RULE-MAKING ORDER
PERMANENT RULE ONLY

CR-103P (December 2017)
(Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: June 19, 2018
TIME: 7:52 AM

WSR 18-13-094

Agency: Department of Revenue

Effective date of rule:

Permanent Rules

☒ 31 days after filing.

☐ Other (specify) _____ **(If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)**

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose: The Department is amending Rule 267 and Rule 268 to conform to changes required by ESHB 1296, 2017 Regular Session (Chapter 135, Laws of 2017). This legislation replaces the annual report and annual survey used for economic development activities with an annual tax performance report. The Department is also amending the following rules to update references changed by this legislation: WAC 458-20-143; WAC 458-20-144; WAC 458-20-169; WAC 458-20-176; WAC 458-20-179; WAC 458-20-210; WAC 458-20-24001; WAC 458-20-24003; WAC 458-20-263. The Department is also renumbering the current Rule 267 as Rule 267A, which will cover periods prior to the effective date of the new Rule 267.

Citation of rules affected by this order:

New:

Repealed:

Amended:

WAC 458-20-267 (Rule 267), Annual tax performance reports for certain tax preferences, explains how taxpayers claiming tax preferences are required to report information to the Department of Revenue.

WAC 458-20-267A (Rule 267A)(Rule 267A is not an existing rule; rather, current Rule 267 is renumbered as Rule 267A, which will cover periods prior to the effective date of the new Rule 267.)

WAC 458-20-268 (Rule 268), Annual surveys for certain tax preferences.

WAC 458-20-143 (Rule 143), Printers and publishers of newspapers, magazines, and periodicals.

WAC 458-20-144 (Rule 144), Printing industry.

WAC 458-20-169 (Rule 169), Nonprofit organizations.

WAC 458-20-176 (Rule 176), Commercial deep sea fishing – Commercial passenger fishing – Diesel fuel.

WAC 458-20-179 (Rule 179), Public utility tax.

WAC 458-20-210 (Rule 210), Sales of tangible personal property for farming – Sales of agricultural products by farmers.

WAC 458-20-24001 (Rule 24001), Sales and use tax deferral – Manufacturing and research/development activities in high unemployment counties – Applications filed after June 30, 2010.

WAC 458-20-263 (Rule 263), Exemptions from retail sales and use taxes for qualifying electric generating and thermal heat producing systems using renewable energy sources.

WAC 458-20-24003 (Rule 24003), Tax incentives for high technology businesses.

Suspended:

Statutory authority for adoption: RCW 82.32.300 and RCW 82.01.060(2).

Other authority: RCW 82.32.534, RCW 82.32.585, RCW 82.32.590, RCW 82.32.600, RCW 82.32.605, RCW 82.32.607, RCW 82.32.710, RCW 82.32.790, RCW 82.32.808, RCW 82.04.240, RCW 82.04.2404, RCW 82.04.260, RCW 82.04.2909, RCW 82.04.426, RCW 82.04.4277, RCW 82.04.4461, RCW 82.04.4463, RCW 82.04.448, RCW 82.04.4481, RCW 82.04.4483, RCW 82.04.449, RCW 82.08.805, RCW 82.08.965, RCW 82.08.9651, RCW 82.08.970, RCW 82.08.980, RCW 82.08.986, RCW 82.12.022, RCW 82.12.025651, RCW 82.12.805, RCW 82.12.965, RCW 82.12.9651, RCW 82.12.970, RCW 82.12.980, RCW 82.16.0421, RCW 82.29A.137, RCW 82.60.070, RCW 82.63.020, RCW 82.63.045, RCW 82.74.040, RCW 82.74.050, RCW 82.75.040, RCW 82.75.070, RCW 82.82.020, RCW 82.82.040, RCW 84.36.645, and RCW 84.36.655.

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 18-09-103 on 4/18/2018 (date).

Describe any changes other than editing from proposed to adopted version: none

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Web site:
Other: An analysis was not prepared. This rule is not a significant legislative rule as defined by RCW 34.05.328.

Note: If any category is left blank, it will be calculated as zero. No descriptive text.

Count by whole WAC sections only, from the WAC number through the history note. A section may be counted in more than one category.

The number of sections adopted in order to comply with:

	New	Amended	Repealed
Federal statute:			
Federal rules or standards:			
Recently enacted state statutes:			

The number of sections adopted at the request of a nongovernmental entity:

New	Amended	Repealed

The number of sections adopted on the agency's own initiative:

New	Amended	Repealed
	12	

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	Amended	Repealed
	12	

The number of sections adopted using:

	New	Amended	Repealed
Negotiated rule making:			
Pilot rule making:			
Other alternative rule making:		12	

Date Adopted: June 19, 2018

Name: Erin T. Lopez

Title: Rules Coordinator

Signature:

AMENDATORY SECTION (Amending WSR 10-18-067, filed 8/30/10, effective 9/30/10)

WAC 458-20-143 Printers and publishers of newspapers, magazines, and periodicals. (1) **Introduction.** This section explains the application of the business and occupation (B&O), retail sales, and use taxes to printers and/or publishers of newspapers, magazines, periodicals, and other printed materials. The department of revenue (department) has adopted other sections providing tax reporting information to persons printing, publishing, or selling these publications and other printed materials.

• Persons selling newspapers, magazines, and periodicals that are not printed and/or published by the seller should also refer to WAC 458-20-127;

• For information regarding the printing industry in general, see WAC 458-20-144;

• For information regarding the tax-reporting responsibilities of persons selling direct mail or engaging in business as a mailing bureau, see WAC 458-20-141;

• For information regarding the tax-reporting responsibilities of persons duplicating printed materials for others, see WAC 458-20-141;

• For information regarding potential litter tax liability, see WAC 458-20-243.

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

(a) **"Newspaper."**

(i) Effective July 1, 2008, "newspaper" means a publication issued regularly at stated intervals at least twice a month and printed on newsprint in tabloid or broadsheet format folded loosely together without stapling, glue, or any other binding of any kind, including any supplement of a printed newspaper; and an electronic version of a printed newspaper that:

• Shares content with the printed newspaper; and

• Is prominently identified by the same name as the printed newspaper or otherwise conspicuously indicates that it is a complement to the printed newspaper. See RCW 82.04.214.

(ii) Prior to July 1, 2008, "newspaper" means a publication issued regularly at stated intervals at least twice a month and printed on newsprint in tabloid or broadsheet format folded loosely together without stapling, glue, or any other binding of any kind.

(b) **"Supplement"** means a printed publication, including a magazine or advertising section, that is:

(i) Labeled and identified as part of the printed newspaper; and

(ii) Circulated or distributed:

• As an insert or attachment to the printed newspaper; or

• Separate and apart from the printed newspaper so long as the distribution is within the general circulation area of the newspaper.

(c) **"Periodical or magazine"** means a printed publication, other than a newspaper, issued regularly at stated interval at least once every three months, including any supplement or special edition of the publication.

(d) For purposes of this section, **"other printed material"** refers to printed materials other than newspapers, magazines, or periodicals.

(3) **General tax guidance.**

(a) **Publishing newspapers.** Effective July 1, 2009, publishers of newspapers are taxable under the publication of newspapers classifica-

tion of the B&O tax upon the gross income (including advertising income) derived from publishing newspapers. See (d) of this subsection and RCW 82.04.260(13). Prior to July 1, 2009, publishers of newspapers are taxable under the printing and publishing classification of the B&O tax upon the gross income (including advertising income) derived from publishing newspapers.

Persons reporting income under the publication of newspapers classification of the B&O tax must file a complete annual tax performance report with the department. In addition, such persons must electronically file with the department all ((~~surveys,~~)) reports, returns, and any other forms. Refer to RCW 82.32.600 and WAC 458-20-267 for the specific guidelines and requirements.

Retail sales of newspapers, whether by publishers or others, are exempt from retail sales tax. See RCW 82.08.0253.

(b) **Publishing periodicals or magazines.** Publishers of periodicals or magazines are taxable under the printing and publishing classification of the B&O tax upon the gross income (including advertising income) derived from publishing periodicals or magazines. See (d) of this subsection and RCW 82.04.280(1).

Retail sales of printed magazines and periodicals are subject to retail sales tax. Magazines and periodicals transferred electronically to the end user are also subject to the retail sales tax regardless of how they are accessed. For more information on the sale of digital products, refer to RCW 82.04.050, 82.04.192, and 82.04.257.

(c) **Publishing other printed materials.** Retail and wholesale sales of other printed materials by persons who both print and publish the items, are taxable under the printing and publishing classification. Persons who publish but do not print other printed materials, are subject to:

• Either the wholesaling or retailing B&O tax, measured by gross sales of the other printed materials; and

• The service and other activities B&O tax, measured by the gross income received from advertising.

(d) **Doing business inside and outside the state.** RCW 82.04.460 requires that advertising income earned by printers and by publishers of newspapers, periodicals, and magazines derived from business activities performed within Washington be apportioned to this state for tax purposes. Refer to chapter 23 (E2SSB 6143), Laws of 2010 1st sp. sess. Part I for information on apportioning advertising income.

(e) **Wholesale sales of printed materials.** Sales of magazines, periodicals, and other printed materials by the publisher to newsstands, book stores, department stores, and others who resell such items are wholesale sales. Such sales are not subject to retail sales tax when the buyer provides a resale certificate (WAC 458-20-102A) for sales made before January 1, 2010, or a reseller permit (WAC 458-20-102) for sales made on or after January 1, 2010, to the seller.

(4) **Sales to publishers.**

(a) Sales to newspaper, magazine and periodical publishers of paper and printers ink which become a part of the publications sold, and sales by printers of printed publications to publishers for sale, are wholesale sales and are not subject to the retail sales tax when the buyer provides a resale certificate (WAC 458-20-102A) for sales made before January 1, 2010, or a reseller permit (WAC 458-20-102) for sales made on or after January 1, 2010, to the seller.

(b) With respect to community newspapers which are distributed free of charge, where the publisher has a contract with his advertisers to distribute the newspaper to the subscriber in consideration for

the payments made by the advertisers, it will be construed that the publisher sells the newspaper to the advertiser, and, therefore, the retail sales tax will not apply with respect to the charge made by the printer to the publisher for printing the newspaper or with respect to the purchase of ink and paper when the publisher prints his own newspaper.

(c) Sales to newspaper, magazine or periodical publishers of equipment and of supplies and materials which do not become a part of the finished publication that is sold are subject to the retail sales tax unless specifically exempt (see subsection (5) of this section). This includes, among others, sales of fuel, furniture, lubricants, and office supplies.

(d) Sales to newspaper, magazine or periodical publishers of baseball bats, bicycles, dolls and other articles of tangible personal property which are to be distributed by the publisher as gifts, premiums or prizes are sales for consumption and subject to the retail sales tax.

(e) Sales by authors and artists to publishers of the right to publish scripts, paintings, illustrations and cartoons are mere licenses to use, not sales of tangible personal property and are not subject to the retail sales tax.

(5) **Exemption for sales of computer equipment to printers and/or publishers.** RCW 82.08.806 and 82.12.806 provide printers and publishers retail sales and use tax exemptions for computer equipment that is used primarily in the printing or publishing of any printed material. The exemption includes repair parts and replacement parts for such equipment and sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the computer equipment. The exemption also includes maintenance agreements (service contracts), as defined in WAC 458-20-257, on such equipment. This exemption applies only to computer equipment not otherwise exempt under RCW 82.08.02565.

(6) **Use tax.** Publishers of newspapers, magazines and periodicals are subject to tax upon the value of articles printed or produced for use in conducting such business. Tax also applies to materials, supplies, and other items which do not become part of the finished publication or which are not resold. Where retail sales tax is not paid, the publisher must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. Deferred sales or use tax should be reported on the use tax line of the buyer's excise tax return. For detailed information about use tax, refer to WAC 458-20-178, Use tax.

AMENDATORY SECTION (Amending WSR 11-04-010, filed 1/21/11, effective 2/21/11)

WAC 458-20-144 Printing industry. (1) **Introduction.** This section discusses the taxability of the printing industry. For information on the taxability of mailing bureau services and a discussion of direct mail, refer to WAC 458-20-141. For information on the taxability of printers and publishers of newspapers, magazines, and periodicals, refer to WAC 458-20-143.

(2) **Definition.** The phrase "printing industry" includes letterpress, offset-lithography, and gravure processes as well as multi-

graph, mimeograph, autotyping, addressographing and similar activities.

(3) **Business and occupation tax.**

(a) Printers are subject to the business and occupation tax under the printing and publishing classification upon the gross income of the business.

(b) Effective July 1, 2009, printers of newspapers are taxable under the publication of newspapers classification of the B&O tax upon the gross income of the business. Persons reporting income under the publication of newspapers classification of the B&O tax must file a complete annual tax performance report with the department. In addition, such persons must electronically file with the department all ((~~surveys,~~)) reports, returns, and any other forms. Refer to RCW 82.32.600 and WAC 458-20-267 for the specific guidelines and requirements.

(c) **Doing business inside and outside the state.** RCW 82.04.460 requires that advertising income earned by printers derived from business activities performed within Washington be apportioned to this state for tax purposes. Refer to chapter 23 (E2SSB 6143), Laws of 2010 1st sp. sess. Part I for information on apportioning advertising income.

(4) **Retail sales tax.**

(a) The printing or imprinting of advertising circulars, books, briefs, envelopes, folders, posters, racing forms, tickets, and other printed matter, whether upon special order or upon materials furnished either directly or indirectly by the customer is a retail sale and subject to the retail sales tax, providing the customer either consumes, or distributes such articles free of charge, and does not resell such articles in the regular course of business. The retail sales tax is computed upon the total charge for printing, and the printer may not deduct the cost of labor, author's alterations, or other service charges in performing the printing, even though such charges may be stated or shown separately on invoices.

(b) Sales of printed matter to advertising agencies who purchase for their own use or for the use of their clients, and not for resale in the regular course of business, are sales for consumption and subject to the retail sales tax.

(c) Sales of tickets to theater owners, amusement operators, transportation companies and others are sales for consumption and subject to the retail sales tax. Such tickets are not resold by the theater owners or amusement proprietors as tangible personal property but are used merely as a receipt to the patrons for payment and as evidence of the right to admission or transportation.

(d) Sales of school annuals and similar publications by printers to school districts, private schools or student organizations therein are subject to the retail sales tax.

(e) Sales by printers of books, envelopes, folders, posters, racing forms, stationery, tickets and other printed matter to dealers for resale in the regular course of business are wholesale sales. Such sales are not subject to retail sales tax when seller obtains a resale certificate for sales made before January 1, 2010, or a reseller permit for sales made on or after January 1, 2010, from the buyer to document the wholesale nature of the sale as provided in WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits). Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.

(f) Charges made by bookbinders or printers for imprinting, binding or rebinding of materials for consumers are subject to the retail sales tax.

(g) Sales to printers of equipment, supplies and materials which do not become a component part or ingredient of the finished printed matter sold or which are put to "intervening use" before being resold are subject to the retail sales tax unless specifically exempt (see subsection (5) of this section). This includes, among others, sales of fuel, furniture, and lubricants.

(h) Sales to printers of paper stock and ink which become a part of the printed matter sold are sales for resale and are not subject to retail sales tax when the buyer provides a resale certificate (WAC 458-20-102A) for sales made before January 1, 2010, or a reseller permit (WAC 458-20-102) for sales made on or after January 1, 2010, to the seller.

(5) **Exemption for sales of computer equipment to printers.** RCW 82.08.806 and 82.12.806 provide a retail sales and use tax exemption to a printer or publisher, of computer equipment, including repair parts and replacement parts for such equipment, when the computer equipment is used primarily in the printing or publishing of any printed material, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the computer equipment. This exemption applies only to computer equipment not otherwise exempt under RCW 82.08.02565.

(6) **Commissions and discounts.**

(a) There is a general trade practice in the printing industry of making allowances to advertising agencies of a certain percentage of the gross charge made for printed matter ordered by the agency either in its own name or in the name of the advertiser. This allowance may be a "commission" or may be a "discount."

(b) A "commission" paid by a seller constitutes an expense of doing business and is not deductible from the measure of tax under either business and occupation tax or retail sales tax. On the other hand, a "discount" is a deduction from an established selling price allowed to buyers, and a bona fide discount is deductible under both these classifications.

(c) In order that there may be a definite understanding, printers, advertising agencies and advertisers are advised that tax liability in such cases is as follows:

(i) The allowance taken by an advertising agency will be deductible as a discount in the computation of the printer's liability only in the event that the printer bills the charge on a net basis; i.e., less the discount.

(ii) Where the printer bills the gross charge to the agency, and the advertiser pays the sales tax measured by the gross charge, no deduction will be allowed, irrespective of the fact that in payment of the account the printer actually receives from the agency the net amount only; i.e., the gross billing, less the commission retained by the agency. In all cases the commission received is taxable to the agency.

AMENDATORY SECTION (Amending WSR 16-20-011, filed 9/23/16, effective 10/24/16)

WAC 458-20-169 Nonprofit organizations. (1) **Introduction.** Unlike the tax systems of most states and the federal government, Washington's tax system, including its primary business tax, applies to the activities of nonprofit organizations. Washington's business and occupation (B&O) tax is imposed on all entities that generate gross receipts or proceeds, unless there is a specific statutory exemption or deduction. This rule explains how the B&O, retail sales, and use taxes apply to activities often performed by nonprofit organizations. Although some nonprofit organizations may be subject to other taxes (e.g., public utility or insurance premium taxes on income from utility or insurance activities), these taxes are not discussed in this rule. The rule describes the most common B&O, retail sales, and use tax exemptions and deductions that are specifically provided to nonprofit organizations by state law. Other exemptions or deductions not specific to nonprofit organizations may also apply.

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

(b) **Other rules that may be relevant.** Rules in the following list may contain additional relevant information for nonprofit organizations:

(i) WAC 458-20-167 Educational institutions, school districts, student organizations, and private schools;

(ii) WAC 458-20-168 Hospitals, nursing homes, assisted living facilities, adult family homes and similar health care facilities;

(iii) WAC 458-20-183 Amusement, recreation, and physical fitness services;

(iv) WAC 458-20-249 Artistic or cultural organizations; and

(v) WAC 458-20-256 Trade shows, conventions and seminars.

(2) **Registration requirements.** Nonprofit organizations with $12,000 or more per year in gross receipts from sales, and/or gross income from services subject to the B&O tax, or that are required to collect or pay to the department of revenue (department) retail sales tax or any other tax or fee which the department administers (regardless of the level of annual gross receipts) must register with the department. Nonprofit organizations with less than twelve thousand dollars per year in gross receipts and that are not required to collect retail sales tax or any other tax or fee administered by the department are not required to register with the department. For more information on whether registration with the department is required see WAC 458-20-101.

(3) **Filing excise tax returns.** Nonprofit organizations making retail sales that require the collection of retail sales tax must file an excise tax return, regardless of the annual level of gross receipts or gross income and whether or not any B&O tax is due. For information on when a taxpayer may qualify for a small business B&O tax credit, see WAC 458-20-104. The excise tax return with payment is generally filed on a monthly basis. Under certain conditions the department may authorize taxpayers to file and remit payment on either a quarterly or an annual basis. For information on how reporting frequencies are assigned to taxpayers see WAC 458-20-22801.

Nonprofit organizations that do not have retail sales tax to remit, but are required to register, do not have to file an excise tax return if they meet certain statutory requirements (e.g., annual gross income of less than $28,000) and are placed on an "active nonreporting" status by the department. For additional information on whether an organization qualifies for the "active nonreporting" status see WAC 458-20-101.

(4) **General tax reporting responsibilities.** While Washington state law provides some tax exemptions and deductions specifically for nonprofit organizations, these organizations otherwise have the same tax-reporting responsibilities as for-profit organizations.

(a) **Business and occupation tax.** Chapter 82.04 RCW imposes a B&O tax on every person with substantial nexus in Washington (see RCW 82.04.067) engaged in business activities within this state, unless the income is specifically exempt or deductible under state law. The B&O tax applies to the value of products, gross proceeds of sales, or gross income of the business, as the case may be. RCW 82.04.220.

(i) **Common B&O tax classifications.** Chapter 82.04 RCW provides a number of classifications that apply to specific activities. The most common B&O tax classifications applying to income received by nonprofit organizations are the retailing, wholesaling, and service and other activities classifications. RCW 82.04.250, 82.04.270, and 82.04.290. If an organization engages in more than one kind of business activity, it must report the gross income from each activity under the appropriate tax classification. RCW 82.04.440(1).

(ii) **Measure of tax.** The most common measures of the B&O tax are "gross proceeds of sales" and "gross income of the business." RCW 82.04.070 and 82.04.080, respectively. These measures include the value proceeding or accruing from the sale of tangible personal property or services rendered without any deduction for the cost of property sold, cost of materials used, labor costs, discounts paid, delivery costs, taxes, losses, or any other expenses.

(b) **Retail sales tax.** A nonprofit organization must collect and remit retail sales tax on all retail sales, unless the sale is specifically exempt by statute. Examples of retail sales tax exemptions that may apply to nonprofit organizations are those for sales of certain food products (see WAC 458-20-244, Food and food ingredients), construction materials purchased by a health or social welfare organization for new construction of alternative housing to be licensed as a family foster home for youth in crisis (see RCW 82.08.02915), and fund-raising activities (see subsection (5)(g) of this rule). New construction includes renovating an existing structure to provide new housing for youth in crisis.

A nonprofit organization must pay retail sales tax when it purchases goods or retail services for its own use as a consumer, unless the purchase is specifically exempt by statute. Items purchased for resale without intervening use are purchases at wholesale and are not subject to the retail sales tax if the seller takes from the buyer a copy of the buyer's reseller permit. The reseller permit documents the wholesale nature of any sale. Reseller permits replaced resale certificates effective January 1, 2010. For additional information on reseller permits see WAC 458-20-102.

(c) **Use tax.** The use tax is imposed on every person, including nonprofit organizations, using tangible personal property within this state as a consumer, unless such use is specifically exempt by statute. The use tax applies only if retail sales tax has not previously

been paid on the item. The rate of tax is the same as the sales tax rate that applies at the location where the property is first used.

A common application of the use tax occurs when items are purchased from an out-of-state seller who has no presence in Washington. When the out-of-state seller does not collect Washington's retail sales or use tax, the buyer is statutorily required to remit use tax directly to the department. For more information on use tax and the use of tangible personal property see WAC 458-20-178.

Except for fund-raising, use tax exemptions generally correspond to retail sales tax exemptions. For example, the use tax exemption for construction materials acquired by a health or social welfare organization for new construction of alternative housing for youth in crisis, to be licensed as a family foster home (RCW 82.12.02915) corresponds with the retail sales tax exemption described in subsection (4)(b) of this rule for purchasing these construction materials.

(i) **Use tax exemption for donated items.** RCW 82.12.02595 provides a use tax exemption for personal property donated to a nonprofit charitable organization. This exemption is available for the nonprofit charitable organization and the donor, if the donor did not previously use the personal property as a consumer. It also applies to the use of property by a donor who is incorporating the property into a nonprofit organization's real or personal property for no charge.

The exemption also applies to another person using property originally donated to a charitable nonprofit organization that is subsequently donated or bailed to that person by the charitable nonprofit organization, provided that person uses the property in furtherance of the charitable purpose for which the property was originally donated to the charitable nonprofit organization. For example, a hardware store donates an industrial pressure washer to a nonprofit community center for neighborhood cleanup, the community center bails this washer to people enrolled in its neighborhood improvement group for neighborhood clean-up projects. No use tax is due from any of the participants in these transactions. An example of a gift that would not qualify is when a car is donated to a church for its staff and the church gives that car to its pastor. The pastor must pay use tax on the car because it serves multiple purposes. It serves the church's charitable purpose, but it also acts as compensation to the pastor and is available for the pastor's personal use. The subsequent donation of property from the charity to another person must be solely for a charitable purpose. If the property is donated or bailed to the third party for a charitable purpose in line with the nonprofit organization's charitable activities, generally, no additional proof is required that this was the charitable purpose for which the property was originally donated.

(ii) **Use tax implications with respect to fund-raising activities.** Subsection (5)(g) of this rule explains that a retail sales tax exemption is available for certain fund-raising sales. However, there is usually no comparable use tax exemption provided to the buyer/user of property purchased at these fund-raising sales. While the nonprofit organization is not obligated to collect use tax from the buyer, the organization is encouraged to inform the buyer of the buyer's possible use tax obligation.

(iii) From October 1, 2013, through October 8, 2015, RCW 82.12.225 provided a use tax exemption for the use of any article of personal property, valued at less than ten thousand dollars, purchased or received as a prize in a contest of chance, as defined in RCW 82.04.285, from a nonprofit organization or a library. Effective Octo-

ber 9, 2015, chapter 32, Laws of 2015 3rd Sp. Sess. (ESB 6013), the exemption applies to qualifying personal property valued at less than twelve thousand dollars. This exemption only applies if the gross income from the sale by the nonprofit organization or library is exempt under RCW 82.04.3651. This exemption is scheduled to expire July 1, 2020.

(5) **Exemptions.** The following sources of income are specifically exempt from tax. As such, they should not be included or reported as gross income if the organization is required to file an excise tax return.

(a) **Adult family homes.** RCW 82.04.327 exempts from B&O tax amounts received by licensed adult family homes or adult family homes that are exempt from licensing under rules of the department of social and health services.

(b) **Nonprofit assisted living facilities.** RCW ((~~82.04.4262 [RCW 82.04.4264]~~)) 82.04.4264 exempts from B&O tax amounts received by a nonprofit assisted living facility licensed under chapter 18.20 RCW for providing room and domiciliary care to residents of the assisted living facility. Nonprofit assisted living facilities were formerly known as "nonprofit boarding homes" in the statute.

(c) **Camp or conference centers.** RCW 82.04.363 and 82.08.830 respectively exempt from B&O tax and retail sales tax amounts received by a nonprofit organization from the sale or furnishing of certain items or services at a camp or conference center conducted on property exempt from the property tax under RCW 84.36.030 (1), (2), or (3). For information about property tax exemptions that may apply see: WAC 458-16-210 (Nonprofit organizations or associations organized and conducted for nonsectarian purposes); WAC 458-16-220 (Church camps); and WAC 458-16-230 (Character building organizations).

Amounts received from the sale of the following items and services are exempt:

(i) Lodging, conference and meeting rooms, camping facilities, parking, and similar licenses to use real property;

(ii) Food and meals;

(iii) Books, tapes, and other products, including electronically transferred items, available exclusively to the participants at the camp, conference, or meeting and not available to the public at large.

(d) **Child care resource and referral services.** RCW 82.04.3395 exempts from B&O tax amounts received by nonprofit organizations for providing child care resource and referral services. Child care resource and referral services do not include child care services provided directly to children.

(e) **Credit and debt services.** RCW 82.04.368 exempts from B&O tax amounts received by nonprofit organizations for providing specialized credit and debt services. These services include:

(i) Presenting individual and community credit education programs including credit and debt counseling;

(ii) Obtaining creditor cooperation allowing a debtor to repay debt in an orderly manner;

(iii) Establishing and administering negotiated repayment programs for debtors; and

(iv) Providing advice or assistance to a debtor with regard to (i), (ii), or (iii) of this subsection.

(f) **Day care provided by churches.** RCW 82.04.339 exempts from B&O tax amounts received by a church for the care of children of any age for periods of less than twenty-four hours, provided the church is exempt from property tax under RCW 84.36.020.

(g) **Fund-raising.** RCW 82.04.3651 and 82.08.02573, respectively, exempt from B&O tax and retail sales tax amounts received from certain fund-raising activities.

These exemptions apply only to the fund-raising income received by the nonprofit organization. For example, commission income received by a nonprofit organization selling books owned by a for-profit entity on a consignment basis is exempt from tax only if the statutory requirements are satisfied. The nonprofit organization is generally responsible for collecting and remitting retail sales tax on the gross proceeds of sales when selling items for another person. For additional information on the taxability of sales by agents, auctioneers and other similar types of sellers see WAC 458-20-159.

(i) **What nonprofit organizations qualify?** Nonprofit organizations that qualify for this exemption are those that are:

(A) A tax-exempt nonprofit organization described by section 501 (c)(3) (educational and charitable), 501 (c)(4) (social welfare), or 501 (c)(10) (fraternal societies operating as lodges) of the Internal Revenue Code; or

(B) A nonprofit organization that would qualify for tax exemption under section 501 (c)(3), (4), or (10) except that it is not organized as a nonprofit corporation; or

(C) A nonprofit organization that does not pay its members, stockholders, officers, directors, or trustees any amounts from its gross income, except as payment for services rendered, does not pay more than reasonable compensation to any person for services rendered, and does not engage in a substantial amount of political activity. Political activity includes, but is not limited to, influencing legislation and participating in any campaign on behalf of any candidate for political office.

(ii) **Qualifying fund-raising activities.** For the purpose of this exemption, "fund-raising activity" means soliciting or accepting contributions of money or other property, or activities involving the anticipated exchange of goods or services for money between the soliciting organization and the organization or person solicited, for furthering the goals of the nonprofit organization.

(A) Money raised by a nonprofit charitable group from its annual telephone fund drive to fund its homeless shelters where nothing is promised in return for a donor's pledge is exempt as fund-raising contributions of money to further the goals of the nonprofit organization.

(B) A nonprofit group organized as a community playhouse has an annual telephone fund drive. The group gives the caller a mug, jacket, dinner, or vacation trip depending on the amount of pledge made over the phone. The community playhouse does not sell or exchange the mugs, jackets, dinners, or trips for cash or property, except during this pledge drive. The money is used to produce the next season's plays. The money earned from the pledges is exempt from both B&O tax and retail sales tax to the extent these amounts represent an exchange of goods and services for money to further the goals of the nonprofit group. The money earned from the pledges above the value of the goods and services exchanged is exempt as a fund-raising contribution of money to further the goals of the nonprofit organization.

(C) A nonprofit group sells ice cream bars at booths leased during the two-week runs of three county fairs, for a total of six weeks during the year, to fund youth camps maintained by the nonprofit group. The money earned from the booths is exempt from both B&O tax

and retail sales tax as a fund-raising exchange of goods for money to further the goals of the nonprofit group.

(iii) **Contributions of money or other property.** The term contributions includes grants, donations, endowments, scholarships, gifts, awards, and any other transfer of money or other property by a donor, provided the donor receives no significant goods, services, or benefits in return for making the gift. For example, an amount received by a nonprofit educational broadcaster from a group that conditions receipt on the nonprofit broadcaster airing its seminars is not a contribution regardless of how the amount paid is titled by the two organizations.

It is not unusual for the person making a gift to require some accountability for how the gift is used as a condition for receiving the gift or future gifts. Such gifts remain exempt, provided the "accountability" required does not result in a direct benefit to the donor (examples of direct benefits to a donor are: Money given for a report on the soil contamination levels of land owned by the donor, medical services provided to the donor or the donor's family, or market research benefiting the donor directly). This "accountability" can take the form of conditions or restrictions on the use of the gift for specific charitable purposes or can take the form of written reports accounting for the use of the gift. Public acknowledgment of a donor for the gift is not a significant service or benefit.

(iv) **Nonqualifying activities.** Fund-raising activity does not include the operation of a regular place of business in which services are provided or sales are made during regular hours such as a bookstore, thrift shop, restaurant, legal or health clinic, or similar business. It also does not include the operation of a regular place of business from which services are provided or performed during regular hours such as the provision of retail, personal, or professional services. A regular place of business and the regular hours of that business depend on the type of business being conducted.

(A) In the example demonstrating that an amount received by a nonprofit broadcaster was not a contribution because services were given in return for the funds, this activity must also be examined to see whether the exchange was for services as part of a fund-raising activity. The broadcaster is in the business of broadcasting programs. It has a regular site for broadcasting programs and broadcasts twenty-four hours every day. Broadcasting is a part of its business activity performed from a regular place of business during regular hours. The money received from the group with the requirement that its seminars be broadcast would not qualify as money received from a fund-raising activity even though the parties viewed the money as a "donation."

(B) A nonprofit organization that makes catalog sales throughout the year with a twenty-four hour telephone line for taking orders has a regular place of business at the location where the sales orders are processed and regular hours of twenty-four hours a day. Catalog sales are not exempt as fund-raising amounts even though the funds are raised for a nonprofit purpose.

(C) A nonprofit group organized as a community playhouse has three plays during the year at a leased theatre. The plays run for a total of six weeks and the group provides concessions at each of the performances. The playhouse has a regular place of business with regular hours for that type of business. The concessions are done at that regular place of business during regular hours. The concessions are not exempt as fund-raising activities even though amounts raised from

the concessions may be used to further the nonprofit purpose of that group.

(D) A nonprofit student group, that raises money for scholarships and other educational needs, sets up an espresso stand that is open for two hours every morning during the school year. The espresso stand is a regular place of business with regular hours for that type of business. The money earned from the espresso stand is not exempt, even though the amounts are raised to further the student group's nonprofit purpose.

(v) **Fund-raising sales by libraries.** RCW 82.04.3651 provides that the sale of used books, used videos, used sound recording, or similar used information products in a library is not the operation of a regular place of business, if the proceeds are used solely to support the library. The library must be a free public library supported in whole or in part with money derived from taxes. RCW 27.12.010. In addition to the B&O tax exemption under RCW 82.04.3651, RCW 82.08.02573 provides a comparable retail sales tax exemption for the same sales made by a library.

(h) **Group training homes.** RCW 82.04.385 exempts from B&O tax amounts received from the department of social and health services for operating a nonprofit group training home. The amounts excluded from gross income must be used for the cost of care, maintenance, support, and training of developmentally disabled individuals. As defined in RCW 71A.22.020, a nonprofit group training home is an approved facility equipped, supervised, managed, and operated on a full-time nonprofit basis for the full-time care, treatment, training, and maintenance of individuals with developmental disabilities.

(i) **Sheltered workshops.** RCW 82.04.385 also exempts from B&O tax amounts received by a nonprofit organization for operating a sheltered workshop.

(i) **What is a sheltered workshop?** A sheltered workshop is that part of the nonprofit organization engaged in business activities that are performed primarily to provide evaluation and work adjusted services for a handicapped person or to provide gainful employment or rehabilitation services to a handicapped person. The sheltered workshop can be maintained on or off the premises of the nonprofit organization.

