



INTRODUCTION TO PERSONAL PROPERTY

SECTION 4

Property Tax Advisory

Property Tax Advisories are interpretive statements authorized by RCW 34.05.230.

PTA 6.2.2020

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Property Taxability of Motor Vehicles

Purpose [RCW 84.36.595](#) exempts certain vehicles, including “motor vehicles,” from property taxation. This Property Tax Advisory (PTA) addresses which vehicles qualify as “motor vehicles” exempt from property taxation.

General Rule for Exemption Most vehicles licensed, and used or designed **primarily** for operation on public roads and highways are exempt from property tax. Unlicensed vehicles used in commercial activity (construction, farming, logging, etc.) are generally taxable personal property.

Definition of “Motor Vehicle” The Legislature enacted a property tax exemption in RCW 84.36.595, which applies to the following types of vehicles:

- motor vehicles;
- travel trailers;
- campers; and
- vehicles carrying exempt licenses.¹

The statute defines the term “motor vehicles” in two parts. RCW 84.36.595(1)(a). The first part of the definition describes what vehicles are considered to be “motor vehicles,” for purposes of the exemption from property tax. The second part describes what vehicles are *not* considered to be “motor vehicles,” and therefore do not qualify for the exemption.

¹ RCW 84.36.595(2).

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Department of Revenue
Property Tax Division
PO Box 47471
Olympia, Washington 98504-7471
(360) 534-1400

Specifically, “motor vehicle” means the following:

[A]ll motor vehicles, trailers, and semi-trailers used, or of the type designed primarily to be used, upon the public streets and highways, for the convenience or pleasure of the owner, or for the conveyance, for hire or otherwise, of persons or property, including fixed loads and facilities for human habitation;

However, the definition of motor vehicle² in RCW 84.36.595 also specifically *excludes* the following:

- vehicles carrying exempt licenses;³
- dock and warehouse tractors and their cars or trailers, lumber carriers of the type known as spiders, and all other automotive equipment not designed primarily for use upon public streets or highways;
- motor vehicles or their trailers used entirely upon private property;
- mobile homes as defined in [RCW 46.04.302](#); and
- motor vehicles owned by nonresident military personnel of the armed forces of the United States stationed in the state of Washington, provided personnel were also nonresident at the time of their entry into military service.

Because the statute specifically excludes these vehicles from the definition of motor vehicles as used in the section, they would be subject to property taxation and not exempt from personal property taxes as “motor vehicles” under RCW 84.36.850(2).

Other Statutory Definitions

RCW 84.36.595(2) provides a property tax exemption for motor vehicles. RCW 84.36.595(1)(a) defines motor vehicles for purposes of applying the exemption. However, the definition for motor vehicle uses the terms “motor vehicles” as well as “trailers, and semitrailers” to define what a motor vehicle is without further clarifying these terms. Additionally, RCW 84.36.595(1)(a) uses a number of other related terms that are undefined.

² [RCW 82.44.010\(2\)](#) has substantially the same definition of what is considered a “motor vehicle” for the purposes of the chapter 82.44 RCW Motor Vehicle Excise Tax. For vehicles subject to excise tax, and vehicles exempted from excise tax, see [RCW 82.44.125](#).

³ Because the “motor vehicle” definition in RCW 84.36.595(1) excludes “vehicles carrying exempt licenses,” in order to be exempt, the Legislature needed to add language specifically exempting “vehicles carrying an exempt license” in another part of the statute. The result is that although “vehicles carrying exempt licenses” may not be considered “motor vehicles,” they are still exempt from property tax as their own class of vehicles.

Consistent with longstanding practice, the Department applies the definitions found in the Motor Vehicle Code⁴ for purposes of administering the exemption in RCW 84.36.595 to the extent they are related and not in conflict. The following definitions are applied in administering RCW 84.36.595:

Motor Vehicle

[RCW 46.04.320](#) defines “motor vehicle” as “a vehicle that is self-propelled or a vehicle that is propelled by electric power obtained from overhead trolley wires but not operated upon rails.”

“Motor vehicle” includes neighborhood electric vehicles, medium-speed electric vehicles, and certain golf carts. “Motor vehicle” excludes electric personal assistive mobility devices (EPAMD), power wheelchairs, certain golf carts (except golf carts for the purposes of chapter [46.61 RCW](#)), mopeds, and personal delivery devices.⁵ Definitions for these terms are also found in the Motor Vehicle Code. See [RCW 46.04.357](#): Neighborhood electric vehicle; [RCW 46.04.295](#): Medium-speed electric vehicle; [RCW 46.04.1945](#): Golf cart; [RCW 46.04.1695](#): EPAMD; [RCW 46.04.415](#): Power wheelchair; [RCW 46.04.304](#): Moped; [RCW 46.75.010](#): Personal delivery device.

Trailers, Semi-trailers, Fixed Loads, and Facilities for Human Habitation

The terms “trailers,” “semi-trailers,” “fixed loads,” and “facilities for human habitation” are included in the definition of vehicles that are exempt from property tax under RCW 84.36.595. Definitions for these terms are also found in the Motor Vehicle Code. See [RCW 46.04.620](#): Trailer; [RCW 46.04.530](#): Semitrailer; [RCW 46.04.186](#): Fixed load vehicle.

Motor vehicles that are “facilities for human habitation” are also generally exempt from property tax. Although that term is not defined in statute, the Motor Vehicle Code includes two types of property that are defined in terms of “facilities for human habitation”: “motor homes” and “campers.” See [RCW 46.04.305](#) and [RCW 46.04.085](#), respectively. Campers are specifically exempted in subsection (2) of RCW 84.36.595. “Motor homes” are defined in RCW 46.04.305 as “motor vehicles originally designed, reconstructed, or permanently altered to provide facilities for human habitation, which include lodging and cooking or sewage disposal, and is enclosed within a solid body shell with the vehicle, but excludes a camper or like unit constructed separately and affixed to a motor vehicle.”

In contrast, mobile homes are specifically excluded from the definition of motor vehicles, and they are not otherwise exempted from property taxation. Mobile homes means “a structure, designed and constructed to be transportable in one or

⁴ Title 46 RCW Motor Vehicles.

⁵ See RCW [46.04.670\(2\)](#) for further exclusions of some vehicles.

more sections, and is built on a permanent chassis, and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities that include plumbing, heating, and electrical systems contained therein.”⁶ The primary distinction between a mobile home and a motor home is that a motor home is a type of motor vehicle, designed for temporary dwelling while traveling; whereas a mobile home is designed for permanent dwelling and use on real property.

Exempt vs. Taxable Motor Vehicles

The key question for determining whether a vehicle is an exempt “motor vehicle” is whether it is used or designed **primarily** to be used on public roads and highways. A vehicle capable of being used on public roads, but not **primarily** designed to be used on public roads is not exempt. For example, some vehicles are self-propelled and may be used on public roads, but only as a temporary convenience to move the vehicle from one job site to another. Similarly, motor vehicles or their trailers that are used entirely upon private property are not exempt.

Examples of motor vehicles that **are subject to property tax** because they are not used or designed primarily for use on public streets or highways include the following:

- Any vehicle or automotive equipment that is designed and used primarily for grading of highways, paving of highways, earth moving, construction work, or similar use.⁷
- Vehicles that are in excess of the legal width, length, height, or unladen weight, and may not be moved on a public highway without the permit specified in [RCW 46.44.090](#).⁸
- Farm vehicles operated within a radius of twenty-five miles of the farm where it is principally used or garaged for the purposes of traveling between farms or other locations to engage in activities that support farming operations; farm tractors and farm implements, including trailers designed as cook or bunk houses used exclusively for animal herding, temporarily operating or drawn upon public highways; and trailers used exclusively to transport farm implements from one farm to another during daylight hours or at night when the trailer is equipped with lights that comply with applicable law.⁹
 - Occasional operation of a farm vehicle on a public highway will not exempt the vehicle.

⁶ [RCW 46.04.302](#).

⁷ [RCW 46.04.551](#).

⁸ The maximum requirements for vehicles operating on public roads or highways are set forth in [RCW 46.44.010](#) (outside width limit), [RCW 46.44.020](#) (height), [RCW 46.44.030](#) (lengths), [RCW 46.44.034](#) (lengths – front & rear protrusions), [RCW 46.44.041](#) (gross weights).

⁹ [RCW 46.04.181](#); [RCW 46.16A.080\(3\)\(a\)-\(c\)](#).

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- Forklifts.¹⁰
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Fixed Load Vehicles

A fixed load vehicle means a commercial vehicle that has a structure or machinery permanently attached. Examples of structures or machinery permanently attached are, air compressors, bunk houses, conveyors, hoists, rock crushers, tool houses, and well drilling machines, among others. Fixed load vehicles are incapable of carrying any additional load other than the structure or machinery that is permanently attached.¹¹

A fixed load vehicle is exempt if it meets the following criteria:

1. The fixed load vehicle must be used or designed primarily to be used upon public streets or highways;¹²
2. The vehicle itself, together with its attachment, must be one that can be operated on public streets or highways without the need to obtain a special permit (such as the permit specified in [RCW 46.44.090](#) for vehicles of excessive size, either or load) or without the need for special signage, pilot cars, or other special authorization to operate on the streets or highways;¹³
3. The vehicle must be licensed and registered together with the structure or machine that is permanently attached;¹⁴
4. The license fee paid on the scale weight of the vehicle must include the combined weight of the vehicle and the structure or machine attached;¹⁵
5. The motor vehicle excise tax paid on the vehicle includes the value of the attached equipment or structure;¹⁶ *and*
6. The retail sales or use tax paid on the vehicles includes the value of the attached equipment or structure.¹⁷

Equipment Added to a Vehicle

Separate from fixed load vehicles, the taxability for equipment that is added to a vehicle depends more on the equipment being attached than the use of the vehicle. A key factor in determining if the equipment is taxable is if the equipment can be used separate from the vehicle. For equipment to be exempt, it must meet the following requirements:

¹⁰ [RCW 46.16A.080\(4\)](#).

¹¹ [RCW 46.04.186](#).

¹² [RCW 84.36.595\(1\)\(a\)](#).

¹³ The maximum requirements for vehicles operating on public roads or highways are set forth in [RCW 46.44.010](#) (outside width limit), [RCW 46.44.020](#) (height), [RCW 46.44.030](#) (lengths), [RCW 46.44.034](#) (lengths – front & rear protrusions), [RCW 46.44.041](#) (gross weights).

¹⁴ “Fixed load vehicles” are subject to the registration requirements of [RCW 46.17.335](#). For trucks and trailers that are converted to “fixed load vehicles” after licensing, see [RCW 82.44.035\(2\)](#).

¹⁵ *Id.*

¹⁶ [RCW 82.44.125\(1\)\(c\)](#).

¹⁷ [RCW 82.12.045\(2\)](#).

1. Be permanently attached to the vehicle;¹⁸
2. Be designed to be used on a vehicle and have no useful purpose apart from the vehicle;
3. Be licensed and registered with the vehicle as one unit; *and*
4. The license fee, motor vehicle excise tax, and retail sales or use tax paid includes the value of the equipment.

Example 1:

- **Facts:** A boom truck is a flatbed truck with a boom. The boom is permanently attached to the truck, and serves no useful purpose apart from the truck. The truck and boom are licensed and registered as one unit, and all fees and taxes paid include the boom.
- **Result:** The boom truck may be exempt from property tax as a motor vehicle, if the truck meets the definition of motor vehicle as described in this PTA.

Example 2:

- **Facts:** A welding machine is attached to a trailer and can be operated independently of the trailer. The welding machine has been attached merely as a convenience so that it does not require temporary tie downs while in transit.
- **Result:** The welding machine attached to a trailer is not exempt as part of the vehicle.

**Neighborhood
Electric Vehicles &
Medium-Speed
Electric Vehicles**

A “neighborhood electric vehicle” is a self-propelled, electrically powered motor vehicle whose speed attainable in one mile is more than twenty miles per hour and no more than twenty-five miles per hour.¹⁹

A “medium-speed electric vehicle” is a self-propelled, electrically powered motor vehicle, equipped with a roll cage or crush-proof body design, whose speed attainable in one mile is more than twenty-five miles per hour but not more than thirty-five miles per hour.²⁰

While “neighborhood electric vehicle” and “medium-speed electric vehicle” are included in the definition of “motor vehicle” under RCW 46.04.320, that alone does not mean those vehicles are exempt from property tax. The motor vehicle in question must still be a type of motor vehicle that is used, or is of the type that is designed **primarily** to be used, on public streets and highways.²¹ These types of

¹⁸ The Department interprets “permanently attached” to mean attached by weld, bolts, screws, or the like that would, at minimum, require tools to remove.

¹⁹ [RCW 46.04.357](#).

²⁰ [RCW 46.04.295](#).

²¹ [RCW 84.36.595\(1\)\(a\)](#).

vehicles are not designed primarily for use on public streets and highways, and do not qualify for an exemption from property tax under Title 84.

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SALES TAX AS AN ELEMENT OF VALUE

The Washington State Board of Tax Appeals (Board) ruled in Hoppe v. Boeing Equip. Holding Co., Docket Nos. 9977-9979, that "retail sales tax is not considered to be part of market value of tangible personal property for ad valorem tax purposes." The Board noted that "[t]he amount of sales tax is not known until after the selling price has been determined. The tax as such is not a 'value' agreed upon by the 'willing buyer and willing seller'. [sic]" The Board also noted that retail sales tax is not imposed upon the sale of real property, but it is imposed upon the construction of improvements. Therefore, sales tax is incorporated into the permanent value of the real property and is reflected in the selling price when real property is sold.

The Department of Revenue concurs with the Board's decision. Sales tax is not part of the "purchase price" and thus not part of the "market value." However, it must be pointed out that this applies to personal property only. In fact, the Board's decision implies that sales tax is a part of the value of real property. Consequently, the assessor should make sure that plant machinery, equipment, and other fixtures that would properly be classified as real property are listed and assessed on the real property tax rolls.

"Real property" is defined under RCW 84.04.090 as "the land itself . . . and all buildings, structures or improvements or other fixtures of whatsoever kind thereon"

WAC 458-12-010 further clarifies the definition of "real property" by including as real property all machinery, equipment, or other fixtures permanently affixed to land or to a building, structure, or improvement on land. Items are considered as affixed when they are owned by the owner of the real property and are securely attached to the real property. Items are not considered to be affixed to real property when they are owned separately from the real property unless an agreement specifically provides that such items are to be considered as part of the real property and are to be left with the real property when the occupant vacates the premises. Items that are not attached can also be considered as affixed when they are permanently situated in one location and are adapted to use in the place they are located, e.g., a heavy piece of machinery or equipment set upon, but not bolted to, a foundation.

Whenever there is a question as to whether an item is real property or not, RCW 84.04.080 and 84.04.090 as well as WAC 458-12-005 and 458-12-010 should be consulted. Other sources are the decisions of the appellate courts of this state cited in 18 Wash. Digest 2d, Fixtures §§ 1-35.

