



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Revenue

Permanent Rule Only

Effective date of rule:

Permanent Rules

31 days after filing.

Other (specify) (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose:

The Department is proposing revision to WAC 458-20-13501 to:

- Define log transportation businesses and indicate that effective August 1, 2015, a reduced PUT rate is available to most log transportation businesses (RCW 82.16.020, Chapter 6, 2015 Laws 3rd Special Session);
- Update and add statute references;
- Update definition for “small harvester” to match RCW 84.33.035;
- Update reporting requirements on timber purchases including the extended expiration date of July 1, 2018, as provided by RCW 84.33.088; and
- Revise language pertaining to “services furnished jointly” to correspond with the statute and Puget Sound v Dep’t of Revenue, 158 Wash. App. 616 (2010).

Citation of existing rules affected by this order:

Repealed:

Amended: WAC 458-20-13501 (Rule 13501) *Timber harvest operations*

Suspended:

Statutory authority for adoption: RCW 82.32.300 and 82.01.060(2)

Other authority : RCW 82.16.020

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 15-21-014 on October 12, 2015.

Describe any changes other than editing from proposed to adopted version: **None.**

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available.

An analysis was not prepared.

Date adopted:

January 4, 2016

NAME

Kevin Dixon

SIGNATURE

TITLE

Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: January 04, 2016

TIME: 10:07 AM

WSR 16-02-063

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	Amended		Repealed
Federal rules or standards:	New	Amended		Repealed
Recently enacted state statutes:	New	Amended	1	Repealed

The number of sections adopted at the request of a nongovernmental entity:

	New	Amended		Repealed
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The number of sections adopted in the agency's own initiative:

	New	Amended	1	Repealed
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	Amended		Repealed
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The number of sections adopted using:

Negotiated rule making:	New	Amended		Repealed
Pilot rule making:	New	Amended		Repealed
Other alternative rule making:	New	Amended	1	Repealed

AMENDATORY SECTION (Amending WSR 01-13-042, filed 6/14/01, effective 7/15/01)

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

Timber harvest operations generally consist of a variety of different activities. These activities ~~((are))~~ may be subject to different tax rates ~~((and/))~~ or classifications under the ~~((Revenue Act))~~ business and occupation tax and public utility tax, depending on the nature of the activity.

(a) **Scope of rule.** This rule explains the application of the business and occupation (B&O), public utility, retail sales, and use taxes to persons performing activities associated with timber harvest operations. This rule explains how the public utility tax deduction ~~((available))~~ provided by RCW 82.16.050 for the transportation of commodities to an export facility ~~((RCW 82.16.050))~~ applies to the transportation of logs ~~((subsection 13))~~. It also explains how the B&O tax exemption provided by RCW 82.04.333 for small timber harvesters applies ~~((subsection 14))~~.

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

- (i) WAC 458-20-135 ~~((+))~~ Extracting natural products ~~((+))~~;
- (ii) WAC 458-20-136 ~~((+))~~ Manufacturing, processing for hire, fabricating ~~((+))~~;
- (iii) WAC 458-20-13601 ~~((+))~~ Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment ~~((+))~~;
- (iv) Chapter 458-40 WAC ~~((+))~~ Taxation of forest land and timber ~~((+))~~; and
- (v) Chapter ~~((458-61))~~ 458-61A WAC ~~((+))~~ Real estate excise tax ~~((+))~~.

(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.** ~~((Effective July 22, 2001,))~~ Persons cultivating short-rotation hardwoods are considered farmers. Refer to WAC ~~((458-20-122,))~~ 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. ~~((Chapter 97, Laws of 2001))~~ RCW 84.33.035.

(2) **Timber harvesters.** Timber harvesters may engage in business activities that require them to report under the extracting, manufacturing, ~~((and/or))~~ wholesaling, or retailing B&O tax classifications.

The definition of "extractor" ~~((+))~~ found in RCW 82.04.100 ~~((+ as it))~~ 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 in-

clude 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 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 of privately owned timber in an amount exceeding two hundred thousand board feet, if purchased in a voluntary sale made in the ordinary course of business. The report must contain ~~((the))~~ all information relevant to the value of the timber purchased including, but not limited to, the following, as applicable: Purchaser's name ((and)), address((, purchase information (dates, price, descriptions of land, acreage, and required improvements, the volume purchased, and cruise and thinning data) and all relevant information to the value of the timber purchased)) 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.

