



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (October 2017)
(Implements RCW 34.05.310)
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DATE: February 06, 2024

TIME: 8:00 AM

WSR 24-04-087

Agency: Department of Revenue

Subject of possible rule making: WAC 458-20-182 Warehouse businesses and WAC 458-20-XXX Warehouse and grain elevators and distribution centers exemption -- Remittance.

Statutes authorizing the agency to adopt rules on this subject: RCW 82.01.060(2), RCW 82.32.300, RCW 82.04.280, RCW 82.08.820, and RCW 82.12.820..

Reasons why rules on this subject may be needed and what they might accomplish: WAC 458-20-182: The purpose of this rulemaking effort is to update the definitions for "storage warehouse" and "warehouse" to match the definitions in RCW 82.04.280 and 82.08.820. Additionally, this rulemaking effort adds subsections regarding dry stack storage, portable self-storage containers, prescription drug warehousing, and other rules to reference. Other changes have been made to enhance readability of the rule. WAC 458-20-XXX: The purpose of this rulemaking effort is to provide information about the qualifying criteria, application, and documentation requirements for the retail sales and use tax exemptions provided in RCW 82.08.820 and 82.12.820, respectively.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: N/A

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study

Other (describe) Parties interested in this rule-making may contact the individual listed below. The public may also participate by providing written comments throughout this rule-making or giving oral testimony at the public meeting or hearing.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

| | |
|---|-------------------------|
| Name: Perry Stern | (If necessary) Name: |
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Additional comments: Written comments may be submitted by mail or email and should be directed to Perry Stern using one of the contact methods above.


Written and oral comments will be accepted at the Public Meeting.

Date: Tuesday, March 19, 2024

Time: 10:00 a.m.

Public Meeting Location: This meeting will be conducted over the internet/telephone.

Contact Barbara Imperio at Barbaral@dor.wa.gov for dial-in/login information.

| | |
|---------------------------------|---|
| Date: 2/6/2024 | Signature:  |
| Name: Brenton Madison | |
| Title: Rules Coordinator | |

AMENDATORY SECTION (Amending WSR 87-05-042, filed 2/18/87)

WAC 458-20-182 Warehouse and other storage businesses. (1) **Introduction.** This rule explains the application of the business and occupation (B&O) tax and retail sales and use taxes to warehouse and other storage businesses. It also clarifies the taxability for some specific storage-related activities.

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

- (a) WAC 458-20-115 Sales of packing materials and containers;
- (b) WAC 458-20-118 Sale or rental of real estate, license to use real estate;
- (c) WAC 458-20-133 Frozen food lockers;
- (d) WAC 458-20-180 Motor carriers;
- (e) WAC 458-20-181 Vessels, including log patrols, tugs and barges, operating upon waters in the state of Washington;
- (f) WAC 458-20-193D Transportation, communication, public utility activities, or other services in interstate or foreign commerce; and
- (g) WAC 458-20-211 Leases or rentals of tangible personal property, bailments.

(3) **Definitions.** ((For purposes of this section)) The following terms and meanings ((will)) apply to this rule:

(a) ((("Warehouse" means every structure wherein facilities are offered for the storage of tangible personal property.

(b) "Storage warehouse" means a building or structure, or any part thereof, in which goods, wares, or merchandise are received for storage for compensation, except field warehouses, fruit warehouses, fruit packing plants, warehouses licensed under chapter 22.09 RCW (which are agricultural commodities warehouses), public garages storing automobiles, railroad freight sheds, docks and wharves, and "self-storage" or "mini-storage" facilities whereby customers have direct access to individual storage areas by separate access.

(c) "Automobile storage garage" means any off-street building, structure, or area where vehicles are parked or stored, for any period of time, for a charge.

(b) "Cold storage warehouse" means a storage warehouse used to store either fresh ((and/)) or frozen, or both types of perishable fruits or vegetables, meat, seafood, dairy products, or fowl, or any combination ((thereof)), at a desired temperature to maintain the quality of the product for orderly marketing. RCW 82.04.280. This term does not include freezer space or frozen food lockers. See WAC 458-20-133.

