annual report is organized by employee occupational groups, consistent with the United States Department of Labor's Standard Occupation Codes (SOC) System. The SOC System is a universal occupational classification system used by government agencies and private industries to produce comparable occupational data. The SOC classifies occupations at four levels of aggregation:

- (a) Major group;
- (b) Minor group;
- (c) Broad occupation; and
- (d) Detailed occupation.

All occupations are clustered into one of (~~twenty-three~~) 23 major groups. The annual report uses the SOC major groups to detail the levels of employment, wages, and employer-provided health and retirement benefits at the manufacturing site. A detailed description of the SOC System is available by consulting the United States Department of Labor, Bureau of Labor Statistics online at www.bls.gov/soc. The annual report does not require names of employees.

(7) **What is total employment?** The annual report must state the total number of employees for each SOC major group that are currently employed on December 31st of the calendar year for which an applicable tax preference is taken. Total employment includes employees who are on authorized leaves of absences such as sick leave, vacation, disability leave, jury duty, military leave, regardless of whether those employees are receiving wages. Leaves of absences do not include separations of employment such as layoffs or reductions in force. Vacant positions are not included in total employment.

(8) **What are full-time, part-time, and temporary employment positions?** An employer must provide information on the number of employees, as a percentage of total employment in the SOC major group, that are employed in full-time, part-time, or temporary employment positions on December 31st of the calendar year for which an applicable tax preference is claimed. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(a) **Full-time and part-time employment positions.** For a position to be treated as full time or part time, the employer must intend for the position to be filled for at least (~~(fifty-two)~~) 52 consecutive weeks or (~~(twelve)~~) 12 consecutive months. A full-time position is a position that satisfies any one of the following minimum thresholds:

- (i) Works (~~(thirty-five)~~) 35 hours per week for (~~(fifty-two)~~) 52 consecutive weeks;
- (ii) Works (~~(four hundred fifty-five)~~) 455 hours, excluding overtime, each quarter for four consecutive quarters; or
- (iii) Works (~~(one thousand eight hundred twenty)~~) 1,820 hours, excluding overtime, during a period of (~~(twelve)~~) 12 consecutive months.

A part-time position is a position in which the employee works less than the hours required for a full-time position. In some instances, an employee may not be required to work the hours required for full-time employment because of paid rest and meal breaks, health and safety laws, disability laws, shift differentials, or collective bargaining agreements, but receives wages equivalent to a full-time job. If, in the absence of these factors, the employee would be required to work the number of hours for a full-time position to receive full-time wages, the position should be reported as a full-time employment position.

(b) **Temporary positions.** A temporary position is a position that is intended to be filled for period of less than (~~(twelve)~~) 12 consecutive months. Positions in seasonal employment are temporary positions. Temporary positions include workers furnished by staffing companies regardless of the duration of the placement with the person required to file the annual report.

(c) **The following facts apply to the examples in (c) of this subsection.** National Airplane Inc. manufactures FAA certified navigation systems at a manufacturing site located in Tacoma, WA. National Airplane Inc. is claiming all the tax preferences available for manufacturers and processors for hire of commercial airplanes and component parts. National Airplane Inc. employs (~~(one hundred)~~) 100 people. Seventy-five of the employees work directly in the manufacturing operation and are classified as SOC Production Occupations. Five employees work in the engineering and design division and are classified as SOC Architect and Engineering Occupations. Five employees are sales representatives and are classified as SOC Sales and Related Occupations. Five employees are service technicians and are classified as SOC Installation, Maintenance, and Repair Occupations. Five employees are administrative assistants and are classified as SOC Office and Administrative Support. Five executives are classified as SOC Management Occupations.

(i) **Example 10.** Through a college work-study program, National Airplane Inc. employs six interns from September through June in its engineering department. The interns work (~~(twenty)~~) 20 hours a week. The six interns are reported as temporary employees, and not as part-time employees, because the intern positions are intended to be filled for a period of less than (~~(twelve)~~) 12 consecutive months. Assuming the five employees classified as SOC Architect and Engineering Occupations are full-time employees, National Airplane Inc. will report a total of (~~(eleven)~~) 11 employment positions in SOC Architect and Engineering Occupations with 45% in full-time employment positions and 55% in temporary employment positions.

(ii) **Example 11.** National Airplane Inc. manufactures navigation systems in two shifts of production. The first shift works eight hours

from 8:00 a.m. to 5:00 p.m. Monday thru Friday. The second shift works six hours from 6:00 p.m. to midnight Monday thru Friday. The second shift works fewer hours per week (~~((thirty))~~ 30 hours) than the first shift (~~((forty))~~ 40 hours) as a pay differential for working in the evening. If a second shift employee transferred to the first shift, the employee would be required to work (~~((forty))~~ 40 hours) with no overall increase in wages. The second shift employees should be reported as full-time employment positions, rather than part-time employment positions.

(iii) **Example 12.** On December 1st, (~~((ten))~~ 10 National Airplane Inc. full-time employees classified as SOC Production Occupations take family and medical leave for (~~((twelve))~~ 12 weeks. National Airplane Inc. hires five people to perform the work of the employees on leave. Because the (~~((ten))~~ 10 employees classified as SOC Production Occupations are on authorized leave, National Airplane Inc. will include those employees in the annual report as full-time employment positions. The five people hired to replace the absent employees classified as SOC Production Occupations will be included in the report as temporary employees. National Airplane Inc. will report a total of (~~((eighty))~~ 80 employment positions in SOC Production Occupations with 93.8% in full-time employment positions and 6.2% in temporary employment positions.

(iv) **Example 13.** On December 1st, one full-time employee classified as SOC Sales and Related Occupations resigns from her position. National Airplane Inc. contracts with Jane Smith d/b/a Creative Enterprises, Inc. to finish an advertising project assigned to the employee who resigned. Because Jane Smith is an independent contractor, National Airplane Inc. will not include her employment in the annual report. Because the resignation has resulted in a vacant position, the total number of employment positions National Airplane Inc. will report in SOC Sales and Related Occupations is reduced to four employment positions.

(v) **Example 14.** All National Airplane Inc. employees classified as SOC Office and Administrative Support Occupations work (~~((forty))~~ 40 hours a week, (~~((fifty-two))~~ 52 weeks a year. On November 1st, one employee must limit the number of hours worked to (~~((thirty))~~ 30 hours each week to accommodate a disability. The employee receives wages based on the actual hours worked each week. Because the employee works less than (~~((thirty-five))~~ 35 hours a week and is not paid a wage equivalent to a full-time position, the employee's position is a part-time employment position. National Airplane Inc. will report a total of five employment positions in SOC Office and Administrative Support Occupations with 80% in full-time employment positions and 20% in part-time employment positions.

(9) **What are wages?** For the purposes of the annual report, "wages" means the base compensation paid to an individual for personal services rendered to an employer, whether denominated as wages, salary, commission, or otherwise. Compensation in the form of overtime, tips, bonuses, benefits (insurance, paid leave, meals, etc.), stock options, and severance pay are not "wages." For employees that earn an annual salary, hourly wages are determined by dividing annual salary by 2080. If an employee is paid by commission, hourly wages are determined by dividing the total amount of commissions paid during the calendar year by 2080.

(10) **How are wages detailed for the annual report?**

(a) An employer must provide information on the number of employees, as a percentage of the total employment in the SOC major group, paid a wage within the following five hourly wage bands:

- Up to \$10.00 an hour;
- \$10.01 an hour to \$15.00 an hour;
- \$15.01 an hour to \$20.00 an hour;
- \$20.01 an hour to \$30.00 an hour; and
- \$30.01 an hour or more.

Percentages should be rounded to the nearest 1/10th of 1% (XX.X%). For purposes of the annual report, wages are measured on December 31st of the calendar year for which an applicable tax preference is claimed.

(b) **The following facts apply to the examples in (b) of this subsection.** Washington Airplane Inc. manufactures FAA certified navigation systems at a manufacturing site located in Tacoma, WA. Washington Airplane Inc. is claiming all the tax preferences available for manufacturers and processors for hire of commercial airplanes and component parts. Washington Airplane Inc. employs (~~five hundred~~) 500 people at the manufacturing site, which constitutes its entire work force in this state. Four hundred employees engage in activities that are classified as SOC Production Occupations. Fifty employees engage in activities that are classified as SOC Architect and Engineer Occupations. Twenty-five employees are engaged in activities classified as SOC Management Occupations. Twenty employees are engaged in activities classified as SOC Office and Administrative Support Occupations. Five employees are engaged in activities classified as SOC Sales and Related Occupations.

