



Current Use - Removals

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Outline

Open Space Removals

- Causes of removals
- Assessor's duties
- Additional tax, interest, and penalty
- Exceptions
- Examples/Samples

DFL Removals

- Causes
- Assessor's duties
- Compensating tax, interest, and penalty
- Exceptions
- Examples/Samples

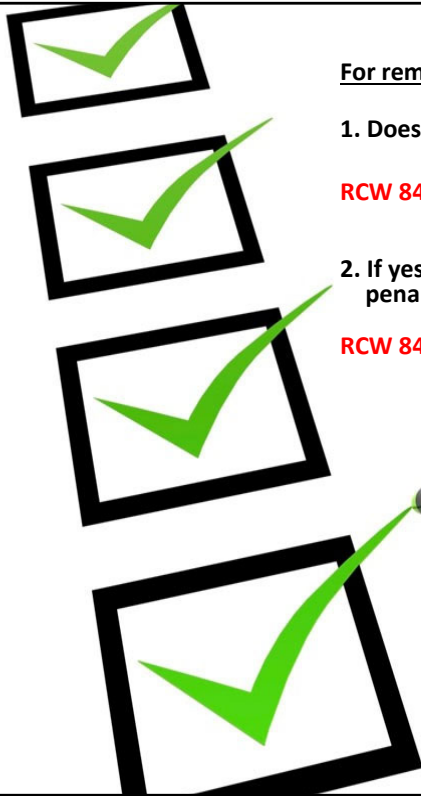
Laws & Rules

- RCW – Revised Code of Washington
 - Passed through legislation (laws)
- WAC – Washington Administrative Code
 - Written interpretations of RCW's
 - Written by the Department of Revenue

Removals from Current Use Classification (Open Space Land, Farm and Ag Land, Timber Land)



- Removals are usually initiated by the Assessor
- Up to seven years of additional tax, interest, and penalty will be due - payable in 30 days
- Current year's tax and interest (January 1 of year removed up through the date of removal) – payable in 30 days



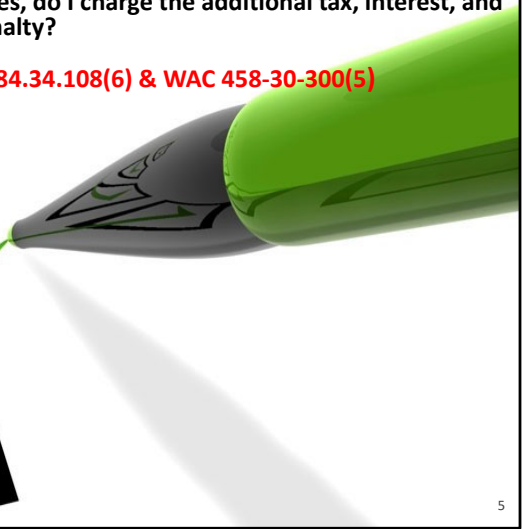
For removals, ask yourself two questions:

1. Does the land have to be removed?

RCW 84.34.108(1) & WAC 458-30-295(3)

2. If yes, do I charge the additional tax, interest, and penalty?

RCW 84.34.108(6) & WAC 458-30-300(5)





- If Assessor determination, must notify owner in writing and give a 30-day notice (Notice of Intent to Remove form)
- If Assessor determines that land still does not qualify, they will remove the land and send the owner a Notice of Removal form.
- From the date the Notice of Removal form was received, the owner has 30 days to submit an application for reclassification.
- From the date the Notice of Removal form was mailed, the owner has 30 or 60 days (depending on the county) or until July 1 of the year of removal, whichever is later, to appeal the removal to the BOE.
- Notice of Removal form explains the steps to reclassify the land and appeal the removal decision, including when a notice of appeal must be filed, where the forms can be obtained, and how to contact the county board of equalization.
- Assessor notifies treasurer of removal and treasurer will mail out statement indicating the amount due and the due date.
- If not paid by the due date, the amount is considered delinquent and subject to the interest outlined in RCW 84.56.020. See Special Notice dated May 17, 2010.
- If the removal occurs as a result of a sale or transfer, the additional tax, interest, and penalty, if imposed, are due at the time of the sale or transfer.
- The additional tax, interest, and penalty will become a lien at the time the land is removed from classification.

