

WSR 14-09-054
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed April 15, 2014, 2:37 p.m.]

Title of Rule and Other Identifying Information: WAC 458-29A-600 Leasehold excise tax—Collection and administration.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Marilou Rickert, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail marilour@dor.wa.gov, AND RECEIVED BY June 23, 2014.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To implement SSB 5444, chapter 235, Laws of 2013, which eliminated the leasehold excise credit for certain leasehold interests for the amount, if any, that the tax exceeds the property tax applicable if the property were privately owned.

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

Reasons Supporting Proposal: To bring WAC 458-29A-600 into conformity with RCW 82.29A.120 as amended by SSB 5444, chapter 235, Laws of 2013.

Statutory Authority for Adoption: RCW 82.01.060 and 82.29A.140.

Statute Being Implemented: RCW 82.29A.120.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Marilou Rickert, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1582; Implementation and Enforcement: Stuart Thronson, 1025 Union Avenue S.E., Suite #100, Olympia, WA, (360) 534-1300.

April 15, 2014
 Dylan Waits
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 99-20-053, filed 10/1/99, effective 11/1/99)

WAC 458-29A-600 Leasehold excise tax—Collection and administration. (1) **Introduction.** Leasehold excise tax is levied by the state under RCW 82.29A.030 and by counties and/or cities under RCW 82.29A.040. The administrative procedures contained in chapters 82.02 and 82.32 RCW apply to the administration and collection of the leasehold excise tax.

(2) **Tax imposed.** The rates at which leasehold excise tax is levied are contained in RCW 82.29A.030 and 82.29A.040. The department publishes documents containing the applicable rates, credits, and formulas. These documents are updated as necessary and are available upon request.

(3) **Separate listing requirement.** The amount of leasehold excise tax due must be listed separately from the amount of contract rent on any statement or other document provided to the lessee by the lessor. If the leasehold excise tax is not stated separately from the contract rent, it is assumed that the leasehold excise tax is not included in the amount stated as due.

(4) **Credits allowed against leasehold excise tax.** Because the leasehold excise tax is intended only to equalize treatment between private property owners and lessees of public entities, the amount of leasehold excise tax should not exceed the amount of property tax that would be due if the leased property was privately owned. Therefore, in calculating the taxes imposed under RCW 82.29A.030 and 82.29A.040, RCW 82.29A.120 authorizes the following credits:

(a) **Leasehold interests created after April 1, 1986, or situations where the department has established taxable rent.** Where a leasehold interest other than a product lease was created after April 1, 1986, or where the department has established taxable rent in accordance with RCW 82.29A.020 (2)(b), and the amount of leasehold excise tax due is greater than the amount of property tax that would be due if the property was privately owned by the lessee, without regard to any property tax exemption under RCW 84.36.381, a credit equal to the difference between the leasehold excise tax and the comparable property tax will be allowed. This credit expires at midnight, July 27, 2013.

If the property is subleased, ((the)) any allowable credit must be passed on to the sublessee. Lessees and sublessees of residential property who would qualify for either a partial or total exemption from property tax under RCW 84.36.381 if they owned the property in fee are eligible for a corresponding reduction in the amount of leasehold excise tax due. The leasehold excise tax for the qualifying lessees or sublessees is reduced by the same percentage as the percentage reduction in property that would result from the property tax exemption under RCW 84.36.381.

(b) **Product leases.** A credit of thirty-three percent of the total leasehold excise tax due is allowed for product leases.

(5) **When payment is due.** The leasehold excise taxes are due on the same date that the contract rent is due to the lessor. If the contract rent is paid to someone other than the lessor, the leasehold tax is due at the time the payment is made to that other person or entity. Any prepaid contract rent will be deemed to have been paid in the year due and not in the year in which it was actually paid if the prepayment is for more than one year's rent. If contract rent is prepaid, the leasehold tax payment may be prorated over the number of years for which the contract rent is prepaid. The prorated portion of the tax will be due in two installments per year, with no less than one-half due on or before May 31 and the second half due no later than November 30 of each year.

(6) **Collection and distribution of tax by the department.** The department collects and distributes the leasehold

excise taxes authorized by RCW 82.29A.030 and 82.29A.-040.

(a) **Taxes levied by the state.** All money received by the department from leasehold taxes levied under RCW 82.29A.-030 is transmitted to the state treasurer for deposit in the general fund.

(b) **Taxes levied by counties and cities.** Prior to the effective date of the ordinance imposing a leasehold excise tax, the county or city imposing the tax must contract with the department for administration and collection services. The department may deduct a percentage, not to exceed two percent, of the taxes collected as reimbursement for administration and collection expenses. The department deposits the balance of the taxes collected in the local leasehold excise tax account with the state treasury, and the state treasurer bimonthly distributes those moneys to the counties and cities.

County treasurers must proportionately distribute the moneys they receive in the same manner they distribute moneys collected from property tax levies in accordance with RCW 84.56.230, provided that no moneys are to be distributed to the state or any city, and the pro rata calculation for proportionate distribution cannot include any levy rates by the state or any city.

(7) **Leasehold interests in federally owned land or federal trust land.** Lessees with a leasehold interest in federally owned lands or federal trust lands must report and remit the leasehold tax due directly to the department on an annual reporting basis.

WSR 14-09-058

EXPEDITED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed April 16, 2014, 11:19 a.m.]

Title of Rule and Other Identifying Information: WAC 388-106-0033 When may I receive services in a facility contracted to provide specialized dementia care services?

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Rules Coordinator, Department of Social and Health Services, P.O. Box 45850, Olympia, WA 98504-5850, or deliver to 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, AND RECEIVED BY 5:00 p.m., June 24, 2014.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making

corrects an error made under WSR 14-02-094 in which there is a reference to WAC 388-110-020. The correct reference is WAC 388-110-220.

Reasons Supporting Proposal: For housekeeping rules only, correcting WAC 388-110-020 to 388-110-220.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.520.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Judi Plesha, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2370.

April 15, 2014

Katherine I. Vasquez
Rules Manager

AMENDATORY SECTION (Amending WSR 14-02-094, filed 12/31/13, effective 2/1/14)

WAC 388-106-0033 When may I receive services in a facility contracted to provide specialized dementia care services? (1) You may be eligible to receive services in a licensed assisted living facility that has a DSHS "enhanced adult residential care-specialized dementia care ("EARC-SDC)," which is defined in WAC (~~(388-110-020)~~) 388-110-220. You may be eligible to receive EARC-SDC services in a licensed assisted living facility under the following circumstances:

(a) You are enrolled in COPES, as defined in WAC 388-106-0015;

(b) The department has received written or verbal confirmation from a health care practitioner that you have an irreversible dementia (such as Alzheimer's disease, multi-infarct or vascular dementia, Lewy body dementia, Pick's disease, alcohol-related dementia);

(c) You are receiving services in an assisted living facility that has a current EARC-SDC contract, and you are living in the part of the facility that is covered by the contract;

(d) The department has authorized you to receive EARC-SDC services in the assisted living facility; and

(e) You are assessed by the comprehensive assessment reporting evaluation tool ("CARE") as having a cognitive performance score of 3 or above; and any one or more of the following:

(i) An unmet need for assistance with supervision, limited, extensive or total dependence with eating/drinking;

(ii) Inappropriate toileting/menses activities;

(iii) Rummages/takes others belongings;

(iv) Up at night when others are sleeping and requires intervention(s);

(v) Wanders/exit seeking;

(vi) Wanders/not exit seeking;

(vii) Has left home and gotten lost;

(viii) Spitting;

(ix) Disrobes in public;

(x) Eats non-edible substances;

(xi) Sexual acting out;

- (xii) Delusions;
- (xiii) Hallucinations;
- (xiv) Assaultive;
- (xv) Breaks, throws items;
- (xvi) Combative during personal care;
- (xvii) Easily irritable/agitated;
- (xviii) Obsessive regarding health/body functions;
- (xix) Repetitive movement/pacing;
- (xx) Unrealistic fears or suspicions;
- (xxi) Repetitive complaints/questions;
- (xxii) Resistive to care;
- (xxiii) Verbally abusive;
- (xxiv) Yelling/screaming;
- (xxv) Inappropriate verbal noises; or
- (xxvi) Accuses others of stealing.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

WSR 14-09-059
EXPEDITED RULES
TRANSPORTATION COMMISSION

[Filed April 16, 2014, 12:40 p.m.]

Title of Rule and Other Identifying Information: SR 520 FY 2015 Annual toll rate adjustment, amending WAC 468-270-071.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Reema Griffith, Washington State Transportation Commission, P.O. Box 47308,

Olympia, WA 98504-7308, AND RECEIVED BY June 23, 2014.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission must consider toll rates that will help maintain travel time, speed, and reliability on the SR 520 corridor and must set and adjust toll rates to generate revenue sufficient and necessary to cover costs and obligations described in RCW 47.56.830 and 47.56.850.

WAC 468-270-040, as adopted by the Washington state transportation commission on January 5, 2011, and filed under WSR 11-04-007, January 20, 2011, provides that "Starting July 1, 2012, the toll rates will increase two and one-half percent annually, subject to review and potential adjustment by the commission, in order to generate toll revenue sufficient to meet the costs and obligations listed in RCW 47.56.830 through 47.56.850."

This is a clarifying amendment that updates the toll rate tables in WAC 468-270-071 to reflect the two and one-half percent increase adopted in 2011 and does not change the toll rules' effect or otherwise make any substantive changes to the rule.

Reasons Supporting Proposal: To provide clarity. This revision will update the SR 520 Toll rate tables, WAC 468-270-071, to reflect the July 1, 2014, two and one-half percent increase.

Statutory Authority for Adoption: RCW 47.56.785, 47.56.795, 47.56.830, 47.56.850, and 47.56.870.

Statute Being Implemented: RCW 47.56.810, 47.56.850, and 47.56.870.

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

Name of Proponent: Washington state transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Reema Griffith, Olympia, Washington, (360) 705-7070; Implementation and Enforcement: Craig Stone, Seattle, Washington, (206) 464-1220.