(ii) **What is meant by "gainful employment or rehabilitation services to a handicapped person"?** Gainful employment or rehabilitation services must be an interim step in the rehabilitation process that is provided because the person cannot be readily absorbed into the competitive labor market or because employment opportunities for the person do not exist during that time in the competitive labor market.

"Handicapped," for the purposes of this exemption, means a physical or mental disability that restricts normal achievement, including medically recognized addictions and learning disabilities. However, this term does not include social or economic disadvantages that restrict normal achievement (e.g., prior criminal history or low-income status).

(j) **Student loan services.** RCW 82.04.367 exempts from B&O tax amounts received by nonprofit organizations that are exempt from federal income tax under section 501 (c)(3) of the Internal Revenue Code that:

(i) Are guarantee agencies under the federal guaranteed student loan program or that issue debt to provide or acquire student loans; or

(ii) Provide guarantees for student loans made through programs other than the federal guaranteed student loan program.

(k) **Grants received to fund education programs pertaining to litter control, waste reduction, recycling, and composting.** Effective July 24, 2015, RCW 82.04.755 provides a B&O tax exemption for grants received by a nonprofit organization from the matching fund competitive grant program established in RCW 70.93.180 (1)(b)(ii). This program provides funding for local or statewide education programs designed to help the public with litter control, waste reduction, recycling, and composting of primarily products upon which litter tax is imposed. For information on the state litter tax program, see chapter 82.19 RCW. The requirements for the grants are listed in RCW 70.93.180 (1)(b)(ii). Chapter 15, Laws of 2015 (ESHB 1060).

(6) **B&O tax deduction of payments made to health or social welfare organizations.**

(a) **Compensation from public entities.** RCW 82.04.4297 provides a B&O tax deduction to health or social welfare organizations for amounts received from the United States, any instrumentality of the United States, the state of Washington, or any municipal corporation or political subdivision of the state of Washington as compensation for or to support health or social welfare services, rendered by a health or social welfare organization, as defined in RCW 82.04.431, or by a municipal corporation or political subdivision. These deductible amounts should be included in the gross income reported on the excise tax return, entered on the deduction page, and then deducted on the return when determining the amount of the organization's taxable income. A deduction is not allowed, however, for amounts that are received under an employee benefit plan.

(b) **Mental health services or chemical dependency services under a government-funded program.** RCW 82.04.4277 provides a B&O tax deduction for health or social welfare organizations for amounts received as compensation for providing mental health services or chemical dependency services under a government-funded program.

(i) The following definitions apply to (b) of this subsection unless the context clearly requires otherwise:

(A) "Chemical dependency" has the same meaning as provided in RCW 70.96A.020;

(B) "Health and social welfare organization" has the meaning provided in RCW 82.04.431; and

(C) "Mental health services" and "behavioral health organization" have the meanings provided in RCW 71.24.025.

(ii) The deduction for amounts received as compensation for providing chemical dependency services under a government-funded program is effective April 1, 2016. Regional support networks, which are renamed behavioral health organizations effective April 1, 2016, may also deduct from the measure of tax amounts received from the state of Washington for distribution to health or social welfare organizations eligible to deduct the distribution under RCW 82.04.4277.

(iii) Persons claiming deductions under RCW 82.04.4277 must file an annual tax performance report with the department. Refer to RCW 82.32.534 and WAC 458-20-267 for information regarding filing an annual tax performance report.

(iv) These deductions are scheduled to expire January 1, 2020.

(c) **Child welfare services.** RCW 82.04.4275 provides a B&O tax deduction for health or social welfare organizations for amounts received as compensation for providing child welfare services under a government-funded program. Persons may also deduct from the measure of

tax amounts received from the state of Washington for distribution to health or social welfare organizations eligible to deduct the distribution under RCW 82.04.4275(1).

(d) **What is a health or social welfare organization?** A health or social welfare organization is an organization, including any community action council, providing health or social welfare services as defined in subsection (6)(e) of this rule. To be exempt under RCW 82.04.4297, a corporation must satisfy all of the following conditions:

(i) Be a corporation sole under chapter 24.12 RCW or a domestic or foreign not-for-profit corporation under chapter 24.03 RCW. A corporation providing professional services as authorized under chapter 18.100 RCW does not qualify as a health or social welfare organization;

(ii) Be governed by a board of not less than eight individuals who are not paid corporate employees when the organization is a not-for-profit corporation;

(iii) Not pay any part of its corporate income directly or indirectly to its members, stockholders, officers, directors, or trustees except as executive or officer compensation or as services rendered by the corporation in accordance with its purposes and bylaws to a member, stockholder, officer, or director or as an individual;

(iv) Only pay compensation to corporate officers and executives for actual services rendered. This compensation must be at a level comparable to like public service positions within Washington;

(v) Have irrevocably dedicated its corporate assets to health or social welfare activities. Upon corporate liquidation, dissolution, or abandonment, any distribution or transfer of corporate assets may not inure directly or indirectly to the benefit of any member or individual, except for another health or social welfare organization;

(vi) Be duly licensed or certified as required by law or regulation;

(vii) Use government payments to provide health or social welfare services;

(viii) Make its services available regardless of race, color, national origin, or ancestry; and

(ix) Provide access to the corporation's books and records to the department's authorized agents upon request.

(e) **Qualifying health or welfare services.** The term "health or social welfare services" includes and is limited to:

(i) Mental health, drug, or alcoholism counseling or treatment;

(ii) Family counseling;

(iii) Health care services;

(iv) Therapeutic, diagnostic, rehabilitative, or restorative services for the care of the sick, aged, physically-disabled, developmentally-disabled, or emotionally-disabled individuals;

(v) Activities, including recreational activities, intended to prevent or ameliorate juvenile delinquency or child abuse;

(vi) Care of orphans or foster children;

(vii) Day care of children;

(viii) Employment development, training, and placement;

(ix) Legal services to the indigent;

(x) Weatherization assistance or minor home repairs for low-income homeowners or renters;

(xi) Assistance to low-income homeowners and renters to offset the cost of home heating energy, through direct benefits to eligible households or to fuel vendors on behalf of eligible households; and

(xii) Community services to low-income individuals, families and groups that are designed to have a measurable and potentially major impact on causes of poverty in communities of the state of Washington; and

(xiii) Temporary medical housing, as defined in RCW 82.08.997, if the housing is provided only:

(A) While the patient is receiving medical treatment at a hospital required to be licensed under RCW 70.41.090 or at an outpatient clinic associated with such hospital, including any period of recuperation or observation immediately following such medical treatment; and

(B) By a person that does not furnish lodging or related services to the general public.

AMENDATORY SECTION (Amending WSR 16-02-059, filed 1/4/16, effective 2/4/16)

WAC 458-20-176 Commercial deep sea fishing—Commercial passenger fishing—Diesel fuel. (1) **Introduction.** This rule explains the business and occupation (B&O) tax, sales tax and use tax responsibilities of those engaged in commercial deep sea fishing, and suppliers selling to those persons.

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

(a) WAC 458-20-119 Sales by caterers and food service contractors;

(b) WAC 458-20-135 Extracting natural products;

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

(d) WAC 458-20-193 Interstate sales of tangible personal property;

(e) WAC 458-20-244 Food and food ingredients.

(2) **Definitions.** The following definitions apply to this rule.

(a) **Commercial deep sea fishing.** "Commercial deep sea fishing" means fishing done for profit outside the territorial waters of the state of Washington. It does not include sport fishing or the operation of charter boats for sport fishing. Nor does the phrase include the operation or purchase of watercraft for kelping, purse seining, or gill netting, because such fishing methods can be legally performed in Washington only within the territorial waters of the state (the three-mile limit). Therefore, watercraft rigged for fishing by any of these methods will be deemed for use in other than commercial deep sea fishing unless proof, including documentation to be retained by sellers, is furnished that said watercraft will be used for these purposes exclusively outside the Washington territorial limit.

(b) **Commercial passenger fishing.** "Commercial passenger fishing" means that done from charter boats for sport outside the territorial waters of the state of Washington.

(c) **Component part.** "Component part" includes all tangible personal property that is attached to and a part of a watercraft. It includes dories, gurdies and accessories, bait tanks, baiting tables and turntables. It also includes spare parts that are designed for ultimate attachment to a watercraft. The term "component part" does not

include equipment or furnishings of any kind that are not attached to a watercraft, nor does it include consumable supplies. Thus, it does not include, among other things, bedding, table and kitchen wares, fishing nets, hooks, lines, floats, hand tools, ice, fuel or lubricants.

(d) **Watercraft.** "Watercraft" means every type of floating equipment that is designed for carrying fishing gear, fish catch or fishing crews, and used primarily in commercial deep sea fishing operations.

(3) **Business and occupation tax.**

(a) Persons engaged in commercial deep sea fishing are not taxable under the extracting classification with respect to catches obtained outside the territorial waters of this state.

(b) Such persons are taxable under either the retailing or the wholesaling classification with respect to sales made within this state, unless entitled to exemption by reason of the commerce clauses of the federal constitution.

(c) Such persons may qualify for a B&O tax exemption under RCW 82.04.4269. This exemption pertains to the value of products or the gross proceeds of sales derived from:

(i) Manufacturing seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or

(ii) In the ordinary course of business, manufactured seafood products that remain in a raw, raw frozen or raw salted state to buyers that transport the goods out of the state of Washington. A person taking an exemption must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the buyer in the ordinary course of business out of the state of Washington.

(d) Persons claiming the exemption in (c) of this subsection must file a completed annual ((~~survey~~)) tax performance report with the department under RCW ((~~82.32.585~~)) 82.32.534. In addition, persons claiming this tax preference must report the amount of the exemption on their monthly or quarterly excise tax return. For more information on reporting requirements for this tax preference see RCW 82.32.808.

(e) The exemption provided by RCW 82.04.4269 is scheduled to expire on July 1, 2025.

(4) **Retail sales tax.**

(a) Under RCW 82.08.0262, the retail sales tax does not apply to sales of watercraft (including component parts thereof) which are primarily for use in conducting commercial deep sea fishing operations, nor does retail sales tax apply to sales of or charges made for labor and services rendered in respect to the constructing, repairing, cleaning, altering or improving of such property.

(b) The retail sales tax applies to sales made to persons engaged in commercial deep sea fishing of every type of tangible personal property (except only sales of watercraft and component parts thereof) and to sales of or charges made for labor and services rendered in respect to the construction, repairing, cleaning, altering or improving of such types of property. Thus, the retail sales tax applies to sales to such persons of such things as fishing nets, hooks, lines, floats and bait; table and kitchen wares; hand tools, ice, fuel except diesel fuel as noted in subsection (7) of this rule, and lubricants for use or consumption. For sales of food and food ingredients see WAC 458-20-119 and 458-20-244.

(5) **Exemption certificates required.**

(a) Persons selling watercraft or component parts thereof to persons engaged in commercial deep sea fishing or performing services with respect to such craft or parts, are required to obtain from the buyer a certificate evidencing the exempt nature of the transaction.

(b) Buyers claiming the exemption may use the department's Buyers' Retail Sales Tax Exemption Certificate. The certificate can be found on the department's web site at dor.wa.gov. Sellers must retain certificates in its records as evidence of the exempt nature of the sales to eligible buyers.

(c) Fishing boats used primarily in commercial deep sea fishing operations that are incidentally used within the waters of this state are still eligible for the exemption from retail sales tax.

(d) Sales of fishing boats, that are the types used in the waters of Puget Sound or the Columbia River and the tributaries thereof, and are not practical for use in deep sea fishing, are subject to the retail sales tax including sales of component parts thereof and on charges made for the repair of the same.

(e) It is a gross misdemeanor for a buyer to make a false certificate of exemption for the purpose of avoiding the tax.

(6) **Use tax.**

(a) The use tax does not apply to the use of watercraft or component parts thereof. RCW 82.12.0254.

(b) The use tax applies to the actual use within this state of all other types of tangible personal property purchased at retail where the sales tax has not been paid and no exemption exists.

(7) **Diesel fuel.**

(a) RCW 82.08.0298 and 82.12.0298 provide sales and use tax exemptions on diesel fuel for both commercial passenger fishing (charter boats for sport fishing) and commercial deep sea fishing operations.

(b) Neither retail sales nor use tax applies with respect to sales or use of diesel fuel in the operation of watercraft in commercial deep sea fishing operations or commercial passenger fishing operations by persons who are regularly engaged in the business of such operations outside the territorial waters (three-mile limit) of this state. For purposes of this exemption, a person is not regularly engaged in either business if the person has gross receipts from the extra territorial operations of less than five thousand dollars a year. For persons involved in both commercial deep sea fishing operations and commercial passenger fishing operations, the receipts from both will be added together to determine eligibility for this exemption.

(c) If a person qualifies for the exemptions by virtue of operating a deep sea fishing vessel, and has the requisite amount of gross receipts from that activity, all diesel fuel purchases and uses by such person for such vessel are tax exempt. It is not required that all the diesel fuel purchased be used outside the territorial waters of this state.

(d) **Diesel fuel exemption certificates required.** Persons selling diesel fuel to such persons are required to obtain from the buyer a certificate evidencing the exempt nature of the transaction. This certificate must identify the buyer by name and address, and by the registered name and number of the watercraft with respect to which the purchase is made. Blanket certificates covering all diesel fuel purchases for specified watercraft may be used, where appropriate. A seller of diesel fuel who accepts such a certificate is not liable for sales tax on the diesel fuel sold. Certificates must be retained by the sellers in their permanent records as evidence of the exempt nature of diesel sales to eligible buyers. It is a gross misdemeanor for

a buyer to make a false certificate of exemption for the purpose of avoiding the tax. Buyers may use the Buyers' Retail Sales Tax Exemption Certificate found on the department's web site at dor.wa.gov.

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

WAC 458-20-179 Public utility tax. Introduction. This rule explains the public utility tax (PUT) imposed by chapter 82.16 RCW. The PUT is a tax for engaging in certain public service and transportation businesses within this state.

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

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

(2) WAC 458-20-121 Sales of heat or steam—Including production by cogeneration;

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

(4) WAC 458-20-175 Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce;

(5) WAC 458-20-180 Motor carriers;

(6) WAC 458-20-192 Indians—Indian country;

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

(8) WAC 458-20-251 Sewerage collection and other related activities.

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

Part I - General Information

(101) **Persons subject to the public utility tax.** The PUT is imposed by RCW 82.16.020 on certain public service and transportation businesses including railroad, express, railroad car, water distribution, sewerage collection, light and power, telegraph, gas distribution, motor transportation, urban transportation, log transportation, vessels under sixty-five feet in length operating upon the waters within the state of Washington, and tugboat businesses.

(a) **Hauling by watercraft.** Income from hauling persons or property for hire by watercraft between points in Washington is subject to one of two PUT classifications, depending on the nature of the service. Income from:

• Operating tugboats of any size, and the sale of transportation services by vessels sixty-five feet and over, is subject to tax under the "other public service business" PUT classification.

• The sale of transportation services using vessels under sixty-five feet, other than tugboats, is subject to tax under the "vessels under sixty-five feet" public utility tax classification.

These classifications do not include sightseeing tours, fishing charters, or activities that are in the nature of guided tours where

the tour may include some water transportation. Persons engaged in providing tours should refer to WAC 458-20-258, Travel agents and tour operators.

(b) **Other businesses subject to the public utility tax.** The PUT also applies to any other public service business subject to control by the state, or having the powers of eminent domain, or any business declared by the legislature to be of a public service nature, unless the activity is subject to tax under chapter 82.04 RCW, Business and occupation (B&O) tax.

(i) The phrase "subject to control by the state" means control by the utilities and transportation commission or any other state agency required by law to exercise control of a business of a public service nature regarding rates charged or services rendered. Examples of other public service businesses include, but are not limited to: Airplane transportation, boom, dock, ferry, pipeline, toll bridge, water transportation, and wharf businesses. RCW 82.16.010.

(ii) Persons engaged in the same business activities as the businesses described above are subject to the PUT even if they are not publicly recognized as providing that type of service or the amount of income from these activities is not substantial. For example, an industrial manufacturing company that owns and operates a well, and that sells a relatively small amount of water to its wholly owned subsidiary, is subject to the PUT as a water distribution business on its sales of water.

(c) **Are amounts derived from interest and penalties taxable?** Amounts charged to customers as interest or penalties are generally subject to the service and other activities B&O tax. This includes interest charged for failure to timely pay for utility services or for incidental services. Incidental services include for example meter installation or other activities which are performed prior to the customer receiving utility services. Any interest or penalty resulting from the failure to timely pay a local improvement district or utility local improvement district assessment is not subject to public utility or B&O taxes.

(102) **Tax rates and measure of tax.** The rates of tax for each business activity subject to the PUT are imposed under RCW 82.16.020 and set forth on appropriate lines of the state public utility tax addendum for the excise tax return. The measure of the PUT is the gross income of the business. The term "gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental to that business. No deduction may be taken on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discounts, delivery costs, taxes, or any other expense whatsoever paid or accrued, nor on account of losses. RCW 82.16.010(3).

(103) **Persons subject to public utility tax may also be subject to B&O tax.** The B&O tax does not apply to any business activities for which PUT is specifically imposed, including amounts derived from activities for which a deduction from the PUT is available under RCW 82.16.050. RCW 82.04.310(1). However, many persons engaged in business activities subject to the PUT are also engaged in other business activities subject to B&O tax.

For example, a gas distribution company operating a system for the distribution of natural gas for sale may also make retail sales of gas appliances. The gas distribution company is subject to the PUT on its distribution of natural gas to consumers. It is also subject to

retailing B&O tax and must collect and remit retail sales tax on its retail sales of gas appliances. Repairs of customer owned appliances are also a retailing activity subject to retail sales tax.

In distinguishing gross income taxable under the PUT from gross income taxable under the B&O tax, the department is guided by the uniform system of accounts established for the specific type of utility concerned. Because of differences in the uniform systems of accounts established for various types of utility businesses, such guides are not controlling for the purposes of classifying revenue under the Revenue Act.

(104) **Charges for service connections, line extensions, and other similar services.**

(a) For existing customers, amounts derived from services that are incidental to a public utility activity are subject to PUT. Thus, amounts received for the following are subject to PUT:

(i) Service connection, start-up, and testing fees;

(ii) Charges for line extensions, repairs, raisings, and/or drops;

(iii) Meter or pole replacement;

(iv) Meter reading or load factor charges; and

(v) Connecting or disconnecting.

(b) For new customers, amounts received for any of the services noted above in Part (104)(a) of this rule are subject to service and other activities B&O tax.

A "new customer" is a customer who previously has not received the utility service at the location. For example, a customer of a water distribution company who currently receives water at a residence and constructs a new residence at a different location is considered a "new customer" with respect to any meter installation services performed at the new residence, until the customer actually receives water at that location. It is immaterial that this customer may be receiving water at the old residence. The charge for installing the meter for this customer at the new location is subject to service and other activities B&O tax.

(105) **Contributions of equipment or facilities.** Contributions to a utility business in the form of equipment or facilities are not considered income to the utility business, if the contribution is a condition of receiving service.

(a) **Example 1.** An industrial customer purchases and pays sales tax on transformers it installs. The customer then provides the transformers to a public utility district as a condition of receiving future service. The public utility district is not subject to the PUT or B&O tax on the receipt of the transformers. Use tax is not owed by the utility district as the customer paid sales tax at the time of purchase.

(b) **Example 2.** For a water or sewerage collection business, the value of pipe, valves, pumps, or similar items provided by a developer for purposes of servicing the developed area is likewise not subject to PUT or B&O tax.

Part II - Exemptions, Deductions, and Nontaxable Receipts

(201) **Exemptions.** This subsection describes PUT exemptions. Also see subsections in this rule that discuss specific utilities.

(a) **Income exemption.** Persons subject to the PUT are exempt from the payment of the tax if their taxable income from utility activities does not meet a minimum threshold. RCW 82.16.040. For detailed infor-

mation about this exemption, refer to WAC 458-20-104, Small business tax relief based on income of business.

(b) **Ride sharing.** RCW 82.16.047 exempts amounts received in the course of commuter ride sharing or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010. For detailed information about this exemption, refer to WAC 458-20-261, Commute trip reduction incentives.

(c) **State route number 16.** RCW 82.16.046 exempts amounts received from operating state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW.

(202) **Deductions.** In general, costs of doing business are not deductible under the PUT. However, RCW 82.16.050 provides for limited deductions. This subsection describes a number of those deductions. The deductible amounts should be included in the gross income reported on the state public utility tax addendum for the excise tax return and then deducted on the deduction detail page to determine the amount of taxable income. Deductions taken but not identified on the appropriate deduction detail page may be disallowed. Also see Parts III and IV of this rule, which identify additional deductions available to power and light, gas distribution, and water distribution businesses.

(a) **Cash discounts.** The amount of cash discount actually taken by the purchaser or customer is deductible under RCW 82.16.050(4).

(b) **Credit losses.** The amount of credit losses actually sustained by taxpayers whose regular books of account are kept on an accrual basis is deductible under RCW 82.16.050(5). For additional information regarding credit losses see WAC 458-20-196, Bad debts.

(c) **Taxes.** Amounts derived by municipally owned or operated public service businesses directly from taxes levied for their support are deductible under RCW 82.16.050(1). However, service charges that are spread on the property tax rolls and collected as taxes are not deductible.

Local improvement district and utility local improvement district assessments, including interest and penalties on such assessments, are not income because they are exercises of the jurisdiction's taxing authority. These assessments may be composed of a share of the costs of capital facilities, installation labor, connection fees, etc.

(d) **Prohibitions imposed by federal law or the state or federal constitutions.** Amounts derived from business that the state is prohibited from taxing under federal law or the state or federal constitutions are deductible under RCW 82.16.050(6).

(e) **Sales of commodities for resale.** Amounts derived from the sale of commodities to persons in the same public service business as the seller, for resale within this state, are deductible under RCW 82.16.050(2). This deduction is allowed only with respect to water distribution, gas distribution, or other public service businesses that furnish water, gas, or any other commodity in the performance of a public service business. For example, income from the sale of natural gas by a gas distributing company to natural gas companies located in Washington, who resell the gas to their customers, is deductible from the gas distributing company's gross income.

(f) **Services furnished jointly.** In general, costs of doing business are not deductible under the PUT. However, RCW 82.16.050(3) allows a deduction for amounts actually paid by a taxpayer to another person taxable under the PUT as the latter's portion of the consideration due for services furnished jointly by both, provided the full amount paid by the customer for the service is received by the taxpayer and reported as gross income subject to the PUT. The services must

be furnished jointly by both the taxpayer and another person taxable under the PUT.

Example 1. Manufacturing Company hires ABC Transport (ABC) to haul goods from Tacoma to a manufacturing facility in Bellingham. ABC subcontracts part of the haul to XYZ Freight (XYZ) and has XYZ haul the goods from Tacoma to Everett, where the goods are loaded into ABC's truck and transported to Bellingham. Assuming all other requirements of the deduction are met, ABC may deduct the payments it makes to XYZ from its gross income as XYZ's portion of the consideration paid by Manufacturing Company for transportation services furnished jointly by both ABC and XYZ. See WAC 458-20-180 for additional information on motor carriers.

Example 2. Dakota Electricity Generator (DEG) sells electricity to Mod Industrial Firm (MIF). DEG hires Wheeler #1 to transmit the electricity from DEG to MIF. Wheeler #1 subcontracts a portion of the transmission service to Wheeler #2.

• Wheeler #1 and Wheeler #2 are jointly furnishing transmission services to DEG. Assuming all other requirements of the deduction are met, Wheeler #1 may claim a "services jointly provided" deduction in the amount paid to Wheeler #2.

• DEG may not claim a "services jointly provided" deduction for the amount DEG paid Wheeler #1. DEG and Wheeler #1 are ***not*** jointly furnishing a service to MIF. DEG is selling electricity to MIF, and Wheeler #1 is selling transmission services to DEG.

Example 3. City A's water department purchases water from City B's water department. City A sells the water to its customers. City A may not take a deduction for its payment to City B's water department as "services jointly provided." The sale of water by City A to its customers is not a service jointly provided to City A's customers by both City A and City B.

City B, however, may take a deduction under RCW 82.16.050(2) for its sales of water to City A since this is a sale of commodities to a person in the same public service business, for resale within this state.

(203) **Nontaxable amounts.** The following amounts are not considered taxable income.

(a) **Insurance claim amounts.** Amounts received from insurance companies in payment of losses, which are distinguishable from amounts received to settle contract payment disagreements.

(b) **Payment of damages.** Amounts received from individuals and others in payment of damages caused by them to the utility's plant or equipment.

(c) **Amounts from eminent domain proceedings or governmental action.** Amounts received as compensation for compensatory or involuntary taking of facilities of a public utility, by the exercise of eminent domain or governmental action, are considered liquidated damages.

Part III - Light and Power Business

(301) **Light and power business.** Public utility tax is imposed by RCW 82.16.020 on gross income from providing light and power services. Light and power business means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale. RCW 82.16.010.

(302) **Requirements for light and power businesses.** RCW 82.16.090 requires that customer billings issued by light and power businesses serving more than twenty thousand customers include the following information:

(a) The rates and amounts of taxes paid directly by the customer on products or services rendered by such business; and

(b) The rate, origin, and approximate amount of each tax levied on the revenue of such business which has been added as a component of the amount charged to the customer. This does not include taxes levied by the federal government or taxes levied under chapters 54.28, 80.24, or 82.04 RCW.

(303) **Wheeling of electricity.** "Wheeling of electricity" is the activity of delivering or distributing electricity owned by others using power lines and equipment of the person doing the wheeling. Income from wheeling electricity is subject to the PUT.

(304) **Exchanges of electricity by light and power businesses.** There is no specific exemption that applies to an "exchange" of electrical energy or its rights. However, exchanges of electrical energy between light and power businesses qualify for deduction in computing the PUT as sales of power to another light and power business for resale. RCW 82.16.050(11). An exchange is a transaction that is considered to be a sale and involves a delivery or transfer of energy or its rights by one party to another for which the second party agrees, subject to the terms and conditions of the agreement, to deliver electrical energy at the same or another time. Examples of deductible exchange transactions include, but are not limited to, the following:

(a) The exchange of electric power for electric power between one light and power business and another light and power business;

(b) The transmission of electric power by one light and power business to another light and power business pursuant to the agreement for coordination of operations among power systems of the Pacific Northwest executed as of September 15, 1964;

(c) The acquisition of electric power by the Bonneville Power Administration (BPA) for resale to its Washington customers in the light and power business;

(d) The residential exchange of electric power entered into between a light and power business and the administrator of the BPA pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501, Sec. 5(c), 16 U.S.C. Sec. 839c. In some cases, power is not physically transferred, but the purpose of the residential exchange is for BPA to pay a "subsidy" to the exchanging utilities. These subsidies are considered a nontaxable adjustment (rebate or discount) for purchases of power from BPA.

(305) **Exemptions.** The following exemptions are available for sales of electricity, and are in addition to the general exemptions found in Part II of this rule.

(a) **Sales of electricity to an electrolytic processor.** RCW 82.16.0421 provides an exemption for sales of electricity made by light and power businesses to chlor-alkali electrolytic processing businesses or sodium chlorate electrolytic processing businesses for the electrolytic process. This exemption, which is scheduled to expire June 30, 2019, applies to sales of electricity made by December 31, 2018.

The exemption does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the electrolytic process.

(i) **Exemption certificate required.** To claim the exemption, the chlor-alkali electrolytic processing business or the sodium chlorate electrolytic processing business must provide the light and power business with an exemption certificate. RCW 82.16.0421. A certificate can be obtained from the department's web site at: dor.wa.gov.

(ii) **Annual tax performance report requirement.** RCW 82.16.0421 requires taxpayers receiving the benefit of this tax preference to file an annual tax performance report by ((~~April 30th~~)) May 31st of the year following any calendar year in which a taxpayer becomes eligible to claim the tax preference. See RCW 82.32.534 for more information on the annual tax performance report requirement for tax preferences.

(iii) **Qualification requirements.** To qualify all the following requirements must be met:

(A) The electricity used in the electrolytic process must be separately metered from the electricity used for the general operations of the business;

(B) The price charged for the electricity used in the electrolytic process must be reduced by an amount equal to the tax exemption available to the light and power business; and

(C) Disallowance of all or part of the exemption is a breach of contract and the damages to be paid by the chlor-alkali electrolytic processing business or the sodium chlorate electrolytic processing business is the amount of the tax exemption disallowed.

(b) **Sales of electricity to aluminum smelters.** RCW 82.16.0498 provides an exemption to be taken in the form of a credit. The credit is allowed if the contract for sale of electricity to an aluminum smelter specifies that the price charged for the electricity will be reduced by an amount equal to the credit. The exemption does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the smelting process. The credit allowed is the same amount as the utility tax that would otherwise have been due under RCW 82.16.020.

(c) **BPA credits or funds.** Effective June 10, 2010, through June 30, 2015, RCW 82.04.310 exempted from the B&O tax credits or payments received by persons from the BPA, for the purpose of implementing energy conservation programs or demand-side management programs. This exemption expired June 30, 2015, and credits or payments received on or after July 1, 2015, are subject to the B&O tax under the service and other activities classification.

(306) **Deductions.** The following deductions are available for sales of electricity, and are in addition to the general deductions found in Part II of this rule.

(a) **Sales of electricity for resale or for consumption outside Washington.** Amounts derived from the production, sale, or transfer of electrical energy for resale within or outside the state of Washington or for consumption outside the state are deductible under RCW 82.16.050(11). These sales of electricity are also not subject to the manufacturing B&O tax. RCW 82.04.310.

(b) **Low density light and power businesses.** RCW 82.16.053 provides a deduction for light and power businesses having seventeen or fewer customers per mile of distribution power lines with retail power rates that exceed the state average power rate. The statute requires the department to determine the state average electric power rate each year and make this rate available to these businesses. This rate and additional information regarding this deduction can be found on the department's web site at: dor.wa.gov.

(c) **Conservation - Electrical energy and gas.** RCW 82.16.055 provides deductions relating to the production or generation of energy from cogeneration or renewable resources, and for measures to improve the efficiency of energy end-use.

(i) **Restrictions.** Use of the deductions is subject to the following restrictions:

(A) They apply only to new facilities for the production or generation of energy from cogeneration or renewable energy resources or measures to improve the efficiency of energy end-use on which construction or installation was begun after June 12, 1980, and before January 1, 1990;

(B) The measures or projects must be, at the time they are placed in service, reasonably expected to save, produce, or generate energy at a total incremental system cost per unit of energy delivered to end-use which is less than or equal to the incremental system cost per unit of energy delivered to end-use from similarly available conventional energy resources that utilize nuclear energy or fossil fuels and that the gas or electric utility could acquire to meet energy demand in the same time period; and

(C) They may be taken for a period not exceeding thirty years after the project is placed in operation. Any recurring costs determined to be eligible for deduction under this rule will cease to be eligible in whole or part at the time of termination of any energy conservation measure or project that originally authorized the deduction under RCW 82.16.055.

(ii) **What can be deducted.** The following may be deducted from a taxpayer's gross income:

(A) Amounts equal to the cost of production at the plant for consumption within the state of Washington of electrical energy produced or generated from cogeneration as defined in RCW 82.08.02565;

(B) Amounts equal to the cost of production at the plant for consumption within the state of Washington of electrical energy or gas produced or generated from renewable energy resources such as solar energy, wind energy, hydroelectric energy, geothermal energy, wood, wood wastes, municipal wastes, agricultural products and wastes, and end-use waste heat;

(C) Amounts expended to improve consumers' efficiency of energy end-use or to otherwise reduce the use of electrical energy or gas by the consumer;

(D) Amounts received by a utility as a contribution for the installation of service, and later refunded to the customer, are deductible from gross income at the time the amounts are refunded;

(E) Production expenses, eligible fuel costs and book depreciation of capital costs. Eligible fuel costs are all fuels if used for cogeneration or nonfossil fuel costs if not a cogeneration facility.

(307) **Credits.** Credit is available to light and power businesses that make contributions to an electric utility rural economic development revolving fund. The credit is equal to fifty percent of contributions made during a fiscal year to an electric utility rural economic development revolving fund.

(a) Light and power businesses may take a credit up to twenty-five thousand dollars, not to exceed the PUT that would normally be due, against their public utility tax liability each fiscal year for contributions made.

(b) Expenditures from the electric utility rural economic development revolving fund must be made solely on qualifying projects, in a designated qualifying rural area. For additional information see RCW 82.16.0491.

(c) The total amount of credits available statewide on a fiscal year basis for all qualified businesses is three hundred fifty thousand dollars. The department will allow earned credits on a first-

come, first-served basis. The right to earn these tax credits expired June 30, 2011. Unused earned credits may be carried forward to subsequent years provided the department has given prior approval.

Part IV - Gas and Water Distribution Businesses

(401) **Gas distribution.** Gross income received for the distribution of gas is taxable under PUT as provided by RCW 82.16.020. Gas distribution business means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural. RCW 82.16.010. See Part II for general exemptions and deductions that may apply to gas distribution.

(402) **Requirements for gas distribution businesses.** RCW 82.16.090 requires that customer billings issued by gas distribution businesses serving more than twenty thousand customers include the following information:

(a) The rates and amounts of taxes paid directly by the customer on products or services rendered by such business; and

(b) The rate, origin, and approximate amount of each tax levied on the revenue of such business which has been added as a component of the amount charged to the customer. This does not include taxes levied by the federal government or taxes levied under chapters 54.28, 80.24, or 82.04 RCW.

(c) In addition to the general exemptions and deductions noted in Part II of this rule, the law provides the following:

(i) **Sales of natural or manufactured gas to aluminum smelters.** RCW 82.16.0498 provides an exemption to be taken in the form of a credit for sales of natural or manufactured gas to aluminum smelters. The credit is allowed if the contract for sale of gas to an aluminum smelter specifies that the price charged for the gas will be reduced by an amount equal to the credit. The credit allowed is the same amount as the utility tax that would otherwise have been due under RCW 82.16.020.

(ii) **Conservation - Energy from gas.** RCW 82.16.055 provides deductions for the production or generation of energy from cogeneration or renewable resources and for measures to improve the efficiency of energy end-use. See subsection (306)(c) of this rule.