(i) **Example 15.** One hundred employees classified as SOC Production Occupations are paid \$12.00 an hour. Two hundred employees classified as SOC Production Occupations are paid \$17.00 an hour. One hundred employees classified as SOC Production Occupations are paid \$25.00 an hour. For SOC Production Occupations, Washington Airplane Inc. will report 25% of employment positions are paid \$10.01 an hour to \$15.00 an hour; 50% are paid \$15.01 an hour to \$20.00 an hour; and 25% are paid \$20.01 an hour to \$30.00 an hour.

(ii) **Example 16.** Ten employees classified as SOC Architect and Engineering Occupations are paid an annual salary of \$42,000; another (~~ten~~) 10 employees are paid \$50,000 annually; and the remaining employees are all paid over \$70,000 annually. To report wages, the annual salaries must be converted to hourly amounts by dividing the annual salary by 2080 hours. For SOC Architect and Engineering Occupations, Washington Airplane Inc. will report 40% of employment positions are paid \$20.01 an hour to \$30.00 an hour and 60% are paid \$30.00 an hour or more.

(iii) **Example 17.** All the employees classified as SOC Sales and Related Occupations are sales representatives that are paid on commission. They receive \$10.00 commission for each navigation system sold. Three sales representatives sell 2,500 navigation systems during the calendar year. Two sales representatives sell 3,500 navigation systems during the calendar year and receive a \$10,000 bonus for exceeding company's sales goals. To report wages, the employee's commissions must be converted to hourly amounts by dividing the total commissions by 2080 hours. Washington Airplane Inc. will report that 60% of employment positions classified as SOC Sales and Related Occupations are paid \$10.01 an hour to \$15.00 an hour. Because bonuses are not included in wages, Washington Airplane Inc. will report 40% of employment

positions classified as SOC Sales and Related Occupations are paid \$15.01 an hour to \$20.00 an hour.

(iv) **Example 18.** Ten of the employees classified as SOC Office and Administrative Support Occupations earn \$9.50 an hour. The remaining (~~ten~~) 10 employees classified as SOC Office and Administrative Support Occupations earn wages between \$10.01 an hour to \$15.00 an hour. On December 1st, Washington Airplane Inc. announces that effective December 15th, all employees classified as SOC Office and Administrative Support Occupations will earn wages of at least \$10.50 an hour, but no more than \$15.00 an hour. Because wages are measured on December 31st, Washington Airplane Inc. will report 100% of employment positions classified as SOC Office and Administrative Support Occupations Sales and Related Occupations are paid \$10.01 an hour to \$15.00 an hour.

(11) **Reporting workers furnished by staffing companies.** For temporary positions filled by workers that are furnished by staffing companies, the person filling out the annual report must provide the following information:

(a) Total number of staffing company employees furnished by staffing companies;

(b) Top three occupational codes of all staffing company employees; and

(c) Average duration of all staffing company employees.

(12) **What are employer-provided health benefits?** For purposes of the annual report, "health benefits" means compensation, not paid as wages, in the form of a health plan offered by an employer to its employees. A health plan that is equally available to employees and the general public is not an "employer-provided" health benefit.

(a) "Dental care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease of human teeth, alveolar process, gums, or jaw.

(b) "Dental care plan" means a health plan for the purpose of providing for its employees or their beneficiaries' dental care services.

(c) "Health plan" means any plan, fund, or program established, maintained, or funded by an employer for the purpose of providing for its employees or their beneficiaries, through the purchase of insurance or otherwise, medical care and dental care services. Health plans include any "employee welfare benefit plan" as defined by the Employee Retirement Income Security Act (ERISA), any "health plan" or "health benefit plan" as defined in RCW 48.43.005, any self-funded multiple employer welfare arrangement as defined in RCW 48.125.010, any "qualified health insurance" as defined in Section 35 of the Internal Revenue Code, an "Archer MSA" as defined in Section 220 of the Internal Revenue Code, a "health savings plan" as defined in Section 223 of the Internal Revenue Code, any "health plan" qualifying under Section 213 of the Internal Revenue Code, governmental plans, and church plans.

(d) "Medical care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(e) "Medical care plan" means a health plan for the purpose of providing for its employees or their beneficiaries' medical care services.

(13) **How are employer-provided health benefits detailed in the annual report?** The annual report is organized by SOC major group and by type of health plan offered to or with enrolled employees on Decem-

ber 31st of the calendar year for which an applicable tax preference is claimed.

(a) **Detail by SOC major group.** For each SOC major group, report the number of employees, as a percentage of total employment in the SOC major group, eligible to participate in an employer-provided medical care plan. An employee is "eligible" if the employee can currently participate in a medical care plan provided by the employer. Waiting periods, tenure requirements, minimum work hour requirements, preexisting conditions, and other limitations may prevent an employee from being eligible for coverage in an employer's medical care plan. If an employer provides multiple medical care plans, an employee is "eligible" if the employee can currently participate in one of the medical care plans. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(i) **Example 19.** On December 31st, Acme Engines has (~~one hundred~~) 100 employees classified as SOC Production Occupations. It offers these employees two medical care plans. Plan A is available to all employees at the time of hire. Plan B is available to employees after working (~~ninety~~) 90 days. For SOC Production Occupations, Acme Engines will report 100% of its employees are eligible for employer-provided medical benefits because all of its employees are eligible for at least one medical care plan offered by Acme Engines.

(ii) **Example 20.** Apex Aluminum has (~~fifty~~) 50 employees classified as SOC Transportation and Material Moving Occupations, all of whom have worked for Apex Aluminum for over five years. Apex Aluminum offers one medical care plan to its employees. Employees must work for Apex Aluminum for six months to participate in the medical care plan. On October 1st, Apex Aluminum hires (~~ten~~) 10 new employees classified as SOC Transportation and Material Moving Occupations. For SOC Transportation and Material Moving Occupations, Apex Aluminum will report 83.3% of its employees are eligible for employer-provided medical benefits.

(b) **Detail by type of health plan.** The report also requires detailed information about the types of health plans the employer provides. If an employer has more than one type of health plan, it must report each health plan separately. If a person offers more than one of the same type of health plan as described in (b)(i) of this subsection, the person may consolidate the detail required in (b) through (d) of this subsection by using ranges to describe the information. The details include:

(i) A description of the type of plan in general terms such as self-insured, fee for service, preferred provider organization, health maintenance organization, health savings account, or other general description. The report does not require a person to disclose the name(s) of their health insurance carrier(s).

(ii) The number of employees eligible to participate in the health plan, as a percentage of total employment at the manufacturing site or as otherwise reported. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iii) The number of employees enrolled in the health plan, as a percentage of employees eligible to participate in the health plan at the manufacturing site or as otherwise reported. An employee is "enrolled" if the employee is currently covered by or participating in an employer-provided health plan. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iv) The average percentage of premium paid by employees enrolled in the health plan. "Premium" means the cost incurred by the employer

to provide a health plan or the continuance of a health plan, such as amounts paid to health carriers or costs incurred by employers to self-insure. Employers are generally legally responsible for payment of the entire cost of the premium for enrolled employees, but may require enrolled employees to share in the cost of the premium to obtain coverage. State the amount of premium, as a percentage, employees must pay to maintain enrollment under the health plan. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(v) If necessary, the average monthly contribution to enrolled employees. In some instances, employers may make contributions to an employee health plan, but may not be aware of the percentage of premium cost borne by the employee. For example, employers may contribute to a health plan sponsored by an employee organization, or may sponsor a medical savings account or health savings account. Under those circumstances in which the employee's contribution to the health plan is unknown, an employer must report its average monthly contribution to the health plan by dividing the employer's total monthly costs for the health plan by the total number of employees enrolled in the health plan.

(vi) Whether legal spouses, state registered domestic partners, and unmarried dependent children can obtain coverage under the health plan and if there is an additional premium for such coverage.

(vii) Whether part-time employees are eligible to participate in the health plan.

(c) **Medical care plans.** In addition to the detailed information required for each health plan, report the amount of enrolled employee point of service cost-sharing for hospital services, prescription drug benefits, and primary care physician services for each medical care plan. If differences exist within a medical care plan, the lowest cost option to the enrolled employee must be stated in the report. For example, if employee point of service cost-sharing is less if an enrolled employee uses a network of preferred providers, report the amount of point of service cost-sharing using a preferred provider. Employee point of service cost-sharing is generally stated as a percentage of cost, a specific dollar amount, or both.