April 16, 2014
 Reema Griffith
 Executive Director

AMENDATORY SECTION (Amending WSR 13-12-005, filed 5/23/13, effective 7/1/13)

WAC 468-270-071 What are the toll rates on the SR 520 Bridge? Tables 3 through 7 show the applicable toll rates by vehicle axles, day and time of travel, and method of payment.

TABLE 3
SR 520 BRIDGE
TWO-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	Pay By Plate²	Short-Term Account³
Midnight to 5 a.m.	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 6 a.m.	\$(1.70) <u>1.75</u>	\$(3.25) <u>3.35</u>	\$(1.95) <u>2.00</u>	\$(2.75) <u>2.85</u>
6 a.m. to 7 a.m.	\$(2.95) <u>3.00</u>	\$(4.50) <u>4.60</u>	\$(3.20) <u>3.25</u>	\$(4.00) <u>4.10</u>

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Pay By Plate²	Short-Term Account³
7 a.m. to 9 a.m.	\$((3.70)) <u>3.80</u>	\$((5.25)) <u>5.40</u>	\$((3.95)) <u>4.05</u>	\$((4.75)) <u>4.90</u>
9 a.m. to 10 a.m.	\$((2.95)) <u>3.00</u>	\$((4.50)) <u>4.60</u>	\$((3.20)) <u>3.25</u>	\$((4.00)) <u>4.10</u>
10 a.m. to 2 p.m.	\$((2.35)) <u>2.40</u>	\$((3.95)) <u>4.05</u>	\$((2.60)) <u>2.65</u>	\$((3.45)) <u>3.55</u>
2 p.m. to 3 p.m.	\$((2.95)) <u>3.00</u>	\$((4.50)) <u>4.60</u>	\$((3.20)) <u>3.25</u>	\$((4.00)) <u>4.10</u>
3 p.m. to 6 p.m.	\$((3.70)) <u>3.80</u>	\$((5.25)) <u>5.40</u>	\$((3.95)) <u>4.05</u>	\$((4.75)) <u>4.90</u>
6 p.m. to 7 p.m.	\$((2.95)) <u>3.00</u>	\$((4.50)) <u>4.60</u>	\$((3.20)) <u>3.25</u>	\$((4.00)) <u>4.10</u>
7 p.m. to 9 p.m.	\$((2.35)) <u>2.40</u>	\$((3.95)) <u>4.05</u>	\$((2.60)) <u>2.65</u>	\$((3.45)) <u>3.55</u>
9 p.m. to 11 p.m.	\$((1.70)) <u>1.75</u>	\$((3.25)) <u>3.35</u>	\$((1.95)) <u>2.00</u>	\$((2.75)) <u>2.85</u>
11 p.m. to 11:59 p.m.	\$0.00	\$0.00	\$0.00	\$0.00

Saturdays and Sundays⁴	Good To Go!™ Pass¹	Pay By Mail¹	Pay By Plate²	Short-Term Account³
Midnight to 5 a.m.	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 8 a.m.	\$((1.15)) <u>1.20</u>	\$((2.75)) <u>2.80</u>	\$((1.40)) <u>1.45</u>	\$((2.25)) <u>2.30</u>
8 a.m. to 11 a.m.	\$((1.75)) <u>1.80</u>	\$((3.30)) <u>3.40</u>	\$((2.00)) <u>2.05</u>	\$((2.80)) <u>2.90</u>
11 a.m. to 6 p.m.	\$((2.30)) <u>2.35</u>	\$((3.90)) <u>4.00</u>	\$((2.55)) <u>2.60</u>	\$((3.40)) <u>3.50</u>
6 p.m. to 9 p.m.	\$((1.75)) <u>1.80</u>	\$((3.30)) <u>3.40</u>	\$((2.00)) <u>2.05</u>	\$((2.80)) <u>2.90</u>
9 p.m. to 11 p.m.	\$((1.15)) <u>1.20</u>	\$((2.75)) <u>2.80</u>	\$((1.40)) <u>1.45</u>	\$((2.25)) <u>2.30</u>
11 p.m. to 11:59 p.m.	\$0.00	\$0.00	\$0.00	\$0.00

- Notes:
- ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
 - ²For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
 - ³For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.
 - ⁴The weekend rates will be assessed for the following holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**TABLE 4
SR 520 BRIDGE
THREE-AXLE VEHICLE TOLL RATES**

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Pay By Plate²	Short-Term Account³
Midnight to 5 a.m.	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 6 a.m.	\$((2.50)) <u>2.55</u>	\$((4.90)) <u>5.00</u>	\$((2.75)) <u>2.80</u>	\$((4.40)) <u>4.50</u>
6 a.m. to 7 a.m.	\$((4.40)) <u>4.50</u>	\$((6.80)) <u>6.95</u>	\$((4.65)) <u>4.75</u>	\$((6.30)) <u>6.45</u>

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Pay By Plate²	Short-Term Account³
7 a.m. to 9 a.m.	\$((5.50)) <u>5.65</u>	\$((7.90)) <u>8.10</u>	\$((5.75)) <u>5.90</u>	\$((7.40)) <u>7.60</u>
9 a.m. to 10 a.m.	\$((4.40)) <u>4.50</u>	\$((6.80)) <u>6.95</u>	\$((4.65)) <u>4.75</u>	\$((6.30)) <u>6.45</u>
10 a.m. to 2 p.m.	\$((3.60)) <u>3.70</u>	\$((5.95)) <u>6.10</u>	\$((3.85)) <u>3.95</u>	\$((5.45)) <u>5.60</u>
2 p.m. to 3 p.m.	\$((4.40)) <u>4.50</u>	\$((6.80)) <u>6.95</u>	\$((4.65)) <u>4.75</u>	\$((6.30)) <u>6.45</u>
3 p.m. to 6 p.m.	\$((5.50)) <u>5.65</u>	\$((7.90)) <u>8.10</u>	\$((5.75)) <u>5.90</u>	\$((7.40)) <u>7.60</u>
6 p.m. to 7 p.m.	\$((4.40)) <u>4.50</u>	\$((6.80)) <u>6.95</u>	\$((4.65)) <u>4.75</u>	\$((6.30)) <u>6.45</u>
7 p.m. to 9 p.m.	\$((3.60)) <u>3.70</u>	\$((5.95)) <u>6.10</u>	\$((3.85)) <u>3.95</u>	\$((5.45)) <u>5.60</u>
9 p.m. to 11 p.m.	\$((2.50)) <u>2.55</u>	\$((4.90)) <u>5.00</u>	\$((2.75)) <u>2.80</u>	\$((4.40)) <u>4.50</u>
11 p.m. to 11:59 p.m.	\$0.00	\$0.00	\$0.00	\$0.00

Saturdays and Sundays⁴	Good To Go!™ Pass¹	Pay By Mail¹	Pay By Plate²	Short-Term Account³
Midnight to 5 a.m.	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 8 a.m.	\$((1.75)) <u>1.80</u>	\$((4.10)) <u>4.20</u>	\$((2.00)) <u>2.05</u>	\$((3.60)) <u>3.70</u>
8 a.m. to 11 a.m.	\$((2.60)) <u>2.65</u>	\$((5.00)) <u>5.15</u>	\$((2.85)) <u>2.90</u>	\$((4.50)) <u>4.65</u>
11 a.m. to 6 p.m.	\$((3.45)) <u>3.55</u>	\$((5.85)) <u>6.00</u>	\$((3.70)) <u>3.80</u>	\$((5.35)) <u>5.50</u>
6 p.m. to 9 p.m.	\$((2.60)) <u>2.65</u>	\$((5.00)) <u>5.15</u>	\$((2.85)) <u>2.90</u>	\$((4.50)) <u>4.65</u>
9 p.m. to 11 p.m.	\$((1.75)) <u>1.80</u>	\$((4.10)) <u>4.20</u>	\$((2.00)) <u>2.05</u>	\$((3.60)) <u>3.70</u>
11 p.m. to 11:59 p.m.	\$0.00	\$0.00	\$0.00	\$0.00

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.
⁴The weekend rates will be assessed for the following holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**TABLE 5
SR 520 BRIDGE
FOUR-AXLE VEHICLE TOLL RATES**

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Pay By Plate²	Short-Term Account³
Midnight to 5 a.m.	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 6 a.m.	\$((3.35)) <u>3.45</u>	\$((6.50)) <u>6.65</u>	\$((3.60)) <u>3.70</u>	\$((6.00)) <u>6.15</u>
6 a.m. to 7 a.m.	\$((5.90)) <u>6.05</u>	\$((9.05)) <u>9.30</u>	\$((6.15)) <u>6.30</u>	\$((8.55)) <u>8.80</u>

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Pay By Plate²	Short-Term Account³
7 a.m. to 9 a.m.	\$((7.35)) <u>7.55</u>	\$((10.50)) <u>10.75</u>	\$((7.60)) <u>7.80</u>	\$((10.00)) <u>10.25</u>
9 a.m. to 10 a.m.	\$((5.90)) <u>6.05</u>	\$((9.05)) <u>9.30</u>	\$((6.15)) <u>6.30</u>	\$((8.55)) <u>8.80</u>
10 a.m. to 2 p.m.	\$((4.75)) <u>4.85</u>	\$((7.90)) <u>8.10</u>	\$((5.00)) <u>5.10</u>	\$((7.40)) <u>7.60</u>
2 p.m. to 3 p.m.	\$((5.90)) <u>6.05</u>	\$((9.05)) <u>9.30</u>	\$((6.15)) <u>6.30</u>	\$((8.55)) <u>8.80</u>
3 p.m. to 6 p.m.	\$((7.35)) <u>7.55</u>	\$((10.50)) <u>10.75</u>	\$((7.60)) <u>7.80</u>	\$((10.00)) <u>10.25</u>
6 p.m. to 7 p.m.	\$((5.90)) <u>6.05</u>	\$((9.05)) <u>9.30</u>	\$((6.15)) <u>6.30</u>	\$((8.55)) <u>8.80</u>
7 p.m. to 9 p.m.	\$((4.75)) <u>4.85</u>	\$((7.90)) <u>8.10</u>	\$((5.00)) <u>5.10</u>	\$((7.40)) <u>7.60</u>
9 p.m. to 11 p.m.	\$((3.35)) <u>3.45</u>	\$((6.50)) <u>6.65</u>	\$((3.60)) <u>3.70</u>	\$((6.00)) <u>6.15</u>
11 p.m. to 11:59 p.m.	\$0.00	\$0.00	\$0.00	\$0.00

