

PRELIMINARY DRAFT—FOR DISCUSSION PURPOSES ONLY. THIS DRAFT IS NOT TO BE CONSIDERED A PROPOSED RULE AND IS ONLY PROVIDED FOR DISCUSSION PURPOSES TO DETERMINE WHAT TOPICS A LATER PROPOSED RULE MIGHT ADDRESS. UNDER NO CIRCUMSTANCES IS THIS DISCUSSION DRAFT TO BE USED TO DETERMINE TAX LIABILITY AND OR EXEMPTIONS.

AMENDATORY SECTION: (Amending WSR 94-07-050, filed 3/10/94, effective 4/10/94)

**WAC 458-20-209 Farming for hire and horticultural services (~~(performed for)~~) provided to farmers.** (1)

**Introduction.** (~~This section provides tax reporting information for persons performing horticultural services for farmers. Persons providing horticultural services to persons other than farmers should refer to WAC 458-20-226. Farmers and persons making sales to farmers may also want to refer to the following sections of chapter 458-20 WAC:~~

(a) ~~WAC 458-20-122 (Sales of feed, seed, fertilizer, spray materials, and other tangible personal property for farm use);~~

(b) ~~WAC 458-20-210 (Sales of agricultural products by farmers); and~~

(c) ~~WAC 458-20-239 (Sales to nonresidents of farm machinery or implements).~~

(2) **Definitions.** For the purposes of this section, the following definitions apply:

(a) "Farmer" means any person engaged in the business of growing or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product whatsoever for sale. "Farmer" does not include a person using such products as ingredients in a manufacturing process, or a person growing or producing such products for the person's own consumption. The term does not include a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard, slaughter or packing house. "Farmer" does not include any person in respect to the business of taking, cultivating, or raising timber. RCW 82.04.213.

(b) "Agricultural product" means any product of plant cultivation or animal husbandry including, but not limited to a product of horticulture, grain cultivation, vermiculture, or viticulture. "Agricultural product" includes plantation Christmas trees, animals, birds, insects, or the substances obtained from such animals. RCW 82.04.213. On and after July 1, 1993, "agricultural product" includes products of "aquaculture" and animals that are "cultured aquatic products," as those terms are defined by RCW 15.85.020. Also effective July 1, 1993, "turf" was added to the definition of "agricultural product," and "animals intended to be pets" were specifically excluded. (See chapter 25, Laws of 1993 sp.s.)

(c) "Horticultural services" include services related to the cultivation of vegetables, fruits, grains, field crops,

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~~ornamental floriculture, and nursery products. The term "horticultural services" includes, but is not limited to, the following:~~

~~(i) Soil preparation services such as plowing or weed control before planting;~~

~~(ii) Crop cultivation services such as planting, thinning, pruning, or spraying; and~~

~~(iii) Crop harvesting services such as threshing grain, mowing and baling hay, or picking fruit.~~

~~(3) **Business and occupation tax.** Persons performing horticultural services for farmers are generally subject to the service and other business activities B&O tax upon the gross proceeds. However, if the person providing horticultural services also sells tangible personal property for a separate and distinct charge, the charge made for the tangible personal property will be subject to either the wholesaling or retailing B&O tax, depending on the nature of the sale. Persons making sales of tangible personal property to farmers should refer to WAC 458-20-122 to determine whether the wholesaling or retailing tax applies, and under what circumstances retail sales tax must be collected.~~

~~(a) A farmer who occasionally assists another farmer in planting or harvesting a crop is generally not considered to be engaged in the business of performing horticultural services. These activities are generally considered to be casual and incidental to the farming activity. For example, a farmer owning baling equipment which is used primarily for baling hay produced by the farmer, but who may occasionally accommodate neighboring farmers by baling small quantities of hay produced by them, is not considered to be in business with respect thereto.~~

~~(b) The extent to which horticultural services are performed for others is determinative of whether or not they are considered taxable business activities. Persons who advertise or hold themselves out to the public as being available to perform farming for hire will be considered as being engaged in business. For example, a person who regularly engages in baling hay or threshing grain for others is engaged in business and taxable upon the gross proceeds derived therefrom, irrespective of the amount of such business or that this person also does some farming of his or her own land.~~

~~(c) In cases where doubt exists in determining whether or not a person is engaged in the business of performing horticultural services, all pertinent information should be submitted to the department of revenue for a specific ruling.~~

~~(4) **Deferred sales or use tax.** If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred sales or use tax directly to the~~

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department.

