



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Revenue

Permanent Rule Only

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: WAC 458-30-200 *Definitions (Open Space Taxation Act Rules)* provides definitions for the terms used in conjunction with land classified under the Open Space Taxation Act, codified as chapter 84.34 RCW.

The Department has amended WAC 458-30-200 to recognize and incorporate legislation from recent years:

- SSB 5359 (2011), which amended the definition of “contiguous” land;
- E2SHB 1597 (2010), which made technical and administrative corrections;
- EHB 1815 (2009), which amended provisions related to the income or investment requirements for parcels of “farm and agricultural land” between five and twenty acres; and
- SHB 1733 (2009), which amended provisions relating to land used primarily for equestrian related activities for which a charge is made.

Citation of existing rules affected by this order:

- Repealed:
- Amended: WAC 458-30-200 *Definitions (Open Space Taxation Act Rules)*
- Suspended:

Statutory authority for adoption: RCW 84.08.070 and 84.08.010(2)

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 12-01-046 on December 14, 2011.
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: **An analysis was not prepared.**

Date adopted:

March 19, 2012

NAME

Alan R. Lynn

SIGNATURE

TITLE

Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: March 19, 2012
TIME: 2:09 PM

WSR 12-07-059

**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:

Federal statute:	New	Amended		Repealed
Federal rules or standards:	New	Amended		Repealed
Recently enacted state statutes:	New	Amended	1	Repealed

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

	New	Amended		Repealed
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The number of sections adopted in the agency's own initiative:

	New	Amended	1	Repealed
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	Amended		Repealed
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The number of sections adopted using:

Negotiated rule making:	New	Amended		Repealed
Pilot rule making:	New	Amended		Repealed
Other alternative rule making:	New	Amended		Repealed

This rule was adopted on March 19, 2012 and becomes effective April 19, 2012. It may be used to determine tax liability on and after the effective date, until the codified version is available from the code reviser's office.

AMENDATORY SECTION (Amending WSR 02-20-041, filed 9/24/02, effective 10/25/02)

WAC 458-30-200 Definitions. (1) **Introduction.** This ~~((rule))~~ section provides definitions for the terms used in conjunction with land classified under the Open Space Taxation Act, codified as chapter 84.34 RCW. The terms listed in this ~~((rule))~~ section are intended to act in concert with each other as appropriate.

(2) **Definitions.** For purposes of land classified under chapter 84.34 RCW, the following definitions apply:

(a) "Additional tax" means the additional property taxes that will be collected when classification is withdrawn or removed from land classified under chapter 84.34 RCW.

(b) "Affidavit" means the real estate excise tax affidavit required by chapter 82.45 RCW and chapter 458-61 WAC. The affidavit will be prescribed by the department and furnished to county treasurers. This form is used by landowners to report sales or transfers of classified land. The owner or transferor and the purchaser or transferee, or agents of each, must sign the affidavit under penalty of perjury.

(c) "Agreement" means an agreement executed between an owner and the granting authority regarding the classification or reclassification of land as either open space or timber land under chapter 84.34 RCW.

(d) "Agricultural product" means livestock and plants that are produced for commercial purposes and includes any agricultural, horticultural, or aquacultural produce or crop; the raising of livestock, poultry, bees, or fur-bearing animals; or the production of milk, eggs, wool, fur, meat, honey, or other substances obtained therefrom. When used in relation to livestock or fur-bearing animals used for food or fiber, "raising" means breeding or increasing the value, size, or weight of the animal.

(e) "Applicant" means the owner who submits an application for classification or reclassification of land under chapter 84.34 RCW.

~~((+e))~~ (f) "Application" means an application for classification or reclassification of land under chapter 84.34 RCW.

~~((+f))~~ (g) "Approval" means a determination by the granting authority that land qualifies for classification or reclassification under chapter 84.34 RCW.

~~((g))~~ (h) "Appurtenance" refers to something used with, and related to or dependent upon another thing; that is, something that belongs to something else, an adjunct. The thing appurtenant is strictly necessary and essential to the proper use and enjoyment of the land, as well as useful or necessary for carrying out the purposes for which the land was classified under chapter 84.34 RCW.

(i) In terms of farm and agricultural land, an appurtenance is something used for a particular sort of farm and is widely and routinely used in the operation of the commercial agricultural enterprise.