This report must be filed on or before the last day of the month following the purchase of the timber. A two hundred fifty dollar penalty may be imposed against a purchaser for each failure to satisfy the requirements for filing this report. These filing requirements ~~((become effective July 1, 2001, and))~~ are scheduled to expire July 1, ~~((2004. Chapter 320, Laws of 2001))~~ 2018. RCW 84.33.088.

(b) **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 of the severed trees prior to any manufacturing activity.

(c) **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 ~~((applies to))~~ is measured by the value of the products manufactured, which is generally the gross proceeds of sale~~((, whether the manufactured product is sold at retail or wholesale. Refer also to RCW 82.04.450 and WAC 458-20-112)).~~ For more information regarding the value of products see RCW 82.04.450 and WAC 458-20-112.

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. ~~((For example,))~~

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

(i) 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;

(ii) If logs are hauled to a 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 facility to delivery to the customer; and

(iii) 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 customer. 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 manufacturing process (e.g., cutting the logs into lumber), the entire process, including the debarking, is a manufacturing activity. In such a 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 facility to the customer.

(d) **Selling.** The income from the sale of the logs is subject to 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. (~~For example,~~)

Example 2. 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.

(ii) Retail sales tax must be collected and remitted on all sales to consumers, (~~again~~) unless exempt by law. For wholesale sales, sellers must obtain (~~resale certificates from their customers to document the wholesale nature of any transaction. (Refer to WAC 458-20-102 on resale certificates.)~~) and retain copies of their customers' reseller permits to document the wholesale nature of the transaction. For information on reseller permits see WAC 458-20-102 and 458-20-10201.

(e) **Multiple activities tax credit (MATC).** An extractor (~~and~~) or manufacturer who sells the product (~~he or she extracts and/or manufactures~~) extracted or manufactured must report under each of the appropriate "production" (extracting (~~and~~) or manufacturing) and "selling" (wholesaling or retailing) classifications (~~of the B&O tax. RCW 82.04.440~~) on the excise tax return. The extractor (~~and~~) 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. (~~See WAC 458-20-19301 (Multiple activities tax credits)~~) For a more detailed explanation of the MATC reporting requirements see WAC 458-20-19301.

(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 B&O tax (~~upon~~) classification measured by the gross income from those services. RCW 82.04.280(~~(+3)~~). (~~For example, a person severing trees owned by a timber harvester is performing an extracting activity, and is considered an extractor for hire with respect to those services.~~)

~~(See also WAC 458-20-135 for more information regarding extractors for hire.) The measure of tax is the gross income from the services. This income is not subject to the retail sales tax.)~~

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 owes B&O tax under the extractor for hire tax classification measured by its gross income from the services.

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

- (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.

(4) **Processors for hire.** Persons performing ~~((labor or mechanical))~~ services as independent contractors for timber harvesters during the manufacturing portion of a timber harvest operation are subject to tax under the processing for hire B&O tax classification measured by the gross income from those services. RCW 82.04.280~~((3)).~~ ~~(See also WAC 458-20-136 for more).~~ For information regarding processors for hire see WAC 458-20-136. ~~(() For example, a person delimiting and bucking severed trees at the harvest site is a processor for hire if another person owns the severed trees. A person transporting))~~

Example 4. 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 B&O tax under the processing for hire tax classification. TTT then hires Chopper Services to transport the logs by helicopter from where the logs were ~~((severed to a landing))~~ delimited and bucked to a location from which the logs will be transported to a mill ~~((is generally))~~. 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 ~~((has))~~ had not yet begun ~~((the helicopter operator is))~~ 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 ~~((activities))~~ or extracting for hire services for consumers must collect and remit retail sales tax on those services unless otherwise exempt by law.

(5) **Hauling activities.** Persons performing services for timber harvesters are often required to haul logs by motor vehicle from the harvest site ~~((exclusively or in part))~~ over public roads. The income attributable to this hauling activity is subject to the public utility tax~~((. While the appropriate tax rate will generally be the motor transportation tax rate, refer to WAC 458-20-180 for more information regarding the distinction between the motor and urban transportation tax rates and classifications))~~ (PUT).

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 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 tax under the service and other activities B&O tax ((applies. For example,)) classification, not the PUT.