Saturdays and Sundays⁴	Good To Go!™ Pass¹	Pay By Mail¹	Pay By Plate²	Short-Term Account³
Midnight to 5 a.m.	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 8 a.m.	\$((2.30)) <u>2.35</u>	\$((5.45)) <u>5.60</u>	\$((2.55)) <u>2.60</u>	\$((4.95)) <u>5.10</u>
8 a.m. to 11 a.m.	\$((3.45)) <u>3.55</u>	\$((6.60)) <u>6.75</u>	\$((3.70)) <u>3.80</u>	\$((6.10)) <u>6.25</u>
11 a.m. to 6 p.m.	\$((4.60)) <u>4.70</u>	\$((7.80)) <u>8.00</u>	\$((4.85)) <u>4.95</u>	\$((7.30)) <u>7.50</u>
6 p.m. to 9 p.m.	\$((3.45)) <u>3.55</u>	\$((6.60)) <u>6.75</u>	\$((3.70)) <u>3.80</u>	\$((6.10)) <u>6.25</u>
9 p.m. to 11 p.m.	\$((2.30)) <u>2.35</u>	\$((5.45)) <u>5.60</u>	\$((2.55)) <u>2.60</u>	\$((4.95)) <u>5.10</u>
11 p.m. to 11:59 p.m.	\$0.00	\$0.00	\$0.00	\$0.00

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.
⁴The weekend rates will be assessed for the following holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**TABLE 6
SR 520 BRIDGE
FIVE-AXLE VEHICLE TOLL RATES**

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Pay By Plate²	Short-Term Account³
Midnight to 5 a.m.	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 6 a.m.	\$((4.20)) <u>4.30</u>	\$((8.15)) <u>8.35</u>	\$((4.45)) <u>4.55</u>	\$((7.65)) <u>7.85</u>
6 a.m. to 7 a.m.	\$((7.35)) <u>7.55</u>	\$((11.30)) <u>11.60</u>	\$((7.60)) <u>7.80</u>	\$((10.80)) <u>11.10</u>

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Pay By Plate²	Short-Term Account³
7 a.m. to 9 a.m.	\$((9.20)) <u>9.45</u>	\$((13.15)) <u>13.50</u>	\$((9.45)) <u>9.70</u>	\$((12.65)) <u>13.00</u>
9 a.m. to 10 a.m.	\$((7.35)) <u>7.55</u>	\$((11.30)) <u>11.60</u>	\$((7.60)) <u>7.80</u>	\$((10.80)) <u>11.10</u>
10 a.m. to 2 p.m.	\$((5.95)) <u>6.10</u>	\$((9.90)) <u>10.15</u>	\$((6.20)) <u>6.35</u>	\$((9.40)) <u>9.65</u>
2 p.m. to 3 p.m.	\$((7.35)) <u>7.55</u>	\$((11.30)) <u>11.60</u>	\$((7.60)) <u>7.80</u>	\$((10.80)) <u>11.10</u>
3 p.m. to 6 p.m.	\$((9.20)) <u>9.45</u>	\$((13.15)) <u>13.50</u>	\$((9.45)) <u>9.70</u>	\$((12.65)) <u>13.00</u>
6 p.m. to 7 p.m.	\$((7.35)) <u>7.55</u>	\$((11.30)) <u>11.60</u>	\$((7.60)) <u>7.80</u>	\$((10.80)) <u>11.10</u>
7 p.m. to 9 p.m.	\$((5.95)) <u>6.10</u>	\$((9.90)) <u>10.15</u>	\$((6.20)) <u>6.35</u>	\$((9.40)) <u>9.65</u>
9 p.m. to 11 p.m.	\$((4.20)) <u>4.30</u>	\$((8.15)) <u>8.35</u>	\$((4.45)) <u>4.55</u>	\$((7.65)) <u>7.85</u>
11 p.m. to 11:59 p.m.	\$0.00	\$0.00	\$0.00	\$0.00

Saturdays and Sundays⁴	Good To Go!™ Pass¹	Pay By Mail¹	Pay By Plate²	Short-Term Account³
Midnight to 5 a.m.	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 8 a.m.	\$((2.90)) <u>2.95</u>	\$((6.85)) <u>7.00</u>	\$((3.15)) <u>3.20</u>	\$((6.35)) <u>6.50</u>
8 a.m. to 11 a.m.	\$((4.35)) <u>4.45</u>	\$((8.30)) <u>8.50</u>	\$((4.60)) <u>4.70</u>	\$((7.80)) <u>8.00</u>
11 a.m. to 6 p.m.	\$((5.80)) <u>5.95</u>	\$((9.70)) <u>9.95</u>	\$((6.05)) <u>6.20</u>	\$((9.20)) <u>9.45</u>
6 p.m. to 9 p.m.	\$((4.35)) <u>4.45</u>	\$((8.30)) <u>8.50</u>	\$((4.60)) <u>4.70</u>	\$((7.80)) <u>8.00</u>
9 p.m. to 11 p.m.	\$((2.90)) <u>2.95</u>	\$((6.85)) <u>7.00</u>	\$((3.15)) <u>3.20</u>	\$((6.35)) <u>6.50</u>
11 p.m. to 11:59 p.m.	\$0.00	\$0.00	\$0.00	\$0.00

- Notes:
- ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
 - ²For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
 - ³For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.
 - ⁴The weekend rates will be assessed for the following holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**TABLE 7
SR 520 BRIDGE
SIX-AXLE OR MORE VEHICLE TOLL RATES**

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Pay By Plate²	Short-Term Account³
Midnight to 5 a.m.	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 6 a.m.	\$((5.05)) <u>5.20</u>	\$((9.75)) <u>10.00</u>	\$((5.30)) <u>5.45</u>	\$((9.25)) <u>9.50</u>
6 a.m. to 7 a.m.	\$((8.85)) <u>9.05</u>	\$((13.55)) <u>13.90</u>	\$((9.10)) <u>9.30</u>	\$((13.05)) <u>13.40</u>

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Pay By Plate²	Short-Term Account³
7 a.m. to 9 a.m.	\$((11.05)) <u>11.35</u>	\$((15.75)) <u>16.15</u>	\$((11.30)) <u>11.60</u>	\$((15.25)) <u>15.65</u>
9 a.m. to 10 a.m.	\$((8.85)) <u>9.05</u>	\$((13.55)) <u>13.90</u>	\$((9.10)) <u>9.30</u>	\$((13.05)) <u>13.40</u>
10 a.m. to 2 p.m.	\$((7.10)) <u>7.30</u>	\$((11.80)) <u>12.10</u>	\$((7.35)) <u>7.55</u>	\$((11.30)) <u>11.60</u>
2 p.m. to 3 p.m.	\$((8.85)) <u>9.05</u>	\$((13.55)) <u>13.90</u>	\$((9.10)) <u>9.30</u>	\$((13.05)) <u>13.40</u>
3 p.m. to 6 p.m.	\$((11.05)) <u>11.35</u>	\$((15.75)) <u>16.15</u>	\$((11.30)) <u>11.60</u>	\$((15.25)) <u>15.65</u>
6 p.m. to 7 p.m.	\$((8.85)) <u>9.05</u>	\$((13.55)) <u>13.90</u>	\$((9.10)) <u>9.30</u>	\$((13.05)) <u>13.40</u>
7 p.m. to 9 p.m.	\$((7.10)) <u>7.30</u>	\$((11.80)) <u>12.10</u>	\$((7.35)) <u>7.55</u>	\$((11.30)) <u>11.60</u>
9 p.m. to 11 p.m.	\$((5.05)) <u>5.20</u>	\$((9.75)) <u>10.00</u>	\$((5.30)) <u>5.45</u>	\$((9.25)) <u>9.50</u>
11 p.m. to 11:59 p.m.	\$0.00	\$0.00	\$0.00	\$0.00

Saturdays and Sundays⁴	Good To Go!™ Pass¹	Pay By Mail¹	Pay By Plate²	Short-Term Account³
Midnight to 5 a.m.	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 8 a.m.	\$((3.45)) <u>3.55</u>	\$((8.20)) <u>8.40</u>	\$((3.70)) <u>3.80</u>	\$((7.70)) <u>7.90</u>
8 a.m. to 11 a.m.	\$((5.20)) <u>5.35</u>	\$((9.95)) <u>10.20</u>	\$((5.45)) <u>5.60</u>	\$((9.45)) <u>9.70</u>
11 a.m. to 6 p.m.	\$((6.95)) <u>7.10</u>	\$((11.65)) <u>11.95</u>	\$((7.20)) <u>7.35</u>	\$((11.15)) <u>11.45</u>
6 p.m. to 9 p.m.	\$((5.20)) <u>5.35</u>	\$((9.95)) <u>10.20</u>	\$((5.45)) <u>5.60</u>	\$((9.45)) <u>9.70</u>
9 p.m. to 11 p.m.	\$((3.45)) <u>3.55</u>	\$((8.20)) <u>8.40</u>	\$((3.70)) <u>3.80</u>	\$((7.70)) <u>7.90</u>
11 p.m. to 11:59 p.m.	\$0.00	\$0.00	\$0.00	\$0.00

Notes:

¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.²For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.³For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.⁴The weekend rates will be assessed for the following holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

WSR 14-09-083
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed April 21, 2014, 3:10 p.m.]