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Department of Revenue
Property Tax Division
P O Box 47471
Olympia, Washington 98504-7471
(360) 570-5865

In the valuation of real property, sales tax is not an element of value for any machinery and equipment that qualifies for the Manufacturing Machinery and Equipment Sales and Use Tax Exemption provided by RCW 82.08.02565 and 82.12.02565. This is true even for machinery and equipment purchased before the exemption went into effect. If the property would qualify for the exemption if purchased on the assessment date, sales tax is not an element of value for the assessment year and should be deducted if it was paid originally. This information is relevant only to machinery and equipment that constitutes a fixture (i.e., real property), since sales tax is never an element of value for personal property. Please refer to RCW 82.08.02565 and 82.12.02565 and WAC 458-20-13601 to determine what property qualifies for the exemption.

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ASSESSMENT OF SUPPLIES

This Property Tax Advisory is issued as a guide in clarifying the assessment of supplies for the 2003 and subsequent assessment years. The advisory should not be used to determine the taxability of furniture and fixtures or machinery and equipment.

Taxable assets in this category, like all other assets, are valued at market value as of the assessment date. Since these assets are often consumed during the year, the average inventory method is used to determine the cost for the basis of the valuation if the year-end inventory is not representative of what is typically on hand. In many cases, one-twelfth of the annual cost for the taxable assets is a good estimate of the market value. This suggests that, on average, one month's worth of supplies is on hand at any given time during the year. When it can be shown that more or less inventory is typically on hand, a different measure of average inventory may be used. For example, divide the annual cost of supplies by 52 when only one week's worth of supplies are typically on hand.

An exception to the average inventory method is used to determine the value of spare parts, especially when they are not typically consumed within the year. If this is the case, all of the parts are listed on the personal property affidavit and valued in the same manner as other personal property, with one exception. Since the parts have not been put in service, they do not tend to depreciate. Hence, they are generally assessed at their original cost. However, trend factors may be applied if deemed appropriate to arrive at the market value. Applying a trend factor does not always equate to an increase in the replacement cost estimate; some trend factors indicate a decline in cost/value from one year to the next.

BUSINESS SUPPLIES - GENERAL DEFINITION: Business supplies means:

- (1) Products or materials not held for sale in the normal course of business.
- (2) Materials that do not become an ingredient or component of an article being manufactured for sale or lease (RCW 84.40.210).

As a "general" rule of thumb, items that purchasers should have paid sales or use tax on are considered consumable supplies.

BUSINESS INVENTORIES - DEFINITION: Business inventories are exempt from ad valorem property taxation. "Business inventories" is defined in RCW 84.36.477 and means:

- (1) All livestock;
- (2) All personal property held for sale or lease in the normal course of business; and
- (3) All property becoming an ingredient or component of any article of tangible personal property being manufactured for sale or lease.

Generally, items purchased with a resale certificate are business inventories. "Business inventories" does not include personal property acquired to lease or rent to others unless the requirements of RCW 84.36.477 are met.

The above list is not inclusive. For a more complete listing of exempt business inventories, see RCW 84.36.477.

PACKAGING MATERIALS - DEFINITION: "Packaging materials" means and includes all boxes, crates, bottles, cans, bags, drums, cartons, wrapping papers, cellophane, twines, gummed tapes, wire, bands, excelsior, wastepaper, and all other materials in which tangible personal property may be contained or protected within a container for transportation or delivery to a purchaser.

DUNNAGE - DEFINITION: The term "dunnage" means any material used for the purpose of protecting or holding cargo in place during shipping by any type of carrier. Examples of these types of materials include wood blocks, timbers, separating forms, bulkheads, double floors, or any other type of bracing or support structures.

EXAMPLES AMONG VARIOUS BUSINESS CATEGORIES:

MANUFACTURING/PROCESSING

PACKAGING MATERIALS: The location in the production stream is the determining factor whether packaging materials are inventory or supplies.

When the manufacturer or processor packages manufactured or processed products for a final sale, all packaging materials in which the product is held for sale become a part of that product and are considered inventory for resale. Examples of packaging components used to contain a product held for sale might include some or all of the following: individual wrappings of each item; cardboard used for layering; the package containing each item; the box holding numerous individual items; staples, banding, glue, or other material used to seal the box; pallets holding numerous boxes which might also be sealed in plastic and/or banded together for shipping.

If the product has not been completed and is packaged for shipment to another step in the manufacturing process where it will be repacked, the materials or containers used to ship the product from one step to another are considered supplies. Containers may be considered equipment if they are returned and are reusable by the shipper.

"Dunnage," as defined in this advisory, is always considered a supply item to the user whether it is returned to the user or not.

CHEMICALS: All chemicals used in processing or manufacturing of a product are considered inventory if they react chemically with, or become a component of, the product. An example of this process is chemicals used in a pulp mill for digesting and bleaching pulp. The chemicals react to the cellulose in the pulp fibers altering the fiber and also becoming an ingredient of the final product. Another example is carbon used to form a chemical reaction with alumina to remove oxygen content. This alters the final product produced in an aluminum reduction plant and, therefore, is considered a part of the end product.

OTHER SUPPLIES: All other materials (except packaging) **NOT** held for resale or stockpiled to become an ingredient or component in the manufactured or processed finished product are taxable supplies.

SERVICE

DEFINITION: A "service business" means conducting any type of personal service for others that does not involve the sale of a product. Examples include, but are not limited to, attorneys, hairdressers, doctors, dentists, dry cleaners, nursing homes, accountants, etc.

SUPPLIES: "Supplies" means all materials consumed in the rendering of the service. Exceptions to this rule are:

- (1) Businesses that make a separate charge for material used in the service provided. An example of this type of business is custom meatpacking. The wrapping paper is considered an inventory item because the charge for cutting and wrapping is separate from the charge made for the meat.
- (2) In a business providing parts used in the repair of items of tangible personal property, the parts are considered inventory even though they are not held for resale.
- (3) Materials are considered inventory if they become a part of an item for sale in trade shops, such as newspaper publishers, printing shops, photographers, typesetters, processing for hire, etc., are considered inventory.

INVENTORY: Items held for sale which are not part of the rendition of the personal service are considered inventory.

COMMERCIAL/WHOLESALE

For commercial/wholesale businesses, supplies are considered to be any product or material not held for sale in the normal course of business. Examples of commercial/wholesale businesses and the supplies used in such businesses include but are not limited to:

RESTAURANTS -- Paper napkins, straws, "doggie bags," cleaning supplies, and plastic silverware.

CLOTHING STORES -- Hangers, bags or boxes, wrapping paper, cash register tapes, and cleaning supplies.

MOTELS -- Cleaning supplies, advertising items, coffee, cups, and plasticware.

RETAIL STORES -- Sacks, boxes, other wrapping material, cleaning supplies, cash register tapes, computer paper, and office supplies.

GROCERY STORES -- Grocery bags, cleaning supplies, and office supplies.

WHOLESALE OUTLETS -- Packaging materials other than those enclosing the product, cleaning supplies, cash register tapes, computer paper, office supplies, fuel stored for vehicles, and fleet maintenance parts.

AGRICULTURE/AQUACULTURE

Supplies are any items not influential in the growing of a crop or the raising of animals.

Items under this definition that are NOT SUBJECT TO AD VALOREM PROPERTY TAX include:

- (1) Feed, whether grown or purchased, used in the raising of livestock or water animals for meat, seafood, or dairy purposes.
- (2) Fertilizers or insecticides used to enhance the growing of a current year's crop.

TAXABLE SUPPLIES under the above definition include but are not limited to petrochemicals held in storage and used in vehicles, veterinary supplies, and cleaning supplies. Spare parts and small tools that are sometimes classified as supplies for accounting purposes are also taxable.

CONSTRUCTION/LOGGING

Supplies are considered any material used in the performance of the involved activity other than materials used in the construction of an improvement to real property.

Examples of these types of supplies would include but are not limited to explosives, petrochemicals, spare parts, tires, small tools, and other cleaning supplies.

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“TRUE LEASE” OR SECURITY AGREEMENT

The information in this advisory will assist counties in distinguishing a “true lease” from a security agreement. This distinction is necessary to determine the ownership of personal property when the lessee is a government entity or a nonprofit organization that may be entitled to an exemption. This distinction is also important because the owner of personal property is the “taxpayer” when non-exempt parties are involved in the lease. A lease intended to be a security agreement is a financing arrangement in which the credit of the lessor is used by the lessee to finance the purchase of property. In the case of a “true lease,” the lessor (e.g., a leasing company) is typically the owner, while in the case of a security agreement, the lessee is the owner.

A lease intended as a security agreement transfers substantial ownership of the property to the lessee and, in most instances, requires the lessee to pay personal property taxes. A true lease does not transfer ownership, and the personal property taxes remain the responsibility of the lessor (owner). A 1981 Court of Appeals case¹ sets forth a number of factors for determining whether an agreement was intended to be a true lease or security agreement. These factors include, but are not limited to, whether:

- (1) The lessee is given an option to purchase the equipment, and, if so, whether the option price is nominal;
- (2) The lessee acquires any equity in the equipment;
- (3) The lessee is required to bear the entire risk of loss;
- (4) The lessee is required to pay all charges and taxes imposed on ownership;
- (5) There is a provision for acceleration of rent payments; and
- (6) The property was purchased specifically for lease to this lessee.

The court went on to discuss each of these factors. The first factor recognizes that there may be a true lease with an option to purchase; in other words, the parties do not intend to have a financing agreement.

¹ *Rainier Nat'l Bank v. Inland Machinery Co.*, 29 Wn. App. 725 (1981).

However, if the lessee is allowed to purchase the property “for no or only nominal consideration” at the end of the lease or at some other specific time, then the lease is intended as a security agreement. Nominal consideration may be \$1 or may be relative to the value of the property. For example, consideration of \$1,000 for a machine worth \$10,000 would be minimal. Cases from other jurisdictions have held that a nominal amount is less than 25 percent of the fair market value of the purchase price at the time of the option. On the other hand, if the purchase option price is approximately equal to the market value of the property at the time the option is exercised, the lease is likely a true lease.

The second factor described by the court arises when the lessee acquires an enforceable ownership interest in the property. This can happen when, by crediting earlier payments of rent to the purchase price, the lessee is accorded an equity or pecuniary interest in the subject matter of the lease that the lessee may recover at the lessee’s option.

Factors 3, 4, and 5 are also to be considered, but the court cautioned that costs associated with the risk of loss, insurance, taxes, and the like will be borne by one party or the other in most contracts, and the lessor is either going to include them in the rental charge or lower the lessee’s rent payment for the property. Rental payments that indicate an intention to compensate the lessor for loss of value over the term of the lease due to aging, wear, and obsolescence suggest that the parties intend a true lease.

The sixth factor arises when the leased property is purchased by the lessor specifically for lease to the lessee. This factor indicates that the transaction is a sale rather than a lease, because the property might not be suitable for another party or potential lessee. This factor is more important when the lessor is not the actual supplier of the leased property, since in that situation, the lessor would presumably be even less inclined to want the property returned.

Factors that have been considered by courts in other jurisdictions include whether the lessor disclaims all warranties and the lessee agrees to hold the lessor harmless from all liability associated with the leased property. Provisions such as these are indicative of a sale to the lessee rather than a true lease. Two additional factors to be considered are whether a security interest has been extended to other equipment of the lessee and whether the lessee treats the lease as a lease for tax purposes.

Whether a lease agreement constitutes a “true lease” or merely a disguised security agreement is determined by the intent of the parties as evidenced by the provisions of the agreement between them and, when necessary, by the facts and circumstances surrounding the transaction. The criteria as set out above will help to make this determination.

The lease agreement dealing with personal property leased to a government entity or a nonprofit organization must be read carefully to determine whether it is a true lease or a security agreement. Property that is the subject of a security agreement is considered to be owned by the lessee and, if a government entity is the lessee, the property would be entitled to exemption pursuant to the provisions of RCW 84.36.010.

The following are examples of true leases; therefore, the leasing company/lessor is the owner/taxpayer:

True Lease #1

Lessor: Farm machinery dealer

Lessee: Farmer

Title: Remains with leasing company during the period of rental.

Maintenance & Repair: Lessee is not responsible for normal wear and tear or depreciation.

Lessee is responsible for all risk of loss or damage.

Lessee is responsible for all taxes including personal property taxes.

Notes: This lease was not being depreciated on the taxpayer's depreciation schedule and the provision for buyout (option to buy) was one additional annual lease payment.

True Lease #2

Lessor: Leasing company affiliated with a bank

Lessee: Farmer

Title: Title may pass to farmer at the end of the lease at farmer's option.

Lessor is responsible for all taxes

Option to Purchase is 10 percent of the original cost of the property and is the residual value stated in the lease and not a nominal amount.

This could also be a security agreement. Some of these types of leases require that the lessee purchase the property at the end of the lease, and some of the leases do not. In either case, the purchase price is 10 percent of the original cost of the equipment. If the price is nominal, this may be regarded as a security agreement.

RCW 46.04.622 Park trailer. "Park trailer" or "park model trailer" means a travel trailer designed to be used with temporary connections to utilities necessary for operation of installed fixtures and appliances. The trailer's gross area shall not exceed four hundred square feet when in the setup mode. "Park trailer" excludes a mobile home. [1989 c 337 § 2.]

RCW 46.04.623 Travel trailer. "Travel trailer" means a trailer built on a single chassis transportable upon the public streets and highways that is designed to be used as a temporary dwelling without a permanent foundation and may be used without being connected to utilities. [1989 c 337 § 3.]

RCW 84.04.080 "Personal property." "Personal property" for the purposes of taxation, shall be held and construed to embrace and include, without especially defining and enumerating it, all goods, chattels, stocks, estates or moneys; all standing timber held or owned separately from the ownership of the land on which it may stand; all fish trap, pound net, reef net, set net and drag seine fishing locations; all leases of real property and leasehold interests therein for a term less than the life of the holder; all improvements upon lands the fee of which is still vested in the United States, or in the state of Washington; all gas and water mains and pipes laid in roads, streets or alleys; and all property of whatsoever kind, name, nature and description, which the law may define or the courts interpret, declare and hold to be personal property for the purpose of taxation and as being subject to the laws and under the jurisdiction of the courts of this state, whether the same be any marine craft, as ships and vessels, or other property holden under the laws and jurisdiction of the courts of this state, be the same at home or abroad: PROVIDED, That mortgages, notes, accounts, certificates of deposit, tax certificates, judgments, state, county, municipal and taxing district bonds and warrants shall not be considered as property for the purpose of this title, and no deduction shall hereafter be made or allowed on account of any indebtedness owed. [1961 c 15 § 84.04.080. Prior: 1925 ex.s. c 130 § 5, part; 1907 c 108 §§ 1, 2; 1907 c 48 § 1, part; 1901 ex.s. c 2 § 1, part; 1897 c 71 § 3, part; 1895 c 176 § 1, part; 1893 c 124 § 3, part; 1891 c 140 § 3, part; 1890 p 530 § 3, part; 1886 p 48 § 2, part; Code 1881 § 2830, part; 1871 p 37 § 1, part; 1869 p 176 § 3, part; 1854 p 332 § 4, part; RRS § 11109, part.]

