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AMENDATORY SECTION (Amending WSR 98-24-069, filed 11/30/98, effective 12/31/98)

WAC 458-20-262 Retail sales and use tax exemptions for agricultural employee housing. (1) **Introduction.** RCW 82.08.02745 and 82.12.02685 provide a retail sales and use tax exemption for agricultural employee housing (~~as of March 20, 1996. Chapter 438, Laws of 1997, effective May 20, 1997, amended both RCW 82.08.02745 and 82.12.02685 by limiting the exemptions and allowing additional agricultural employee housing providers to receive the exemption~~). This ((rule)) section also explains the exemptions, who is entitled to the exemption and ((the required information to be contained in)) how to obtain an exemption certificate.

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

(a) "Agricultural employee" means any person who renders personal services to, or under the direction of, an agricultural employer in connection with the employer's agricultural activity (RCW 19.30.010).

(b) "Agricultural employer" means any person engaged in agricultural activity, including the growing, producing, or harvesting of farm or nursery products, or engaged in the forestation or reforestation of lands, which includes but is not limited to the planting, transplanting, tubing, precommercial thinning, and thinning of trees and seedlings, the clearing, piling and disposal of brush and slash, the harvest of Christmas trees, and other related activities (RCW 19.30.010).

(c) "Agricultural employee housing" means all facilities provided by an agricultural employer, housing authority, local government, state or federal agency, nonprofit community or neighborhood-based organization that is exempt from income tax under section 501(c) of the Internal Revenue Code of 1986 (26 U.S.C. sec. 501(c)), or for-profit provider of housing for housing agricultural employees on a year-round or seasonal basis, including bathing, food handling, hand washing, laundry, and toilet facilities, single-family and multifamily dwelling units and dormitories, and includes labor camps (~~under RCW 70.54.110~~). The term also includes but is not limited to mobile homes, travel trailers, mobile bunkhouses, modular homes, fabricated components of a house, and tents. Agricultural employee housing does not include housing regularly provided on a commercial basis to the general public (~~(chapter 438, Laws of 1997)~~). Agricultural employee housing does not include housing

provided by a housing authority unless at least eighty percent of the occupants are agricultural employees whose adjusted income is less than fifty percent of median family income, adjusted for household size, for the county where the housing is provided.

(d) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof (RCW 82.04.030).

(e) "Agricultural land" has the same meaning as "agricultural and farm land" in RCW 84.34.020(2).

(3) Retail sales and use tax exemptions for agricultural employee housing. RCW 82.08.02745 and 82.12.02685, respectively, provide retail sales tax and use tax exemptions for the purchase, construction, and use of agricultural employee housing. Both exemptions require that agricultural employee housing provided to year-round employees of the agricultural employer must be built to the current building code for single-family or multifamily dwellings according to the state building code, chapter 19.27 RCW. Neither of these exemptions apply to housing built for the occupancy of an employer, family members of an employer, or persons owning stock or shares in a farm partnership or corporation business.

(a) The retail sales tax does not apply to charges for labor and services rendered by any person in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures used as agricultural employee housing. Also exempt are sales of tangible personal property that becomes an ingredient or component of the buildings or other structures, including but not limited to septic tanks, pump houses, cisterns, and driveways. Examples of ingredients or components include but are not limited to cement, lumber, nails, paint and wallpaper.

(i) Appliances and furniture, including but not limited to stoves, refrigerators, bed frames, lamps and television sets, bolted or strapped directly to the building or structure are considered components of the building or structure. Additionally, appliances and furniture bolted or strapped to another item that is bolted or strapped directly to the building or structure (e.g., a television set bolted to a refrigerator that is strapped to the structure) are considered components of the building or structure.

(ii) Items that are not bolted or strapped directly to the building or structure, or to another item similarly bolted or

strapped, do not qualify for this exemption. These items include but are not limited to kitchen utensils, mattresses, bedding, portable heating units, and throw rugs. Stoves, refrigerators, bed frames, lamps and television sets that are not bolted or strapped as discussed in (a)(i) of this subsection, also do not qualify as components of the building or structure.

(iii) Purchases of labor and transportation charges necessary to move and set up mobile homes, mobile bunkhouses, and other property and component parts as agricultural employee housing are exempt of retail sales tax.

