



# PREPROPOSAL STATEMENT OF INQUIRY

**CR-101 (October 2017)**  
**(Implements RCW 34.05.310)**

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FILED

DATE: March 01, 2023

TIME: 9:55 AM

WSR 23-06-074

**Agency:** Department of Revenue

**Subject of possible rule making:** WAC 458-20-13501 Timber harvest operations.

**Statutes authorizing the agency to adopt rules on this subject:** RCW 82.32.300, 82.01.060(2), 82.45.150

**Reasons why rules on this subject may be needed and what they might accomplish:** Timber harvesting operations involved multiple activities, which includes extracting, hauling, manufacturing, and selling (standing and harvested timber). RCW [82.04.260](#) provides a preference B&O tax rate for businesses engaged in timber product activities (extracting, manufacturing, selling). RCW [82.16.020](#) gives a reduced public utility tax for businesses that are engaged in log transportation. RCW [82.04.333](#) provides a B&O tax exemption to "small harvester" as defined under RCW [84.33.035](#). In addition, RCW [82.04.440](#) provides a B&O tax credit to businesses who conduct manufacturing, extracting, and selling activities within this state. This rule provides guidance on the tax application of the statutes, the filing and reporting obligations, and other taxes (real estate excise tax, and timber tax) that may apply to this industry.

The Department plans to share the proposed rule amendments to the public in advance of the public meeting and discussed any proposed amendments during the public meeting.

**Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies:** N/A

**Process for developing new rule (check all that apply):**

- Negotiated rule making
- Pilot rule making
- Agency study

Other (describe) Parties interested in this rule-making may contact the individual listed below. The public may also participating by providing written comments throughout this rule-making process, or giving oral testimony at the public meeting or hearing.

**Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:**

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(If necessary)

Name:  
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Other:

Additional comments: Written comments may be submitted by mail or email and should be directed to Tiffany Do using one of the contact methods above. Written and oral comments will be accepted at the Public Meeting.

**Date:** April 11, 2023

**Time:** 10:00 am

**Public Meeting Location:** This meeting will be conducted over the internet/telephone. In-person option also available. Contact Cathy Holder at CathyH@dor.wa.gov for dial-in/login information. If you would like to attend in person, please RSVP by emailing CathyH@dor.wa.gov by 3/28/23

**Date:** March 1, 2023

**Name:** Atif Aziz

**Title:** Rules Coordinator

**Signature:**

A handwritten signature in black ink, appearing to read 'Atif Aziz', is written over the signature line.

AMENDATORY SECTION (Amending WSR 20-02-058, filed 12/24/19, effective 1/24/20)

**WAC 458-20-13501 Timber harvest operations. (1) Introduction.**

Timber harvest operations generally consist of a variety of (~~different~~) activities. (~~These activities may be subject to~~) Depending on the nature of the activity, different tax types and tax rates (~~or classifications under~~) may apply, such as the business and occupation (B&O) tax, (~~and~~) public utility tax (~~, depending on the nature of the activity~~) (PUT), retail sales tax, use tax, real estate excise tax (REET), and timber harvest excise tax (timber excise tax). See chapters 82.04, 82.08, 82.12, 82.16, 82.45, and 84.33 RCW.

(a) **Scope of rule.** This rule explains the application of the (~~business and occupation (B&O), public utility~~) B&O tax, PUT, retail sales, and use taxes to persons performing activities associated with timber harvest operations, including timber harvesters, manufacturers of timber or wood products, extractors for hire, processors for hire, sellers of real property, and consumers of tangible personal property typically used in timber harvest operations. In addition, this rule explains how the (~~public utility tax~~) PUT deduction provided by RCW 82.16.050 for the transportation of commodities to an export facility applies to the transportation of logs (~~. It also explains how the B&O tax exemption provided by RCW 82.04.333~~), and provides details on how to apply the B&O tax exemption for small timber harvesters (~~applies~~).

(b) (~~Additional information sources for activities associated with timber harvest operations.~~ In addition to the taxes addressed in this rule, the forest excise and real estate excise taxes often apply to certain activities or sales associated with timber harvest operations.) **Other rules that may be relevant.**

(i) Persons engaged in timber harvest operations should refer to the following rules for additional information:

(~~(i)~~) (A) WAC 458-20-135 Extracting natural products;

(~~(ii)~~) (B) WAC 458-20-136 Manufacturing, processing for hire, fabricating;

(~~(iii)~~) (C) WAC 458-20-13601 Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment(~~+~~).

(~~(iv)~~) (ii) Persons engaged in timber harvesting activities may be subject to the timber excise tax or REET. This rule does not cover either of those taxes in detail. For more information on timber excise tax and REET, readers should refer to chapter 458-40 WAC Taxation of forest land and timber(~~+~~) and

(~~(v)~~) chapter 458-61A WAC Real estate excise tax.

(iii) Persons cultivating short-rotation hardwoods are considered farmers. "Short-rotation hardwoods" are hardwood trees, such as hybrid cottonwoods, cultivated by agricultural methods in growing cycles shorter than 15 years. RCW 84.33.035. For tax-reporting information for farmers and persons selling property to, or performing horticultural service for, farmers, readers should refer to WAC 458-20-209 Farming for hire and horticultural services performed for farmers, and WAC 458-20-210 Sales of tangible personal property for farming—Sales of agricultural products by farmers.

(c) **Examples.** This rule contains examples that identify a number of facts and then state a conclusion. The examples should be used only

as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

~~((d) **Information regarding short-rotation hardwoods.** Persons cultivating short-rotation hardwoods are considered farmers. Refer to WAC 458-20-209 and 458-20-210 for tax-reporting information for farmers and persons selling property to or performing horticultural services for farmers. "Short-rotation hardwoods" are hardwood trees, such as, but not limited to, hybrid cottonwoods, cultivated by agricultural methods in growing cycles shorter than fifteen years. RCW 84.33.035.))~~

(2) **Timber harvesters.** Timber harvesters may engage in a variety of business activities ~~((that require them to report)),~~ each subject to different tax reporting and collection obligations, including B&O tax under the extracting, manufacturing, wholesaling, or retailing ~~((B&O tax))~~ classifications; retail sales tax; and use tax. Timber harvesters ~~((may qualify))~~ are eligible for preferential B&O tax rates on certain qualifying business activities until July 1, 2045. RCW 82.04.260(12).

~~((The definition of "extractor" found in RCW 82.04.100 relates to the harvesting of trees (other than plantation Christmas trees) and is generally identical to the definition of "harvester" found in RCW 84.33.035. An exception is the specific provisions in the definition of "harvester" relating to trees harvested by federal, state, and local government entities. Both definitions include every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts (severs), or takes timber for sale or for commercial or industrial use. Both definitions exclude))~~ (a) **Definition of "harvester."** With respect to timber, the term "harvester" is every person who, from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use. RCW 84.33.035.

(i) When a government entity, i.e., the United States or any instrumentality thereof; the state, including its departments and institutions and political subdivisions; or any municipal corporation, fells, cuts, or takes timber for sale or for commercial or industrial use, the first person other than that government entity who acquires title to or possessory interest in the timber is considered the harvester.

(ii) The term "harvester" does not include persons performing, under contract, the necessary labor or mechanical services for ~~((the extractor/harvester.~~

~~((a) **Timber purchasers to file information report.** A purchaser must report to the department of revenue (department) purchases))~~ a harvester.

(iii) For purposes of B&O tax, a timber "harvester" is considered an "extractor," as that term is defined in RCW 82.04.100. In general, an extractor is subject to Extracting B&O tax upon the value of the extracted products. RCW 82.04.230 and WAC 458-20-135. See the subsections below for additional information.

(b) **Timber purchasers - Special reporting requirements.** A purchaser of privately owned timber in an amount ~~((exceeding two hundred thousand))~~ in excess of 200,000 board feet ~~((, if purchased))~~ in a voluntary sale made in the ordinary course of business must, on or before the last day of the month following the purchase of the timber, report

the particulars of the purchase to the department of revenue (department). RCW 84.33.088.

(i) The report must contain all information relevant to the value of the timber purchased including, but not limited to, the following, as applicable: Purchaser's name, address and contact information; seller's name, address, and contact information; sale date; termination date in sale agreement; total sale price; legal description of sale area; sale name; forest practice application/harvest permit number if available; total acreage involved in the sale; estimated net volume of timber purchased by tree species and log grade; and description and value of property improvements.

(ii) This report must be filed on or before the last day of the month following ~~((the purchase of))~~ the timber purchase date. A ~~((two hundred fifty dollar))~~ penalty of \$250 may be imposed against a purchaser for each failure to satisfy the requirements for filing this report. These filing requirements are scheduled to expire ~~((July 1, 2018))~~ September 30, 2025. RCW 84.33.088.

~~((b))~~ (c) **Extracting.** The felling, cutting (severing from land), or taking of trees is an extracting activity as defined in RCW 82.04.100. The Extracting B&O tax classification applies to the value of the products extracted, which ~~((is the value))~~ generally is the gross proceeds of sales, whether such sales are at wholesale or at retail, of the severed trees prior to any manufacturing activity. See RCW 82.04.230 and WAC 458-20-112.