Example 5. Hauler A hauls logs over private roads from the harvest site to the transfer site ~~((, at which))~~ 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 ~~((appropriate classification of 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 ~~((appropriate tax classification for the hauling activity. If the hauling is subject to the public utility tax, a))~~ 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 ((the amount paid to the third party may be claimed as)) jointly furnished services((. RCW 82.16.050(3). The law provides no)) 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 ((for hauls subject to the service and other activities)) is available under the B&O tax.

~~((For example, EFH is hired by a timber harvester to perform the necessary labor and services to fell trees, delimb and buck these trees to length, and haul the logs to a mill. EFH is paid two hundred fifty thousand dollars. EFH hires Trucking to haul all of the logs from the woods to the mill, in part over public roads. Trucking is paid one hundred thousand dollars. The amount of income received by EFH attributable to felling the trees is fifty five thousand dollars, while ninety five thousand dollars is attributable to delimiting and bucking the trees. EFH will report fifty five thousand dollars and ninety five thousand dollars under the extracting for hire and processing for hire B&O tax classifications, respectively. EFH will report one hundred thousand dollars under the appropriate public utility tax classification, and claim a deduction for the full one hundred thousand dollars as "jointly furnished services."))~~

(b) **Hauls using own equipment.** If the person hauls the product using his or her own equipment, and has established hauling rates that ~~((he or she pays))~~ are paid to third-parties for comparable hauls, these rates may be used to establish the measure of tax for the 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 ((tax)) PUT classification.

(c) **Deduction for hauls to export facilities.** Refer ~~((also))~~ to subsection (13) ~~((below))~~ 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 take timber may ~~((incur either a))~~ be subject to various taxes including the B&O tax, timber excise tax, and real estate excise tax ~~((liability, or possibly both a B&O and a timber excise tax liability)).~~ 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. ~~((This information should only be used as a general guide. The tax results of other types of arrangements must be determined only after a review of all the facts and circumstances.))~~ These examples presume that the trees being harvested are not Christmas trees, and that no participant is a federal, state, or local government entity.

(a) **Example 6. 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 ~~((remitting))~~ 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 scaled, 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 la-

bor or mechanical services for the extractor/harvester." ((+))See sub-sections (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.

(7) **Equipment and supplies used in timber harvest operations.** The retail sales tax applies to all purchases of 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 seller fails to collect the appropriate retail sales tax, the buyer is required to remit the retail sales tax (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 a retail sales or use tax on the same property to another state or foreign country (or political subdivision of either), that person may claim a credit for those taxes against the Washington use tax liability.

(a) **Exemption available for certain manufacturing equipment.** RCW 82.08.02565 and 82.12.02565 provide ((a)) retail sales and use tax exemptions for certain machinery and equipment 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.

(b) **Property manufactured for commercial use.** Persons manufacturing tangible personal property for commercial or industrial use are subject to both the manufacturing B&O tax and use ((~~taxes upon~~)) tax on the value of the property manufactured, unless a specific exemption applies. ((+See also)) WAC 458-20-134 defines and provides information on commercial or industrial use, and WAC 458-20-112 ((~~on~~)) describes how to determine the value of products.((+)) If the person also extracts the product, ((~~the extracting~~)) B&O tax is ((~~also~~)) due under the extracting tax classification, and a MATC may be taken.

((~~For example,~~)) **Example 8.** ABC Company severs trees, manufactures the logs into lumber, and then uses the lumber to construct an office building. The use of the lumber by ABC in constructing its office building is a commercial or industrial use. ABC is subject to tax under the extracting and manufacturing B&O ((~~taxes~~)) 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 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 third-party grower, the seed is provided to the grower and tree seedlings are received back after a specified growing period.

(a) **Responsibility to remit retail sales or use tax.** The purchase of seeds or seedlings by a person cultivating timber is subject to the retail sales tax. If the seller fails to collect retail sales tax, the buyer must remit retail sales tax (commonly referred to as "deferred sales tax") or use tax, unless otherwise exempt by law. The use of seed collected by a person cultivating timber is subject to use tax. In the case of seed provided to third-party growers in Washington, the seed owner, and not the third-party grower, incurs any use tax liability ((~~upon~~)) on the value of the seed. The value of seedlings brought into and used in Washington is 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.** (~~Chapter 129, Laws of 2001,~~) RCW 82.08.850 and 82.12.850 provide ~~(s)~~ retail sales and use tax exemptions for certain sales ~~((and/))~~ 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 ~~((in whole or in part))~~ eligible for the sales tax exemption.