Title of Rule and Other Identifying Information: WAC 458-20-268 (Rule 268) Annual surveys for certain tax adjustments, describes how taxpayers must file an annual survey with the department of revenue (department) in order to take certain tax credits, deferrals, and exemptions (referred to as

tax adjustments). The annual surveys contain information about business activities and employment. This rule explains the survey requirements for the various tax adjustments, the requirements to file the annual survey, instructions on filing the annual survey, and information that must be included in the annual survey.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Mark E. Bohe, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, AND RECEIVED BY Monday, June 23, 2014.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This amendment is to add language to Rule 268 relating to ESSB 5882, chapter 13, section 1503, Laws of 2013 2nd sp. sess., requiring an annual survey for the tax exemption for sales and use of machinery and equipment used directly in generating electricity from a qualifying renewable energy source.

Further, subsection (3) of the rule is amended to update the filing requirements. Amended subsection (3)(a) describes the required electronic filing; subsection (3)(b) describes the required paper form used if the department waives the electronic filing requirement upon a showing of good cause; and subsection (3)(c) explains that the department's taxpayer account administration division is now handling these annual survey filings with updated contact information.

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

Reasons Supporting Proposal: To update the rule to include legislative changes from the 2013 2nd sp. sess. and to update filing information for the annual surveys, including new contact information.

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

Statute Being Implemented: RCW 82.32.600 and 82.32.-585.

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

Name of Proponent: Department of revenue, governmental.

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

April 21, 2014
Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-22-087, filed 11/1/10, effective 12/2/10)

WAC 458-20-268 Annual surveys for certain tax adjustments. (1) **Introduction.** ~~((In order))~~ To take certain tax credits, deferrals, and exemptions ~~((the))~~ tax adjustments~~((s))~~, taxpayers must file an annual survey with the

department of revenue ~~((the))~~ department~~((s))~~ containing information about their business activities and employment. This section explains the survey requirements for the various tax adjustments. This section also explains who is required to file an annual survey, how to file a survey, and what information must be included in the survey.

Refer to WAC 458-20-267 (Annual reports for certain tax adjustments) for more information on the annual report requirements for certain tax incentive programs.

This section 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 of the facts and circumstances.

(2) **Who is required to file the annual survey?** The following persons must file a complete annual survey:

(a) A person claiming the business and occupation ~~((the))~~ B&O~~((s))~~ tax credit provided by RCW 82.04.4452 for engaging in qualified research and development. A separate annual survey must be filed for each tax reporting account. If the person has assigned its entire B&O tax credit provided by RCW 82.04.4452 to another person, the assignor is not required to file an annual survey. In such an instance, the assignee of the B&O tax credit is required to file an annual survey. If the person has assigned a portion of its B&O tax credit to another person, both the assignor and the assignee are required to file an annual survey. Refer to WAC 458-20-24003 (Tax incentives for high technology businesses) for more specific information about this tax adjustment.

(b) A recipient of a deferral of taxes under chapter 82.60 RCW for sales and use taxes on an eligible investment project in high unemployment counties, except as provided in (f) of this subsection. Refer to WAC 458-20-24001 (Sales and use tax deferral—Manufacturing and research/development activities in high unemployment counties—Applications filed after June 30, 2010) for more specific information about this tax adjustment.

(c) A recipient of a deferral of taxes under chapter 82.63 RCW for sales and use taxes on an eligible investment project in high technology, except as provided in (g) of this subsection. Refer to WAC 458-20-24003 (Tax incentives for high technology businesses) for more specific information about this tax adjustment.

(d) A recipient of a deferral of taxes under chapter 82.74 RCW for sales and use taxes on eligible investment project in certain agricultural or cold storage facilities, except as provided in (g) of this subsection.

(e) ~~A recipient of a deferral of taxes under chapter 82.75 RCW for sales and use taxes on an eligible investment project in biotechnology products, except as provided in (g) of this subsection.~~

(f) A recipient of a deferral of taxes under chapter 82.82 RCW for sales and use taxes on a corporate headquarters, except as provided in (f) of this subsection (2).

(g) A lessee of an eligible investment project under chapters 82.60, 82.63, 82.74 or 82.82 RCW who receives the economic benefit of the deferral. A lessor, by written contract, must agree to pass the economic benefit of the deferral to its lessee. The economic benefit of the deferral to the lessee must be no less than the amount of tax deferred by the lessor

as evidenced by written documentation of any type, whether by payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee. An applicant who is a lessor of an eligible investment project that received a deferral of taxes under chapters 82.60, 82.63, 82.74 or 82.82 RCW and who meets these requirements is not required to complete and file an annual survey.

(h) A person claiming the B&O tax exemption provided by RCW 82.04.4268 for dairy product manufacturers, RCW 82.04.4269 for seafood product manufacturers, and RCW 82.04.4266 for fruits and vegetable manufacturers.

(i) A person claiming the B&O tax credit provided by RCW 82.04.449 for customized employment training.

(j) A person claiming the B&O tax rate provided by RCW 82.04.260(11) for timber products, unless the person is a "small harvester" as defined in RCW 84.33.035.

(k) A person claiming the B&O tax credit provided by RCW 82.04.4483 for new employees created by businesses engaging in computer software manufacturing or programming in rural counties.

(l) A person claiming the B&O tax credit provided by RCW 82.04.4484 for persons providing information technology help desk services to third parties.

(m) Effective on July 1, 2013, a person claiming the retail sales or use tax exemption provided by RCW 82.08.962 or 82.12.962 for machinery and equipment used directly in generating electricity from a qualifying renewable energy source.

(3) How to file annual surveys.

(a) ~~(Required form. The department has developed a survey form that must be used to complete the annual survey unless a person obtains prior written approval from the department to file the annual survey in an alternative format.~~

~~(b))~~ **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 that person's department "My Account." To file and submit electronically, go to <http://dor.wa.gov/TaxIncentiveReporting>.

(b) Required paper form. If the department waives the electronic filing requirement for a person upon a showing of good cause, then that person must use the annual survey 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 survey from the department's web site (www.dor.wa.gov). It may also be obtained from the department's district offices, by telephoning the telephone information center (800-647-7706), or by contacting the department's ~~((special programs))~~ taxpayer account administration division at:

Attn: Local Finance Team
Department of Revenue
((Special Programs Division))
Taxpayer Account Administration
Post Office Box ((47477)) 47476

Olympia, WA 98504-((7477)) 7476
((Fax: 360-586-2163))

(d) Due date.

(i) **For surveys due in 2011 or later.** For persons claiming any B&O tax credit, tax exemption, or tax rate listed under subsection (2) of this section, the survey must be filed or postmarked by April 30th following any calendar year in which the person becomes eligible to claim the tax credit, tax exemption, or tax rate.

For recipients of any sales tax deferrals listed under subsection (2) of this section or for lessees required to file the annual survey as provided in subsection (2)(g) of this section, the survey must be filed or postmarked by April 30th of the year following the calendar year in which an eligible investment project is certified by the department as being operationally complete and each of the seven succeeding calendar years.

(ii) **For surveys due ~~((in 2010 or earlier))~~ prior to 2011.** For persons claiming any B&O tax credit, tax exemption, or tax rate listed under subsection (2) of this section, the survey must be filed or postmarked by March 31st following any calendar year in which the tax credit, tax exemption, or tax rate is claimed.

For recipients of any sales tax deferrals listed under subsection (2) of this section or for lessees required to file the annual survey as provided in subsection (2)(g) of this section, the survey must be filed or postmarked by March 31st of the year following the calendar year in which an eligible investment project is certified by the department as being operationally complete and each of the seven succeeding calendar years.

(iii) **Due date extensions.** The department may extend the due date for timely filing annual surveys as provided in subsection (11) of this section.

(e) **Special requirement for person 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 annual survey must include the information described in subsection (4) of this section for the two calendar years immediately preceding the due date of the survey.

(f) Examples.

(i) Advanced Computing, Inc. qualifies for the B&O tax credit provided by RCW 82.04.4452 and applied it against taxes due in calendar year 2010. Advanced Computing, Inc. filed an annual survey in March 2010 for credit claimed under RCW 82.04.4452 in 2009. Advanced Computing, Inc. must electronically file an annual survey with the department by April 30, 2011.

(ii) In ~~((2009))~~ 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 department certified the investment project ((was certified by the department)) as being operationally complete in ((2010)) 2012. Biotechnology, Inc. filed an annual survey ~~((in March 2010))~~ on April 30, 2013 for credit claimed under RCW 82.04.4452 in ~~((2009-))~~ 2012 for the sales and use tax deferral under chapter 82.63 RCW. ~~((Biotechnology, Inc. must file its annual survey with the department for the 2010 calendar year by April 30, 2011-))~~ A

survey is due from Biotechnology, Inc. by April 30th each following year, with its last survey due April 30, ~~((2018))~~ 2020.

(iii) Advanced Materials, Inc. has been conducting manufacturing activities in a building leased from Property Management Services since ~~((2009))~~ 2014. Property Management Services is a recipient of a deferral under chapter 82.60 RCW, and the department certified the building ~~((was certified by the department))~~ as operationally complete in ~~((2009))~~ 2014. In order to pass on the entire economic benefit of the deferral, Property Management Services charges Advanced Materials, Inc. \$5,000 less in rent each year. Advanced Materials, Inc. is a first-time filer of annual surveys. Advanced Materials, Inc. must file its annual survey with the department covering the ~~((2008 and 2009))~~ 2014 calendar year~~((s))~~ by ~~((March 31, 2010))~~ April 30, 2015, assuming all the requirements of subsection (2)(f) of this section are met. A survey is due from Advanced Materials, Inc. by April 30th each following year, with its last survey due by April 30, ~~((2017))~~ 2022.

(iv) Fruit Canning, Inc. claims the B&O tax exemption provided in RCW 82.04.4266 for the canning of fruit in 2010. Fruit Canning, Inc. is a first-time filer of annual surveys. Fruit Canning, Inc. must file an annual survey with the department by April 30, 2011, covering calendar years 2009 and 2010. If Fruit Canning, Inc. claims the B&O tax exemption during subsequent years, it must file an annual survey for each of those years by April 30th of each following year.

