

# Special Notice

*Intended audience: Agricultural industry*

**Oct. 7, 2021**

## Farmworker housing sales and use tax exemptions

Starting October 1, 2021, the farmworker housing sales and use tax exemption for costs related to building or maintaining farmworker housing will be expanded.

This exemption was expanded to include labor and services used to construct, repair, decorate, or improve new or existing structures, in which at least 50% of housing units in the development are used as farmworker housing. This also includes the sales of tangible personal property that become ingredients or components of the new or existing building or other structures. The sales tax exemption is provided for all housing units in the development, and is available if the buyer provides the seller with a [Farmer's Certificate for Wholesale Purchases and Sales Tax Exemptions](#).

This sales and use tax exemption for farmworker housing will expire on January 1, 2032.

## What requirements must be met for the farmworker housing to be exempt from sales and use tax?

In order to claim the farmworker housing sales and use tax exemption, you must meet all of the following conditions:

- At least 50% of the housing units in the development are used as farmworker housing.
- If the farmworker housing is provided on a year-round basis, the single-family or multifamily dwellings must be built according to the state code ([Chapter 19.27 RCW](#)).
- Farmworker housing must be used for at least five consecutive years from the date the housing is approved for occupancy.

## What happens if the farmworker housing requirements are not met?

The full amount of tax is due immediately, including interest, from the date the housing is approved for occupancy until the date of payment, if either of the following occur:

- The farmworker housing is not used in accordance with the law for five consecutive years from the date the housing is approved for occupancy.

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- The farmworker housing is not built according to the current building code.

## Is there housing that is not eligible for the farmworker housing exemption?

Yes. The farmworker housing exemption does not apply to the following types of housing:

- Housing built for the employer, family members of the employer, or persons owning stock or shares in a farm partnership or corporation business.
- Housing built exclusively for workers in the United States on an H-2A visa.

## Can farmworker housing qualify for this tax exemption if it is not used exclusively for H-2A visa workers?

If, at any time in the consecutive five-year period, the farmworker housing is occupied by at least one farmworker who does not have an H-2A visa, the housing will not be considered to be built exclusively for H-2A visa farmworkers. Accordingly, the farmworker housing would qualify for the exemption.

## Filing requirements

There is no comparable business and occupation (B&O) tax exemption for sellers of services and tangible personal property subject to this tax preference. Income from sales of material and labor for farmworker housing continues to be subject to B&O tax under the retailing classification. When reporting on the Combined Excise Tax Return, sellers must:

- Report under the retailing B&O tax classification for retail sales.
- Deduct the amount of the sale under the retail sales classification, using the deduction "Farmworker Housing."

## Required documentation

The agricultural employer must substantiate the following required documentation to be eligible for the farmworker housing sales tax exemption:

- Complete the [Petition for a Nonimmigrant Worker](#) (Form I-129 (USCIS)) for each farmworker who has an H-2A visa. This form is available at [www.uscis.gov](http://www.uscis.gov).
- Keep records of farmworker income, such as payroll records. In addition, agricultural employers must maintain records of the residential location of, and income received by, each farmworker.

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## Definitions

**Agricultural employer** or **employer** has the same meaning as given in [RCW 19.30.010](#), and includes any employer engaged in aquaculture.

**Farm work** means services relating to any of the following:

- Cultivating the soil, raising or harvesting, or catching, netting, handling, planting, drying, packing, grading, storing, or preserving in its unmanufactured state any agricultural or aquaculture commodity.
- Delivery to storage, market, or a carrier for transportation to market or to processing any agricultural or aquacultural commodity.
- Working in a processing plant and directly handling agricultural or aquacultural product.

**Farmworker means:**

- Single person, or all members of a household, whether such persons are related or not, if the combined household income earned from farm work is at least \$3,000 per calendar year.

**Farmworker housing** includes both of the following:

- Housing occupied by a household with at least one member who is a farmworker.
- Housing occupied by a farmworker on a seasonal basis, where the housing is not used as farmworker housing for a portion of the year, such as when it is rented to the general public.

Farmworker housing does **not** include any of the following:

- Housing regularly provided on a commercial basis to the general public.
- Housing provided by a housing authority unless at least 80% of the occupants are farmworkers whose adjusted income is less than 50% of the median family income, adjusted for household size, for the county where the housing is provided.
- Housing provided to farmworkers providing services related to the growing, raising, or producing of Marijuana.

## More information

- For information on the bill change and the laws, see [RCW 82.08.02745](#), [RCW 82.12.02685](#), and [2SSB 5396, Chapter 250, Laws of 2021](#).
- For information about the form for [Petition for a Nonimmigrant Worker](#) (Form I-129 (USCIS)), please visit [uscis.gov](#).

## Questions?

For questions about excise taxes, please visit [dor.wa.gov](#) or call 360-705-6705.

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