(iii) **Compressed natural gas and liquefied natural gas used as transportation fuel.**

(A) Effective July 1, 2015, RCW 82.16.310 provides an exemption for sales by a gas distribution business of natural gas, compressed natural gas, and liquefied natural gas if the:

(I) Compressed natural gas or liquefied natural gas is sold or used as transportation fuel; or

(II) Buyer uses natural gas to manufacture compressed natural gas or liquefied natural gas to be sold or used as transportation fuel.

(B) The buyer must provide and the seller must retain an exemption certificate. See the department's web site at: dor.wa.gov for the "Purchases of Natural Gas for Use as Transportation Fuel" form. RCW 82.16.310.

(C) Although sales of natural gas, compressed natural gas, and liquefied natural gas may be exempt under RCW 82.16.310, the income from such sales may be subject to other taxes such as business and occupation tax and retail sales tax.

(D) For the purpose of this subsection, "transportation fuel" means fuel for the generation of power to propel a motor vehicle as defined in RCW 46.04.320, a vessel as defined in RCW 88.02.310, or a locomotive or railroad car.

(403) **Water distribution.** PUT is imposed on amounts derived from the distribution of water under RCW 82.16.020. Water distribution business means the business of operating a plant or system for the distribution of water for hire or sale. RCW 82.16.010. In addition to the general exemptions and deductions noted in Part II of this rule, the law provides the following:

(a) **Water distribution by a nonprofit water association.** Amounts derived from the distribution of water by a nonprofit water association and used for capital improvements, related to the water distribution service, by that association are deductible under RCW 82.16.050(12).

(b) **Distribution of irrigation water.** Amounts derived from the distribution of water through an irrigation system, for irrigation purposes, are deductible under RCW 82.16.050(7). The phrase "for irrigation purposes" means water used solely for nourishing plant life. Thus, when a water distribution business supplies potable water and some of the water is segregated and separately supplied solely for the nourishing of plant life as opposed to water supplied for domestic, municipal, or industrial uses, charges for such separately supplied irrigation water may be deducted from gross income subject to PUT.

To meet the "irrigation system" requirement, a water distribution business must demonstrate that its distribution system has turnouts or similar connections for irrigation purposes that are separate from service hookups or similar connections for domestic, industrial, or municipal uses. Under the appropriate circumstances, the use of separate meters and cross-connection or back flow devices may be evidence of such separate connections.

AMENDATORY SECTION (Amending WSR 16-03-002, filed 1/6/16, effective 2/6/16)

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

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

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

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

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

(iii) WAC 458-20-222 Veterinarians;

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

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

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

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

(3) **What is an agricultural product?** An "agricultural product" is any product of plant cultivation or animal husbandry including, but not limited to: A product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as defined in RCW 15.85.020; plantation Christmas trees; short-rotation hardwoods as defined in RCW 84.33.035; turf; or any animal, including, but not limited to, an animal that is a private sector cultured aquatic product as defined in RCW 15.85.020, a bird, an insect, or the substances obtained from such animals. Effective July 1, 2015, "agricultural product" includes honey bee products. An "agricultural product" does not include animals defined under RCW 16.70.020 as "pet animals." Effective June 12, 2014, RCW 82.04.213 excludes marijuana from the definition of "agricultural product." Marijuana is any product with a THC concentration greater than .03 percent. RCW 82.04.213.

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

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

(6) **What is marijuana?** "Marijuana" is any product with a THC concentration greater than .03 percent. For additional information on marijuana see RCW 69.50.101.

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

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

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

The Consumer Use Tax Return may be obtained by calling the department's telephone information center at 1-800-647-7706. The return may also be obtained from the department's web site at dor.wa.gov.

(c) **Feed, seed, seedlings, fertilizer, spray materials, and agents for enhanced pollination.** Sales to farmers of feed, seed, seedlings, fertilizer, spray materials, and agents for enhanced pollination, including insects such as bees, to be used for the purpose of producing an agricultural product, whether for wholesale or retail sale, are wholesale sales.

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

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

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

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

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

(iv) **What are spray materials?** "Spray materials" are any substance or mixture of substances in liquid, powder, granular, dry flowable, or gaseous form, which is intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mite, mollusk, fun-

gus, weed, and any other form of plant or animal life normally considered to be a pest. The term includes treated materials, such as grains, that are intended to destroy, control, or repel such pests. "Spray materials" also include substances that act as plant regulators, defoliants, desiccants, or spray adjuvants.

(v) **Examples.**

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

(B) **Example 2.** WG Vineyards (WG) grows grapes that it uses to manufacture wine for sale. WG purchases pesticides and fertilizers that are applied to its vineyards. WG may purchase these pesticides and fertilizers at wholesale, provided WG gives the seller a copy of their reseller permit, or a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions.

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

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

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

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

(g) **Purchases for dual purposes.** A buyer normally engaged in both consuming and reselling certain types of tangible personal property who is unable to determine at the time of purchase whether the partic-

ular property purchased will be consumed or resold must purchase according to the general nature of his or her business. RCW 82.08.130. If the buyer principally consumes the articles in question, the buyer should not give a copy of its reseller permit for any part of the purchase. If the buyer principally resells the articles, the buyer may provide a copy of its reseller permit for the entire purchase. For the purposes of this subsection, the term "principally" means greater than fifty percent.

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

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

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

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

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

turing operation. For more information on the M&E exemption see WAC 458-20-13601.

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

Farmers are subject to retailing B&O tax on retail sales of agricultural products and retailing or wholesaling B&O tax on sales of nonagricultural products, as the case may be, unless specifically exempt by law. Also, B&O tax applies to sales of agricultural products that the seller has not grown, raised, or produced on the seller's own land or on land in which the seller has a present right of possession, whether these products are sold at wholesale or retail. Likewise, B&O tax applies to sales of animals or substances derived from animals in connection with the business of operating a stockyard, slaughterhouse, or packing house. Farmers may be eligible to claim a small business B&O tax credit if the amount of B&O tax liability in a reporting period is under a certain amount. For more information about the small business B&O tax credit see WAC 458-20-104.

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

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

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

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

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

(A) A person claiming the exemption must file a complete annual ((~~survey~~)) tax performance report with the department under RCW ((~~82.32.585~~)) 82.32.534. In addition, persons claiming this tax preference must report the amount of the exemption on their monthly or quarterly excise tax return. For more information on reporting requirements for this tax preference see RCW 82.32.808.

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

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

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

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

(A) A person claiming the exemption must file a complete annual ((~~survey~~)) tax performance report with the department under RCW ((~~82.32.585~~)) 82.32.534. In addition, persons claiming this tax preference must report the amount of the exemption on their monthly or quarterly excise tax return. For more information on reporting requirements for this tax preference see RCW 82.32.808.

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

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

(c) **Raising cattle for wholesale sale.** RCW 82.04.330 provides a B&O tax exemption to persons who raise cattle for wholesale sale provided that the cattle are held for at least sixty days prior to the sale. Persons who hold cattle for fewer than sixty days before resell-

ing the cattle are not considered to be engaging in the normal activities of growing, raising, or producing livestock for sale.

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

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

Example 7. A farmer is engaged in the business of raising cattle owned by others (commonly referred to as "custom feeding"). After the cattle attain a good market condition, the owner sells them. Amounts received by the farmer for custom feeding are exempt from B&O tax under RCW 82.04.330, provided that the farmer held the cattle for at least 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 (c) of this subsection.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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 (10) of this rule for where to find an exemption certificate. The seller must retain a copy of the exemption certificate for its records.

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

(I) Soil preparation services;

(II) Crop cultivation services;

(III) Crop harvesting services.

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

(I) Heating space for human habitation or water for human consumption; or

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

(ii) **Propane and natural gas used in distilling mint on a farm.** Effective October 1, 2013, RCW 82.08.220 and 82.12.220 exempt from retail sales and use taxes sales to and use by farmers of propane or natural gas used exclusively to distill mint on a farm. The buyer must provide the seller with a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. The seller must retain a copy of the exemption certificate for its records. See subsection (10) of this rule for where to find an exemption certificate. The seller must also report amounts claimed for exemption when electronically filing excise tax returns. This exemption is scheduled to expire July 1, 2017.

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

(i) Qualifying livestock nutrient management equipment;

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

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

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

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

(A) Certified under chapter 90.64 RCW;

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

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

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

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

• Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of 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, as required by chapter 90.64 RCW; or

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

• Who owns an animal feeding operation and has a nutrient management plan approved by a conservation district as meeting natural resource conservation service field office technical guide standards and who qualifies for the exemption provided under RCW 82.08.855.

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

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

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

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

Wheelbarrows, shovels, and pitchforks.

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

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

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

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

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

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

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

(iii) **Example 17.** Dairy Farmer purchases sterilizing agents. The sterilizing agents are applied to the equipment and facilities where Dairy Farmer's cows are milked. Dairy Farmer also purchases teat dips,

antiseptic udder washes, and salves that are not listed in either the FDA's *Green Book* of approved animal pharmaceuticals or the USDA's *Veterinary Biologics Product Catalogue* of approved biotechnology products. The purchases of sterilizing agents are not exempt as animal pharmaceuticals because the sterilizing agents are not administered to animals. The teat dips, antiseptic udder washes, and salves are likewise not exempt because they have not been approved by the FDA or USDA.

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

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

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

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

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

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

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

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

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

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

(B) Sheep and other livestock raised as pets;

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

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

(vii) **Do products that are used to administer animal pharmaceuticals qualify for the exemption?** Sales and uses of products that are used to administer animal pharmaceuticals (e.g., syringes) do not

qualify for the exemptions, even if they are later used to administer a tax-exempt animal pharmaceutical. However, sales and uses of tax-exempt animal pharmaceuticals contained in a product used to administer the animal pharmaceutical (e.g., a dose of a tax-exempt pharmaceutical contained in a syringe or cotton applicator) qualify for the exemption.

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

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

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

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

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

• Vehicles as defined in RCW 46.04.670, other than farm tractors as defined in RCW 46.04.180, farm vehicles and other farm implements. "Farm implements" means machinery or equipment manufactured, designed, or reconstructed for agricultural purposes and used primarily by an eligible farmer to grow, raise, or produce agricultural products, but does not include lawn tractors and all-terrain vehicles;
• Aircraft;
• Hand tools and hand-powered tools; and
• Property with a useful life of less than one year.

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

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

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

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

(10) **Sales tax exemption certificates.** As indicated in subsection (9) of this rule, certain sales of tangible personal property and retail services either to or by farmers are exempt from retail sales tax. A person claiming an exemption must keep records necessary for

the department to verify eligibility for each claimed exemption. Effective June 12, 2014, the requirement for the department to issue certificates to qualified farmers was removed. Instead, farmers may complete and use the department's Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. Refer to the department's 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.

AMENDATORY SECTION (Amending WSR 15-13-109, filed 6/16/15, effective 7/17/15)

WAC 458-20-24001 Sales and use tax deferral—Manufacturing and research/development activities in high unemployment counties—Applications filed after June 30, 2010. (1) **Introduction.**

Chapter 82.60 RCW established a limited sales and use tax deferral program. The purpose of the program is to promote economic stimulation, create new employment opportunities in distressed areas, and reduce poverty in certain distressed counties of the state. RCW 82.60.010.

(a) **Deferral program.** This deferral program applies to an eligible investment project for sales and use taxes imposed on the construction, expansion, or renovation of qualified buildings or acquisition of qualified machinery and equipment. The program requires the recipient of the deferral to maintain the manufacturing or research and development activity for an eight-year period.

This rule does not address specific requirements of RCW 82.08.02565 and 82.12.02565 that provide statewide sales and use tax exemptions for machinery and equipment used directly in a manufacturing operation. Repayment of tax deferred under chapter 82.60 RCW is not required, and interest and penalties under RCW 82.60.070 will not be imposed, on machinery and equipment that qualifies for exemption under RCW 82.08.02565 or 82.12.02565. For additional information on statewide sales and use tax exemptions for machinery and equipment refer to WAC 458-20-13601.

(b) **Program enacted.** The legislature first enacted this program in 1985. It has since made major revisions to the program criteria, specifically to the definitions of "eligible area," "eligible investment project," and "qualified building." For applications made prior to July 1, 2010, see WAC 458-20-24001A.

(c) **Administration of employment and related programs.** The employment security department and the department of commerce administer programs for high unemployment counties and job training and should be contacted directly for information concerning these programs.

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

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

(a) **"Acquisition of machinery and equipment"** means the machinery and equipment is under the dominion and control of the recipient or its agent.

(b) **"Applicant"** means a person applying for a tax deferral under chapter 82.60 RCW.

(c) **"Certificate holder"** means an applicant to whom a tax deferral certificate has been issued.

(d) **"Community empowerment zone (CEZ)"** means an area meeting the requirements of RCW 43.31C.020 and officially designated as a CEZ by the director of the department of community, trade, and economic development.

(e) **"Date of application"** means the date of the U.S. Post Office postmark, fax, or electronic transmittal, or when the application is hand delivered to the department. The statute in effect on the "date of application" will determine the program criteria the applicant must satisfy.

(f) **"Department"** means the department of revenue.

(g) **"Eligible area"** means:

(i) Beginning July 1, 2010, an eligible area is a county that has an unemployment rate, as determined by the employment security department, which is at least twenty percent above the state average for the three calendar years immediately preceding the year in which the list of qualifying counties is established or updated, as the case may be. RCW 82.60.020.

The department, with the assistance of the employment security department, established a list of qualifying counties effective July 1, 2010. RCW 82.60.120. The list of qualifying counties is effective for a twenty-four-month period and must be updated by July 1st of the year that is two calendar years after the list was established or last updated, as the case may be; or

(ii) A designated community empowerment zone approved under RCW 43.31C.020. RCW 82.60.049.

(h) **"Eligible investment project"** means an investment project that is located, as of the date the application required by RCW 82.60.030 is received by the department, in an eligible area. "Eligible investment project" does not include any portion of an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site where the cogeneration project is an integral part. It also does not include investment projects that have already received deferrals under chapter 82.60 RCW. RCW 82.60.020 and 82.60.049.

(i) **"Industrial fixture"** means an item attached to a building or to land. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and improvements to land such as concrete slabs.

(j) **"Initiation of construction"** means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for:

(i) Construction of the qualified building, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral;

(ii) Construction of the qualified building when the lessor pays, if the economic benefits of the deferral are passed to a lessee as provided in subsection (3) of this rule; or

(iii) Tenant improvements for a qualified building when the owner/lessor pays, if the economic benefits of the deferral are passed to a lessee as provided in subsection (3) of this rule; or

(iv) Tenant improvements for a qualified building when the lessee pays and receives the benefit of the deferral.

"Initiation of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

If the investment project is a phased project, "initiation of construction" shall apply separately to each phase.

(k) **"Investment project"** means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

(l) **"Manufacturing"** has the meaning given in RCW 82.04.120. Manufacturing, in addition, includes the activities performed by research and development laboratories and commercial testing laboratories, and the conditioning of vegetable seeds.

For purposes of this rule, both manufacturers and processors for hire may qualify for the deferral program as being engaged in manufacturing activities. For additional information on processors for hire, refer to WAC 458-20-136.

For purposes of this rule, "vegetable seeds" include the seeds of those crops that are grown in gardens and on truck farms and are generally known and sold under the name of vegetable or herb seeds in this state. "Vegetable seeds" include, but are not limited to, cabbage seeds, carrot seeds, onion seeds, tomato seeds, and spinach seeds. Vegetable seeds do not include grain seeds, cereal seeds, fruit seeds, flower seeds, tree seeds, and other similar properties.

(m) **"Office"** means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. An office may be located in a separate building from the building used for manufacturing or research and development activities, but the office must be located at the same site as the qualified building to qualify. Each individual office may qualify or disqualify only in its entirety.

(n) **"Operationally complete"** means the project is capable of being used for its intended purpose as described in the application.

(o) **"Person"** has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" may be either a lessee or a lessor/owner, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of chapter 82.60 RCW.

(p) **"Qualified buildings"** means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for manufacturing or research and development activities. "Qualified buildings" includes plant offices and warehouses or other facilities for the storage of raw material or finished goods if such facilities are an essential or an integral part of a factory, mill, plant, or laboratory used for manufacturing or research and development. "Qualified buildings" include construction of:

• Specialized sewerage pipes connected to a qualified building that are specifically designed and used exclusively for manufacturing or research and development; and

• Parking lots connected to or adjacent to the building if the parking lots are for the use of workers performing manufacturing or research and development in the building. Parking lots may be apportioned based on qualifying use.

"Qualified buildings" does not include construction of landscaping or most other work outside the building itself, even though the landscaping or other work outside the building may be required by the city or county government in order for the city or county to issue a permit for the construction of a building.

(q) **"Qualified employment position"** means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of twelve consecutive months. "Full-time" means at least thirty-five hours a week, four hundred fifty-five hours a quarter, or one thousand eight hundred twenty hours a year.

(r) **"Qualified machinery and equipment"** means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" also includes computers; desks; filing cabinets; photocopiers; printers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

(s) **"Qualifying county"** means a county that has an unemployment rate, as determined by the employment security department, which is at least twenty percent above the state average for the three calendar years immediately preceding the year in which the list of qualifying counties is established or updated, as the case may be.

(t) **"Recipient"** means a person receiving a tax deferral under this program.

(u) **"Research and development"** means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun, but only when such activities are intended to ultimately result in the production of a new, different, or useful substance or article of tangible personal property for sale. For purposes of this rule, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(v) **"Site"** means one or more immediately adjacent parcels of real property. Adjacent parcels of real property separated only by a public road comprise a single site.

(w) **"Warehouse"** means buildings or facilities used for the storage of raw materials or finished goods. A warehouse may be located in a separate building from the building used for manufacturing or research and development activities, but to qualify the warehouse must be located at the same site as the qualified building. Warehouse space may be apportioned based on qualifying use.

(3) **Who is eligible for the sales and use tax deferral program?** A person engaged in manufacturing or research and development activity

is eligible for this deferral program for its eligible investment project.

(a) The lessor or owner of the qualified building is not eligible for deferral unless:

(i) The underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person; or

(ii) The lessor, by written contract, has agreed to pass the economic benefit of the deferral to the lessee;

(iii) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual ((~~survey~~)) tax performance report required under RCW 82.60.070; and

(iv) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor and is evidenced by written documentation of any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee.

For example, the economic benefit of the deferral can be passed through to the lessee when evidenced in writing that the amounts paid to the lessor for construction of tenant improvements are reduced by the amount of the sales tax deferred. Another method of passing the economic benefit is if the lessee receives a credit for tenant improvements or other mechanism in the lease, equal to the amount of the sales tax deferred.

(b) The lessor of the qualified building who receives a letter of intent from a qualifying lessee may be eligible for deferral, assuming that all other requirements of chapter 82.60 RCW are met. At the time of application, the lessor, or another qualifying lessee must provide to the department a letter of intent by the lessee to lease the qualified building and any other information to prove that the lessee will engage in qualified manufacturing or research and development once the building construction is complete. After the investment project is certified as operationally complete, the lessee must actually occupy the building as a lessee and engage in qualified manufacturing or research and development. Otherwise, deferred taxes will be immediately due from the lessor.

The following examples illustrate the application process with lessors and lessees.

Example 1. Prior to the initiation of construction, Owner/Lessor AA enters into an agreement with Lessee BB, a company engaged in qualified manufacturing or research and development. Under the agreement, AA will build a building to house BB's research and development activities, will apply for a tax deferral on construction of the building, will lease the building to BB, and will pass on the economic benefit in the amount of the deferral to BB. BB agrees in writing with the department to complete annual tax ((~~incentive surveys~~)) performance reports. AA applies for the deferral before the initiation of construction that is prior to the date the building permit is issued. AA is entitled to a deferral on building construction costs assuming all eligibility qualifications are met.

Example 2. The following example assumes no deferral on initial construction activity. After the building construction has begun, Lessee CC asks that certain tenant improvements be added to the building. Lessor DD and Lessee CC each agree to pay a portion of the cost of the improvements. DD agrees with CC in writing that DD will pass on the entire value of DD's portion of the tax deferral to CC, and CC agrees in writing with the department to complete annual tax ((~~incentive surveys~~)) performance reports. CC and DD each apply for a deferral on the

costs of the tenant improvements they are legally responsible for before the date the building permit is issued for the tenant improvements. The department will approve both applications assuming all eligibility qualifications are met. While construction of the building was initiated before submission of the applications, tenant improvements on a building under construction are deemed to be the expansion or renovation of an existing structure. In addition, lessees are entitled to the deferral only if they are legally responsible and actually pay contractors for the improvements, rather than merely reimbursing lessors for the costs.

Example 3. After building construction has begun but before machinery or equipment has been acquired, Lessee EE applies for a deferral on machinery and equipment. The department will approve the application assuming all eligibility qualifications are met, and EE will be required to complete annual tax ((~~incentive surveys~~)) performance reports. Even though it is too late to apply for a deferral of tax on building costs, it is not too late to apply for a deferral for the machinery and equipment.

(4) **What if an investment project is located in an area that qualifies as a high unemployment county and as a CEZ?** If an investment project is located in an area that qualifies under more than one type of eligible area, the department will automatically assign the project to the eligible area that imposes the least burden on the taxpayer and with the greatest benefit to the taxpayer. If the applicant elects to be bound by the requirements of the other potential eligible area, the applicant must make a written statement to that effect.

Example 4. On October 1, 2014, a city in a high unemployment county qualifies as a CEZ, and the high unemployment county is on the list as a qualifying county. The CEZ employment requirements are more restrictive than those for qualifying counties. The department will assign the project to the qualifying county designation unless the applicant elects in writing to be bound by the CEZ employment requirements. Refer to subsection (7) of this rule for more information on the application process.

(5) **When is apportionment of qualified buildings appropriate?** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of an existing building used in manufacturing or research and development. Where a building(s) is used partly for manufacturing or research and development and partly for purposes that do not qualify for deferral under this rule, apportionment is necessary.

(a) **What are the apportionment methods?** The deferral is determined by one of the following two apportionment methods. The first method of apportionment is based on square footage and does not require tracking the costs of materials for the qualifying/nonqualifying areas of a building. The second method of apportionment tracks the costs of materials used in the qualifying/nonqualifying areas, and it is primarily used by those industries with specialized building requirements.

(i) **First method.** The applicable tax deferral is determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing or research and development purposes bears to the square footage of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent of building eligible}$$

Percent of building eligible x Total Project Costs = Eligible Costs.

"Total Project Costs" is the cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation.

Eligible Costs (as determined above) x Tax Rate = Eligible Tax Deferred.

Example 5. A taxpayer is constructing a 10,000 square foot building, of which 8,000 square feet will be eligible for tax deferral. The cost of the project is $1,000,000. The combined sales/use tax rate at this location is 9.2%.

$$\frac{\text{8,000 qualifying square feet}}{\text{10,000 total square feet}} = \text{80 percent of the building is eligible}$$

Based on the above apportionment formula, 80% of the building is eligible for deferral. By multiplying the qualifying percentage 80% by the cost of $1,000,000 to determine eligible costs of $800,000. Multiply the eligible cost of $800,000 by the sales/use tax rate of 9.2% to determine a sales/use tax deferral of $73,600.

(ii) **Second method.** If the applicable tax deferral is not determined by the first method, it will be determined by calculating the cost of construction of qualifying/nonqualifying areas as follows:

(A) Tax on the cost of construction of areas devoted solely to manufacturing or research and development may be deferred.

(B) Tax on the cost of construction of areas not used at all for manufacturing or research and development may not be deferred.

(C) Tax on the cost of construction of areas used in common for manufacturing or research and development and for other purposes, such as hallways, bathrooms, and conference rooms, may be deferred by apportioning the costs of construction on a square footage basis. The apportioned costs of construction eligible for deferral are established by using the ratio, expressed as a percentage, of the square feet of the construction, expansion, or renovation devoted to manufacturing or research and development, excluding areas used in common, to the total square feet of the construction, expansion, or renovation, excluding areas used in common. That percentage is applied to the cost of construction of the common areas to determine the costs of construction eligible for tax deferral. Expressed as a formula, apportionment of the common areas is determined by:

$$\frac{\text{Square feet devoted to manufacturing or research and development, excluding square feet of common areas}}{\text{Total square feet, excluding square feet of common areas}} = \text{Percentage of common areas eligible for deferral}$$

Example 6. Taxpayer is planning to build a 10,000 square foot building of which 7,000 square feet will be used for manufacturing and 1,000 square feet will be common area. The remaining portion of the building will not be eligible for any deferral. The cost of the project will be $850,000 for the manufacturing area, $260,000 for the common area, and $140,000 for the remaining portion of the building,

for a total cost of construction of $1,250,000. The combined sales/use tax rate at this location is 8.8%.

$$\frac{\text{7,000 square feet devoted to manufacturing, excluding square feet of common areas}}{\text{9,000 total square feet, excluding square feet of common areas}} = \text{78\% of common areas eligible for deferral}$$

Based on the apportionment formula: 78% of common area costs are eligible. Multiply the common area costs of $260,000 by 78% to determine that $202,800 of common area costs are eligible for deferral. Therefore the $850,000 for the manufacturing portion of the building plus the $202,800 for common areas total $1,052,800 of eligible project costs. Multiply the eligible project costs of $1,052,800 by the tax rate of 8.8% to determine a sales/use tax deferral of $92,646.

(b) **Are qualified machinery and equipment subject to apportionment?** Unlike buildings, machinery and equipment cannot be apportioned if used for both qualifying and nonqualifying purposes.

(c) **To what extent is leased equipment eligible for the deferral?** The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date, the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

(6) **Are there any hiring requirements for an investment project?** There may or may not be a hiring requirement, depending on the location of the project.

(a) **High unemployment county.** There are no hiring requirements for qualifying projects located in high unemployment counties.

(b) **Community empowerment zone (CEZ).** There are hiring requirements for qualifying projects located in CEZs or in counties containing CEZs. The applicant applies for a deferral of investment that correlates to the estimated number of persons to be hired based on a formula. The applicant will create a position and hire at least one qualified employee for each seven hundred fifty thousand dollars of qualified investment in the project. Refer to subsection (7) of this rule for more information on the application process. The recipient must fill the positions with persons who at the time of hire are residents of the CEZ. The persons must be hired after the date the application is filed with the department. As used in this subsection, "resident" means the person makes his or her home in the CEZ or the county in which the zone is located. A mailing address alone is insufficient to establish that a person is a resident. For example, a "P.O. Box" is not a valid address as it does not establish residence at a physical location where the person actually lives. A street address would be an example of a valid address.

The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's web site at dor.wa.gov. A recipient must fill the qualified employment positions by the end of the calendar year following the year in which the project is certified as operationally complete and retain the positions during the entire tax year. Refer to subsection (12) of this rule for more information on certification of an investment project as operationally complete. If the re-

cipient does not fill the qualified employment positions by the end of the second calendar year following the year in which the project is certified as operationally complete, all deferred taxes are immediately due.

(7) **What are the application and review processes?** An application for sales and use tax deferral under this program must be made prior to the initiation of construction, prior to taking possession of machinery and equipment, and prior to the filling of qualified employment positions. Persons, applying after construction is initiated or finished or after taking possession of machinery and equipment, are not eligible for the program. When an application for sales and use tax deferral is timely submitted, costs incurred before the application date are allowable, if they otherwise qualify. Applications for persons subject to hiring requirements must include information regarding the estimated total project cost and the qualified employment positions.

(a) **How does a taxpayer obtain an application form?** Application forms may be obtained at department district offices, by downloading from the department's web site at dor.wa.gov, by telephoning the telephone information center at 800-647-7706, or by contacting the department's special programs division at:

Special Programs Division
Department of Revenue
P.O. Box 47477
Olympia, WA 98504-7477
Fax: 360-534-1498
Email: DORdeferrals@dor.wa.gov.

Applicants must mail, email, or fax applications to the special programs division at the address, email address, or fax number given above. Applications approved by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. RCW 82.60.100.

(b) **Will the department approve the deferral application?** In considering whether to approve or deny an application for a deferral, the department will not approve an application for a project involving construction unless:

(i) The construction will begin within one year from the date of the application; or

(ii) The applicant shows proof that, if the construction will not begin within one year of application, there is a specific and active program to begin construction of the project within two years from the date of application. Proof may include, but is not limited to:

(A) Affirmative action by the board of directors, governing body, or other responsible authority of the applicant toward an active program of construction;

(B) Itemized reasons for the proposed construction;

(C) Clearly established plans for financing the construction; or

(D) Building permits.

Similarly, after an application has been granted, a deferral certificate is no longer valid and should not be used if construction has not begun within one year from the date of application or there is not a specific and active program to begin construction within two years from the date of application. However, the department will grant requests to extend the period for which the certificate is valid if the holder of the certificate can demonstrate that the delay in starting construction is due to circumstances beyond the certificate holder's control such as the acquisition of building permit(s). Refer to sub-

section (9) of this rule for more information on the use of tax deferral certificates.

(c) **When will the department notify approval or disapproval of the deferral application?** The department will verify the information contained in the application and approve or disapprove the application within sixty days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval.

(d) **May an applicant request a review of department disapproval of the deferral application?** The applicant may request administrative review of the department's disapproval of an application, within thirty days from the date of notice of the disallowance, pursuant to the provisions of WAC 458-20-100, Appeals. The filing of a petition for review with the department starts a review of departmental action.

(8) **What happens after the department approves the deferral application?** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral the recipient is eligible for. Recipients must keep track of how much tax is deferred.

(9) **How should a tax deferral certificate be used?** A tax deferral certificate issued under this program is for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified buildings or qualified machinery and equipment as defined in this rule. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment. In addition, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller will be relieved of the responsibility for collecting sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales.

(10) **May an applicant apply for multiple deferrals at the same project location?** The department may not issue a certificate for an investment project that has already received a deferral under chapter 82.60 RCW. For example, replacement machinery and equipment that replaces qualified machinery and equipment is not eligible for the deferral. In addition, if an existing building that received a deferral under chapter 82.60 RCW for the construction of the building is renovated, the renovation is not eligible for the deferral unless the original deferral project is closed and has no more deferral requirements.

(a) If expansion is made from an existing building that has already received a deferral under chapter 82.60 RCW for the construction of the building, the expanded portion of the building may be eligible for the deferral. The expansion must be made for new square footage, either vertically or horizontally. Acquisition of machinery and equipment to be used in the expanded portion of the qualified building may also be eligible.

(b) A certificate may be amended or a certificate issued for a new investment project at an existing facility if all eligibility requirements are met.

(11) **May an applicant or recipient amend an application or certificate?** Applicants and recipients may make a written request to the special programs division to amend an application or certificate when the original estimates change.

(a) Assuming the project continues to meet all eligibility requirement, grounds for requesting amendment include, but are not limited to:

(i) The project will exceed the costs originally stated;

(ii) The project will take more time to complete than originally stated;

(iii) The original application is no longer accurate because of changes in the project;

(iv) The project location changes (only applicable to machinery and equipment); and

(v) Transfer of ownership of the project.

(b) An application may not be amended if the location of the qualified building changes. Taxes become immediately due if the project location changes after the application has been approved.

(c) The department must rule on the request within sixty days. If the request is denied, the department must explain in writing the basis for the denial. An applicant or recipient may appeal a denial within thirty days under WAC 458-20-100, Appeals.

(12) **What are the processes for an investment project?** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) **What should a certificate holder do if its investment project reaches the estimated costs but the project is not yet operationally complete?** If an investment project has reached its estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount on which the deferral taxes are requested along with an explanation for the increase in estimated costs. Requests must be mailed, emailed, or faxed to the department.

(b) **What should a certificate holder do if its investment project reaches the completion date but the project is not yet operationally complete?** If an investment project has reached the completion date and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised completion date along with an explanation for the new completion date. Requests must be mailed, emailed, or faxed to the department prior to the expiration date on the certificate.

(c) **What should a certificate holder do when its investment project is operationally complete?** The certificate holder must notify the department in writing when the investment project is operationally complete. The project is operationally complete once it can be used for its intended purpose as described in the application. The department will certify the qualifying costs and the date when the project became operationally complete. The certificate holder of the deferral must maintain the manufacturing or research and development activity beginning the year the project is operationally complete and the fol-

lowing seven calendar years. It is important to remember that annual tax ((~~survey~~)) performance report reporting requirements begin the year following the operationally complete date, even though the audit certification may not be complete. For information on submitting annual ((~~surveys~~)) tax performance reports, see subsection (13) of this rule.

Example 7. Taxpayer estimated a project end date of June ((~~2015~~)) 2018, but the project was actually operationally complete in November ((~~2014~~)) 2017. Taxpayer must submit the ((~~2014~~)) 2017 annual tax ((~~incentive survey by April 30, 2015~~)) performance report by May 31, 2018. Taxpayer is responsible for notifying the department when the project is operationally complete regardless of the estimated completion date. If the ((~~2014~~)) 2017 annual tax ((~~incentive survey~~)) performance report is not submitted timely, taxpayer will be assessed 12.5% of the deferred sales/use tax for this project.

Example 8. Taxpayer estimated a project end date of May ((~~2014~~)) 2017, but the project was actually not operationally complete until December ((~~2014~~)) 2017. Taxpayer must submit the ((~~2014~~)) 2017 annual tax ((~~incentive survey by April 30, 2015~~)) performance report by May 31, 2018. Taxpayer is responsible for notifying the department when the project is operationally complete regardless of the estimated completion date. If the ((~~2014~~)) 2017 annual tax ((~~incentive survey~~)) performance report is not submitted timely, taxpayer will be assessed 12.5% of the deferred sales/use tax for this project.

(i) If all or any portion of the project does not qualify, the recipient must repay all or a proportional part of the deferred taxes. The department will notify the recipient of the amount due and the due date.

(ii) The department must explain in writing the basis for not qualifying all or any portion of a project. The decision of the department to not qualify all or a portion of a project may be appealed under WAC 458-20-100, Appeals, within thirty days.