((d) "Automobile storage garage" means any off-street building, structure, or area where vehicles are parked or stored, for any period of time, for a charge.

(2) (c) "Storage warehouse" means any part of a building or structure in which goods, wares, or merchandise are received for storage for compensation. "Storage warehouse" does not include field warehouses, fruit warehouses, fruit packing plants, warehouses licensed under chapter 22.09 RCW, automobile storage garages, railroad freight sheds, docks and wharves, and "self-storage" or "mini-storage" facilities where customers have direct access to individual storage areas by a separate entrance. RCW 82.04.280. "Storage warehouse" also does not include a building or structure, or that part of the building or structure, in which an activity taxable under RCW 82.04.272, warehousing and reselling prescription drugs, is conducted. RCW 82.04.280.

(d) "Warehouse" means every structure where facilities are used for the storage of tangible personal property.

(4) **Business and occupation tax.** ((Warehouse)) The B&O tax is imposed on privilege of engaging in business in Washington. The measure of the B&O tax is the gross income of the business (gross income) or gross proceeds of sale (gross proceeds) as the case may be. RCW 82.04.080 and 82.04.090. Businesses that provide storage services are taxable under the B&O tax classification according to the nature of their ((operations)) activities and the specific kinds of goods stored, as follows:

(a) Warehousing classification.

(i) Persons engaged in operating any "storage warehouse" or "cold storage warehouse," as defined ((herein)) in subsection (3) of this rule, are subject to B&O tax under the warehousing classification ((measured by the gross income of the business)). ((+)) See RCW 82.04.280. ((+))

((+)) (ii) Types of activities that fall within the warehousing classification include dry stack storage and storing a third-party's items within a storage container in the person's warehouse. The fact that the third party lacks dominion and control over the warehouse storage area distinguishes, in part, a warehousing activity from activities taxable under other B&O tax classifications.

Example 1.

Facts: Safe Harbor, LLC (Safe Harbor) is a Washington business engaged in providing dry stack storage. Dave purchases a boat storage space from Safe Harbor for the boating season. When Dave wishes to use his boat, he contacts Safe Harbor and the Safe Harbor operator removes Dave's boat from its storage slot and places it in the water. When Dave is finished using his boat, he leaves it in Safe Harbor's dock where the operator lifts the boat from the water and returns it to the stack. The haul-out service is included as part of the dry stack storage.

Result: Dave lacks dominion and control over the stacking berth. Consequently, the charge for the use of a stacking berth is a warehousing activity and not a rental of real estate. The haul-out service is taxable under the warehousing B&O tax classification because it is performed with respect to the dry stack storage of Dave's boat. Safe Harbor must report and pay warehousing B&O tax on its gross income from operating a dry stack storage warehouse. RCW 82.04.080 and 82.04.280.

Example 2.

Facts: Your PNW Storage, LLC (YPS) is engaged in the business of storing a third-party's items within a storage container in YPS' warehouse. YPS maintains control over the storage container when it is stored at YPS' warehouse.

Result: YPS is subject to B&O tax under the warehousing classification. The third party lacks dominion or control over the warehouse storage area which distinguishes, in part, a warehousing activity from activities taxable under other B&O tax classifications.

(iii) If a person is engaged in warehousing and also provides related services including handling, sorting, weighing, measuring, and loading or unloading tangible personal property for storage, the gross income from these services is included in the person's gross income from warehousing.

(iv) A person storing third-party goods, incidental to the person's provision of order fulfillment services to the third party, is

not operating a storage warehouse or cold storage warehouse for purposes of the warehousing B&O tax classification.

(b) Retailing classification.

(i) Persons engaged in operating any automobile storage garage for consumers are generally subject to B&O tax under the retailing classification (, measured by gross proceeds of such operations). ((See)) RCW 82.04.050 ((3)(d).)) and 82.04.250.