(iv) As a condition for exemption, the seller must take from the buyer an exemption certificate (~~(which substantially contains the information included in the sample form provided in subsection (5) of this section.)~~) completed by the buyer to document the exempt nature of the sale. This requirement may be satisfied by using the department of revenue's "Farmers' Retail Sales Tax Exemption Certificate" which can be obtained through the following means:

(A) From the department's internet site at <http://dor.wa.gov>;

(B) By calling taxpayer services at 1-800-647-7706; or

(C) By writing to:

Taxpayer Services

Washington State Department of Revenue

P.O. Box 47478

Olympia, WA 98504-7478

The seller may accept a legible fax or duplicate copy of an original exemption certificate. In all cases, the exemption certificate must be (~~(accepted in good faith by the seller, and must be)~~) retained by the seller for a period of at least five years. An exemption certificate may be provided for a single (~~(purpose,)~~) purchase or for multiple purchases over a period (~~(not to exceed four years)~~) of time. If the certificate is provided for multiple purchases over a period of time, the certificate is valid for as long as the buyer and seller have a recurring business relationship. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months. RCW 82.08.050 (7)(c). Failure to comply with the provisions in this section may result in a denial of the exemption and the agricultural employer may be subject to use tax plus penalties and interest. (~~(Copies of the sample form provided in subsection (5) of this section are available through the department of revenue's taxpayer services division (360) 753-7634.)~~)

(b) The use tax exemption is available for the use of tangible personal property that becomes an ingredient or component of buildings or other structures used as agricultural employee housing during the course of constructing, repairing,

decorating, or improving the buildings or other structures by any person. Again, appliances and furniture that are bolted or strapped to the actual building or structure are considered components of the building or structure.

(i) The exemption for materials incorporated into buildings or other structures used as agricultural employee housing also applies to persons/consumers constructing these buildings or structures for the federal government or county housing authorities. (See also WAC 458-20-17001 on government contracting.)

(ii) An agricultural employer claiming the exemption who retitles a used mobile home or titles a new mobile home acquired from an out-of-state seller must provide a completed exemption certificate to the department of licensing or its agent to substantiate the exempt nature of the home.

(4) Requirement to remit payment of tax if agricultural housing fails to continue to satisfy the conditions of exemption. The agricultural employee housing must be used for at least five consecutive years from the date the housing is approved for occupancy to retain the retail sales and use tax exemption. If this condition is not satisfied, the full amount of tax otherwise due shall be immediately due and payable together with interest, but not penalties, from the date the housing is approved for occupancy until the date of payment.

If at any time agricultural employee housing that is not located on agricultural land ceases to be used as agricultural employee housing, the full amount of tax otherwise due shall be immediately due and payable with interest, but not penalties, from the date the housing ceased to be used as agricultural employee housing.

~~((5) **Retail sales tax exemption certificate.** The agricultural employer (buyer) must provide an exemption certificate to a seller to show entitlement to the exemption provided by the statute. This exemption certificate must be substantially in the form shown below.~~

AGRICULTURAL EMPLOYEE HOUSING EXEMPTION CERTIFICATE

This exemption certificate is to be solely for allowable purchases by an agricultural employee housing provider.

1. Name of Seller:

2. Name of Agricultural Employee Housing Provider:

3. Address of Agricultural Employee Housing Provider:

Street, City, State

Zip Code

4. Agricultural Employee Housing Providers UBI/Registration No.:

For the purpose of the exemption, the agricultural employer certifies the following:

~~The buildings or other structures built on agricultural land will be used as agricultural employee housing for at least five years from the date the housing is approved for occupation otherwise the entire tax becomes due plus interest from the time the housing ceases to be used for agricultural housing until date of payment.~~

~~It is understood that buildings or other structures built on nonagricultural land must conform to the state building code and be provided to year round agricultural employees otherwise the total tax exempted is due plus interest from the date the housing ceases to be used as agricultural employee housing as defined in WAC 458-20-262(3) until date of payment.~~

~~The buildings or other structures used to house year round agricultural employees will be constructed to meet the state building code (chapter 19.27 RCW) for single family or multifamily dwelling.~~

~~The buildings or other structures will not be used as housing for an employer, family members of an employer, or persons owning stock or shares in a farm partnership or corporation business.~~

~~The buildings or other structures will not be used to regularly provide housing on a commercial basis to the general public.~~

~~If purchases are being made to construct agricultural employee housing for a housing authority, at least eighty percent of the occupants will be agricultural employees whose adjusted gross income is less than fifty percent of median family income adjusted for household size, for the county where the housing is provided.~~

Is the agricultural employee housing being built on agricultural land: Yes No

If yes, please provide parcel number: _____
Print Name of Buyer: _____

Signature: _____

Date Signed: _____ Effective Date: _____ through _____ (Not to exceed 4 years)

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[Statutory Authority: RCW 82.32.300 and 82.08.02745. 98-24-069, § 458-20-262, filed 11/30/98, effective 12/31/98.]