(13) **Is a recipient of a tax deferral required to submit annual ((~~surveys~~)) tax performance report?** RCW ((~~82.32.585~~)) 82.32.534 requires each recipient of a tax deferral to complete an annual tax ((~~incentive survey~~)) performance report, every year, by ((~~April 30th~~)) May 31st for eight years following the year in which the project is operationally complete, regardless if the department has audited the project. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.025, the lessee must agree in writing to complete the annual tax ((~~incentive survey~~)) performance report and the applicant is not required to complete the annual tax ((~~incentive survey~~)) performance report. If the ((~~survey~~)) annual tax performance report is not submitted by the due date, or any extension under RCW 82.32.590, the recipient of the tax deferral or lessee, if required to submit, will be billed 12.5% of the deferred tax amount. For example, the deferral project is operationally complete in ((~~2014~~)) 2017. The recipient is required to submit the ((~~2014-2021~~)) 2017-2024 annual tax ((~~incentive surveys~~)) performance reports that are due by ((~~April 30, 2015-2022~~)) May 31, 2018-2025, respectively. For more information on the requirements to file annual tax ((~~incentive surveys~~)) performance reports refer to WAC ((~~458-20-268~~)) 458-20-267.

(14) **Is a recipient of a tax deferral required to repay deferred taxes for reasons other than not submitting the annual tax ((~~incentive survey~~)) performance report?** Repayment of tax deferred under chapter 82.60 RCW is waived, as long as all eligibility requirements are met, except as provided in RCW 82.60.070 and this subsection (14).

The following describes the various circumstances under which repayment of the deferral may occur. Outstanding taxes are determined as of December 31st of each year by reference to the following table. No proration is allowed for completing a partial year of the deferral use requirement.

Repayment Year		Percentage of Deferred Tax Waived
1	(Year operationally complete)	0%
2		0%
3		0%
4		10%
5		15%
6		20%
7		25%
8		30%

Any action taken by the department to disqualify a recipient for tax deferral or assess interest will be subject to administrative review pursuant to the provisions of WAC 458-20-100, Appeals. The filing of a petition for review with the department starts a review of departmental action.

(a) **Failure of investment project to satisfy general conditions.** If based on the recipient's annual tax ((~~incentive survey~~)) performance report or other information, including that submitted by the employment security department, the department finds that an investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, including failure to continue qualifying activity, the department will declare the amount of deferred taxes outstanding to be immediately due. There is no proration of the amount owed under this subsection. No penalties or interest will be assessed on the deferred sales or use taxes; however, all other penalties and interest applicable to excise tax assessments may be assessed and imposed.

(b) **Failure of investment project to satisfy required employment positions conditions.** If based on the recipient's annual tax ((~~incentive survey~~)) performance report or other information, the department finds that an investment project has been operationally complete and has failed to create the required number of qualified employment positions the amount of taxes deferred will be immediately due. There is no proration of the amount owed under this subsection. No penalties or interest will be assessed on the deferred sales or use taxes; however, all other penalties and interest applicable to excise tax assessments may be assessed and imposed.

(15) **When will the tax deferral program expire?** This tax deferral program is scheduled to expire July 1, 2020. No applications for deferral of taxes will be accepted after June 30, 2020. Businesses wishing to take advantage of this program are advised to apply to the department by April 30, 2020. While the department will make every effort to process applications in a timely manner, the department is allowed sixty days to review applications and issue deferral certificates. Applications received after April 30, 2020, may not be processed in time for the business to receive a deferral certificate and would not be eligible for the program. In addition, incomplete applications may be denied or not processed in time for the business to be issued a deferral certificate before July 1, 2020.

(16) **Is debt extinguishable because of insolvency or sale?** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes.

(17) **Does transfer of ownership terminate tax deferral?** Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of chapter 82.60 RCW, for the remaining periods of the deferral. Any person who becomes a successor to such investment project is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient of the deferral. For additional information on successorship or quitting business refer to WAC 458-20-216.

Any questions regarding the potential eligibility of deferrals to be transferred on the sale of a business, should be directed to the special programs division as provided for in subsection (7)(a) of this rule.

AMENDATORY SECTION (Amending WSR 16-12-075, filed 5/27/16, effective 6/27/16)

WAC 458-20-24003 Tax incentives for high technology businesses. (1) **Introduction.** This rule explains the tax incentives, contained in chapter 82.63 RCW and RCW 82.04.4452, which apply to businesses engaged in research and development or pilot scale manufacturing in Washington in five high technology areas: Advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology. Eligibility for high technology or research and development tax incentives offered by the federal government or any other jurisdiction does not establish eligibility for Washington's programs.

This rule contains examples that identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results in all situations must be determined after a review of all facts and circumstances. Assume all the examples below occur on or after June 10, 2004, unless otherwise indicated.

(2) **Organization of the rule.** The information provided in this rule is divided into three parts.

(a) Part I provides information on the sales and use tax deferral program under chapter 82.63 RCW.

(b) Part II provides information on the sales and use tax exemption available for persons engaged in certain construction activities for the federal government under RCW 82.04.190(6).

(c) Part III provides information on the business and occupation tax credit on research and developing spending under RCW 82.04.4452.

PART I

SALES AND USE TAX DEFERRAL PROGRAM

(3) **Who is eligible for the sales and use tax deferral program?** A person engaged in qualified research and development or pilot scale manufacturing in Washington in the five high technologies areas is eligible for this deferral program for its eligible investment project.

(a) **What does the term "person" mean for purposes of this deferral program?** "Person" has the meaning given in RCW 82.04.030. Effec-

tive June 10, 2004, "person" also includes state universities as defined in RCW 28B.10.016. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of chapter 82.63 RCW.

(i) Effective June 10, 2004, the lessor or owner of the qualified building is not eligible for a deferral unless:

(A) The underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person; or

(B) All of the following conditions are met:

(I) The lessor by written contract agrees to pass the economic benefit of the deferral to the lessee;

(II) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual ((~~survey~~)) tax performance report required under RCW 82.63.020(2);

(III) The lessee must receive an economic benefit from the lessor no less than the amount of tax deferred by the lessor; and

(IV) Upon request, the lessor must provide the department with written documentation to support the eligibility of the deferral, including any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee.

For example, economic benefit of the deferral is passed through to the lessee when evidenced by written documentation that the amounts paid to the lessor for construction of tenant improvements are reduced by the amount of the sales tax deferred, or that the lessee receives more tenant improvements through a credit for tenant improvements or other mechanism in the lease equal to the amount of the sales tax deferred.

(ii) Prior to June 10, 2004, the lessor or owner of the qualified building is not eligible for a deferral unless the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(iii) The lessor of the qualified building who receives a letter of intent from a qualifying lessee may be eligible for deferral, assuming that all other requirements of chapter 82.63 RCW are met. At the time of application, the lessor must provide to the department a letter of intent by the lessee to lease the qualified building and any other information to prove that the lessee will engage in qualified research and development or pilot scale manufacturing once the building construction is complete. After the investment project is certified as operationally complete, the lessee must actually occupy the building as a lessee and engage in qualified research and development or pilot scale manufacturing. Otherwise, deferred taxes will be immediately due to the lessor, and interest will be assessed retroactively from the date of deferral.

(b) **What is "qualified research and development" for purposes of this rule?** "Qualified research and development" means research and development performed within this state in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology.

(c) **What is "research and development" for purposes of this rule?** "Research and development" means activities performed to discover technological information, and technical and nonroutine activities concerned with translating technological information into new or im-

proved products, processes, techniques, formulas, inventions, or software.

The term includes exploration of a new use for an existing drug, device, or biological product if the new use requires separate licensing by the Federal Food and Drug Administration under chapter 21 C.F.R., as amended.

The term does not include adaptation or duplication of existing products where the products are not substantially improved by application of the technology, nor does the term include surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software developed for internal use, and research in areas such as improved style, taste, and seasonal design.

(i) A person need not both discover technological information and translate technological information into new or improved products, processes, techniques, formulas, inventions, or software in order to engage in research and development. A person may perform either activity alone and be engaged in research and development.

(ii) To discover technological information means to gain knowledge of technological information through purposeful investigation. The knowledge sought must be of something not previously known or, if known, only known by persons who have not made the knowledge available to the public.

(iii) Technological information is information related to the application of science, especially with respect to industrial and commercial objectives. Industrial and commercial objectives include both sale and internal use (other than internal use software). The translation of technological information into new or improved products, processes, techniques, formulas, inventions, or software does not require the use of newly discovered technological information to qualify as research and development.

(iv) The translation of technological information requires both technical and nonroutine activities.

(A) An activity is technical if it involves the application of scientific, engineering, or computer science methods or principles.

(B) An activity is nonroutine if it:

(I) Is undertaken to achieve a new or improved function, performance, reliability, or quality; and

(II) Is performed by engineers, scientists, or other similarly qualified professionals or technicians; and

(III) Involves a process of experimentation designed to evaluate alternatives where the capability or the method of achieving the new or improved function, performance, reliability, or quality, or the appropriate design of the desired improvement, is uncertain at the beginning of the taxpayer's research activities. A process of experimentation must seek to resolve specific uncertainties that are essential to attaining the desired improvement.

(v) A product is substantially improved when it functions fundamentally differently because of the application of technological information. This fundamental difference must be objectively measured. Examples of objective measures include increased value, faster operation, greater reliability, and more efficient performance. It is not necessary for the improvement to be successful for the research to qualify.

(vi) Computer software development may qualify as research and development involving both technical and nonroutine activities concerned with translating technological information into new or improved

software, when it includes the following processes: Software concept, software design, software design implementation, conceptual freeze, alpha testing, beta testing, international product localization process, and other processes designed to eliminate uncertainties prior to the release of the software to the market for sale. Research and development ceases when the software is released to the market for sale.

Postrelease software development may meet the definition of research and development under RCW 82.63.010(16), but only if it involves both technical and nonroutine activities concerned with translating technological information into improved software. All facts and circumstances are considered in determining whether postrelease software development meets the definition of research and development.

(vii) Computer software is developed for internal use if it is to be used only by the person by whom it is developed. If it is to be available for sale, lease, or license, it is not developed for internal use, even though it may have some internal applications. If it is to be available for use by persons, other than the person by whom it is developed, who access or download it remotely, such as through the internet, it is not usually deemed to be developed for internal use. However, remotely accessed software is deemed to be developed for internal use if its purpose is to assist users in obtaining goods, services, or information provided by or through the person by whom the software is developed. For example, software is developed for internal use if it enables or makes easier the ordering of goods from or through the person by whom the software is developed. On the other hand, a search engine used to search the world wide web is an example of software that is not developed for internal use because the search engine itself is the service sought.

(viii) Research and development is complete when the product, process, technique, formula, invention, or software can be reliably reproduced for sale or commercial use. However, the improvement of an existing product, process, technique, formula, invention, or software may qualify as research and development.

(d) **What is "pilot scale manufacturing" for purposes of this rule?** "Pilot scale manufacturing" means design, construction, and testing of preproduction prototypes and models in the fields of biotechnology, advanced computing, electronic device technology, advanced materials, and environmental technology other than for commercial sale. "Commercial sale" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(e) **What are the five high technology areas?** The five high technology areas are as follows:

(i) **Advanced computing.** "Advanced computing" means technologies used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to super computers, and peripheral equipment.

(ii) **Advanced materials.** "Advanced materials" means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials.

(iii) **Biotechnology.** "Biotechnology" means the application of technologies, such as recombinant DNA techniques, biochemistry, molecular and cellular biology, genetics, including genomics, gene expression and genetic engineering, cell fusion techniques, and new biopro-

cesses, using living organisms, or parts of organisms, to produce or modify products, to improve plants or animals, to develop microorganisms for specific uses, to identify targets for small molecule pharmaceutical development, or to transform biological systems into useful processes and products or to develop microorganisms for specific uses.

(iv) **Electronic device technology.** "Electronic device technology" means technologies involving microelectronics; semiconductors; electronic equipment and instrumentation; radio frequency, microwave, and millimeter electronics; optical and optic-electrical devices; and data and digital communications and imaging devices.

(v) **Environmental technology.** "Environmental technology" means assessment and prevention of threats or damage to human health or the environment, environmental cleanup, and the development of alternative energy sources.

(A) The assessment and prevention of threats or damage to human health or the environment concerns assessing and preventing potential or actual releases of pollutants into the environment that are damaging to human health or the environment. It also concerns assessing and preventing other physical alterations of the environment that are damaging to human health or the environment.

For example, a research project related to salmon habitat restoration involving assessment and prevention of threats or damages to the environment may qualify as environmental technology, if such project is concerned with assessing and preventing potential or actual releases of water pollutants and reducing human-made degradation of the environment.

(I) Pollutants include waste materials or by-products from manufacturing or other activities.

(II) Environmental technology includes technology to reduce emissions of harmful pollutants. Reducing emissions of harmful pollutants can be demonstrated by showing the technology is developed to meet governmental emission standards. Environmental technology also includes technology to increase fuel economy, only if the taxpayer can demonstrate that a significant purpose of the project is to increase fuel economy and that such increased fuel economy does in fact significantly reduce harmful emissions. If the project is intended to increase fuel economy only minimally or reduce emissions only minimally, the project does not qualify as environmental technology. A qualifying research project must focus on the individual components that increase fuel economy of the product, not the testing of the entire product when everything is combined, unless the taxpayer can separate out and identify the specific costs associated with such testing.

(III) Environmental technology does not include technology for preventive health measures for, or medical treatment of, human beings.

(IV) Environmental technology does not include technology aimed to reduce impact of natural disasters such as floods and earthquakes.

(V) Environmental technology does not include technology for improving safety of a product.

(B) Environmental cleanup is corrective or remedial action to protect human health or the environment from releases of pollutants into the environment.

(C) Alternative energy sources are those other than traditional energy sources such as fossil fuels, nuclear power, and hydroelectricity. However, when traditional energy sources are used in conjunction with the development of alternative energy sources, all the development will be considered the development of alternative energy sources.

(4) **What is eligible for the sales and use tax deferral program?** This deferral program applies to an eligible investment project for sales and use taxes imposed on the construction, expansion, or renovation of qualified buildings and acquisition of qualified machinery and equipment.

(a) **What is an "eligible investment project" for purposes of this rule?** "Eligible investment project" means an investment project which either initiates a new operation, or expands or diversifies a current operation by expanding, renovating, or equipping an existing facility.

(b) **What is an "investment project" for purposes of this rule?** "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction or improvement of the project. When an application for sales and use tax deferral is timely submitted, costs incurred before the application date are allowable, if they otherwise qualify.

(c) **What is "qualified buildings" for purposes of this rule?** "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for pilot scale manufacturing or qualified research and development.

(i) "Qualified buildings" is limited to structures used for pilot scale manufacturing or qualified research and development. "Qualified buildings" includes plant offices and other facilities that are an essential or an integral part of a structure used for pilot scale manufacturing or qualified research and development.

(A) "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building, its use must be essential or integral to pilot scale manufacturing or qualified research and development. An office may be located in a separate building from the building used for pilot scale manufacturing or qualified research and development, but the office must be located at the same site as the qualified building in order to qualify. Each individual office may only qualify or disqualify in its entirety.

(B) A site is one or more immediately adjacent parcels of real property. Adjacent parcels of real property separated only by a public road comprise a single site.

(ii) "Qualified buildings" does not include construction of landscaping or most other work outside the building itself, even though the landscaping or other work outside the building may be required by the city or county government in order for the city or county to issue a permit for the construction of a building.

However, "qualified buildings" includes construction of specialized sewerage pipes connected to a qualified building that are specifically designed and used exclusively for pilot scale manufacturing or qualified research and development.

Also, "qualified buildings" includes construction of parking lots connected to or adjacent to the building if the parking lots are for the use of workers performing pilot scale manufacturing or qualified research and development in the building. Parking lots may be apportioned based upon its qualifying use.

(d) **What is "multiple qualified buildings" for purposes of this rule?** "Multiple qualified buildings" means "qualified buildings" leased to the same person when such structures:

(i) Are located within a five-mile radius; and

(ii) The initiation of construction of each building begins within a sixty-month period.

(e) **When is apportionment of qualified buildings appropriate?** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of an existing building used in pilot scale manufacturing or qualified research and development. Where a building(s) is used partly for pilot scale manufacturing or qualified research and development and partly for purposes that do not qualify for deferral under this rule, apportionment is necessary.

(f) **What is the apportionment method?** The applicable tax deferral will be determined as follows:

(i) Tax on the cost of construction of areas devoted solely to pilot scale manufacturing or qualified research and development may be deferred.

(ii) Tax on the cost of construction of areas not used at all for pilot scale manufacturing or qualified research and development may not be deferred.

(iii) Tax on the cost of construction of areas used in common for pilot scale manufacturing or qualified research and development and for other purposes, such as hallways, bathrooms, and conference rooms, may be deferred by apportioning the costs of construction on a square footage basis. The apportioned costs of construction eligible for deferral are established by using the ratio, expressed as a percentage, of the square feet of the construction, expansion, or renovation devoted to pilot scale manufacturing or qualified research and development, excluding areas used in common to the total square feet of the construction, expansion, or renovation, excluding areas used in common. That percentage is applied to the cost of construction of the common areas to determine the costs of construction eligible for tax deferral. Expressed as a formula, apportionment of the cost of the common areas is determined by:

$$\frac{\text{Square feet devoted to research and development or pilot scale manufacturing, excluding square feet of common areas}}{\text{Total square feet, excluding square feet of common areas}} = \text{Percentage of total cost of construction of common areas eligible for deferral}$$

(iv) The apportionment method described in (f)(i), (ii), and (iii) of this subsection must be used unless the applicant or recipient can demonstrate that another method better represents a reasonable apportionment of costs, considering all the facts and circumstances. An example is to use the number of employees in a qualified building that is engaged in pilot scale manufacturing or qualified research and development as the basis for apportionment, if this method is not easily manipulated to reflect a desired outcome, and it otherwise represents a reasonable apportionment of costs under all the facts and circumstances. This method may take into account qualified research and development or pilot scale manufacturing activities that are shifted within a building or from one building to another building. If assistance is needed to a tax-related question specific to your business under this subsection, you may request a tax ruling. To make a request contact the department's taxpayer information and education division at:

Washington State Department of Revenue
Taxpayer Information and Education
P.O. Box 47478

Olympia, WA 98504-7478
fax 360-586-2463

(v) Example. A building to be constructed will be partially devoted to research and development and partially devoted to marketing, a nonqualifying purpose. The total area of the building is 100,000 square feet. Sixty thousand square feet are used only for research and development, 20,000 square feet are used only for marketing, and the remaining 20,000 square feet are used in common by research and development employees and marketing employees. Tax on the cost of constructing the 60,000 square feet used only for research and development may be deferred. Tax on the cost of constructing the 20,000 square feet used only for marketing may not be deferred. Tax on 75% of the cost of constructing the common areas may be deferred. (Sixty thousand square feet devoted solely to research and development divided by 80,000 square feet devoted solely to research and development and marketing results in a ratio expressed as 75%.)

(g) **What is "qualified machinery and equipment" for purposes of this rule?** "Qualified machinery and equipment" means fixtures, equipment, and support facilities that are an integral and necessary part of a pilot scale manufacturing or qualified research and development operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment, instrumentation, and other devices used in a process of experimentation to develop a new or improved pilot model, plant process, product, formula, invention, or similar property; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; vats, tanks, and fermenters; operating structures; and all other equipment used to control, monitor, or operate the machinery. For purposes of this rule, qualified machinery and equipment must be either new to the taxing jurisdiction of the state or new to the certificate holder, except that used machinery and equipment may be treated as qualified machinery and equipment if the certificate holder either brings the machinery and equipment into Washington or makes a retail purchase of the machinery and equipment in Washington or elsewhere.

(i) **What are "integral" and "necessary"?** Machinery and equipment is an integral and necessary part of pilot scale manufacturing or qualified research and development if the pilot scale manufacturing or qualified research and development cannot be accomplished without it. For example, a laboratory table is integral and necessary to qualified research and development. Likewise, telephones, computer hardware (e.g., cables, scanners, printers, etc.), and computer software (e.g., Word, Excel, Windows, Adobe, etc.) used in a typical workstation for an R&D personnel are integral and necessary to qualified research and development. Decorative artwork, on the other hand, is not integral and necessary to qualified research and development.

(ii) **Must qualified machinery and equipment be used exclusively for qualifying purposes in order to qualify?** Qualified machinery and equipment must be used exclusively for pilot scale manufacturing or qualified research and development to qualify for the deferral. Operating system software shared by accounting personnel, for example, is not used exclusively for qualified research and development. However, *de minimis* nonqualifying use will not cause the loss of the deferral. An example of *de minimis* use is the occasional use of a computer for personal email.

(iii) **Is qualified machinery and equipment subject to apportionment?** Unlike buildings, if machinery and equipment is used for both

qualifying and nonqualifying purposes, the costs cannot be apportioned. Sales or use tax cannot be deferred on the purchase or use of machinery and equipment used for both qualifying and nonqualifying purposes.

(iv) **To what extent is leased equipment eligible for the deferral?** In cases of leases of qualifying machinery and equipment, deferral of tax is allowed on payments made during the initial term of the lease, but not for extensions or renewals of the lease. Deferral of tax is not allowed for lease payments for any period after the seventh calendar year following the calendar year for which the project is certified as operationally complete.

(5) **What are the application and review processes?** Applicants must apply for deferral to the department of revenue before the initiation of construction of, or acquisition of equipment or machinery for the investment project. When an application for sales and use tax deferral is timely submitted, costs incurred before the application date are allowable, if they otherwise qualify. In the case of an investment project consisting of "multiple qualified buildings," applications must be made for, and before the initiation of construction of, each qualified building.

(a) **What is "initiation of construction" for purposes of this rule?**

(i) Initiation of construction means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for:

(A) Construction of the qualified building, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral;

(B) Construction of the qualified building, if a lessor passes the economic benefits of the deferral to a lessee as provided in RCW 82.63.010(7); or

(C) Tenant improvements for a qualified building, if a lessor passes the economic benefits of the deferral to a lessee as provided in RCW 82.63.010(7).

(ii) Initiation of construction does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

(iii) If the investment project is a phased project, initiation of construction must apply separately to each building. For purposes of this rule, a "phased project" means construction of multiple buildings in different phases over the life of a project. A taxpayer may file a separate application for each qualified building, or the taxpayer may file one application for all qualified buildings. If a taxpayer files one application for all qualified buildings, initiation of construction must apply separately to each building.

(b) **What is "acquisition of machinery and equipment" for purposes of this rule?** "Acquisition of machinery and equipment" means the machinery and equipment is under the dominion and control of the recipient or its agent.

(c) **Lessor and lessee examples.**

(i) Prior to the initiation of construction, Owner/Lessor A enters into an agreement with Lessee B, a company engaged in qualified research and development. Under the agreement, A will build a building to house B's research and development activities, will apply for a tax deferral on construction of the building, will lease the building to B, and will pass on the entire value of the deferral to B. B agrees in

writing with the department to complete annual ((~~surveys~~)) tax performance reports. A applies for the deferral before the date the building permit is issued. A is entitled to a deferral on building construction costs.

(ii) After construction has begun, Lessee C asks that certain tenant improvements be added to the building. Lessor D and Lessee C each agree to pay a portion of the cost of the improvements. D agrees with C in a written agreement that D will pass on the entire value of D's portion of the tax deferral to C, and C agrees in writing with the department to complete annual ((~~surveys~~)) tax performance reports. C and D each apply for a deferral on the costs of the tenant improvements they are legally responsible for before the date the building permit is issued for such tenant improvements. Both applications will be approved. While construction of the building was initiated before the applications were submitted, tenant improvements on a building under construction are deemed to be the expansion or renovation of an existing structure. Also, lessees are entitled to the deferral only if they are legally responsible and actually pay contractors for the improvements, rather than merely reimbursing lessors for the costs.

(iii) After construction has begun but before machinery or equipment has been acquired, Lessee E applies for a deferral on machinery and equipment. The application will be approved, and E is required to complete annual ((~~surveys~~)) tax performance reports. Even though it is too late to apply for a deferral of tax on building costs, it is not too late to apply for a deferral for the machinery and equipment.

(d) **How may a taxpayer obtain an application form?** Application forms may be obtained at department of revenue district offices, by downloading from the department's web site (dor.wa.gov), by telephoning the telephone information center (800-647-7706), or by contacting the department's special programs division at:

Washington State Department of Revenue
Special Programs Division
Post Office Box 47477
Olympia, WA 98504-7477
fax 360-586-2163

Applicants must mail or fax applications to the special programs division at the address or fax number given above. Only those applications which are approved by the department in connection with the deferral program are not confidential and are subject to public disclosure.

For purposes of this rule, "applicant" means a person applying for a tax deferral under chapter 82.63 RCW, and "department" means the department of revenue.

(e) **What should an application form include?** The application form should include information regarding the location of the investment project, the applicant's average employment in Washington for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, and time schedules for completion and operation. The application form may also include other information relevant to the project and the applicant's eligibility for deferral.

(f) **What is the date of application?** The date of application is the earlier of the postmark date or the date of receipt by the department.

(g) **When will the department notify approval or disapproval of the deferral application?** The department must rule on an application

within sixty days. If an application is denied, the department must explain in writing the basis for the denial. An applicant may seek review of a denial within thirty days under WAC 458-20-100 (Informal administrative reviews).

(6) **Can a lessee leasing "multiple qualified buildings" elect to treat the "multiple qualified buildings" as a single investment project?** Yes. If a lessee will conduct qualified research and development or pilot scale manufacturing within the "multiple qualified buildings" and desires to treat the "multiple qualified buildings" as a single investment project, the lessee may do so by making both a preliminary election and a final election therefore.

(a) **When must the lessee make the preliminary election to treat the "multiple qualified buildings" as a single investment project?** The lessee must make the preliminary election before a temporary certificate of occupancy, or its equivalent, is issued for any of the buildings within the "multiple qualified buildings."

(b) **When must the lessee make the final election to treat the "multiple qualified buildings" as a single investment project?** All buildings included in the final election must have been issued a temporary certificate of occupancy or its equivalent. The lessee must then make the final election for such buildings by the date that is the earlier of:

(i) Sixty months following the date that the lessee made the preliminary election; or

(ii) Thirty days after the issuance of the temporary certificate of occupancy, or its equivalent, for the last "qualified building" to be completed that will be included in the final election.

(c) **What occurs if the final election is not made by the deadline?** When a final election is not made by the deadline in (b)(i) or (ii) of this subsection, the qualified buildings will each be treated as individual investment projects under the original applications for those buildings.

(d) **How are preliminary and final elections made?** The preliminary and final elections must be made in the form and manner prescribed by the department. For information concerning the form and manner for making these elections contact the department's special programs division at:

Washington State Department of Revenue
Special Programs Division
Post Office Box 47477
Olympia, WA 98504-7477
fax 360-586-2163

(e) **Before the final election is made, can the lessee choose to exclude one or more of the buildings included in its preliminary election?** Yes. Before the final election is made, the lessee may remove one or more of the qualified buildings included in the preliminary election from the investment project. When a qualified building under the preliminary election is, for any reason, not included in the final election, the qualified building will be treated as an individual investment project under the original application for that building.

(f) **Application.** This subsection (6) applies to deferral applications received by the department after June 30, 2007.

(7) **What happens after the department approves the deferral application?** If an application is approved, the department must issue the applicant a sales and use tax deferral certificate.

The certificate provides for deferral of state and local sales and use taxes on the eligible investment project. The certificate will state the amount of tax deferral for which the recipient is eligible. It will also state the date by which the project will be operationally complete. The deferral is limited to investment in qualified buildings or qualified machinery and equipment. The deferral does not apply to the taxes of persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

For purposes of this rule, "recipient" means a person receiving a tax deferral under chapter 82.63 RCW.

(8) **How should a tax deferral certificate be used?** A successful applicant, hereafter referred to as a recipient, must present a copy of the certificate to sellers of goods or retail services provided in connection with the eligible investment project in order to avoid paying sales or use tax. Sellers who accept these certificates in good faith are relieved of the responsibility to collect sales or use tax on transactions covered by the certificates. Sellers must retain copies of certificates as documentation for why sales or use tax was not collected on a transaction.

The certificate cannot be used to defer tax on repairs to, or replacement parts for, qualified machinery and equipment.

(9) **May an applicant apply for new deferral at the site of an existing deferral project?**

(a) The department must not issue a certificate for an investment project that has already received a deferral under chapter 82.60, 82.61, or 82.63 RCW. For example, replacement machinery and equipment that replaces qualified machinery and equipment is not eligible for the deferral. Also, if renovation is made from an existing building that has already received a deferral under chapter 82.60, 82.61, or 82.63 RCW for the construction of the building, the renovation is not eligible for the deferral.

(b) If expansion is made from an existing building that has already received a deferral under chapter 82.60, 82.61, or 82.63 RCW for the construction of the building, the expanded portion of the building may be eligible for the deferral. Acquisition of machinery and equipment to be used for the expanded portion of the qualified building may also be eligible.

(c) An investment project for qualified research and development that has already received a deferral may also receive an additional deferral certificate for adapting the investment project for use in pilot scale manufacturing.

(d) A certificate may be amended or a certificate issued for a new investment project at an existing facility.

(10) **May an applicant or recipient amend an application or certificate?** Applicants and recipients may make written requests to the special programs division to amend an application or certificate.

(a) Grounds for requesting amendment include, but are not limited to:

(i) The project will exceed the costs originally stated;

(ii) The project will take more time to complete than originally stated;

(iii) The original application is no longer accurate because of changes in the project; and

(iv) Transfer of ownership of the project.

(b) The department must rule on the request within sixty days. If the request is denied, the department must explain in writing the basis for the denial. An applicant or recipient may seek review of a de-

nial within thirty days under WAC 458-20-100 (Informal administrative reviews).

(11) **What should a recipient of a tax deferral do when its investment project is operationally complete?**

(a) When the building, machinery, or equipment is ready for use, or when a final election is made to treat "multiple qualified buildings" as single investment project, the recipient must notify the special programs division in writing that the eligible investment project is operationally complete. The department must, after appropriate investigation: Certify that the project is operationally complete; not certify the project; or certify only a portion of the project. The certification will include the year in which the project is operationally complete. If the department certifies as an operationally complete investment project consisting of "multiple qualifying buildings," the certification is deemed to have occurred in the calendar year in which the final election is made.

(b) If all or any portion of the project is not certified, the recipient must repay all or a proportional part of the deferred taxes. The department will notify the recipient of the amount due, including interest, and the due date.

(c) The department must explain in writing the basis for not certifying all or any portion of a project. The decision of the department to not certify all or a portion of a project may be reviewed under WAC 458-20-100 (Informal administrative reviews) within thirty days.

(d) An investment project consisting of "multiple qualifying buildings" may not be certified as operationally complete unless the lessee furnishes the department with a bond, letter of credit, or other security acceptable to the department in an amount equal to the repayment obligation as determined by the department. The department may decrease the secured amount each year as the repayment obligation decreases under the provisions of RCW 82.63.045. If the lessee does not furnish the department with a bond, letter of credit, or other acceptable security equal to the amount of deferred tax, the qualified buildings will each be treated as individual investment projects under the original applications for those buildings.

(12) **Is a recipient of a tax deferral required to submit annual ((~~surveys~~)) tax performance reports?** Each recipient of a tax deferral granted under chapter 82.63 RCW must complete an annual ((~~survey~~)) tax performance report. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.63.010(7), the lessee must agree to complete the annual ((~~survey~~)) tax performance report and the applicant is not required to complete the annual ((~~survey~~)) tax performance report. See WAC ((~~458-20-268~~)) 458-20-267 (Annual ((~~surveys~~)) tax performance reports for certain tax ((~~adjustments~~)) preferences) for more information on the requirements to file annual ((~~surveys~~)) tax performance reports.

(13) **Is a recipient of tax deferral required to repay deferred taxes?**

(a) **When is repayment required?** Deferred taxes must be repaid if an investment project is used for purposes other than qualified research and development or pilot scale manufacturing during the calendar year for which the department certifies the investment project as operationally complete or at any time during any of the succeeding seven calendar years. Taxes are immediately due according to the following schedule:

Year in which nonqualifying use occurs	% of deferred taxes due
1	100%
2	87.5%
3	75%
4	62.5%
5	50%
6	37.5%
7	25%
8	12.5%

Interest on the taxes, but not penalties, must be paid retroactively to the date of deferral. For purposes of this rule, the date of deferral is the date tax-deferred items are purchased.

The lessee of an investment project consisting of "multiple qualified buildings" is solely liable for payment of any deferred tax determined to be due and payable beginning on the date the department certifies the product as operationally complete. This does not relieve any lessor of its obligation under RCW 82.63.010(7) and subsection (3)(a) of this rule to pass the economic benefit of the deferral to the lessee.

(b) **When is repayment not required?**

(i) Deferred taxes need not be repaid if the investment project is used only for qualified research and development or pilot scale manufacturing during the calendar year for which the department certifies the investment project as operationally complete and during the succeeding seven calendar years.

(ii) Deferred taxes need not be repaid on particular items if the purchase or use of the item would have qualified for the machinery and equipment sales and use tax exemptions provided by RCW 82.08.02565 and 82.12.02565 (discussed in WAC 458-20-13601) at the time of purchase or first use.

(iii) Deferred taxes need not be repaid if qualified machinery and equipment on which the taxes were deferred is destroyed, becomes inoperable and cannot be reasonably repaired, wears out, or becomes obsolete and is no longer practical for use in the project. The use of machinery and equipment which becomes obsolete for purposes of the project and is used outside the project is subject to use tax at the time of such use.

(14) **When will the tax deferral program expire?** The authority of the department to issue deferral certificates expires January 1, 2015.

(15) **Is debt extinguishable because of insolvency or sale?** The debt for deferred taxes will not be extinguished by the insolvency or other failure of the recipient.

(16) **Does transfer of ownership terminate tax deferral?** Transfer of ownership does not terminate the deferral. The deferral may be transferred to the new owner if the new owner meets all eligibility requirements for the remaining periods of the deferral. The new owner must apply for an amendment to the deferral certificate. If the deferral is transferred, the new owner is liable for repayment of deferred taxes under the same terms as the original owner. If the new owner is a successor to the previous owner under the terms of WAC 458-20-216 (Successors, quitting business) and the deferral is not transferred, the new owner's liability for deferred taxes is limited to those that are due for payment at the time ownership is transferred.