(4) What information does the annual survey require? The annual survey requests information about 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 persons 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 persons 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.

(d) The following information for employment positions in Washington:

(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 section 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 adjustments.

(i) The department is required to report to the ~~((state))~~ legislature summary descriptive statistics by category and the effectiveness of certain tax adjustments, 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 person's use of the sales and use tax exemption for machinery and equipment used in manufacturing provided in RCW 82.08.02565 and 82.12.02565; 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) 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 separation from employment such as layoffs or reductions in force. Vacant positions are not included in total employment.

(b) **Examples.** Assume these facts for the following examples. National Construction Equipment (NCE) manufactures bulldozers, cranes, and other earth-moving equipment in Ridgefield, WA 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, WA.

(i) NCE employs two hundred workers in Ridgefield manufacturing construction cranes. NCE employs two hundred fifty workers in Kennewick manufacturing bulldozers and other earth-moving equipment. Although NCE's facility in Ridgefield does not qualify for any tax adjustments, NCE's annual survey must report a total of four hundred fifty employment positions. The annual survey includes all Washington state employment positions, which includes employment positions engaged in activities that do not qualify for tax adjustments.

(ii) On November 20th, NCE lays off seventy-five workers. NCE notifies ten of the laid off workers on December 20th that they will be rehired and begin work on January 2nd. The seventy-five employment positions are excluded from NCE's annual survey, because a separation of employment

has occurred. Although NCE intends to rehire ten employees, those employment positions are vacant on December 31st.

(iii) On December 31st, NCE has one hundred 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) 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 one intern employed on December 31st.

(6) When is an employment position located in Washington state? The annual survey seeks information about Washington employment positions only. 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) **Examples.** Assume these facts for the following examples. Acme Computer, Inc. develops computer software and claims the B&O tax credit provided by RCW 82.04.4452 for its research and development spending. Acme Computer, headquartered in California, has employees working at four locations in Washington state. Acme Computer also has offices in Oregon and Texas.

(i) 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 in Washington state that Acme Computer reports on the annual survey. Ed performs services both within and without the state, but the services performed without the state are incidental to the employee services within Washington state.

(ii) 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 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) 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 (~~(must)~~) should not be included in the number of total employment 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) 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 in Washington state that Acme Computer reports on the annual survey. Roberta performs services both within and without the state and the service is not directed or controlled in this state, but 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 consecutive weeks or twelve consecutive months, excluding any leaves of absence.

(i) A full-time position is a position that requires the employee to work, excluding overtime hours, thirty-five hours per week for fifty-two consecutive weeks, four hundred fifty-five hours a quarter for four consecutive quarters, or one thousand eight hundred twenty hours during a period of twelve consecutive months.

(ii) A part-time position is a position in which the employee may work less than the hours required for a full-time position.

(iii) 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 required to complete the survey, a temporary position is a position intended to be filled for a period of less than fifty-two consecutive weeks or twelve 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 section.

(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 section. 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) **Examples.** Assume these facts for the following examples. Worldwide Materials, Inc. is a developer of materials used in manufacturing electronic devices at a facility located in Everett, WA. Worldwide Materials claims the B&O tax credit provided by RCW 82.04.4452 for its research and development spending. Worldwide Materials has one hundred employees.

(i) On December 31st, Worldwide Materials has five employees on workers' compensation leave. At the time of the work-related injuries, the employees worked forty hours a week and were expected to work for fifty-two 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 consecutive weeks.

(ii) 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 consecutive months, Worldwide Materials must report these positions as two full-time positions.

(iii) 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 weeks a year. Because the employees work less than thirty-five hours a week, the employment positions are reported as part-time positions.

(iv) On November 1st, a Worldwide Materials engineer begins twelve weeks of family and medical leave. The engineer was expected to work forty hours a week for fifty-two 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) 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 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 hours a week. Although the

three research employees may work fewer hours, they are receiving comparable wages as other research employees working forty 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) Worldwide Materials has a large order to fulfill and hires ten 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 section.

(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) **Examples.** Assume these facts for the following examples. Medical Resource, Inc. is a pharmaceutical manufacturer located in Spokane, WA. Medical Resource, Inc. claims the B&O tax credit provided by RCW 82.04.4452 for its research and development spending. It employs two hundred full-time employees and fifty part-time employees. Medical Resource, Inc. also hires a staffing company to furnish seventy-five workers.

(i) Medical Resource, Inc. 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 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, Inc. must report two hundred employ-

ees as having employer-provided medical benefits, because this is the number of employees enrolled in the health plans it offers.

(ii) Medical Resource, Inc. does not offer medical benefits to the employees of the staffing company. However, twenty-five of these workers have enrolled in a health plan through the staffing company. Medical Resource, Inc. must report these twenty-five employment positions as having employer-provided medical benefits.

(iii) Medical Resource, Inc. 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. No action, other than Medical Resource, Inc. employment, is required by employees 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, Inc. must report two hundred and fifty employment positions as having dental benefits, because this is the number of employees enrolled in this dental plan.

(iv) Medical Resource, Inc. offers a 401(k) Plan to its full-time and part-time employees after six months of employment. Medical Resource, Inc. makes matching contributions to an employee's 401(k) Plan after two years of employment. On December 31st, two hundred and twenty-five 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, Inc. must report two hundred employment positions as having employer-provided retirement benefits, because this is the number of employees enrolled in the 401(k) Plan.

(v) Medical Resource, Inc. 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, Inc. cannot report that these fifty 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, Inc.'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 adjustment taken is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request, except as provided in (b) and (c) of this subsection. More confidentiality provisions in regards to the annual surveys are as follows:

(a) **Failure to timely file a complete annual survey subject to disclosure.** If a taxpayer fails to file a complete annual survey as required by law, then the fact that the taxpayer (~~fails~~) failed to timely file a complete annual survey and 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 upon request.

(b) **Amount reported in annual survey is different from the amount claimed or allowed.** If a taxpayer reports a tax adjustment 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 adjustment is less than ten thousand dollars.** If the tax adjustment is less than ten thousand dollars during the period covered by the annual survey, then the taxpayer may request the department to treat the amount of the tax adjustment as confidential under RCW 82.32.330. The request must be made for each survey in writing, dated and signed by the owner, corporate officer, partner, guardian, executor, receiver, administrator, or trustee of the business, and filed with the department's ~~((special programs))~~ taxpayer account administration division at the address provided above in subsection (3) of this section.

(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 section 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 section.

Responses such as "varied," "various," or "please contact for information" are not good faith responses to a question.

(b) If a person claims a tax adjustment that requires an annual survey under this section but fails to submit a complete annual survey by the due date of the survey or any extension under RCW 82.32.590, the amount of the tax adjustment claimed for the previous calendar year becomes immediately due. If the tax adjustment is a deferral of tax, twelve and one-half 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. Interest, but not penalties, will be assessed on these amounts. The interest will be assessed at the rate provided for delinquent taxes provided for in RCW 82.32.050, retroactively to the date the tax adjustment was claimed, and accrues until the taxes for which the tax adjustment was claimed are repaid.

(c) **Extension for circumstances beyond the control of the taxpayer.** If the department finds that 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 days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this section. The department may grant additional extensions as it deems proper.

In ~~((making a determination))~~ 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 ~~((adopted by the department))~~ in WAC 458-20-228 for the waiver or cancellation of penalties when the underpayment of untimely payment of any tax was due to circumstances beyond the control of the taxpayer.

(d) **One-time only extension.** A taxpayer who fails to file an annual survey required under this section 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 respective due dates, beginning with annual reports and surveys due in the calendar year 2010.

(ii) ~~((A#))~~ The extension is for ninety days from the original due date of the annual survey.

(iii) No taxpayer may be granted more than one ninety-day extension.

WSR 14-09-098

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed April 22, 2014, 11:47 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-210 (Rule 210) Sales of tangible personal property for farming—Sales of agricultural products by farmers, this rule explains the application of business and occupation, retail sales, and use taxes to the sales of tangible personal property to farmers. It also explains the application of taxes to the sale of agricultural products by farmers.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Gayle Carlson, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail GayleC@dor.wa.gov, AND RECEIVED BY June 23, 2014.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to make the following changes to WAC 458-20-210:

- Update language pertaining to taxability of:
 - Manufacturing fresh fruit and vegetables.
 - Manufacturing dairy products.
 - Nutrient management.
- Delete language pertaining to B&O tax credit for alternatives to field burning as credit expired January 1, 2006.
- Replace resale certificate language with reseller permit language.
- Add exemption information from legislation passed through SSB 6333, chapter XX [97], Laws of 2014.

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

Reasons Supporting Proposal: Legislation.

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

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Gayle Carlson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1576; Implementation: Dylan Waits, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1583; and Enforcement: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

April 22, 2014
Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-18-024, filed 8/25/03, effective 9/25/03)

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 which 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 the following rules for additional information:

~~((a))~~ (i) WAC 458-20-178, Use tax;

~~((ii))~~ (ii) WAC 458-20-209 ~~((f))~~, Farming for hire and horticultural services ~~((provided to))~~ performed for farmers~~((g))~~;

~~((b))~~ (iii) WAC 458-20-222 ~~((f))~~, Veterinarians~~((h))~~;

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

~~((d))~~ (v) WAC 458-20-262 ~~((f))~~, Retail sales and use tax exemptions for agricultural employee housing~~((j))~~.

(2) **Who is a farmer?** A "farmer" is any person engaged in the business of growing, raising, or producing, upon the person's own lands or ~~((upon))~~ on the lands in which the person has a present right of possession, any agricultural product to be sold. 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 ~~((and chapter 118, Laws of 2001))~~.

(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; plantation Christmas trees; short-rotation hardwoods as defined in RCW 84.33.035 ~~((as of July 22, 2001))~~; 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. An "agricultural product" does not include animals defined under RCW 16.70.020 as "pet animals." RCW 82.04.213 ~~((and chapter 118, Laws of 2001))~~.