(i) "Employee point of service cost-sharing" means amounts paid to health carriers directly providing medical care services, health care providers, or health care facilities by enrolled employees in the form of copayments, co-insurance, or deductibles. Copayments and co-insurance mean an amount specified in a medical care plan that is an obligation of enrolled employees for a specific medical care service which is not fully prepaid. A deductible means the amount an enrolled employee is responsible to pay before the medical care plan begins to pay the costs associated with treatment.

(ii) "Hospital services" means covered in-patient medical care services performed in a hospital licensed under chapter 70.41 RCW.

(iii) "Prescription drug benefit" means coverage to purchase a (~~thirty~~) 30-day or less supply of generic prescription drugs from a retail pharmacy.

(iv) "Primary care provider services" means nonemergency medical care services provided in an office setting by the employee's primary care provider.

(d) **Dental care plans.** In addition to the health plan information required for each dental care plan, the annual maximum benefit for each dental care plan must be stated in the report. Most dental care plans have an annual dollar maximum benefit. This is the maximum dollar amount a dental care plan will pay toward the cost of dental care

services within a specific benefit period, generally one year. The enrolled employee is personally responsible for paying costs above the annual maximum.

(e) **The following facts apply to the examples in (e) of this subsection.** Mosaic Aerospace employs (~~one hundred~~) 100 employees and offers two medical care plans as health benefits to employees at the time of hire. Plan A is a managed care plan (HMO). Plan B is a fee for service medical care plan.

(i) **Example 21.** Forty Mosaic Aerospace employees are enrolled in Plan A. It costs Mosaic Aerospace \$750 a month for each employee covered by Plan A. Enrolled employees must pay \$150 each month to participate in Plan A. If an enrolled employee uses its network of physicians, Plan A will cover 100% of the cost of primary care provider services with employees paying a \$10.00 copayment per visit. If an enrolled employee uses its network of hospitals, Plan A will cover 100% of the cost of hospital services with employees paying a \$200 deductible. If an enrolled employee does not use a network provider, Plan A will cover only 50% of the cost of any service with a \$500 employee deductible. An enrolled employee must use a network of retail pharmacies to receive any prescription drug benefit. Plan A will cover the cost of prescription drugs with enrolled employees paying a \$10.00 copayment. If an enrolled employee uses the mail-order pharmacy option offered by Plan A, copayment for prescription drug benefits is not required.

Mosaic Aerospace will report Plan A separately as a managed care plan. One hundred percent of its employees are eligible to participate in Plan A. The percentage of eligible employees enrolled in Plan A is 40%. The percentage of premium paid by an employee is 20%. Mosaic Aerospace will also report that employees have a \$10.00 copayment for primary care provider services and a \$200 deductible for hospital services because this is the lowest cost option within Plan A. Mosaic Aerospace will report that employees have a \$10.00 copayment for prescription drug benefit. Mosaic Aerospace cannot report that employees do not have a prescription drug benefit copayment because "prescription drug benefit" is defined as coverage to purchase a (~~thirty~~) 30-day or less supply of generic prescription drugs from a retail pharmacy, not a mail-order pharmacy.

(ii) **Example 22.** Fifty Mosaic Aerospace employees are enrolled in Plan B. It costs Mosaic Aerospace \$1,000 a month for each employee covered by Plan B. Enrolled employees must pay \$300 a month to participate in Plan B. Plan B covers 100% of the cost of primary care provider services and 100% of the cost of prescription drugs with employees paying a \$200 annual deductible for each covered service. Plan B covers 80% of the cost of hospital services with employees paying a \$250 annual deductible.

Mosaic Aerospace will report Plan B separately as a fee for service medical care plan. One hundred percent of its employees are eligible to participate in Plan B. The percentage of eligible employees enrolled in Plan B is 50%. The percentage of premium paid by an employee is 30%. Mosaic Aerospace will also report that employees have a \$200 annual deductible for both primary care provider services and prescription drug benefits. Hospital services have a \$250 annual deductible and 20% co-insurance obligation.

(iii) **Example 23.** On December 1st, Mosaic Aerospace acquires General Aircraft Inc., a company claiming all the tax preferences available for manufacturers and processors for hire of commercial airplanes and component parts. General Aircraft Inc. had (~~fifty~~) 50 employees,

all of whom were retained by Mosaic Aerospace. At General Aircraft Inc., employees were offered one managed care plan (HMO) as a benefit. The former General Aircraft Inc. employees will retain their current managed care plan until the following June when employees would be offered Mosaic Aerospace benefits. On December 31st, Mosaic Aerospace is offering employees two managed care plans. Mosaic Aerospace may report each managed care plan separately or may consolidate the detail required in (b) through (d) of this subsection for this type of medical care plan by using ranges to report the information.

(iv) **Example 24.** Aero Turbines employs (~~one hundred~~) 100 employees. It offers employees health savings accounts as a benefit to employees who have worked for the company for six months. Aero Turbines established the employee health savings accounts with a local bank and makes available to employees a high deductible medical care plan to be used in conjunction with the account. Aero Turbines deposits \$500 a month into each employee's health savings account. Employees deposit a portion of their pretax earnings into a health savings account to cover the cost of primary care provider services, prescription drug purchases, and the high deductible medical care plan for hospital services. The high deductible medical care plan has an annual deductible of \$2,000 and covers 75% of the cost of hospital services. Sixty-six employees open health savings accounts. Four employees have not worked for Aero Turbines for six months.

Aero Turbines will report the medical care plan as a health savings account. Ninety-six percent of employees are eligible to participate in health savings accounts. The percentage of eligible employees enrolled in health savings accounts is 68.8%. Because the amount of employee deposits into their health savings accounts will vary, Aero Turbines will report the average monthly contribution of \$500 rather than the percentage of premium paid by enrolled employees. Because employees are responsible for covering their primary care provider services and prescription drugs costs, Aero Turbines will report that this health plan does not include these services. Because the high deductible medical care plan covers the costs of hospital services, Aero Turbines will report that the medical care plan has an annual deductible of \$2,000 and employees have 25% co-insurance obligation.

(14) **What are employer-provided retirement benefits?** For purposes of the annual report, "retirement benefits" mean compensation, not paid as wages, in the form of a retirement plan offered by an employer to its employees. A "retirement plan" means any plan, account, deposit, annuity, or benefit, other than a life insurance policy, that provides for retirement income or deferred income to employees for periods extending to the termination of employment or beyond. Retirement plans include pensions, annuities, stock bonus plans, employee stock ownership plans, profit sharing plans, self-employed retirement plans, individual retirement accounts, individual retirement annuities, and retirement bonds, as well as any other plan or program, without regard to its source of funding, and without regard to whether the retirement plan is a qualified plan meeting the guidelines established in the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code. A retirement plan that is equally available to employees and the general public is not an "employer-provided" retirement benefit.

(15) **How are employer-provided retirement benefits detailed in the annual report?** The annual report is organized by SOC major group and by type of retirement plans offered to employees or with enrolled employees on December 31st of the calendar year for which an applica-

ble tax preference is claimed. Inactive or terminated retirement plans are excluded from the annual report. An inactive retirement plan is a plan that is not offered to new employees, but has enrolled employees, and neither enrolled employees nor the employer are making contributions to the retirement plan.

(a) **Detail by SOC major group.** For each SOC major group, report the number of employees, as a percentage of total employment in the SOC major group, eligible to participate in an employer-provided retirement plan. An employee is "eligible" if the employee can currently participate in a retirement plan provided by the employer. Waiting periods, tenure requirements, minimum work hour requirements, and other limitations may prevent an employee from being eligible for coverage in an employer's retirement plan. If an employer provides multiple retirement plans, an employee is "eligible" if the employee can currently participate in one of the retirement plans. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(i) **Example 25.** Lincoln Airplane has (~~one hundred~~) 100 employees classified as SOC Production Occupations. Fifty employees were enrolled in defined benefit pension at the time of hire. All employees are eligible to participate in a 401(k) Plan. For SOC Production Occupations, Lincoln Airplane will report 100% of its employees are eligible for employer-provided retirement benefits because all of its employees are eligible for at least one retirement plan offered by Lincoln Airplane.

(ii) **Example 26.** Fly-Rite Airplanes has (~~fifty~~) 50 employees classified in SOC Computer and Mathematical Occupations. Fly-Rite Airplane offers a SIMPLE IRA to its employees after working for the company one year. Forty-five employees classified in SOC Computer and Mathematical Occupations have worked for the company more than one year. For SOC Computer and Mathematical Occupations, Fly-Rite Airplanes will report 90% of its employees are eligible for retirement benefits.