(i) Until July 1, 2045, timber extractors are eligible for a preferential B&O tax rate for timber extracting activities. RCW 82.04.260 (12) (a). Taxpayers reporting under the preferential Extracting Timber B&O tax classification in the current year are required to complete an Annual Tax Performance Report by May 31st of the following year.

(ii) Small harvesters, as defined in RCW 84.33.035, are not required to complete an Annual Tax Performance Report with the department.

~~((e))~~ (d) **Manufacturing.** The cutting into length (bucking), delimiting, and measuring (for bucking) of felled, cut (severed), or taken trees is a manufacturing activity as defined in RCW 82.04.120. The manufacturing B&O tax is measured by the value of the products manufactured, which is generally the gross proceeds of sale. For more information regarding the value of products see RCW 82.04.450 and WAC 458-20-112.

(i) For timber harvest operations, the manufacturing portion of the operation begins once the timber has been extracted (felled, cut (severed from land), or taken). The manufacturing site includes the entire contiguous area that is being actively logged (known as a "cutting area" or "harvest unit"). For timber harvest operations, manufacturing activities including bucking (cutting into length), delimiting, and measuring felled, cut (severed from the land), or taken trees.

(ii) If the product is delivered to a point outside the state, transportation costs incurred by the seller from the last point at which manufacturing takes place within Washington may be deducted from the gross proceeds of sale when determining the value of the product, depending on extent of the additional manufacturing activity conducted subsequent to the manufacturing conducted at the harvest site. See WAC 458-20-112.

~~((Example 1. In each of the following situations presume that the timber harvester delivers the product to the customer at a point outside the state:))~~

~~(i))~~ (A) If there is no further manufacturing subsequent to manufacturing conducted at the harvest site, the measure of tax is the gross proceeds of the sale of the logs less transportation costs incurred by the seller from the harvest site to delivery to the customer out-of-state;

~~((ii))~~ (B) If logs are hauled to a separate manufacturing facility for processing into lumber, poles, or piles, the measure of tax is the gross proceeds of sale of the lumber, poles, or piles less transportation costs incurred by the seller from the manufacturing facility to the place of delivery to the customer out-of-state; and

~~((iii))~~ (C) If logs are hauled to a facility that only removes the bark, the measure of tax is the gross proceeds of sale of the logs less transportation costs incurred by the seller from the harvest site to the place of delivery to the customer out-of-state. This is because the mere removal of bark is not a manufacturing activity.

However, if at that facility the debarking is a part of a broader manufacturing process (e.g., cutting the logs into lumber), the entire process, including the debarking, is a manufacturing activity. In ~~(such a)~~ this case, the measure of tax is the gross proceeds of sale of the products manufactured from the logs less transportation costs incurred by the seller from the manufacturing facility to the place of delivery to the customer out-of-state.

~~((iv))~~ (iii) Until July 1, 2045, persons who manufacture ~~((A))~~ timber into timber products or wood products; ~~((B))~~ timber products into other timber products or wood products; or ~~((C))~~ mass timber products defined in RCW 19.27.570(1), are eligible ~~((for))~~ to report their gross proceeds of sales under a preferential Manufacturing of Timber or Wood Products B&O tax ((rate multiplied by the gross proceeds of sale)) classification. RCW 82.04.260 (12)(b). Taxpayers ~~((reporting under the preferential Manufacturing of Timber or Wood Products))~~ claiming this B&O tax ((classification)) preferential rate in the current year are required to complete an Annual Tax Performance Report by May 31st of the following year.

~~((v))~~ Small harvesters, as defined in RCW 84.33.035, are not required to complete an Annual Tax Performance Report with the department.

~~((d))~~ (e) Selling. ~~((The income from the sale of the logs is))~~ Sales of felled timber and timber products are subject to B&O tax under either the wholesaling or retailing ((B&O tax)) classification, as the case may be, unless exempt by law. The measure of tax is the gross proceeds of sale without any deduction for transportation costs.

(i) When determining the gross proceeds of sale, the timber harvester may not deduct amounts paid to others.

**Example ((2)) 1. Measure of B&O tax for timber harvester.** ~~((A timber harvester enters into a contract with another person to perform the necessary labor and mechanical services for the harvesting of timber. The harvester is to receive sixty percent of the log sale proceeds, and the person contracting to perform the services is to receive forty percent. The log buyer purchases the logs for five hundred thousand dollars. The buyer pays three hundred thousand dollars to the harvester and two hundred thousand dollars to the person performing the harvesting services. The harvester's gross proceeds of sale is five hundred thousand dollars.))~~ **Facts:** UVW Company (UVW), a timber harvester, enters into a contract with QRS Company (QRS), in which QRS agrees to perform the necessary labor and mechanical services for the harvesting of timber. UVW receives 60 percent of the log sales proceeds, and QRS receives 40 percent. A third-party buyer located in

Washington purchases the logs from UVW for \$500,000. The buyer pays \$300,000 to the harvester and \$200,000 to the person performing the harvesting services.

**Result:** UVW is required to report the entire \$500,000 in sales proceeds for B&O tax purposes, regardless of the fact that QRS received \$200,000 of the sales proceeds directly from the buyer. In accordance with RCW 82.04.070, there is no deduction for cost of doing business from the "gross proceeds of sales"; therefore, UVW may not deduct the amount UVW paid to QRS for performing harvesting services. As a harvester, UVW would report \$500,000 under Extracting B&O tax, and retailing or wholesaling B&O tax, depending on whether the third-party buyer is buying the logs for resale. UVW is eligible for a multiple activities tax credit (MATC) because UVW is selling the logs it extracted in Washington to a Washington customer. See subsection (2)(g) of this rule for more information on the MATC.

(ii) Retail sales tax must be collected and remitted on all sales to consumers, unless ((exempt by law)) a statutory exemption applies. For wholesale sales, sellers must obtain and retain copies of their customers' reseller permits to document the wholesale nature of the transaction or otherwise comply with RCW 82.04.470. For information on reseller permits see WAC 458-20-102 and 458-20-10201.

(iii) Until July 1, 2045, persons who ((sell at wholesale)) make wholesale sales of eligible products to report their gross proceeds of sale under the preferential Wholesaling of Timber or Wood Products B&O tax classification. RCW 82.04.260 (12)(c). Taxpayers who claim this preference in the current calendar year must complete an Annual Tax Performance Report by May 31st of the following calendar year. The following are eligible products:

(A) Timber extracted by the seller;

(B) Timber products manufactured by the seller from timber or other timber products;

(C) Wood products manufactured by the seller from timber or timber products; ((or)) and

(D) Mass timber products, as defined in RCW 19.27.570(1) manufactured by the seller((, are eligible for a preferential B&O tax rate multiplied by the gross proceeds of sale. RCW 82.04.260 (12)(c). Taxpayers reporting under the preferential Wholesaling of Timber or Wood Products B&O tax classification in the current year are required to complete an Annual Tax Performance Report by May 31st of the following year)).

(iv) Small harvesters, as defined in RCW 84.33.035, are not required to complete an Annual Tax Performance Report with the department.

((~~(e) Multiple activities tax credit (MATC).~~ An extractor or manufacturer who sells the product extracted or manufactured must report under each of the appropriate "production" (extracting or manufacturing) and "selling" (wholesaling or retailing) classifications on the excise tax return. The extractor or manufacturer may then claim a multiple activities tax credit (MATC) as described in RCW 82.04.440 for the extracting tax (RCW 82.04.230) or manufacturing tax (RCW 82.04.240), provided the credit does not exceed the wholesaling or retailing tax liability. For a more detailed explanation of the MATC reporting requirements see WAC 458-20-19301.)) (f) **Engaging in multiple activities.** Persons who extract, manufacture, or both extract and manufacture the timber products they sell are engaged in multiple activities. Timber harvesters who are engaged in multiple activities are required to report their gross proceeds of sales under each applicable

B&O tax classification (extracting or manufacturing) and, under the appropriate selling B&O tax classification (wholesaling or retailing).

(g) **Multiple activities tax credit (MATC).** A MATC will apply in cases where a person sells products to Washington customers that they have also extracted or manufactured in Washington. For a detailed explanation of the MATC reporting requirements see WAC 458-20-19301.

**Example 2. Computing the MATC.**

**Facts:** ZYX Tree Company (ZYX) is in the business of manufacturing and selling wood siding products used in building construction. All of ZYX's products are manufactured by ZYX using timber that ZYX harvested. For the month of July 2023, ZYX had \$100,000 in gross income from its sales of specialty wood siding products. All of the sales were made at wholesale and occurred in Washington.

**Result:** ZYX must report \$100,000 in gross revenue under each of the following B&O tax classifications: Extracting Timber, Manufacturing of Timber or Wood Products, and Wholesaling of Timber or Wood Products. Additionally, ZYX is eligible to claim a MATC. Because the preferential B&O tax rates are the same for all three of the classifications reported by ZYX, the MATC will fully offset both the Extracting Timber or Manufacturing Timber or Wood Products B&O tax liabilities. ZYX's tax liability after applying the MATC is \$290.40 (\$100,000 multiplied by the Wholesaling of Timber or Wood Products tax rate of 0.2904 percent under RCW 82.04.260 (12)(c)). Note, the additional B&O tax surcharge imposed on those persons who are subject to any of the taxes imposed under RCW 82.04.260(12) may apply. See RCW 82.04.261 for more information.