Actions that cause removal of land from classification



- Sale or transfer to a new owner if the notice of continuance is signed but not approved by the assessor
- Failure of an owner to respond to request for data
- When owner has sought reclassification because land was subject to removal and the reclassification is denied
- An ineligible change in use that occurs after a request to withdraw classification is made under RCW [84.34.070](#) and before the actual withdrawal of the land occurs
- The assessor determines, based on field inspections, analysis of income and expense data, or any other reasonable evidence, that the land no longer meets the criteria for classification under chapter [84.34](#) RCW
- Assessor discovers the land was classified in error

Actions that do not cause removal of land from classification



YES!

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- The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120
- The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040

Removals due to sales



Whenever there is a sale, some action needs to happen. Either:

- 1) The new owner completes a notice of continuance to be reviewed by the Assessor (or CLA for open space). This will determine if the property will remain in classification.
- 2) No continuance is signed and the property is removed from classification and additional tax, penalty, and interest become due.

Removals due to audit



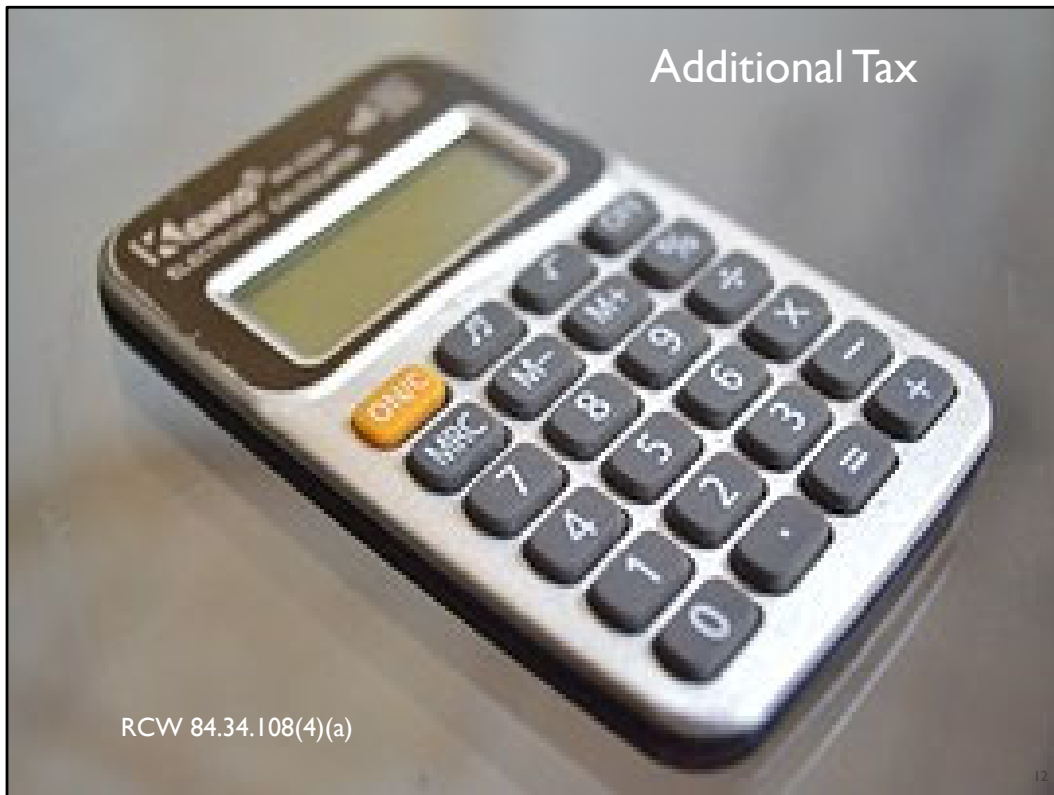
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DOR encourages counties to perform routine audits to verify classified land qualifies to be in the program. This ensures the program is being administered correctly and promotes fairness to taxpayers. Audits can include:

- Physical visits
- Requests for relevant information such as:
 - Open space agreement
 - Farm and ag receipts
 - Federal income tax documents
 - Rental/lease agreements
 - Government payments
 - Livestock or crop data
 - Crop production & yield rates
 - Any other income related to the land
- Discussions with property owners
- Important to document the process to show due process in case of appeal



- Remainder of tax for current year (date of removal through December 31) – payable on regular due dates under RCW 84.56.020.
- This amount is the increase in what they owe for the remainder of the year – not the total amount due for the remainder of the year.
- If property tax statement has not been mailed, it can be adjusted to include the increase



“The amount of additional tax shall be equal to the difference between the property tax paid as “open space land”, “farm and agricultural land”, or “timber land” and the amount of property tax otherwise due and payable for seven years last past had the land not been so classified.”



