

This rule was adopted on April 26, 2010 and becomes effective May 27, 2010. 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 Order 86-17, filed 9/23/86)

**WAC 458-20-134 Commercial or industrial use.** (1)  
**Introduction.** "The term 'commercial or industrial use' means the following uses of products, including by-products, by the ~~((extractor))~~ same person that extracted or ~~((manufacturer thereof))~~ manufactured them:

(a) Any use as a consumer; and  
(b) The manufacturing of articles, substances or commodities." (RCW 82.04.130.)

(2) **Examples of commercial or industrial use.** The following are examples of commercial or industrial use:

(a) The use of lumber by the manufacturer ~~((thereof))~~ of that lumber to build a shed for its own use.

(b) The use of a motor truck by the manufacturer ~~((thereof))~~ of that truck as a service truck for itself.

(c) The use by a boat manufacturer of patterns, jigs and dies which it has manufactured.

(d) The use by a contractor building or improving a publicly owned road of crushed rock or pit run gravel which it has extracted.

(3) **Business and occupation tax.** Persons manufacturing or extracting tangible personal property for commercial or industrial use are subject to tax under the manufacturing or extracting B&O tax classifications ~~((manufacturing or extracting))~~, as the case may be. The tax is measured by the value of the product manufactured or extracted and used. (See WAC 458-20-112 for definition and explanation of value of products.)

(4) **Use tax.** Persons manufacturing or extracting tangible personal property for commercial or industrial use are subject to use tax on the value of the articles used, unless a specific exemption is provided. (See WAC 458-20-178 for further explanation of the use tax and definition of value of the article used.)

(5) **Exemptions.** The following uses of articles produced for commercial or industrial use are expressly exempt of use tax.

(a) RCW 82.12.0263 exempts from the use tax the use of fuel by the ~~((extractor))~~ same person that extracted or ~~((manufacturer thereof))~~ manufactured that fuel when it is used

directly in the operation of the particular extractive operation or manufacturing plant which produced or manufactured the same. (~~(Example: The use of hog fuel to produce heat or power in the same plant which produced it.)~~)

(b) (~~Effective April 3, 1986, (chapter 231, Laws of 1986)~~) Property produced for use in manufacturing ferrosilicon which is subsequently used to make magnesium for sale is exempt of use tax if the primary purpose is to create a chemical reaction directly through contact with an ingredient of ferrosilicon. (RCW 82.04.190(1).)

(c) Effective July 1, 2009, hog fuel used to produce electricity, steam, heat, or biofuel is exempt from use tax. RCW 82.12.956. For the purposes of this exemption, "hog fuel" means wood waste and other wood residuals including forest derived biomass, but not including firewood or wood pellets. "Biofuel" has the same meaning as provided in RCW 43.325.010.

(6) (~~RCW 82.12.010 provides that in the case of articles manufactured for commercial or industrial use by manufacturers selling to the United States Department of Defense, the value of the articles used shall be determined according to the value of the ingredients of such articles, rather than the full value of the manufactured articles as is normally the case.~~) **Special provisions regarding value of article used.** RCW 82.12.010 provides the following special valuation provisions to persons manufacturing products for commercial or industrial use:

(a) In the case of articles manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the United States Department of Defense, the value of the articles used is determined according to the value of the ingredients of those articles.

(b) In the case of an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product, the value of the article used is determined by:

□ The retail selling price of such new or improved product when first offered for sale; or

□ The value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.