(4) **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. ~~((Readers should))~~ Refer to subsection (6) of this rule for information about specific sales tax exemptions available for sales to farmers.

(a) **Documenting wholesale sales.** A seller must ~~((obtain a resale certificate from the buyer to document the wholesale nature of any transaction. (Refer to WAC 458-20-102 for detailed information about resale certificates.))~~ take from the buyer a copy of the buyer's reseller permit, or a "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 ~~((Combined))~~ excise tax return~~((s))~~ 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 ~~((Combined))~~ 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 (see WAC 458-20-101), the farmer must report the tax on a "Consumer Use Tax Return" and remit the appropriate tax to the department. Refer to WAC 458-20-178 (Use tax) for detailed information regarding use tax.

The Consumer Use Tax Return ~~((can))~~ may be obtained by calling the department's telephone information center at 1-800-647-7706. The return may also be obtained from the department's web site at: ~~((http://))~~ 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, or 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, 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.

(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, 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.** ~~((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) **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 ~~((resale certificate))~~ copy of her reseller permit, or Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. Retail sales tax ~~((does apply))~~ applies to her purchases of poultry feed, as the poultry ~~((are))~~ 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 pur-

chase these pesticides and fertilizers at wholesale, provided WG gives the seller a ~~((resale certificate))~~ copy of their reseller permit, or 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 ~~((are obligated to))~~ must pay for the seed whether or not the crop meets the specified standard. The transfer of the possession of the seed to ~~((the))~~ each farmer~~((s))~~ is a wholesale sale, provided Seed Co. obtains a ~~((resale certificate))~~ copy of their reseller permit, or Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions from ~~((the))~~ that farmer~~((s))~~.

(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 (4)(i) and (6) 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 ~~((and not able))~~ that 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 ~~((resale certificate))~~ copy of its reseller permit for any part of the purchase. If the buyer principally resells the articles, the buyer may ~~((issue a resale certificate))~~ provide a copy of its reseller permit for the entire purchase. For the purposes of this subsection, the term "principally" means greater than fifty percent.

If a buyer makes a purchase for dual purposes and does not give a ~~((resale certificate))~~ 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. Refer to WAC 458-20-102 (Reseller permits) for additional information regarding pur-

chases for dual purposes and the "taxable amount for tax paid at source" deduction.

(i) **Potential deferred sales tax liability.** If the buyer gives a ~~((resale certificate))~~ 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 subsection (4)(b) of this rule ~~((and))~~, 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 fifty 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 ~~((issue a resale certificate))~~ provide a copy of their reseller permit, or 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 which 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. ~~((Information regarding the taxability of fruit packing is contained in WAC 458-20-214.))~~ Refer to WAC 458-20-214 (Cooperative marketing associations and independent dealers acting as agents of others with respect to the sale of fruit and produce) for more information regarding the taxability of fruit packing.

(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 ~~((or))~~ and use ((tax)) taxes provided that all requirements for the exemptions are met. RCW 82.08.02565 and 82.12.02565. ~~((This exemption is))~~ 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. Refer to WAC 458-20-13601 (Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment) for ~~((detailed))~~ more information regarding the M&E exemption.

~~((See subsection (5)(b) of this rule for an example illustrating a farmer using agricultural products that the farmer has grown as an ingredient in a manufacturing process.))~~

(5) **Sales by farmers.** Farmers are not subject to B&O tax on wholesale sales of agricultural products. RCW 82.04.330. Farmers who manufacture products using agricultural products that they have grown, raised, or produced should refer to subsection (5)(b) of this rule 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 ~~((upon))~~ on the seller's own land or ~~((upon))~~ 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 period is under a certain amount. ~~((For detailed information about this credit,))~~ Refer to WAC 458-20-104 (Small business tax relief based on income of business) for more information about this B&O tax credit.

(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 ~~((and chapter 18, Laws of 2001))~~. 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. Also, 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 detailed information about the litter tax,))~~ Refer to chapter 82.19 RCW and WAC 458-20-243 (Litter tax) for more information about the litter tax.

~~((For example,))~~ **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 ~~((makes retail sales of))~~ 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. ~~((See))~~ Refer to subsection (6)(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. ~~((For detailed information regarding the manufacturing B&O tax and the MATC,)) 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.~~

~~((For example, WG Vineyards (WG) produces wine from grapes that it grows in its vineyards located within this state. WG makes wholesale sales of its wine to customers both within and outside of this state. WG is subject to manufacturing B&O tax on the value of the wine it produces. WG is also subject to wholesaling B&O tax on wholesale sales of wine delivered to buyers within this state, and WG is entitled to a multiple activities tax credit. In addition, WG is subject to litter tax on the value of wine sold within this state. (See subsection (5)(a) of this rule for information on the litter tax.))~~

(i) ~~((Special B&O tax rate for))~~ **Manufacturing fresh fruits and vegetables.** ~~((A special lower B&O tax rate is provided by RCW 82.04.260))~~ RCW 82.04.4266 provides a B&O tax exemption to persons manufacturing fresh fruits or vegetables by canning, preserving, freezing, processing, or dehydrating ~~((Thus, farmers and other persons manufacturing fresh fruits and vegetables using these processes should report their manufacturing activity under the manufacturing fresh fruits and vegetables B&O tax classification))~~ fresh fruits or vegetables.

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 ~~((subject to the lower B&O tax rate provided by RCW 82.04.260))~~ 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 survey with the department under RCW 82.32.-585.

(B) RCW 82.04.4266 is scheduled to expire July 1, 2015, at which time the preferential B&O tax rate under RCW 82.04.260 will apply.

(ii) ~~((Special B&O tax rate for))~~ **Manufacturing dairy products.** ~~((Effective September 20, 2001, a special lower B&O tax rate is provided by RCW 82.04.260))~~ RCW 82.04.-4268 provides a B&O tax exemption to persons manufacturing dairy products that, as of ~~((that date))~~ 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. ~~((Thus, farmers and other persons manufacturing qualifying dairy products should report their manufacturing activity under the manufacturing dairy products B&O tax classification. This special rate does not apply, however, when dairy products are used merely as an ingredient or component of a manufactured product that is not a dairy product (e.g., milk-based soups or pizza).~~

The special B&O tax rate provided by RCW 82.04.260))

The exemption also applies to persons selling manufactured dairy products to purchasers who transport the goods ~~((outside of this))~~ out of Washington state in the ordinary course of business. Unlike the ~~((special B&O tax rate))~~ exemption for certain wholesale sales of fresh fruits or vegetables (see subsection (5)(b)(i) of this rule), the ~~((special B&O tax rate))~~ exemption for sales of qualifying dairy products does not require that the sales be made ~~((by the person who manufactured the dairy products nor that they be sales))~~ 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 survey with the department under RCW 82.32.585.

(B) RCW 82.04.4268 is scheduled to expire July 1, 2015, 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 seventy percent dairy products measured by weight or volume.

(D) Effective July 1, 2023, the preferential B&O tax rate will no longer apply to sales of dairy products, where a dairy product is used by the purchaser as an ingredient or component in the manufacturing of a dairy product in Washington.

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

~~((For example,))~~ **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 ~~((are held))~~ for at least sixty days while they ~~((are))~~ were prepared for market. However, the feedlot operator is subject to wholesaling B&O tax on wholesale sales of cattle held for fewer than sixty days prior to the sale.

(d) **B&O tax exemptions available to farmers.** In addition to the exemption for wholesale sales of agricultural products, ~~((there are))~~ several other B&O tax exemptions available to farmers ~~((which))~~ that 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.

~~((For example,))~~ **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 then 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 (~~(are held by the farmer)~~) for at least sixty days. Farmers are not considered to be engaging in the activity of raising cattle for sale unless the cattle are held for at least sixty days while the cattle are prepared for market. (See subsection (5)(c) of this rule.)

(ii) ~~((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.~~

(iii) **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.

~~((e) **B&O tax credit to encourage alternatives to field burning.** Persons who qualify for a sales or use tax exemption under RCW 82.08.840 or 82.12.840 (machinery, equipment, or structures that reduce emissions from field burning) also qualify for a B&O tax credit. RCW 82.04.4459. The amount of the credit is equal to fifty percent of the amount of costs expended for constructing structures or acquiring machinery and equipment for which an exemption was taken under RCW 82.08.840 or 82.12.840. (See subsection (6)(l) of this rule for information about the sales and use tax exemptions provided by RCW 82.08.840 and 82.12.840.) No application is necessary for the credit. Persons taking the credit must keep records necessary for the department to verify eligibility for the credit. This credit is subject to the following limitations:~~

~~(i) No credit may be taken in excess of the amount of B&O tax that would otherwise be due;~~

~~(ii) Credit may not be carried over to subsequent calendar years;~~

~~(iii) The credit must be claimed by the due date of the last tax return for the calendar year in which the payment is made;~~

~~(iv) Any unused credit expires;~~

~~(v) Refunds will not be given in place of credits;~~

~~(vi) The credit may not be claimed for expenditures that occurred before March 22, 2000; and~~

~~(vii) The credit expires on January 1, 2006.)~~ (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.

(6) **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. ~~((Readers should))~~

Refer to subsection (7) of this rule for additional information regarding exemption certificates.

~~((This subsection contains a number of examples which illustrate these exemptions. The examples 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 of the facts and circumstances.))~~

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

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

(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 (~~(is exempt)~~) from retail sales and use taxes. ~~((RCW 82.08.0296 and 82.12.0296.))~~

(d) **Food products.** RCW 82.08.0293 and 82.12.0293 exempt the sale and use of food products for human consumption (~~(are exempt)~~) from retail sales and use taxes. ~~((RCW 82.08.0293 and 82.12.0293. This))~~ These exemptions also (~~(applies))~~ apply to the sale and/or use of livestock for personal consumption as food. ~~((For detailed))~~ Refer to WAC 458-20-244 (Food and food products) for more information about food products that qualify for this exemption (~~(refer to 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 (~~(do not apply to))~~ tangible personal property, including household goods, which (~~(have))~~ has been used in conducting a farm activity, if the property (~~(was))~~ is purchased from a farmer at an auction sale held or conducted by an auctioneer (~~(upon))~~ on a farm. ~~((RCW 82.08.0257 and 82.12.0258.))~~

(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 (~~(is exempt from retail sales and use taxes. RCW 82.08.0267 and 82.12.0262)).~~

~~((For example,))~~ **Example 8.** A poultry hatchery produces poultry from eggs. The resulting poultry are sold to egg producers. These sales are exempt from retail sales (~~(taxes))~~ tax under RCW 82.08.0267. (They are also exempt from B&O tax. See subsection (5)(d)(ii) of this rule.)