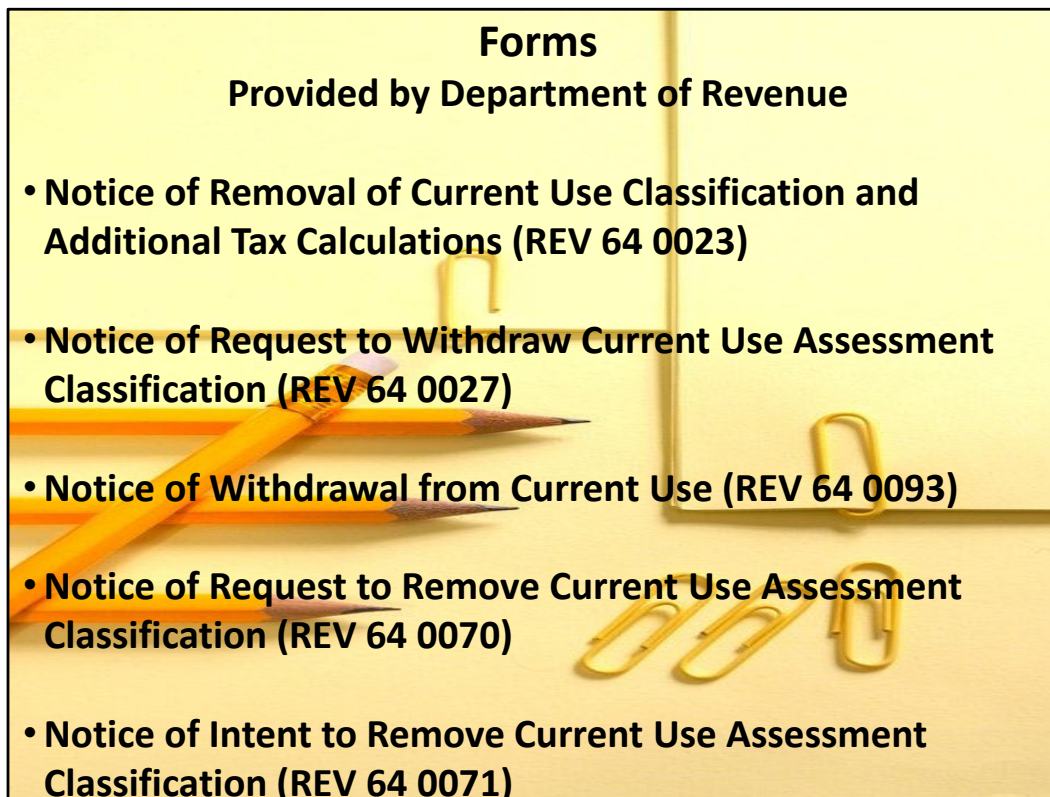
The amount of applicable interest shall be equal to the interest upon the amount of such additional tax paid at the same statutory rate charged on delinquent property taxes from the dates on which such additional tax could have been paid without penalty if the land had been assessed at a value without regard to this chapter.

