WAC 458-20-262 Retail sales and use tax exemptions for agricultural employee housing. (1) Introduction. RCW 82.08.02745 and 82.12.02685 provide a retail sales and use tax exemption for agricultural employee housing. This section also explains the exemptions, who is entitled to the exemption and how to obtain an exemption certificate.

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

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

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

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

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

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

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

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

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

(ii) Items that are not bolted or strapped directly to the build-
ing or structure, or to another item similarly bolted or strapped, do
not qualify for this exemption. These items include but are not limi-
ted to kitchen utensils, mattresses, bedding, portable heating units,
and throw rugs. Stoves, refrigerators, bed frames, lamps and televi-
sion sets that are not bolted or strapped as discussed in (a)(i)
of this subsection, also do not qualify as components of the building or
structure.

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

(iv) As a condition for exemption, the seller must take from the
buyer an exemption certificate completed by the buyer to document the
exempt nature of the sale. This requirement may be satisfied by using
the department of revenue's "Farmers' Retail Sales Tax Exemption Cer-
tificate" which can be obtained through the following means:

(A) From the department's internet site at http://dor.wa.gov;
(B) By calling taxpayer services at 1-800-647-7706; or
(C) By writing to:

Taxpayer Services
Washington State Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478

The seller may accept a legible fax or duplicate copy of an orig-
inal exemption certificate. In all cases, the exemption certificate
must be retained by the seller for a period of at least five years. An
exemption certificate may be provided for a single purchase or for
multiple purchases over a period of time. If the certificate is provi-
ded for multiple purchases over a period of time, the certificate is
valid for as long as the buyer and seller have a recurring business
relationship. A "recurring business relationship" means at least one
sale transaction within a period of twelve consecutive months. RCW
82.08.050 (7)(c). Failure to comply with the provisions in this sec-
tion may result in a denial of the exemption and the agricultural em-
ployer may be subject to use tax plus penalties and interest.
(b) The use tax exemption is available for the use of tangible personal property that becomes an ingredient or component of buildings or other structures used as agricultural employee housing during the course of constructing, repairing, decorating, or improving the buildings or other structures by any person. Again, appliances and furniture that are bolted or strapped to the actual building or structure are considered components of the building or structure.

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

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

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

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

[Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.08.02745 and 82.12.02685. WSR 08-14-017, § 458-20-262, filed 6/20/08, effective 7/21/08. Statutory Authority: RCW 82.32.300 and 82.08.02745. WSR 98-24-069, § 458-20-262, filed 11/30/98, effective 12/31/98.]