(g) **Leases of irrigation equipment.** ~~((Retail sales and use taxes do not apply to))~~ 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; and

(iv) The irrigation equipment is leased to the lessee as an incidental part of the lease of the underlying land and is used solely on such land. ~~((RCW 82.08.0288 and 82.12.0283.))~~

(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 (~~are exempt~~) from retail sales and use taxes. (~~RCW 82.08.0259 and 82.12.0261.~~

~~For example,)~~

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. (~~At of~~) John's sales of beef and dairy (~~and beef~~) 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 this subsection (6)(d) of this rule, or the exemption for sales of livestock for breeding purposes (~~which is~~) described (~~immediately below~~) in this subsection (6)(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 (~~is exempt~~) from retail sales and use taxes. (~~RCW 82.08.0259 and 82.12.0261. This exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.~~

~~For example,)~~

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 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 (~~do not apply to~~) the sale to and use of bedding materials (~~used~~) by farmers to accumulate and facilitate the removal of chicken manure provided that the farmer is raising chickens that are sold as agricultural products. (~~RCW 82.08.920 and 82.12.920. The exemption became effective September 20, 2001, and is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.~~)

(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 (~~the chickens~~) 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. The (~~law~~) 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 (~~do not apply to~~) the sale to and use of propane or natural gas (~~used~~) 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. (~~RCW 82.08.910 and 82.12.910. The exemption became effective September 20, 2001, and is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.~~)

(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. The (~~law~~) 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.

(l) **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 (7) of this rule. 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. Effective October 1, 2013, RCW 82.08.220 and 82.12.220 exempt from retail sales and use taxes sales to and the use by farmers of propane or natural gas that is 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 an exemption certificate for its records. See subsection (7) of this rule. 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) Machinery, equipment, and structures used to reduce emissions from field burning. Prior to January 1, 2011, RCW 82.08.840 and 82.12.840 (~~provide a~~) provided retail sales and use tax exemptions for certain property and services used to reduce field burning of cereal grains and field and turf grass grown for seed, or to reduce air emissions resulting from such field burning. The (~~retail sales tax~~) exemptions (~~applies~~) applied to sales and uses of machinery and equipment, and (~~to services rendered in respect to constructing structures, installing, constructing, repairing, cleaning, decorating, altering, or improving of structures or eligible machinery and equipment, and to~~) sales and uses of tangible personal property that (~~becomes~~) became an ingredient or component of eligible structures or eligible machinery and equipment, if all of the requirements for the exemption listed below in this subsection (~~are~~) were met. The sales tax exemption (~~is effective March 22, 2000.~~) also applied to services rendered in respect to constructing structures, installing, constructing, repairing, cleaning, decorating, altering, or improving of structures or eligible machinery and equipment, and the use tax exemption (~~applies~~) also applied to the (~~use of machinery and equipment, and of tangible personal property that becomes an ingredient or component of eligible machinery and equipment, if all of the requirements for the exemption listed below in this subsection are met. This use tax exemption is also effective March 22, 2000. The use tax exemption also applies to the~~) use of services rendered in respect to installing, repairing, cleaning, altering, or improving of eligible machinery and equipment, if all of the requirements for the exemption (~~are~~) were met. (~~This component of the use tax exemption is effective June 1, 2002.~~)

~~These exemptions expire January 1, 2006.~~)

Persons taking an exemption must keep records necessary for the department to verify eligibility for the exemption. Persons who have taken an exemption and then discover that they do not meet the requirements for the exemption are subject to a deferred sales tax or use tax liability. (~~For~~) Refer to subsection (4)(b) of this rule for additional information about deferred sales tax and use tax (~~refer to subsection (4)(b) of this rule.~~).

(i) Majority use requirement. To qualify for an exemption, the machinery, equipment, or structure must be used more than half (50%) of the time to:

(A) (~~For gathering, densifying, processing, handling, storing, transporting, or incorporating~~) Gather, densify, process, handle, store, transport, or incorporate straw or straw-based products that results in a reduction in field burning of cereal grains and field and turf grass grown for seed; or

(B) (~~To~~) Decrease air emissions resulting from field burning of cereal grains and field and turf grass grown for seed.

(ii) (~~Exemption certificates.~~ For the sales tax exemption, the buyer must provide the seller with an exemption certificate in a form and manner prescribed by the department.

(iii)) **Examples.** The following examples illustrate this exemption:

(A) **Example 14.** Farmer cultivates turf grass. Farmer purchases spray equipment. As an alternative to field burning, the fields in which the spray equipment is used must be sprayed five times instead of twice. If the use of the spray equipment meets the requirement that the equipment be used more than half of the time to decrease air emissions resulting from field burning (~~therefore,~~) the purchase of the spray equipment is exempt.

(B) **Example 15.** Farmer, who performs custom baling, purchases a new baler for use in baling hay and straw. The purchase of the baler is exempt if it will be used more than half of the time to bale straw, which results in a reduction in field burning.

(C) **Example 16.** Farmer purchases a new combine for use in harvesting wheat. In addition to cutting the stalks, separating the kernels from the chaff, and unloading the kernels, the combine also chops the residual chaff before discharging it onto the field. While the need for field burning may decrease because the smaller residue more readily decomposes, the purchase of the combine does not qualify for the exemption. The combine is not used more than half of the time to decrease air emissions from field burning.

~~(m) Dairy~~) **(n) Nutrient management equipment and facilities.** RCW 82.08.890 and 82.12.890 provide (~~a~~) retail sales and use tax exemptions for (~~persons operating dairy nutrient management equipment and facilities. The retail sales tax exemption applies to sales to eligible persons of services rendered in respect to operating, repairing, cleaning, altering, or improving of dairy nutrient management equipment and facilities, or to sales of tangible personal property that becomes an ingredient or component of the equipment and facilities. The sales tax exemption became effective July 13, 2001. The use tax exemption applies to the use by an eligible person of tangible personal property that becomes an ingredient or component of dairy nutrient management equipment and facilities. This use tax exemption also became effective July 13, 2001. The use tax exemption also applies to the use of labor and services rendered in respect to repairing, cleaning, altering, or improving eligible tangible personal property. This component of the use tax exemption is effective June 1, 2002. The sales and use tax exemption applies to sales made or to the use of tangible personal property or labor and services made after the dairy nutrient management plan is certified under chapter 90.64 RCW.~~)

(i) These exemptions are available only if all of the following requirements are met:

(A) The equipment and facilities must be used exclusively for activities necessary to maintain a dairy nutrient management plan as required under chapter 90.64 RCW; and

(B) The buyer provides the seller with an exemption certificate in a form and manner prescribed by the department which must be retained in the seller's files. The department will provide an exemption certificate to an eligible person upon application. A sample letter for use in applying for an exemption certificate can be obtained from the department as

provided in subsection (7) of this rule)) 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 (6)(n)(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 possesses an exemption certificate under RCW 82.08.855.

~~((ii))~~ (vi) **Definitions. For the purpose(s of this)) 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 forty-five days or more in any twelve-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 ((by December 31, 2003)), as required by chapter 90.64 RCW((-

(B) "Dairy nutrient management equipment and facilities" means machinery, equipment, and structures used exclusively in the handling and treatment of dairy manure, such as aerators, agitators, alley scrapers, augers, dams, gutter cleaners, loaders, lagoons, pipes, pumps, separators, and tanks. The term also includes tangible personal property that becomes an ingredient or component of the equipment and facilities, including repair and replacement parts:

~~((ii))~~; 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 resource conservation service field office technical guide standards and who possesses an exemption certificate 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 the dry storage of manure, including roofed stacking facilities.

(o) **Anaerobic digesters.** 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 fifty 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.** The department must provide an exemption certificate to an eligible person when an application is made. 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. A buyer must provide the seller with an exemption certificate, and the seller must retain a copy of the certificate for its files.

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

~~((This exemption became effective August 1, 2001, and is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.))~~

(i) ~~((What))~~ **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. ~~((This is the case even if these products are approved by the United States Environmental Protection Agency or any other governmental agency.))~~

(iv) **What type of animal must the pharmaceutical be administered to?** As ~~((noted))~~ explained above, the exemptions ~~((is))~~ are limited to the sale ~~((and/or))~~ 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.** ~~((The animal pharmaceutical exemption is available in the following non-exclusive list of examples because the))~~ 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.** ~~((The animal pharmaceutical exemption is not available in))~~ 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 ~~((in the future))~~ 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) ~~((do))~~ 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.

(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 this subsection (6)(q) of this rule.

(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. See the department's web site for the "Application for Exemption Certificate for Replacement Parts and/or Services for Farm Machinery and Equipment."

(A) Persons claiming the exemptions must keep records necessary for the department to verify eligibility. Eligible farmers must provide sellers with their department issued exemption certificate.

(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.

(7) Sales tax exemption certificates. As indicated in subsection (6) 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. Except as provided below, for those exemptions that require the buyer to provide the seller with an exemption certificate at the time of sale, farmers may use the department's ("~~Farmers' Retail Sales Tax Exemption~~

~~Certificate" or another certificate with substantially the same information as it relates to the claimed exemption))~~ Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. Refer to the department's web site 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.