Penalty

20%

RCW 84.34.080

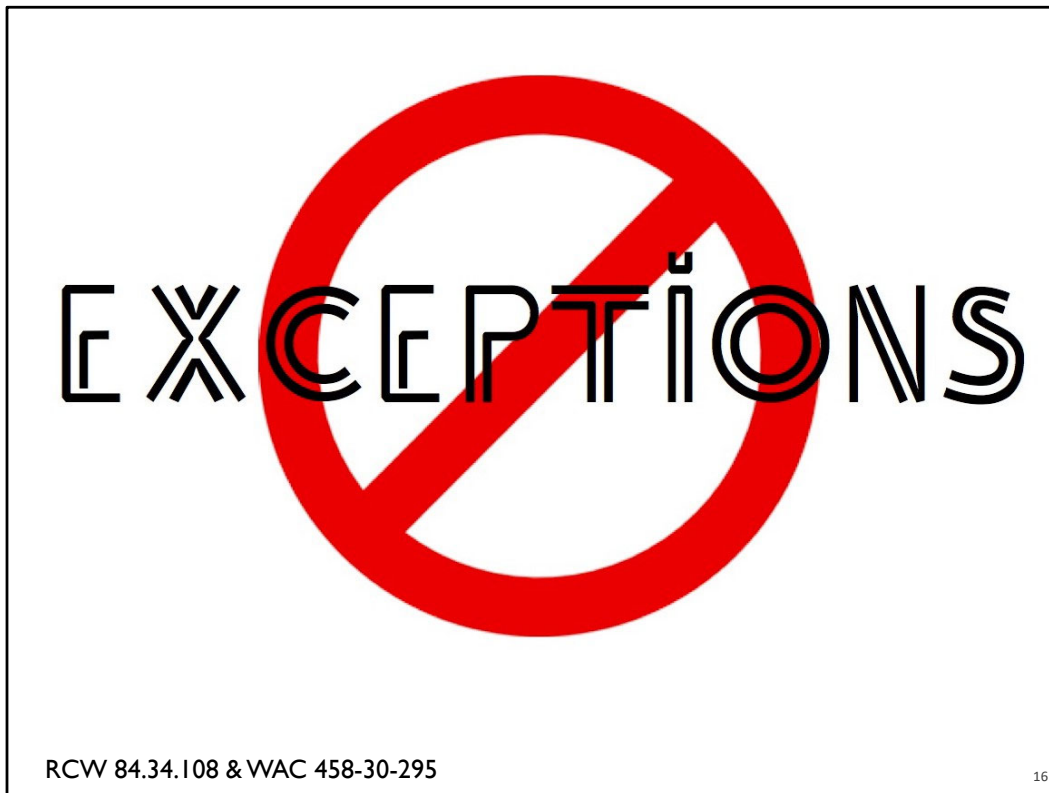
The penalty is twenty percent of the sum of the additional tax and interest



Department of Revenue provides forms to help the counties to administer the program. (RCW 84.08.020 (2)) (RCW 84.34.030 (1)(a))

Forms that are used for the Current Use removal process:

- Notice of Removal of Current Use Classification and Additional Tax Calculations (REV 64 0023)
- Notice of Request to Withdraw Current Use Assessment Classification (REV 64 0027)
- Notice of Withdrawal from Current Use (REV 64 0093)
- Notice of Request to Remove Current Use Assessment Classification (REV 64 0070)
- Notice of Intent to Remove Current Use Assessment Classification (REV 64 0071)



- **Transfer to a government entity in exchange for land located in the state**
- Land taken by power of eminent domain (or sold in anticipation of eminent domain)
- Natural disaster
- Action by an agency of the State of Washington, or by the county or city, where the land is located disallowing the present use of the land
- Transfer of land to a church where the land qualifies for an exemption under RCW 84.36.020
- Property acquired by state agencies or agencies listed in RCW 84.34.210/64.04.130
- **Home site RCW 84.34.020(2)(f)**
- Enactment of statutory exemption
- Creation, sale, or transfer of forestry riparian easements (RCW 76.13.120)
- Creation, sale, or transfer of a conservation easement of private forest lands – unconfined migration zones/critical habitat for threatened or endangered species (RCW 76.09.040)
- **Two year death window**
- Land reclassified in error through no fault of the owner



Designated Forest Land

Transfer to a Government Entity.

Government Entities are:

- State agency
- Federal agency
- County
- City Town
- Metropolitan park district – (RCW 35.61.010)
 - Manages, controls, improvements, maintenance
 - Acquires parks, parkways, boulevards, an recreational facilities (swimming pools, playfields, or public parks) can be located in all or one or more city or county
- Metropolitan municipal corporation
 - Provide essential services in metropolitan areas not adequately provided by existing agencies
 - Provides parks & parkways
 - Water pollution abatement
 - Provides water supply
 - Public transportation
 - Garbage disposal
 - Comprehensive planning services
- Nonprofit nature conservancy corporation or association
- Federally recognized Indian tribe
 - Chehalis
 - Colville
 - Cowlitz
 - Hoh
 - Jamestown
 - Kalispel
 - Lower Elwha
 - Lummi



Title 8 RCW – Eminent Domain

- State
- County
- City
- Corporations

Eminent domain is the same for Current Use classifications and Designated Forestland.
Proof of the intent to exercise eminent domain must be given before a transfer is recorded.