(3) **Extractors for hire.** Persons performing extracting activities (labor or mechanical services) (~~(, such as independent contractors,)~~) for timber harvesters (~~(are subject to tax under the extracting for hire)~~) as independent contractors for hire must report gross income from these activities under the Extracting for Hire B&O tax classification ((measured by the gross income from those services)). RCW 82.04.280.

Until July 1, 2045, persons who extract timber for hire are eligible for a preferential B&O tax rate for timber extracting for hire activities. RCW 82.04.260 (12)(a). Taxpayers reporting under the preferential Extracting for Hire Timber B&O tax classification in the current year are required to complete an Annual Tax Performance Report by May 31st of the following year.

((**Example 3.** Tree Severing Corporation (TSC) is hired by Timber Harvester to fell trees owned by Timber Harvester. TSC is performing an extracting activity, and is considered an extractor for hire with respect to those services. TSC is subject to tax under the Extracting for Hire Timber B&O tax classification measured by its gross income from the services.))

Extracting activities commonly performed by extractors for hire include, but are not limited to the following:

- (a) Cutting or severing trees;
- (b) Logging road construction or maintenance;
- (c) Activities related to and performed on timber-producing property that are necessary and incidental to timber operations, such as:
  - (i) Slash cleanup and burning;
  - (ii) Scarification;
  - (iii) Stream and pond cleaning or rebuilding;
  - (iv) Restoration of logging roadways to a natural state;
  - (v) Restoration of wildlife habitat; and
  - (vi) Fire trail work.



**Example 3. Extracting timber for hire.**

**Facts:** Timber Harvester pays Tree Severing Corporation (TSC) \$100,000 to fell trees owned by Timber Harvester.

**Result:** TSC is performing an extracting activity for hire. The \$100,000 TSC received is subject to B&O tax under the preferential Extracting for Hire Timber classification, provided TSC timely files an Annual Tax Performance Report as required under RCW 82.04.260(12).

(4) **Processors for hire.** Persons (~~(performing)~~) that perform labor and mechanical services as independent contractors for timber harvesters (~~(during the manufacturing portion of a timber harvest operation)~~) upon property belonging to others, so that as a result a new, different, or useful article of tangible personal property is produced for sale or commercial or industrial use during the manufacturing portion of a timber harvest operation are subject to B&O tax under the Processing for Hire (~~(B&O tax)~~) classification, measured by the gross income from those services. A processor for hire is any person who would be a manufacturer if that person were performing the labor and mechanical services upon his or her own materials. RCW 82.04.280 (~~(For information regarding processors for hire see)~~) and WAC 458-20-136.

(a) For timber harvest operations, the manufacturing portion of the operation begins once the standing timber has been felled, cut (severed from the land), or taken. The subsequent activities of cutting, delimiting, and measuring the felled, cut (severed from the land), or taken timber by third-parties are considered processing for hire activities when performed at the site of the harvest.

(b) Until July 1, 2045, persons who process for hire (~~((a))~~) (i) timber into timber products or wood products; (~~((b))~~) (ii) timber products into other timber products or wood products; or (~~((c))~~) (iii) mass timber products defined in RCW 19.27.570(1), are eligible (~~(for a preferential B&O tax rate multiplied by the gross proceeds of sale)~~) to report the gross proceeds under the preferential Processing for Hire Timber Products B&O tax classification. RCW 82.04.260 (12)(b). Taxpayers (~~(reporting under the preferential Processing for Hire Timber Products B&O tax classification)~~) claiming this B&O tax preference in the current year are required to complete an Annual Tax Performance Report by May 31st of the following year.

**Example 4. Processing timber for hire.** (~~(Tree Services Inc. (TSI) is hired to delimit and buck severed trees at the harvest site by the owner of the severed trees, the TTT Company. TSI is a processor for hire and is subject to tax under the Processing for Hire Timber Products B&O tax classification. TTT then hires Chopper Services to transport the logs by helicopter from where the logs were delimited and bucked to a location from which the logs will be transported to a mill. Under these circumstances, Chopper Services is a processor for hire as the manufacturing of the logs has started. However, if the manufacturing process on those logs had not yet begun Chopper Services would be an extractor for hire. In either case, the measure of tax is the gross income from the services.~~)

Persons performing processing for hire or extracting for hire services for consumers must collect and remit retail sales tax on those services unless otherwise exempt by law.)

**Facts:** TTT Company (TTT) owns a parcel of land comprised of standing timber. Timber fells the timber on its own behalf. Subsequently, TTT pays Tree Services, Inc. (TSI) \$300,000 to delimit, measure, and buck the severed trees at TTT's harvest site.

**Result:** TSI is a processor for hire. The \$300,000 TSI received is subject to B&O tax under the preferential Processing for Hire Timber Products classification, provided TSI timely files an Annual Tax Performance Report as required under RCW 82.04.260.

**Example 5. Tax treatment of services related to the manufacturing portion of a timber harvest operation.**

**Facts:** With the same facts from Example 4, TTT pays Chopper Services Inc. (CS) \$200,000 to transport severed timbered by helicopter from the location within the harvest site where the timber was felled to a staging location where the logs can be delimbed, measured, and bucked by TSI, prior to being loaded into trucks by TTT and transported to a mill for further processing.

**Result:** CS's provision of helicopter transportation services are part of the manufacturing operation (which began once the timber was felled), and are themselves manufacturing activities. See RCW 82.08.02565 (2)(c)(ii). The \$200,000 CS received from TTT are subject to B&O tax under the Processing for Hire Timber Products classification, provided CS timely files the Annual Tax Performance Report as required under RCW 82.04.260(12).

(5) **Log hauling activities.** Persons performing services for timber harvesters are often required to haul logs by motor vehicle from the harvest site to separate locations, over public roads. The income attributable to this hauling activity is subject to ~~((the public utility tax (PUT))~~ PUT.

(a) Effective August 1, 2015, RCW 82.16.020 provides a reduced PUT rate for most log transportation businesses. A "log transportation business" means the business of transporting logs by truck, except when the transportation meets the definition of urban transportation business or occurs exclusively on private roads. RCW 82.16.010. ~~((The))~~ WAC 458-20-180 explains distinction between motor and urban transportation ~~((is explained in WAC 458-20-180))~~. If the hauling is exclusively performed over private roads, the gross income from the transportation activity is subject to B&O tax under the ~~((service and other activities B&O tax))~~ Service & Other Activities classification, not ~~((the))~~ a PUT classification.

~~((Example 5. Hauler A hauls logs over private roads from the harvest site to the transfer site where the logs are unloaded. Hauler B hauls these logs over both private and public roads from the transfer site to a mill. The income received by Hauler A is subject to tax under the service and other activities B&O tax classification. The income received by Hauler B is subject to the public utility tax.~~

~~((a) **Subcontracting hauls to a third party.** If the person hired to haul logs by motor carrier subcontracts part or all of the hauling to a third party, the amount paid to the third party is subject to the public utility tax if any part of the transportation performed by the third party occurred on a public road, and is subject to the B&O tax if the transportation occurred exclusively on private roads. The person originally hired to haul the logs by motor carrier may be entitled to claim the deduction for jointly furnished services in computing its PUT liability, depending on the circumstances. See WAC 458-20-179 for more information on the PUT deduction for services furnished jointly. No similar deduction is available under the B&O tax.~~

~~((b) **Hauls))** **Example 6. Tax consequences of hauling logs (private roads, public roads, or both).**~~

**Facts:** HHH Log Hauling Company (HHH) is hired by Bob's Logging Company (Bob's Logging) for \$4,000 to haul logs over private roads from Bob's harvest site to a transfer site located 10 miles away,

where Bob's Logging will unload, sort, and reload the logs for further distribution. Bob's Logging hires JJJ Log Hauling Ltd (JJJ) for \$6,000 to haul logs from the transfer site to a mill located 30 miles away. JJJ will transport the logs over both private and public roads. The harvest site, transfer site, and mill site are all located in unincorporated parts of Mason County.

**Result:** The \$4,000 gross income HHH received from Bob's Logging is subject to B&O tax under the Service & Other Activities classification because the haul of the logs performed by HHH is exclusively on private roads. The \$6,000 gross income JJJ received from Bob's Logging is subject to the PUT under the Motor Transportation classification.

(b) **Jointly provided hauling services.** In cases where log hauling services are jointly provided by two or more motor carriers, the motor carrier that contracts with the purchaser of the hauling services may be eligible to claim a PUT deduction for the amounts paid to third-party motor carriers that jointly furnish some portion (or all) of the haul. See WAC 458-20-179 and RCW 82.16.050 for more information on the PUT deduction for services furnished jointly.