PART II

SALES AND USE TAX EXEMPTION FOR PERSONS ENGAGED IN CERTAIN CONSTRUCTION ACTIVITIES FOR THE FEDERAL GOVERNMENT

(17) **Persons engaged in construction activities for the federal government.** Effective June 10, 2004, persons engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, or any instrumentality thereof, are not liable for sales and use tax on tangible personal property incorporated into, installed in, or attached to such building or other structure, if the investment project would qualify for sales and use tax deferral under chapter 82.63 RCW if undertaken by a private entity. RCW 82.04.190(6).

PART III

BUSINESS AND OCCUPATION TAX CREDIT FOR RESEARCH AND DEVELOPMENT SPENDING

(18) **Who is eligible for the business and occupation tax credit?** RCW 82.04.4452 provides for a business and occupation tax credit for persons engaging in research and development in Washington in five areas of high technology: Advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology.

A person is eligible for the credit if its research and development spending in the calendar year for which credit is claimed exceeds 0.92 percent of the person's taxable amount for the same calendar year.

(a) **What does the term "person" mean for purposes of this credit?** "Person" has the meaning given in RCW 82.04.030.

(b) **What is "research and development spending" for purposes of this rule?** "Research and development spending" means qualified research and development expenditures plus eighty percent of amounts paid to a person other than a public educational or research institution to conduct qualified research and development.

(c) **What is "taxable amount" for purposes of this rule?** "Taxable amount" means the taxable amount subject to business and occupation tax required to be reported on the person's combined excise tax returns for the year for which the credit is claimed, less any taxable amount for which a multiple activities tax credit is allowed under RCW 82.04.440. See WAC 458-20-19301 (Multiple activities tax credits) for information on the multiple activities tax credit.

(d) **What are "qualified research and development expenditures" for purposes of this rule?** "Qualified research and development expenditures" means operating expenses, including wages, compensation of a proprietor or a partner in a partnership, benefits, supplies, and computer expenses, directly incurred in qualified research and development by a person claiming the business and occupation tax credit provided by RCW 82.04.4452. The term does not include amounts paid to a person other than a public educational or research institution to conduct qualified research and development. Nor does the term include capital costs and overhead, such as expenses for land, structures, or depreciable property.

(i) In order for an operating expense to be a qualified research and development expenditure, it must be directly incurred in qualified research and development. If an employee performs qualified research and development activities and also performs other activities, only

the wages and benefits proportionate to the time spent on qualified research and development activities are qualified research and development expenditures under this rule. The wages of employees who supervise or are supervised by persons performing qualified research and development are qualified research and development expenditures to the extent the work of those supervising or being supervised involves qualified research and development.

(ii) The compensation of a proprietor or a partner is determined in one of two ways:

(A) If there is net income for federal income tax purposes, the amount reported subject to self-employment tax is the compensation.

(B) If there is no net income for federal income tax purposes, reasonable cash withdrawals or cash advances are the compensation.

(iii) Depreciable property is any property with a useful life of at least a year. Expenses for depreciable property will not constitute qualified research and development expenditures even if such property may be fully deductible for federal income tax purposes in the year of acquisition.

(iv) Computer expenses do not include the purchase, lease, rental, maintenance, repair or upgrade of computer hardware or software. They do include internet subscriber fees, run time on a mainframe computer, and outside processing.

(v) Training expenses for employees are qualified research and development expenditures if the training is directly related to the research and development being performed. Training expenses include registration fees, materials, and travel expenses. Although the research and development must occur in Washington, training may take place outside of Washington.

(vi) Qualified research and development expenditures include the cost of clinical trials for drugs and certification by Underwriters Laboratories.

(vii) Qualified research and development expenditures do not include legal expenses, patent fees, or any other expense not incurred directly for qualified research and development.

(viii) Stock options granted as compensation to employees performing qualified research and development are qualified research and development expenditures to the extent they are reported on the W-2 forms of the employees and are taken as a deduction for federal income tax purposes by the employer.

(ix) Preemployment expenses related to employees who perform qualified research and development are qualified research and development expenditures. These expenses include recruiting and relocation expenses and employee placement fees.

(e) **What does it mean to "conduct" qualified research and development for purposes of this rule?** A person is conducting qualified research and development when:

(i) The person is in charge of a project or a phase of the project; and

(ii) The activities performed by that person in the project or the phase of the project constitute qualified research and development.

(iii) Examples.

(A) Company C is conducting qualified research and development. It enters into a contract with Company D requiring D to provide workers to perform activities under the direction of C. D is not entitled to the credit because D is not conducting qualified research and de-

velopment. Its employees work under the direction of C. C is entitled to the credit if all other requirements of the credit are met.

(B) Company F enters into a contract with Company G requiring G to perform qualified research and development on a phase of its project. The phase of the project constitutes qualified research and development. F is not entitled to the credit because F is not conducting qualified research and development on that phase of the project. G, however, is entitled to the credit if all other requirements of the credit are met.

(f) **What is "qualified research and development" for purposes of this rule?** "Qualified research and development" means research and development performed within this state in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology.

(g) **What is "research and development" for purposes of this rule?** See subsection (3)(c) of this rule for more information on the definition of research and development.

(i) Example. A company that engages in environmental cleanup contracted to clean up a site. It had never faced exactly the same situation before, but guaranteed at the outset that it could do the job. It used a variety of existing technologies to accomplish the task in a combination it had never used before. The company was not engaged in qualified research and development in performing this contract. While the company applied existing technologies in a unique manner, there was no uncertainty to attain the desired or necessary specifications, and therefore the outcome of the project was certain.

(ii) Example. Same facts as (g)(i) of this subsection, except that the company performed research on a technology that had been applied in other contexts but never in the context where the company was attempting to use it, and it was uncertain at the outset whether the technology could achieve the desired outcome in the new context. If the company failed, it would have to apply an existing technology that is much more costly in its cleanup effort. The company was engaged in qualified research and development with respect to the research performed in developing the technology.

(iii) Example. Company A is engaged in research and development in biotechnology and needs to perform standard blood tests as part of its development of a drug. It contracts with a lab, B, to perform the tests. The costs of the tests are qualified research and development expenditures for A, the company engaged in the research and development. Although the tests themselves are routine, they are only a part of what A is doing in the course of developing the drug. B, the lab contracted to perform the testing, is not engaged in research and development with respect to the drug being developed. B is neither discovering technological information nor translating technological information into new or improved products, processes, techniques, formulas, inventions, or software. B is not entitled to a credit on account of the compensation it receives for conducting the tests.

(h) **What are the five high technology areas?** See subsection (3)(e) of this rule for more information.

(19) **How is the business and occupation tax credit calculated?**

(a) **On or after July 1, 2004.** The amount of the credit is calculated as follows:

(i) A person must first determine the greater of:

The person's qualified research and development expenditures;

or

Eighty percent of amounts received by a person other than a public educational or research institution as compensation for conducting qualified research and development.

(ii) Then the person subtracts, from the amount determined under (a)(i) of this subsection, 0.92 percent of its taxable amount. If 0.92 percent of the taxable amount exceeds the amount determined under (a)(i) of this subsection, the person is not eligible for the credit.

(iii) The credit is calculated by multiplying the amount determined under (a)(ii) of this subsection by the following:

(A) For the periods of July 1, 2004, to December 31, 2006, the person's average tax rate for the calendar year for which the credit is claimed;

(B) For the periods of January 1, 2007, to December 31, 2007, the greater of the person's average tax rate for the calendar year or 0.75 percent;

(C) For the periods of January 1, 2008, to December 31, 2008, the greater of the person's average tax rate for the calendar year or 1.0 percent;

(D) For the periods of January 1, 2009, to December 31, 2009, the greater of the person's average tax rate for the calendar year or 1.25 percent; and

(E) For the periods after December 31, 2009, 1.50 percent.

(iv) For the purposes of this rule, "average tax rate" means a person's total business and occupation tax liability for the calendar year for which the credit is claimed, divided by the person's total taxable amount for the calendar year for which the credit is claimed.

(v) For purposes of calculating the credit, if a person's reporting period is less than annual, the person may use an estimated average tax rate for the calendar year for which the credit is claimed, by using the person's average tax rate for each reporting period. When the person files its last return for the calendar year, the person must make an adjustment to the total credit claimed for the calendar year using the person's actual average tax rate for the calendar year.

(vi) Examples.

(A) A business engaging in qualified research and development has a taxable amount of $10,000,000 in a year. It pays $80,000 in that year in wages and benefits to employees directly engaged in qualified research and development. The business has no other qualified research and development expenditures. Its qualified research and development expenditures of $80,000 are less than $92,000 (0.92 percent of its taxable amount of $10,000,000). If a business's qualified research and development expenditures (or eighty percent of amounts received for the conduct of qualified research and development) are less than 0.92 percent of its taxable amount, it is not eligible for the credit.

(B) A business engaging in qualified research and development has a taxable amount of $10,000,000 in 2005. Seven million dollars of this amount is taxable at the rate of 0.015 under the B&O tax classification for services and $3,000,000 is taxable at the rate of 0.00484 under the B&O tax classification for royalties. The business pays $119,520 in B&O tax for this reporting period. It pays $200,000 in that year to employees directly engaged in qualified research and development. The business has no other qualified research and development expenditures.

In order to determine the amount of its credit, the business subtracts $92,000 (0.92 percent of its taxable amount of $10,000,000) from $200,000, its qualified research and development expenditures.

The resulting amount of $108,000 multiplied by the business's average tax rate equals the amount of the credit.

The business's average tax rate in 2005 is determined by dividing its B&O tax of $119,520 by its taxable amount of $10,000,000. The result, 0.01195, is multiplied by $108,000 to determine the amount of the credit. The credit is $1,291 ($1,290.60 rounded to the nearest whole dollar).

(b) **From July 1, 1998 to June 30, 2004.** The amount of the credit is equal to the greater of:

The person's qualified research and development expenditures;

or

Eighty percent of amounts received by a person other than a public educational or research institution as compensation for conducting qualified research and development

multiplied by 0.00484 in the case of a nonprofit corporation or association; and

multiplied by 0.015 in the case of all other persons.

(c) **Prior to July 1, 1998.** The amount of the credit is equal to the greater of:

The person's qualified research and development expenditures;

or

Eighty percent of amounts received by a person other than a public educational or research institution as compensation for conducting qualified research and development

multiplied by 0.00515 in the case of a nonprofit corporation or association; and

multiplied by 0.025 in the case of all other persons.

(d) The credit for any calendar year may not exceed the lesser of two million dollars or the amount of business and occupation tax otherwise due for the calendar year.

(e) Credits may not be carried forward or carried back to other calendar years.

(20) **Is the person claiming the business and occupation tax credit required to submit annual ((~~surveys~~)) tax performance reports?** Each person claiming the credit granted under RCW 82.04.4452 must complete an annual ((~~survey~~)) tax performance report. See WAC ((~~458-20-268~~)) 458-20-267 (Annual ((~~surveys~~)) tax performance reports for certain tax ((~~adjustments~~)) preferences) for more information on the requirements to file annual ((~~surveys~~)) tax performance reports.

(21) **Is the business and occupation tax credit assignable?** A person entitled to the credit because of qualified research and development conducted under contract for another person may assign all or a portion of the credit to the person who contracted for the performance of the qualified research and development.

(a) Both the assignor and the assignee must be eligible for the credit for the assignment to be valid.

(b) The total of the credit claimed and the credit assigned by a person assigning credit may not exceed the lesser of two million dollars or the amount of business and occupation tax otherwise due from the assignor in any calendar year.

(c) The total of the credit claimed, including credit received by assignment, may not exceed the lesser of two million dollars or the amount of business and occupation tax otherwise due from the assignee in any calendar year.

(22) **What happens if a person has claimed the business and occupation tax credit earlier but is later found ineligible?** If a person has claimed the credit earlier but is later found ineligible for the credit, then the department will declare the taxes against which the credit was claimed to be immediately due and payable. Interest on the taxes, but not penalties, must be paid retroactively to the date the credit was claimed.

(23) **When will the business and occupation tax credit program expire?** The business and occupation tax credit program for high technology businesses expires January 1, 2015.

(24) **Do staffing companies qualify for the business and occupation tax credit program?** A staffing company may be eligible for the credit if its research and development spending in the calendar year for which credit is claimed exceeds 0.92 percent of the person's taxable amount for the same calendar year.

(a) **Qualifications of the credit.** In order to qualify for the credit, a staffing company must meet the following criteria:

(i) It must conduct qualified research and development through its employees;

(ii) Its employees must perform qualified research and development activities in a project or a phase of the project, without considering any activity performed:

(A) By the person contracting with the staffing company for such performance; or

(B) By any other person;

(iii) It must complete an annual ((~~survey~~)) tax performance report by March 31st following any year in which the credit was taken; and

(iv) It must document any claim of the B&O tax credit.

(b) Examples.

(i) Company M, a staffing company, furnishes three employees to Company N for assisting a research project in electronic device technology. N has a manager and five employees working on the same project. The work of M's employees and N's employees combined as a whole constitutes qualified research and development. M's employees do not perform sufficient activities themselves to be considered performing qualified research and development. M does not qualify for the credit.

(ii) Company V, a staffing company, furnishes three employees to Company W for performing a phase of a research project in advanced materials. W has a manager and five employees working on other phases of the same project. V's employees are in charge of a phase of the project that results in discovery of technological information. The work of V's employees alone constitutes qualified research and development. V qualifies for the credit if all other requirements of the credit are met.

(iii) Same as (b)(ii) of this subsection, except that the phase of the research project involves development of computer software for W's internal use. The work of V's employees alone constitutes qualified research and development. V qualifies for the credit if all other requirements of the credit are met.

AMENDATORY SECTION (Amending WSR 14-14-078, filed 6/27/14, effective 7/28/14)

WAC 458-20-263 Exemptions from retail sales and use taxes for qualifying electric generating and thermal heat producing systems using renewable energy sources. RCW 82.08.962, 82.08.963, 82.12.962, and 82.12.963 provide exemptions from the "retail sales tax" described in chapter 82.08 RCW and the "use tax" described in chapter 82.12 RCW paid with respect to the sale or use of machinery and equipment used directly in generating electricity or producing thermal heat using qualified renewable energy sources. This rule explains how these exemptions apply and is divided into four parts as follows:

PART 1: Exemptions as Applied to Qualified Solar Systems.

PART 2: Exemptions as Applied to Qualified Nonsolar Renewable Energy Systems.

PART 3: Exemptions as Applied to Qualifying Solar-Heat Systems.

PART 4: General Provisions.

PART 1
Exemptions as Applied to Qualified Solar Systems

(101) **Solar systems that generate ten kilowatts or less.**

(a) **Exemptions.** RCW 82.08.963 and 82.12.963 provide exemptions from retail sales and use taxes paid with the respect to the sale or use of machinery and equipment that is used directly in a solar energy system capable of generating ten kilowatts of electricity or less. The nameplate DC power rating of a system, which is an industry standard, is used to determine whether the energy system is capable of generating ten kilowatts of electricity or less. Labor charges to install the qualified machinery and equipment are also exempt from retail sales and use taxes. Both state and local retail sales and use taxes are exempt. These exemptions are effective from July 1, 2009, and expire June 30, 2018.

(b) **Exemption certificate required.** The buyer must document this exemption at the time of sale by providing the seller (and installer, if different from the seller), a completed *Buyers' Retail Sales Tax Exemption Certificate*. The seller or installer must keep the completed form in its records for five years.

(c) **Instructions for sellers that E-file.** For sellers that E-file, the exemption permitted under Part 1, subsection (101)(a) of this rule should be listed on the line entitled *Sales of Solar Machinery/Equipment; Install Labor* on the retail sales tax deduction page of E-file.

(102) **Solar systems that generate more than ten kilowatts.**

(a) **Partial exemptions.** For buyers that do not qualify for the full exemption described in Part 1, subsection (101)(a) of this rule, there is an alternative partial exemption. RCW 82.08.962 and 82.12.962 provide an exemption, in the form of a remittance (refund) from the department, equal to seventy-five percent of the retail sales and use taxes paid with respect to the sale or use of machinery and equipment used directly in solar energy systems capable of generating at least 1000 watts (one kilowatt) of electricity. The exemption also applies to amounts paid for labor and services rendered in respect to installing such machinery and equipment, and may only be claimed if the exemption permitted in Part 1, subsection (101)(a) of this rule has not been claimed. The nameplate DC power rating of a system, which is an industry standard, is used to determine whether the solar energy sys-

tem is capable of generating 1000 watts (one kilowatt) or more of electricity. The buyer must pay the total amount of the retail sales or use taxes paid with the respect to the sale or use of the qualifying machinery, equipment, and labor charges to install the same. The buyer may then apply to the department for a refund of seventy-five percent of the state and local retail sales and use taxes paid. This partial exemption is effective from July 1, 2011, and expires January 1, 2020.

(b) From July 1, 2009, through June 30, 2011, these systems qualified for a one hundred percent exemption for retail sales and use taxes paid with the respect to the sale and use of qualified machinery, equipment, and labor charges to install the same at the point of sale. For documentation requirements see Part 1, subsection (101) of this rule.

(c) **Required annual ((~~survey~~)) tax performance report.** Beginning ((~~July 1, 2013~~)) January 1, 2018, buyers applying for a refund must complete and submit an annual tax ((~~incentive survey~~)) performance report. The ((~~survey~~)) annual tax performance report must be filed with the department by ((~~April 30th~~)) May 31st, following the year for which the refund is claimed. For more information see Part 4, subsection (401)(c) of this rule.

PART 2
Exemptions as Applied to Qualified Nonsolar Renewable Energy Systems

(201) **Qualified nonsolar renewable energy systems generating one kilowatt or more.**

(a) **Partial exemptions.** RCW 82.08.962 and 82.12.962 provide an exemption equal to seventy-five percent of the retail sales and use taxes paid with respect to the sale or use of machinery and equipment used directly in a renewable energy system employing a qualified power source that generates at least 1000 watts (one kilowatt) or more of electricity. This exemption also applies to amounts paid for labor and services rendered in respect to installing such machinery and equipment. The buyer is eligible for the exemption in the form of a remittance (refund) from the department and must have paid to the seller or to the department the total amount of retail sales or use taxes paid with the respect to the sale or use of the machinery, equipment, and labor charges to install the same. To claim the exemption, the buyer must apply to the department for a refund. See Part 4, subsection (401) of this rule for instructions on how to file a claim for refund. This partial exemption is effective from July 1, 2011, and expires January 1, 2020.

(b) **Refund procedure.** Beginning July 1, 2011, the buyer is eligible for the exemption in the form of a remittance (refund) from the department. The buyer must pay the total amount of the retail sales or use taxes due with the respect to the sale or use of qualifying machinery or equipment and labor charges to install the same. The buyer may then apply to the department for a refund of seventy-five percent of the state and local retail sales and use taxes paid. These exemptions expire on January 1, 2020.

(c) **Required ((~~survey~~)) tax performance report.** Beginning ((~~July 1, 2013~~)) January 1, 2018, buyers applying for a refund must complete and submit an annual tax ((~~incentive survey~~)) performance report. The ((~~survey~~)) annual tax performance report must be filed with the department by ((~~April 30th~~)) May 31st, following the year for which the refund is claimed. For more information see Part 4, subsection (401)(c) of this rule.

(202) **Qualified power sources.** The partial exemption permitted under Part 2, subsection (201)(a) of this rule applies only with respect to a renewable energy system that employs one of the following qualified power sources:

- Fuel cells;
- Wind;
- Biomass energy;
- Tidal or wave energy;
- Geothermal resources;
- Anaerobic digestion;
- Technology that converts otherwise lost energy from exhaust; and
- Landfill gas.

(203) **Definitions for these power sources.** For purposes of Part 2, the terms below are defined as or include within their definition the following:

(a) **Biomass energy.** "Biomass energy" includes:

(i) By-products of pulping and wood manufacturing processes;

(ii) Animal waste;

(iii) Solid organic fuels from wood;

(iv) Forest or field residues;

(v) Wooden demolition or construction debris;

(vi) Food waste;

(vii) Liquors derived from algae and other sources;

(viii) Dedicated energy crops;

(ix) Biosolids; and

(x) Yard waste.

"Biomass energy" does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; wood from old growth forests; or municipal solid waste.

(b) **Fuel cell.** "Fuel cell" means an electrochemical reaction that generates electricity by combining atoms of hydrogen and oxygen in the presence of a catalyst.

(c) **Landfill gas.** "Landfill gas" means biomass fuel, of the type that qualifies for federal tax credits under Title 26 U.S.C. § 45K (formerly Title 26 U.S.C. § 29) of the federal Internal Revenue Code, collected from a "landfill" as defined in RCW 70.95.030.

PART 3
Exemptions as Applied to Qualifying Solar-Heat Systems

(301) **Solar-heat systems.**

(a) **Exemption.** RCW 82.08.963 and 82.12.963 provide exemptions from retail sales and use taxes paid with the respect to the sale and use of machinery and equipment used directly in producing thermal heat using solar energy and the labor charges to install the qualified equipment, if the buyer installs a system capable of producing no more than three million BTU per day. These exemptions are valid July 1, 2013, and expire June 30, 2018.

(b) **Exemption certificate required.** The buyer must document this exemption at the time of sale by providing the seller (and installer if different from the seller) a completed *Buyers' Retail Sales Tax Exemption Certificate*. The seller or installer must keep the completed form in its records for five years.

(c) **Instructions for sellers that E-file.** For sellers that E-file, the exemption permitted under Part 3, subsection (301)(a) of this rule should be listed on the line entitled *Sales of Solar Machi-*

nery/Equipment; Install Labor on the retail sales tax deduction page of E-file.

PART 4
General Provisions

(401) **Requirements for a refund from the department of taxes paid, referred to as the seventy-five percent remittance.**

(a) **Required application.** This exemption, in the form of a remittance (refund) from the department, equals seventy-five percent of the retail sales and use taxes paid with respect to the sale or use of the qualifying machinery and equipment. The form that the buyer must submit to the department is the *Application for Sales Tax Refund on Purchases & Installation of Qualified Renewable Energy Equipment.* This form is available through the department's web site at dor.wa.gov under *Get a form or publication*. The application must be completed in full and mailed to the address provided on the form.

(b) **Required records.** The purchaser must provide records that will allow the department to determine whether the purchaser is entitled to a refund. The records include:

- Invoices;
- Proof of tax paid;
- Documents describing the machinery and equipment; and
- Electrical capacity of the system.

(c) **File annual tax ((~~incentive survey~~)) performance report.** Effective ((~~July 1, 2013~~)) January 1, 2018, any person claiming a seventy-five percent refund must electronically file an annual tax ((~~incentive survey~~)) performance report with the department each year. This applies to buyers of solar systems generating electricity of more than ten kilowatts and other qualified renewable energy systems generating electricity of one kilowatt or more.

(d) **Separate ((~~survey~~)) tax performance report for each system.** The buyer must file a separate ((~~survey~~)) tax performance report for each system owned or operated in Washington. The annual ((~~survey~~)) tax performance report is due ((~~April 30th~~)) May 31st, following the year for which the exemption is claimed. (Systems installed in ((~~2013~~)) 2017 require a ((~~survey~~)) tax performance report to be completed by ((~~April 30, 2014~~)) May 31, 2018.)

(e) **Limitation on frequency for claiming exemption.** A buyer may not apply to the department for a remittance (refund) more frequently than once a quarter.

(f) **Qualified retail sales and use taxes.** These exemptions apply to both state and local retail sales and use taxes.

(402) **What is "machinery and equipment"?** For purposes of RCW 82.08.962 and 82.12.962, "machinery and equipment" means fixtures, devices, and support facilities that are integral and necessary to the generation of electricity from qualifying sources of power. For purposes of RCW 82.08.963 and 82.12.963, "machinery and equipment" means fixtures, devices, and support facilities that are integral to the generation of electricity or production and use of thermal heat from solar energy.

A "support facility" is a part of a building, structure, or improvement used to contain or steady a fixture or device. A support facility must be specially designed and necessary for the proper functioning of the fixture or device and must perform a function beyond being a building, structure, or improvement. It must have a function relative to a fixture or a device. To determine if some portion of a building is a support facility, the parts of the building are exam-

ined. For example, a highly specialized structure, like a vibration reduction slab under generators in a landfill gas generating facility, is a support facility. Without the slab, the generators would not function properly. The ceiling and walls of the building housing the generator are not support facilities if they only serve to define the space and do not have a function relative to a fixture or a device.

"Machinery and equipment" does not include:

(a) The utility grid system;

(b) Hand-powered tools;

(c) Property with a useful life of less than one year;

(d) Repair parts required to restore machinery and equipment to normal working order;

(e) Replacement parts that do not increase productivity, improve efficiency, or extend the useful life of the machinery and equipment;

(f) Buildings; or

(g) Building fixtures that:

(i) Are permanently affixed to and become a physical part of a building; but

(ii) Are not integral and necessary to the generation of electricity.

(403)(a) **When is machinery and equipment "used directly" in generating electricity?** Machinery and equipment is used directly to generate electricity when it is used to:

(i) Capture the energy of the qualifying source of power;

(ii) Convert that energy to electricity; and

(iii) Store, transform, or transmit that electricity for entry into or operation in parallel with electric transmission and distribution systems.

(b) **When is machinery and equipment "used directly" in producing thermal heat?** Machinery and equipment is "used directly" in producing thermal heat with solar energy if it uses a solar collector or a solar hot water system that:

(i) Meets the certification standards for solar collectors and solar hot water systems developed by the solar rating and certification corporation; or

(ii) The Washington State University extension energy program determines a solar collector or solar hot water system is an equivalent collector or system.

(404) **Examples of qualifying machinery and equipment.** This section provides examples of machinery and equipment that may be used directly in generating electricity and could qualify for the exemptions from retail sales and use taxes. This list is illustrative only and is not intended to provide an exhaustive list of possible qualifying machinery and equipment.

(a) **Solar.** Where solar energy is the principal source of power: Solar modules; inverters; Stirling converters; power conditioning equipment; batteries; transformers; power poles; power lines; and connectors to the utility grid system or point of use.

(b) **Wind.** Where wind is the principal source of power: Turbines; blades; generators; towers and tower pads; substations; guy wires and ground stays; power conditioning equipment; anemometers; recording meters; transmitters; power poles; power lines; and connectors to the utility grid system or point of use.

(c) **Landfill.** Where landfill gas is the principal source of power: Turbines; blades; blowers; burners; heat exchangers; generators; towers and tower pads; substations; guy wires and ground stays; pipe; valves; power conditioning equipment; pressure control equipment; re-

cording meters; transmitters; power poles; power lines; and connectors to the utility grid system or point of use.

(d) **Fuel cells.** Where fuel cells are the principal source of power: Fuel cell assemblies; fuel storage and delivery systems; power inverters; transmitters; transformers; power poles; power lines; and connectors to the utility grid system or point of use.

(405) **Installation charges.** The exemptions from retail sales and use taxes addressed in this rule apply to installation charges for qualifying machinery and equipment, including charges for labor and services. There are no exemptions from retail sales and use taxes for charges for labor and services rendered in respect to constructing buildings or access roads that may be necessary to install or use qualifying machinery and equipment. Further, there are no exemptions from retail sales and use taxes paid with respect to tangible personal property, such as a crane or forklift, purchased or rented by the buyer, the contractor, or the installer to be used to install qualifying machinery and equipment. Further, there are no exemptions from retail sales and use taxes for services that were included in the construction contract for design, planning, studies, project management, or other charges not directly related to the actual labor for installing the qualifying machinery and equipment.

AMENDATORY SECTION (Amending WSR 17-09-086, filed 4/19/17, effective 5/20/17)

WAC 458-20-267 Annual tax performance reports for certain tax preferences. (1) **Introduction.** Effective for tax reporting periods beginning January 1, 2018, taxpayers taking certain tax preferences must file an annual tax performance report with the department of revenue (department) providing information about their business. This rule explains how to file a report, the information that must be included in the report, due dates for filing, and other filing requirements.

(a) **References to related rules.** For tax reporting periods through December 31, 2017, readers may want to refer to the following rules:

(i) WAC 458-20-267A Annual reports for certain tax preferences;

(ii) WAC 458-20-268 Annual surveys for certain tax preferences.

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

(i) **Person.** "Person" has the meaning under RCW 82.04.030 and also includes the state and its departments and institutions.

(ii) **Tax preference.** As defined under RCW 43.136.021, "tax preference" means:

(A) An exemption, exclusion, or deduction from the base of a state tax; a credit against a state tax; a deferral of a state tax; or a preferential state tax rate; and

(B) For purposes of this rule, tax preference includes only the tax preferences requiring ((~~a~~)) an annual tax performance report under RCW 82.32.534.

((~~(b)~~)) (c) **Elimination of annual survey.** For tax preferences claimed for tax reporting periods beginning in January 2018 and later, taxpayers ((~~taking certain tax preferences may be~~)) are no longer required to complete both an annual report and an annual survey. ((~~For~~

~~information on the annual survey requirements, refer to RCW 82.32.585 and WAC 458-20-268.~~

~~(c)~~))

(d) **Examples.** This rule includes examples that identify a set of facts and then state a conclusion. These examples should only be used as a general guide. The department will evaluate each case on its particular facts and circumstances.

(2) **Tax preferences requiring an annual tax performance report.** Taxpayers may refer to the department's web site at dor.wa.gov for the "Annual Tax ((~~Incentive~~)) Performance Report for Preferential Tax Rates/Credits/Exemptions/Deferrals Worksheet." This worksheet lists tax preferences that require an annual tax performance report. Taxpayers may also contact the telephone information center at 800-647-7706 to determine whether they must file an annual tax performance report.

(3) **How to file annual tax performance reports.**

(a) **Electronic filing.** Annual tax performance reports must be filed electronically unless the department waives this requirement upon a showing of good cause. A report is filed electronically when the department receives the report in an electronic format((~~. A person accesses electronic filing through their department "My Account"~~)) through the "MyDOR" system at dor.wa.gov.

(b) **Required paper form.** If the department waives the electronic filing requirement for a person who shows good cause, that person must use the annual tax performance report form developed by the department unless that person obtains prior written approval from the department to file an annual tax performance report in an alternative format.

(c) **How to obtain the form.** Persons who have received a waiver of the electronic filing requirement from the department or who otherwise would like a paper copy of the report may obtain the annual tax performance report form from the department's web site at dor.wa.gov. It may also be obtained by calling the telephone information center at 800-647-7706, or by contacting the department at:

Attn: Tax Incentive Team
Taxpayer Account Administration
Department of Revenue
Post Office Box 47476
Olympia, WA 98504-7476

(d) **Special requirement for persons who did not file an annual tax performance report during the previous calendar year.** If a person is a first-time filer or otherwise did not file an annual tax performance report with the department during the previous calendar year, or prior to 2019 did not file an annual report or annual survey, the annual tax performance report must include information on employment((~~,~~)) and wages((~~, and employer-provided health and retirement benefits~~)) for the two calendar years immediately preceding the due date of the report.

(e) **Due date of annual tax performance report for tax preferences other than deferrals.** Every person claiming a tax preference that requires ((~~a~~)) an annual tax performance report under RCW 82.32.534 must file the report annually with the department in the year following the calendar year in which the person becomes eligible to claim the tax preference. The due date for filing the report is ((~~as follows:~~

~~(i) April 30th for reports due prior to 2017.~~

~~(ii) May 31st for reports due in or after 2017~~)) May 31st.

(f) **Due date of annual tax performance report for tax preferences that are deferrals.** If the tax preference is a deferral of tax, an an-

nual tax performance report must be filed by May 31st in the year following the calendar year in which the investment project is certified by the department as operationally complete, and by May 31st of each of the seven succeeding calendar years.

(g) **Due date extensions.** The department may extend the due date for filing annual tax performance reports as provided in subsection ((~~(18)~~)) (15) of this rule.

((~~(g)~~)) (h) **Example 1.** An aerospace firm first claimed the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts on April 1, ((~~2015~~)) 2017. By ((~~April 30, 2016~~)) May 31, 2018, the aerospace firm ((~~must~~)) was required to submit an annual report covering calendar years ((~~2014 and 2015~~)) 2016 and 2017. If the aerospace firm continues to claim the B&O tax rate provided by RCW 82.04.260(11) during calendar year ((~~2016~~)) 2018, an annual tax performance report is due by May 31, ((~~2017~~)) 2019, covering calendar year ((~~2016~~)) 2018.

((~~(h)~~)) (i) **Example 2.** An aluminum smelter first claimed the B&O tax rate provided by RCW 82.04.2909 for aluminum smelters on July 31, ((~~2015~~)) 2017. By ((~~April 30, 2016~~)) May 31, 2018, the aluminum smelter must provide an annual report covering calendar years ((~~2014 and 2015~~)) 2016 and 2017. If the aluminum smelter continues to claim the B&O tax rate provided by RCW 82.04.2909 during calendar year ((~~2016~~)) 2018, an annual tax performance report is due by May 31, ((~~2017~~)) 2019, covering calendar year ((~~2016~~)) 2018.

(4) **Amount of tax preference.** The annual tax performance report must include the amount of the tax preference claimed for the calendar year covered by the report.

(5) **What employment positions are included in the annual tax performance report?**

(a) **General rule.** Except as provided in (a)(i), (ii), or (b) of this subsection, the report must include information detailing employment positions in the state of Washington.

(i) **Alternative to reporting employment and wage data.** A person may elect to allow, on their behalf, the employment security department to release wage and employment data to the department and the joint legislative audit and review committee. Each taxpayer electing this option must affirm that election in accordance with procedures approved by the employment security department.

(ii) **Additional reporting requirements for public research institutions claiming an exemption for machinery and equipment.** For a person that claimed an exemption provided in RCW 82.08.025651 or RCW 82.12.025651, the report must include the amount of tax exempted under those sections in the prior calendar year for each general area or category of research and development for which exempt machinery and equipment and labor and services were acquired in the prior calendar year.

(b) **Alternative method.** Persons engaged in manufacturing commercial airplanes or their components may report employment positions per job at the manufacturing site.

(i) **What is a "manufacturing site"?** For purposes of the annual tax performance report, a "manufacturing site" is one or more immediately adjacent parcels of real property located in Washington state on which manufacturing occurs that support activities qualifying for a tax preference. Adjacent parcels of real property separated only by a public road comprise a single site. A manufacturing site may include real property that supports the qualifying activity, such as administration offices, test facilities, warehouses, design facilities, and

shipping and receiving facilities. It may also include portions of the manufacturing site that support nonqualifying activities.