Metropolitan park district :

- Manages, controls, improvements, maintenance.
- Acquires parks, parkways, boulevards, and recreational facilities (swimming pools, playfields, or public parks) can be located in all or one or more city or county.



Metropolitan municipal corporation:

- Provide essential services in metropolitan areas not adequately provided by existing agencies.
- Provides parks & parkway.
- Water pollution abatement.
- Provides water supply.
- Public transportation.
- Garbage disposal.
- Comprehensive planning services.



A nonprofit historic preservation corporation:

- Independent, nonprofit organization
- Dedicated to saving historic places through advocacy, education, collaboration and stewardship



Nonprofit Nature Conservancy

Conserve lands and waters:

- Forestry
- Floodplains by design
- Washington Coast
- Puget Sound: Cities and Water

Protecting nature for communities and people

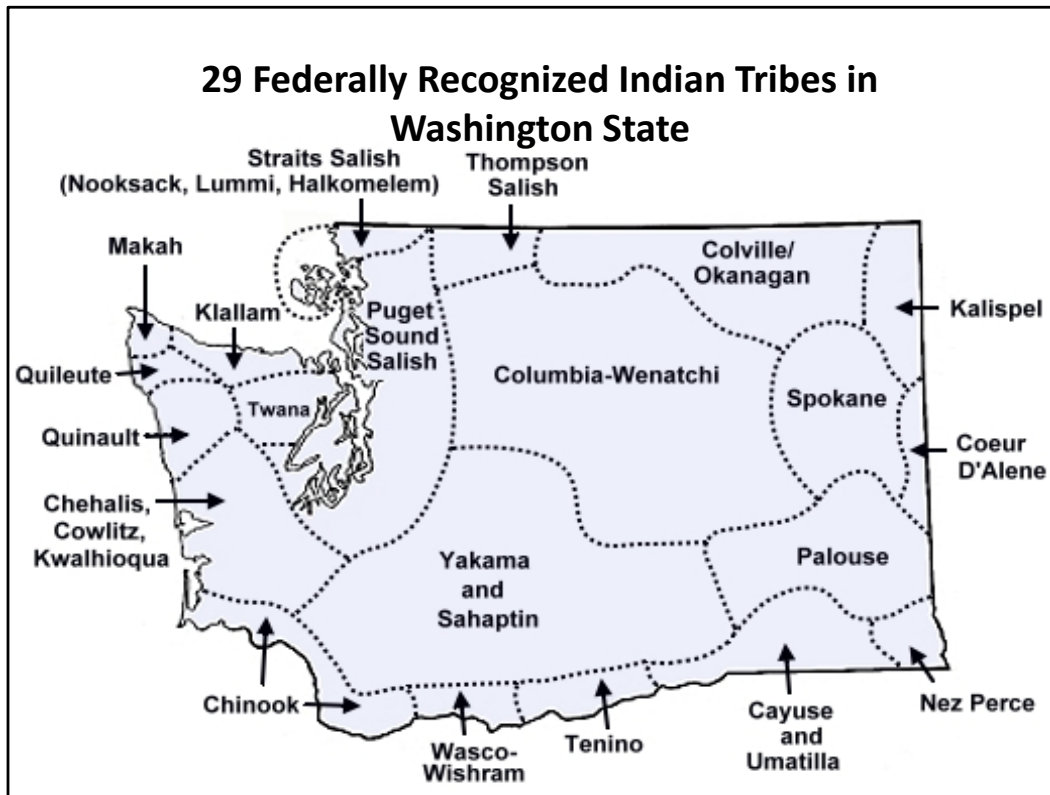
Tribally Owned Land



If tribally owned land is being withdrawn or removed from classification, no additional tax, interest, and penalty are due – regardless of the reason for removal.