**Example 7. Hauling services jointly provided.**

**Facts:** Assume the facts from Example 6, except that JJJ contracts with Bob's Logging to perform all necessary hauling services from harvest site to transfer site, then from transfer site to mill. The portion of the haul from the harvest site to the transfer site will be performed over private and public roads. JJJ receives \$10,000 from Bob's Logging in exchange for the contracted services. After entering into the contract with Bob's Logging, JJJ enters into a contract with HHH, in which HHH will perform the first portion of the haul from the harvest site to the transfer site. HHH receives \$4,000 from JJJ in exchange for its portion of the jointly provided services.

**Result:** JJJ must report \$10,000 in gross income under the Log Hauling over Public Highways PUT classification. Additionally, JJJ may take a \$4,000 deduction for "Amounts Paid to Another for Services Jointly Provided" from the amount reported.

HHH must report \$4,000 in gross income under the Log Hauling over Public Highways PUT classification. HHH is not eligible for a deduction.

**Example 8. Hauling services jointly provided.**

**Facts:** Assume the facts from Example 6, except that JJJ contracts with Bob's Logging to perform all necessary hauling services from harvest site to transfer site, then from transfer site to mill. The portion of the haul from the harvest site to the transfer site will be performed entirely over private roads. JJJ receives \$10,000 from Bob's Logging in exchange for the contracted services. After entering into the contract with Bob's Logging, JJJ enters into a contract with HHH, in which HHH will perform the first portion of the haul from the harvest site to the transfer site. HHH receives \$4,000 from JJJ in exchange for its portion of the jointly provided services.

**Result:** JJJ must report \$10,000 in gross income under the Log Hauling over Public Highways PUT classification. JJJ may not claim a deduction for "Amount Paid to Another for Services Jointly Provided," as HHH's hauling services are not performed over a public road and are therefore not subject to PUT.

HHH must report \$4,000 in gross income under the Service and Other Activities B&O tax classification. HHH is not subject to PUT, as the log hauling services were provided entirely over private roads.

(c) **Hauling logs using own equipment.** ((If the person hauls the product using his or her)) In cases where a person hauls timber or

wood products using their own equipment ~~((7))~~ and has established hauling rates that ~~((are paid))~~ they pay to third-parties for comparable hauls, ~~((these))~~ such rates may be used to establish the measure of tax for the person's hauling activity. Otherwise, the measure of the tax should be all costs attributable to the hauling activity including, but not limited to, the following costs relative to the hauling equipment: Depreciation; repair parts and repair labor; and wages and benefits for employees or compensation to contractors driving or maintaining the equipment. If appropriate records are not maintained to document these costs, the department will accept one-third of the gross income derived from a contract for all labor or mechanical services beginning with the cutting or severance of trees through the hauling services as the measure of the tax under the Motor Transportation or Log Hauling over Public Highways PUT classification.

~~((e))~~ (d) Deduction for hauls to export facilities. Refer to subsection (13) of this rule for information regarding the deduction available for certain log hauls to export facilities.

(6) Common timber sale arrangements. Persons who sell ~~((and/or))~~ or take timber may be subject to various taxes including ~~((the))~~ B&O tax, sales tax, use tax, timber excise tax, and ~~((real estate excise tax))~~ REET. There are a number of ways in which harvesting activities are conducted and timber is sold. The timing of the transfer of ownership of, or the contractual right to sever, standing timber determines which taxes are due and who is liable for remitting tax.

The following examples briefly identify two common types of timber sale arrangements ~~((and then state a conclusion as to the taxes that apply. These examples are not an all-inclusive list of the different types of timber sale arrangements, or the variations that may occur)).~~ These examples presume that the trees being harvested are not Christmas trees, and that no participant is a federal, state, or local government entity. The examples do not detail the timber excise tax consequences.

~~((a))~~ Example ((6)) 9. Sale of standing timber (stumpage sales). ~~((In this type of arrangement, Seller (landowner or other owner of the rights to standing timber) sells standing timber to Buyer. Buyer receives title to the timber from Seller before it is severed from the stump. Buyer may hire Contractor to perform the harvesting activity.~~

The tax consequences are:

(i) Seller is liable for real estate excise tax. A sale of real property has occurred under RCW 82.45.060. Refer to chapter 458-61 WAC for information on the real estate excise tax.

(ii) Buyer is liable for both timber excise tax and B&O tax. Buyer is a "harvester" under RCW 84.33.035 and an "extractor" under RCW 82.04.100 because Buyer "from the...land of another under a right or license...fells, cuts (severs), or takes timber for sale or for commercial or industrial use." See subsection (2) of this rule.

(iii) Contractor is liable for B&O tax and possibly public utility tax because Contractor "is performing under contract the necessary labor or mechanical services for the extractor/harvester." See subsections (3), (4), and (5) of this rule.

~~(b) Example 7. Sale of harvested timber (logs).~~ In this type of sales transaction, Seller (landowner or other owner of the rights to standing timber) hires Contractor to perform the harvesting activity. Contractor obtains all the necessary cutting permits, performs all of the harvesting activities from severing the trees to delivering the logs for scaling, and makes all the arrangements for the sale of the

logs. Contractor, in effect, is performing the harvesting and marketing services for Seller. Seller retains title to the logs until after they are sealed, at which time title transfers to Buyer.

The tax consequences are:

(i) Seller is liable for both timber excise tax and B&O tax. Seller is a "harvester" under RCW 84.33.035 and an "extractor" under RCW 82.04.100 because Seller is "the person who from the person's own land or from the land of another under a right or license granted by lease or contract...fells, cuts (severs), or takes timber for sale or for commercial or industrial use." See subsection (2) of this rule.

(ii) Contractor is liable for B&O tax and possibly public utility tax because Contractor "is performing under contract the necessary labor or mechanical services for the extractor/harvester." See subsections (3), (4), and (5) of this rule.

(iii) There is no real estate excise tax liability because there is no sale of real property under chapter 82.45 RCW.)

**Facts:** ABC Company (ABC) owns a large tract of standing timber. ABC sells the standing timber to XYZ Partnership (XYZ) for \$100,000. XYZ receives title to the timber from ABC prior to harvesting it. XYZ hires DEF Company (DEF) (third-party timber harvest contractor) to harvest the timber on its behalf. XYZ pays DEF \$50,000. After the timber is harvested, it is sold to an unrelated Washington manufacturer for \$250,000. The purchaser hauls the timber from the harvest site using its own trucks.

**Result:** ABC is not subject to B&O tax, PUT, or retail sales or use tax. ABC is liable for REET as the transaction is a sale of real property. See RCW 82.45.060 and chapter 458-61A WAC.

XYZ is required to report \$250,000 in gross income under the following B&O tax classifications: Extracting Timber and Wholesaling of Timber or Wood Products. XYZ is also eligible to claim a MATC equal to its Extracting Timber B&O tax liability. XYZ is also subject to timber excise tax. See chapters 84.33 RCW and 458-40 WAC.

DEF is required to report \$50,000 in gross income under the Extracting for Hire Timber B&O tax classification and is not eligible for a credit or deduction.

#### **Example 10. Sale of harvested timber (logs).**

**Facts:** Assume the facts from Example 9, except that ABC hires DEF to harvest the timber on ABC's behalf, rather than selling the standing timber to XYZ. ABC agrees to pay DEF \$50,000 in exchange for its services. After the harvest, the logs are sold to GHI Lodge, Inc. (GHI) for \$250,000. GHI is purchasing the logs for its own use; it will use the logs to construct a new lodge in unincorporated Skamania County (which is also the location of the harvest site).

**Result:** ABC is required to report \$250,000 in gross income under the following B&O tax classifications: Extracting Timber and Retailing. ABC is also eligible to claim a MATC equal to its Extracting Timber B&O tax liability. ABC is required to collect retail sales tax at the current combined state and local rate for unincorporated Skamania County. ABC is subject to timber excise tax. See chapters 84.33 RCW and 458-20 WAC. DEF is required to report \$50,000 in gross income under the Extracting for Hire Timber B&O tax classification and is not eligible for a credit or deduction.

#### **(7) Equipment and supplies used in timber harvest operations.**

((The)) Retail sales tax applies to all ((purchases of)) retail sales of tangible personal property, including equipment, component parts of equipment, and supplies by persons engaging in timber operations unless a specific exemption applies. Purchases of fertilizer and spray

materials (e.g., pesticides) for use in the cultivating of timber are also subject to ((the)) retail sales tax, unless purchased for resale ((as tangible personal property)). If ((the)) a seller fails to collect the ((appropriate)) retail sales tax, the buyer is required to remit ((the retail sales tax (-) what is commonly referred to as "deferred retail sales tax"((-) or use tax)) directly to the department.

If a person ((using property in Washington incurs a use tax liability, and prior to that use paid)) acquires tangible personal property in a transaction that is not subject to the Washington retail sales tax, the person is subject to the Washington use tax based on the place of first use of that tangible personal property in Washington. In cases where a person has already paid a retail sales or use tax on the same tangible personal property to another state or foreign country (or political subdivision of either), that person may claim a credit for those taxes against ((the)) their Washington use tax liability.

(a) **Exemption available for certain manufacturing machinery and equipment.** RCW 82.08.02565 and 82.12.02565 provide retail sales and use tax exemptions for certain machinery and equipment (M&E) used by manufacturers. Persons engaged in both extracting and manufacturing activities should refer to WAC 458-20-13601 for an explanation of how these exemptions may apply to them.