(ii) **If the person files per job at the manufacturing site, which manufacturing site is included in the annual tax performance report for the aerospace manufacturing industry tax preferences?** The location(s) where a person is manufacturing commercial airplanes or components of such airplanes within this state is the manufacturing site(s) included in the annual tax performance report. A "commercial airplane" has its ordinary meaning, which is an airplane certified by the Federal Aviation Administration (FAA) for transporting persons or property, and any military derivative of such an airplane. A "component" means a part or system certified by the FAA for installation or assembly into a commercial airplane.

(iii) **Are there alternative methods for reporting separately for each manufacturing site?** For purposes of completing the annual tax performance report, the department may agree to allow a person whose manufacturing sites are within close geographic proximity to consolidate its manufacturing sites onto a single annual tax performance report provided that the jobs located at the manufacturing sites have equivalent employment positions, and wages((~~, and employer-provided health and retirement benefits~~)). A person may request written approval to consolidate manufacturing sites by contacting the department at:

Attn: Tax Incentive Team
Taxpayer Account Administration
Department of Revenue
Post Office Box 47476
Olympia, WA 98504-7476

(c) **Example 3.** ABC Airplanes, a company manufacturing FAA certified airplane landing gear, conducts activities at three locations in Washington state. ABC Airplanes is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. In Seattle, WA, ABC Airplanes maintains its corporate headquarters and administrative offices. In Spokane, WA, ABC Airplanes manufactures the brake systems for the landing gear. In Vancouver, WA, ABC Airplanes assembles the landing gear using the components manufactured in Spokane, WA. If filing per manufacturing site, ABC Airplanes must file separate annual tax performance reports for employment positions at its manufacturing sites in Spokane and Vancouver because these are the Washington state locations in which manufacturing occurs that supports activities qualifying for a tax preference.

(d) **Example 4.** Acme Engines, a company manufacturing engine parts, conducts manufacturing in five locations in Washington state. Acme Engines is reporting tax under the B&O tax rate provided by RCW 82.04.260 (11) for manufacturers and processors for hire of commercial airplanes and component parts. It manufactures FAA certified engine parts at its Puyallup, WA location. Acme Engines' four other locations manufacture non-FAA certified engine parts. If filing per manufacturing site, Acme Engines must file an annual tax performance report for employment positions at its manufacturing site in Puyallup because it is the only location in Washington state in which manufacturing occurs that supports activities qualifying for a tax preference.

(e) **Example 5.** Tacoma Rivets, with one in-state manufacturing site located in Tacoma, WA, manufactures rivets used in manufacturing airplanes. Half of the rivets Tacoma Rivets manufactures are FAA cer-

tified to be used on commercial airplanes. The remaining rivets Tacoma Rivets manufactures are not FAA certified and are used on military airplanes. Tacoma Rivets is reporting tax on its sales of FAA certified rivets under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. If filing per manufacturing site, Tacoma Rivets must file an annual tax performance report for employment positions at its manufacturing site in Tacoma because it is the location in Washington state in which manufacturing occurs that supports activities qualifying for a tax preference.

(f) **Example 6.** Dynamic Aerospace Composites is a company that manufactures only FAA certified airplane fuselage materials. Dynamic Aerospace Composites conducts activities at three separate locations within Kent, WA. Dynamic Aerospace Composites is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. If filing per manufacturing site, Dynamic Aerospace Composites must file separate annual tax performance reports for each of its three manufacturing sites.

(g) **Example 7.** Worldwide Aerospace, an aerospace company, manufactures wing systems for commercial airplanes in twenty locations around the world, but none located in Washington state. Worldwide Aerospace manufactures wing surfaces in San Diego, CA. Worldwide Aerospace sells the wing systems to an airplane manufacturer located in Moses Lake, WA and is reporting tax on these sales under the B&O tax rate provided by RCW 82.04.260(11) for sales, at retail or wholesale, of commercial airplanes, or components of such airplanes, manufactured by that person. Worldwide Aerospace is required to complete the annual tax performance report for any employment positions in Washington that are directly related to the qualifying activity.

((~~(5)~~)) (6) **What jobs are included in the annual tax performance report?** The annual tax performance report covers all full-time, part-time, and temporary jobs in this state or, for persons filing as provided in subsection ((~~(4)~~)) (5)(b) of this rule, at the manufacturing site as of December 31st of the calendar year for which an applicable tax preference is claimed. Jobs that support nonqualifying activities or support both nonqualifying and qualifying activities for a tax preference are included in the report if the job is located in Washington state or, for persons filing as provided in subsection ((~~(4)~~)) (5)(b) of this rule, at the manufacturing site.

(a) **Example 8.** XYZ Aluminum, an aluminum smelter company, manufactures aluminum in Tacoma, WA. The company is reporting tax under the B&O tax rate provided by RCW 82.04.2909 for aluminum smelters. XYZ Aluminum's annual tax performance report for its Tacoma, WA location will include all of its employment positions in this state, including its nonmanufacturing employment positions.

(b) **Example 9.** AAA Tire Company manufactures tires at one manufacturing site located in Centralia, WA. The company is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. FAA certified tires comprise only 20% of the products it manufactures and are manufactured in a separate building at the manufacturing site. If filing under the method described in subsection ((~~(4)~~)) (5)(b) of this rule, AAA Tire Company must report all jobs at the manufacturing site, including the jobs engaged in the nonqualifying activities of manufacturing non-FAA certified tires.

((~~(6)~~)) (7) **How is employment detailed in the annual tax performance report?** The annual tax performance report ((~~is organized by employee occupational groups, consistent with the United States Department of Labor's Standard Occupation Codes (SOC) System. The SOC System is a universal occupational classification system used by government agencies and private industries to produce comparable occupational data. The SOC classifies occupations at four levels of aggregation:~~

~~(a) Major group;~~

~~(b) Minor group;~~

~~(c) Broad occupation; and~~

~~(d) Detailed occupation.~~

~~All occupations are clustered into one of twenty-three major groups. The annual report uses the SOC major groups to detail the levels of employment, wages, and employer-provided health and retirement benefits at the manufacturing site. A detailed description of the SOC System is available by consulting the United States Department of Labor, Bureau of Labor Statistics online at www.bls.gov/soc. The annual report does not require names of employees.~~

~~(7)~~)) requires reporting of the total hours and wages for employees in Washington for each quarter or for the calendar year, as determined by the department.

(8) **What is total employment?** The annual tax performance report must ((~~state the total number of employees for each SOC major group that are currently employed on December 31st of the calendar year for which an applicable tax preference is taken~~)) provide information on all full-time, part-time, and temporary employment positions located in Washington. Total employment includes employees who are on authorized leaves of absences such as sick leave, vacation, disability leave, jury duty, military leave, regardless of whether those employees are receiving wages. Leaves of absences do not include separations of employment such as layoffs or reductions in force. Vacant positions are not included in total employment.

((~~(8)~~)) (9) **What are full-time, part-time, and temporary employment positions?** An employer must provide information on the total number of employees((~~, as a percentage of total employment in the SOC major group,~~)) that are employed in full-time, part-time, or temporary employment positions on December 31st of the calendar year for which an applicable tax preference is claimed. ((~~Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).~~))

(a) **Full-time and part-time employment positions.** For a position to be treated as full time or part time, the employer must intend for the position to be filled for at least fifty-two consecutive weeks or twelve consecutive months. A full-time position is a position that satisfies any one of the following minimum thresholds:

(i) Works thirty-five hours per week for fifty-two consecutive weeks;

(ii) Works four hundred fifty-five hours, excluding overtime, each quarter for four consecutive quarters; or

(iii) Works one thousand eight hundred twenty hours, excluding overtime, during a period of twelve consecutive months.

A part-time position is a position in which the employee works less than the hours required for a full-time position. In some instances, an employee may not be required to work the hours required for full-time employment because of paid rest and meal breaks, health and safety laws, disability laws, shift differentials, or collective bargaining agreements, but receives wages equivalent to a full-time job. If, in the absence of these factors, the employee would be required to

work the number of hours for a full-time position to receive full-time wages, the position should be reported as a full-time employment position.

(b) **Temporary positions.** A temporary position is a position that is intended to be filled for period of less than twelve consecutive months. Positions in seasonal employment are temporary positions. Temporary positions include workers furnished by staffing companies regardless of the duration of the placement with the person required to file the annual tax performance report.

(c) **The following facts apply to the examples in (c) of this subsection.** National Airplane Inc. manufactures FAA certified navigation systems at a manufacturing site located in Tacoma, WA. National Airplane Inc. is claiming all the tax preferences available for manufacturers and processors for hire of commercial airplanes and component parts. National Airplane Inc. employs one hundred people. Seventy-five of the employees work directly in the manufacturing operation and are classified as (U.S. Department of Labor Standard Occupation Code) SOC Production Occupations. Five employees work in the engineering and design division and are classified as SOC Architect and Engineering Occupations. Five employees are sales representatives and are classified as SOC Sales and Related Occupations. Five employees are service technicians and are classified as SOC Installation, Maintenance, and Repair Occupations. Five employees are administrative assistants and are classified as SOC Office and Administrative Support. Five executives are classified as SOC Management Occupations.

(i) **Example 10.** Through a college work-study program, National Airplane Inc. employs six interns from September through June in its engineering department. The interns each work twenty hours a week. The six interns are reported as temporary employees, and not as part-time employees, because the intern positions are intended to be filled for a period of less than twelve consecutive months. Assuming the five employees classified as SOC Architect and Engineering Occupations are full-time employees, National Airplane Inc. will report a total of eleven employment positions in SOC Architect and Engineering Occupations with ((~~45%~~)) five in full-time employment positions and ((~~55%~~)) six in temporary employment positions.

(ii) **Example 11.** National Airplane Inc. manufactures navigation systems in two shifts of production. The first shift works eight hours from 8:00 a.m. to 5:00 p.m. Monday ((~~thru~~)) through Friday. The second shift works six hours from 6:00 p.m. to midnight Monday ((~~thru~~)) through Friday. The second shift works fewer hours per week (thirty hours) than the first shift (forty hours) as a pay differential for working in the evening. If a second shift employee transferred to the first shift, the employee would be required to work forty hours with no overall increase in wages. The second shift employees should be reported as full-time employment positions, rather than part-time employment positions.

(iii) **Example 12.** On December 1st, ten National Airplane Inc. full-time employees classified as SOC Production Occupations take family and medical leave for twelve weeks. National Airplane Inc. hires five people to perform the work of the employees on leave. Because the ten employees classified as SOC Production Occupations are on authorized leave, National Airplane Inc. will include those employees in the annual tax performance report as full-time employment positions. The five people hired to replace the absent employees classified as SOC Production Occupations will be included in the report as temporary employees. National Airplane Inc. will report a total of eighty employ-

ment positions in SOC Production Occupations with ((~~93.8%~~)) seventy-five in full-time employment positions and ((~~6.2%~~)) five in temporary employment positions.

(iv) **Example 13.** On December 1st, one full-time employee classified as SOC Sales and Related Occupations resigns from her position. National Airplane Inc. contracts with Jane Smith d/b/a Creative Enterprises, Inc. to finish an advertising project assigned to the employee who resigned. Because Jane Smith is an independent contractor, National Airplane Inc. will not include her employment in the annual tax performance report. Because the resignation has resulted in a vacant position, the total number of employment positions National Airplane Inc. will report in SOC Sales and Related Occupations is reduced to four employment positions.

(v) **Example 14.** All National Airplane Inc. employees classified as SOC Office and Administrative Support Occupations work forty hours a week, fifty-two weeks a year. On November 1st, one employee must limit the number of hours worked to thirty hours each week to accommodate a disability. The employee receives wages based on the actual hours worked each week. Because the employee works less than thirty-five hours a week and is not paid a wage equivalent to a full-time position, the employee's position is a part-time employment position. National Airplane Inc. will report a total of five employment positions in SOC Office and Administrative Support Occupations with ((~~80%~~)) four in full-time employment positions and ((~~20%~~)) one in part-time employment positions.

((~~(9)~~)) (10) **What are wages?** For the purposes of the annual tax performance report, "wages" means the base compensation paid to an individual for personal services rendered to an employer, whether denominated as wages, salary, commission, or otherwise. Generally, compensation in the form of overtime, tips, bonuses, benefits (insurance, paid leave, meals, etc.), stock options, and severance pay are not "wages." For employees that earn an annual salary, hourly wages are determined by dividing annual salary by 2080. If an employee is paid by commission, hourly wages are determined by dividing the total amount of commissions paid during the calendar year by 2080.

((~~(10)~~)) (11) **How are wages detailed for the annual tax performance report?**

(a) An employer must ((~~provide information on the number of employees, as a percentage of the total employment in the SOC major group, paid a wage within the following five hourly wage bands:~~

~~Up to $10.00 an hour;~~
~~$10.01 an hour to $15.00 an hour;~~
~~$15.01 an hour to $20.00 an hour;~~
~~$20.01 an hour to $30.00 an hour; and~~
~~$30.01 an hour or more.~~

~~Percentages should be rounded to the nearest 1/10th of 1% (XX.X%)~~)) report the total wages for employees in Washington for each quarter or for the calendar year, as determined by the department.

(b) For purposes of the annual tax performance report, wages are measured on December 31st of the calendar year for which an applicable tax preference is claimed.

((~~(b) **The following facts apply to the examples in (b) of this subsection.** Washington Airplane Inc. manufactures FAA certified navigation systems at a manufacturing site located in Tacoma, WA. Washington Airplane Inc. is claiming all the tax preferences available for manufacturers and processors for hire of commercial airplanes and com-~~

~~ponent parts. Washington Airplane Inc. employs five hundred people at the manufacturing site, which constitutes its entire work force in this state. Four hundred employees engage in activities that are classified as SOC Production Occupations. Fifty employees engage in activities that are classified as SOC Architect and Engineer Occupations. Twenty-five employees are engaged in activities classified as SOC Management Occupations. Twenty employees are engaged in activities classified as SOC Office and Administrative Support Occupations. Five employees are engaged in activities classified as SOC Sales and Related Occupations.~~

~~(i) **Example 15.** One hundred employees classified as SOC Production Occupations are paid $12.00 an hour. Two hundred employees classified as SOC Production Occupations are paid $17.00 an hour. One hundred employees classified as SOC Production Occupations are paid $25.00 an hour. For SOC Production Occupations, Washington Airplane Inc. will report 25% of employment positions are paid $10.01 an hour to $15.00 an hour; 50% are paid $15.01 an hour to $20.00 an hour; and 25% are paid $20.01 an hour to $30.00 an hour.~~

~~(ii) **Example 16.** Ten employees classified as SOC Architect and Engineering Occupations are paid an annual salary of $42,000; another ten employees are paid $50,000 annually; and the remaining employees are all paid over $70,000 annually. To report wages, the annual salaries must be converted to hourly amounts by dividing the annual salary by 2080 hours. For SOC Architect and Engineering Occupations, Washington Airplane Inc. will report 40% of employment positions are paid $20.01 an hour to $30.00 an hour and 60% are paid $30.00 an hour or more.~~

~~(iii) **Example 17.** All the employees classified as SOC Sales and Related Occupations are sales representatives that are paid on commission. They receive $10.00 commission for each navigation system sold. Three sales representatives sell 2,500 navigation systems during the calendar year. Two sales representatives sell 3,500 navigation systems during the calendar year and receive a $10,000 bonus for exceeding company's sales goals. To report wages, the employee's commissions must be converted to hourly amounts by dividing the total commissions by 2080 hours. Washington Airplane Inc. will report that 60% of employment positions classified as SOC Sales and Related Occupations are paid $10.01 an hour to $15.00 an hour. Because bonuses are not included in wages, Washington Airplane Inc. will report 40% of employment positions classified as SOC Sales and Related Occupations are paid $15.01 an hour to $20.00 an hour.~~

~~(iv) **Example 18.** Ten of the employees classified as SOC Office and Administrative Support Occupations earn $9.50 an hour. The remaining ten employees classified as SOC Office and Administrative Support Occupations earn wages between $10.01 an hour to $15.00 an hour. On December 1st, Washington Airplane Inc. announces that effective December 15th, all employees classified as SOC Office and Administrative Support Occupations will earn wages of at least $10.50 an hour, but no more than $15.00 an hour. Because wages are measured on December 31st, Washington Airplane Inc. will report 100% of employment positions classified as SOC Office and Administrative Support Occupations Sales and Related Occupations are paid $10.01 an hour to $15.00 an hour.~~

~~(11)~~)) (12) **Reporting workers furnished by staffing companies.** For temporary positions filled by workers that are furnished by staffing companies, the person filling out the annual tax performance report must provide the following information:

(a) Total number of staffing company employees furnished by staffing companies;

(b) ((~~Top three occupational codes of all staffing company employees; and~~

~~(c)~~)) Average duration of all staffing company employees.

((~~(12) **What are employer-provided health benefits?** For purposes of the annual report, "health benefits" means compensation, not paid as wages, in the form of a health plan offered by an employer to its employees. A health plan that is equally available to employees and the general public is not an "employer-provided" health benefit.~~

~~(a) "Dental care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease of human teeth, alveolar process, gums, or jaw.~~

~~(b) "Dental care plan" means a health plan for the purpose of providing for its employees or their beneficiaries' dental care services.~~

~~(c) "Health plan" means any plan, fund, or program established, maintained, or funded by an employer for the purpose of providing for its employees or their beneficiaries, through the purchase of insurance or otherwise, medical care and dental care services. Health plans include any "employee welfare benefit plan" as defined by the Employee Retirement Income Security Act (ERISA), any "health plan" or "health benefit plan" as defined in RCW 48.43.005, any self-funded multiple employer welfare arrangement as defined in RCW 48.125.010, any "qualified health insurance" as defined in Section 35 of the Internal Revenue Code, an "Archer MSA" as defined in Section 220 of the Internal Revenue Code, a "health savings plan" as defined in Section 223 of the Internal Revenue Code, any "health plan" qualifying under Section 213 of the Internal Revenue Code, governmental plans, and church plans.~~

~~(d) "Medical care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.~~

~~(e) "Medical care plan" means a health plan for the purpose of providing for its employees or their beneficiaries' medical care services.~~

~~(13) **How are employer-provided health benefits detailed in the annual report?** The annual report is organized by SOC major group and by type of health plan offered to or with enrolled employees on December 31st of the calendar year for which an applicable tax preference is claimed.~~

~~(a) **Detail by SOC major group.** For each SOC major group, report the number of employees, as a percentage of total employment in the SOC major group, eligible to participate in an employer-provided medical care plan. An employee is "eligible" if the employee can currently participate in a medical care plan provided by the employer. Waiting periods, tenure requirements, minimum work hour requirements, preexisting conditions, and other limitations may prevent an employee from being eligible for coverage in an employer's medical care plan. If an employer provides multiple medical care plans, an employee is "eligible" if the employee can currently participate in one of the medical care plans. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).~~

~~(i) **Example 19.** On December 31st, Acme Engines has one hundred employees classified as SOC Production Occupations. It offers these employees two medical care plans. Plan A is available to all employees at the time of hire. Plan B is available to employees after working~~

~~ninety days. For SOC Production Occupations, Acme Engines will report 100% of its employees are eligible for employer-provided medical benefits because all of its employees are eligible for at least one medical care plan offered by Acme Engines.~~

~~(ii) **Example 20.** Apex Aluminum has fifty employees classified as SOC Transportation and Material Moving Occupations, all of whom have worked for Apex Aluminum for over five years. Apex Aluminum offers one medical care plan to its employees. Employees must work for Apex Aluminum for six months to participate in the medical care plan. On October 1st, Apex Aluminum hires ten new employees classified as SOC Transportation and Material Moving Occupations. For SOC Transportation and Material Moving Occupations, Apex Aluminum will report 83.3% of its employees are eligible for employer-provided medical benefits.~~

~~(b) **Detail by type of health plan.** The report also requires detailed information about the types of health plans the employer provides. If an employer has more than one type of health plan, it must report each health plan separately. If a person offers more than one of the same type of health plan as described in (b)(i) of this subsection, the person may consolidate the detail required in (b) through (d) of this subsection by using ranges to describe the information. The details include:~~

~~(i) A description of the type of plan in general terms such as self-insured, fee for service, preferred provider organization, health maintenance organization, health savings account, or other general description. The report does not require a person to disclose the name(s) of their health insurance carrier(s).~~

~~(ii) The number of employees eligible to participate in the health plan, as a percentage of total employment at the manufacturing site or as otherwise reported. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).~~

~~(iii) The number of employees enrolled in the health plan, as a percentage of employees eligible to participate in the health plan at the manufacturing site or as otherwise reported. An employee is "enrolled" if the employee is currently covered by or participating in an employer-provided health plan. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).~~

~~(iv) The average percentage of premium paid by employees enrolled in the health plan. "Premium" means the cost incurred by the employer to provide a health plan or the continuance of a health plan, such as amounts paid to health carriers or costs incurred by employers to self-insure. Employers are generally legally responsible for payment of the entire cost of the premium for enrolled employees, but may require enrolled employees to share in the cost of the premium to obtain coverage. State the amount of premium, as a percentage, employees must pay to maintain enrollment under the health plan. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).~~

~~(v) If necessary, the average monthly contribution to enrolled employees. In some instances, employers may make contributions to an employee health plan, but may not be aware of the percentage of premium cost borne by the employee. For example, employers may contribute to a health plan sponsored by an employee organization, or may sponsor a medical savings account or health savings account. Under those circumstances in which the employee's contribution to the health plan is unknown, an employer must report its average monthly contribution to the health plan by dividing the employer's total monthly costs for the health plan by the total number of employees enrolled in the health plan.~~

~~(vi) Whether legal spouses, state registered domestic partners, and unmarried dependent children can obtain coverage under the health plan and if there is an additional premium for such coverage.~~

~~(vii) Whether part-time employees are eligible to participate in the health plan.~~

~~(c) **Medical care plans.** In addition to the detailed information required for each health plan, report the amount of enrolled employee point of service cost-sharing for hospital services, prescription drug benefits, and primary care physician services for each medical care plan. If differences exist within a medical care plan, the lowest cost option to the enrolled employee must be stated in the report. For example, if employee point of service cost-sharing is less if an enrolled employee uses a network of preferred providers, report the amount of point of service cost-sharing using a preferred provider. Employee point of service cost-sharing is generally stated as a percentage of cost, a specific dollar amount, or both.~~

~~(i) "Employee point of service cost-sharing" means amounts paid to health carriers directly providing medical care services, health care providers, or health care facilities by enrolled employees in the form of copayments, co-insurance, or deductibles. Copayments and co-insurance mean an amount specified in a medical care plan that is an obligation of enrolled employees for a specific medical care service which is not fully prepaid. A deductible means the amount an enrolled employee is responsible to pay before the medical care plan begins to pay the costs associated with treatment.~~

~~(ii) "Hospital services" means covered in-patient medical care services performed in a hospital licensed under chapter 70.41 RCW.~~

~~(iii) "Prescription drug benefit" means coverage to purchase a thirty-day or less supply of generic prescription drugs from a retail pharmacy.~~

~~(iv) "Primary care provider services" means nonemergency medical care services provided in an office setting by the employee's primary care provider.~~

~~(d) **Dental care plans.** In addition to the health plan information required for each dental care plan, the annual maximum benefit for each dental care plan must be stated in the report. Most dental care plans have an annual dollar maximum benefit. This is the maximum dollar amount a dental care plan will pay toward the cost of dental care services within a specific benefit period, generally one year. The enrolled employee is personally responsible for paying costs above the annual maximum.~~

~~(e) **The following facts apply to the examples in (e) of this subsection.** Mosaic Aerospace employs one hundred employees and offers two medical care plans as health benefits to employees at the time of hire. Plan A is a managed care plan (HMO). Plan B is a fee for service medical care plan.~~

~~(i) **Example 21.** Forty Mosaic Aerospace employees are enrolled in Plan A. It costs Mosaic Aerospace $750 a month for each employee covered by Plan A. Enrolled employees must pay $150 each month to participate in Plan A. If an enrolled employee uses its network of physicians, Plan A will cover 100% of the cost of primary care provider services with employees paying a $10.00 copayment per visit. If an enrolled employee uses its network of hospitals, Plan A will cover 100% of the cost of hospital services with employees paying a $200 deductible. If an enrolled employee does not use a network provider, Plan A will cover only 50% of the cost of any service with a $500 employee deductible. An enrolled employee must use a network of retail pharma-~~

~~cies to receive any prescription drug benefit. Plan A will cover the cost of prescription drugs with enrolled employees paying a $10.00 co-payment. If an enrolled employee uses the mail-order pharmacy option offered by Plan A, copayment for prescription drug benefits is not required.~~

~~Mosaic Aerospace will report Plan A separately as a managed care plan. One hundred percent of its employees are eligible to participate in Plan A. The percentage of eligible employees enrolled in Plan A is 40%. The percentage of premium paid by an employee is 20%. Mosaic Aerospace will also report that employees have a $10.00 copayment for primary care provider services and a $200 deductible for hospital services because this is the lowest cost option within Plan A. Mosaic Aerospace will report that employees have a $10.00 copayment for prescription drug benefit. Mosaic Aerospace cannot report that employees do not have a prescription drug benefit copayment because "prescription drug benefit" is defined as coverage to purchase a thirty-day or less supply of generic prescription drugs from a retail pharmacy, not a mail-order pharmacy.~~

~~(ii) **Example 22.** Fifty Mosaic Aerospace employees are enrolled in Plan B. It costs Mosaic Aerospace $1,000 a month for each employee covered by Plan B. Enrolled employees must pay $300 a month to participate in Plan B. Plan B covers 100% of the cost of primary care provider services and 100% of the cost of prescription drugs with employees paying a $200 annual deductible for each covered service. Plan B covers 80% of the cost of hospital services with employees paying a $250 annual deductible.~~

~~Mosaic Aerospace will report Plan B separately as a fee for service medical care plan. One hundred percent of its employees are eligible to participate in Plan B. The percentage of eligible employees enrolled in Plan B is 50%. The percentage of premium paid by an employee is 30%. Mosaic Aerospace will also report that employees have a $200 annual deductible for both primary care provider services and prescription drug benefits. Hospital services have a $250 annual deductible and 20% co-insurance obligation.~~

~~(iii) **Example 23.** On December 1st, Mosaic Aerospace acquires General Aircraft Inc., a company claiming all the tax preferences available for manufacturers and processors for hire of commercial airplanes and component parts. General Aircraft Inc. had fifty employees, all of whom were retained by Mosaic Aerospace. At General Aircraft Inc., employees were offered one managed care plan (HMO) as a benefit. The former General Aircraft Inc. employees will retain their current managed care plan until the following June when employees would be offered Mosaic Aerospace benefits. On December 31st, Mosaic Aerospace is offering employees two managed care plans. Mosaic Aerospace may report each managed care plan separately or may consolidate the detail required in (b) through (d) of this subsection for this type of medical care plan by using ranges to report the information.~~

~~(iv) **Example 24.** Aero Turbines employs one hundred employees. It offers employees health savings accounts as a benefit to employees who have worked for the company for six months. Aero Turbines established the employee health savings accounts with a local bank and makes available to employees a high deductible medical care plan to be used in conjunction with the account. Aero Turbines deposits $500 a month into each employee's health savings account. Employees deposit a portion of their pretax earnings into a health savings account to cover the cost of primary care provider services, prescription drug purchases, and the high deductible medical care plan for hospital services.~~

~~The high deductible medical care plan has an annual deductible of $2,000 and covers 75% of the cost of hospital services. Sixty-six employees open health savings accounts. Four employees have not worked for Aero Turbines for six months.~~

~~Aero Turbines will report the medical care plan as a health savings account. Ninety-six percent of employees are eligible to participate in health savings accounts. The percentage of eligible employees enrolled in health savings accounts is 68.8%. Because the amount of employee deposits into their health savings accounts will vary, Aero Turbines will report the average monthly contribution of $500 rather than the percentage of premium paid by enrolled employees. Because employees are responsible for covering their primary care provider services and prescription drugs costs, Aero Turbines will report that this health plan does not include these services. Because the high deductible medical care plan covers the costs of hospital services, Aero Turbines will report that the medical care plan has an annual deductible of $2,000 and employees have 25% co-insurance obligation.~~

~~(14) **What are employer-provided retirement benefits?** For purposes of the annual report, "retirement benefits" mean compensation, not paid as wages, in the form of a retirement plan offered by an employer to its employees. A "retirement plan" means any plan, account, deposit, annuity, or benefit, other than a life insurance policy, that provides for retirement income or deferred income to employees for periods extending to the termination of employment or beyond. Retirement plans include pensions, annuities, stock bonus plans, employee stock ownership plans, profit sharing plans, self-employed retirement plans, individual retirement accounts, individual retirement annuities, and retirement bonds, as well as any other plan or program, without regard to its source of funding, and without regard to whether the retirement plan is a qualified plan meeting the guidelines established in the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code. A retirement plan that is equally available to employees and the general public is not an "employer-provided" retirement benefit.~~

~~(15) **How are employer-provided retirement benefits detailed in the annual report?** The annual report is organized by SOC major group and by type of retirement plans offered to employees or with enrolled employees on December 31st of the calendar year for which an applicable tax preference is claimed. Inactive or terminated retirement plans are excluded from the annual report. An inactive retirement plan is a plan that is not offered to new employees, but has enrolled employees, and neither enrolled employees nor the employer are making contributions to the retirement plan.~~

~~(a) **Detail by SOC major group.** For each SOC major group, report the number of employees, as a percentage of total employment in the SOC major group, eligible to participate in an employer-provided retirement plan. An employee is "eligible" if the employee can currently participate in a retirement plan provided by the employer. Waiting periods, tenure requirements, minimum work hour requirements, and other limitations may prevent an employee from being eligible for coverage in an employer's retirement plan. If an employer provides multiple retirement plans, an employee is "eligible" if the employee can currently participate in one of the retirement plans. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).~~

~~(i) **Example 25.** Lincoln Airplane has one hundred employees classified as SOC Production Occupations. Fifty employees were enrolled in defined benefit pension at the time of hire. All employees are eligi-~~

~~ble to participate in a 401(k) Plan. For SOC Production Occupations, Lincoln Airplane will report 100% of its employees are eligible for employer-provided retirement benefits because all of its employees are eligible for at least one retirement plan offered by Lincoln Airplane.~~

~~(ii) **Example 26.** Fly-Rite Airplanes has fifty employees classified in SOC Computer and Mathematical Occupations. Fly-Rite Airplane offers a SIMPLE IRA to its employees after working for the company one year. Forty-five employees classified in SOC Computer and Mathematical Occupations have worked for the company more than one year. For SOC Computer and Mathematical Occupations, Fly-Rite Airplanes will report 90% of its employees are eligible for retirement benefits.~~

~~(b) **Detail by retirement plan.** The report also requires detailed information about the types of retirement plans an employer offers employees. If an employer offers multiple retirement plans, it must report each type of retirement plan separately. If an employer offers more than one of the same type of retirement plan, but with different levels of employer contributions, it may consolidate the detail required in (i) through (iv) of this subsection by using ranges to describe the information. The report includes:~~

~~(i) The type of plan in general terms such as 401(k) Plan, SEP IRA, SIMPLE IRA, cash balance pension, or defined benefit plan.~~

~~(ii) The number of employees eligible to participate in the retirement plan, as a percentage of total employment at the manufacturing site, or as otherwise reported. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).~~

~~(iii) The number of employees enrolled in the retirement plan, as a percentage of employees eligible to participate in the retirement plan at the manufacturing site. An employee is "enrolled" if the employee currently participates in an employer-provided retirement plan, regardless of whether the employee has a vested benefit. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).~~

~~(iv) The maximum benefit the employer will contribute into the retirement plan for enrolled employees. The maximum benefit an employer will contribute is generally stated as a percentage of salary, specific dollar amount, or both. This information is not required for a defined benefit plan meeting the qualification requirements of Employee Retirement Income Security Act (ERISA) that provides benefits according to a flat benefit, career-average, or final pay formula.~~

~~(A) **Example 27.** General Airspace is a manufacturer of airplane components located in Centralia, WA. General Airspace employs one hundred employees. Fifty employees are eligible for and enrolled in a defined benefit pension with a flat benefit at the time of retirement. Twenty-five employees are eligible for and enrolled in a cash balance pension with General Airspace contributing 7% of an employee's annual compensation with a maximum annual contribution of $10,000. All General Airspace employees can participate in a 401(k) Plan. Sixty-five employees are participating in the 401(k) Plan. General Airspace does not make any contributions into the 401(k) Plan. Five employees are former employees of United Skyways, a company General Airspace acquired. United Skyways employees were enrolled in a cash balance pension at the time of hire. When General Airspace acquired United Skyways, it did not terminate or liquidate the United Skyways cash balance plan. Rather, General Airspace maintains cash balance plan only for former United Skyways employees, allowing only interest to accrue to the plan.~~

~~(I) General Airspace will report that it offers three retirement plans - A defined benefit pension, a cash-balance pension, and a~~

~~401(k) Plan. General Airspace will not report the inactive cash balance pension it maintains for former United Skyways employees.~~

~~(II) For the defined benefit pension, General Airspace will report 50% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 100% are enrolled.~~

~~(III) For the cash-balance pension, General Airspace will report 25% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 100% are enrolled. General Airspace will report a maximum contribution of $10,000 or 7% of an employee's annual compensation.~~

~~(IV) For the 401(k) Plan, General Airspace will report 100% of its total employment positions are eligible to participate in the retirement plan. Of the employment positions eligible to participate, 65% are enrolled. General Airspace will report that it does not make any contributions into the 401(k) Plan.~~

~~(B) **Example 28.** Washington Alloys is an aluminum smelter located in Grandview, WA. Washington Alloys employs two hundred employees. Washington Alloys offers a 401(k) Plan to its employees after one year of hire. One hundred seventy-five employees have worked for Washington Alloys for one year or more. Of that amount, seventy-five have worked more than five years. Washington Alloys will match employee contributions up to a maximum 3% of annual compensation. If an employee has worked for Washington Alloys for more than five years, Washington Alloys will contribute 5% of annual compensation regardless of the employee's contribution. One hundred employees receive a 3% matching contribution from Washington Alloys. Fifty employees receive a contribution of 5% of annual compensation.~~

~~(I) Washington Alloys may report each 401(k) Plan separately - A 401(k) Plan with a maximum employer contribution of 3% of annual compensation and a 401(k) Plan with a maximum employer contribution to 5% of annual compensation. Alternatively, Washington Alloys may report that it offers a 401(k) Plan with a maximum employer contribution ranging from 3% to 5% of annual compensation.~~

~~(II) If Washington Alloys reports each 401(k) Plan separately, for the 401(k) Plan with a maximum employer contribution of 3% of annual compensation, Washington Alloys will report 50% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 100% are enrolled.~~

~~For the 401(k) Plan with a maximum employer contribution of 5% of annual compensation, Washington Alloys will report 37.5% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 66.6% are enrolled.~~

~~(III) If Washington Alloys consolidates its detailed information about its 401(k) Plans, it will report that 87.5% of its total employment positions are eligible to participate in 401(k) Plans. Of the employment positions eligible to participate in the 401(k) Plans, 85.7% are enrolled.~~

~~(16)~~)) (13) **Additional reporting for aluminum smelters and electrolytic processing businesses.** For an aluminum smelter or electrolytic processing business, the annual tax performance report must indicate the quantity of product produced in this state during the time period covered by the report.