PTA 14.2.2009

Based on a United States Court of Appeals case for the 9th Circuit determined in *Quinault Indian Nation v. Grays Harbor County*, 310 F.3d. 645 (2002)

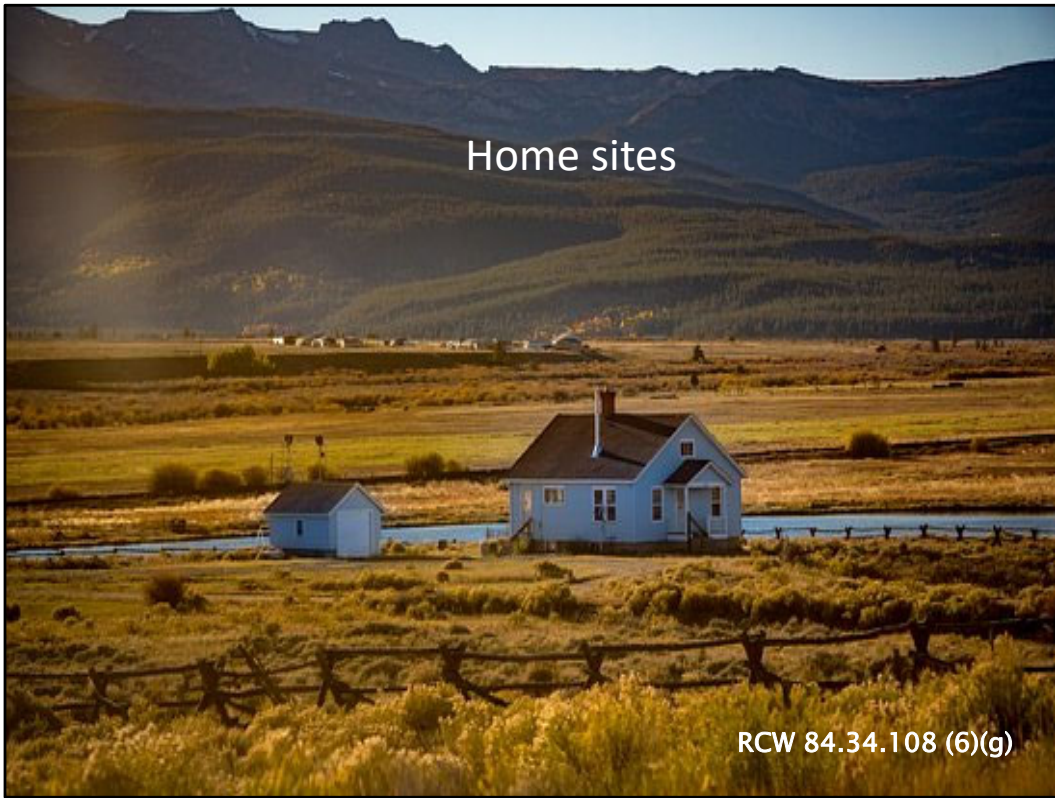


This map is not exact.

- Territories of the different tribes were sometimes shared.
- No one was drawing accurate maps of tribal land in North America until after some of the tribes were displaced, and pushed westward by population growth.

29 Federally recognized tribes

Chehalis Tribe	Colville Confederated Tribes	Cowlitz Tribe
Cowlitz Tribe	Elwha S'Klallam Tribe	Hoh Tribe
Jamestown S'Klallam Tribe	Kalispel Tribe	Lummi Nation
Makah Indian Tribe	Muckleshoot Tribe	Nisqually Indian
Community		
Nooksack Tribe	Port Gamble Indian Community	Puyallup Tribe
Quileute Tribe	Quinault Tribe	Samish Tribe
Sauk-Suiattle Indian Tribe	Shoalwater Bay Indian Tribe	Skokomish Tribe
Spokane Tribe	Squaxin Tribe	Stillaguamish
Tribe		
Suquamish Tribe	Swinomsh Indian Tribe	Tulalip Tribes
Upper Skagit Tribe	Yakama Indian Nation	



Farm and Agricultural Land home sites that qualify for a reduced valuation are exempt from additional tax, interest, and penalties.

Removal reasons:

- Farm owner/operator no longer lives in home.
- Residence is no longer used for farm worker or workers.
- Land is segregated and land that residence is on is less than 20 acres and is not contiguous to any land in the farm and agricultural land classification.



- Property must transfer within 2 years of death of the owner.
- Owner had at least a fifty percent interest in the land.
- Land was continuously classified since 1993.
- The date of death shown on a death certificate is the date used.



- When classified property such as Open Space, Open Space Timber, Open Space Farm and Agricultural land and designated forest land is foreclosed on due to delinquent taxes a county tax foreclosure sale occurs.
- The assessor will calculate the additional or compensating tax and notify the treasurer. The assessor will then record the lien for the additional or compensating tax.
- When the property is sold at a county tax sale for delinquent taxes the additional or compensating tax amount is taken from the proceeds of the sale.
- The new owner will not be liable for the additional or compensating tax that was created by the previous owner.
- If the new owner wishes to be in the classification or designation that the property was in prior to the sale the purchaser can apply for it after the sale.