**Example 11. Retail sales tax exemption for M&E (qualifying and nonqualifying M&E).**

**Facts:** GHI LLC (GHI) is a timber harvester, engaged in felling, delimiting, bucking, measuring, cutting, and loading logs at a logging operation site. GHI specializes in harvesting timber in remote locations with steep and challenging terrain. In performing its business activities, GHI uses a feller buncher to fell, delimit, buck, and cut a majority of the timber. GHI also uses chainsaws to fell snags. After completing the harvesting process, GHI uses a yarder to drag the logs to a staging area where they will ultimately be loaded into trucks for transportation to an off-site mill. At the staging area, GHI uses a log loader to sort and stack the logs by species and length. Both the yarder and the log loader are exclusively used by GHI as described in this example.

**Result:** For purposes of the retail sales and use tax exemptions in RCW 82.08.02565 and 82.12.02565, GHI may be eligible to claim an exemption for the yarder and the log loader as (a) GHI is a manufacturer; (b) the manufacturing operation process has begun; (c) both pieces of equipment are used directly in the manufacturing operation; (d) both pieces of equipment are used a majority of the time in a qualifying manner; and (e) meet all other requirements under WAC 458-20-13601 (including the one year useful life requirement). GHI is not eligible to claim an exemption for the feller buncher or chainsaws as both types of equipment are used in the harvesting portion of GHI's business operation. Had the chainsaws been primarily used to buck, delimit, and cut timber that had already been severed, the equipment may have been eligible for the exemption.

**Example 12. Retail sales tax exemption for M&E (majority use test).**

**Facts:** Assume the facts from Example 11. In addition, GHI uses a bulldozer for a variety of purposes in its timber harvesting operations. The bulldozer is used exclusively to (a) support GHI's feller buncher while timber is harvested; (b) support GHI's yarder while the timber is dragged to the landing area; and (c) clear debris and generally assist in the restoration of timber harvest sites. GHI does not

separately state charges associated with its use of the bulldozer in its timber harvest contracts with customers. GHI does maintain detailed time records that document the number of hours the bulldozer is used in the performance of each of the three activities. In its first year of use, the bulldozer was used to support the feller buncher for 200 hours, support the yarder for 400 hours, and clear debris and generally assist in harvest site restoration for 400 hours.

**Result:** While the use of the bulldozer to support the yarder is generally a qualifying use for purposes of the M&E exemption, the bulldozer is not eligible for the exemption because the majority of its use is for a nonqualifying purpose (supporting the feller buncher and clearing debris). In this case, the proper measure for determining majority use is time. A majority of the bulldozer's use, measured in time, was for nonmanufacturing purposes (60%, or 600 of 1,000 hours used).

**(b) Property manufactured for commercial use.** ((Persons manufacturing tangible personal property)) A person who manufactures timber or wood for commercial or industrial use ((are)) is subject to ((both the manufacturing)) B&O tax under Manufacturing of Timber or Wood Products classification and use tax ((en)). Both taxes are measured according to the value of the tangible personal property manufactured, unless a specific exemption applies. WAC 458-20-134 defines and provides information on commercial or industrial use, and WAC 458-20-112 describes how to determine the value of products. If ((the person also extracts the product, B&O tax is due under the extracting tax classification, and a MATC may be taken)) a person is also the harvester of the timber, the activity is subject to the B&O tax under the Extracting Timber classification. The MATC will also apply, so long as both the extracting and manufacturing activities occur in Washington.

**Example ((8)) 13. Lumber manufactured for commercial use.**

**Facts:** ABC Company ((severs trees)) (ABC) harvests timber, manufactures the ((logs)) timber into lumber, and then uses the lumber to construct an office building. The harvest site and manufacturing site are both located in unincorporated Clark County. The office building site is in Camas.

**Result:** ABC's use of the lumber ((by ABC in constructing)) to construct its office building is a commercial or industrial use. ABC is subject to use tax on the value of the lumber incorporated into the office building. Because ABC's first taxable use of the lumber occurred in Camas (the building construction site location), combined state and local use tax is due based on the location code and rate assigned to the Camas address. ABC is also subject to B&O tax under the Extracting Timber and Manufacturing of Timber or Wood Products ((B&O tax)) classifications and may claim a MATC((. ABC is also responsible for remitting use tax on the value of the lumber incorporated into the office building)).

**(8) Seeds and seedlings.** Persons ((cultivating timber)) who cultivate trees by agricultural methods (or tree cultivators) often purchase or collect tree seeds that are raised into tree seedlings. The ((growing of the seed may be performed by the person cultivating timber, or through the use of a third-party grower. In the case of a)) activity of raising a seed into a seedling may be performed by the tree cultivator, or by third-party growers. In this case of third-party growers, typically the seed is provided ((to the grower)) by the tree cultivator and tree seedlings are received back after a specified growing period.

(a) **Responsibility to remit retail sales or use tax.** The purchase of seed((s)) or seedlings by a ((~~person cultivating timber~~)) tree cultivator is subject to ((~~the~~)) retail sales tax. If ((~~the~~)) a seller fails to collect retail sales tax, the buyer must remit ((~~retail sales tax (commonly referred to as "~~))deferred retail sales tax((~~"~~)) (or use tax)((~~r~~)) unless otherwise exempt by law. The use of seed collected by a ((~~person cultivating timber~~)) tree cultivator is also subject to use tax.

(i) In the case of seed provided by a tree cultivator to a third-party grower((s)) in Washington, the ((~~seed owner, and not the third-party grower,~~)) tree cultivator incurs any use tax liability on the value of the seed. ((~~The value~~))

(ii) In the case of seedlings brought into and used in Washington ((is)) by a tree cultivator, the seedlings are subject to ((the)) use tax, unless retail sales or use tax was previously paid on the seedlings ((or on the seed from which the seedlings were grown)).

(b) **Limited sales and use tax exemptions for conifer seeds.** ((RCW 82.08.850 and 82.12.850 provide retail sales and use tax exemptions for certain sales or uses of conifer seeds. A deferral mechanism is also available if the buyer cannot at the time of purchase determine whether the purchase is eligible for the sales tax exemption.))

(i) ((~~Retail sales tax~~)) Exemption requirements. Retail sales and use tax ((does)) do not apply to the sale of conifer seed that is immediately placed into freezer storage operated by the seller ((if the seed is to be)) and is: (A) Used for growing timber outside Washington((. This exemption also applies to the sale of conifer seed)) or (B) sold to an Indian tribe or member and is to be used for growing timber in Indian country((, again only if the seed is immediately placed into freezer storage operated by the seller)). For the purposes of this ((~~exemption~~)) rule, "Indian country" ((~~has the meaning given in~~)) is as defined in manner set forth in 18 U.S.C. Sec. 1151. See RCW 82.24.010.

((~~This exemption applies only if~~)) The buyer must provide((s)) the seller with an exemption certificate in a form and manner prescribed by the department at the time of purchase. The seller must retain a copy of the buyer's exemption certificate ((~~to substantiate the exempt nature of these sales~~)).

(ii) **Deferring payment of retail sales tax if unable to determine whether purchase qualifies for the retail sales tax exemption.** If a buyer of conifer seed is normally engaged in growing timber both within and outside Washington and is not able to determine at the time of purchase whether the seed acquired, or the seedlings germinated from the seed acquired, will be used for growing timber within or outside Washington, the buyer may defer payment of the sales tax until it is determined that the seed, or seedlings germinated from the seed, will be planted for growing timber in Washington. A buyer that does not pay sales tax on the purchase of conifer seed and subsequently determines that the sale did not qualify for the tax exemption must remit to the department the amount of sales tax that would have been paid at the time of purchase. It is important to note that the sales tax liability may be deferred only if the seller immediately places the conifer seed into freezer storage operated by the seller.

(iii) **Tax paid at source deduction.** A buyer who pays retail sales tax on the purchase of conifer seed and subsequently determines that the sale qualifies for the tax paid at source deduction may claim a deduction on its excise tax return. The deduction is allowed only if the buyer keeps and preserves records ((~~that show from whom the seed~~



~~was purchased, the date of the purchase, the amount of the purchase, and the tax that was paid)) identifying the seller, purchase date, purchase amount, and retail sales tax paid. See WAC 458-20-102 for more information.~~

(iv) **Use tax exemption.** Use tax does not apply to the use of conifer seed to grow seedlings if the seedlings are grown by a person other than the owner of the seed. This exemption applies only if the seedlings will be used for growing timber outside Washington, or if the owner of the conifer seed is an Indian tribe or member and the seedlings will be used for growing timber in Indian country. If the owner of the conifer seed is not able to determine at the time the seed is used in a growing process whether the use of the seed qualifies for this exemption, the owner may defer payment of the use tax until it is determined that the seedlings will be planted for growing timber in Washington. ~~((For the purposes of this exemption, "Indian country" has the meaning given in RCW 82.24.010.))~~

(9) **Activities or income incidental to timber harvest operations.** ~~((The following activities or income, and the applicable tax classifications are often associated with timber operations. These tax reporting requirements apply even if these activities are incidental to the person's primary business activity.)) This subsection of the rule addresses the tax consequences of various business activities or gross income which are incidental to timber harvest operations.~~

(a) **Taking other natural products from timberland.** The value of natural products such as boughs, mushrooms, seeds, and cones taken for sale or commercial or industrial use is subject to ~~((the))~~ B&O tax under the extracting ~~((B&O tax))~~ classification. ~~((The sale))~~ Sales of these products ~~((is))~~ are subject to B&O tax under the Wholesaling or Retailing ~~((tax))~~ classification, as the case may be. Persons ~~((both extracting and selling natural products should refer to WAC 458-20-19301 for an explanation of the MATC reporting requirements. The retail sales tax applies to sales to consumers,))~~ who extract these natural products in Washington and subsequently sell those products to customers that receive the products in Washington are eligible for the MATC. Sales of natural products to consumers that are sourced to Washington are subject to retail sales tax unless a specific exemption applies.