((~~(17)~~)) (14) **Are annual tax performance reports confidential?** Except for the additional information that the department and the joint legislative audit and review committee may request which it deems necessary to measure the results of, or to determine eligibility

for the tax preference, annual tax performance reports are not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

((~~(18)~~)) (15) **What are the consequences for failing to file a complete annual tax performance report?**

(a) **What is a "complete annual tax performance report"?** An annual tax performance report is complete if:

(i) The annual tax performance report is filed on the form required by this rule or in an electronic format as required by law; and

(ii) The person makes a good faith effort to substantially respond to all report questions required by this rule.

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

(b) **Amounts due for late filing.** Except ((~~as otherwise provided by law~~)) for deferrals, if a person ((~~claims a tax preference that requires an~~)) does not timely file a required annual tax performance report ((~~under this rule, but fails to submit a complete report by the due dates described in subsection (3)(e) of this section, or any extension under RCW 82.32.590~~)), then the following amounts are immediately due and payable:

((~~(i) For reports due prior to July 1, 2017, one hundred percent of the amount of the tax preference claimed for the previous calendar year. Interest, but not penalties, will be assessed on the amounts due at the rate provided for under RCW 82.32.050, retroactively to the date the tax preference was claimed, and accruing until the taxes for which the tax preference was claimed are repaid.~~

~~(ii)~~)) For reports due on or after July 1, 2017 or annual tax performance reports due on or after May 31, 2019:

((~~(A)~~)) (i) Thirty-five percent of the amount of the tax preference claimed for the previous calendar year; and

((~~(B)~~)) (ii) An additional fifteen percent of the amount of the tax preference claimed for the previous calendar year if the person has previously been assessed under (b)((~~(ii)~~)) of this subsection for failure to timely submit a report for the same tax preference.

(c) **Tax deferrals.** If the tax preference 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.

(d) **Interest and penalties.** The department may not assess interest or penalties on amounts due under (b)((~~(ii)~~)) and (c) of this subsection.

((~~(d)~~)) (e) **Extension for circumstances beyond the control of the taxpayer.** If the department finds the failure of a taxpayer to file an annual tax performance report by the due date was the result of circumstances beyond the control of the taxpayer, the department will extend the time for filing the report. The extension will be for a period of thirty days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this rule. The department may grant additional extensions as it deems proper under RCW 82.32.590.

In determining whether the failure of a taxpayer to file an annual tax performance report by the due date was the result of circumstances beyond the control of the taxpayer, the department will apply the provisions in WAC 458-20-228 for the waiver or cancellation of penalties when the underpayment or untimely payment of any tax was due to circumstances beyond the control of the taxpayer.

((~~(e)~~)) (f) **One-time only extension.** A taxpayer who fails to file an annual tax performance report, as required under this rule, by the due date of the report is entitled to an extension of the due date. A request for an extension under this subsection must be made in writing to the department.

(i) To qualify for an extension, a taxpayer must have filed all annual tax performance reports, annual reports and annual surveys, if any, due in prior years by their respective due dates, beginning with annual reports and annual surveys due in the calendar year 2010.

(ii) The extension is for ninety days from the original due date of the annual tax performance report.

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

NEW SECTION

WAC 458-20-267A Annual reports for certain tax preferences. (1) **Introduction.** Effective for calendar years in which a taxpayer claims a tax preference beginning January 1, 2018, Washington changed its annual reporting requirements. This rule addresses how taxpayers taking certain tax preferences must file an annual report with the department of revenue (department) providing information about their business for tax periods through December 31, 2017, only. See WAC 458-20-267 Annual tax performance reports for certain tax preferences for the proper way to report tax preferences for periods beginning January 1, 2018.

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

(i) **Person.** "Person" has the meaning under RCW 82.04.030 and also includes the state and its departments and institutions.

(ii) **Tax preference.** As defined under RCW 43.136.021, "tax preference" means:

(A) An exemption, exclusion, or deduction from the base of a state tax; a credit against a state tax; a deferral of a state tax; or a preferential state tax rate; and

(B) Includes only the tax preferences requiring a report under RCW 82.32.534.

(b) **Annual survey.** Taxpayers taking certain tax preferences may be required to complete both an annual report and an annual survey. For information on the annual survey requirements, refer to RCW 82.32.585 and WAC 458-20-268.

(c) **Examples.** This rule includes examples that identify a set of facts and then state a conclusion. These examples should only be used as a general guide. The department will evaluate each case on its particular facts and circumstances.

(2) **Tax preferences requiring an annual report.** Taxpayers may refer to the department's web site at dor.wa.gov for the "Annual Tax Incentive Report for Preferential Tax Rates/Credits/Exemptions/Deferrals Worksheet." This worksheet lists tax preferences that require an annual report. Taxpayers may also contact the telephone information center at 800-647-7706 to determine whether they must file an annual report.

(3) **How to file annual reports.**

(a) **Electronic filing.** Reports must be filed electronically unless the department waives this requirement upon a showing of good cause. A report is filed electronically when the department receives

the report in an electronic format. A person accesses electronic filing through their department "My Account" at dor.wa.gov.

(b) **Required paper form.** If the department waives the electronic filing requirement for a person who shows good cause, that person must use the annual report form developed by the department unless that person obtains prior written approval from the department to file an annual report in an alternative format.

(c) **How to obtain the form.** Persons who have received a waiver of the electronic filing requirement from the department or who otherwise would like a paper copy of the report may obtain the annual report form from the department's web site at dor.wa.gov. It may also be obtained by calling the telephone information center at 800-647-7706, or by contacting the department at:

Attn: Tax Incentive Team
Taxpayer Account Administration
Department of Revenue
Post Office Box 47476
Olympia, WA 98504-7476

(d) **Special requirement for persons who did not file an annual report during the previous calendar year.** If a person is a first-time filer or otherwise did not file an annual report with the department during the previous calendar year, the report must include information on employment, wages, and employer-provided health and retirement benefits for the two calendar years immediately preceding the due date of the report.

(e) **Due date of annual report.** Every person claiming a tax preference that requires a report under RCW 82.32.534 must file the report annually with the department in the year following the calendar year in which the person becomes eligible to claim the tax preference. The due date for filing the report is as follows:

(i) April 30th for reports due prior to 2017.

(ii) May 31st for reports due in or after 2017.

(f) **Due date extensions.** The department may extend the due date for filing annual reports as provided in subsection (18) of this rule.

(g) **Example 1.** An aerospace firm first claimed the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts on April 1, 2015. By April 30, 2016, the aerospace firm must submit an annual report covering calendar years 2014 and 2015. If the aerospace firm continues to claim the B&O tax rate provided by RCW 82.04.260(11) during calendar year 2016, an annual report is due by May 31, 2017, covering calendar year 2016.

(h) **Example 2.** An aluminum smelter first claimed the B&O tax rate provided by RCW 82.04.2909 for aluminum smelters on July 31, 2015. By April 30, 2016, the aluminum smelter must provide an annual report covering calendar years 2014 and 2015. If the aluminum smelter continues to claim the B&O tax rate provided by RCW 82.04.2909 during calendar year 2016, an annual report is due by May 31, 2017, covering calendar year 2016.

(4) **What employment positions are included in the annual report?**

(a) **General rule.** Except as provided in (b) of this subsection, the report must include information detailing employment positions in the state of Washington.

(b) **Alternative method.** Persons engaged in manufacturing commercial airplanes or their components may report employment positions per job at the manufacturing site.

(i) **What is a "manufacturing site"?** For purposes of the annual report, a "manufacturing site" is one or more immediately adjacent parcels of real property located in Washington state on which manufacturing occurs that support activities qualifying for a tax preference. Adjacent parcels of real property separated only by a public road comprise a single site. A manufacturing site may include real property that supports the qualifying activity, such as administration offices, test facilities, warehouses, design facilities, and shipping and receiving facilities. It may also include portions of the manufacturing site that support nonqualifying activities.

(ii) **If the person files per job at the manufacturing site, which manufacturing site is included in the annual report for the aerospace manufacturing industry tax preferences?** The location(s) where a person is manufacturing commercial airplanes or components of such airplanes within this state is the manufacturing site(s) included in the annual report. A "commercial airplane" has its ordinary meaning, which is an airplane certified by the Federal Aviation Administration (FAA) for transporting persons or property, and any military derivative of such an airplane. A "component" means a part or system certified by the FAA for installation or assembly into a commercial airplane.

(iii) **Are there alternative methods for reporting separately for each manufacturing site?** For purposes of completing the annual report, the department may agree to allow a person whose manufacturing sites are within close geographic proximity to consolidate its manufacturing sites onto a single annual report provided that the jobs located at the manufacturing sites have equivalent employment positions, wages, and employer-provided health and retirement benefits. A person may request written approval to consolidate manufacturing sites by contacting the department at:

Attn: Tax Incentive Team
Taxpayer Account Administration
Department of Revenue
Post Office Box 47476
Olympia, WA 98504-7476

(c) **Example 3.** ABC Airplanes, a company manufacturing FAA certified airplane landing gear, conducts activities at three locations in Washington state. ABC Airplanes is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. In Seattle, WA, ABC Airplanes maintains its corporate headquarters and administrative offices. In Spokane, WA, ABC Airplanes manufactures the brake systems for the landing gear. In Vancouver, WA, ABC Airplanes assembles the landing gear using the components manufactured in Spokane, WA. If filing per manufacturing site, ABC Airplanes must file separate annual reports for employment positions at its manufacturing sites in Spokane and Vancouver because these are the Washington state locations in which manufacturing occurs that supports activities qualifying for a tax preference.

(d) **Example 4.** Acme Engines, a company manufacturing engine parts, conducts manufacturing in five locations in Washington state. Acme Engines is reporting tax under the B&O tax rate provided by RCW 82.04.260 (11) for manufacturers and processors for hire of commercial airplanes and component parts. It manufactures FAA certified engine parts at its Puyallup, WA location. Acme Engines' four other locations manufacture non-FAA certified engine parts. If filing per manufacturing site, Acme Engines must file an annual report for employment posi-

tions at its manufacturing site in Puyallup because it is the only location in Washington state in which manufacturing occurs that supports activities qualifying for a tax preference.

(e) **Example 5.** Tacoma Rivets, with one in-state manufacturing site located in Tacoma, WA, manufactures rivets used in manufacturing airplanes. Half of the rivets Tacoma Rivets manufactures are FAA certified to be used on commercial airplanes. The remaining rivets Tacoma Rivets manufactures are not FAA certified and are used on military airplanes. Tacoma Rivets is reporting tax on its sales of FAA certified rivets under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. If filing per manufacturing site, Tacoma Rivets must file an annual report for employment positions at its manufacturing site in Tacoma because it is the location in Washington state in which manufacturing occurs that supports activities qualifying for a tax preference.

(f) **Example 6.** Dynamic Aerospace Composites is a company that manufactures only FAA certified airplane fuselage materials. Dynamic Aerospace Composites conducts activities at three separate locations within Kent, WA. Dynamic Aerospace Composites is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. If filing per manufacturing site, Dynamic Aerospace Composites must file separate annual reports for each of its three manufacturing sites.

(g) **Example 7.** Worldwide Aerospace, an aerospace company, manufactures wing systems for commercial airplanes in twenty locations around the world, but none located in Washington state. Worldwide Aerospace manufactures wing surfaces in San Diego, CA. Worldwide Aerospace sells the wing systems to an airplane manufacturer located in Moses Lake, WA and is reporting tax on these sales under the B&O tax rate provided by RCW 82.04.260(11) for sales, at retail or wholesale, of commercial airplanes, or components of such airplanes, manufactured by that person. Worldwide Aerospace is required to complete the annual report for any employment positions in Washington that are directly related to the qualifying activity.

(5) **What jobs are included in the annual report?** The annual report covers all full-time, part-time, and temporary jobs in this state or, for persons filing as provided in subsection (4)(b) of this rule, at the manufacturing site as of December 31st of the calendar year for which an applicable tax preference is claimed. Jobs that support nonqualifying activities or support both nonqualifying and qualifying activities for a tax preference are included in the report if the job is located in Washington state or, for persons filing as provided in subsection (4)(b) of this rule, at the manufacturing site.

(a) **Example 8.** XYZ Aluminum, an aluminum smelter company, manufactures aluminum in Tacoma, WA. The company is reporting tax under the B&O tax rate provided by RCW 82.04.2909 for aluminum smelters. XYZ Aluminum's annual report for its Tacoma, WA location will include all of its employment positions in this state, including its nonmanufacturing employment positions.

(b) **Example 9.** AAA Tire Company manufactures tires at one manufacturing site located in Centralia, WA. The company is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. FAA certified tires comprise only 20% of the products it manufactures and are manufactured in a separate building at the manufacturing site. If filing under the method described in subsection (4)(b) of this

rule, AAA Tire Company must report all jobs at the manufacturing site, including the jobs engaged in the nonqualifying activities of manufacturing non-FAA certified tires.

(6) **How is employment detailed in the annual report?** The annual report is organized by employee occupational groups, consistent with the United States Department of Labor's Standard Occupation Codes (SOC) System. The SOC System is a universal occupational classification system used by government agencies and private industries to produce comparable occupational data. The SOC classifies occupations at four levels of aggregation:

(a) Major group;
(b) Minor group;
(c) Broad occupation; and
(d) Detailed occupation.

All occupations are clustered into one of twenty-three major groups. The annual report uses the SOC major groups to detail the levels of employment, wages, and employer-provided health and retirement benefits at the manufacturing site. A detailed description of the SOC System is available by consulting the United States Department of Labor, Bureau of Labor Statistics online at www.bls.gov/soc. The annual report does not require names of employees.

(7) **What is total employment?** The annual report must state the total number of employees for each SOC major group that are currently employed on December 31st of the calendar year for which an applicable tax preference is taken. Total employment includes employees who are on authorized leaves of absences such as sick leave, vacation, disability leave, jury duty, military leave, regardless of whether those employees are receiving wages. Leaves of absences do not include separations of employment such as layoffs or reductions in force. Vacant positions are not included in total employment.

(8) **What are full-time, part-time, and temporary employment positions?** An employer must provide information on the number of employees, as a percentage of total employment in the SOC major group, that are employed in full-time, part-time, or temporary employment positions on December 31st of the calendar year for which an applicable tax preference is claimed. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(a) **Full-time and part-time employment positions.** For a position to be treated as full time or part time, the employer must intend for the position to be filled for at least fifty-two consecutive weeks or twelve consecutive months. A full-time position is a position that satisfies any one of the following minimum thresholds:

(i) Works thirty-five hours per week for fifty-two consecutive weeks;

(ii) Works four hundred fifty-five hours, excluding overtime, each quarter for four consecutive quarters; or

(iii) Works one thousand eight hundred twenty hours, excluding overtime, during a period of twelve consecutive months.

A part-time position is a position in which the employee works less than the hours required for a full-time position. In some instances, an employee may not be required to work the hours required for full-time employment because of paid rest and meal breaks, health and safety laws, disability laws, shift differentials, or collective bargaining agreements, but receives wages equivalent to a full-time job. If, in the absence of these factors, the employee would be required to work the number of hours for a full-time position to receive full-time

wages, the position should be reported as a full-time employment position.

(b) **Temporary positions.** A temporary position is a position that is intended to be filled for period of less than twelve consecutive months. Positions in seasonal employment are temporary positions. Temporary positions include workers furnished by staffing companies regardless of the duration of the placement with the person required to file the annual report.

(c) **The following facts apply to the examples in (c) of this subsection.** National Airplane Inc. manufactures FAA certified navigation systems at a manufacturing site located in Tacoma, WA. National Airplane Inc. is claiming all the tax preferences available for manufacturers and processors for hire of commercial airplanes and component parts. National Airplane Inc. employs one hundred people. Seventy-five of the employees work directly in the manufacturing operation and are classified as SOC Production Occupations. Five employees work in the engineering and design division and are classified as SOC Architect and Engineering Occupations. Five employees are sales representatives and are classified as SOC Sales and Related Occupations. Five employees are service technicians and are classified as SOC Installation, Maintenance, and Repair Occupations. Five employees are administrative assistants and are classified as SOC Office and Administrative Support. Five executives are classified as SOC Management Occupations.

(i) **Example 10.** Through a college work-study program, National Airplane Inc. employs six interns from September through June in its engineering department. The interns work twenty hours a week. The six interns are reported as temporary employees, and not as part-time employees, because the intern positions are intended to be filled for a period of less than twelve consecutive months. Assuming the five employees classified as SOC Architect and Engineering Occupations are full-time employees, National Airplane Inc. will report a total of eleven employment positions in SOC Architect and Engineering Occupations with 45% in full-time employment positions and 55% in temporary employment positions.

(ii) **Example 11.** National Airplane Inc. manufactures navigation systems in two shifts of production. The first shift works eight hours from 8:00 a.m. to 5:00 p.m. Monday thru Friday. The second shift works six hours from 6:00 p.m. to midnight Monday thru Friday. The second shift works fewer hours per week (thirty hours) than the first shift (forty hours) as a pay differential for working in the evening. If a second shift employee transferred to the first shift, the employee would be required to work forty hours with no overall increase in wages. The second shift employees should be reported as full-time employment positions, rather than part-time employment positions.

(iii) **Example 12.** On December 1st, ten National Airplane Inc. full-time employees classified as SOC Production Occupations take family and medical leave for twelve weeks. National Airplane Inc. hires five people to perform the work of the employees on leave. Because the ten employees classified as SOC Production Occupations are on authorized leave, National Airplane Inc. will include those employees in the annual report as full-time employment positions. The five people hired to replace the absent employees classified as SOC Production Occupations will be included in the report as temporary employees. National Airplane Inc. will report a total of eighty employment positions in SOC Production Occupations with 93.8% in full-time employment positions and 6.2% in temporary employment positions.

(iv) **Example 13.** On December 1st, one full-time employee classified as SOC Sales and Related Occupations resigns from her position. National Airplane Inc. contracts with Jane Smith d/b/a Creative Enterprises, Inc. to finish an advertising project assigned to the employee who resigned. Because Jane Smith is an independent contractor, National Airplane Inc. will not include her employment in the annual report. Because the resignation has resulted in a vacant position, the total number of employment positions National Airplane Inc. will report in SOC Sales and Related Occupations is reduced to four employment positions.

(v) **Example 14.** All National Airplane Inc. employees classified as SOC Office and Administrative Support Occupations work forty hours a week, fifty-two weeks a year. On November 1st, one employee must limit the number of hours worked to thirty hours each week to accommodate a disability. The employee receives wages based on the actual hours worked each week. Because the employee works less than thirty-five hours a week and is not paid a wage equivalent to a full-time position, the employee's position is a part-time employment position. National Airplane Inc. will report a total of five employment positions in SOC Office and Administrative Support Occupations with 80% in full-time employment positions and 20% in part-time employment positions.

(9) **What are wages?** For the purposes of the annual report, "wages" means the base compensation paid to an individual for personal services rendered to an employer, whether denominated as wages, salary, commission, or otherwise. Compensation in the form of overtime, tips, bonuses, benefits (insurance, paid leave, meals, etc.), stock options, and severance pay are not "wages." For employees that earn an annual salary, hourly wages are determined by dividing annual salary by 2080. If an employee is paid by commission, hourly wages are determined by dividing the total amount of commissions paid during the calendar year by 2080.

(10) **How are wages detailed for the annual report?**

(a) An employer must provide information on the number of employees, as a percentage of the total employment in the SOC major group, paid a wage within the following five hourly wage bands:

Up to $10.00 an hour;
$10.01 an hour to $15.00 an hour;
$15.01 an hour to $20.00 an hour;
$20.01 an hour to $30.00 an hour; and
$30.01 an hour or more.

Percentages should be rounded to the nearest 1/10th of 1% (XX.X%). For purposes of the annual report, wages are measured on December 31st of the calendar year for which an applicable tax preference is claimed.

(b) **The following facts apply to the examples in (b) of this subsection.** Washington Airplane Inc. manufactures FAA certified navigation systems at a manufacturing site located in Tacoma, WA. Washington Airplane Inc. is claiming all the tax preferences available for manufacturers and processors for hire of commercial airplanes and component parts. Washington Airplane Inc. employs five hundred people at the manufacturing site, which constitutes its entire work force in this state. Four hundred employees engage in activities that are classified as SOC Production Occupations. Fifty employees engage in activities that are classified as SOC Architect and Engineer Occupations. Twenty-five employees are engaged in activities classified as SOC Management Occupations. Twenty employees are engaged in activities clas-

sified as SOC Office and Administrative Support Occupations. Five employees are engaged in activities classified as SOC Sales and Related Occupations.

(i) **Example 15.** One hundred employees classified as SOC Production Occupations are paid $12.00 an hour. Two hundred employees classified as SOC Production Occupations are paid $17.00 an hour. One hundred employees classified as SOC Production Occupations are paid $25.00 an hour. For SOC Production Occupations, Washington Airplane Inc. will report 25% of employment positions are paid $10.01 an hour to $15.00 an hour; 50% are paid $15.01 an hour to $20.00 an hour; and 25% are paid $20.01 an hour to $30.00 an hour.

(ii) **Example 16.** Ten employees classified as SOC Architect and Engineering Occupations are paid an annual salary of $42,000; another ten employees are paid $50,000 annually; and the remaining employees are all paid over $70,000 annually. To report wages, the annual salaries must be converted to hourly amounts by dividing the annual salary by 2080 hours. For SOC Architect and Engineering Occupations, Washington Airplane Inc. will report 40% of employment positions are paid $20.01 an hour to $30.00 an hour and 60% are paid $30.00 an hour or more.

(iii) **Example 17.** All the employees classified as SOC Sales and Related Occupations are sales representatives that are paid on commission. They receive $10.00 commission for each navigation system sold. Three sales representatives sell 2,500 navigation systems during the calendar year. Two sales representatives sell 3,500 navigation systems during the calendar year and receive a $10,000 bonus for exceeding company's sales goals. To report wages, the employee's commissions must be converted to hourly amounts by dividing the total commissions by 2080 hours. Washington Airplane Inc. will report that 60% of employment positions classified as SOC Sales and Related Occupations are paid $10.01 an hour to $15.00 an hour. Because bonuses are not included in wages, Washington Airplane Inc. will report 40% of employment positions classified as SOC Sales and Related Occupations are paid $15.01 an hour to $20.00 an hour.

(iv) **Example 18.** Ten of the employees classified as SOC Office and Administrative Support Occupations earn $9.50 an hour. The remaining ten employees classified as SOC Office and Administrative Support Occupations earn wages between $10.01 an hour to $15.00 an hour. On December 1st, Washington Airplane Inc. announces that effective December 15th, all employees classified as SOC Office and Administrative Support Occupations will earn wages of at least $10.50 an hour, but no more than $15.00 an hour. Because wages are measured on December 31st, Washington Airplane Inc. will report 100% of employment positions classified as SOC Office and Administrative Support Occupations Sales and Related Occupations are paid $10.01 an hour to $15.00 an hour.

(11) **Reporting workers furnished by staffing companies.** For temporary positions filled by workers that are furnished by staffing companies, the person filling out the annual report must provide the following information:

(a) Total number of staffing company employees furnished by staffing companies;

(b) Top three occupational codes of all staffing company employees; and

(c) Average duration of all staffing company employees.

(12) **What are employer-provided health benefits?** For purposes of the annual report, "health benefits" means compensation, not paid as wages, in the form of a health plan offered by an employer to its em-

ployees. A health plan that is equally available to employees and the general public is not an "employer-provided" health benefit.

(a) "Dental care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease of human teeth, alveolar process, gums, or jaw.

(b) "Dental care plan" means a health plan for the purpose of providing for its employees or their beneficiaries' dental care services.

(c) "Health plan" means any plan, fund, or program established, maintained, or funded by an employer for the purpose of providing for its employees or their beneficiaries, through the purchase of insurance or otherwise, medical care and dental care services. Health plans include any "employee welfare benefit plan" as defined by the Employee Retirement Income Security Act (ERISA), any "health plan" or "health benefit plan" as defined in RCW 48.43.005, any self-funded multiple employer welfare arrangement as defined in RCW 48.125.010, any "qualified health insurance" as defined in Section 35 of the Internal Revenue Code, an "Archer MSA" as defined in Section 220 of the Internal Revenue Code, a "health savings plan" as defined in Section 223 of the Internal Revenue Code, any "health plan" qualifying under Section 213 of the Internal Revenue Code, governmental plans, and church plans.

(d) "Medical care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(e) "Medical care plan" means a health plan for the purpose of providing for its employees or their beneficiaries' medical care services.

(13) **How are employer-provided health benefits detailed in the annual report?** The annual report is organized by SOC major group and by type of health plan offered to or with enrolled employees on December 31st of the calendar year for which an applicable tax preference is claimed.

(a) **Detail by SOC major group.** For each SOC major group, report the number of employees, as a percentage of total employment in the SOC major group, eligible to participate in an employer-provided medical care plan. An employee is "eligible" if the employee can currently participate in a medical care plan provided by the employer. Waiting periods, tenure requirements, minimum work hour requirements, preexisting conditions, and other limitations may prevent an employee from being eligible for coverage in an employer's medical care plan. If an employer provides multiple medical care plans, an employee is "eligible" if the employee can currently participate in one of the medical care plans. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(i) **Example 19.** On December 31st, Acme Engines has one hundred employees classified as SOC Production Occupations. It offers these employees two medical care plans. Plan A is available to all employees at the time of hire. Plan B is available to employees after working ninety days. For SOC Production Occupations, Acme Engines will report 100% of its employees are eligible for employer-provided medical benefits because all of its employees are eligible for at least one medical care plan offered by Acme Engines.

(ii) **Example 20.** Apex Aluminum has fifty employees classified as SOC Transportation and Material Moving Occupations, all of whom have worked for Apex Aluminum for over five years. Apex Aluminum offers one medical care plan to its employees. Employees must work for Apex Alu-

minum for six months to participate in the medical care plan. On October 1st, Apex Aluminum hires ten new employees classified as SOC Transportation and Material Moving Occupations. For SOC Transportation and Material Moving Occupations, Apex Aluminum will report 83.3% of its employees are eligible for employer-provided medical benefits.

(b) **Detail by type of health plan.** The report also requires detailed information about the types of health plans the employer provides. If an employer has more than one type of health plan, it must report each health plan separately. If a person offers more than one of the same type of health plan as described in (b)(i) of this subsection, the person may consolidate the detail required in (b) through (d) of this subsection by using ranges to describe the information. The details include:

(i) A description of the type of plan in general terms such as self-insured, fee for service, preferred provider organization, health maintenance organization, health savings account, or other general description. The report does not require a person to disclose the name(s) of their health insurance carrier(s).

(ii) The number of employees eligible to participate in the health plan, as a percentage of total employment at the manufacturing site or as otherwise reported. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iii) The number of employees enrolled in the health plan, as a percentage of employees eligible to participate in the health plan at the manufacturing site or as otherwise reported. An employee is "enrolled" if the employee is currently covered by or participating in an employer-provided health plan. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iv) The average percentage of premium paid by employees enrolled in the health plan. "Premium" means the cost incurred by the employer to provide a health plan or the continuance of a health plan, such as amounts paid to health carriers or costs incurred by employers to self-insure. Employers are generally legally responsible for payment of the entire cost of the premium for enrolled employees, but may require enrolled employees to share in the cost of the premium to obtain coverage. State the amount of premium, as a percentage, employees must pay to maintain enrollment under the health plan. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(v) If necessary, the average monthly contribution to enrolled employees. In some instances, employers may make contributions to an employee health plan, but may not be aware of the percentage of premium cost borne by the employee. For example, employers may contribute to a health plan sponsored by an employee organization, or may sponsor a medical savings account or health savings account. Under those circumstances in which the employee's contribution to the health plan is unknown, an employer must report its average monthly contribution to the health plan by dividing the employer's total monthly costs for the health plan by the total number of employees enrolled in the health plan.

(vi) Whether legal spouses, state registered domestic partners, and unmarried dependent children can obtain coverage under the health plan and if there is an additional premium for such coverage.

(vii) Whether part-time employees are eligible to participate in the health plan.

(c) **Medical care plans.** In addition to the detailed information required for each health plan, report the amount of enrolled employee point of service cost-sharing for hospital services, prescription drug

benefits, and primary care physician services for each medical care plan. If differences exist within a medical care plan, the lowest cost option to the enrolled employee must be stated in the report. For example, if employee point of service cost-sharing is less if an enrolled employee uses a network of preferred providers, report the amount of point of service cost-sharing using a preferred provider. Employee point of service cost-sharing is generally stated as a percentage of cost, a specific dollar amount, or both.

(i) "Employee point of service cost-sharing" means amounts paid to health carriers directly providing medical care services, health care providers, or health care facilities by enrolled employees in the form of copayments, co-insurance, or deductibles. Copayments and co-insurance mean an amount specified in a medical care plan that is an obligation of enrolled employees for a specific medical care service which is not fully prepaid. A deductible means the amount an enrolled employee is responsible to pay before the medical care plan begins to pay the costs associated with treatment.

(ii) "Hospital services" means covered in-patient medical care services performed in a hospital licensed under chapter 70.41 RCW.

(iii) "Prescription drug benefit" means coverage to purchase a thirty-day or less supply of generic prescription drugs from a retail pharmacy.

(iv) "Primary care provider services" means nonemergency medical care services provided in an office setting by the employee's primary care provider.

(d) **Dental care plans.** In addition to the health plan information required for each dental care plan, the annual maximum benefit for each dental care plan must be stated in the report. Most dental care plans have an annual dollar maximum benefit. This is the maximum dollar amount a dental care plan will pay toward the cost of dental care services within a specific benefit period, generally one year. The enrolled employee is personally responsible for paying costs above the annual maximum.

(e) **The following facts apply to the examples in (e) of this subsection.** Mosaic Aerospace employs one hundred employees and offers two medical care plans as health benefits to employees at the time of hire. Plan A is a managed care plan (HMO). Plan B is a fee for service medical care plan.

(i) **Example 21.** Forty Mosaic Aerospace employees are enrolled in Plan A. It costs Mosaic Aerospace $750 a month for each employee covered by Plan A. Enrolled employees must pay $150 each month to participate in Plan A. If an enrolled employee uses its network of physicians, Plan A will cover 100% of the cost of primary care provider services with employees paying a $10.00 copayment per visit. If an enrolled employee uses its network of hospitals, Plan A will cover 100% of the cost of hospital services with employees paying a $200 deductible. If an enrolled employee does not use a network provider, Plan A will cover only 50% of the cost of any service with a $500 employee deductible. An enrolled employee must use a network of retail pharmacies to receive any prescription drug benefit. Plan A will cover the cost of prescription drugs with enrolled employees paying a $10.00 copayment. If an enrolled employee uses the mail-order pharmacy option offered by Plan A, copayment for prescription drug benefits is not required.

Mosaic Aerospace will report Plan A separately as a managed care plan. One hundred percent of its employees are eligible to participate in Plan A. The percentage of eligible employees enrolled in Plan A is

40%. The percentage of premium paid by an employee is 20%. Mosaic Aerospace will also report that employees have a $10.00 copayment for primary care provider services and a $200 deductible for hospital services because this is the lowest cost option within Plan A. Mosaic Aerospace will report that employees have a $10.00 copayment for prescription drug benefit. Mosaic Aerospace cannot report that employees do not have a prescription drug benefit copayment because "prescription drug benefit" is defined as coverage to purchase a thirty-day or less supply of generic prescription drugs from a retail pharmacy, not a mail-order pharmacy.

(ii) **Example 22.** Fifty Mosaic Aerospace employees are enrolled in Plan B. It costs Mosaic Aerospace $1,000 a month for each employee covered by Plan B. Enrolled employees must pay $300 a month to participate in Plan B. Plan B covers 100% of the cost of primary care provider services and 100% of the cost of prescription drugs with employees paying a $200 annual deductible for each covered service. Plan B covers 80% of the cost of hospital services with employees paying a $250 annual deductible.

Mosaic Aerospace will report Plan B separately as a fee for service medical care plan. One hundred percent of its employees are eligible to participate in Plan B. The percentage of eligible employees enrolled in Plan B is 50%. The percentage of premium paid by an employee is 30%. Mosaic Aerospace will also report that employees have a $200 annual deductible for both primary care provider services and prescription drug benefits. Hospital services have a $250 annual deductible and 20% co-insurance obligation.

(iii) **Example 23.** On December 1st, Mosaic Aerospace acquires General Aircraft Inc., a company claiming all the tax preferences available for manufacturers and processors for hire of commercial airplanes and component parts. General Aircraft Inc. had fifty employees, all of whom were retained by Mosaic Aerospace. At General Aircraft Inc., employees were offered one managed care plan (HMO) as a benefit. The former General Aircraft Inc. employees will retain their current managed care plan until the following June when employees would be offered Mosaic Aerospace benefits. On December 31st, Mosaic Aerospace is offering employees two managed care plans. Mosaic Aerospace may report each managed care plan separately or may consolidate the detail required in (b) through (d) of this subsection for this type of medical care plan by using ranges to report the information.

