

This rule was adopted on February 25, 2010 and becomes effective March 28, 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 WSR 99-09-013, filed 4/13/99, effective 5/14/99)

**WAC 458-20-226 Landscape and horticultural services.** (1)  
**Introduction.** This (~~rule~~) section provides tax reporting instructions for persons who provide landscape and horticultural services. This (~~rule~~) section does not apply to silvicultural activities or to horticultural services provided to farmers. Silviculture means the commercial production of timber and includes activities such as growing seed into seedlings, planting, fertilizer and pesticide application, pruning and thinning as provided to timber growers. Silvicultural activities are generally subject to the extracting B&O tax classification or the service and other business activities B&O tax classification. (See WAC 458-20-135 and 458-20-224.)

(2) **Retail landscape and horticultural services.** Landscape and horticultural services which are retail sales include:

(a) Grading, filling, leveling, planting, seeding, sodding, removing, cutting, trimming, pruning, mulching, aerating, applying chemicals, watering, and fertilizing to establish, promote, or control the growth of trees, shrubs, flowers, grass, ground cover and other flora for ornamentation or other nonagricultural purposes.

(b) The sale or rental of landscaping materials and the construction of sprinkling systems, walks, pools, fences, trellises, rockeries, and retaining walls.

(c) Cultivating fruits, flowers, and vegetables for consumers other than farmers.

(d) All tree trimming other than for farmers or persons engaged in silviculture. This includes all trimming for size, shape, aesthetics, removal of diseased branches, and removal of limbs because they are too close to structures. It does not include tree trimming performed for public and private electric utilities or at the direction of electric utilities to keep power lines, distribution lines, or equipment free of tree branches or brush.

(3) **Nonretail landscape and horticultural services.** Landscape and horticultural services which are not retail sales include:

(a) Landscape design services performed by a landscape architect separate from a contract for landscape maintenance.

(b) Planting trees for farmers.

(c) Thinning or planting of trees for persons who are involved in the commercial production of timber. These are silvicultural activities and silvicultural activities are not considered to be horticultural or landscape maintenance activities. (See WAC 458-20-135 and 458-20-209.)

(d) Landscape services performed for municipal corporations or political subdivisions of the state on real property owned by those entities if the real property is used or held for public road purposes. (See WAC 458-20-171.)

(e) Horticultural services, including spraying and fertilizing, performed for farmers for agricultural purposes. See WAC 458-20-209 for examples of horticultural services performed for farmers.

(f) Pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility. The removing and clearing of trees includes the stump removal by grinding, digging, or any other means, if performed by or at the direction of an electric utility. These are retail activities when not performed by or at the direction of an electric utility.

(4) **Business and occupation tax.** The business and occupation (B&O) tax applies as follows.

(a) **Retailing.** The gross income from landscape and horticultural services which are retail sales and which are performed for consumers is taxable under the retailing classification.

(b) **Wholesaling.** The gross income from services which are retail sales and which are performed for other contractors for resale is taxable under the wholesaling classification.

(c) **Service.** The gross income from horticultural services provided to farmers is taxable under the service and other activities classification. This tax classification also applies to income received from pruning, tree trimming, removing and clearing of trees and brush near electric lines, if performed by or at the direction of an electric utility. (~~Beginning July 1, 1998,~~) Income from services performed by landscape architects is also subject to ((this)) the service and other activities classification. ((See chapter 7, Laws of 1997.) For the period July 1, 1993, through June 30, 1998, landscape architects who performed design services were taxable under the selected business service tax classification.) RCW 82.04.290.

(d) **Public road construction.** Persons who perform landscape services for municipal corporations or political subdivisions of the state on real property owned by those entities are taxable under the public road construction B&O tax classification, but only if the real property is used or held for public road purposes.

(e) **Government contracting.** This classification applies to persons engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures for the United States, or a city or county housing authority created under chapter 35.82 RCW. This classification would include the construction or maintenance of items such as walls, fences, walks, pools and other structures. This classification does not include the planting of lawns or trees or the cutting of grass or tree trimming performed for these customers. These activities are subject to the retailing classification.

(5) **Retail sales and use tax.** Landscape gardeners and horticulturists, except horticulturists performing services for farmers, must generally collect and report the retail sales tax upon the full contract price when performing landscaping or horticultural services for consumers. For purposes of collecting the local option retail sales tax, the sale takes place where the service is performed. See WAC 458-20-145. The retail sales tax does not apply to charges to the United States for landscape services, including landscape maintenance services, and sellers may take a deduction from the retail sales tax classification in reporting those sales which are taxable under the retailing B&O tax classification.