Fox, mink, marten declared personalty: RCW 16.72.030.

RCW 84.04.090 "Real property." The term "real property" for the purposes of taxation shall be held and construed to mean and include the land itself, whether laid out in town lots or otherwise, and all buildings, structures or improvements or other fixtures of whatsoever kind thereon, except improvements upon lands the fee of which is still vested in the United States, or in the state of Washington, and all rights and privileges thereto belonging or in any wise appertaining, except leases of real property and leasehold interests therein for a term less than the life of the holder; and all substances in and under the same; all standing timber growing thereon, except standing timber owned separately from the ownership of the land upon which the same may stand or be growing; and all property which the law defines or the courts may interpret, declare and hold to be real property under the letter, spirit, intent and meaning of the law for the purposes of taxation. The term real property shall also include a mobile home which has substantially lost its identity as a mobile unit by virtue of its being permanently fixed in location upon land owned or leased by the owner of the mobile home and placed on a permanent foundation (posts or blocks) with fixed pipe connections with sewer, water, or other utilities: PROVIDED, That a mobile home located on land leased by the owner of the mobile home shall be subject to the personal property provisions of chapter 84.56 RCW and RCW 84.60.040. [1987 c 155 § 1; 1985 c 395 § 2; 1971 ex.s. c 299 § 70; 1961 c 15 § 84.04.090. Prior: 1925 ex.s. c 130 § 4; 1897 c 71 § 2; 1893 c 124 § 2; 1891 c 140 § 2; 1890 p 530 § 2; 1886 p 48 § 2, part; Code 1881 § 2830, part; 1871 p 37 § 2; 1869 p 176 § 2; RRS § 11108.]

Effective date—1971 ex.s. c 299: See RCW 82.50.901(3).

Severability—1971 ex.s. c 299: See note following RCW 82.04.050.

RCW 84.04.150 "Computer software" and related terms. (1)

"Computer software" is a set of directions or instructions that exist in the form of machine-readable or human-readable code, is recorded on physical or electronic medium, and directs the operation of a computer system or other machinery or equipment. "Computer software" includes the associated documentation that describes the code and its use, operation, and maintenance and typically is delivered with the code to the user. "Computer software" does not include databases.

A "database" is text, data, or other information that may be accessed or managed with the aid of computer software but that does not itself have the capacity to direct the operation of a computer system or other machinery or equipment.

(2) "Custom computer software" is computer software that is designed for a single person's or a small group of persons' specific needs. "Custom computer software" includes modifications to canned computer software and can be developed in-house by the user, by outside developers, or by both.

A group of four or more persons is presumed not to be a small group of persons for the purposes of this subsection unless each of the persons is affiliated through common control and ownership. The department may by rule provide a definition of small group and affiliates consistent with this subsection.

For purposes of this subsection, "person" has the meaning given in RCW 82.04.030.

(3) "Canned computer software," occasionally known as prewritten or standard software, is computer software that is designed for and distributed "as is" for multiple persons who can use it without modifying its code and that is not otherwise considered custom computer software.

(4) "Embedded software" is computer software that resides permanently on some internal memory device in a computer system or other machinery or equipment, that is not removable in the ordinary course of operation, and that is of a type necessary for the routine operation of the computer system or other machinery or equipment. "Embedded software" may be either canned or custom computer software.

(5) "Retained rights" are any and all rights, including intellectual property rights such as those rights arising from copyrights, patents, and trade secret laws, that are owned or are held under contract or license by a computer software developer, author, inventor, publisher, licensor, sublicensor, or distributor.

(6) A "golden" or "master" copy of computer software is a copy of computer software from which a computer software developer, author, inventor, publisher, licensor, sublicensor, or distributor makes copies for sale or license. [1991 sp.s. c 29 § 2.]

Findings—Intent—1991 sp.s. c 29: "(1) The legislature finds that:

(a) Computer software is a class of personal property that is itself comprised of several different subclasses of personal property which can be distinguished by their use, development, distribution, and relationship to hardware, and includes custom software, canned software, and embedded software;

(b) Because different classes of software serve different needs, may be used by different taxpayers, and present different administrative burdens on both the state and the citizens of the state

of Washington, the different classes of software should be treated differently for tax purposes;

(c) Canned software should continue to be subject to property tax, but, because of its rapid obsolescence, should be subject to tax for only two years; and the taxable interest should reside with the end user;

(d) Canned software that has been modified should continue to be taxable on the canned portion of the software;

(e) Embedded software should continue to be taxed as part of the machinery or equipment of which it is a part;

(f) Custom software should be exempt from taxation, in part because of the difficulty in accurately and uniformly determining the value of such software;

(g) Retained rights in computer software should be exempt from the property tax in part because of the difficulty in accurately and uniformly determining the value of such software, the difficulty in determining the scope and situs of such rights, and the adverse economic consequences to the state of taxing such rights; and

(h) So-called "golden" or "master" copies of software should be exempt from property tax like business inventory.

(2) It is the intent of the legislature that:

(a) The voluntary compliance nature of the personal property tax system should be preserved and nothing in this act shall be construed to reduce the taxpayer's obligation to fully and accurately list all taxable computer software;

(b) Computer software should be listed and assessed for property taxes payable in 1991 and 1992 in the same manner and to the same extent as computer software was listed and assessed for taxes due in 1989;

(c) The definition of custom software, golden or master copies, and retained rights shall be liberally construed in accordance with the purposes of this act;

(d) This act shall provide fairness, equity, and uniformity in the property tax treatment of each class of computer software in the state of Washington; and

(e) No inference should be taken from this act regarding the application of the property tax to databases." [1991 sp.s. c 29 § 1.]

Severability—1991 sp.s. c 29: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 sp.s. c 29 § 8.]

Application—Taxes collected in 1993—1991 sp.s. c 29: "Sections 2 through 4 and 6 of this act apply to taxes levied for collection in 1993, and thereafter." [1991 sp.s. c 29 § 9.]

RCW 84.36.005 Property subject to taxation. All property now existing, or that is hereafter created or brought into this state, shall be subject to assessment and taxation for state, county, and other taxing district purposes, upon equalized valuations thereof, fixed with reference thereto on the first day of January at twelve o'clock meridian in each year, excepting such as is exempted from taxation by law. [1961 c 15 § 84.36.005. Prior: 1955 c 196 § 2; prior: 1939 c 206 § 8, part; 1933 ex.s. c 19 § 1, part; 1933 c 115 § 1, part; 1929 c 126 § 1, part; 1925 ex.s. c 130 § 7, part; 1915 c 131 § 1, part; 1903 c 178 § 1, part; 1901 c 176 § 1, part; 1899 c 141 § 2, part; 1897 c 71 §§ 1, 5, part; 1895 c 176 § 2, part; 1893 c 124 §§ 1, 5, part; 1891 c 140 §§ 1, 5, part; 1890 p 532 §§ 1, 5, part; 1886 p 47 § 1, part; Code 1881 § 2829, part; 1871 p 37 § 4, part; 1869 p 176 § 4, part; 1867 p 61 § 2, part; 1854 p 331 § 2, part; RRS § 11111, part. Formerly RCW 84.40.010.]

RCW 84.36.015 Property valued at less than five hundred dollars

—Exceptions. (1) Each parcel of real property, and each personal property account, that has an assessed value of less than five hundred dollars is exempt from taxation.

(2) This section does not apply to personal property to which the exemption from taxation under RCW 84.36.110(2) may be applied or to real property which qualifies for preferential tax treatment under this chapter or chapter 84.14, 84.26, 84.33, or 84.34 RCW. [1997 c 244 § 1.]

Effective date—1997 c 244: "This act takes effect January 1, 1999." [1997 c 244 § 3.]

RCW 84.36.110 Household goods and personal effects—Fifteen thousand dollars actual value to head of family. The following property shall be exempt from taxation:

(1) All household goods and furnishings in actual use by the owner thereof in equipping and outfitting his or her residence or place of abode and not for sale or commercial use, and all personal effects held by any person for his or her exclusive use and benefit and not for sale or commercial use.

(2) The personal property, other than specified in subsection (1) of this section, of each head of a family liable to assessment and taxation of which the individual is the actual and bona fide owner to an amount of fifteen thousand dollars of true and fair value. This exemption shall not apply to any private motor vehicle or mobile home. If the county assessor is satisfied that all of the personal property of any person is exempt from taxation under the provisions of this statute or any other statute providing exemptions for personal property, no listing of such property shall be required. However, if the personal property described in this subsection exceeds in value the amount allowed as exempt, then a complete list of said personal property shall be made as provided by law, and the county assessor shall deduct the amount of the exemption authorized by this subsection from the total amount of the assessment and impose taxes on the remainder. [2006 c 281 § 2; 1988 c 10 § 1; 1971 ex.s. c 299 § 71; 1961 c 15 § 84.36.110. Prior: 1935 c 27 § 1; RRS § 11111-7.]

Contingent effective date—2006 c 281: "This act takes effect January 1, 2007, if the proposed amendment to Article VII, section 1 of the state Constitution authorizing an increased personal exemption for the head of a family is validly submitted to and is approved and ratified by the voters at the next general election. If the proposed amendment is not approved and ratified, this act is void in its entirety." [2006 c 281 § 3.]

Finding—Intent—2006 c 281: "The legislature finds that it is in the public interest of the people of the state of Washington to ease the burden of property taxes paid by the head of a family. To achieve this purpose, this act increases the amount of personal property exemption for the head of a family from three thousand dollars to fifteen thousand dollars. The last time this exemption was increased was 1988. It is the clear and unambiguous intent of the legislature that the property described within this measure shall be exempt for [from] taxation, as authorized by Article VII, section 1 of the state Constitution." [2006 c 281 § 1.]

Contingent effective date—1988 c 10: "This act shall take effect January 1, 1989, for taxes levied for collection in 1990 and thereafter, if the proposed amendment to Article VII, section 1 of the state Constitution authorizing an increased personal exemption for the head of a family (HJR 4222) is validly submitted to and is approved and ratified by the voters at a general election held in November 1988. If the proposed amendment is not so approved and ratified, this act shall be null and void in its entirety." [1988 c 10 § 2.] The proposed constitutional amendment was approved by the voters on November 8, 1988.

Effective date—1971 ex.s. c 299: See RCW 82.50.901(3).

Severability—1971 ex.s. c 299: See note following RCW 82.04.050.

RCW 84.36.120 Household goods and personal effects—Definitions.

For the purposes of RCW 84.36.110 "head of a family" shall be construed to include a surviving spouse or surviving domestic partner who has neither remarried nor entered into a subsequent domestic partnership, any person receiving an old age pension under the laws of this state and any citizen of the United States, over the age of sixty-five years, who has resided in the state of Washington continuously for ten years.

"Personal effects" shall be construed to mean and include such tangible property as usually and ordinarily attends the person such as wearing apparel, jewelry, toilet articles and the like.

"Private motor vehicle" shall be construed to mean and include all motor vehicles used for the convenience or pleasure of the owner and carrying a licensing classification other than motor vehicle for hire, auto stage, auto stage trailer, motor truck, motor truck trailer or dealers' licenses.

"Mobile home" shall be construed to mean and include all trailers of the type designed as facilities for human habitation and which are capable of being moved upon the public streets and highways and which are more than thirty-five feet in length or more than eight feet in width. [2008 c 6 § 708; 1973 1st ex.s. c 154 § 120; 1971 ex.s. c 299 § 72; 1961 c 15 § 84.36.120. Prior: 1935 c 27 § 2; RRS § 11111-8.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

Effective date—1971 ex.s. c 299: See RCW 82.50.901(3).

Severability—1971 ex.s. c 299: See note following RCW 82.04.050.

RCW 84.36.240 Soil and water conservation districts, personal property. All personal property belonging solely to soil and water conservation districts shall be exempt from taxation: PROVIDED, That the exemption contained herein shall not apply to property of any such district which engages in contract work for persons or firms not landowners or cooperators of a district. [1963 c 179 § 1.]

RCW 84.36.255 Improvements to benefit fish and wildlife habitat, water quality, and water quantity—Cooperative assistance to landowners—Certification of best management practice—Limitation—Landowner claim and certification. (1) All improvements to real and personal property that benefit fish and wildlife habitat, water quality, or water quantity are exempt from taxation if the improvements are included under a written conservation plan approved by a conservation district. The conservation districts must cooperate with the federal natural resource conservation service, other conservation districts, the department of ecology, the department of fish and wildlife, and nonprofit organizations to assist landowners by working with them to obtain approved conservation plans so as to qualify for the exemption provided for in this section. As provided in subsection (3) of this section and RCW 89.08.440(2), a conservation district must initially certify that the best management practice benefits fish and wildlife habitat, water quality, or water quantity. A habitat conservation plan under the terms of the federal endangered species act is not considered a conservation plan for purposes of this exemption.

(2) The exemption remains in effect only if improvements identified in the written best management practices agreement are maintained as originally approved or amended. Improvements made as a requirement to mitigate for impacts to fish and wildlife habitat, water quality, or water quantity are not eligible for exemption under this section.

(3) A claim for exemption under this section must be filed annually with the county assessor on or before October 31st during the year for exemption from taxes levied for collection in the following year when submitted on forms prescribed by the department of revenue developed in consultation with the conservation district. The landowner must certify each subsequent year that the improvements for which exemption is sought are maintained as originally approved or amended in the written conservation plan. In the first filing year, the claim must contain the initial certification by the conservation district that the improvements for which exemption is sought were included under a written conservation plan approved by the conservation district including best management practices that benefit fish and wildlife habitat, water quality, or water quantity. Each subsequent filing year, the claim must contain a copy of the conservation district's initial certification made in the first filing year, along with the landowner's own certification for the current filing year. [2013 c 236 § 1; 1997 c 295 § 2.]

Application—1997 c 295 § 2: "Section 2 of this act applies to taxes levied for collection in 1998 and thereafter." [1997 c 295 § 4.]

Purpose—1997 c 295: "The purpose of this act is to improve fish and wildlife habitat, water quality, and water quantity for the benefit of the public at large. Private property owners should be encouraged to make voluntary improvements to their property as recommended by governmental agencies without the penalty of paying higher property taxes as a result of those improvements." [1997 c 295 § 1.]

RCW 84.36.477 Business inventories. (1) Business inventories are exempt from property taxation.