(b) **Detail by retirement plan.** The report also requires detailed information about the types of retirement plans an employer offers employees. If an employer offers multiple retirement plans, it must report each type of retirement plan separately. If an employer offers more than one of the same type of retirement plan, but with different levels of employer contributions, it may consolidate the detail required in (i) through (iv) of this subsection by using ranges to describe the information. The report includes:

(i) The type of plan in general terms such as 401(k) Plan, SEP IRA, SIMPLE IRA, cash balance pension, or defined benefit plan.

(ii) The number of employees eligible to participate in the retirement plan, as a percentage of total employment at the manufacturing site, or as otherwise reported. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iii) The number of employees enrolled in the retirement plan, as a percentage of employees eligible to participate in the retirement plan at the manufacturing site. An employee is "enrolled" if the employee currently participates in an employer-provided retirement plan, regardless of whether the employee has a vested benefit. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iv) The maximum benefit the employer will contribute into the retirement plan for enrolled employees. The maximum benefit an employer will contribute is generally stated as a percentage of salary, specific dollar amount, or both. This information is not required for a defined benefit plan meeting the qualification requirements of Employ-

ee Retirement Income Security Act (ERISA) that provides benefits according to a flat benefit, career-average, or final pay formula.

(A) **Example 27.** General Airspace is a manufacturer of airplane components located in Centralia, WA. General Airspace employs (~~one hundred~~) 100 employees. Fifty employees are eligible for and enrolled in a defined benefit pension with a flat benefit at the time of retirement. Twenty-five employees are eligible for and enrolled in a cash balance pension with General Airspace contributing 7% of an employee's annual compensation with a maximum annual contribution of \$10,000. All General Airspace employees can participate in a 401(k) Plan. Sixty-five employees are participating in the 401(k) Plan. General Airspace does not make any contributions into the 401(k) Plan. Five employees are former employees of United Skyways, a company General Airspace acquired. United Skyways employees were enrolled in a cash balance pension at the time of hire. When General Airspace acquired United Skyways, it did not terminate or liquidate the United Skyways cash balance plan. Rather, General Airspace maintains cash balance plan only for former United Skyways employees, allowing only interest to accrue to the plan.

(I) General Airspace will report that it offers three retirement plans - A defined benefit pension, a cash-balance pension, and a 401(k) Plan. General Airspace will not report the inactive cash balance pension it maintains for former United Skyways employees.

(II) For the defined benefit pension, General Airspace will report 50% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 100% are enrolled.

(III) For the cash-balance pension, General Airspace will report 25% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 100% are enrolled. General Airspace will report a maximum contribution of \$10,000 or 7% of an employee's annual compensation.

(IV) For the 401(k) Plan, General Airspace will report 100% of its total employment positions are eligible to participate in the retirement plan. Of the employment positions eligible to participate, 65% are enrolled. General Airspace will report that it does not make any contributions into the 401(k) Plan.

(B) **Example 28.** Washington Alloys is an aluminum smelter located in Grandview, WA. Washington Alloys employs (~~two hundred~~) 200 employees. Washington Alloys offers a 401(k) Plan to its employees after one year of hire. One hundred seventy-five employees have worked for Washington Alloys for one year or more. Of that amount, (~~seventy-five~~) 75 have worked more than five years. Washington Alloys will match employee contributions up to a maximum 3% of annual compensation. If an employee has worked for Washington Alloys for more than five years, Washington Alloys will contribute 5% of annual compensation regardless of the employee's contribution. One hundred employees receive a 3% matching contribution from Washington Alloys. Fifty employees receive a contribution of 5% of annual compensation.

(I) Washington Alloys may report each 401(k) Plan separately - A 401(k) Plan with a maximum employer contribution of 3% of annual compensation and a 401(k) Plan with a maximum employer contribution to 5% of annual compensation. Alternatively, Washington Alloys may report that it offers a 401(k) Plan with a maximum employer contribution ranging from 3% to 5% of annual compensation.

(II) If Washington Alloys reports each 401(k) Plan separately, for the 401(k) Plan with a maximum employer contribution of 3% of an-

nual compensation, Washington Alloys will report 50% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 100% are enrolled.

For the 401(k) Plan with a maximum employer contribution of 5% of annual compensation, Washington Alloys will report 37.5% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 66.6% are enrolled.

(III) If Washington Alloys consolidates its detailed information about its 401(k) Plans, it will report that 87.5% of its total employment positions are eligible to participate in 401(k) Plans. Of the employment positions eligible to participate in the 401(k) Plans, 85.7% are enrolled.

(16) Additional reporting for aluminum smelters and electrolytic processing businesses. For an aluminum smelter or electrolytic processing business, the annual report must indicate the quantity of product produced in this state during the time period covered by the report.

(17) Are annual reports confidential? Except for the additional information that the department may request which it deems necessary to measure the results of, or to determine eligibility for the tax preference, annual reports are not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(18) What are the consequences for failing to file a complete annual report?

(a) What is a "complete annual report"? An annual report is complete if:

(i) The annual report is filed on the form required by this rule or in an electronic format as required by law; and

(ii) The person makes a good faith effort to substantially respond to all report questions required by this rule.

Responses such as "varied," "various," or "please contact for information" are not considered good faith responses to a question.

(b) Amounts due for late filing. Except as otherwise provided by law, if a person claims a tax preference that requires an annual report under this rule, but fails to submit a complete report by the due dates described in subsection (3)(e) of this section, or any extension under RCW 82.32.590, the following amounts are immediately due and payable:

(i) For reports due prior to July 1, 2017, (~~one hundred~~) 100 percent of the amount of the tax preference claimed for the previous calendar year. Interest, but not penalties, will be assessed on the amounts due at the rate provided for under RCW 82.32.050, retroactively to the date the tax preference was claimed, and accruing until the taxes for which the tax preference was claimed are repaid.

(ii) For reports due on or after July 1, 2017:

(A) Thirty-five percent of the amount of the tax preference claimed for the previous calendar year; and

(B) An additional (~~fifteen~~) 15 percent of the amount of the tax preference claimed for the previous calendar year if the person has previously been assessed under (b)(ii) of this subsection for failure to timely submit a report for the same tax preference.

(c) Interest and penalties. The department may not assess interest or penalties on amounts due under (b)(ii) of this subsection.

(d) Extension for circumstances beyond the control of the taxpayer. If the department finds the failure of a taxpayer to file an annual report by the due date was the result of circumstances beyond the

control of the taxpayer, the department will extend the time for filing the report. The extension will be for a period of (~~thirty~~) 30 days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this rule. The department may grant additional extensions as it deems proper under RCW 82.32.590.

In determining whether the failure of a taxpayer to file an annual report by the due date was the result of circumstances beyond the control of the taxpayer, the department will apply the provisions in WAC 458-20-228 for the waiver or cancellation of penalties when the underpayment or untimely payment of any tax was due to circumstances beyond the control of the taxpayer.

(e) **One-time only extension.** A taxpayer who fails to file an annual report, as required under this rule, by the due date of the report is entitled to an extension of the due date. A request for an extension under this subsection must be made in writing to the department.

(i) To qualify for an extension, a taxpayer must have filed all annual reports and surveys, if any, due in prior years by their respective due dates, beginning with annual reports and surveys due in the calendar year 2010.

(ii) The extension is for (~~ninety~~) 90 days from the original due date of the annual report.

(iii) No taxpayer may be granted more than one (~~ninety~~) 90-day extension.

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

WAC 458-20-268 Annual surveys for certain tax preferences. (1) **Introduction.** Effective for calendar years in which a taxpayer claims a tax preference beginning January 1, 2018, Washington changed its annual reporting requirements. This rule addresses how taxpayers taking certain tax preferences must file an annual survey as provided under RCW 82.32.585 with the department of revenue (department) providing information about their business for tax periods through December 31, 2017, only. See WAC 458-20-267 Annual tax performance reports for certain tax preferences for the proper way to report tax preferences for periods beginning January 1, 2018.

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

(i) **Person.** "Person" has the meaning under RCW 82.04.030 and also includes the state and its departments and institutions.

(ii) **Tax preference.** As defined under RCW 43.136.021, "tax preference" means:

(A) An exemption, exclusion, or deduction from the base of a state tax; a credit against a state tax; a deferral of a state tax; or a preferential state tax rate; and

(B) Includes only the tax preferences requiring a survey under RCW 82.32.585.

(b) **Annual reports.** Taxpayers taking certain tax preferences may be required to complete both an annual report and an annual survey. For information on the annual report requirements, refer to RCW 82.32.534 and WAC 458-20-267.