(ii) For example, an appurtenance may be an outhouse, barn, or tool shed (~~attached to or adjoining a dwelling~~) or it may be equipment used for a particular purpose or task, such as tools, instruments, or machinery.

~~((h))~~ (i) "Aquaculture" means the growing and harvesting of marine or fresh water flora or fauna in a soil or water medium for commercial agricultural (~~activities~~) purposes.

~~((i))~~ (j) "Assessor" means the county assessor or any agency or person who is authorized to act on behalf of the assessor.

~~((j))~~ (k) "Assessment year" means the year in which the property is listed and valued by the assessor and precedes the year in which the taxes on the property are due and payable.

~~((k))~~ (l) "Change in use" means a direct action taken by an owner that actually changes the use of, or has started changing the use of, classified land to a use that is not in compliance with the conditions of the agreement executed between the owner and the granting authority or to a use that is otherwise not in compliance with the provisions of chapter 84.34 RCW (see WAC 458-30-295).

~~((l))~~ (m) "Classified land" means a parcel(s) of land that has been approved by the appropriate granting authority for taxation under chapter 84.34 RCW.

~~((m))~~ (n) "Commercial agricultural purposes" means the use of land on a continuous and regular basis, prior to and subsequent to application for classification or reclassification, that demonstrates that the owner or lessee is engaged in and intends to obtain through lawful means, a monetary profit from cash income (~~received by engaging in the following commercial agricultural activities:~~

- ~~(i) Raising, harvesting, and selling lawful crops;~~
- ~~(ii) Feeding, breeding, managing, and selling of livestock, poultry, fur-bearing animals, or honey bees, or any products thereof;~~
- ~~(iii) Dairying or selling of dairy products;~~
- ~~(iv) Animal husbandry;~~
- ~~(v) Aquaculture;~~
- ~~(vi) Horticulture;~~

~~(vii) Participating in a government funded crop reduction or acreage set aside program; or~~

~~(viii) Cultivating Christmas trees or short rotation hardwoods on land that has been prepared by intensive cultivation and tilling, such as by plowing or turning over the soil, and on which all unwanted plant growth is controlled continuously for the exclusive purpose of growing such trees)) by producing an agricultural product. In addition, commercial agricultural purposes include the following uses of agricultural land:~~

(i) Land enrolled in the federal conservation reserve program or its successor administered by the United States Department of Agriculture;

(ii) Land used primarily for equestrian related activities for which a charge is made, including but not limited to stabling, training, riding, clinics, schooling, shows, or grazing for feed;

(iii) Land used for incidental uses that do not exceed twenty percent of the total classified land and are compatible with commercial agricultural purposes;

(iv) Land on which appurtenances necessary to the production, preparation, or sale of the agricultural products exist in conjunction with the lands producing such products;

(v) Land on which employee housing or the principal residence of the farm owner or operator is located, if the housing or residence is on or contiguous to a classified parcel of twenty acres or more, and the use of the housing or the residence is integral to the use of the classified land for agricultural purposes;

(vi) Land, one to five acres which is not contiguous to a classified parcel, that constitutes an integral part of the farming operation being conducted on land qualifying as "farm and agricultural land";

(vii) Cultivating Christmas trees or short rotation hardwoods, or growing other standing crops on land that has been prepared by intensive cultivation and tilling, such as by plowing or turning over the soil, and on which all unwanted plant growth is controlled continuously for the exclusive purpose of growing such trees or other standing crops.

An owner or lessee must engage in commercial agricultural activities on the land to demonstrate a commercial agricultural purpose.

~~((n))~~ (o) "Contiguous" means land that adjoins and touches other land owned by the same owner or held under the same ownership. Land that is an integral part of a farming operation is considered contiguous even though the land may be separated by a public road, railroad, right of way, or waterway.

For purposes of this subsection (2)(o):

(i) "Same ownership" means owned by the same person or

persons, except that parcels owned by different persons are deemed held by the same ownership if the parcels are:

(A) Managed as part of a single operation; and

(B) Owned by:

(I) Members of the same family;

(II) Legal entities that are wholly owned by members of the same family; or

(III) An individual who owns at least one of the parcels and a legal entity or entities that own the other parcel or parcels if the entity or entities are wholly owned by that individual, members of his or her family, or that individual and members of his or her family.