((c) Persons engaged in operating any warehouse business, other than those of (a) and (b) of this subsection, are subject to tax under the service classification, measured by the gross income of the business. (See RCW 82.04.290.) This includes cold storage and frozen food lockers, field warehouses, fruit warehouses, agricultural commodities warehouses, and freight storage warehouses.

(d) Effective July 1, 1986, no warehouse business or operation of any kind is subject to tax under the public utility tax of chapter 82.16 RCW.

(3) **Tax measure.** The gross income of the business of operating a warehouse includes all income from the storing, handling, sorting, weighing, measuring, and loading or unloading for storage of tangible personal property.

(4)) However, amounts received for the rental of designated parking spaces are derived from the rental of real estate and are not subject to retail sales tax or B&O tax. See (4)(e) of this rule for more information on the exemption for rental of real estate.

(ii) Persons renting or leasing to a consumer tangible personal property used to store goods are making retail sales. See RCW 82.04.040 and 82.04.050 and WAC 458-20-211.

Example 3.

Facts: Porta-Closet, LLC (Porta-Closet) is engaged in renting portable self-storage containers to customers that are stored at the customer's site rather than in a warehouse.

Result: Porta-Closet is subject to B&O tax under the retailing classification on the gross proceeds of sales from the activity. B&O tax under the retailing classification also applies to any transportation charges for delivery or pick-up of the portable storage containers to or from the customer's site. See WAC 458-20-211. However, public utility tax applies to transportation charges for moving the portable storage containers between the customer's different sites.

(c) Prescription drug warehousing classification. Persons engaged in warehousing and reselling drugs for human use under a prescription are subject to B&O tax under the warehousing and reselling prescription drugs classification. See RCW 82.04.272.

(i) A person qualifies for the prescription drug warehousing classification only if it satisfies all of the following requirements:

(A) Purchases prescription drugs from a manufacturer or wholesaler;

(B) Warehouses and resells the prescription drugs directly to a qualified buyer;

(C) Is registered with the Federal Drug Enforcement Administration;

(D) Is licensed as either a wholesaler or retailer by the state pharmacy quality assurance commission established by RCW 18.64.001; and

(E) Resells the prescription drugs directly to a retailer with a pharmacy facility license or nonresidential pharmacy license issued by the department of health under RCW 18.64.043 or 18.64.370, respective-

ly, or to a hospital, clinic, health care provider, or other provider of health care services.

(ii) While the person must be engaged in both the warehousing and reselling of prescriptions drugs to be eligible for the preferential B&O tax rate, it is not necessary for the person's warehouse to be located in Washington to qualify.

(d) Wholesaling. A person engaged as a lessor of storage equipment or containers is not required to pay retail sales or use tax on purchases of storage containers and other related equipment that are leased to a customer and subsequently leased to other customers without intervening use. The original rental is subject to wholesaling B&O tax and the subsequent rental is subject to the retailing B&O tax. The original seller is required to obtain a reseller permit (WAC 458-20-102) to substantiate the wholesale nature of the transaction. WAC 458-20-211.

(e) Service and other classification.

(i) Persons engaged in storage activities not described in subsection (4) (a), (b), (c), or (d) of this rule, and that are not otherwise addressed in any other specific B&O tax classification, are subject to B&O tax under the service and other B&O classification.

(ii) Granting of a license to use real estate is taxable under the service and other B&O tax classification unless specifically classified otherwise by statute. RCW 82.04.290 and WAC 458-20-118(1). A license to use real estate grants merely a right to use the real property of another but does not confer exclusive control or dominion over the same.

(iii) Storage activities that fall within the service and other classification include freezer space and frozen food lockers, field warehouses, agricultural commodities warehouses, and freight storage warehouses.

Example 4.

Facts: South Pole Storage (South Pole) is engaged in the business of renting frozen food lockers. Cara rents a frozen food locker from South Pole for the purpose of storing large cuts of beef, which she purchases from a local cattle ranch for her family's consumption. South Pole does not alter the meat in any way; it merely provides storage.