(c) **Examples.** This rule includes examples that identify a set of facts and then state a conclusion. These examples should only be used as a general guide. The department will evaluate each case on its particular facts and circumstances.

(2) **Tax preferences requiring an annual survey.** Taxpayers may refer to the department's website at dor.wa.gov for the "Annual Tax Incentive Survey for Preferential Tax Rates/Credits/Exemptions/Deferrals Worksheet." This worksheet lists tax preferences that require an annual survey. Taxpayers may also contact the telephone information center (~~(800-647-7706)~~) 360-705-6705 to determine whether they must file an annual survey.

(3) **How to file annual surveys.**

(a) **Electronic filing.** Surveys must be filed electronically unless the department waives this requirement upon a showing of good cause. A survey is filed electronically when the department receives the survey in an electronic format. A person accesses electronic filing through their department "My Account" at dor.wa.gov.

(b) **Required paper form.** If the department waives the electronic filing requirement for a person that shows good cause, that person must use the annual survey form developed by the department unless that person obtains prior written approval from the department to file an annual survey in an alternative format.

(c) **How to obtain the form.** Persons who have received a waiver of the electronic filing requirement from the department or who otherwise would like a paper copy of the survey may obtain the annual survey form from the department's website at dor.wa.gov. It may also be obtained by calling the telephone information center at (~~(800-647-7706)~~) 360-705-6705, or by contacting the department at:

Attn: Tax Incentive Team
Taxpayer Account Administration
Department of Revenue
Post Office Box 47476
Olympia, WA 98504-7476

(d) **Special requirement for persons who did not file an annual survey during the previous calendar year.** If a person is a first-time filer or otherwise did not file an annual survey with the department during the previous calendar year, the survey must include information on employment, wages, and employer-provided health and retirement benefits for the two calendar years immediately preceding the due date of the survey.

(e) **Due date of annual survey.** Every person claiming a tax preference that requires a survey under RCW 82.32.585 must file the survey annually with the department in the year following the calendar year in which the person becomes eligible to claim the tax preference. The due date for filing the survey is as follows:

(i) April 30th for surveys due prior to 2017.

(ii) May 31st for surveys due in 2017 or 2018.

(iii) If the tax preference is a deferral of tax, the first survey must be filed by April 30th (if prior to 2017) or by May 31st (if in 2017) of the calendar year following the calendar year in which the investment project is certified by the department as operationally complete. Thereafter, a survey must also be filed for each of the seven succeeding calendar years by April 30th (if prior to 2017) or by May 31st (if in 2017), or a tax performance report for tax preferences claimed in tax reporting periods in 2018 and after.

(f) **Due date extensions.** The department may extend the due date for filing annual surveys as provided in subsection (11) of this rule.

(g) **Example 1.** Advanced Computing, Inc. qualified for the B&O tax credit provided by RCW 82.04.4452 and applied it against taxes due in calendar year 2014. Advanced Computing filed an annual survey in March 2014 for credit claimed under RCW 82.04.4452 in 2013. Advanced Computing must electronically file an annual survey with the department by April 30, 2015, for credits taken in calendar year 2014. The tax preference in this example expired January 1, 2015.

(h) **Example 2.** In 2011, Biotechnology, Inc. applied for and received a sales and use tax deferral under chapter 82.63 RCW for an eligible investment project in qualified research and development. The investment project was operationally complete in 2012. Biotechnology filed an annual survey on April 30, 2013, for the sales and use tax deferral under chapter 82.63 RCW. Surveys are due from Biotechnology by April 30th each year through 2016 and by May 31st in 2017 and 2018, with tax performance reports due in 2019 through May 31, 2020.

(i) **Example 3.** Advanced Materials, Inc., a new business in 2014, has been conducting manufacturing activities in a building leased from Property Management Services. Property Management Services is a recipient of a deferral under chapter 82.60 RCW, and the department certified the building as operationally complete in 2014. To pass on the entire economic benefit of the deferral, Property Management Services charges Advanced Materials \$5,000 less in rent each year. Advanced Materials is a first-time filer of annual surveys. Advanced Materials must file its annual survey with the department covering the 2014 calendar year by April 30, 2015. Surveys are due from Advanced Materials by April 30th for 2016 and by May 31st for 2017, with annual tax performance reports due in 2018 through May 31, 2022.

(j) **Example 4.** Fruit Canning, Inc. claims the B&O tax exemption provided in RCW 82.04.4266 for the canning of fruit in 2015. Fruit Canning is a first-time filer of annual surveys. Fruit Canning must file an annual survey with the department by April 30, 2016, covering calendar years 2014 and 2015. If Fruit Canning claims the B&O tax exemption during subsequent years, it must file an annual survey by May 31st in 2017 and 2018, and an annual tax performance report by May 31st in 2019 and each subsequent year.

(4) **What information does the annual survey require?** The annual survey requires the following:

(a) Amount of tax deferred, the amount of B&O tax exempted, the amount of B&O tax credit taken, or the amount of B&O tax reduced under the preferential rate;

(b) For taxpayers claiming the tax deferral under chapter 82.60 or 82.63 RCW:

(i) The number of new products or research projects by general classification; and

(ii) The number of trademarks, patents, and copyrights associated with activities at the investment project;

(c) For taxpayers claiming the B&O tax credit under RCW 82.04.4452:

(i) The qualified research and development expenditures during the calendar year for which the credit was claimed;

(ii) The taxable amount during the calendar year for which the credit was claimed;

(iii) The number of new products or research projects by general classification;

(iv) The number of trademarks, patents, and copyrights associated with the research and development activities for which the credit was claimed; and

(v) Whether the credit has been assigned and who assigned the credit.

The credit provided under RCW 82.04.4452 expired January 1, 2015.

(d) The following information for employment positions in Washington state:

(i) The total number of employment positions;

(ii) Full-time, part-time, and temporary employment positions as a percent of total employment. Refer to subsection (7) of this rule for information about full-time, part-time, and temporary employment positions;

(iii) The number of employment positions according to the wage bands of less than \$30,000; \$30,000 or greater, but less than \$60,000; and \$60,000 or greater. A wage band containing fewer than three individuals may be combined with the next lowest wage band; and

(iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands; and

(e) Additional information the department requests that is necessary to measure the results of, or determine eligibility for the tax preferences.

(i) Prior to its repeal effective January 1, 2018, RCW 82.32.585 requires the department to report to the legislature summary descriptive statistics by category and the effectiveness of certain tax preferences, such as job creation, company growth, and such other factors as the department selects or as the statutes identify. The department has included questions related to measuring these effects.

(ii) In addition, the department has included questions related to:

(A) The taxpayer's use of the sales and use tax exemption for machinery and equipment used in manufacturing provided in RCW 82.08.025651 and 82.12.025651; and

(B) The Unified Business Identifier used with the Washington state employment security department and all employment security department reference numbers used on quarterly tax reports that cover the employment positions reported in the annual survey.

(5) What is total employment in the annual survey?

(a) **Employment as of December 31st.** The annual survey requires information on all full-time, part-time, and temporary employment positions located in Washington state on December 31st of the calendar year covered by the survey. Total employment includes persons who are on leaves of absence such as sick leave, vacation, disability leave, jury duty, military leave, and workers compensation leave, regardless of whether those persons are receiving wages. Total employment does not include separations from employment such as layoffs and reductions in force. Vacant positions are not included in total employment.

(b) **The following facts apply to the examples in (b) (i) through (iv) of this subsection.** National Construction Equipment (NCE) manufactures bulldozers, cranes, and other earth-moving equipment in Ridgefield and Kennewick, WA. NCE received a deferral of taxes under chapter 82.60 RCW for sales and use taxes on its new manufacturing site in Kennewick.

(i) **Example 5.** NCE employs (~~two hundred~~) 200 workers in Ridgefield manufacturing construction cranes. NCE employs (~~two hundred fifty~~) 250 workers in Kennewick manufacturing bulldozers and other

earth-moving equipment. Although NCE's facility in Ridgefield does not qualify for any tax preferences, NCE's annual survey must report a total of (~~four hundred fifty~~) 450 employment positions. The annual survey includes all Washington state employment positions, which includes employment positions engaged in activities that do not qualify for tax preferences.

(ii) **Example 6.** On November 20th, NCE lays off (~~seventy-five~~) 75 workers. NCE notifies (~~ten~~) 10 of the laid off workers on December 20th that they will be rehired and begin work on January 2nd. The (~~seventy-five~~) 75 employment positions are excluded from NCE's annual survey, because a separation of employment has occurred. Although NCE intends to rehire (~~ten~~) 10 employees, those employment positions are vacant on December 31st.