(ii) "Family" includes only:

(A) An individual and his or her spouse or domestic partner, child, stepchild, adopted child, grandchild, parent, stepparent, grandparent, cousin, or sibling;

(B) The spouse or domestic partner of an individual's child, stepchild, adopted child, grandchild, parent, stepparent, grandparent, cousin, or sibling;

(C) A child, stepchild, adopted child, grandchild, parent, stepparent, grandparent, cousin, or sibling of the individual's spouse or the individual's domestic partner; and

(D) The spouse or domestic partner of any individual described in this subsection (2)(o)(i)(B)(III).

~~((+o))~~ (p) "County financial authority" and "financial authority" mean the treasurer or any agency or person charged with the responsibility of billing and collecting property taxes.

~~((+p))~~ (q) "County legislative authority" means the county commission, council, or other legislative body.

~~((+q))~~ (r) "County recording authority" means the auditor or any agency or person charged with the recording of documents.

~~((+r))~~ (s) "Current" and "currently" means as of the date on which property is to be listed and valued by the assessor.

~~((+s))~~ (t) "Current use value" means the taxable value of a parcel of land placed on the assessment rolls following its classification or reclassification under chapter 84.34 RCW.

~~((+t))~~ (u) "Department" means the department of revenue.

~~((+u))~~ (v) "Farm woodlot" means an area of land within a parcel(s) of classified farm and agricultural land that is used in a manner compatible with commercial agricultural ~~((activities))~~ purposes including, but not limited to, the growing and cutting of trees for the use of the owner or the sheltering of livestock.

~~((+v))~~ (w) "Granting authority" means the appropriate agency or official that acts on an application for classification or reclassification under chapter 84.34 RCW. The granting authority for:

(i) Open space classification under RCW 84.34.020(1) and

84.34.037 is the county legislative authority. However, for applications within an incorporated area of a county, the granting authority is made up of three members of the county legislative body and three members of the city legislative body in the county in which the land is located;

(ii) Farm and agricultural classification under RCW 84.34.020(2) and 84.34.035 is the assessor or the assessor's designee; and

(iii) Timber land classification under RCW 84.34.020(3) and 84.34.041 is the county legislative authority. However, for applications within an incorporated area of a county, the granting authority is made up of three members of the county legislative body and three members of the city legislative body in the county in which the land is located.

~~((w))~~ (x) "Gross income" means cash income derived from commercial agricultural ~~((activities, including))~~ purposes, as defined in (n) of this subsection. Gross income includes payments received from the United States Department of Agriculture for participating in a crop reduction or acreage set-aside program when such payments are based on the productive capacity of the land. It also includes the wholesale value of agricultural products produced from any parcel of classified land of at least five acres but less than twenty acres in which the agricultural products are donated to nonprofit food banks or feeding programs. The term ~~((shall))~~ does not include the following:

(i) The value of any products produced on the land and consumed by the owner or lessee;

(ii) Cash income derived from leases for the use of the land for noncommercial agricultural activities; ~~((or))~~

(iii) Payments for soil conservation programs; or

(iv) The value represented from an exchange of goods or services for other goods or services (bartering).

~~((x))~~ (y) "Incidental use" means a use of land classified as farm and agricultural land or timber land that is compatible with commercial agricultural ~~((activities if it does not exceed twenty percent of the classified land))~~ purposes or the commercial growing and harvesting of timber. Incidental use for land classified as farm and agricultural land cannot exceed twenty percent of the total classified land, while incidental use for timber land cannot exceed ten percent of the total classified land. An incidental use may include, but is not limited to, wetland preservation, a gravel pit, a farm woodlot, or a produce stand.

~~((y))~~ (z) "Integral" means that which is central to or inherent in the use or operation of classified farm and agricultural land for commercial agricultural ~~((activities))~~ purposes.

~~((z))~~ (aa) "Interest" means the amount of applicable

interest upon additional tax.

~~((aa))~~ (bb) "Net cash rental" means the earning or productive capacity of farm and agricultural land less the production costs customarily or typically paid by an owner or landlord. See WAC 458-30-260 for a more detailed explanation.