Result: South Pole's gross income from the rental of the frozen food lockers is taxable under the service and other activities classification. See WAC 458-20-133.

(f) Exempt from B&O tax. Amounts derived from the sale and rental of real estate are exempt from B&O tax. See RCW 82.04.390 and WAC 458-20-118. A transaction will be considered the rental of real estate if all of the following five elements are met:

(i) A rental period of 30 days or longer;

(ii) The lessee has the right to exclusive use of the rented space;

(iii) The lessee has the right of continuous possession over the space;

(iv) The lessee has dominion and control of the rented space; and

(v) A landlord/tenant relationship exists between the lessor and lessee. See WAC 458-20-118.

Example 5.

Facts: More Space Company (MSC) rents self-service storage units. All of the storage units have separate entrances. Carter enters into a six-month contract with MSC for an individual storage unit for his furniture while he works in Denmark.

Result: Carter likely has dominion and control of the rented space. Thus, MSC's gross income received from the rental of its storage unit to Carter is exempt from B&O tax because it is a rental of real estate.

(5) Grain warehouses storing own grain. Where a grain ((warehouseman)) warehouse purchases or owns grain stored in such warehouse, ((there shall be included in)) taxable gross income includes:

(a) An amount equal to the charges at the customary rate for all services ((rendered)) given in connection with ((such)) the grain((s)) up to the time of purchase by the ((warehouseman)) warehouse; and

(b) The amount of any charges for services that are ((rendered)) given during the period of the ((warehouseman's)) warehouse's ownership ((thereof)) of the grain, billed and stated((, as such,)) separately from the price of the grain((s)) on the invoice to the purchaser at the time of the sale by the ((warehouseman)) warehouse.

~~((5)) (6) Retail sales tax and use tax.~~ ((Persons operating automobile garage storage businesses must collect and report retail sales tax upon the gross selling price of such parking/storage services.

~~(6) Consumables.~~ Retail sales tax is due on the sale of tangible personal property or retail services to a consumer as provided in chapter 82.04 RCW. Persons ((engaged in)) operating any of the business activities ((covered by)) described in this ((section)) rule must pay retail sales tax ((upon)) on their purchases of their consumable supplies, equipment, and materials for their own use as consumers in operating ((such)) the businesses. ~~((7) Use tax.~~ The Use tax is due ((upon)) on the value of all tangible personal property used as consumers by persons operating warehouse businesses, upon which the retail sales tax has not been paid.

~~((For specific provisions covering temporary holding of goods in foreign or interstate movement by water, see WAC 458-20-193D respecting stevedoring and associated activities.)) (a) Portable storage containers.~~ A person engaged in the business of providing portable self-storage containers to customers for temporary storage must pay retail sales tax upon their purchases of property used in the operation of the business. A purchase of a storage container is subject to retail sales tax when the container is used for storage at the purchaser's warehouse rather than rented to customers for use at the customer's location. A reseller permit may not be used to purchase consumable supplies, equipment, and materials used in the operation of a business. See WAC 458-20-211.

(b) Automobile garage parking/storage. Persons operating any automobile storage garage must collect and report retail sales tax upon the gross selling price of the parking/storage services to consumers.

NEW SECTION

WAC 458-20-18201 Warehouse and grain elevators and distribution centers exemption—Remittance.

Part 1. General.

(101) **Introduction.** Wholesalers or third-party warehouse owners that own or operate qualifying warehouses or grain elevators, and retailers who own or operate qualifying distribution centers, may be eligible for a limited sales/use tax exemption on qualifying construction costs and qualifying purchases of material-handling and racking equipment. The exemption is in the form of a remittance. See RCW 82.08.820 and 82.12.820. This rule provides details on the qualifying criteria for the exemption.

