



# EXPEDITED RULE MAKING

## CR-105 (December 2017) (Implements RCW 34.05.353)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: October 11, 2019

TIME: 9:24 AM

WSR 19-21-057

**Agency:** Department of Revenue

**Title of rule and other identifying information:** (describe subject) WAC 458-20-13501 – Timber harvest operations.

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The Department is updating WAC 458-20-13501 to include guidance on the preferential B&O tax rate provided in RCW 82.04.260. The rule will reflect legislative changes to RCW 82.04.260 that extend the expiration date of a preferential B&O tax rate for timber extracting and extracting for hire, timber manufacturing and processing for hire, and timber wholesaling activities to July 1, 2045. The Department is also updating WAC 458-20-13501 to reflect legislative changes to RCW 82.04.260 that expand the preferential B&O tax rate to include the activity of manufacturing products defined in RCW 19.24.570(1).

**Reasons supporting proposal:** WAC 458-20-13501 is the Department’s administrative rule for all timber harvest operational activities. Including language that discusses the preferential B&O tax rate provided in RCW 82.04.260 will assist taxpayers in finding information that is relevant to their industry.

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

**Statute being implemented:** RCW 82.04.260.

**Is rule necessary because of a:**

- |                         |                              |  |
|-------------------------|------------------------------|--|
| Federal Law?            | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision?   | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

**Name of proponent:** (person or organization) Department of Revenue

- Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Brenton Madison	6400 Linderson Way SW, Tumwater, WA	360-534-1583
Implementation:	John Ryser	6400 Linderson Way SW, Tumwater, WA	360-534-1603
Enforcement:	John Ryser	6400 Linderson Way SW, Tumwater, WA	360-534-1603

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** None.

**Expedited Adoption - Which of the following criteria was used by the agency to file this notice:**

- Relates only to internal governmental operations that are not subject to violation by a person;
- Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- Content is explicitly and specifically dictated by statute;
- Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
- Is being amended after a review under RCW 34.05.328.

**Expedited Repeal - Which of the following criteria was used by the agency to file notice:**

- The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
- The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
- The rule is no longer necessary because of changed circumstances; or
- Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

**Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4):** The amendments to WAC 458-20-13501 only incorporate existing statutory provisions in RCW 82.04.260 and are not interpretive. The amendments were completed due to 2019 legislative changes to RCW 82.04.260.

**NOTICE**

**THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO**

Name: Brenton Madison  
Agency: Department of Revenue  
Address: PO Box 47476, Olympia, WA 98504-7476  
Phone: 360-534-1583  
Fax: 360-534-1606  
Email: BrentonM@dor.wa.gov  
Other:

**AND RECEIVED BY** (date) December 23, 2019

**Date:** October 4, 2019

**Name:** Atif Aziz

**Title:** Rules Coordinator

**Signature:**



AMENDATORY SECTION (Amending WSR 16-02-063, filed 1/4/16, effective 2/4/16)

**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 different tax rates or classifications under the 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 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 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. 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 458-61A 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.** 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 business activities that require them to report under the extracting, manufacturing, wholesaling, or retailing B&O tax classifications. Timber harvesters may qualify for preferential B&O tax rates on certain qualifying business activities. 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 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 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.

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 are scheduled to expire July 1, 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.

(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.

(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 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.

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.

**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) 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.

(iv) 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 a preferential B&O tax rate multiplied by the gross proceeds of sale. RCW 82.04.260 (12)(b). Taxpayers reporting under the preferential Manufacturing 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.

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

(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.

**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, unless exempt by law. For wholesale sales, sellers must obtain 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.

(iii) Until July 1, 2045, persons who sell at wholesale (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 (D) mass timber products 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.

(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 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 ~~((owes B&O))~~ is subject to tax under the ((extractor)) 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:

- (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 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. For information regarding processors for hire see WAC 458-20-136.

Until July 1, 2045, persons who process for hire (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 a preferential B&O tax rate multiplied by the gross proceeds of sale. RCW 82.04.260 (12) (b). Taxpayers reporting under the preferential Processing for Hire Timber 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.

**Example 4.** Tree Services Inc. (TSI) is hired to delimb 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 Timber Products B&O tax classifica-

tion. TTT then hires Chopper Services to transport the logs by helicopter from where the logs were delimbed 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.

(5) **Hauling activities.** Persons performing services for timber harvesters are often required to haul logs by motor vehicle from the harvest site over public roads. The income attributable to this hauling activity is subject to the public utility tax (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 classification, not the PUT.

**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 using own equipment.** If the person hauls the product using his or her own equipment, and has established hauling rates that 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 PUT classification.

(c) **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 take timber may be subject to various taxes including the B&O tax, timber excise tax, and real estate excise tax. 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.

(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 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 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.



(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 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 tax on the value of the 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.

**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 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 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 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.** 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.** 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 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.

(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 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 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 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, 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 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) 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 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. 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. 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. 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. 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 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 and 84.33.035.

(i) Gross income from wholesale sales of plantation Christmas trees by farmers is exempt from B&O tax. RCW 82.04.330. Gross income from retail sales of plantation Christmas trees by farmers is subject to the retailing B&O tax 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 purchase seeds, seedlings, fertilizer, and spray materials at wholesale. RCW 82.04.050 and 82.04.060.

(iii) Persons performing cultivation or harvesting services for farmers are generally subject to the service and other activities B&O tax on the gross income from those services. See 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 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. 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 the construction of the residential community, golf course, park, or other development is subject to the wholesaling, retailing, retail sales, or public road construction 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.

(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 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 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 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 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, B&O tax under the extracting classification is due on the value of the extracted product before any manufacturing. B&O tax under the manufacturing classification, and use 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 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 logging road site, but not further processed, B&O tax under the extracting classification, and use 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

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 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) 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, 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. 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. 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" 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 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) **Examples.** In each of the following examples, the harvester must register with the department'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. 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 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 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 84.33.035.

DRAFT