~~(a) Purchases of machinery, machinery parts and repair, tools, and cleaning materials by persons performing horticultural services are subject to retail sales tax.~~

~~(b) Persons taxable under the service and other business activities B&O tax classification are defined as consumers of anything they use in performing their services. (Refer to RCW 82.04.190.) As such, these persons are required to pay retail sales or use tax upon the purchase of all items used in performing the service, such as fertilizers, spray materials, and baling wire, which are not sold separate and apart from the service they perform.~~

~~(5) **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 of the facts and circumstances.~~

~~(a) John Doe is a wheat farmer owning threshing equipment which is generally used only for threshing his own wheat. Occasionally a neighbor's threshing equipment may break down and John will use his own equipment to assist the neighbor in completing the neighbor's wheat harvest. While John receives payment for providing the threshing assistance, this activity is considered to be a casual and isolated sale. John does not hold himself out as being in the business of performing farming (threshing) for hire. John Doe is not considered to be engaging in taxable business activities. The amounts John Doe receives for assisting in the harvest of his neighbors' wheat is not subject to tax.~~

~~(b) X Spraying applies fertilizer to orchards owned by Farmer A. The sales invoice provided to Farmer A by X Spraying reflects a "lump sum" amount with no segregation of charges for the fertilizer and the application. When reporting its tax liability, X Spraying would report the total charge under the service B&O tax classification. X Spraying must also remit retail sales or use tax upon the purchase of the fertilizer. The entire amount charged by X Spraying is for horticultural services, and X Spraying is considered the consumer of the fertilizer.~~

~~(c) Z Flying aerial sprays pesticides on crops owned by Farmer B. The sales invoice Z Flying provides to Farmer B segregates the charge for the pesticides and the charge for the application. When reporting its tax liability, Z Flying would report the charge for the application under the service B&O tax classification. The charge for the sale of the spray materials is subject to the wholesaling B&O tax, provided Z Flying obtains a resale certificate from Farmer B. Z Flying's purchase of the pesticides is a purchase for resale and not subject to the retail sales tax.)) This rule explains the~~

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application of business and occupation (B&O), retail sales, and use taxes to persons engaging in the business of farming for hire and persons who provide horticultural services to farmers. Persons providing horticultural services to persons other than farmers should refer to WAC 458-20-226 for tax reporting information. Farmers and persons making sales to farmers may also want to refer to the following rules:

(a) WAC 458-20-210 (Sales of tangible personal property for farming—Sales of agricultural products by farmers);

(b) WAC 458-20-222 (Veterinarians and other persons who perform services for live animals);

(c) WAC 458-20-239 (Sales to nonresidents of farm machinery or implements, and related services); and

(d) WAC 458-20-262 (Retail sales and use tax exemptions for agricultural employee housing).

(2) **Who is a farmer?** A "farmer" is any person engaged in the business of growing, raising, or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product to be sold. A "farmer" does not include a person growing, raising, or producing such products for the person's own consumption; a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard, slaughter or packing house; or a person in respect to the business of taking, cultivating, or raising timber. RCW 82.04.213 and chapter 118, Laws of 2001.

(3) **What is an agricultural product?** An "agricultural product" is any product of plant cultivation or animal husbandry including, but not limited to: a product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as defined in RCW 15.85.020; plantation Christmas trees; short-rotation hardwoods as defined in RCW 84.33.035 (as of July 22, 2001); turf; or any animal, including but not limited to an animal that is a private sector cultured aquatic product as defined in RCW 15.85.020, a bird, an insect, or the substances obtained from such animals. An "agricultural product" does not include animals defined as pet animals under RCW 16.70.020. RCW 82.04.213 and chapter 118, Laws of 2001.

(4) **What are horticultural services provided to farmers?** "Horticultural services provided to farmers" are activities related to the cultivation of plants, including vegetables, fruits, grains, field crops, ornamental floriculture, and nursery products. These activities include, but are not limited to: soil preparation of land currently being used to raise plant crops; plowing, weed control, or stump removal before planting; cultivation activities such as planting, thinning, weeding, pruning, or spraying; and harvesting activities such as threshing grain or legumes, mowing and baling hay, or picking fruit.

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For example, XYZ Bulldozing Co. (XYZ) is hired to remove trees and stumps from a farmer's existing orchards in preparation for replanting. XYZ is providing a horticultural service to a farmer. However, if XYZ is hired to remove trees from a farmer's existing orchards in preparation for a housing development, XYZ is performing a land clearing activity subject to both retailing B&O and retail sales taxes, and not a horticultural service. (Refer to WAC 458-20-172 for tax-reporting information regarding the clearing of land.)