(2) As used in this section:

(a)(i) "Business inventories" means all livestock, inventories of finished goods and work in process, and personal property not under lease or rental, acquired, or produced solely for the purpose of sale or lease or for the purpose of consuming the property in producing for sale or lease a new article of tangible personal property of which the property becomes an ingredient or component.

(ii) "Business inventories" also includes:

(A) All grains and flour, fruit and fruit products, unprocessed timber, vegetables and vegetable products, and fish and fish products, while being transported to or held in storage in a public or private warehouse or storage area if actually shipped to points outside the state on or before April 30th of the first year for which they would otherwise be taxable;

(B) All finished plywood, hardboard, and particleboard panels shipped from outside this state to any processing plant within this state, if the panels are moving under a through freight rate to final destination outside this state and the carrier grants the shipper the privilege of stopping the shipment in transit for the purpose of storing, milling, manufacturing, or other processing, while the panels are in the process of being treated or shaped into flat component parts to be incorporated into finished products outside this state and for thirty days after completion of the processing or treatment;

(C) All ore or metal shipped from outside this state to any smelter or refining works within this state, while in process of reduction or refinement and for thirty days after completion of the reduction or refinement; and

(D) All metals refined by electrolytic process into cathode or bar form while in this form and held under negotiable warehouse receipt in a public or private warehouse recognized by an established incorporated commodity exchange and for sale through the exchange.

(iii) "Business inventories" does not include personal property acquired or produced for the purpose of lease or rental if the property was leased or rented at any time during the calendar year immediately preceding the year of assessment and was not thereafter remanufactured, nor does it include property held within the normal course of business for lease or rental for periods of less than thirty days.

(iv) "Business inventories" does not include agricultural or horticultural property fully or partially exempt under RCW 84.36.470.

(v) "Business inventories" does not include timber that is standing on public land and that is sold under a contract entered into after August 1, 1982;

(b) "Fish and fish products" means all fish and fish products suitable and designed for human consumption, excluding all others;

(c) "Fruit and fruit products" means all raw edible fruits, berries, and hops and all processed products of fruits, berries, or hops, suitable and designed for human consumption, while in the hands of the first processor;

(d) "Processed" means canning, barreling, bottling, preserving, refining, freezing, packing, milling, or any other method employed to keep any grain, fruit, vegetable, or fish in an edible condition or to put it into more suitable or convenient form for consuming, storing, shipping, or marketing;

(e) "Remanufactured" means the restoration of property to essentially its original condition, but does not mean normal maintenance or repairs; and

(f) "Vegetables and vegetable products" means all raw edible vegetables such as peas, beans, beets, sugar beets, and other vegetables, and all processed products of vegetables, suitable and designed for human consumption, while in the hands of the first processor. [2001 c 187 § 15; 1983 1st ex.s. c 62 § 6.]

Short title—Intent—1983 1st ex.s. c 62: "(1) This act shall be known as the homeowner's property tax relief act of 1983.

(2) The intent of the inventory tax phaseout was to stimulate the economy of the state and to increase the revenues of the state and local taxing districts by attracting new business, encouraging the expansion of existing businesses thereby increasing economic activity and tax revenue on noninventory property. The inventory tax phaseout will cause certain unforeseen and heretofore unprepared for tax shifts among property owners.

(3) This act is intended to lessen the impact of the property tax shift. Relief is provided by the following means:

(a) The state will provide fourteen million dollars over a four-year period to lessen the impact on the most severely affected districts.

(b) Persons purchasing timber on public lands after August 1, 1982, are required to continue to pay property tax on those timber inventories. They will receive a credit against the timber excise tax for these property tax payments.

(c) Local governments are granted the ability to lessen their short-term reliance on the property tax without reducing their future ability to levy property taxes." [1983 1st ex.s. c 62 § 1.]

Effective dates—Applicability—1983 1st ex.s. c 62: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [June 13, 1983], except sections 6 through 8 and 14 of this act which shall take effect January 1, 1984, and shall be effective for taxes first due in 1984 and thereafter." [1983 1st ex.s. c 62 § 15.]

Application—2001 c 187: See note following RCW 84.40.020.

Rules and regulations, procedures: RCW 84.40.405.

RCW 84.36.510 Mobile homes in dealer's inventory. Any mobile home which is a part of a dealer's inventory and held solely for sale in the ordinary course of the dealer's business and is not used for any other purpose shall be exempt from property taxation: PROVIDED, That this exemption shall not apply to property taxes already levied or delinquent on such mobile home at the time it becomes part of a dealer's inventory. [1985 c 395 § 7.]

RCW 84.36.595 Motor vehicles, travel trailers, campers, and vehicles carrying exempt licenses. (1) For the purposes of this section, the following definitions apply:

(a) "Motor vehicle" means all motor vehicles, trailers, and semitrailers used, or of the type designed primarily to be used, upon the public streets and highways, for the convenience or pleasure of the owner, or for the conveyance, for hire or otherwise, of persons or property, including fixed loads and facilities for human habitation; but shall not include (i) vehicles carrying exempt licenses; (ii) dock and warehouse tractors and their cars or trailers, lumber carriers of the type known as spiders, and all other automotive equipment not designed primarily for use upon public streets or highways; (iii) motor vehicles or their trailers used entirely upon private property; (iv) mobile homes as defined in RCW 46.04.302; or (v) motor vehicles owned by nonresident military personnel of the armed forces of the United States stationed in the state of Washington, provided personnel were also nonresident at the time of their entry into military service.

(b) "Travel trailer" has the meaning given in RCW 46.04.623. However, if a park trailer, as defined in RCW 46.04.622, has substantially lost its identity as a mobile unit by virtue of its being permanently sited in location and placed on a foundation of either posts or blocks with connections with sewer, water, or other utilities for the operation of installed fixtures and appliances, it will be considered real property and will be subject to ad valorem property taxation imposed in accordance with this title, including the provisions with respect to omitted property, except that a park trailer located on land not owned by the owner of the park trailer will be subject to the personal property provisions of chapter 84.56 RCW and RCW 84.60.040.

(c) "Camper" has the meaning given in RCW 46.04.085.

(2) Motor vehicles, vehicles carrying exempt licenses, travel trailers, and campers are exempt from property taxation. [2004 c 156 § 1; 2000 c 136 § 1.]

Effective date—2000 c 136: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 27, 2000]." [2000 c 136 § 2.]

Retroactive application—2000 c 136: "This act applies retroactively to January 1, 2000." [2000 c 136 § 3.]

RCW 84.36.597 Heavy equipment rental property. (1) All heavy equipment rental property owned by a heavy equipment rental property dealer is exempt from taxation.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a)(i) "Heavy equipment rental property" means any equipment that is rented by a heavy equipment rental property dealer that:

(A) Is mobile. For purposes of this subsection, "mobile" means that the heavy equipment property is not permanently affixed to real property and may be moved among worksites as needed;

(B) Is customarily used for construction, earthmoving, or industrial applications. For the purposes of this subsection, "construction, earthmoving, or industrial applications" means the constructing of new buildings or other structures, or the repairing, remodeling, or expansion of existing buildings or other structures, under, upon, or above real property; the repositioning of terrain using vehicles or self-propelled equipment; and manufacturing or processing raw materials or other ingredients or components into new articles of tangible personal property for sale; and

(C) Is rented without an operator.

(ii) Subject to the provisions of (a)(i) of this subsection, "heavy equipment rental property" includes, but is not limited to the following:

(A) Earthmoving equipment, including but not limited to backhoes, loaders, rollers, excavators, bulldozers, and dump trucks;

(B) Self-propelled vehicles that are not designed to be driven on the highway;

(C) Industrial electrical generation equipment;

(D) Industrial lift equipment;

(E) Industrial material handling equipment;

(F) Equipment used in shoring, shielding, and ground trenching;

(G) Portable power and HVAC generation equipment;

(H) Attachments to heavy equipment rental property, including but not limited to buckets, augers, hammers for backhoes, hoses, fittings, piping, chains, tools (such as jackhammers and cement chippers), and portable power connections;

(I) Ancillary equipment, including but not limited to generators, ground thawing equipment, fluid transfer equipment, pumping equipment, portable storage, portable fuel and water tanks, and light towers; and

(J) Equipment or vehicles not subject to vehicle license fees and not required to be registered with the department of licensing.

(iii) "Heavy equipment rental property" does not include small hand tools, chainsaws, or lawnmowers.

(b) "Heavy equipment rental property dealer" means a person principally engaged in the business of renting heavy equipment rental property. For purposes of this subsection, "principally" means that the heavy equipment rental property dealer receives more than fifty percent of the dealer's annual total revenue from the rental of heavy equipment rental property.

(3)(a) The exemption in subsection (1) of this section does not apply in any tax year to heavy equipment rental property that the heavy equipment rental property dealer rented or leased at any time during the immediately preceding tax year to a person with whom the heavy equipment rental property dealer is affiliated.

(b) For purposes of this subsection, "affiliated" means:

(i) One person has an ownership interest of more than five percent, whether direct or indirect, in the other person; or

(ii) Persons who are related to each other because a third person, or group of third persons who are affiliated with respect to each other, holds an ownership interest of more than five percent, whether direct or indirect, in the related persons.

(4) (a) A claim for exemption under this section must be filed with the county assessor together with the statement required under RCW 84.40.190, for exemption from taxes payable the following year.

(b) The claim must be made solely upon forms as prescribed and approved by the department.

(c) If the assessor finds that the applicant does not meet the requirements for exemption under this section, the exemption must be denied but such denial is subject to appeal under the provisions of RCW 84.48.010 and 84.40.038.

(5) If a heavy equipment rental property dealer received an exemption under this section based on erroneous information provided by the heavy equipment rental property dealer to the county assessor, the taxes must be collected for a period not to exceed five years, subject to penalties as follows:

(a) Twenty-five percent of the total tax due;

(b) Fifty percent of the total tax due if the heavy equipment rental property dealer was previously assessed a penalty under this subsection, unless the penalty was overturned by a court or administrative tribunal in a final decision that is no longer subject to appeal; or

(c) A penalty as provided in RCW 84.40.130(2), if the heavy equipment rental property dealer, with intent to defraud, submitted a false or materially misleading claim for exemption.

(6) The department may adopt rules as it deems necessary to administer this section. [2020 c 301 § 1.]

Application—2020 c 301 § 1: "Section 1 of this act applies to taxes levied for collection in 2022 and thereafter." [2020 c 301 § 8.]

Automatic expiration date and tax preference performance statement exemption—2020 c 301: See RCW 82.51.900.

RCW 84.36.600 Computer software. (1) All custom computer software, except embedded software, is exempt from property taxation.

(2) Retained rights in computer software are exempt from property taxation.

(3) Modifications to canned software are exempt from property taxation, but the underlying canned software remains subject to taxation as provided in RCW 84.40.037.

(4) Master or golden copies of computer software are exempt from property taxation. [1991 sp.s. c 29 § 3.]

Findings, intent—Severability—Application—1991 sp.s. c 29: See notes following RCW 84.04.150.

RCW 84.36.630 Farming machinery and equipment. (1) All machinery and equipment owned by a farmer that is personal property is exempt from property taxes levied for any state purpose, including the additional state property tax imposed under RCW 84.52.065(2), if it is used exclusively in growing and producing agricultural products during the calendar year for which the claim for exemption is made.

(2) "Farmer" and "agricultural product" have the same meaning as defined in RCW 82.04.213.

(3) A claim for exemption under this section must be filed with the county assessor together with the statement required under RCW 84.40.190, for exemption from taxes payable the following year. The claim must be made solely upon forms as prescribed and furnished by the department of revenue. [2017 3rd sp.s. c 13 § 312; 2014 c 140 § 28; 2003 c 302 § 7; 2001 2nd sp.s. c 24 § 1.]

Application—Tax preference performance statement and expiration—2017 3rd sp.s. c 13 §§ 301-314: See notes following RCW 84.52.065.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Application—2001 2nd sp.s. c 24: "This act applies to taxes levied for collection in 2003 and every year thereafter." [2001 2nd sp.s. c 24 § 3.]

RCW 84.36.635 Property used for the operation of an anaerobic digester. (1) For the purposes of this section, "anaerobic digester" has the same meaning as provided in RCW 82.08.900.

(2) All buildings, machinery, equipment, and other personal property which are used primarily for the operation of an anaerobic digester, the land upon which this property is located, and land that is reasonably necessary in the operation of an anaerobic digester, are exempt from property taxation for the six assessment years following the date on which the facility or the addition to the existing facility becomes operational.

(3) Claims for exemptions authorized by this section must be filed with the county assessor on forms prescribed by the department of revenue and furnished by the assessor. Once filed, the exemption is valid for six assessment years following the date on which the facility or the addition to the existing facility becomes operational and may not be renewed. The assessor must verify and approve claims as the assessor determines to be justified and in accordance with this section. No claims may be filed after December 31, 2024.

(4) The department of revenue may promulgate such rules, pursuant to chapter 34.05 RCW, as necessary to properly administer this section. [2018 c 164 § 8; 2010 1st sp.s. c 11 § 4; 2008 c 268 § 1; 2003 c 261 § 9.]

Tax preference performance statement—Effective date—2018 c 164:
See notes following RCW 82.08.900.

Effective date—2008 c 268: "This act takes effect July 1, 2008."
[2008 c 268 § 3.]

Application—2003 c 261 § 9: "Section 9 of this act applies to taxes levied for collection in 2004 and thereafter." [2003 c 261 § 12.]

Effective dates—2003 c 261: "(1) Sections 9 through 15 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of state government and its existing public institutions, and take effect July 1, 2003.

(2) Sections 1 through 8 of this act take effect July 1, 2004."
[2003 c 261 § 13.]

RCW 84.36.680 Generation or storage of renewable energy. (1)

Provided the taxpayer fulfills the requirements of this section, all qualified personal property owned by a taxpayer is exempt from property taxes levied for any state purpose.

(2)(a) Unless a taxpayer is assessed under chapter 84.12 RCW, a claim for an exemption under this section from taxes payable the following year must be filed by March 31st with the county assessor together with the statement required under RCW 84.40.190 and a statement attesting that the taxpayer meets the requirements of subsection (3) of this section. The claim must be made upon forms as prescribed and furnished by the department. The application must indicate if the taxpayer is applying for a 10 or 15-year exemption.

(b) If a taxpayer is assessed under chapter 84.12 RCW, a claim for an exemption under this section from taxes payable the following year must be filed by March 31st with the department together with the annual report required under RCW 84.12.230 and a statement attesting that the taxpayer meets the requirements of subsection (3) of this section. The claim must be made upon forms as prescribed and furnished by the department. The application must indicate if the taxpayer is applying for a 10 or 15-year exemption.

(c) The taxpayer claiming an exemption under this subsection (2) and paying the production excise tax under RCW 82.96.010 must file an annual attestation in the manner and form prescribed by the department.

(3) The taxpayer must register with the department to pay the production excise tax authorized in RCW 82.96.010.