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

(a) **"Construction"** means the actual construction of a warehouse or grain elevator that did not exist before the construction began. Construction also includes expansion, if the expansion adds at least 200,000 square feet of additional space to an existing warehouse or additional storage capacity of at least 1,000,000,000 bushels to an existing grain elevator. Construction does not include renovation, remodeling, or repair. Activities not involving actual construction do not fall within the definition of construction. For example, costs related to housing, meals, trailers, permit fees, insurance, bonds, dumpsters, etc., are not construction costs. Similarly, "actual" construction generally does not include activities in the preparation of building a warehouse or grain elevator. Thus, except for design and engineering activities, activities occurring prior to the issuance of a building permit do not constitute construction.

(b) **"Distribution center"** means a warehouse used exclusively by a retailer solely for the storage and distribution of finished goods to retail outlets of the retailer, i.e., to physical locations owned or operated by the retailer at which retail sales occur. Distribution center does not include any warehouse at which retail sales occur, and distribution centers are not used to fulfill retail orders directly to customers. RCW 82.08.820.

(c) **"Finished goods"** means tangible personal property intended for sale by a retailer or wholesaler. Finished goods do not include any of the following:

(i) Agricultural products stored by wholesalers, third-party warehouses, or retailers if the storage takes place on the land of the person who produced the agricultural product;

(ii) Logs, minerals, petroleum, gas, or other extracted products stored as raw materials or in bulk; or

(iii) Cannabis, useable cannabis, or cannabis-infused products. RCW 82.08.820.

(d) **"Grain elevator"** means a structure used for storage and handling of grain in bulk. RCW 82.08.820. The term "structure" as it relates to a grain elevator is not limited to a single building or edifice of a single foundation or footprint.

(e) **"Material-handling equipment and racking equipment"** means equipment in a warehouse or grain elevator used primarily (more than 50 percent of the time) to handle, store, organize, convey, package, or repackage finished goods. RCW 82.08.820. The term includes tangible

personal property with a useful life of at least one year that becomes an ingredient or component part of the equipment, including repair and replacement parts. See subsection 203(a) of this rule for additional information about the types of costs related to material handling and racking equipment that do and do not qualify for this exemption.

(f) **"Material-handling equipment"** means equipment that physically moves tangible personal property and equipment used in the process of moving tangible personal property. The term generally includes, but is not limited to, the following:

(i) Conveyers, carousels, lifts, positioners, pick-up-and-place units, cranes, hoists, mechanical arms, and robots;

(ii) Mechanized systems, including containers that are an integral part of the system, the purpose of which is to lift or move tangible personal property;

(iii) Automated handling, storage, and retrieval systems, including computers that control them, the purpose of which is to lift or move tangible personal property;

(iv) Forklifts and other off-the-road vehicles that are used to lift or move tangible personal property and that cannot be operated legally on roads and streets; and

(v) Equipment used to organize and track products, such as hand-held scanners and stand-alone scales used to organize goods by weight. In contrast, stand-alone scales used to weigh goods to determine postage are not material-handling equipment.

(g) **"Qualifying activity"** means the storage by a wholesaler of finished goods for wholesaling purposes, the storage by a third-party warehouse of another person's finished goods, or the storage by a retailer of its finished goods for the purpose of distributing the goods to retail outlets of the retailer.

(h) **"Racking equipment"** means equipment used to physically store tangible personal property. The term generally includes conveying systems, chutes, shelves, racks, bins, drawers, pallets, and other containers and storage devices that form a necessary part of the storage system. Examples of racking equipment include stand-alone tables, when the tables are used during packaging or storing finished goods; drawers, when used to handle, store, or organize finished goods; and refrigeration systems that are a necessary part of the storage system for finished goods that must be stored in a refrigerated state. Dock doors and dock levelers are not racking equipment.

(i) **"Third-party warehouseer"** means a person taxable under the B&O tax classification in RCW 82.04.280 (1)(d) for persons operating cold storage warehouses or storage warehouses. RCW 82.08.820.