**(5) Tax treatment of income received from farming for hire and/or performing horticultural services for farmers.**

Persons engaging in the business of farming for hire or providing horticultural services to farmers are generally subject to the service and other activities B&O tax upon the gross income of the business. If a person engaging in farming for hire or providing horticultural services to farmers also sells tangible personal property for a separate charge, the charge made for the tangible personal property will be subject to either the wholesaling or retailing B&O tax depending on the nature of the sale; (see subsection (6) of this rule). Persons making sales of tangible personal property to farmers should refer to WAC 458-20-210 to determine whether the wholesaling or retailing B&O tax applies, and under what circumstances retail sales tax must be collected.

(a) **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 of the facts and circumstances.

(i) X-Spraying is hired by farmers to apply fertilizer to their crops. The sales invoices provided to the farmers by X-Spraying reflects a lump sum amount with no segregation of charges for the fertilizer and the application. When reporting its tax liability, X-Spraying should report the total charge under the service and other activities B&O tax classification. In addition, X-Spraying is subject to retail sales or use tax on the purchase or use of the fertilizer. (See subsection (6)(a) of this rule for more information about the taxability of purchases at retail by persons in the business of farming for hire or providing horticultural services to farmers.)

(ii) ABC Aviation Co. (ABC) is hired by farmers to spray pesticides on their crops. ABC segregates the charge for the pesticides and the charge for the application on its sales invoices. When reporting its tax liability, ABC should report the charge for the pesticide application under the service and other activities B&O tax classification. The charge for the sale of the spray materials is subject to the wholesaling B&O tax, provided ABC obtains a resale certificate from the

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farmers. (Refer to WAC 458-20-102 for information about resale certificates.) The purchases of pesticides by ABC are for resale and not subject to retail sales tax. (See subsection (6)(b) of this rule for more information about purchases for resale by persons in the business of farming for hire or providing horticultural services to farmers.)

**(b) What are the tax consequences for farmers who assist other farmers on an occasional basis?** A farmer may occasionally assist another farmer in planting or harvesting a crop. In such cases, the farmer is not considered to be engaging in the business of farming for hire. However, persons who advertise or otherwise hold themselves out to the public as being available to perform farming for hire are considered to be engaging in the business of farming for hire, irrespective of the amount of business conducted or whether the person does some farming on his or her own land.

**(i) Example.** The following example identifies a number of facts and then states a conclusion. This example should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

JD is a wheat farmer who owns a combine that he generally uses only for harvesting his own wheat crops. JD does not hold himself out as being in the business of farming for hire. Occasionally a neighbor's combine will break down, and JD uses his combine to assist the neighbor in completing the neighbor's wheat harvest. While JD does receive payment for providing occasional assistance to his neighbors, this income is not subject to B&O tax. JD is not considered to be engaging in the business of farming for hire.

**(ii) What should I do if I cannot determine whether I am engaging in the business of farming for hire?** In cases where doubt exists in determining whether or not a person is engaged in the business of farming for hire, all relevant information should be submitted in writing to the department for a specific ruling. Inquiries, with all pertinent facts, should be addressed to:

Taxpayer Information and Education  
Department of Revenue  
P.O. Box 47478  
Olympia, WA 98504-7478

In addition, inquiries may be faxed to the department at (360) 486-2159.

**(6) Taxability of property used in the business of farming for hire or providing horticultural services to farmers.** Persons taxable under the service and other activities B&O tax classification are consumers of anything they use in performing their services. RCW 82.04.190. If the

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seller does not collect retail sales tax on a retail sale, the buyer is required to pay the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department, unless specifically exempt by law. For detailed information about use tax, refer to WAC 458-20-178.

(a) **Purchases at retail.** Purchases of machinery, machinery parts and repair, tools, and cleaning materials by persons in the business of farming for hire or providing horticultural services to farmers are subject to retail sales tax unless specifically exempt. In addition, purchases by such persons of supplies like fertilizers, spray materials, and baler twine or wire are subject to sales tax if not resold separate and apart from the services performed.

(b) **Purchases for resale.** If a person engaging in the business of farming for hire or providing horticultural services to farmers also sells tangible personal property for a separate and distinct charge, the purchase of such tangible personal property by that person is a purchase for resale, provided the buyer provides the seller with a properly completed resale certificate, and the property is not put to any intervening use. (Refer to WAC 458-20-102 for information about resale certificates.)