~~((The Farmers' Retail Sales Tax Exemption Certificate cannot be used for the dairy nutrient management exemption discussed in subsection (6)(m) of this rule. However, as noted above, the department will provide eligible persons, upon application, with an exemption certificate for this exemption. The Farmers' Retail Sales Tax Exemption Certificate and a sample letter for use in applying for the Dairy Nutrient Management Exemption Certificate can be obtained by calling the department's taxpayer information center at 1-800-647-7706. These documents can also be downloaded from the department's web site at <http://dor.wa.gov/>.)~~ Effective June 12, 2014, chapter 97, Laws of 2014, § 602 removed the requirement for the department to issue certificates for RCW 82.08.-890 when qualified farmers applied for them. Sellers making tax-exempt sales of livestock nutrient management equipment may obtain a Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions certificate from the buyer in lieu of the department issued certificate. A seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement in lieu of the exemption certificate. The department is still required to issue an exemption certificate to eligible persons for exemptions under RCW 82.08.900.

WSR 14-09-123

EXPEDITED RULES

DEPARTMENT OF

ENTERPRISE SERVICES

[Filed April 23, 2014, 10:46 a.m.]

Title of Rule and Other Identifying Information: Chapter 200-300 WAC, Office of state procurement and chapter 200-310 WAC, Relationship and procedures between division of purchasing and state agencies.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Jack Zeigler, Department

of Enterprise Services, 1500 Jefferson Street S.E., Olympia, WA 98504-1401, AND RECEIVED BY June 24, 2014.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Under HB [2SHB] 2452 (2012), laws relating to the procurement of goods and services were reorganized and recodified into a new chapter in Title 39 RCW. The processes for procurement of personal services contracts, or services, were combined with the processes for procurement of goods.

As a direct result of the passage of HB [2SHB] 2452, sections of chapters 200-300 and 200-310 WAC are invalid or are no longer relevant. This rule change consolidates and aligns the remaining sections with current law and procurement policy.

Reasons Supporting Proposal: This rule-making change is necessary to align state purchasing rules with current law.

Statutory Authority for Adoption: Chapters 39.26 and 43.19 RCW.

Statute Being Implemented: Chapters 39.26 and 43.19 RCW.

Name of Proponent: Department of enterprise services, governmental.

Name of Agency Personnel Responsible for Drafting: Jack Zeigler, 1500 Jefferson Street S.E., Olympia, WA, (360) 407-9209; Implementation: Steve Krueger, 1500 Jefferson Street S.E., Olympia, WA, (360) 407-9400; and Enforcement: Ferrell Presnell, 1500 Jefferson Street S.E., Olympia, WA, (360) 407-8820.

Jack Zeigler
Rules and Policy Manager

Chapter 200-300 WAC

~~((OFFICE OF STATE PROCUREMENT))~~ CONTRACTING FOR GOODS AND SERVICES

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-300-010 Purpose. The purpose of this chapter is to set forth rules and regulations applicable to the purchase ~~((or sale))~~ of goods and services by, through, or under authority delegated by, the ~~((office of state procurement))~~ department of enterprise services.

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-300-075 In-state preference bids. The ~~((office of state procurement))~~ department of enterprise services shall ~~((compile))~~ make available a list of each state, relating to state purchasing practices, whose statutes or regulations grant a preference to ~~((suppliers))~~ bidders located within that state or goods manufactured within that state. This list shall be updated on an annual basis ~~((and shall include only those states with currently active in-state preference clauses for procuring goods and services and the list shall contain the percentage of preference allowed. States with only reciprocity legislation will not be included on the list))~~. The ~~((office of state procurement))~~ department of enterprise services shall ~~((compile the list and))~~ notify ~~((impacted state~~

~~agency, college and university purchasing offices))~~ agencies when the list is updated. In determining whether to assess a percentage increase against a bidder, and the amount of that increase, the purchasing ~~((activity))~~ agency will consider only the business address from which the bid ~~((or proposal))~~ was submitted. The purchasing ~~((activity))~~ agency will add the appropriate percentage increase to each bid ~~((or proposal))~~ bearing the address from a state with in-state preference rather than subtracting a like amount from Washington state bidders.

This action will be used only when evaluating bids ~~((or proposals))~~ for award. In no instance shall the increase be paid to a ~~((supplier))~~ bidder whose bid is accepted.

This WAC section applies only to ~~((formal invitations for bid and requests for proposals solicited in accordance with chapter 43.19 RCW))~~ competitive solicitations in accordance with chapter 39.26 RCW.

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-300-085 Bid award preference. In conducting purchases of goods and/or services, preference shall be given to the extent allowed by statute: ~~((1)) Under RCW 43.19.534, to those goods and services produced in whole or in part by Class II inmate programs operated by the department of corrections as described in WAC 236-49-055.~~

~~((2))~~ To goods containing ~~((recovered))~~ recycled material as outlined under RCW ~~((43.19.538))~~ 39.26.255 provided that the purchasing ~~((activity))~~ agency sets forth in the competitive solicitation a minimum percent content of ~~((recovered))~~ recycled material that must be certified by the producer of the goods to qualify for the preference. Bids for goods so certified shall be given a preference of ten percent of the amount of the bid in determining the lowest responsive bid for any item or grouping of items to be awarded to a single bidder. This preference shall be separate from and applied after any other preferences allowed by statute. The minimum content of ~~((recovered))~~ recycled material shall be not less than fifteen percent provided that for those goods for which the Environmental Protection Agency has adopted procurement guidelines under the Resource Conservation and Recovery Act of 1976 (Public Law 94-580, 42 U.S.C. §6901 et seq.), as amended, the minimum content of ~~((recovered))~~ recycled material shall not be less than specified in the most current adopted issue of those guidelines. The producer of the goods shall certify the post consumer and ~~((recovered))~~ recycled or waste material content at the time of submitting bid. To qualify for the preference, the goods shall otherwise be at least functionally equal to all other specifications and use requirements. The preference shall be used for bid evaluation purposes only and the actual dollars bid shall be the contracted amount. In the event of a tie for lowest responsive bid between products otherwise meeting all bid specifications, the purchasing ~~((activity))~~ agency shall consider the larger post consumer material content as a factor in determining the award. Should the purchasing ~~((activity))~~ agency determine that the use of this preference does not encourage the use of more ~~((recovered))~~ recycled material for reasons including inadequate competition, economics, environmental con-

straints, quality or availability, the purchasing ~~((activity))~~ agency shall issue, consider and award bids without the preference. For the purpose of meeting Resource Conservation and Recovery Act requirements for state agency purchase of goods complying with Environmental Protection Agency ~~((recovered))~~ recycled or waste guidelines, the ~~((office of state procurement))~~ department of enterprise services may adopt specifications requiring that only goods meeting these guidelines are responsive and may consider bids for such goods though the cost exceeds ten percent of goods not meeting such guidelines.

NEW SECTION

WAC 200-300-086 Preference for correctional industries Class II products. The following provisions outline purchase requirements for correctional industries, Class II goods and services:

(1) Correctional industries will identify the goods and services available for purchase through the department of enterprise services and confirm the same in writing to the director of the department of enterprise services at least one hundred twenty days before the expiration of any existing contract(s). The writing from correctional industries will include a request that the department of enterprise services tender to correctional industries a mandatory use contract to sell these goods and services to state agencies, the legislature and departments in accordance with RCW 43.19.534. A mandatory use contract as defined in the procurement document will be executed between the department of enterprise services and correctional industries that complies with state law and covers all specified Class II goods and services that are produced in whole, or in part, by correctional industries.

(2) All goods and services covered by the department of enterprise services mandatory use contract are to be purchased from correctional industries. The department of enterprise services will administer these contracts.

(3) Any state agency, branch of the legislature or department may apply for an exemption from the correctional industries purchase preference by using the form developed by the department of enterprise services. If the request for exemption is approved, that approval shall apply for the specified product or product line for a period of one year from the date of approval of the exemption. The approval shall apply to all customers of that agency requesting that product or product line.

(4) However, goods or services produced by Class II correctional industries programs which primarily replace goods manufactured or services obtained from outside the state of Washington are not subject to the criteria contained in subsection (3) of this section, and shall be purchased solely from correctional industries.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 200-300-015 Definitions.
WAC 200-300-020 Public notice.

WAC 200-300-025 Receipt of bids, quotes or proposals.
WAC 200-300-030 Amendment of invitation for bid, request for quotation or request for proposal.
WAC 200-300-035 Supplier lists.
WAC 200-300-040 Removal or suspension.
WAC 200-300-045 Appeal, reapplication or reinstatement.
WAC 200-300-050 Bid guarantee.
WAC 200-300-055 Performance guarantees.
WAC 200-300-060 Form of bid, quote or proposal.
WAC 200-300-065 Standard specifications.
WAC 200-300-070 Acceptance of alternate bid, quote or proposal.
WAC 200-300-080 Partial award.
WAC 200-300-090 Rejection.
WAC 200-300-095 Acceptance of terms.
WAC 200-300-100 Handling of bids and proposals if publicly opened.
WAC 200-300-105 Mistakes in bid(s) or proposals detected prior to opening.
WAC 200-300-110 Mistakes in bid(s) or proposals detected during or after bid opening.
WAC 200-300-115 Disclosure of information.
WAC 200-300-120 Informalities in bids, quotes, or proposals.
WAC 200-300-125 Notice of cancellation or rejection of bids.
WAC 200-300-130 Protests and appeals—Form and substance.
WAC 200-300-135 Office of state procurement protest procedure prior to award.
WAC 200-300-140 Office of state procurement protest procedure after award.
WAC 200-300-145 Offset against contractor payments.
WAC 200-300-150 Delivery date.
WAC 200-300-155 Change in product offered.
WAC 200-300-160 Contract extension.
WAC 200-300-165 Additions or deletions to contract or purchase order.
WAC 200-300-170 Leases.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 200-310-001 Purpose.
WAC 200-310-010 Definitions.

- WAC 200-310-020 Washington state purchasing structure.
- WAC 200-310-055 Preference for correctional industries Class II products.
- WAC 200-310-060 State purchasing cooperative.