(iv) **Example 24.** Aero Turbines employs one hundred employees. It offers employees health savings accounts as a benefit to employees who have worked for the company for six months. Aero Turbines established the employee health savings accounts with a local bank and makes available to employees a high deductible medical care plan to be used in conjunction with the account. Aero Turbines deposits $500 a month into each employee's health savings account. Employees deposit a portion of their pretax earnings into a health savings account to cover the cost of primary care provider services, prescription drug purchases, and the high deductible medical care plan for hospital services. The high deductible medical care plan has an annual deductible of $2,000 and covers 75% of the cost of hospital services. Sixty-six employees open health savings accounts. Four employees have not worked for Aero Turbines for six months.

Aero Turbines will report the medical care plan as a health savings account. Ninety-six percent of employees are eligible to participate in health savings accounts. The percentage of eligible employees enrolled in health savings accounts is 68.8%. Because the amount of

employee deposits into their health savings accounts will vary, Aero Turbines will report the average monthly contribution of $500 rather than the percentage of premium paid by enrolled employees. Because employees are responsible for covering their primary care provider services and prescription drugs costs, Aero Turbines will report that this health plan does not include these services. Because the high deductible medical care plan covers the costs of hospital services, Aero Turbines will report that the medical care plan has an annual deductible of $2,000 and employees have 25% co-insurance obligation.

(14) **What are employer-provided retirement benefits?** For purposes of the annual report, "retirement benefits" mean compensation, not paid as wages, in the form of a retirement plan offered by an employer to its employees. A "retirement plan" means any plan, account, deposit, annuity, or benefit, other than a life insurance policy, that provides for retirement income or deferred income to employees for periods extending to the termination of employment or beyond. Retirement plans include pensions, annuities, stock bonus plans, employee stock ownership plans, profit sharing plans, self-employed retirement plans, individual retirement accounts, individual retirement annuities, and retirement bonds, as well as any other plan or program, without regard to its source of funding, and without regard to whether the retirement plan is a qualified plan meeting the guidelines established in the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code. A retirement plan that is equally available to employees and the general public is not an "employer-provided" retirement benefit.

(15) **How are employer-provided retirement benefits detailed in the annual report?** The annual report is organized by SOC major group and by type of retirement plans offered to employees or with enrolled employees on December 31st of the calendar year for which an applicable tax preference is claimed. Inactive or terminated retirement plans are excluded from the annual report. An inactive retirement plan is a plan that is not offered to new employees, but has enrolled employees, and neither enrolled employees nor the employer are making contributions to the retirement plan.

(a) **Detail by SOC major group.** For each SOC major group, report the number of employees, as a percentage of total employment in the SOC major group, eligible to participate in an employer-provided retirement plan. An employee is "eligible" if the employee can currently participate in a retirement plan provided by the employer. Waiting periods, tenure requirements, minimum work hour requirements, and other limitations may prevent an employee from being eligible for coverage in an employer's retirement plan. If an employer provides multiple retirement plans, an employee is "eligible" if the employee can currently participate in one of the retirement plans. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(i) **Example 25.** Lincoln Airplane has one hundred employees classified as SOC Production Occupations. Fifty employees were enrolled in defined benefit pension at the time of hire. All employees are eligible to participate in a 401(k) Plan. For SOC Production Occupations, Lincoln Airplane will report 100% of its employees are eligible for employer-provided retirement benefits because all of its employees are eligible for at least one retirement plan offered by Lincoln Airplane.

(ii) **Example 26.** Fly-Rite Airplanes has fifty employees classified in SOC Computer and Mathematical Occupations. Fly-Rite Airplane offers a SIMPLE IRA to its employees after working for the company one year. Forty-five employees classified in SOC Computer and Mathematical

Occupations have worked for the company more than one year. For SOC Computer and Mathematical Occupations, Fly-Rite Airplanes will report 90% of its employees are eligible for retirement benefits.

(b) **Detail by retirement plan.** The report also requires detailed information about the types of retirement plans an employer offers employees. If an employer offers multiple retirement plans, it must report each type of retirement plan separately. If an employer offers more than one of the same type of retirement plan, but with different levels of employer contributions, it may consolidate the detail required in (i) through (iv) of this subsection by using ranges to describe the information. The report includes:

(i) The type of plan in general terms such as 401(k) Plan, SEP IRA, SIMPLE IRA, cash balance pension, or defined benefit plan.

(ii) The number of employees eligible to participate in the retirement plan, as a percentage of total employment at the manufacturing site, or as otherwise reported. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iii) The number of employees enrolled in the retirement plan, as a percentage of employees eligible to participate in the retirement plan at the manufacturing site. An employee is "enrolled" if the employee currently participates in an employer-provided retirement plan, regardless of whether the employee has a vested benefit. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iv) The maximum benefit the employer will contribute into the retirement plan for enrolled employees. The maximum benefit an employer will contribute is generally stated as a percentage of salary, specific dollar amount, or both. This information is not required for a defined benefit plan meeting the qualification requirements of Employee Retirement Income Security Act (ERISA) that provides benefits according to a flat benefit, career-average, or final pay formula.

(A) **Example 27.** General Airspace is a manufacturer of airplane components located in Centralia, WA. General Airspace employs one hundred employees. Fifty employees are eligible for and enrolled in a defined benefit pension with a flat benefit at the time of retirement. Twenty-five employees are eligible for and enrolled in a cash balance pension with General Airspace contributing 7% of an employee's annual compensation with a maximum annual contribution of $10,000. All General Airspace employees can participate in a 401(k) Plan. Sixty-five employees are participating in the 401(k) Plan. General Airspace does not make any contributions into the 401(k) Plan. Five employees are former employees of United Skyways, a company General Airspace acquired. United Skyways employees were enrolled in a cash balance pension at the time of hire. When General Airspace acquired United Skyways, it did not terminate or liquidate the United Skyways cash balance plan. Rather, General Airspace maintains cash balance plan only for former United Skyways employees, allowing only interest to accrue to the plan.

(I) General Airspace will report that it offers three retirement plans - A defined benefit pension, a cash-balance pension, and a 401(k) Plan. General Airspace will not report the inactive cash balance pension it maintains for former United Skyways employees.

(II) For the defined benefit pension, General Airspace will report 50% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 100% are enrolled.

(III) For the cash-balance pension, General Airspace will report 25% of its total employment positions are eligible to participate. Of

the employment positions eligible to participate, 100% are enrolled. General Airspace will report a maximum contribution of $10,000 or 7% of an employee's annual compensation.

(IV) For the 401(k) Plan, General Airspace will report 100% of its total employment positions are eligible to participate in the retirement plan. Of the employment positions eligible to participate, 65% are enrolled. General Airspace will report that it does not make any contributions into the 401(k) Plan.

(B) **Example 28.** Washington Alloys is an aluminum smelter located in Grandview, WA. Washington Alloys employs two hundred employees. Washington Alloys offers a 401(k) Plan to its employees after one year of hire. One hundred seventy-five employees have worked for Washington Alloys for one year or more. Of that amount, seventy-five have worked more than five years. Washington Alloys will match employee contributions up to a maximum 3% of annual compensation. If an employee has worked for Washington Alloys for more than five years, Washington Alloys will contribute 5% of annual compensation regardless of the employee's contribution. One hundred employees receive a 3% matching contribution from Washington Alloys. Fifty employees receive a contribution of 5% of annual compensation.

(I) Washington Alloys may report each 401(k) Plan separately - A 401(k) Plan with a maximum employer contribution of 3% of annual compensation and a 401(k) Plan with a maximum employer contribution to 5% of annual compensation. Alternatively, Washington Alloys may report that it offers a 401(k) Plan with a maximum employer contribution ranging from 3% to 5% of annual compensation.

(II) If Washington Alloys reports each 401(k) Plan separately, for the 401(k) Plan with a maximum employer contribution of 3% of annual compensation, Washington Alloys will report 50% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 100% are enrolled.

For the 401(k) Plan with a maximum employer contribution of 5% of annual compensation, Washington Alloys will report 37.5% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 66.6% are enrolled.

(III) If Washington Alloys consolidates its detailed information about its 401(k) Plans, it will report that 87.5% of its total employment positions are eligible to participate in 401(k) Plans. Of the employment positions eligible to participate in the 401(k) Plans, 85.7% are enrolled.

(16) **Additional reporting for aluminum smelters and electrolytic processing businesses.** For an aluminum smelter or electrolytic processing business, the annual report must indicate the quantity of product produced in this state during the time period covered by the report.

(17) **Are annual reports confidential?** Except for the additional information that the department may request which it deems necessary to measure the results of, or to determine eligibility for the tax preference, annual reports are not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(18) **What are the consequences for failing to file a complete annual report?**

(a) **What is a "complete annual report"?** An annual report is complete if:

(i) The annual report is filed on the form required by this rule or in an electronic format as required by law; and

(ii) The person makes a good faith effort to substantially respond to all report questions required by this rule.

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

(b) **Amounts due for late filing.** Except as otherwise provided by law, if a person claims a tax preference that requires an annual report under this rule, but fails to submit a complete report by the due dates described in subsection (3)(e) of this section, or any extension under RCW 82.32.590, the following amounts are immediately due and payable:

(i) For reports due prior to July 1, 2017, one hundred percent of the amount of the tax preference claimed for the previous calendar year. Interest, but not penalties, will be assessed on the amounts due at the rate provided for under RCW 82.32.050, retroactively to the date the tax preference was claimed, and accruing until the taxes for which the tax preference was claimed are repaid.

(ii) For reports due on or after July 1, 2017:

(A) Thirty-five percent of the amount of the tax preference claimed for the previous calendar year; and

(B) An additional fifteen percent of the amount of the tax preference claimed for the previous calendar year if the person has previously been assessed under (b)(ii) of this subsection for failure to timely submit a report for the same tax preference.

(c) **Interest and penalties.** The department may not assess interest or penalties on amounts due under (b)(ii) of this subsection.

(d) **Extension for circumstances beyond the control of the taxpayer.** If the department finds the failure of a taxpayer to file an annual report by the due date was the result of circumstances beyond the control of the taxpayer, the department will extend the time for filing the report. The extension will be for a period of thirty days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this rule. The department may grant additional extensions as it deems proper under RCW 82.32.590.

In determining whether the failure of a taxpayer to file an annual report by the due date was the result of circumstances beyond the control of the taxpayer, the department will apply the provisions in WAC 458-20-228 for the waiver or cancellation of penalties when the underpayment or untimely payment of any tax was due to circumstances beyond the control of the taxpayer.

(e) **One-time only extension.** A taxpayer who fails to file an annual report, as required under this rule, by the due date of the report is entitled to an extension of the due date. A request for an extension under this subsection must be made in writing to the department.

(i) To qualify for an extension, a taxpayer must have filed all annual reports and surveys, if any, due in prior years by their respective due dates, beginning with annual reports and surveys due in the calendar year 2010.

(ii) The extension is for ninety days from the original due date of the annual report.

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

AMENDATORY SECTION (Amending WSR 17-09-086, filed 4/19/17, effective 5/20/17)

WAC 458-20-268 Annual surveys for certain tax preferences. (1) **Introduction.** Effective for calendar years in which a taxpayer claims a tax preference beginning January 1, 2018, Washington changed its annual reporting requirements. This rule addresses how taxpayers taking certain tax preferences must file an annual survey as provided under RCW 82.32.585 with the department of revenue (department) providing information about their business((~~. This rule explains how to file a survey, the information that must be included in the survey, due dates for filing, and other filing requirements~~)) for tax periods through December 31, 2017, only. See WAC 458-20-267 Annual tax performance reports for certain tax preferences for the proper way to report tax preferences for periods beginning January 1, 2018.

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

(i) **Person.** "Person" has the meaning under RCW 82.04.030 and also includes the state and its departments and institutions.

(ii) **Tax preference.** As defined under RCW 43.136.021, "tax preference" means:

(A) An exemption, exclusion, or deduction from the base of a state tax; a credit against a state tax; a deferral of a state tax; or a preferential state tax rate; and

(B) Includes only the tax preferences requiring a survey under RCW 82.32.585.

(b) **Annual reports.** Taxpayers taking certain tax preferences may be required to complete both an annual report and an annual survey. For information on the annual report requirements, refer to RCW 82.32.534 and WAC 458-20-267.

(c) **Examples.** This rule includes examples that identify a set of facts and then state a conclusion. These examples should only be used as a general guide. The department will evaluate each case on its particular facts and circumstances.

(2) **Tax preferences requiring an annual survey.** Taxpayers may refer to the department's web site at dor.wa.gov for the "Annual Tax Incentive Survey for Preferential Tax Rates/Credits/Exemptions/Deferrals Worksheet." This worksheet lists tax preferences that require an annual survey. Taxpayers may also contact the telephone information center 800-647-7706 to determine whether they must file an annual survey.

(3) **How to file annual surveys.**

(a) **Electronic filing.** Surveys must be filed electronically unless the department waives this requirement upon a showing of good cause. A survey is filed electronically when the department receives the survey in an electronic format. A person accesses electronic filing through their department "My Account" at dor.wa.gov.

(b) **Required paper form.** If the department waives the electronic filing requirement for a person that shows good cause, that person must use the annual survey form developed by the department unless that person obtains prior written approval from the department to file an annual survey in an alternative format.

(c) **How to obtain the form.** Persons who have received a waiver of the electronic filing requirement from the department or who otherwise would like a paper copy of the survey may obtain the annual survey form from the department's web site at dor.wa.gov. It may also be ob-

tained by calling the telephone information center at 800-647-7706, or by contacting the department at:

Attn: Tax Incentive Team
Taxpayer Account Administration
Department of Revenue
Post Office Box 47476
Olympia, WA 98504-7476

(d) **Special requirement for persons who did not file an annual survey during the previous calendar year.** If a person is a first-time filer or otherwise did not file an annual survey with the department during the previous calendar year, the survey must include information on employment, wages, and employer-provided health and retirement benefits for the two calendar years immediately preceding the due date of the survey.

(e) **Due date of annual survey.** Every person claiming a tax preference that requires a survey under RCW 82.32.585 must file the survey annually with the department in the year following the calendar year in which the person becomes eligible to claim the tax preference. The due date for filing the survey is as follows:

(i) April 30th for surveys due prior to 2017.

(ii) May 31st for surveys due in ((~~or after~~)) 2017 or 2018.

(iii) If the tax preference is a deferral of tax, the first survey must be filed by April 30th (if prior to 2017) or by May 31st (if in ((~~or after~~)) 2017) of the calendar year following the calendar year in which the investment project is certified by the department as operationally complete. Thereafter, a survey must also be filed for each of the seven succeeding calendar years by April 30th (if prior to 2017) or by May 31st (if in ((~~or after~~)) 2017), or a tax performance report for tax preferences claimed in tax reporting periods in 2018 and after.

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

(g) **Example 1.** Advanced Computing, Inc. qualified for the B&O tax credit provided by RCW 82.04.4452 and applied it against taxes due in calendar year 2014. Advanced Computing filed an annual survey in March 2014 for credit claimed under RCW 82.04.4452 in 2013. Advanced Computing must electronically file an annual survey with the department by April 30, 2015, for credits taken in calendar year 2014. The tax preference in this example expired January 1, 2015.

(h) **Example 2.** In 2011, Biotechnology, Inc. applied for and received a sales and use tax deferral under chapter 82.63 RCW for an eligible investment project in qualified research and development. The investment project was operationally complete in 2012. Biotechnology filed an annual survey on April 30, 2013, for the sales and use tax deferral under chapter 82.63 RCW. Surveys are due from Biotechnology by April 30th each year through 2016 and by May 31st ((~~beginning~~)) in 2017 ((~~and each subsequent year~~)) and 2018, with ((~~its last survey~~)) tax performance reports due in 2019 through May 31, 2020.

(i) **Example 3.** Advanced Materials, Inc., a new business in 2014, has been conducting manufacturing activities in a building leased from Property Management Services. Property Management Services is a recipient of a deferral under chapter 82.60 RCW, and the department certified the building as operationally complete in 2014. To pass on the entire economic benefit of the deferral, Property Management Services charges Advanced Materials $5,000 less in rent each year. Advanced Materials is a first-time filer of annual surveys. Advanced Materials

must file its annual survey with the department covering the 2014 calendar year by April 30, 2015. Surveys are due from Advanced Materials by April 30th for 2016 and by May 31st for ((~~each subsequent year~~)) 2017, with ((~~its last survey due~~)) annual tax performance reports due in 2018 through May 31, 2022.

(j) **Example 4.** Fruit Canning, Inc. claims the B&O tax exemption provided in RCW 82.04.4266 for the canning of fruit in 2015. Fruit Canning is a first-time filer of annual surveys. Fruit Canning must file an annual survey with the department by April 30, 2016, covering calendar years 2014 and 2015. If Fruit Canning claims the B&O tax exemption during subsequent years, it must file an annual survey ((~~for each of those years~~)) by May 31st ((~~of~~)) in 2017 and 2018, and an annual tax performance report by May 31st in 2019 and each subsequent year.

(4) **What information does the annual survey require?** The annual survey requires the following:

(a) Amount of tax deferred, the amount of B&O tax exempted, the amount of B&O tax credit taken, or the amount of B&O tax reduced under the preferential rate;

(b) For taxpayers claiming the tax deferral under chapter 82.60 or 82.63 RCW:

(i) The number of new products or research projects by general classification; and

(ii) The number of trademarks, patents, and copyrights associated with activities at the investment project;

(c) For taxpayers claiming the B&O tax credit under RCW 82.04.4452:

(i) The qualified research and development expenditures during the calendar year for which the credit was claimed;

(ii) The taxable amount during the calendar year for which the credit was claimed;

(iii) The number of new products or research projects by general classification;

(iv) The number of trademarks, patents, and copyrights associated with the research and development activities for which the credit was claimed; and

(v) Whether the credit has been assigned and who assigned the credit.

The credit provided under RCW 82.04.4452 expired January 1, 2015.

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

(i) The total number of employment positions;

(ii) Full-time, part-time, and temporary employment positions as a percent of total employment. Refer to subsection (7) of this rule for information about full-time, part-time, and temporary employment positions;

(iii) The number of employment positions according to the wage bands of less than $30,000; $30,000 or greater, but less than $60,000; and $60,000 or greater. A wage band containing fewer than three individuals may be combined with the next lowest wage band; and

(iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands; and

(e) Additional information the department requests that is necessary to measure the results of, or determine eligibility for the tax preferences.

(i) Prior to its repeal effective January 1, 2018, RCW 82.32.585 requires the department to report to the legislature summary descriptive statistics by category and the effectiveness of certain tax preferences, such as job creation, company growth, and such other factors as the department selects or as the statutes identify. The department has included questions related to measuring these effects.

(ii) In addition, the department has included questions related to:

(A) The taxpayer's use of the sales and use tax exemption for machinery and equipment used in manufacturing provided in RCW 82.08.025651 and 82.12.025651; and

(B) The Unified Business Identifier used with the Washington state employment security department and all employment security department reference numbers used on quarterly tax reports that cover the employment positions reported in the annual survey.

(5) **What is total employment in the annual survey?**

(a) **Employment as of December 31st.** The annual survey requires information on all full-time, part-time, and temporary employment positions located in Washington state on December 31st of the calendar year covered by the survey. Total employment includes persons who are on leaves of absence such as sick leave, vacation, disability leave, jury duty, military leave, and workers compensation leave, regardless of whether those persons are receiving wages. Total employment does not include separations from employment such as layoffs and reductions in force. Vacant positions are not included in total employment.

(b) **The following facts apply to the examples in (b)(i) through (iv) of this subsection.** National Construction Equipment (NCE) manufactures bulldozers, cranes, and other earth-moving equipment in Ridgefield and Kennewick, WA. NCE received a deferral of taxes under chapter 82.60 RCW for sales and use taxes on its new manufacturing site in Kennewick.

(i) **Example 5.** NCE employs two hundred 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 preferences, 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 preferences.

(ii) **Example 6.** 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) **Example 7.** 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) **Example 8.** In June, NCE hires two employees from a local college to intern in its engineering department. When the academic year begins in September, one employee ends the internship. The other

employee's internship continues until the following June. NCE must report one employment position on the annual survey, representing the intern employed on December 31st.

(6) **When is an employment position located in Washington state?** The annual survey seeks information only about Washington employment positions. An employment position is located in Washington state if:

(a) The service of the employee is performed entirely within the state;

(b) The service of the employee is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state;

(c) The service of the employee is performed both within and without the state, and the employee's base of operations is within the state;

(d) The service of the employee is performed both within and without the state, but the service is directed or controlled in this state; or

(e) The service of the employee is performed both within and without the state and the service is not directed or controlled in this state, but the employee's individual residence is in this state.

(f) **The following facts apply to the examples in (f)(i) through (iv) of this subsection.** Acme Computer, Inc. develops computer software and receives a deferral of taxes under chapter 82.60 RCW for sales and use taxes on an eligible investment project in a high unemployment county. Acme Computer, headquartered in California, has employees working at four locations in Washington state. Acme Computer also has offices in Oregon and Texas.

(i) **Example 9.** Ed is a software engineer in Acme Computer's Vancouver office. Ed occasionally works at Acme Computer's Portland, Oregon office when other software engineers are on leave. Ed's position must be included in the number of total employment positions in Washington state that Acme Computer reports on the annual survey. Ed performs services both within and without the state, but the services performed without the state are incidental to the employee services within the state.

(ii) **Example 10.** John is an Acme Computer salesperson. John travels throughout Washington, Oregon, and Idaho promoting sales of new Acme Computer products. John's activities are directed by his manager in Acme Computer's Spokane office. John's position must be included in the number of total employment positions in Washington state that Acme Computer reports on the annual survey. John performs services both within and without the state, but the services are directed or controlled in Washington state.

(iii) **Example 11.** Jane, vice president for product development, works in Acme Computer's Portland, Oregon office. Jane regularly travels to Seattle to review the progress of research and development projects conducted in Washington state. Jane's position should not be included in the number of total employment positions in Washington state that Acme Computer reports on the annual survey. Although Jane regularly performs services within Washington state, her activities are directed or controlled in Oregon.

(iv) **Example 12.** Roberta, a service technician, travels throughout the United States servicing Acme Computer products. Her activities are directed from Acme Computer's corporate offices in California, but she works from her home office in Tacoma. Roberta's position must be included in the number of total employment positions in Washington state that Acme Computer reports on the annual survey. Although Rob-

erta performs services both within and without the state and the service is not directed or controlled in this state, her residence is in Washington state.

(7) **What are full-time, part-time, and temporary employment positions?** The survey must separately identify the number of full-time, part-time, and temporary employment positions as a percent of total employment.

(a) **Full-time and part-time employment positions.** A position is considered full-time or part-time if the employer intends for the position to be filled for at least fifty-two consecutive weeks or twelve consecutive months, excluding any leaves of absence.

(i) **Full-time positions.** A full-time position is a position that requires the employee to work, excluding overtime hours, thirty-five 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) **Part-time positions.** A part-time position is a position in which the employee may work less than the hours required for a full-time position.

(iii) **Exceptions for full-time positions.** In some instances, an employee may not be required to work the hours required for full-time employment because of paid rest and meal breaks, health and safety laws, disability laws, shift differentials, or collective bargaining agreements. If, in the absence of these factors, the employee would be required to work the number of hours for a full-time position to receive their current wage, the position must be reported as a full-time employment position.

(b) **Temporary positions.** There are two types of temporary positions.

(i) **Employees of the person required to complete the survey.** In the case of a temporary employee directly employed by the person 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 rule.

(ii) **Workers furnished by staffing companies.** A temporary position also includes a position filled by a worker furnished by a staffing company, regardless of the duration of the placement. These temporary positions must be included in the information required in subsections (5), (8), and (9) of this rule. In addition, the person filling out the annual survey must provide the following additional information:

(A) Total number of staffing company employees furnished by staffing companies;

(B) Top three occupational codes of all staffing company employees; and

(C) Average duration of all staffing company employees.

(c) **The following facts apply to the examples in (c)(i) through (vi) of this subsection.** Worldwide Materials, Inc. is a developer of materials used in manufacturing electronic devices. Worldwide Materials receives a deferral of taxes under chapter 82.60 RCW for sales and use taxes on an eligible investment project in a high unemployment county. Worldwide Materials has one hundred employees.

(i) **Example 13.** On December 31st, Worldwide Materials has five employees on workers' compensation leave. At the time of the work-related injuries, the employees worked forty 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) **Example 14.** In September, Worldwide Materials hires two employees on a full-time basis for a two-year project to design composite materials to be used in a new airplane model. Because the position is intended to be filled for a period exceeding twelve consecutive months, Worldwide Materials must report these positions as full-time positions.

(iii) **Example 15.** Worldwide Materials has two employees who clean laboratories during the evenings. The employees regularly work 5:00 p.m. to 11:00 p.m., Monday through Friday, fifty-two weeks a year. Because the employees work less than thirty-five hours a week, the employment positions are reported as part-time positions.

(iv) **Example 16.** 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) **Example 17.** Worldwide Materials allows three of its research employees to work on specific projects with a flexible schedule. These employees are not required to work a set amount of hours each week, but are expected to work twelve 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) **Example 18.** 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 rule.

(8) **What are wages?** For the purposes of the annual survey, "wages" means compensation paid to an individual for personal services, whether denominated as wages, salary, commission, or otherwise as reported on the W-2 forms of employees. Stock options granted as compensation to employees are wages to the extent they are reported on the W-2 forms of the employees and are taken as a deduction for federal income tax purposes by the employer. The compensation of a proprietor or a partner is determined in one of two ways:

(a) If there is net income for federal income tax purposes, the amount reported subject to self-employment tax is the compensation.

(b) If there is no net income for federal income tax purposes, reasonable cash withdrawals or cash advances is the compensation.

(9) **What are employer-provided benefits?** The annual survey requires persons to report the number of employees that have employer-provided medical, dental, and retirement benefits, by each of the wage bands. An employee has employer-provided medical, dental, and retirement benefits if the employee is currently eligible to participate or receive the benefit. A benefit is "employer-provided" if the medical, dental, and retirement benefit is dependent on the employer's establishment or administration of the benefit. A benefit that is equally available to employees and the general public is not an "employer-provided" benefit.

(a) **What are medical benefits?** "Medical benefits" means compensation, not paid as wages, in the form of a health plan offered by an employer to its employees. A "health plan" means any plan, fund, or program established, maintained, or funded by an employer for the purpose of providing for its employees or their beneficiaries, through the purchase of insurance or otherwise, medical and/or dental care services.

(i) Health plans include any:

(A) "Employee welfare benefit plan" as defined by the Employee Retirement Income Security Act (ERISA);

(B) "Health plan" or "health benefit plan" as defined in RCW 48.43.005;

(C) Self-funded multiple employer welfare arrangement as defined in RCW 48.125.010;

(D) "Qualified health insurance" as defined in Section 35 of the Internal Revenue Code;

(E) "Archer MSA" as defined in Section 220 of the Internal Revenue Code;

(F) "Health savings plan" as defined in Section 223 of the Internal Revenue Code;

(G) "Health plan" qualifying under Section 213 of the Internal Revenue Code;

(H) Governmental plans; and

(I) Church plans.

(ii) "Health care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(b) **What are dental benefits?** "Dental benefits" means a dental health plan offered by an employer as a benefit to its employees. "Dental health plan" has the same meaning as "health plan" in (a) of this subsection, but is for the purpose of providing for employees or their beneficiaries, through the purchase of insurance or otherwise, dental care services. "Dental care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease of human teeth, alveolar process, gums, or jaw.

(c) **What are retirement benefits?** "Retirement benefits" means compensation, not paid as wages, in the form of a retirement plan offered by an employer to its employees. An employer contribution to the retirement plan is not required for a retirement plan to be employer-provided. A "retirement plan" means any plan, account, deposit, annuity, or benefit, other than a life insurance policy, that provides for retirement income or deferred income to employees for periods after

employment is terminated. The term includes pensions, annuities, stock bonus plans, employee stock ownership plans, profit sharing plans, self-employed retirement plans, individual retirement accounts, individual retirement annuities, and retirement bonds, as well as any other plan or program, without regard to its source of funding, and without regard to whether the retirement plan is a qualified plan meeting the guidelines established in the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code.

(d) **The following facts apply to the examples in (d)(i) through (v) of this subsection.** Medical Resource, Inc. is a pharmaceutical manufacturer that receives a deferral of taxes under chapter 82.60 RCW for sales and use taxes on an eligible investment project in a high unemployment county. It employs two hundred full-time employees and fifty part-time employees. Medical Resource also hires a staffing company to furnish seventy-five workers.

(i) **Example 19.** Medical Resource offers its employees two different health plans as a medical benefit. Plan A is available at no cost to full-time employees. Employees are not eligible to participate in Plan A until completing thirty days of employment. Plan B costs employees $200 each month. Full-time and part-time employees are eligible for Plan B after six months of employment. One hundred full-time employees are enrolled in Plan A. One hundred full-time and part-time employees are enrolled in Plan B. Forty full-time and part-time employees chose not to enroll in either plan. Ten part-time employees are not yet eligible for either Plan A or Plan B. Medical Resource must report two hundred employees as having employer-provided medical benefits, because that is the number of employees enrolled in the health plans it offers.

(ii) **Example 20.** Medical Resource does not offer medical benefits to the employees of the staffing company. However, twenty-five of these workers have enrolled in a health plan through the staffing company. Medical Resource must report these twenty-five employment positions as having employer-provided medical benefits.

(iii) **Example 21.** Medical Resource does not offer its employees dental insurance, but has arranged with a group of dental providers to provide all employees with a 30% discount on any dental care service. Medical Resource employment is the sole requirement to receive this benefit. Unlike the medical benefit, employees are eligible for the dental benefit as of the first day of employment. This benefit is not provided to the workers furnished by the staffing company. Medical Resource must report two hundred and fifty employment positions as having dental benefits, because that is the number of employees enrolled in this dental plan.

(iv) **Example 22.** Medical Resource offers a 401(k) Plan to its full-time and part-time employees after six months of employment. Medical Resource makes matching contributions to an employee's 401(k) Plan after two years of employment. On December 31st, two hundred and twenty-five workers are eligible to participate in the 401(k) Plan. Two hundred workers are enrolled in the 401(k) Plan. One hundred of these workers receive matching contributions. Medical Resource must report two hundred employment positions as having employer-provided retirement benefits, because that is the number of employees enrolled in the 401(k) Plan.

(v) **Example 23.** Medical Resource coordinates with a bank to insert information in employee paycheck envelopes on the bank's Individual Retirement Account (IRA) options offered to bank customers. Employees who open an IRA with the bank can arrange to have their con-

tributions directly deposited from their paychecks into their accounts. Fifty employees open IRAs with the bank. Medical Resource 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's participation or sponsorship of the benefit.

(10) **Is the annual survey confidential?** The annual survey is subject to the confidentiality provisions of RCW 82.32.330. However, information on the amount of tax preference taken is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public, except as provided in (c) of this subsection.

(a) **Failure to timely file a complete annual survey subject to disclosure.** If a taxpayer fails to timely file a complete annual survey, then the amount required to be repaid as a result of the taxpayer's failure to file a complete annual survey is not confidential and may be disclosed to the public.

(b) **Amount reported in annual survey is different from the amount claimed or allowed.** If a taxpayer reports a tax preference amount on the annual survey that is different than the amount actually claimed on the taxpayer's tax returns or otherwise allowed by the department, then the amount actually claimed or allowed may be disclosed.

(c) **Tax preference is less than ten thousand dollars.** If the tax preference is less than ten thousand dollars during the period covered by the annual survey, the taxpayer may request that the department treat the amount of the tax preference as confidential under RCW 82.32.330.

(11) **What are the consequences for failing to timely file a complete annual survey?**

(a) **What is a "complete annual survey"?** An annual survey is complete if:

(i) The annual survey is filed on the form required by this rule or in an electronic format as required by law; and

(ii) The person makes a good faith effort to substantially respond to all survey questions required by this rule.

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

(b) **Amounts due for late filing.** Unless the tax preference is a deferral of tax, as described in (c) of this subsection, or as otherwise provided by law, if a person claims a tax preference that requires an annual survey under this rule, but fails to submit a complete survey by the due dates described in subsection (3)(e) of this rule, or any extension under RCW 82.32.590, the following amounts are immediately due and payable:

(i) For surveys due prior to July 1, 2017, one hundred percent of the amount of the tax preference claimed for the previous calendar year. Interest, but not penalties, will be assessed on the amounts due at the rate provided for under RCW 82.32.050, retroactively to the date the tax preference was claimed, and accruing until the taxes for which the tax preference was claimed are repaid.

(ii) For surveys due on or after July 1, 2017:

(A) Thirty-five percent of the amount of the tax preference claimed for the previous calendar year; and

(B) An additional fifteen percent of the amount of the tax preference claimed for the previous calendar year if the person has previously been assessed under (b)(ii) of this subsection for failure to timely submit a survey for the same tax preference.

(c) **Tax deferrals.** If the tax preference is a deferral of tax, twelve and one-half percent of the deferred tax is immediately due. If the economic benefits of the deferral are passed to a lessee, the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(d) **Interest and penalties.** The department may not assess interest or penalties on amounts due under (b)(ii) and (c) of this subsection.

(e) **Extension for circumstances beyond the control of the taxpayer.** If the department finds the failure of a taxpayer to file an annual survey by the due date was the result of circumstances beyond the control of the taxpayer, the department will extend the time for filing the survey. The extension will be for a period of thirty days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this rule. The department may grant additional extensions as it deems proper under RCW 82.32.590.

In determining whether the failure of a taxpayer to file an annual survey by the due date was the result of circumstances beyond the control of the taxpayer, the department will apply the provisions in WAC 458-20-228 for the waiver or cancellation of penalties when the underpayment or untimely payment of any tax was due to circumstances beyond the control of the taxpayer.

(f) **One-time only extension.** A taxpayer who fails to file an annual survey, as required under this rule, by the due date of the survey is entitled to an extension of the due date. A request for an extension under this subsection must be made in writing to the department.

(i) To qualify for an extension, a taxpayer must have filed all annual reports and surveys, if any, due in prior years by their respective due dates, beginning with annual reports and surveys due in the calendar year 2010.

(ii) 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.