(4) An exemption granted pursuant to this section to a taxpayer compliant with requirements of this section is granted for 10 or 15 years following the date on which the facility where the qualified personal property is located first becomes operational.

(5) The department must apportion personal property assessed under chapter 84.12 RCW that is granted an exemption under this section pursuant to RCW 84.12.360.

(6)(a) If a taxpayer fails to meet the annual attestation requirement in subsection (2)(c) of this section or fails to pay the production excise tax required in RCW 82.96.010, the department shall send a notice to the taxpayer to comply or forfeit the exemption. The taxpayer must come into compliance within 60 days from the date of the notice.

(b) Failure to comply with the requirements of this section results in the personal property taxes previously exempted becoming immediately due and payable with interest. The rate of interest must be the same as provided for delinquent taxes in RCW 84.56.020(5). No additional penalties may be assessed; however, credit for production excise taxes paid pursuant to RCW 82.96.010 may not be given in calculating the total amount due under this subsection (6). In addition, the qualified personal property no longer qualifies for a personal property tax exemption under this section.

(7) The definitions in this subsection apply throughout this section unless the context clearly indicates otherwise.

(a) "Personal property" has the same meaning as in RCW 84.04.080.

(b) "Qualified personal property" means personal property that is used exclusively for the generation or storage of renewable energy in a facility, the construction of which began on or after July 1, 2023.

(c) "Renewable energy" means energy produced by a solar or wind facility with nameplate capacity sufficient to generate at least 10

megawatts of nameplate capacity of alternating current power. [2023 c 427 § 1.]

Tax preference performance statement exemption—Automatic expiration date exemption—2023 c 427: "RCW 82.32.805 and 82.32.808 do not apply to this act." [2023 c 427 § 5.]

Application—2023 c 427: "This act applies to taxes levied for collection in 2025 and thereafter." [2023 c 427 § 7.]

RCW 84.40.020 Assessment date—Average inventory basis may be used—Public inspection of listing, documents, and records. All real property in this state subject to taxation shall be listed and assessed every year, with reference to its value on the first day of January of the year in which it is assessed. Such listing and all supporting documents and records shall be open to public inspection during the regular office hours of the assessor's office: PROVIDED, That confidential income data is hereby exempted from public inspection as noted in RCW 42.56.070 and 42.56.210. All personal property in this state subject to taxation shall be listed and assessed every year, with reference to its value and ownership on the first day of January of the year in which it is assessed: PROVIDED, That if the stock of goods, wares, merchandise or material, whether in a raw or finished state or in process of manufacture, owned or held by any taxpayer on January 1 of any year does not fairly represent the average stock carried by such taxpayer, such stock shall be listed and assessed upon the basis of the monthly average of stock owned or held by such taxpayer during the preceding calendar year or during such portion thereof as the taxpayer was engaged in business. [2005 c 274 § 364; 2001 c 187 § 16. Prior: 1997 c 239 § 2; 1997 c 3 § 103 (Referendum Bill No. 47, approved November 4, 1997); 1973 c 69 § 1; 1967 ex.s. c 149 § 35; 1961 c 15 § 84.40.020; prior: (i) 1939 c 137 § 1; 1925 ex.s. c 130 § 8; 1897 c 71 § 6; 1895 c 176 § 3; 1893 c 124 § 6; 1891 c 140 §§ 1, 6; 1890 p 532 § 6; Code 1881 § 2832; 1871 p 40 § 15; 1869 p 180 § 15; 1867 p 62 § 6; 1854 p 332 § 4; RRS § 11112. (ii) 1937 c 122 § 1; 1890 p 532 § 6; RRS § 11112-1.]

Application—2001 c 187: "This act applies for [to] taxes levied in 2001 for collection in 2002 and thereafter." [2001 c 187 § 33.]

Contingent effective date—2001 c 187: See note following RCW 84.70.010.

Application—Severability—Part headings not law—Referral to electorate—1997 c 3: See notes following RCW 84.40.030.

Effective date—1967 ex.s. c 149: See note following RCW 82.04.050.

Savings—1967 ex.s. c 149: See RCW 82.98.035.

Severability—1967 ex.s. c 149: See note following RCW 82.98.030.

RCW 84.40.030 Basis of valuation, assessment, appraisal—One hundred percent of true and fair value—Exceptions—Leasehold estates—Real property—Appraisal—Comparable sales. (1) All property must be valued at one hundred percent of its true and fair value in money and assessed on the same basis unless specifically provided otherwise by law.

(2) Taxable leasehold estates must be valued at such price as they would bring at a fair, voluntary sale for cash without any deductions for any indebtedness owed including rentals to be paid.

(3) The true and fair value of real property for taxation purposes (including property upon which there is a coal or other mine, or stone or other quarry) must be based upon the following criteria:

(a) Any sales of the property being appraised or similar properties with respect to sales made within the past five years. The appraisal must be consistent with the comprehensive land use plan, development regulations under chapter 36.70A RCW, zoning, and any other governmental policies or practices in effect at the time of appraisal that affect the use of property, as well as physical and environmental influences. An assessment may not be determined by a method that assumes a land usage or highest and best use not permitted, for that property being appraised, under existing zoning or land use planning ordinances or statutes or other government restrictions. The appraisal must also take into account: (i) In the use of sales by real estate contract as similar sales, the extent, if any, to which the stated selling price has been increased by reason of the down payment, interest rate, or other financing terms; and (ii) the extent to which the sale of a similar property actually represents the general effective market demand for property of such type, in the geographical area in which such property is located. Sales involving deed releases or similar seller-developer financing arrangements may not be used as sales of similar property.

(b) In addition to sales as defined in subsection (3)(a) of this section, consideration may be given to cost, cost less depreciation, reconstruction cost less depreciation, or capitalization of income that would be derived from prudent use of the property, as limited by law or ordinance. Consideration should be given to any agreement, between an owner of rental housing and any government agency, that restricts rental income, appreciation, and liquidity; and to the impact of government restrictions on operating expenses and on ownership rights in general of such housing. In the case of property of a complex nature, or being used under terms of a franchise from a public agency, or operating as a public utility, or property not having a record of sale within five years and not having a significant number of sales of similar property in the general area, the provisions of this subsection must be the dominant factors in valuation. When provisions of this subsection are relied upon for establishing values the property owner must be advised upon request of the factors used in arriving at such value.

(c) In valuing any tract or parcel of real property, the true and fair value of the land, exclusive of structures thereon must be determined; also the true and fair value of structures thereon, but the valuation may not exceed the true and fair value of the total property as it exists. In valuing agricultural land, growing crops must be excluded. For purposes of this subsection (3)(c), "growing crops" does not include cannabis as defined under RCW 69.50.101.

[2022 c 16 § 167; 2014 c 140 § 29; 2007 c 301 § 2; 2001 c 187 § 17;

1998 c 320 § 9. Prior: 1997 c 429 § 34; 1997 c 134 § 1; 1997 c 3 § 104 (Referendum Bill No. 47, approved November 4, 1997); 1994 c 124 § 20; 1993 c 436 § 1; 1988 c 222 § 14; 1980 c 155 § 2; prior: 1973 1st ex.s. c 195 § 96; 1973 1st ex.s. c 187 § 1; 1972 ex.s. c 125 § 2; 1971 ex.s. c 288 § 1; 1971 ex.s. c 43 § 1; 1961 c 15 § 84.40.030; prior: 1939 c 206 § 15; 1925 ex.s. c 130 § 52; 1919 c 142 § 4; 1913 c 140 § 1; 1897 c 71 § 42; 1893 c 124 § 44; 1891 c 140 § 44; 1890 p 547 § 48; RRS § 11135. FORMER PART OF SECTION: 1939 c 116 § 1, part, now codified in RCW 84.40.220.]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Contingent effective date—2001 c 187: See note following RCW 84.70.010.

Application—2001 c 187: See note following RCW 84.40.020.

Severability—1997 c 429: See note following RCW 36.70A.3201.

Application—1997 c 3: "(1) Sections 101 through 126 of this act apply to taxes levied for collection in 1999 and thereafter.

(2) Sections 201 through 207 of this act apply to taxes levied for collection in 1998 and thereafter." [1997 c 3 § 501 (Referendum Bill No. 47, approved November 4, 1997).]

Severability—1997 c 3: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 3 § 502 (Referendum Bill No. 47, approved November 4, 1997).]

Part headings not law—1997 c 3: "Part headings used in this act are not any part of the law." [1997 c 3 § 503 (Referendum Bill No. 47, approved November 4, 1997).]

Referral to electorate—1997 c 3: "Except for section 401 of this act, the secretary of state shall submit this act to the people for their adoption and ratification, or rejection, at the next general election to be held in this state, in accordance with Article II, section 1 of the state Constitution and the laws adopted to facilitate its operation." [1997 c 3 § 504.] 1997 c 3 (this act) was adopted and ratified by the people at the November 4, 1997, general election (Referendum Bill No. 47).

Effective date—Applicability—1980 c 155: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately and shall be effective for assessments made in 1980 and years thereafter." [1980 c 155 § 8.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Severability—Construction—1973 1st ex.s. c 187: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1973

amendatory act, or the application of the provision to other persons or circumstances is not affected: PROVIDED, That if the leasehold in lieu excise tax imposed by section 4 of this 1973 amendatory act is held invalid, the entirety of the act, except for section 3 and section 15, shall be null and void." [1973 1st ex.s. c 187 § 13.]

Severability—1972 ex.s. c 125: See note following RCW 84.40.045.

Savings—1971 ex.s. c 288: "The amendment or repeal of any statutes by this 1971 amendatory act shall not be construed as invalidating, abating or otherwise affecting any existing right acquired or any liability or obligation incurred under the provisions of the statutes amended or repealed. Such amendment or repeals shall not affect the right of any person to make a claim for exemption during the calendar year 1971 pursuant to RCW 84.36.128." [1971 ex.s. c 288 § 12.]

Severability—1971 ex.s. c 288: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 288 § 28.]

Severability—1971 ex.s. c 43: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 43 § 6.]

RCW 84.40.037 Valuation of computer software—Embedded software.

(1) Computer software, except embedded software, shall be valued in the first year of taxation at one hundred percent of the acquisition cost of the software and in the second year at fifty percent of the acquisition cost. Computer software, other than embedded software, shall have no value for purposes of property taxation after the second year.

(2) Embedded software is a part of the computer system or other machinery or equipment in which it is housed and shall be valued in the same manner as the machinery or equipment. [1991 sp.s. c 29 § 4.]

Findings, intent—Severability—Application—1991 sp.s. c 29: See notes following RCW 84.04.150.

RCW 84.40.038 Petition county board of equalization—Limitation on changes to time limit—Waiver of filing deadline—Direct appeal to state board of tax appeals. (1) The owner or person responsible for payment of taxes on any property may petition the county board of equalization for a change in the assessed valuation placed upon such property by the county assessor or for any other reason specifically authorized by statute. Such petition must be made on forms prescribed or approved by the department of revenue and any petition not conforming to those requirements or not properly completed may not be considered by the board. The petition must be filed with the board:

(a) On or before July 1st of the year of the assessment or determination;

(b) Within thirty days after the date the assessment, value change notice, or other notice was mailed;

(c) Within thirty days after the date that the assessor electronically (i) transmitted the assessment, value change notice, or other notice, or (ii) notified the owner or person responsible for payment of taxes that the assessment, value change notice, or other notice was available to be accessed by the owner or other person; or

(d) Within a time limit of up to sixty days adopted by the county legislative authority, whichever is later. If a county legislative authority sets a time limit, the authority may not change the limit for three years from the adoption of the limit.

(2) The board of equalization may waive the filing deadline if the petition is filed within a reasonable time after the filing deadline and the petitioner shows good cause for the late filing. However, the board of equalization must waive the filing deadline for the circumstance described under (f) of this subsection if the petition is filed within a reasonable time after the filing deadline. The decision of the board of equalization regarding a waiver of the filing deadline is final and not appealable under RCW 84.08.130. Good cause may be shown by one or more of the following events or circumstances:

(a) Death or serious illness of the taxpayer or his or her immediate family;

(b) The taxpayer was absent from the address where the taxpayer normally receives the assessment or value change notice, was absent for more than fifteen days of the days allowed in subsection (1) of this section before the filing deadline, and the filing deadline is after July 1;

(c) Incorrect written advice regarding filing requirements received from board of equalization staff, county assessor's staff, or staff of the property tax advisor designated under RCW 84.48.140;

(d) Natural disaster such as flood or earthquake;

(e) Delay or loss related to the delivery of the petition by the postal service, and documented by the postal service;

(f) The taxpayer was not sent a revaluation notice under RCW 84.40.045 for the current assessment year and the taxpayer can demonstrate both of the following:

(i) The taxpayer's property value did not change from the previous year; and

(ii) The taxpayer's property is located in an area revalued by the assessor for the current assessment year; or

(g) Other circumstances as the department may provide by rule.

(3) The owner or person responsible for payment of taxes on any property may request that the appeal be heard by the state board of

tax appeals without a hearing by the county board of equalization when the assessor, the owner or person responsible for payment of taxes on the property, and a majority of the county board of equalization agree that a direct appeal to the state board of tax appeals is appropriate. The state board of tax appeals may reject the appeal, in which case the county board of equalization must consider the appeal under RCW 84.48.010. Notice of such a rejection, together with the reason therefor, must be provided to the affected parties and the county board of equalization within thirty days of receipt of the direct appeal by the state board. [2014 c 97 § 407; 2011 c 84 § 1; 2001 c 185 § 11; 1997 c 294 § 1; 1994 c 123 § 4; 1992 c 206 § 11; 1988 c 222 § 19.]

Application—2011 c 84: "This act applies to taxes levied for collection in 2012 and thereafter." [2011 c 84 § 2.]

Application—2001 c 185 §§ 1-12: See note following RCW 84.14.110.

Applicability—1994 c 123: See note following RCW 84.36.815.

Effective date—1992 c 206: See note following RCW 82.04.170.

Effective date—1988 c 222: See note following RCW 84.40.040.

RCW 84.40.080 Listing omitted property or improvements. An assessor shall enter on the assessment roll in any year any property shown to have been omitted from the assessment roll of any preceding year, at the value for the preceding year, or if not then valued, at such value as the assessor shall determine for the preceding year, and such value shall be stated separately from the value of any other year. Where improvements have not been valued and assessed as a part of the real estate upon which the same may be located, as evidenced by the assessment rolls, they may be separately valued and assessed as omitted property under this section. No such assessment shall be made in any case where a bona fide purchaser, encumbrancer, or contract buyer has acquired any interest in said property prior to the time such improvements are assessed. When such an omitted assessment is made, the taxes levied thereon may be paid within one year of the due date of the taxes for the year in which the assessment is made without penalty or interest. In the assessment of personal property, the assessor shall assess the omitted value not reported by the taxpayer as evidenced by an inspection of either the property or the books and records of said taxpayer by the assessor. [1995 c 134 § 14. Prior: 1994 c 301 § 37; 1994 c 124 § 21; 1973 2nd ex.s. c 8 § 1; 1961 c 15 § 84.40.080; prior: 1951 1st ex.s. c 8 § 1; 1925 ex.s. c 130 § 59; 1897 c 71 § 48; RRS § 11142.]