When property does not sell through a tax foreclosure sale it becomes tax title property.

- All liens are removed from the property, including any additional tax or compensating tax liens.
- The land is no longer on the tax rolls.
- Tax Title property is held in trust by the county for the taxing districts (RCW 36.35.020).
- The County Legislative Authority (CLA) agrees to a minimum price of the property.
- When the county does sell a tax title property it is put back on the tax rolls. All liens have been removed.

Current Use Removal Question

A fire district purchases land classified as open space because they want to build a new fire station.

- 1. Should you remove it?**
- 2. Should you charge additional tax, interest, and penalty?**



Current Use Removal Answer

1. Should you remove it?

Yes, because a fire district is an entity that is exempt from ad valorem taxation.

2. Should you assess additional tax, penalty, and interest?

Yes, because the use of the land, building a fire house, is not an exception to additional tax, interest, and penalty.



Current Use Removal Question

A non-profit nature conservancy purchases land classified as farm and agricultural because it wants to use the land for conservation purposes.

- 1. Should you remove it?**
- 2. Should you charge additional tax, interest, and penalty?**



Current Use Removal Answer

1. Should you remove it?

The land should be removed if the purchaser has no intention of commercially farming the land. However, if they want to sign the notice of continuance because they intend to reclassify the land into open space, the assessor can make the decision on whether to approve the notice of continuance.

2. Should you charge additional tax, interest, & penalty?

If the land is removed at the time of sale, the assessor should not charge additional tax, interest, and penalties. This type of transaction meets the exceptions listed in

Current Use Removal Question

A city purchases land classified as open space because it wants to develop it as a public park.

- 1. Should you remove it?**
- 2. Should you charge additional tax, interest, and penalty?**

Current Use Removal Answer

1. Should you remove it?

Yes, because a city is an entity exempt from ad valorem taxation.

2. Should you charge additional tax, interest, & penalty?

No, because a public park would meet the criteria for “conservation purposes” under RCW 84.34.210. The exception for this removal would be under RCW 84.34.108(6)(f).

Current Use Removal Question

An owner of land classified as farm and agricultural enters into a Wetland Reserve Program conservation easement with the USDA. The easement restricts commercial farming on the entire parcel.

- 1. Should you remove it?**
- 2. Should you charge additional tax, interest, and penalty?**

Current Use Removal Answer

1. Should you remove it?

Yes, because the land cannot be commercially farmed. However, the owner should be encouraged to reclassify the land into the open space classification.

2. Should you charge additional tax, interest, & penalty?

No, because the USDA (a federal agency) is acquiring a property interest (a conservation easement) in the land for conservation purposes. Property interests do not have to be fee simple interests. RCW 64.04.130.

Questions?





Events that create a removal:

- Owner submits a written request to remove the land from the designation.
- Sale or transfer to an ownership making land exempt from ad valorem taxation (automatically exempt - no exemption application required),
- Change of use, the land is no longer primarily devoted to growing and harvesting timber.
- The owner has failed to comply with a final administrative or judicial order made because of the violation of restocking, forest management, fire protection, insect and disease control and forest debris provision of Title 76 RCW.
- The owner sells or transfers forest land to a new owner who has not signed a notice of continuance , except when the new owner is the heir or devisee of a deceased owner. (RCW 84.33.140(5))
- Restocking has not occurred to the extent or within the time specified in the application for designation of the land
- Sale or transfer to a new owner if the notice of continuance is signed but not approved by the assessor
- When owner has sought reclassification because land was subject to removal and the reclassification is denied

Actions that do not cause removal



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- Designated Forest Land cannot be removed if in an Urban Growth Area (UGA) as designated in RCW 36.70A.110.
- When land is subdivided it can remain in the designation if it continues to primarily used to grow and harvest timber. Land has to meet the 5 acre minimum or be contiguous to other parcels to meet the 5 acres minimum. (WAC 458-30-700(4)(e))
- Government restriction that prohibits (partially or wholly) from harvesting timber on forest land (RCW 84.33.140(6))
- If a governmental agency, organization, or other recipient identified as being exempt from the payment of compensating tax has manifested its intent in writing...to acquire a property interest...by means of a transaction that would qualify for an exemption to compensating tax. They must annually provide the assessor...reasonable evidence in writing of the intent to acquire the designated forest land as long as the intent continues or within sixty days of a request by the assessor...
 - [RCW 84.33.140\(5\)\(e\)\(i\)](#)