~~((bb))~~ (cc) "Notice of continuance" means the notice signed when land classified under chapter 84.34 RCW is sold or transferred if the new owner of the land intends to continue the classified use of the land and elects to have the land remain classified under chapter 84.34 RCW. This notice is part of the real estate excise tax affidavit or may be a separate document prepared by the department and attached to this affidavit.

~~((ee))~~ (dd) "Owner" means:

(i) Any person(s) having a fee interest in a parcel of land; or

(ii) The contract vendee when the land is subject to a real estate contract.

~~((dd))~~ (ee) "Parcel of land" means a property identified as such on the assessment roll. For purposes of chapter 84.34 RCW and this WAC chapter, a parcel ~~((shall))~~ does not include any land area not owned by the applicant including, but not limited to, a public road, right of way, railroad, or waterway.

~~((ee))~~ (ff) "Penalty" means the amount due when land is removed from classification under chapter 84.34 RCW. The amount of the penalty is equal to twenty percent of the additional tax and interest calculated in accordance with RCW 84.34.080 or 84.34.108.

~~((ff))~~ (gg) "Planning authority" means the local government agency empowered by the appropriate legislative authority to develop policies and proposals relating to land use.

~~((gg))~~ (hh) "Primary use" means the existing use of a parcel or parcels of land so prevalent that when the characteristic use of the land is evaluated a conflicting or nonrelated use appears to be very limited or excluded. The primary use of a parcel does not represent a specific percentage of the total classified land.

~~((hh))~~ (ii) "Qualification of land" means the approval of an application for classification or reclassification of land by a granting authority in accordance with chapter 84.34 RCW.

~~((ii))~~ (jj) "Rating system" means a public benefit rating system adopted for classified open space land according to RCW 84.34.055.

~~((jj))~~ (kk) "Reclassification" means the process by which land classified under chapter 84.34 or 84.33 RCW is changed from one classification to a different classification established by chapter 84.34 RCW or into forest land as described in chapter 84.33 RCW. For example, land classified as farm and agricultural land under RCW 84.34.020(2) may be reclassified as

open space land under RCW 84.34.020(1).

~~((kk))~~ (ll) "Removal" or "removed" means land classified under chapter 84.34 RCW is removed from classification by the assessor either because the owner requests removal, the new owner fails to sign the notice of ~~((classification))~~ continuance, the assessor does not approve a notice of continuance, or the land is no longer being used for the purpose for which classification was granted.

~~((ll))~~ (mm) "Sale of ownership" means the conveyance of the ownership of a parcel of land in exchange for valuable consideration.

~~((mm))~~ (nn) "Standing crop" includes short rotation hardwoods, Christmas trees, vineyards, fruit trees, or other perennial crops that:

(i) Are planted using agricultural methods normally used in the commercial production of that particular crop; and

(ii) Typically do not produce harvestable quantities in the initial years after planting.

(oo) "Tax year" means the year when property tax is due and payable.

~~((nn))~~ (pp) "Timber management plan" means the plan filed with the county legislative authority or the assessor when classified timber land is sold or transferred. It is synonymous with a "forest management plan" and details an owner's plan regarding the management of classified timber land including, but not limited to, the planting, growing and/or harvesting of timber. The elements of such a plan are set forth in WAC 458-30-232.

~~((oo))~~ (qq) "Transfer" means the conveyance of the ownership of a parcel of land without an exchange of valuable consideration and may include situations where classified land is donated to an owner, corporation, partnership, or limited liability corporation.

~~((pp))~~ (rr) "True and fair value" is the value of a parcel of land placed on the assessment rolls at its highest and best use without regard to its current use. The term also refers to market value, that is, the amount of money a buyer of property willing, but not obligated to buy would pay a seller of property willing but not obligated to sell, taking into consideration all uses to which the property is adapted and might reasonably be applied.

~~((qq))~~ (ss) "Withdrawal" or "withdrawn" means action taken by the owner of land classified under chapter 84.34 RCW by filing a notice of request to withdraw the land from classification under the current use program in compliance with RCW 84.34.070. Once land has been classified under chapter 84.34 RCW, it must remain so classified for at least ten years from the date of classification. At any time after eight years of the initial ten-year classification period have elapsed, the

owner may file a notice of request to withdraw all or a portion of the land from classification with the assessor of the county in which the land is located. Land is withdrawn from classification as a result of a voluntary act by the owner.