RCW 84.40.085 Limitation period for assessment of omitted property or value—Notification to taxpayer of omission—Procedure. No omitted property or omitted value assessment shall be made for any period more than three years preceding the year in which the omission is discovered. The assessor, upon discovery of such omission, shall forward a copy of the amended personal property affidavit along with a letter of particulars informing the taxpayer of the findings and of the taxpayer's right of appeal to the county board of equalization. Upon request of either the taxpayer or the assessor, the county board of equalization may be reconvened to act on the omitted property or omitted value assessments. [1994 c 124 § 22; 1973 2nd ex.s. c 8 § 2.]

RCW 84.40.130 Penalty for failure or refusal to list—False or fraudulent listing, additional penalty. (1) If any person or corporation fails or refuses to deliver to the assessor, on or before the date specified in RCW 84.40.040, a list of the taxable personal property which is required to be listed under this chapter, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there must be added to the amount of tax assessed against the taxpayer on account of such personal property five percent of the amount of such tax, not to exceed fifty dollars per calendar day, if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues not exceeding twenty-five percent in the aggregate. Such penalty must be collected in the same manner as the tax to which it is added and distributed in the same manner as other property tax interest and penalties.

(2) If any person or corporation willfully gives a false or fraudulent list, schedule or statement required by this chapter, or, with intent to defraud, fails or refuses to deliver any list, schedule or statement required by this chapter, such person or corporation is liable for the additional tax properly due or, in the case of willful failure or refusal to deliver such list, schedule or statement, the total tax properly due; and in addition such person or corporation is liable for a penalty of one hundred percent of such additional tax or total tax as the case may be. Such penalty is in lieu of the penalty provided for in subsection (1) of this section. A person or corporation giving a false list, schedule or statement is not subject to this penalty if it is shown that the misrepresentations contained therein are entirely attributable to reasonable cause. The taxes and penalties provided for in this subsection must be recovered in an action in the name of the state of Washington on the complaint of the county assessor or the county legislative authority and must, when collected, be paid into the county treasury to the credit of the current expense fund. The provisions of this subsection are additional and supplementary to any other provisions of law relating to recovery of property taxes. [2021 c 145 § 21; 2012 c 59 § 1; 2004 c 79 § 5; 1988 c 222 § 17; 1967 ex.s. c 149 § 38; 1961 c 15 § 84.40.130. Prior: 1925 ex.s. c 130 § 51; 1897 c 71 § 41; 1893 c 124 § 41; 1891 c 140 § 41; 1890 p 546 § 45; Code 1881 § 2835; RRS § 11132.]

Effective date—2012 c 59: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 20, 2012]." [2012 c 59 § 2.]

Effective date—1988 c 222: See note following RCW 84.40.040.

Effective date—1967 ex.s. c 149: See note following RCW 82.04.050.

Savings—1967 ex.s. c 149: See RCW 82.98.035.

Severability—1967 ex.s. c 149: See note following RCW 82.98.030.

RCW 84.40.185 Individuals, corporations, limited liability companies, associations, partnerships, trusts, or estates required to list personalty. Every individual, corporation, limited liability company, association, partnership, trust, or estate shall list all personal property in his or her or its ownership, possession, or control which is subject to taxation pursuant to the provisions of this title. Such listing shall be made and delivered in accordance with the provisions of this chapter. [2013 c 23 § 360; 1995 c 318 § 5; 1967 ex.s. c 149 § 41.]

Effective date—1995 c 318: See note following RCW 82.04.030.

Effective date—1967 ex.s. c 149: See note following RCW 82.04.050.

Savings—1967 ex.s. c 149: See RCW 82.98.035.

Severability—1967 ex.s. c 149: See note following RCW 82.98.030.

RCW 84.40.190 Statement of personal property. Every person required by this title to list property shall make out and deliver to the assessor, or to the department as required by RCW 84.40.065, either in person, by mail, or by electronic transmittal if available, a statement of all the personal property in his or her possession or under his or her control, and which, by the provisions of this title, he or she is required to list for taxation, either as owner or holder thereof. When any list, schedule, or statement is made, the principal required to make out and deliver the same shall be responsible for the contents and the filing thereof and shall be liable for the penalties imposed pursuant to RCW 84.40.130. No person shall be required to list for taxation in his statement to the assessor any share or portion of the capital stock, or of any of the property of any company, association or corporation, which such person may hold in whole or in part, where such company, being required so to do, has listed for assessment and taxation its capital stock and property with the department of revenue, or as otherwise required by law. [2003 c 302 § 4; 2001 c 185 § 13; 1993 c 33 § 4; 1967 ex.s. c 149 § 39; 1961 c 15 § 84.40.190. Prior: 1945 c 56 § 1; 1925 ex.s. c 130 § 22; 1897 c 71 § 15; 1893 c 124 § 15; 1891 c 140 § 15; 1890 p 535 § 15; Code 1881 § 2834; Rem. Supp. 1945 § 11126.]

Effective date—1993 c 33: See note following RCW 82.49.060.

Effective date—1967 ex.s. c 149: See note following RCW 82.04.050.

Savings—1967 ex.s. c 149: See RCW 82.98.035.

Severability—1967 ex.s. c 149: See note following RCW 82.98.030.

RCW 84.40.200 Listing of personalty on failure to obtain statement—Statement of valuation to person assessed or listing—Exemption.

(1) In all cases of failure to obtain a statement of personal property, from any cause, it shall be the duty of the assessor to ascertain the amount and value of such property and assess the same at such amount as he or she believes to be the true value thereof.

(2) The assessor, in all cases of the assessment of personal property, shall deliver or mail to the person assessed, or to the person listing the property, a copy of the statement of property hereinbefore required, showing the valuation of the property so listed.

(3) This section does not apply to the listing required under RCW 84.40.065. [1993 c 33 § 5; 1987 c 319 § 3; 1961 c 15 § 84.40.200. Prior: 1939 c 206 § 18; 1925 ex.s. c 130 § 64; 1897 c 71 § 53; 1893 c 124 § 54; 1891 c 140 § 54; 1890 p 551 § 59; RRS § 11147.]

Effective date—1993 c 33: See note following RCW 82.49.060.

RCW 84.40.210 Personalty of manufacturer, listing procedure, statement—"Manufacturer" defined. Every person who purchases, receives, or holds personal property of any description for the purpose of adding to the value thereof by any process of manufacturing, refining, rectifying, or by the combination of different materials with the view of making gain or profit by so doing shall be held to be a manufacturer, and he or she shall, when required to, make and deliver to the assessor a statement of the amount of his or her other personal property subject to taxes, also include in his or her statement the value of all articles purchased, received, or otherwise held for the purpose of being used in whole or in part in any process or processes of manufacturing, combining, rectifying, or refining. Every person owning a manufacturing establishment of any kind and every manufacturer shall list as part of his or her manufacturer's stock the value of all engines and machinery of every description used or designed to be used in any process of refining or manufacturing except such fixtures as have been considered as part of any parcel of real property, including all tools and implements of every kind, used or designed to be used for the first aforesaid purpose. [2013 c 23 § 361; 1961 c 168 § 1; 1961 c 15 § 84.40.210. Prior: 1939 c 66 § 1; 1927 c 282 § 1; 1925 ex.s. c 130 § 26; 1921 c 60 § 1; 1897 c 71 § 19; 1893 c 124 § 19; 1891 c 140 § 19; 1890 p 538 § 20; RRS § 11130.]

RCW 84.40.340 Verification by assessor of any list, statement, or schedule—Confidentiality, penalty. (1) For the purpose of verifying any list, statement, or schedule required to be furnished to the assessor by any taxpayer, any assessor or his or her trained and qualified deputy at any reasonable time may visit, investigate and examine any personal property, and for this purpose the records, accounts and inventories also shall be subject to any such visitation, investigation and examination which shall aid in determining the amount and valuation of such property. Such powers and duties may be performed at any office of the taxpayer in this state, and the taxpayer shall furnish or make available all such information pertaining to property in this state to the assessor although the records may be maintained at any office outside this state.

(2) Any information or facts obtained pursuant to this section shall be used by the assessor only for the purpose of determining the assessed valuation of the taxpayer's property: PROVIDED, That such information or facts shall also be made available to the department of revenue upon request for the purpose of determining any sales or use tax liability with respect to personal property, and except in a civil or criminal judicial proceeding or an administrative proceeding in respect to penalties imposed pursuant to RCW 84.40.130, to such sales or use taxes, or to the assessment or valuation for tax purposes of the property to which such information and facts relate, shall not be disclosed by the assessor or the department of revenue without the permission of the taxpayer to any person other than public officers or employees whose duties relate to valuation of property for tax purposes or to the imposition and collection of sales and use taxes, and any violation of this secrecy provision is a gross misdemeanor. [2003 c 53 § 410; 1997 c 239 § 3; 1973 1st ex.s. c 74 § 1; 1967 ex.s. c 149 § 40; 1961 ex.s. c 24 § 6.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—1967 ex.s. c 149: See note following RCW 82.04.050.

Savings—1967 ex.s. c 149: See RCW 82.98.035.

Severability—1967 ex.s. c 149: See note following RCW 82.98.030.

RCW 84.44.080 Owner moving into state or to another county after January 1st. The owner of personal property removing from one county to another between the first day of January and the first day of July shall be assessed in either in which he or she is first called upon by the assessor. The owner of personal property moving into this state from another state between the first day of January and the first day of July shall list the property owned by him or her on the first day of January of such year in the county in which he or she resides: PROVIDED, That if such person has been assessed and can make it appear to the assessor that he or she is held for the tax of the current year on the property in another state or county, he or she shall not be again assessed for such year. [2013 c 23 § 367; 1961 c 15 § 84.44.080. Prior: 1939 c 206 § 13; 1925 ex.s. c 130 § 14; RRS § 11118; prior: 1891 c 140 § 7; 1890 p 534 § 13.]

RCW 84.60.020 Attachment of tax liens. The taxes assessed upon real property, including mobile homes assessed thereon, and other mobile homes as defined in RCW 82.50.010 shall be a lien thereon from and including the first day of January in the year in which they are levied until the same are paid, but as between the grantor or vendor and the grantee or purchaser of any real property or any such mobile home, when there is no express agreement as to payment of the taxes thereon due and payable in the calendar year of the sale or the contract to sell, the grantor or vendor shall be liable for the same proportion of such taxes as the part of the calendar year prior to the day of the sale or the contract to sell bears to the whole of such calendar year, and the grantee or purchaser shall be liable for the remainder of such taxes and subsequent taxes. The lien for the property taxes assessed on a mobile home shall be terminated and absolved for the year subsequent to the year of its removal from the state, when notice is given to the county treasurer describing the mobile home, if all property taxes due at the time of removal are satisfied. The taxes assessed upon each item of personal property assessed shall be a lien upon such personal property except mobile homes as above provided from and after the date upon which the same is listed with and valued by the county assessor, and no sale or transfer of such personal property shall in any way affect the lien for such taxes upon such property. The taxes assessed upon personal property shall be a lien upon each item of personal property of the person assessed, distrained by the treasurer as provided in RCW 84.56.070, from and after the date of the distraint and no sale or transfer of such personal property so distrained shall in any way affect the lien for such taxes upon such property. The taxes assessed upon personal property shall be a lien upon the real property of the person assessed, selected by the county treasurer and designated and charged upon the tax rolls as provided in RCW 84.60.040, from and after the date of such selection and charge and no sale or transfer of such real property so selected and charged shall in any way affect the lien for such personal property taxes upon such property. [1985 c 395 § 5; 1977 ex.s. c 22 § 8; 1961 c 15 § 84.60.020. Prior: 1943 c 34 § 1; 1939 c 206 § 45; 1935 c 30 § 7; 1925 ex.s. c 130 § 104; Rem. Supp. 1943 § 11265; prior: 1903 c 59 § 3; 1897 c 71 § 83; 1895 c 176 § 21; 1893 c 124 § 88. Formerly RCW 84.60.020 and 84.60.030.]

Severability—1977 ex.s. c 22: See note following RCW 46.04.302.

WAC 458-07-030 True and fair value—Defined—Criteria—Highest and best use—Data from property owner. (1) **True and fair value—Defined.** All property must be valued and assessed at one hundred percent of true and fair value unless otherwise provided by law. "True and fair value" means market value and is the amount of money a buyer of property willing but not obligated to buy would pay a seller of property willing but not obligated to sell, taking into consideration all uses to which the property is adapted and might in reason be applied.

(2) **True and fair value—Criteria.** In determining true and fair value, the assessor may use the sales (market data) approach, the cost approach, or the income approach, or a combination of the three approaches to value. The provisions of (b) and (c) of this subsection, the cost and income approaches, respectively, shall be the dominant factors considered in determining true and fair value in cases of property of a complex nature, or property being used under terms of a franchise granted by a public agency, or property being operated as a public utility, or property not having a record of sale within five years and not having a significant number of sales of comparable property in the general area. When the cost or income approach is used, the assessor shall provide the property owner, upon request, with the factors used in arriving at the value determined, subject to any lawful restrictions on the disclosure of confidential or privileged tax information.

(a) **Sales.** Sales of the property being appraised or sales of comparable properties that occurred within five years of January 1st of the assessment year are valid indicators of true and fair value. In valuing property, the following shall be considered:

(i) Any governmental policies or practices, regulations or restrictions in effect at the time of appraisal that affect the use of property, including a comprehensive land use plan, developmental regulations under the Growth Management Act (chapter 36.70A RCW), and zoning ordinances. No appraisal may assume a land usage or highest and best use not permitted under existing zoning or land use planning ordinances or statutes or other government restrictions, unless such usage is otherwise allowed by law;

(ii) Physical and environmental influences that affect the use of the property;

(iii) When a sale involves a real estate contract, the extent, if any, to which the down payment, interest rate, or other financing terms may have increased the selling price;

(iv) The extent to which the sale of a comparable property actually represents the general effective market demand for property of that type, in the geographical area in which the property is located; and

(v) Sales involving deed releases or similar seller-developer financing arrangements shall not be used as sales of comparable property in determining value.

(b) **Cost.** In determining true and fair value, consideration may be given to cost, cost less depreciation, or reconstruction cost less depreciation.

(c) **Income.** In determining true and fair value, consideration may be given to the capitalization of income that would be derived from prudent use of the property, as limited by law or ordinance. Consideration should be given to any agreement between an owner of rental housing and any government agency that restricts rental income, appre-

ciation, and liquidity and to the impact of government restrictions on operating expenses and on ownership rights in general of such housing.