(iii) **Example 7.** On December 31st, NCE has (~~one hundred~~) 100 employees on vacation leave, five employees on sick leave, two employees on military leave, one employee who is scheduled to retire as of January 1st, and three vacant employment positions. The employment positions of employees on vacation, sick leave, and military leave must be included in NCE's annual survey. The one employee scheduled to retire must be included in the annual survey because the employment position is filled on December 31st. The three vacant positions are not included in the annual survey.

(iv) **Example 8.** In June, NCE hires two employees from a local college to intern in its engineering department. When the academic year begins in September, one employee ends the internship. The other employee's internship continues until the following June. NCE must report one employment position on the annual survey, representing the intern employed on December 31st.

(6) When is an employment position located in Washington state?

The annual survey seeks information only about Washington employment positions. An employment position is located in Washington state if:

(a) The service of the employee is performed entirely within the state;

(b) The service of the employee is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state;

(c) The service of the employee is performed both within and without the state, and the employee's base of operations is within the state;

(d) The service of the employee is performed both within and without the state, but the service is directed or controlled in this state; or

(e) The service of the employee is performed both within and without the state and the service is not directed or controlled in this state, but the employee's individual residence is in this state.

(f) **The following facts apply to the examples in (f) (i) through (iv) of this subsection.** Acme Computer, Inc. develops computer software and receives a deferral of taxes under chapter 82.60 RCW for sales and use taxes on an eligible investment project in a high unemployment county. Acme Computer, headquartered in California, has employees working at four locations in Washington state. Acme Computer also has offices in Oregon and Texas.

(i) **Example 9.** Ed is a software engineer in Acme Computer's Vancouver office. Ed occasionally works at Acme Computer's Portland, Oregon office when other software engineers are on leave. Ed's position must be included in the number of total employment positions in Washington state that Acme Computer reports on the annual survey. Ed per-

forms services both within and without the state, but the services performed without the state are incidental to the employee services within the state.

(ii) **Example 10.** John is an Acme Computer salesperson. John travels throughout Washington, Oregon, and Idaho promoting sales of new Acme Computer products. John's activities are directed by his manager in Acme Computer's Spokane office. John's position must be included in the number of total employment positions in Washington state that Acme Computer reports on the annual survey. John performs services both within and without the state, but the services are directed or controlled in Washington state.

(iii) **Example 11.** Jane, vice president for product development, works in Acme Computer's Portland, Oregon office. Jane regularly travels to Seattle to review the progress of research and development projects conducted in Washington state. Jane's position should not be included in the number of total employment positions in Washington state that Acme Computer reports on the annual survey. Although Jane regularly performs services within Washington state, her activities are directed or controlled in Oregon.

(iv) **Example 12.** Roberta, a service technician, travels throughout the United States servicing Acme Computer products. Her activities are directed from Acme Computer's corporate offices in California, but she works from her home office in Tacoma. Roberta's position must be included in the number of total employment positions in Washington state that Acme Computer reports on the annual survey. Although Roberta performs services both within and without the state and the service is not directed or controlled in this state, her residence is in Washington state.

(7) **What are full-time, part-time, and temporary employment positions?** The survey must separately identify the number of full-time, part-time, and temporary employment positions as a percent of total employment.

(a) **Full-time and part-time employment positions.** A position is considered full-time or part-time if the employer intends for the position to be filled for at least (~~(fifty-two)~~) 52 consecutive weeks or (~~(twelve)~~) 12 consecutive months, excluding any leaves of absence.

(i) **Full-time positions.** A full-time position is a position that requires the employee to work, excluding overtime hours, (~~(thirty-five)~~) 35 hours per week for (~~(fifty-two)~~) 52 consecutive weeks, (~~(four hundred fifty-five)~~) 455 hours a quarter for four consecutive quarters, or (~~(one thousand eight hundred twenty)~~) 1,820 hours during a period of (~~(twelve)~~) 12 consecutive months.

(ii) **Part-time positions.** A part-time position is a position in which the employee may work less than the hours required for a full-time position.

(iii) **Exceptions for full-time positions.** In some instances, an employee may not be required to work the hours required for full-time employment because of paid rest and meal breaks, health and safety laws, disability laws, shift differentials, or collective bargaining agreements. If, in the absence of these factors, the employee would be required to work the number of hours for a full-time position to receive their current wage, the position must be reported as a full-time employment position.

(b) **Temporary positions.** There are two types of temporary positions.

(i) **Employees of the person required to complete the survey.** In the case of a temporary employee directly employed by the person re-

quired to complete the survey, a temporary position is a position intended to be filled for a period of less than (~~(fifty-two)~~) 52 consecutive weeks or (~~(twelve)~~) 12 consecutive months. For example, seasonal employment positions are temporary positions. These temporary positions must be included in the information required in subsections (5), (8), and (9) of this rule.

(ii) **Workers furnished by staffing companies.** A temporary position also includes a position filled by a worker furnished by a staffing company, regardless of the duration of the placement. These temporary positions must be included in the information required in subsections (5), (8), and (9) of this rule. In addition, the person filling out the annual survey must provide the following additional information:

(A) Total number of staffing company employees furnished by staffing companies;

(B) Top three occupational codes of all staffing company employees; and

(C) Average duration of all staffing company employees.

(c) **The following facts apply to the examples in (c)(i) through (vi) of this subsection.** Worldwide Materials, Inc. is a developer of materials used in manufacturing electronic devices. Worldwide Materials receives a deferral of taxes under chapter 82.60 RCW for sales and use taxes on an eligible investment project in a high unemployment county. Worldwide Materials has (~~(one-hundred)~~) 100 employees.

(i) **Example 13.** On December 31st, Worldwide Materials has five employees on workers' compensation leave. At the time of the work-related injuries, the employees worked (~~(forty)~~) 40 hours a week and were expected to work for (~~(fifty-two)~~) 52 consecutive weeks. Worldwide Materials must report these employees as being employed in a full-time position. Although the five employees are not currently working, they are on workers' compensation leave and Worldwide Materials had intended for the full-time positions to be filled for at least (~~(fifty-two)~~) 52 consecutive weeks.

(ii) **Example 14.** In September, Worldwide Materials hires two employees on a full-time basis for a two-year project to design composite materials to be used in a new airplane model. Because the position is intended to be filled for a period exceeding (~~(twelve)~~) 12 consecutive months, Worldwide Materials must report these positions as full-time positions.

(iii) **Example 15.** Worldwide Materials has two employees who clean laboratories during the evenings. The employees regularly work 5:00 p.m. to 11:00 p.m., Monday through Friday, (~~(fifty-two)~~) 52 weeks a year. Because the employees work less than (~~(thirty-five)~~) 35 hours a week, the employment positions are reported as part-time positions.

(iv) **Example 16.** On November 1st, a Worldwide Materials engineer begins (~~(twelve)~~) 12 weeks of family and medical leave. The engineer was expected to work (~~(forty)~~) 40 hours a week for (~~(fifty-two)~~) 52 consecutive weeks. While the engineer is on leave, Worldwide Materials hires a staffing company to furnish a worker to complete the engineer's projects. Worldwide Materials must report the engineer as a full-time position on the annual survey. Worldwide Materials must also report the worker furnished by the staffing company as a temporary employment position and include the information as required in (b) of this subsection.

(v) **Example 17.** Worldwide Materials allows three of its research employees to work on specific projects with a flexible schedule. These employees are not required to work a set amount of hours each week,

but are expected to work (~~twelve~~) 12 consecutive months. The three research employees are paid a comparable wage as other research employees who are required to work a set schedule of (~~forty~~) 40 hours a week. Although the three research employees may work fewer hours, they are receiving comparable wages as other research employees working (~~forty~~) 40 hours a week. Worldwide Materials must report these positions as full-time employment positions, because each position is equivalent to a full-time employment position.

(vi) **Example 18.** Worldwide Materials has a large order to fulfill and hires (~~ten~~) 10 employees for the months of June and July. Five of the employees leave at the end of July. Worldwide Materials decides to have the remaining five employees work on an on-call basis for the remainder of the year. As of December 31st, three of the employees are working for Worldwide Materials on an on-call basis. Worldwide Materials must report three temporary employment positions on the annual survey and include these positions in the information required in subsections (5), (8), and (9) of this rule.

(8) **What are wages?** For the purposes of the annual survey, "wages" means compensation paid to an individual for personal services, whether denominated as wages, salary, commission, or otherwise as reported on the W-2 forms of employees. Stock options granted as compensation to employees are wages to the extent they are reported on the W-2 forms of the employees and are taken as a deduction for federal income tax purposes by the employer. The compensation of a proprietor or a partner is determined in one of two ways:

(a) If there is net income for federal income tax purposes, the amount reported subject to self-employment tax is the compensation.