(i) **Retail sales tax exemption.** Retail sales tax does 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 used for growing timber outside Washington. This exemption also applies to the sale of conifer seed 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, "Indian country" has the meaning given in RCW 82.24.010.

This exemption applies only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the 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 ~~((this))~~ the tax ((exemption)) paid at source deduction may claim a ~~((tax paid at source))~~ deduction on ~~((the buyer's))~~ 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.

(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 ((and/)) or income incidental to timber 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.

(a) **Taking other natural products from timberland.** The ~~((taking))~~ value of natural products such as boughs, mushrooms, seeds, and cones taken for sale or commercial or industrial use is subject to the tax under the extracting B&O tax classification. The sale of these products is subject to B&O tax under the wholesaling or retailing ~~((B&O))~~ tax classification, as the case may be. Persons both extracting and selling natural products should refer to WAC 458-20-19301 ~~((Multiple activities tax credit))~~ for an explanation of the MATC reporting requirements. The retail sales tax applies to sales to consumers, unless a specific exemption applies.

(b) **Timber cruising, scaling, and access fees.** ~~((Charges for))~~ Gross income from timber cruising, scaling services, and ~~((to allow))~~ allowing others to use private roads ~~((are))~~ is subject to tax under the service and other activities B&O tax classification. This tax classification also applies to access fees for activities such as hunting, taking firewood, bough cutting, mushroom picking, or grazing. Charges to allow a person to take an identified quantity of tangible personal property are considered sales of that property ~~((+))~~. See subsection (9)(d) ~~((below))~~ 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 planting trees or other vegetation, precommercial thinning, 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 ~~((B&O))~~ tax classification) or retail (subject to B&O tax under the retailing ~~((B&O))~~ tax classification and also to retail sales ~~((taxes))~~ tax sales, depending on the nature of the transaction. ~~((See WAC 458-20-102 for an explanation of the documentation requirements for wholesale sales.))~~ These sales are often made in the nature of charges allowing 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.** Gross income from the unloading of 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. ~~((See also WAC 458-20-211))~~ 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 subject to 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. ~~((See also WAC 458-20-193D for additional))~~ For tax-reporting information regarding services associated with interstate or foreign commerce 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 log patrols is subject to 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. In many cases logs will be towed to a location specified by the customer for storage. Any charges for boomsticks while the logs are stored are rentals of tangible personal property and subject to the tax under the retailing B&O tax classification and retail sales tax if to a consumer. (~~(See also WAC 458-20-211 for more)~~) 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 activities. These activities can include, but are not necessarily limited to, services such as weighing, tagging, banding, appraising, and sorting of logs. Other incidental activities, such as the debarking, removal of imperfections such as crooks, knots, splits, and seams, and trimming of log ends to remove defects, are also performed as needed. Income received by persons performing the export sorting yard activities as identified in this subsection is subject to tax under the service and other activities B&O tax classification.

(10) **Harvesting Christmas trees.** 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 bailing (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.

(a) **Plantation Christmas tree operations.** Persons growing or producing plantation Christmas trees on their own lands or (~~upon~~) on lands in which they have a present right of possession are farmers. RCW 82.04.213. Plantation Christmas trees are Christmas trees that are exempt from the timber excise tax under RCW 84.33.170. This 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. RCW 82.04.035(~~(, 84.33.170,)~~) and 84.33.035.

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

(ii) Farmers growing or producing plantation Christmas trees may purchase seeds, seedlings, fertilizer, and spray materials at wholesale. RCW 82.04.050 and 82.04.060. (~~See also WAC 458-20-122 (Sales of feed, seed, fertilizer, spray materials, and other tangible personal property for farm use).~~)

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

(b) **Other Christmas tree 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. RCW 82.04.100. The tax-reporting in-

structions 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 ~~((and/or))~~ 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 ~~((of which))~~ may be subject to different tax liabilities. Income attributable to the timber harvest operations is subject to tax under the tax classifications as described elsewhere in this rule. Income attributable to the clearing of land for ~~((and/or))~~ the construction of the residential community, golf course, park, or other development is subject to the wholesaling, retailing, retail sales, or public road construction ~~((taxes))~~ tax, as the case may be. Refer to WAC 458-20-170, 458-20-171, and~~((/or))~~ 458-20-172 for tax-reporting information regarding these construction activities. Persons performing landscape and horticultural services such as cutting ~~((and/))~~ or trimming trees after the land is developed should refer to WAC 458-20-226 ~~((Landscape and horticultural services))~~.