Assessor's Duties



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- If Assessor determination: must notify owner in writing and provide an opportunity to be heard. Assessor to determine process – must be reasonable and consistent.
- If Assessor determines that land still does not qualify, the land will be removed and the assessor will send the owner a Notice of Removal form.
- Within 30 days of the postmark date on the Notice of Removal, the owner has 30 days to submit an application for reclassification.
- Within 30 days of the postmark date on the Notice of Removal form, the owner has 30 or 60 days (depending on the county) or until July 1 of the year of removal, whichever is later, to appeal the removal to the BOE.
- Notice of Removal form explains the steps to reclassify the land and appeal the removal decision, including when a notice of appeal must be filed, where the forms can be obtained, and how to contact the county board of equalization.
- Assessor notifies treasurer of removal and treasurer will mail out statement indicating the amount due and the due date.
- If not paid by the due date, the amount is considered delinquent and subject to the interest outlined in RCW 84.56.020. See Special Notice dated May 17, 2010.
- If the removal occurs as a result of a sale or transfer, the compensating tax, if imposed, is due at the time of the sale or transfer.
- The compensating tax will become a lien on the land at the time of removal from designation

Removal from Designation (Designated Forest Land)



- Removals are usually initiated by the Assessor
- Up to nine years of compensating tax - payable in 30 days
- Current year's tax (from January 1 of the year of removal up to the date of removal) - payable in 30 days
- Remainder of tax for current year (date of removal through December 31)
 - Payable on regular due dates under RCW 84.56.020
 - The increase in what they owe for the remainder of the year – not the total amount due for the remainder of the year.

Removals from Designation (Designated Forest Land)

Compensating tax

The amount of compensating tax is equal to the difference between the amount that would have been paid on the land if it had been assessed at its true and fair value instead of the forest land value, up to a maximum of nine years.



Exceptions to Compensating Tax (Designated Forest Land)

- Transfer to a government entity in exchange for forestland in the state
- Taking through eminent domain
- Donation of fee title
- Sale or transfer to parks and rec
- Action by the state
- Conservation easement
- Two year death window
- No fault
- Natural disaster

Natural Disaster (2017)

As a result of a natural disaster such as flood, windstorm, earthquake, wildfire, or other such calamity rather than by virtue of the act of the landowner changing the use of the property

RCW 84.33.140(15)



Exceptions to Compensating Tax (Designated Forest Land)

**If tribally owned land is being removed from designation, no compensating tax is due – regardless of the reason for removal.
PTA 14.2.2009**

Based on a United States Court of Appeals case for the 9th Circuit determined in *Quinault Indian Nation v. Grays Harbor County*, 310 F.3d. 645 (2002)

DFL Removal Examples

The Department of Natural Resources exchanges 50 acres of pasture land they own for 50 acres of land designated as forest land that Joe Jones owns.

Should you remove the 50 acres of DFL?

Should you charge compensating tax?

DFL Removal Examples

Should you remove the 50 acres of DFL?

Yes, because the land is being exchanged with an entity exempt from ad valorem taxation.

Should you charge compensating tax?

Yes, because the exchange of forest land and non-forest land is not an exception to compensating tax.

RCW 84.33.140(13)(a)

DFL Removal Examples

Land designated as forest land is donated to Grays Harbor County for conservation purposes.

Should you remove it?

Should you charge compensating tax?



DFL Removal Examples

Should you remove it?

Yes, because the forest land is being donated to an entity exempt from ad valorem taxation.

Should you charge compensating tax?

No, because the donation of land to this type of entity for conservation purposes is an exception to compensating tax.

DFL Removal Examples

Land designated as forest land is sold to Pacific County for conservation purposes.

Should you remove it?

Should you charge compensating tax?



DFL Removal Examples

Should you remove it?

Yes, because the land is being sold to an entity exempt from ad valorem taxation.

Should you charge compensating tax?

Maybe. If the forest land is not exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage council and natural heritage plan as defined in chapter [79.70](#) RCW or approved for state natural resources conservation area purposes as defined in chapter [79.71](#) RCW, you would charge compensating tax.

Questions?