(b) If there is no net income for federal income tax purposes, reasonable cash withdrawals or cash advances is the compensation.

(9) **What are employer-provided benefits?** The annual survey requires persons to report the number of employees that have employer-provided medical, dental, and retirement benefits, by each of the wage bands. An employee has employer-provided medical, dental, and retirement benefits if the employee is currently eligible to participate or receive the benefit. A benefit is "employer-provided" if the medical, dental, and retirement benefit is dependent on the employer's establishment or administration of the benefit. A benefit that is equally available to employees and the general public is not an "employer-provided" benefit.

(a) **What are medical benefits?** "Medical benefits" means compensation, not paid as wages, in the form of a health plan offered by an employer to its employees. A "health plan" means any plan, fund, or program established, maintained, or funded by an employer for the purpose of providing for its employees or their beneficiaries, through the purchase of insurance or otherwise, medical and/or dental care services.

(i) Health plans include any:

(A) "Employee welfare benefit plan" as defined by the Employee Retirement Income Security Act (ERISA);

(B) "Health plan" or "health benefit plan" as defined in RCW 48.43.005;

(C) Self-funded multiple employer welfare arrangement as defined in RCW 48.125.010;

(D) "Qualified health insurance" as defined in Section 35 of the Internal Revenue Code;

(E) "Archer MSA" as defined in Section 220 of the Internal Revenue Code;

(F) "Health savings plan" as defined in Section 223 of the Internal Revenue Code;

(G) "Health plan" qualifying under Section 213 of the Internal Revenue Code;

(H) Governmental plans; and

(I) Church plans.

(ii) "Health care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(b) **What are dental benefits?** "Dental benefits" means a dental health plan offered by an employer as a benefit to its employees. "Dental health plan" has the same meaning as "health plan" in (a) of this subsection, but is for the purpose of providing for employees or their beneficiaries, through the purchase of insurance or otherwise, dental care services. "Dental care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease of human teeth, alveolar process, gums, or jaw.

(c) **What are retirement benefits?** "Retirement benefits" means compensation, not paid as wages, in the form of a retirement plan offered by an employer to its employees. An employer contribution to the retirement plan is not required for a retirement plan to be employer-provided. A "retirement plan" means any plan, account, deposit, annuity, or benefit, other than a life insurance policy, that provides for retirement income or deferred income to employees for periods after employment is terminated. The term includes pensions, annuities, stock bonus plans, employee stock ownership plans, profit sharing plans, self-employed retirement plans, individual retirement accounts, individual retirement annuities, and retirement bonds, as well as any other plan or program, without regard to its source of funding, and without regard to whether the retirement plan is a qualified plan meeting the guidelines established in the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code.

(d) **The following facts apply to the examples in (d) (i) through (v) of this subsection.** Medical Resource, Inc. is a pharmaceutical manufacturer that receives a deferral of taxes under chapter 82.60 RCW for sales and use taxes on an eligible investment project in a high unemployment county. It employs (~~two hundred~~) 200 full-time employees and (~~fifty~~) 50 part-time employees. Medical Resource also hires a staffing company to furnish (~~seventy-five~~) 75 workers.

(i) **Example 19.** Medical Resource offers its employees two different health plans as a medical benefit. Plan A is available at no cost to full-time employees. Employees are not eligible to participate in Plan A until completing (~~thirty~~) 30 days of employment. Plan B costs employees \$200 each month. Full-time and part-time employees are eligible for Plan B after six months of employment. One hundred full-time employees are enrolled in Plan A. One hundred full-time and part-time employees are enrolled in Plan B. Forty full-time and part-time employees chose not to enroll in either plan. Ten part-time employees are not yet eligible for either Plan A or Plan B. Medical Resource must report (~~two hundred~~) 200 employees as having employer-provided medical benefits, because that is the number of employees enrolled in the health plans it offers.

(ii) **Example 20.** Medical Resource does not offer medical benefits to the employees of the staffing company. However, (~~twenty-five~~) 25 of these workers have enrolled in a health plan through the staffing

company. Medical Resource must report these (~~twenty-five~~) 25 employment positions as having employer-provided medical benefits.

(iii) **Example 21.** Medical Resource does not offer its employees dental insurance, but has arranged with a group of dental providers to provide all employees with a 30% discount on any dental care service. Medical Resource employment is the sole requirement to receive this benefit. Unlike the medical benefit, employees are eligible for the dental benefit as of the first day of employment. This benefit is not provided to the workers furnished by the staffing company. Medical Resource must report (~~two hundred and fifty~~) 250 employment positions as having dental benefits, because that is the number of employees enrolled in this dental plan.

(iv) **Example 22.** Medical Resource offers a 401(k) Plan to its full-time and part-time employees after six months of employment. Medical Resource makes matching contributions to an employee's 401(k) Plan after two years of employment. On December 31st, (~~two hundred and twenty-five~~) 225 workers are eligible to participate in the 401(k) Plan. Two hundred workers are enrolled in the 401(k) Plan. One hundred of these workers receive matching contributions. Medical Resource must report (~~two hundred~~) 200 employment positions as having employer-provided retirement benefits, because that is the number of employees enrolled in the 401(k) Plan.

(v) **Example 23.** Medical Resource coordinates with a bank to insert information in employee paycheck envelopes on the bank's Individual Retirement Account (IRA) options offered to bank customers. Employees who open an IRA with the bank can arrange to have their contributions directly deposited from their paychecks into their accounts. Fifty employees open IRAs with the bank. Medical Resource cannot report that these (~~fifty~~) 50 employees have employer-provided retirement benefits. IRAs are not an employer-provided benefit because the ability to establish the IRA is not dependent on Medical Resource's participation or sponsorship of the benefit.

(10) **Is the annual survey confidential?** The annual survey is subject to the confidentiality provisions of RCW 82.32.330. However, information on the amount of tax preference taken is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public, except as provided in (c) of this subsection.

(a) **Failure to timely file a complete annual survey subject to disclosure.** If a taxpayer fails to timely file a complete annual survey, then the amount required to be repaid as a result of the taxpayer's failure to file a complete annual survey is not confidential and may be disclosed to the public.

(b) **Amount reported in annual survey is different from the amount claimed or allowed.** If a taxpayer reports a tax preference amount on the annual survey that is different than the amount actually claimed on the taxpayer's tax returns or otherwise allowed by the department, then the amount actually claimed or allowed may be disclosed.

(c) **Tax preference is less than (~~ten thousand dollars~~) \$10,000.** If the tax preference is less than (~~ten thousand dollars~~) \$10,000 during the period covered by the annual survey, the taxpayer may request that the department treat the amount of the tax preference as confidential under RCW 82.32.330.

(11) **What are the consequences for failing to timely file a complete annual survey?**

(a) **What is a "complete annual survey"?** An annual survey is complete if:

(i) The annual survey is filed on the form required by this rule or in an electronic format as required by law; and

(ii) The person makes a good faith effort to substantially respond to all survey questions required by this rule.

Responses such as "varied," "various," or "please contact for information" are not considered good faith responses to a question.

(b) **Amounts due for late filing.** Unless the tax preference is a deferral of tax, as described in (c) of this subsection, or as otherwise provided by law, if a person claims a tax preference that requires an annual survey under this rule, but fails to submit a complete survey by the due dates described in subsection (3)(e) of this rule, or any extension under RCW 82.32.590, the following amounts are immediately due and payable:

(i) For surveys due prior to July 1, 2017, (~~one hundred~~) 100 percent of the amount of the tax preference claimed for the previous calendar year. Interest, but not penalties, will be assessed on the amounts due at the rate provided for under RCW 82.32.050, retroactively to the date the tax preference was claimed, and accruing until the taxes for which the tax preference was claimed are repaid.

(ii) For surveys due on or after July 1, 2017:

(A) Thirty-five percent of the amount of the tax preference claimed for the previous calendar year; and

(B) An additional (~~fifteen~~) 15 percent of the amount of the tax preference claimed for the previous calendar year if the person has previously been assessed under (b)(ii) of this subsection for failure to timely submit a survey for the same tax preference.

(c) **Tax deferrals.** If the tax preference is a deferral of tax, (~~twelve and one-half~~) 12.5 percent of the deferred tax is immediately due. If the economic benefits of the deferral are passed to a lessee, the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(d) **Interest and penalties.** The department may not assess interest or penalties on amounts due under (b)(ii) and (c) of this subsection.