(j) **"Warehouse"** means a single enclosed building or structure in which finished goods are stored. RCW 82.08.820. A warehouse building or structure may have more than one storage room and more than one floor. Office space, lunchrooms, restrooms, and other space within the warehouse and necessary for the operation of the warehouse are considered part of the warehouse, as are loading docks and other such space attached to the building and used for handling of finished goods. A guard shack or any external building is not considered part of the warehouse. Landscaping and parking lots are not considered part of the warehouse. A storage yard is not a warehouse, nor is any building in which manufacturing takes place.

Part 2. Remittance Eligibility.

(201) **Qualifying owner/operator.** The remittance is available only to the following types of businesses:

- (a) A wholesaler that owns or operates a warehouse or a grain elevator;
- (b) A third-party warehouse that owns or operates a warehouse or a grain elevator; or
- (c) A retailer that owns or operates a distribution center.

(202) **Effect of nonqualifying activities.**

(a) **Distribution centers.** A distribution center may qualify for the exemption only if the retailer that operates the distribution center uses it solely for a qualifying activity. For example, a retailer that operates its distribution center for its own retail outlets and also fulfills retail orders directly to consumers does not qualify for the exemption because the distribution center is not used exclusively for the qualifying activity of storing and distributing finished goods to the retailer's retail outlets.

(b) **Warehouses.**

(i) A single warehouse accommodating multiple business activities may qualify for the exemption if none of the activities is excluded by statute and at least one of the activities carried on at the warehouse is a qualifying activity, provided that at least 200,000 square feet of the warehouse is dedicated to the qualifying activity.

(ii) A warehouse that accommodates both qualifying and nonqualifying activities must be able to demonstrate that it meets the 200,000 square feet requirement in order to receive the exemption. Office space, lunchrooms, restrooms, and other space within the warehouse and necessary for the operation of the warehouse are included within the 200,000 square feet warehouse space measure. The department determines eligibility under this section based on information provided by the taxpayer and through audit and other administrative records.

Examples.

(A) **Example 1.** Company A operates a 250,000 square foot warehouse that it uses to store goods of third parties. Company A also fulfills retail orders directly to its retail customers. Company A designates 200,000 square feet of the warehouse exclusively to its third-party warehousing activity, i.e., storing goods of third parties. The other 50,000 square feet of Company A's warehouse has separately stored goods, and Company A exclusively uses those goods (not the goods in the other 200,000 square feet) to fulfill Company A's retail sales. Company A's warehouse may qualify for the exemption because 200,000 square feet of its warehouse space is dedicated for use solely as a third-party warehouse, which is a qualifying activity, and retail order fulfillment is not a prohibited use of warehouses under RCW 82.08.820.

(B) **Example 2.** Company B operates a 500,000 square foot warehouse that it uses to store and distribute finished goods from the warehouse to its retail outlets. Company B also uses the warehouse to fulfill orders directly to its retail customers. Company B dedicates 300,000 square feet of the warehouse to storing the goods to be distributed to its retail outlets, and the remaining 200,000 square feet is segregated and dedicated exclusively to fulfillment of retail orders. Company B's warehouse is a distribution center; retail fulfillment is a disqualifying activity if it occurs in a retail distribution center. See subsection (102)(b) of this rule. Therefore, Company B's distribution center does not qualify for the exemption.

(C) **Example 3.** Company C operates a 500,000 square foot warehouse that it uses to store finished goods for wholesale. Company C also uses the warehouse to fulfill orders directly to its retail customers. The wholesale goods and the products for fulfilling retail orders are

intermingled throughout the warehouse. Company B's warehouse does not qualify for the exemption because it does not dedicate 200,000 square feet of the warehouse's physical space exclusively to the wholesaling activity, the qualifying activity.