(d) **Manuals.** Appraisal manuals or guides published or approved by the department of revenue shall be considered in conjunction with the three approaches to value. The data contained in these manuals or guides must be analyzed and adjusted by the assessor to consider time, location, and any other applicable factors to properly reflect market value in the county.

(3) **True and fair value—Highest and best use.** Unless specifically provided otherwise by statute, all property shall be valued on the basis of its highest and best use for assessment purposes. Highest and best use is the most profitable, likely use to which a property can be put. It is the use which will yield the highest return on the owner's investment. Any reasonable use to which the property may be put may be taken into consideration and if it is peculiarly adapted to some particular use, that fact may be taken into consideration. Uses that are within the realm of possibility, but not reasonably probable of occurrence, shall not be considered in valuing property at its highest and best use.

(4) **Valuation of land and improvements.** In valuing any lot, tract, or parcel of real property, the assessor must determine the true and fair value of the land, excluding the value of any structures on the land and excluding the value of any growing crops. The assessor must also determine the true and fair value of any structure on the land. The total value of the land and the structures must not exceed one hundred percent of the true and fair value of the total property as it exists at the time of appraisal.

(5) **Valuation data from property owners.** The assessor may require property owners to submit pertinent data regarding property in their control, including sales data, costs and characteristics of improvements, and other facts necessary for appraisal of the property.

[Statutory Authority: RCW 84.08.070. WSR 09-04-035, § 458-07-030, filed 1/29/09, effective 3/1/09; WSR 00-01-043, § 458-07-030, filed 12/7/99, effective 1/7/00.]

WAC 458-12-005 Definition—Property—Personal. (1) Introduction.

The terms "personal property" and "real property" are defined in RCW 84.04.080 and 84.04.090, respectively. These definitions should routinely be consulted in any case where it is at all doubtful whether a given piece of property is real or personal.

Personal property, as defined in RCW 84.04.080, falls into two categories; namely, *tangible* personal property, that is to say, things which have a physical existence, and *intangible* personal property which consists of rights and privileges having a legal but not a physical existence.

(2) **Tangible personal property.** The category of tangible personal property includes but is not limited to the following:

(a) Goods and chattels. RCW 84.04.080. This category includes most tangible movables, such as:

(i) Inventories, AGO 57-58, No. 206 (1958);

(ii) Farm machinery, AGO 1909-1910, p. 51;

(iii) Livestock and poultry;

(iv) Logs and lumber, RCW 84.44.030;

(v) Motor vehicles, RCW 84.44.050;

(vi) Books, *Booth & Henford Abstract Company v. Phelps*, 8 Wash. 549 (1894);

(vii) Coin collections and coin inventories of coin dealers, AGO 63-64, No. 116 (1964); and

(viii) Tools.

(b) All standing timber held or owned separately from the ownership of the land on which it stands, RCW 84.04.080; *Leuthold v. Davis*, 56 Wn.2d 710 (1960).

(c) All fish traps, pound net, reef net, set net and drag seine fishing locations, RCW 84.04.080.

(d) All privately owned improvements, including buildings and the like, upon publicly owned lands which have not become part of the realty, RCW 84.04.080; *Pier 67, Inc. v. King County*, 71 W.D.2d 89 (1967); AGO 1935-1936, p. 167; AGO 3-25-52; TCR 6-17-1947.

(e) All gas and water mains and pipes laid in roads, streets or alleys, RCW 84.04.080.

(f) Water craft of all descriptions, RCW 84.04.080, *Black v. State*, 67 Wn.2d 97 (1965), provided they have acquired an actual situs in the taxing county pursuant to RCW 84.44.050.

(g) Foxes, mink, marten, fish, oysters and all other animals held or raised in captivity for business or commercial purposes, including livestock.

(h) The roads and bridges of plank roads, gravel roads, turnpike or bridge companies.

(i) Trade fixtures. This concept, which is peculiar to the landlord-tenant relationship, refers to the machinery or equipment of any commercial or industrial business which operates on leased land or in rented quarters. Such machinery or equipment is a trade fixture; i.e., the tenant's personal property, no matter how firmly it may be attached to the landlord's realty, unless it could not be removed without virtually destroying the building housing it, or otherwise seriously damaging the landlord's realty. Brown on *Personal Property* (2d Edition 1955), Sec. 144.

(j) All engines and machinery of every description used or designed to be used in any process of refining or manufacturing, unless such engines and machinery shall have been included as part of any parcel of real property as defined in WAC 458-12-010(3).

(k) All buildings and other permanent improvements constructed or placed upon the easements of public service corporations other than railroads.

(l) All surface leases, whether of public or privately owned land, except leases for the life of the lessee. RCW 84.04.080; AGO 49-51, No. 476 (1951); TCR 8-8-41: *In Re Barclay's Estate*, 1 Wn.2d 82 (1939). This category includes practically all leases to corporations because the legal life of a corporation is almost always longer than the term of any lease to it. *Pier 67, Inc., v. King County*, 71 W.D.2d 89 (1967).

(3) **Intangible personal property.** Intangible personal property includes but is not necessarily limited to the following:

(a) Contract rights to cut timber on either public or privately owned land under which title to the timber has not yet passed. AGO 53-55, No. 29 (1953). A contract right to cut timber is a mere license, and all contractual licenses to use someone else's realty are personal property.

(b) All mining claims, whether patented or unpatented, which are located on public land. TCR 10-3-35; TCR 4-4-1950; AGO 55-57, No. 327 (1956); *American Smelting and Refining Company v. Whatcom County*, 13 Wn.2d 295 (1942).

(c) All mining or prospecting leases, whether on public or privately owned land, except leases for the life of the lessee. RCW 84.04.080; TCR 4-22-36; *Walla Walla Oil, Gas & Pipe Line Company v. Vallentine*, 103 Wash. 359 (1918).

(d) All contractual licenses to use public or someone else's land for specified purposes, or to take something from public or someone else's land, which have a specified minimum term. Examples: Timber contracts, AGO 53-55, No. 29, (1953); oil and gas prospecting permits, *Walla Walla Oil, Gas & Pipe Line Company v. Vallentine*, 103 Wash. 359 (1918); grazing permits; permits to take gravel or other minerals, TCR 4-22-1936. However, a license or permit which is revocable at the will of the landowner is not property at all because it gives the licensee no legally protected right or interest whatsoever.

(e) All possessory rights in realty which are divorced from the title to the realty. TCR 10-3-35; AGO 1937-1938, p. 353. Such possessory rights are analogous to leases; hence they are personal property unless they are coextensive with the life of their holder. This category includes the possessory interest which an installment contract for the sale of public or privately owned land creates in the vendee. See RCW 84.40.230.

(f) Public utility franchises owned by public service corporations. A public utility franchise is the right to use publicly owned real estate for power lines, gas or water lines, sewers or some other public utility facility. *Commercial Electric Light and Power Company v. Judson*, 21 Wash. 49 (1899); *Chehalis Broom Company v. Chehalis County*, 24 Wash. 135 (1901). Such public utility franchises are very similar to public utility easements, which are personal property under Paragraph 8 thereof. However, a Washington corporation's primary franchise to exist and do business in corporate form is not taxable property. *Bank of Fairfield v. Spokane County*, 173 Wash. 145 (1933).

(g) Public utility easements owned by public service corporations other than railroads. RCW 84.20.010.

(h) See WAC 458-50-150 through 458-50-190 for rules relating to exemption of intangible personal property under RCW 84.36.070.

[Statutory Authority: RCW 84.08.010, 84.08.070, and 84.36.865. WSR 06-24-043, § 458-12-005, filed 11/30/06, effective 12/31/06; Order PT 68-6, § 458-12-005, filed 4/29/68.]

WAC 458-12-010 Definition—Property—Real. The term "real property" is defined in RCW 84.04.090; this definition should be consulted as a matter of course in all cases where the meaning of "real property" is in doubt. As there defined, "real property" includes but is not limited to the following:

(1) All land, whether platted or unplatted.

(2) All buildings, structures or permanent improvements built upon or attached to privately owned land.

(3) Any fixture permanently affixed to and intended to be annexed to land or permanently affixed to and intended to be a component of a building, structure, or improvement on land, including machinery and equipment which become fixtures. Intent is to be gathered from all the surrounding circumstances at the time of annexation or installation of the item, including consideration of the nature of the item affixed, the manner of annexation and the purpose for which the annexation is made and is not to be gathered exclusively from the statements of the annex or, installer, or owner as to his or her actual state of mind.

(a) Such items shall be considered as permanently affixed when they are owned by the owner of the real property and:

(i) They are securely attached to the real property; or

(ii) Although not so attached, the item appears to be permanently situated in one location on real property and is adapted to use in the place it is located. For example a heavy piece of machinery or equipment set upon a foundation without being bolted thereto could be considered as affixed.

(b) Such items shall not be considered as affixed when they are owned separately from the real property unless an agreement specifically provides that such items are to be considered as part of the real property and are to be left with the real property when the occupant vacates the premises.

(c) Whenever the property taxable status of engines, machinery, equipment or fixtures is questioned by the assessor, the taxpayer may be required to list such items in the manner provided by chapter 84.40 RCW and WAC 458-12-060. The assessor shall make the determination of whether such property is real, and shall amend the taxpayer's statement as provided by WAC 458-12-060(4).

(d) The explanations relating to fixtures under subsection (3) of this section are for purposes of clarification and may not answer the question as to whether an item is a fixture in all cases. In the event these explanations do not clearly indicate whether the item is a fixture, the numerous decisions of the Washington appellate courts regarding fixtures should be consulted.

(4) Privately owned easements and easement-like privileges, irrespective of whether the servient estate is public or privately owned land. However, easements of public service corporations other than railroads are personal property by reason of RCW 84.20.010.

(5) Leases of real property and leasehold interests therein having a term coextensive with the life of the tenant.

(6) Title to minerals in place which belongs to someone other than the surface owner. Such a title to minerals in place is a "mineral right" but must be distinguished from mineral leases and permits, which do not give title to minerals in place and which are intangible personal property. Mineral rights, as defined herein, are realty regardless of whether they were created by grant or reservation.

(7) Standing timber growing on land which belongs to the same person as the timber.

(8) Water rights, whether riparian, appropriative, or in the nature of an easement.

(9) Buildings and similar permanent improvements erected or made by a tenant on land which he does not own, and title to which is not reserved in the tenant by the lease or some other landlord-tenant agreement. Such buildings and improvements become the landlord's real property.

(10) All life estates in real property, whether created by grant or a reservation. A person has such a life estate when he has a right to the possession, occupation and use of a piece of realty, and to the crops, rents and profits produced by it, during his or her natural life.

(11) All possessory rights in realty which are coextensive with the natural life of their holder. Such possessory rights are analogous to leases, and since leases for life are realty, possessory rights for life are also realty.

[Statutory Authority: RCW 84.08.010, 84.08.070, and 84.04.090. WSR 14-21-044, § 458-12-010, filed 10/7/14, effective 11/7/14. Statutory Authority: RCW 84.41.090 and 84.08.010. WSR 93-08-049, § 458-12-010, filed 4/2/93, effective 5/3/93; Order PT 69-1, § 458-12-010, filed 4/14/69; Order PT 68-6, § 458-12-010, filed 4/29/68.]

WAC 458-12-050 Omitted property and omitted value. (1) **Introduction.** Under RCW 84.40.080, an assessor is required to add to the assessment roll any real or personal property omitted from the assessment roll for any preceding year, at the value for the preceding year. The assessor is also required to add to the assessment roll any omitted value of personal property. This rule explains the meaning of the terms "omitted property" and "omitted value." It also provides information about omitted property and omitted value assessments, including when the taxes on these assessments are due and the appeal rights of persons receiving an omitted property or omitted value assessment.

(2) **What is omitted property?** Omitted property includes all real and personal property that was not entered on the assessment roll. Omitted property does not include:

(a) Real or personal property that was listed on the assessment roll but improperly exempted from taxation in prior years; and

(b) Real or personal property that was accurately listed but improperly valued by the assessor.

(3) **What is omitted value?** Omitted value includes all personal property that was assessed at less than its true and fair value due to inaccurate reporting by the taxpayer or person making the listing. Omitted value does not include:

(a) Personal property that was listed on the assessment roll but improperly exempted from taxation in prior years; and

(b) Personal property that was accurately listed but improperly valued by the assessor.

(4) **What is the duty of the assessor upon discovery of omitted property or value?** Whenever the assessor discovers or is made aware of omitted property or omitted value, the assessor is required to make an omitted property or omitted value assessment at the property's true and fair value for each year omitted, subject to the requirements of (a) and (b) of this subsection. The assessor is required to notify the property owner or taxpayer of the omitted property or value assessment for each year omitted and the value shall be stated separately from the value of any other year. The assessor must value real property for the years omitted in accordance with the revaluation cycle of the county. For an omitted value assessment, the assessor must provide the taxpayer with a copy of the amended personal property statement along with a letter of particulars informing the taxpayer of the assessor's findings. The assessor must also notify the property owner or taxpayer of the right to appeal an omitted value assessment to the board of equalization and the right to request the board be reconvened to act on the omitted property or omitted value assessment.

(a) **Improvements omitted from the assessment roll.** Where improvements have not been valued and assessed as a part of the real estate upon which the improvements are located, as evidenced by the assessment rolls, they may be separately valued and assessed as omitted property. No such omitted assessment can be made where a bona fide purchaser, encumbrancer, or contract buyer has acquired any interest in the property prior to the time the improvements are assessed. Thus, if a purchaser, encumbrancer, or contract buyer has acquired an interest in improvements that have been omitted from the assessment roll by giving valuable consideration, in good faith, and without actual or constructive knowledge of the omission of the assessment, the assessor is prohibited from making an omitted property assessment. However, if the assessment roll is still open in the year the omission is discovered, the improvements must be added to the assessment roll for that assessment year. If the assessment roll is closed for that year, the

improvements must be placed on the assessment roll in the following year.

(b) **Limitation period for omitted property or omitted value assessments.** No omitted property or omitted value assessment can be made for any period more than three years preceding the year in which the omission is discovered. RCW 84.40.085.

(5) **When are taxes on omitted property or omitted value assessments due?** When an omitted property or omitted value assessment is made, the taxes levied as a result of the assessment may be paid within one year of the due date of the taxes for the year in which the assessment is made without penalty or interest. An assessment is "made," for purposes of omitted property or omitted value assessments, when the assessor notifies the taxpayer in writing of the property and/or value that was previously omitted from the assessment roll. Taxes resulting from an omitted property or omitted value assessment are due on April 30th and cannot be timely paid in two installments, unlike taxes for the current tax year.

(a) **Penalties and interest.** If the taxes due on an omitted property or omitted value assessment are not paid by the due date, the penalties and interest provided in RCW 84.56.020 begin to accrue from the date the taxes become delinquent.