(a) Persons performing a landscaping or horticultural service for a contractor for resale must provide a resale certificate(~~(. — See WAC 458-20-102.)~~) for sales made before January 1, 2010, or a reseller permit for sales made on or after January 1, 2010, to document the wholesale nature of any sale as provided by 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 a seller for five years from the date of last use or December 31, 2014.

(b) Landscape gardeners and horticulturists must pay the retail sales tax to their vendors when purchasing tools, equipment, and supplies which are not resold, either directly or as a component part of the finished work. They must pay deferred sales or use tax directly to the department upon the value of any such property that was purchased or acquired without payment of Washington retail sales tax.

(c) Plants, shrubs, trees, sod, seed, chemicals, fertilizer, peat moss, sprinkler systems, rocks, building materials and any other tangible personal property which becomes a part of the finished work may be purchased for resale, except items used in providing horticultural services for farmers and items used in performing public road construction, government contracting, or services for timber growers.

(d) Retail sales tax or use tax is due with respect to items purchased by horticulturists for use in performing

services for farmers. (See also WAC 458-20-209.)

(e) Retail sales tax or use tax is due with respect to items purchased for use in performing services for timber growers or which are taxable as either public road construction or government contracting. This includes items such as sod, seed, trees, building materials, fertilizers, spray materials, etc.

(f) The retail sales tax does not apply to the charge made by persons performing tree trimming near electric transmission or distribution lines, but only if the work is performed at the direction of an electric utility. Persons performing these services must pay retail sales or use tax on all materials, supplies, tools, and equipment used in performing the service.

(6) **Examples.** The following examples 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.

(a) John Doe, a landscaper, was hired by a city to maintain the landscaping around the buildings at the city's municipal golf courses. He must collect and report the retail sales tax and pay retailing B&O tax on the full contract amount.

(b) John Doe purchased several plants, some fertilizer, and insect spray to use in landscaping the golf course. He also purchased some solvent and mineral oil to clean and maintain some of his landscaping tools. His purchases of the plants, fertilizer and insect spray are purchases for resale. He must pay retail sales tax to his vendors on his purchases of the solvent and mineral oil.

(c) Landscaping company provides complete landscaping services including landscape design by a licensed landscape architect, installation, and maintenance. Landscaping charged Jane Smith two hundred dollars for a landscaping plan for her new home. She planned to purchase the plants and do the landscaping work herself. Landscaping must report B&O tax on the charge for the design service at the service and other activities classification rate.

(d) Landscaping company entered into a contract to landscape the yard for a client's new home. The company must collect and report retail sales tax and pay retailing B&O on the full contract amount, even though part of Landscaping's services included drawing a landscaping plan.

(e) Landscaping company entered into a two-phase contract with a county. Phase one required the company to plant trees and shrubs and put in a sprinkling system as part of a public road project. The sprinkler system is located in the public road right of way. The contract provided Landscaping would receive five hundred thousand dollars for phase one of the project. Phase two provided that Landscaping would maintain the

trees and shrubs for a period of five years. The contract provided for payments of four thousand dollars per month plus costs for fertilizer and spray for maintaining the planted strips.

(i) Phase one is part of public road construction and Landscaping is taxable under the public road construction classification upon the five hundred thousand dollars received for phase one. The company must pay sales tax when purchasing the trees and shrubs and materials for the sprinkling system for use in phase one of the project. See WAC 458-20-171 for the tax liability for public road construction.

(ii) Phase two for the maintenance of the completed project is also public road construction. This is not a retail sale because the work is performed for a municipal corporation or political subdivision of the state on land owned by that entity and which is being used for public road purposes. See RCW 82.04.190.

Landscaping will owe B&O tax under the public road construction classification and must pay retail sales or use tax on any items used in performing this work, including purchases of fertilizers, chemicals and other materials.

(f) John Doe operates a tree trimming business and has a contract with a public utility district (PUD) to trim trees along the PUD's power lines. Some of these trees are on private property with the PUD obtaining the permission of the owners to trim the trees. Some trees are also located on land for which the PUD has an easement, including along public road right of ways. This tree trimming is not a retail sale, but taxable under the service and other activities classification. This includes trimming performed along the road right of way. The property on the road right of way is not owned by the PUD for whom the work is being performed. The easement is not for use as a public road and as such the tree trimming is not public road construction.

(g) John Doe provides a tree trimming service to his residential customers. The tree trimming is performed at the direction of the residential customer to remove diseased limbs, limbs too close to the house, limbs which are a safety hazard because of their proximity to power lines, and limbs which are objectionable to the desired shape of the tree. All of this tree trimming is a retail activity, regardless of the specific reason for cutting the limbs.