(203) **Payment of sales/use tax required.** The remittance is available only to an eligible business that has paid sales tax levied under RCW 82.08.020, or use tax levied under RCW 82.12.020, for the following types of costs:

(a) Material-handling equipment and racking equipment, and labor and services given in respect to installing, repairing, cleaning, altering, or improving the equipment. For example, costs of renting material-handling and racking equipment, without an operator, qualifies for the remittance if the equipment is primarily used to handle, store, organize, convey, package, or repackage finished goods. However, the cost of renting equipment used to install material-handling and racking equipment does not qualify because the charge for the rental equipment is not a charge for labor or services and the equipment used in installation is not itself material-handling and racking equipment. Costs for maintaining material-handling and racking equipment do not qualify for the exemption.

(b) Materials incorporated in the construction of a warehouse or grain elevator, and labor and services given in respect to that construction. Thus, construction costs may include flooring, walls, HVAC, roofing, and windows. Labor costs for pouring a foundation and installing a roof for a warehouse or grain elevator also may qualify as construction costs. However, costs for soil testing, soil amendments, excavation, and earth moving activities performed before the excavation of a foundation are not qualifying construction costs.

(204) **Remittance amount.** The amount of the remittance or credit available to an eligible person is based on the state share of sales tax paid or state share of use tax paid (or both, see RCW 82.08.020 for the state sales and use tax rate), computed as follows:

(a) For grain elevators with bushel capacity of at least 1,000,000 but less than 2,000,000, the remittance is equal to 50 percent of the amount of state sales or use tax paid for:

(i) Qualifying materials incorporated as an ingredient or component of the grain elevator, and labor and services rendered in respect to the grain elevator's construction; and

(ii) Qualifying material-handling equipment and racking equipment, and labor and services given in respect to installing, repairing, cleaning, altering, or improving the equipment.

(b) For grain elevators with bushel capacity of 2,000,000 or more, and for warehouses and distribution centers with at least 200,000 square feet of space dedicated exclusively to a qualifying activity, the remittance is equal to:

(i) 100 percent of the amount of state sales and use tax paid for qualifying materials incorporated as an ingredient or component of the structure, and labor and services rendered in respect to the structure's construction; and

(ii) 50 percent of the amount of state sales and use tax paid for qualifying material-handling equipment and racking equipment, and labor and services given in respect to installing, repairing, cleaning, altering, or improving the equipment.

Part 3. Application for Tax Remittance.

(301) **General application information.** The department determines eligibility for the exemption remittance in this section based on in-

formation provided by the buyer and through audit and other administrative records.

(a) An application and required documentation for a tax exemption remittance must be submitted quarterly.

(b) The department will send the approved exempted amount to the business by the end of the calendar quarter following the quarter the application was submitted.

(c) While not required, applicants are encouraged to submit the application and applicable documentation electronically through the MyDOR portal.

(302) **Documentation needed to verify eligibility.** Applicants must provide a completed Warehouse Tax Incentive Remittance application that corresponds to their qualifying activity. In addition to a completed application, supporting documentation is also required.

(a) Required documentation will depend on the applicant's qualifying activity and may include, but is not limited to, the following:

(i) Blueprints identifying the building location and the size of the facility;

(ii) Building permits associated with the foundation and the structure;

(iii) Proof of invoice and sales tax payments (copies of checks, bank statements for ACH payments, certification of use/deferred sales tax paid);

(iv) Completed electronic spreadsheet detailing purchase invoices and payments;

(v) For lessors, a copy of the lease agreement stating that the economic benefit of the remittance is passed to the tenant in the form of reduced rent; and

(vi) Any other items requested by the department to substantiate the applicant's claim for the remittance.

(b) Applicants are encouraged to file substantiation documents at the time of filing the application. However, once an application is filed, the taxpayer must provide sufficient substantiation to support the claim for remittance before the department can determine whether the claim is valid. The department will notify the taxpayer if additional substantiation is required. The taxpayer must provide the necessary substantiation within 90 days after the notice is sent, unless the documentation is under the control of a third party not affiliated with or under the control of the taxpayer. If the documentation is under the control of an unaffiliated third party, the taxpayer will have 180 days to provide the documentation.