(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 the extracting or extracting for hire B&O tax, as the case may be. 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 ~~((and/))~~ or use of these materials is subject to either the retail sales or use tax.

(a) **Logging road materials provided without charge.** Landowners/timber harvesters may provide materials (e.g., crushed rock) without charge to persons constructing or maintaining logging roads. 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. The person constructing or maintaining the roads is responsible for remitting use tax on the value of the materials, unless that person documents that the landowner ~~((and/))~~ or timber harvester previously remitted the appropriate retail sales or use tax.

Alternatively, the person may take a written statement from the landowner/timber harvester certifying that the landowner/timber harvester has remitted (for past periods) and/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 is effective. The statement must identify the landowner/timber harvester's tax reporting account number and must be signed by a person who is authorized to make such a representation.

(b) **Extracted ~~((and/))~~ or manufactured logging road materials.** Persons constructing or maintaining logging roads are subject to the B&O and use taxes on the value of applied materials they extract ~~((and/))~~ 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 person either directly or by contracting with others extracts and crushes, washes, screens, or blends materials to be incorporated into the road, ~~((extracting))~~ B&O tax under the extracting

classification is due on the value of the extracted product before any manufacturing. (~~The manufacturing~~) B&O tax under the manufacturing classification, and use (~~taxes~~) tax are also due upon the value of 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 processing point to the road site. A MATC may be taken (~~under~~) when computing the B&O tax (~~classification~~) 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 logging road site, but not further processed, (~~extracting~~) B&O tax under the extracting classification, and use (~~taxes~~) tax are due upon the value of the extracted 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 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 (~~an extracting and/or use~~) a tax liability (~~with respect to~~) 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 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, before the logs are put 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:

(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 on the ship. The mere removal of bark from the logs (debarking) (~~and/~~) or the incidental removal of imperfections (see subsection (9)(g), (~~above~~) 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, presume that the logs are shipped directly to another country from the export facility. (~~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) **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. 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 to an export sorting area. At this location further sorting takes place and eighty percent of the logs are hauled approximately one mile on public roads to shipside and shipped to another country. The other twenty percent of the logs are sold to local sawmills. The haul to the sorting yard is subject to tax because there is another haul from the sorting yard to shipside. It is immaterial that the hauler may be paid based on an "export" rate.

The haul from the sorting yard to shipside is deductible if it 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, 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 (~~((whose value of product harvested, gross proceeds of log sales, or gross income of the timber harvesting business is less than one hundred thousand dollars per year))~~). A small harvester may take a deduction for an amount not to exceed one hundred thousand dollars 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 "small harvester" ((is a harvester who takes timber in an amount not exceeding two million board feet in a calendar year. It is important to note that whenever the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein, 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, who acquires title to or a possessory interest in such timber. RCW 84.33.073))~~ 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 board feet in a calendar year. When 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, 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) **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 required to register with the department for B&O tax purposes. This person must nonetheless register with the forest tax division of the department for payment of the timber excise tax. ~~((+))~~See ~~((also))~~ 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 ~~((a))~~ an excise tax return all proceeds received during the calendar year to the time when the filing of ~~((a))~~ the excise tax return is required.

(b) **Examples.** ~~((The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.))~~ In each ~~((example))~~ of the following examples, the harvester must register with the de-

partment's forest tax division for the payment of timber excise tax, and must report under the appropriate tax classifications as described above in this rule.

(i) **Example 12.** 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. 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. ((A)) 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 is currently registered with the department for B&O tax purposes and has monthly receipts of two hundred fifty thousand dollars. The person is a small harvester (~~under RCW 84.33.073~~) as defined in RCW 84.33.035 and receives sixty thousand dollars from the sale of the timber harvested.

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 ((combined)) 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.

(iii) **Example 14.** 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 percent and the logging company forty 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 (~~84.33.073~~) 84.33.035.