(b) **Timber cruising, scaling, and access fees.** Gross income from timber cruising, scaling services, and allowing others to use private roads is subject to B&O tax under the Service and Other Activities ~~((B&O tax))~~ classification. ~~((This tax classification also applies to))~~ Gross income from access fees for activities such as hunting, taking firewood, bough cutting, mushroom picking, or grazing is also subject to B&O tax under the Service and Other Activities classification. Charges ~~((to))~~ that allow a person to take an identified quantity of tangible personal property from privately owned real property are considered sales of that property, and the gross income received from these charges is subject to B&O tax under the Retailing or Wholesaling classification, as the case may be. These charges are also subject to retail sales tax when made to a consumer and the sale is sourced to Washington, unless a specific exemption applies. ~~((See subsection (9)-(d) of this rule.))~~

(c) **Planting, thinning, and spraying.** ~~((The service and other activities B&O tax applies to the gross proceeds of sale received for))~~ Sales of the following services are subject to B&O tax under the Service and Other Activities classification: Planting trees or other vege-

tation((~~r~~)); precommercial thinning((~~r~~)); and spraying or applying fertilizers, pesticides, or herbicides.

(d) **Sales of firewood and Christmas trees.** Sales of firewood, Christmas trees, and other tangible personal property are ~~((either wholesale (subject to B&O tax under the wholesaling tax classification) or retail (subject to B&O tax under the retailing tax classification and also to retail sales tax) sales, depending on the nature of the transaction))~~ subject to either the wholesaling B&O tax, or the retailing B&O tax and retail sales tax, as the case may be. These sales are often made in the nature of charges ~~((allowing))~~ that allow the buyer to select and take an identified quantity of the property (e.g., six cords of firewood or two Christmas trees).

(e) **Unloading logs from logging trucks.** The taxability of gross income ~~((from the unloading of))~~ received by persons operating equipment to unload logs from logging trucks onto rail cars at transfer points ~~((is subject to the retailing B&O and retail sales taxes when the activity is a rental of equipment with operator. RCW 82.04.050. For more information regarding the rental of equipment with an operator see WAC 458-20-211. If this activity is not a rental of equipment with operator, gross income from the activity is))~~ depends on the nature of the customer's activities.

(i) In cases where the customer will direct the operator of the equipment as to where and how to move the logs, the activity is considered a "rental of equipment with an operator," the charges for which are subject to Retailing B&O tax and retail sales tax. See RCW 82.04.050(9) and WAC 458-20-211.

(ii) In cases where the equipment operator is responsible for loading and unloading logs at their own discretion and to contract specification, the activity is considered an "other support service," and the charges for which are subject to B&O tax under the Service and Other Activities ~~((B&O tax))~~ classification.

~~((The income from unloading of logs from logging trucks is subject to tax under the stevedoring B&O tax classification if performed at an export facility as a part of or to await future movement in waterborne export. For tax-reporting information regarding services associated with interstate or foreign commerce))~~ (iii) In cases where the equipment operator is responsible for loading and unloading logs at their own discretion and to contract specification, and where the activities are performed at an export facility as part of a waterborne export activity, the activity is considered "stevedoring," the charges for which are subject to B&O tax under the Stevedoring classification. See WAC 458-20-193D.

(f) **Transporting logs by water.** Gross income received for transporting logs by water (e.g., log booming and rafting) or from log patrols is subject to PUT tax under the ~~((("))~~Other Public Service Business ~~((("~~ classification of the public utility tax.

~~This tax classification applies to the gross income from this activity even if the person segregates a charge for boomsticks used while transporting the logs))~~ classification. Commonly, log transporters use "boomsticks" (i.e., floating logs chained together in a rough hexagonal shape, which are designed to prevent log bundles or loose logs from escaping the log boom during towing) to assist in the transportation of logs over water.

(i) In cases where boomsticks are used in the transportation of logs, any separate or itemized charges for the use of boomsticks are included in the taxable measure subject to the Other Public Service Business PUT classification.

(ii) In ~~((many))~~ cases where logs will be towed to a location specified by the customer for storage ~~((. Any charges for))~~, separately stated or itemized charges for the use of boomsticks, while the logs are stored, are rentals of tangible personal property and are subject to ~~((the))~~ B&O tax under the Retailing ((B&O tax)) classification and retail sales tax ~~((if to a consumer. For information regarding the rental of tangible personal property see WAC 458-20-211))~~.

(g) **Export sorting yard operations.** Export sorting yard operations generally consist of ~~((multiple))~~ a number of distinct business activities ~~((. These activities can include))~~ including, but ~~((are))~~ not ~~((necessarily))~~ limited to, ~~((services such as))~~ weighing, tagging, banding, appraising, and sorting of logs. Other incidental activities ~~((, such as the))~~ include debarking, ~~((removal of))~~ removing imperfections (such as crooks, knots, splits, and seams), and trimming of log ends to remove defects ~~((, are also performed as needed))~~. Gross income received by persons performing the types of export sorting yard activities ~~((as identified))~~ described in this subsection is subject to B&O tax under the Service and Other Activities ((B&O tax)) classification.

(10) **Harvesting Christmas trees.** As described below, persons growing, producing, or harvesting Christmas trees are either farmers or extractors ~~((under the law, as explained below. Activities generally associated with the harvesting of Christmas trees, such as cutting, trimming, shearing, and baling (packaging) are not manufacturing activities because they are not the "cutting, delimiting, and measuring of felled, cut, or taken trees" under RCW 82.04.120))~~, depending on the facts and circumstances in each case.

(a) **Plantation Christmas tree operations (farming operations).** Persons growing or producing plantation Christmas trees on their own lands or on lands in which they have a present right of possession are farmers. RCW 82.04.213 and WAC 458-20-210 for more information on farmers. Plantation Christmas trees are Christmas trees that are exempt from the timber excise tax under RCW 84.33.170 ~~((. This))~~, which requires that the Christmas trees be grown on land prepared by intensive cultivation and tilling, such as irrigating, plowing, or turning over the soil, and on which all unwanted plant growth is controlled continuously for the exclusive purpose of raising Christmas trees. See RCW 82.04.035 and 84.33.035.

(i) Gross income from wholesale sales of plantation Christmas trees by farmers is exempt from B&O tax. See RCW 82.04.330. Gross income from retail sales of plantation Christmas trees by farmers is subject to B&O tax under the Retailing ((B&O tax)) classification and ~~((to))~~ retail sales tax. ~~((For information on sales of agricultural products by farmers see WAC 458-20-210.))~~

(ii) Farmers growing or producing plantation Christmas trees ~~((may))~~ are not subject to retail sales or use tax on their purchase of seed((s)), seedlings, fertilizer, and spray materials ((at whole-sale)). See RCW 82.04.050 and ((82.04.060)) WAC 458-20-210.

(iii) Persons performing cultivation or harvesting services for farmers are generally ~~((subject to the service and other activities B&O tax on the))~~ taxable on gross income from ~~((those))~~ these services under the Service and Other Activities B&O tax classification. See WAC 458-20-209 for information on farming for hire and horticultural services performed for farmers.

(b) **Other Christmas tree operations (extracting operations).** Persons who, either directly or by contracting with others for the necessary labor or mechanical services, fell, cut, or take Christmas trees

other than plantation Christmas trees are extractors and should refer to the provisions in this rule for timber harvesters. ((RCW 82.04.100. The tax-reporting instructions regarding extracting and extracting for hire activities provided elsewhere in this rule apply.))

(11) **Timber harvest operations in conjunction with other land clearing or construction activities.** Persons sometimes engage in timber harvest operations in conjunction with ((the clearing of land for the construction of residential communities, golf courses, parks, or other development. In such cases, these persons are engaging in separate business activities, and income from each may be subject to different tax liabilities)) land clearing or construction activities, such as clearing or improving land for residential or commercial building development, golf courses, parks, or other improvements to real property. Each activity has its own tax consequences and may be subject to tax under a variety of taxes and tax classifications.

(a) Income ((attributable to the)) derived from a timber harvest operation(s) is subject to ((tax under the tax classifications as described elsewhere in this rule)) the provisions in this rule for timber harvesters.