(e) **Extension for circumstances beyond the control of the taxpayer.** If the department finds the failure of a taxpayer to file an annual survey by the due date was the result of circumstances beyond the control of the taxpayer, the department will extend the time for filing the survey. The extension will be for a period of (~~thirty~~) 30 days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this rule. The department may grant additional extensions as it deems proper under RCW 82.32.590.

In determining whether the failure of a taxpayer to file an annual survey by the due date was the result of circumstances beyond the control of the taxpayer, the department will apply the provisions in WAC 458-20-228 for the waiver or cancellation of penalties when the underpayment or untimely payment of any tax was due to circumstances beyond the control of the taxpayer.

(f) **One-time only extension.** A taxpayer who fails to file an annual survey, as required under this rule, by the due date of the survey is entitled to an extension of the due date. A request for an extension under this subsection must be made in writing to the department.

(i) To qualify for an extension, a taxpayer must have filed all annual reports and surveys, if any, due in prior years by their re-

spective due dates, beginning with annual reports and surveys due in the calendar year 2010.

(ii) The extension is for (~~ninety~~) 90 days from the original due date of the annual survey.

(iii) No taxpayer may be granted more than one (~~ninety~~) 90-day extension.

AMENDATORY SECTION (Amending WSR 15-15-157, filed 7/21/15, effective 8/21/15)

WAC 458-20-278 Returned goods, defective goods—Motor vehicle lemon law. (1) **Introduction.** This rule explains how sellers should report business and occupation (B&O) tax and retail sales tax when goods are returned and refunds or credits are granted.

(a) **Contract of sale.** Generally, 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, the gross proceeds actually derived from the contract and the selling price are determined by the transaction as finally completed.

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

(2) **Returned goods.** When sales are made either upon approval or upon a sale or return basis, and the buyer returns the property purchased and the entire selling price is refunded or credited to the buyer, the seller may deduct an amount equal to the selling price from gross proceeds of sales in computing tax liability. A deduction is available under the retail sales tax classification only 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 if the full selling price is not refunded or credited to the buyer, a presumption is raised, subject to rebuttal by a preponderance of the evidence, that the property returned is not a returned good but is an exchange or a repurchase by the seller.

(a) **Example 1.** Stan sells an article for \$60.00 and credits his sales account with the sale. The buyer returns the article purchased within the guaranty period and the purchase price and the sales tax previously paid by the buyer is refunded or credited to the buyer. If the sale has not been reported to the department of revenue, Stan may deduct \$60.00 for the returned article from his gross sales amount. If Stan has already reported the sale on his excise tax return, he may take a deduction for \$60.00 for the returned article on his next filed excise tax return.

(b) **Restocking fees charged on returned goods.** A "restocking fee" is a fee intended to cover the cost, by the seller, of restoring returned items to saleable condition and returning them to inventory. The restocking fee is the same regardless of when a purchased item is returned to the seller by the buyer.

If all the conditions of this subsection are met for returned merchandise with the exception of a restocking fee, the transaction will be viewed as a sale return and not as a repurchase. When a sale return occurs, a deduction may be taken under the appropriate tax

classification used in reporting the original sale. However, the restocking fee is considered income and taxable under the service and other business activities B&O tax classification.

(i) **Example 2.** Ace Auto Parts (Ace) sells a catalytic converter to Stan for \$400.00 plus tax. The receipt that Ace gives Stan states that returns must be made within 30 days and a \$35.00 restocking fee will apply to returns. Stan realizes after he gets the part home that it is the wrong one for his car. When Stan returns the part, he finds that Ace does not have the catalytic converter that he needs for his car. Ace computes Stan's refund of \$400.00 plus sales tax minus the \$35.00 restocking fee. Ace may reduce its gross retail sales by \$400.00, but must report the \$35.00 restocking fee under the service and other business activities B&O tax classification.

(ii) **Example 3.** Breen's Department Store (Breen's) accepts returned items, in new condition, but may discount the original purchase price based on the time elapsed since purchase.

Return within	Amount of credit
0 – 30 days from receipt	100% of original purchase price
31 – 60 days from receipt	75% of original purchase price
61 + days from receipt	50% of original purchase price

For example, Jill purchases a dress from Breen's and returns the dress 45 days after purchase. Breen's refunds or provides a credit to her of 75 percent of the cost of the dress. The amount retained by Breen's is not considered a restocking fee. This is considered a repurchase by Breen's, and thus no deductions are allowed under the retailing B&O tax or retail sales tax classifications on Breen's excise tax return.

(3) **Defective goods.** This subsection does not apply to new motor vehicles under an original manufacturer's warranty. See subsection (4) of this rule regarding new motor vehicles under an original manufacturer's warranty.

When bona fide refunds, credits, or allowances are given within the guaranty period by a seller to a buyer on account of defects in goods sold, the seller may deduct the amount of such refunds, credits, or allowances in computing its tax liability, if the seller has refunded the proportionate amount of the sales tax it previously collected from the buyer.

Example 4. On April 5th, Stan sells an item to Bob for \$60.00. Stan records the sale as gross income. The item is later found to be defective by Bob.

(a) Bob returns the item prior to Stan reporting the sale on his excise tax return, and remitting B&O tax and the collected retail sales tax. Stan refunds Bob the purchase price including the retail sales tax. Stan may subtract \$60.00 from his gross income when completing his excise tax return.

(b) Bob returns the defective article and Stan allows him a full credit of \$60.00 towards another article. The new article's price is \$80.00. Bob pays, in cash, the additional \$20.00 plus retail sales tax on the \$20.00. Stan records the \$20.00 as gross sales. The allowance for the defective article (\$60.00) is already included in Stan's gross sales, thus only the \$20.00 (\$60.00 credit and \$20.00 cash = \$80.00 purchase price) should be added to the gross sales amount.

(c) Bob waits a month to return the defective item for a refund. Stan refunds Bob the full purchase price of \$60.00 plus the retail sales tax. As Stan has already reported the sale on his excise tax return, he may deduct \$60.00 under "Returns" for both the retailing B&O tax and retail sales tax classifications on his next excise tax return.

(d) Bob is willing to keep the defective item but requests a partial refund to offset repair costs. Stan refunds Bob \$25.00 of the purchase price, plus the applicable retail sales tax. As Stan has already reported the sale on his excise tax return, he may take a deduction for \$25.00 under both the retailing B&O tax and retail sales tax classifications on his next excise tax return.

(4) **Motor vehicle warranties - Lemon law.** A manufacturer that replaces or repurchases a new motor vehicle under warranty because of a defective condition is required to refund to the consumer the "collateral charges" (RCW 19.118.021(2)) which include retail sales tax. The refund will be made to the consumer by the manufacturer or by the dealer for the manufacturer. The department of revenue will then verify calculations and credit or refund the correct amount of the tax so refunded. For information on the lemon law, other than retail sales tax, contact the attorney general's office.

(a) **What documentation is needed for credit or refund?** To receive a credit or refund, the manufacturer or dealer must provide the following information to the department of revenue establishing that the dealer collected the retail sales tax and that it was refunded to the consumer:

(i) A complete copy of the new motor vehicle arbitration board decision including the owner signed acceptance/denied page; or

(ii) The Lemon Law Refund Request Verification Form completed in nonarbitrated situations; and

(iii) A statement signed and dated by the consumer accepting the arbitration board decision or the manufacturer's nonarbitrated repurchase offer. The statement must include the consumer's name, repurchase offer date, total repurchase amount, sales tax amount refunded, the name of the manufacturer issuing the refund and any other supporting documents needed to substantiate the claim; and

(iv) A copy of the dealer invoice (purchase order) or lease agreement, signed by the consumer, that shows the amount of retail sales tax paid; and

(v) A copy of the manufacturer's refund check(s) for repurchase drawn payable to the consumer and/or lien holder; and

(vi) For the calculation of reasonable offset for mileage provide all supporting documentation necessary to verify the calculation used and documentation (e.g., all dealer repair records or service records) to verify the attempted repairs to the vehicle did comply with RCW 19.118.041.

(b) **Where can I obtain the Lemon Law Refund Request Verification Form?** The "Lemon Law Refund Request Verification Form" is available on the department's website at dor.wa.gov, or by calling the department's telephone information center at ((~~1-800-647-7706~~)) 360-705-6705, or writing to:

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

(c) **Where should documentation be sent?** All documentation from manufacturers for credit or refund on lemon law refunds should be sent to:

Audit Division/Lemon Law Refund Section
Department of Revenue
P.O. Box 47474
Olympia, WA 98504-7474