(b) Income ((attributable to the)) derived from clearing or improving of land for ((the)) construction of ((the)) residential ((community, golf course, park)), commercial, or other ((development)) improvements is subject to ((the)) wholesaling B&O tax, retailing((,)) B&O tax and retail sales tax, or public road construction B&O tax, as the case may be. Refer to WAC 458-20-170, 458-20-171, and 458-20-172 for tax-reporting information regarding these construction activities. Persons performing landscape and horticultural services such as cutting or trimming trees after the land is developed should refer to WAC 458-20-226.

**Example 14. Combined contracts (land clearing and timber harvesting).**

**Facts:** LCG Land Clearing and Grading Company (LCG) is hired by FFF Corporation (FFF), a commercial property development company, to clear and grade an unimproved parcel of land owned by FFF. Once cleared and graded, FFF intends to construct a commercial warehouse on the property, which it will lease to third-party tenants. The property contains a significant amount of standing timber, which LCG is responsible for harvesting and selling on FFF's behalf under the terms of the contract. The contract between FFF and LCG includes \$25,000 charge for the timber extraction services and a \$75,000 charge for the land clearing and grading services. FFF receives all of the proceeds from the sale of the timber to a third-party buyer. LCG hires a subcontractor, HHH Logging Company (HHH) to extract the timber from the property. LCG pays HHH \$20,000 for its services. The logs are ultimately sold to JJ Mill Company (JJ) for \$30,000 at wholesale.

**Result:** LCG is an extractor for hire with respect to the \$25,000 in proceeds from FFF for the harvest of the standing timber. The gross income is subject to B&O tax under the Extracting for Hire Timber classification. LCG is also subject to B&O tax under the Retailing classification and must collect retail sales tax from FFF on the \$75,000 in proceeds for the clearing and grading of the real property.

HHH is an extractor for hire with respect to the \$20,000 in proceeds from LCG for the harvest of the standing timber. The gross income is subject to B&O tax under the Extracting for Hire Timber classification.

FFF is an extractor with respect to the sale of the harvested timber to JJ. FFF must report \$30,000 in gross income under the Ex-

tracting Timber and Wholesaling of Timber or Wood Products B&O tax classifications. FFF may also be eligible for the MATC, if the sale to JJ occurred in Washington.

(12) **Logging road construction and maintenance.** Constructing or maintaining logging roads (whether active or inactive) is considered an extracting activity. Income derived from this activity is subject to B&O tax under the Extracting or Extracting for Hire (~~(B&O tax, as the case may be)~~) classification. This income is not subject to ~~((the))~~ retail sales tax. A person constructing or maintaining a logging road is a consumer of all materials incorporated into the logging road. The purchase or use of these materials is subject to either ~~((the))~~ retail sales or use tax.

(a) **Logging road materials provided without charge.**

(i) Landowners (~~((/))~~) or timber harvesters may provide materials (e.g., crushed rock) (~~((without charge))~~) to persons constructing or maintaining logging roads without charge. In such cases, (~~((while both the person providing the materials without charge and the person applying the materials to the road are consumers under the law,))~~) tax is due only once on the value of the materials.

(ii) The person constructing or maintaining the roads is responsible for remitting use tax on the value of the materials, unless ~~((that))~~ the person documents that the landowner or timber harvester previously remitted the appropriate retail sales or use tax.

Alternatively, the person may take a written statement from the landowner (~~((/))~~) or timber harvester certifying that the landowner (~~((/))~~) or timber harvester has remitted (for past periods) (~~((and/or))~~) or will remit (for future periods) all applicable retail sales or use taxes due on materials provided without charge. This statement must identify the period of time, not to exceed four years, for which ~~((it))~~ the agreement is effective. The statement must identify the landowner (~~((/))~~) or timber harvester's tax (~~((reporting account))~~) registration number and must be signed by (~~((a person who is authorized to make such a representation))~~) an owner, member, or authorized agent of the timber harvester.

(b) **Extracted or manufactured logging road materials.** Persons constructing or maintaining logging roads are subject to ~~((the))~~ B&O tax and use (~~((taxes))~~) tax on the value of applied materials they extract or manufacture from private pits, quarries, or other locations. The measure of tax is the value of the extracted or manufactured products (~~((, as the case may be))~~). See WAC 458-20-112 for additional information regarding how to determine the "value of products."

(i) If ~~((the))~~ a person (~~((either))~~) directly, or by contracting with others, extracts and crushes, washes, screens, or blends materials to be incorporated into the logging road, B&O tax under the Extracting classification is due on the raw value of the extracted products (~~((before any manufacturing))~~). B&O tax under the Manufacturing classification (~~((,))~~) and use tax are also due (~~((upon))~~), measured by the value of the manufactured product. If the "cost basis" is the appropriate method for determining the value of products under WAC 458-20-112, this value includes the cost of transportation to a processing point (~~((,))~~) but does not include any transportation from ~~((the))~~ a processing point to ~~((the))~~ a road site. ((A)) The MATC may be taken when computing the B&O tax as explained in WAC 458-20-19301.

(ii) In the case of fill dirt, sand, gravel, or rock that is extracted from a location away from ~~((the))~~ a logging road site, but not further processed, (~~((B&O tax under the extracting classification,))~~) Extracting B&O tax and use tax are due based upon the value of the ex-

tracted product. If the "cost of production basis" is the appropriate method for determining the value of products under WAC 458-20-112, this value does not include transportation costs to ~~((the))~~ a road site.

(iii) The mere severance of fill dirt, sand, gravel, or rock from outcroppings at the side of a logging road for placement in the road is a part of the logging road construction or maintenance activity. The person incorporating these materials into the road does not incur a tax liability for ~~((either))~~ the extracting or ~~((the))~~ use of these materials.

(13) **Deduction for hauling logs to export yards.** RCW 82.16.050 provides a ~~((public utility tax))~~ PUT deduction for amounts derived from the transportation of commodities from points of origin within this state to an export elevator, wharf, dock, or shipside ("export facility") on tidewater or navigable tributaries of tidewaters. The commodities must be forwarded from the facility, without intervening transportation, by vessel and in their original form, to an interstate or foreign destination. No deduction is allowed when the point of origin and the point of delivery are located within the corporate limits of the same city or town.

(a) **Conditions for deduction.** This deduction is available only to the person making the last haul, not including hauls within the export facility ~~((r))~~ before the logs are ~~((put))~~ placed on the ship. This deduction is not available if the haul starts in the same city or town where the export facility is located.

The deduction is available only if both of the following criteria are met:

(i) The logs eventually go by vessel to another state or country; and

(ii) The form of the logs does not change between the time the logs are delivered to the export facility and the time the logs are ~~((put))~~ placed on the ship. The mere removal of bark from the logs (debarking) or the incidental removal of imperfections (see subsection (9)(g), of this rule) while the logs are at the export facility is not itself a manufacturing activity, nor does it result in a change in the "original form" of the logs as contemplated by RCW 82.16.050.

(b) **Documentation requirements for deduction.** The log hauler must prove entitlement to the deduction. Delivery tickets that show delivery to an export facility are not, alone, sufficient proof. A certificate from the export facility operator is acceptable additional proof if it is substantially in the following form. Rather than a certificate covering each haul, a "blanket certificate" may be used for a one-year period ~~((of time))~~ if no significant changes in operation will occur within this period of time.

#### **Exemption certificate for logs delivered to an export facility**

The undersigned export facility operator hereby certifies:

That \_\_\_\_\_ percentage or more of all logs hauled to the storage facilities at \_\_\_\_\_, the same located on tidewater or navigable tributaries thereto, will be shipped by vessel directly to an out-of-state or foreign destination and the following conditions will be met:

1. The logs will not go through a process to change the form of the logs before shipment to another state or country.

2. There will be no intervening transportation of these logs from the time of receipt at the export facility until loaded on the vessel for the interstate or foreign journey.

Trucking Firm \_\_\_\_\_

Trucking Firm Address \_\_\_\_\_

Trucking Firm UBI# \_\_\_\_\_

Export Facility Operator \_\_\_\_\_

Operator UBI# \_\_\_\_\_

Person Giving Statement \_\_\_\_\_

Title of Person Giving Statement \_\_\_\_\_

(c) **Examples.** ~~((The following examples identify a number of facts and then state a conclusion regarding the deductibility of income derived from hauling logs to export facilities. Unless specifically provided otherwise))~~ For Examples 16 through 18, presume that the logs are shipped directly to another country from the export facility.

~~((i) Example 9. Logs are hauled from the harvest site to an export facility. While the bark will be removed from fifty percent of the logs, no other processing takes place.))~~ **Example 16. Qualifying PUT deduction for transportation to an export facility.**

**Facts:** MMM Hauling Company (MMM) is hired to haul logs from a harvest site to an export facility over public roads. The logs will immediately be loaded upon a ship for export at the export facility. As part of its services, MMM will remove bark from 50 percent of the logs; no other processing activities will occur. MMM receives \$10,000 in exchange for its services.

**Result:** MMM must report \$10,000 in gross income under the Log Hauling over Public Highways PUT classification. MMM may also claim a \$10,000 deduction from the measure of its PUT, as the logs will be shipped directly to another country from the export facility, provided the appropriate exemption certificate is obtained.

**NOTE:** Because the mere removal of bark is not considered a change in the form of the logs, the export facility may provide a certificate in the above form indicating that all logs at this facility will ultimately be shipped to another country. ~~((The hauler may then claim a deduction for one hundred percent of this haul.~~

~~((ii) Example 10. Logs are hauled from the harvest site))~~ Additionally, this means that MMM is not engaged in a processing for hire activity.

**Example 17. Activities that do not qualify for PUT deduction for transportation to an export facility.**

**Facts:** Assume the facts from Example 16, except that MMM hauls the logs to an export sorting area, approximately one mile from the export facility. At this location further sorting takes place and ~~((eighty))~~ 80 percent of the logs are hauled approximately one mile on public roads ~~((to shipside and shipped))~~ for export to another country. The other ~~((twenty))~~ 20 percent of the logs are sold and delivered to local sawmills. ~~((The haul to the sorting yard is subject to tax because there is another haul from the sorting yard to shipside.))~~

**Result:** MMM must report \$10,000 in gross income under the Log Hauling over Public Highways classification. MMM may not claim a deduction from the measure of its PUT, as the logs will not be shipped directly to another country from the export facility. It is immaterial ~~((that the hauler))~~ MMM may be paid ~~((based on))~~ an "export" rate for its services.

~~((The haul from the sorting yard to shipside is))~~ **NOTE:** Charges for the haul of the logs from the export sorting area to the export facility may be deductible if ((~~it~~)) the transportation route does not start and end within the corporate limits of the same city or town, and the hauler obtains the appropriate exemption certificate. The haul to the local sawmills is not deductible.

~~((iii))~~ **Example 11.** Logs are hauled from the harvest site to an export facility. The hauler is aware that all logs will need to be hauled a distance of approximately one-half mile across the export facility yard to reach the ship when it arrives at the dock. The dock is located next to the export facility. The hauler may take the deduction,) **Example 18. Qualifying PUT deduction for transportation to an export facility.**

**Facts:** Assume the facts from Example 16, except that once the logs are delivered by MMM to an export facility, the logs will still need to be transported approximately half of a mile to reach the ship for loading (all within the export facility).

**Result:** MMM must report \$10,000 in gross income under the Log Hauling over Public Highways PUT classification. MMM may also claim a \$10,000 deduction from the measure of its PUT, as the logs will be shipped directly to another country from the export facility, provided the appropriate exemption certificate is obtained. Movement of the logs within the export facility is not an intervening haul.

(14) **Small timber harvesters - Business and occupation tax exemption.** RCW 82.04.333 provides a limited exemption from B&O tax for small harvesters. A small harvester may take a deduction for an amount not to exceed ((one hundred thousand dollars)) \$100,000 per tax year from the gross receipts or value of products proceeding or accruing from timber harvested. A deduction may not reduce the amount of tax due to less than zero.

((A)) (a) **Definition of small harvester.** "Small harvester" means every person, who from his or her own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use in an amount not exceeding ((two million)) 2,000,000 board feet in a calendar year. When a government entity (i.e., the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein) ((so)) fells, cuts, or takes timber for sale or for commercial or industrial use, not exceeding these amounts, the small harvester is the first person other than the ((United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein,)) government entity who acquires title to or a possessory interest in the timber. "Small harvester" does not include persons performing under contract the necessary labor or mechanical services for a harvester, and it does not include the harvesters of Christmas trees or short-rotation hardwoods. RCW 84.33.035.

((a)) (b) **Registration - Tax return.** A person whose only business activity is as a small harvester of timber ((and whose gross income in a calendar year from the harvesting of timber is less than one hundred thousand dollars, is not)) is required to register with the department for B&O tax purposes ((. This person must nonetheless register with the forest tax)), unless otherwise specified in WAC 458-20-101 (2) (a), tax registration and tax reporting, or under chapter 82.32 RCW. Small harvester must also register with the forest tax



program in audit division of the department for payment of the timber excise tax. See chapters 84.33 RCW and 458-40 WAC for more information regarding the timber excise tax.

~~((An unregistered small harvester of timber is required to register with the department for B&O tax purposes in the month when the gross proceeds received during a calendar year from the timber harvested exceed the exempt amount. The harvester must then file and report on an excise tax return all proceeds received during the calendar year to the time when the filing of the excise tax return is required.~~

~~(b-)) (c) **Examples.** In each of the following examples, the harvester must register with the department's forest tax ((division)) program for the payment of timber excise tax, and must report under the appropriate tax classifications as described above in this rule.~~

~~((i) **Example 12.**) **Example 19. Unregistered small harvester.**~~

~~**Facts:** A small harvester, not currently registered with the department for B&O tax purposes, harvests timber in June and again in August, receiving ((fifty thousand dollars in June and two hundred thousand dollars in August from the sale of the logs harvested.~~

~~B&O tax is due on the entire two hundred fifty thousand dollars received from the sale of logs.) \$10,000 for the June sale and \$200,000 for the August sale of the harvested logs. Each sale is made to a lumber mill who presents the small harvester with a reseller permit.~~

~~**Result:** The small harvester must register with the department in August when the receipts from the timber harvesting business exceed the ((one hundred thousand dollars exemption amount)) gross revenue threshold in WAC 458-20-101, assuming the other registration conditions in that rule have not otherwise been met prior to August.~~

~~An excise tax return ((is to be filed in the appropriate period as provided in WAC 458-20-22801.~~

~~(ii) **Example 13.** A person is primarily engaged in another business that)) must be filed according to the tax reporting frequency assigned by the department (e.g., monthly, quarterly, or annually). The small harvester must report \$210,000 in gross revenue under Timber Extracting and Wholesaling of Timber or Wood Products B&O tax classifications. The taxpayer is eligible to report a \$100,000 "small harvester" B&O tax deduction from the measure of both B&O tax classifications.~~

~~**Example 20. Registered small harvester.**~~

~~**Facts:** RRR Construction Company (RRR) is primarily in the business of commercial building construction and is currently registered with the department ((for B&O tax purposes and has monthly receipts of two hundred fifty thousand dollars. The person is)). In July 2023, RRR generates \$250,000 in gross wholesaling income from its construction activities. RRR is also a small harvester as defined in RCW 84.33.035 ((and receives sixty thousand dollars)). In July 2023, RRR receives \$60,000 from the sale of ((the)) timber harvested from one of its construction sites, to a local mill for resale. Year to date, RRR has not had any other sales of harvested timber or wood products.~~

~~((B&O tax remains due on two hundred fifty thousand dollars from the other business activities. The sixty thousand dollars received from the sale of logs is exempt and is not reported on the person's excise tax return. The exemption applies to the activity of harvesting timber and receipts from the sale of logs are not combined with the receipts from other business activities to make the sale of logs taxable))~~

**Results:** RRR is required to report \$250,000 in gross revenue under the Wholesaling B&O tax classification for its construction activities.

RRR is required to report the \$60,000 in proceeds from the sale of logs under the Timber Extracting and Wholesaling of Timber or Wood Products B&O tax classifications. RRR is eligible to report a \$60,000 "small harvester" B&O tax deduction from the measure of both B&O tax classifications. RRR remains eligible for a "small harvester" B&O tax deduction up to \$40,000 (\$100,000-\$60,000), if it harvests and sells more timber through the end of the tax reporting year.

~~((iii) Example 14.))~~ **Example 21. Unregistered small harvester (deduction carryover).**

**Facts:** Don Janson, a small harvester not otherwise registered with the department for B&O tax purposes contracts with ~~((a logging company to provide the labor and mechanical services of the harvesting. The small harvester is to receive sixty))~~ NNN Logging Company (NNN) to harvest standing timber from real property owned by Mr. Janson. Mr. Janson retains ownership of the timber until it is sold to a party. Under the agreement, Mr. Janson receives 60 percent and the logging company ~~((forty))~~ 40 percent of the log sale proceeds. ~~((The log purchaser pays two hundred fifty thousand dollars for the logs during the calendar year, paying one hundred fifty thousand dollars to the small harvester and one hundred thousand dollars to the logging company.~~

For the small harvester, B&O tax is due on the entire two hundred fifty thousand dollars paid for the logs. The small harvester is taxed upon the gross sales price of the logs without deduction for the amount paid to the logging company. RCW 82.04.070. The small harvester must register with the department for B&O tax purposes in the month when, for the calendar year, the proceeds from all timber harvested exceed one hundred thousand dollars. The logging company is taxed on the one hundred thousand dollars it received under the appropriate business tax classification(s). The logging company is not a small harvester as defined in RCW 84.33.035.) In September 2021, the harvested timber is sold at wholesale for \$250,000, \$150,000 (60% of \$250,000) of which is received by Mr. Janson.

**Result:** Mr. Janson is required to register with the department for B&O tax purposes and must report the entire \$250,000 in sales proceeds under the Timber Extracting and Wholesaling of Timber or Wood Products B&O tax classifications. Mr. Janson is eligible to take a \$100,000 "small harvester" B&O tax deduction from the measure of both B&O tax classifications, reducing the B&O taxable revenue to \$150,000. Assuming the sale occurred in Washington, Mr. Janson is also eligible to claim a MATC.