(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 status of each actual situation must be determined after a review of all of the facts and circumstances.

(i) In April 2003, an assessor discovers an improvement that has never been valued, that is, the assessment roll shows no improvement on the property. Construction of the improvement was completed in June 2001. (This fact means the assessor should have added the improvement to the assessment roll by the end of August 2001 under the "new construction" statute, RCW 36.21.080.) No bona fide purchaser, encumbrancer, or contract buyer has acquired any interest in the improvement. The assessor values the improvement for 2001, 2002, and the current assessment year of 2003, and mails a valuation notice to the taxpayer. The taxes for the 2003 assessment year are due on April 30, 2004. If the amount due is fifty dollars or more, one-half of the tax due may be paid by April 30, 2004, and the balance may be paid by October 31, 2004. The taxes for the omitted property assessment covering the 2001 and 2002 assessment years are due in full by April 30, 2005, which is one year after the due date for the taxes for the assessment year in which the omitted property assessment is made. If the taxes for the omitted assessment are not paid in full by April 30, 2005, the penalties and interest provided in RCW 84.56.020 begin to accrue as of May 1, 2005, on the unpaid amount.

(ii) In November 2002, after the assessment rolls are closed, an assessor discovers an improvement that has never been valued, that is, the assessment roll shows no improvement on the property. Construction of the improvement was completed in March 1998. No bona fide purchaser, encumbrancer, or contract buyer has acquired any interest in the improvement. The assessor adds the improvement to the assessment roll at true and fair value for 1999, 2000, 2001, and 2002, and mails a valuation notice to the taxpayer. Because the roll is closed for assessment year 2002, no taxes are due on the improvement in 2003. The taxes resulting from this omitted property assessment are due in full by April 30, 2004, which is one year after the due date for the taxes for the assessment year in which the omitted property assessment is made. (Although the roll is closed in 2002, the assessment is still

"made" in 2002.) If the taxes for the omitted property assessment are not paid in full by April 30, 2004, the penalties and interest provided in RCW 84.56.020 begin to accrue as of May 1, 2004, on the unpaid amount. The taxes for the 2003 assessment year are due on April 30, 2004. If the amount due is fifty dollars or more, one-half of the tax due may be paid by April 30, 2004, and the balance may be paid by October 31, 2004.

(iii) In May 2004, an assessor audits a taxpayer's personal property records and discovers omitted value not reported by the taxpayer. The personal property was acquired by the taxpayer in 1997, and disposed of by the taxpayer in November 2003. The assessor values the property at true and fair value for assessment years 2001, 2002, and 2003, and notifies the taxpayer of the omitted value by forwarding a copy of the amended personal property statements along with a letter of particulars informing the taxpayer of the assessor's findings and of the taxpayer's right to appeal those findings to the board of equalization, and/or to request that the board of equalization be reconvened to act on the omitted value assessment. The taxes resulting from the omitted value assessment are due in full by April 30, 2006, which is one year after the due date for the taxes for the assessment year in which the omitted value assessment is made. If the taxes for the omitted value assessment are not paid in full by April 30, 2006, the penalties and interest provided in RCW 84.56.020 begin to accrue as of May 1, 2006, on the unpaid amount.

(6) What are the appeal rights of taxpayers receiving an omitted property or omitted value assessment? Upon request of either the taxpayer or the assessor, the county board of equalization may be reconvened to act on an omitted property or omitted value assessment. RCW 84.40.085. For additional information on reconvened boards of equalization, refer to WAC 458-14-127.

[Statutory Authority: RCW 84.08.010, 84.08.070, 84.40.040, 84.40.080, 84.40.085, 84.40.130, and 84.40.200. WSR 05-02-034, § 458-12-050, filed 12/30/04, effective 1/30/05; Order PT 68-6, § 458-12-050, filed 4/29/68.]

WAC 458-12-060 Listing of personal property. (1) Introduction.

This rule provides information about the listing of personal property subject to ad valorem taxation. This rule also provides specific information about the listing of personal property by manufacturers. For information about the listing of ships and vessels subject to property taxation, refer to WAC 458-17-101.

(2) Who is required to list personal property with the county assessor? Every person is required to list all taxable (i.e., nonexempt) personal property in the person's ownership, possession, or control. RCW 84.40.185 and 84.40.190. Every person required to list personal property must deliver to the county assessor a form listing all of the person's taxable personal property that was located in the county as of 12:00 p.m. on January 1st of the assessment year. The listing may be delivered to the assessor either in person, by mail, or by electronic transmittal (e.g., internet-based application, email, or facsimile) if available. The listing does not need to be signed or verified under penalty of perjury. (Chapter 302, Laws of 2003.)

For purposes of this rule, the term "person" includes natural persons and artificial persons such as partnerships, corporations, limited liability companies, associations, trusts, and estates.

(a) How should property be identified on the listing form? Each item of taxable personal property may, but need not, be separately identified on the listing form. At a minimum, however, each category of taxable personal property must be separately identified on the listing form. For example, office equipment must be separately identified as personal computers and peripherals, facsimile machines, copiers, telephone equipment, office furniture, supplies, and the like. RCW 84.08.020 and 84.40.040.

(b) What other information must be included in the personal property listing? In addition to a listing of all categories of taxable personal property, a listing form must also include:

(i) The year of acquisition for each category of personal property; and

(ii) The total original cost of each category of personal property. The value of any trade-in is not to be deducted from the acquisition cost. For purposes of listing taxable personal property, the total original cost includes all costs associated with making the property operational but excludes sales tax. For example, installation, freight, and engineering charges are costs that may be incurred while placing property into operation. RCW 84.08.020 and 84.40.040.

(c) When are personal property listings due? RCW 84.40.040 provides that personal property listings are due on or before April 30th. A penalty may be added to the amount of tax assessed if listing is not made by the due date. RCW 84.40.130. Refer to WAC 458-12-110 for detailed information about the penalties imposed under RCW 84.40.130.

(d) How do the exemptions for household goods, furnishings, and personal effects and for the head of a family affect listing? RCW 84.36.110 provides exemptions for the head of a family and for household goods, furnishings, and personal effects. Information about these exemptions and their effect on listing is provided in WAC 458-16-115.

(e) What if the assessor believes that an incomplete or inaccurate listing has been made? When the assessor believes that an incomplete or inaccurate listing has been made, the assessor has the following options:

(i) If the assessor believes that a person listing personal property for himself or herself, or on behalf of a principal (e.g., any other person, company, or corporation), has not made a full, fair, and

complete listing of such property, the assessor may examine the person under oath in regard to the amount of the property the person is required to list. If the person refuses to answer under oath, the assessor may list the property of that person, or of that person's principal, according to the assessor's best judgment and information. RCW 84.40.110. Any oath authorized to be administered under Title 84 RCW may be administered by any assessor or deputy assessor, or by any other officer having authority to administer oaths. Any person willfully making a false list, schedule, or statement under oath is subject to the penalties of perjury. RCW 84.40.120.

(ii) For the purpose of verifying any list, statement, or schedule required to be furnished to the assessor by any taxpayer, any assessor or the assessor's trained and qualified deputy may visit, investigate, and examine any personal property at any reasonable time. For the purposes of this verification, the records, accounts, and inventories, which will aid in determining the amount and valuation of the property, will also be subject to visitation, investigation, and examination. The visitation, investigation, and examination may be performed at any office of the taxpayer in this state. The taxpayer is required to furnish or make available all the information pertaining to property in this state to the assessor even though the records may be maintained at any office outside this state. RCW 84.40.340.

(f) **What if the owner of personal property moves to another county or into this state after January 1st?** The owner of taxable personal property who moves from one county to another between January 1st and July 1st will be assessed in the county whose assessor first calls upon the owner to make a listing. The owner of personal property who moves into this state from another state between January 1st and July 1st must make a listing of taxable personal property that the person owned on January 1st of the assessment year with the assessor in the county in which the person resides.

If the owner of personal property moves to another county or into this state after January 1st and can satisfy the assessor that the owner's property has been assessed and will be held liable for the tax on the current year in another state or county, the owner cannot be assessed again for the current year. RCW 84.44.080.

(3) **Assessor's duty to maintain list of persons liable to assessment.** Assessors must maintain an alphabetical list of the names and last known addresses of all property owners in the county who are subject to assessment of personal property. On or before January 1st of each year, the assessor is required to mail or electronically transmit (e.g., email) a notice to such persons that a listing is required along with a listing form. The notice and listing form must be in accordance with forms prescribed by the department of revenue. If practicable, the notice and listing form mailed or electronically transmitted to each taxpayer must include a copy of the previous year's listing. RCW 84.40.040. A copy of the taxpayer's previous year's listing must also be provided to the taxpayer upon the taxpayer's request.

(a) **What if I do not receive a listing form from the assessor?** Property owners who are subject to assessment of personal property and any other person required to list personal property are responsible for making a listing regardless of whether or not the person receives a listing form from the assessor.

(b) **What are the assessor's duties upon receipt of a personal property listing?** Upon receipt of a personal property listing, the assessor will determine the true and fair value of the property listed and enter one hundred percent of the true and fair value of the prop-

erty on the assessment roll opposite the name of the party assessed (i.e., the owner of the property). The assessor may, after giving written notice of the action to the person assessed, add to the assessment list any taxable property that should have been included in the list but was omitted by the taxpayer. RCW 84.40.040.

RCW 84.40.200 requires that a copy of the completed personal property listing containing the assessor's determination of the true and fair value of the property assessed must be provided to the person assessed, or to the person listing the property. The information may be provided in person, by mail, or by electronic transmittal if available.

(4) **Listing of personal property by manufacturers.** This subsection provides specific information about the listing of taxable personal property by manufacturers. A manufacturer must make and deliver to the assessor a personal property listing. The listing is made in the county where the personal property is situated. RCW 84.44.010. The listing must include the manufacturer's stock, engines, machinery, and other nonexempt personal property, together with the year of acquisition and total original cost for each category. Detailed information about the cost of personal property is contained in subsection (2)(b)(ii) of this rule. Manufacturer's stock that constitutes "business inventories," as that term is defined in RCW 84.36.477, is exempt from ad valorem taxation and need not be included in the personal property listing.

Fixtures considered by the assessor as part of any parcel of real property should not be included in a manufacturer's personal property listing. For detailed information about fixtures or trade fixtures, refer to WAC 458-12-005 and 458-12-010.

(a) **Who is a "manufacturer"?** A "manufacturer" is any person who purchases, receives, or holds personal property of any description for the purpose of adding to the value thereof by any process of manufacturing, refining, rectifying, or by the combination of different materials with the view of making gain or profit by so doing. RCW 84.40.210.

(b) **What is "manufacturer's stock"?** "Manufacturer's stock" includes all articles purchased, received, or otherwise held for the purpose of being used in whole or in part in any process or processes of manufacturing, combining, rectifying, or refining.

(c) **What if property identified on the personal property listing has also been listed and assessed as part of any parcel of real property?** On receipt of the manufacturer's personal property listing, the assessor will delete from the assessment the value of any engines and machinery that the assessor knows to have been assessed as part of any parcel of real property (i.e., as a fixture). A copy of the corrected assessment will be provided to the manufacturer.

[Statutory Authority: RCW 84.08.010 and 84.08.070. WSR 04-01-119, § 458-12-060, filed 12/17/03, effective 1/17/04; Order PT 68-6, § 458-12-060, filed 4/29/68.]

WAC 458-12-110 Listing of personal property by the assessor—Penalties for failing to list personal property and for making a false or fraudulent listing. (1) **Introduction.** This rule explains the process of listing and assessing taxable personal property by the assessor when the taxpayer fails to make a listing as required by chapter 84.40 RCW. This rule also provides information about the penalties imposed by RCW 84.40.130 for persons who fail or refuse to make a timely listing of their taxable personal property or who willfully provide the assessor a false or fraudulent listing of their taxable personal property. For additional information about the listing of personal property, refer to the rules found in WAC 458-12-060 through 458-12-080.

(2) **Failure to provide a listing of taxable personal property to the assessor.** If a person who is required under chapter 84.40 RCW to make a listing of taxable personal property with the county assessor fails to do so by April 30, it is the duty of the assessor under RCW 84.40.200 to ascertain the amount and value of the taxable personal property that should have been listed. When such a listing is made by the assessor, he or she must deliver or mail a copy of the listing, showing the valuation of the property so listed, to the person for whom the listing is made. The provisions of RCW 84.40.200 do not apply to the listing of ships and vessels required under RCW 84.40.065.

(3) **Penalty for failing or refusing to make a listing of taxable personal property.** A person who fails or refuses to provide the assessor with a listing of their taxable personal property by April 30 is subject to a mandatory penalty. The amount of the penalty is described below in (a) of this subsection.

(a) **Amount of penalty.** The amount of the penalty is five percent of the amount of tax assessed against the taxpayer on the property not listed, not to exceed fifty dollars per calendar day if the delinquency is for less than one month. If the delinquency is for more than one month, the taxpayer must pay an additional five percent of the amount of tax for each additional month or fraction of a month that the listing is delinquent, up to a maximum penalty each year of twenty-five percent of the amount of tax. The penalty provided in this subsection (3) will be collected in the same manner as the tax to which it is added.

(b) **How does the penalty apply when a listing is made by the assessor?** When the assessor makes a listing of taxable personal property under the provisions of RCW 84.40.200 and subsection (2) of this rule, the penalty provided in this subsection (3) continues to accrue until the taxpayer provides a listing to the assessor as required by chapter 84.40 RCW.

(c) **Can the penalty be waived?** If a person can establish to the satisfaction of the assessor that the failure to provide a listing of taxable personal property was due to reasonable cause and not due to willful neglect, no penalty will be imposed.

Whether reasonable cause exists depends upon the facts of each case. Reasonable cause may be shown by one or more of the following events or circumstances. These examples do not encompass all of the possible events or circumstances that could constitute reasonable cause for failing to make a listing of taxable personal property with the assessor by the due date.

(i) The taxpayer was unable to make a listing by the due date because of a death or serious illness of the taxpayer or of a member of the taxpayer's immediate family occurring at or shortly before the due date. For purposes of this subsection, the term "immediate family" in-

cludes, but is not limited to, a grandparent, parent, brother, sister, spouse, domestic partner, child, grandchild, or domestic partner's child or grandchild.

(ii) The taxpayer was unable to make a listing by the due date because the taxpayer reasonably relied upon incorrect, ambiguous, or misleading written advice as to the proper listing requirements by either the assessor or assessor's staff, or the property tax advisor designated under RCW 84.48.140, or his or her staff.

(iii) The taxpayer was unable to make a listing by the due date because of a natural disaster such as a flood or earthquake occurring at or shortly before the due date.

(iv) The taxpayer was unable to make a listing by the due date because of a delay or loss related to the delivery of the listing form by the postal service. The taxpayer must be able to provide documentation from the postal service of such a delay or loss.

(v) The failure of the assessor to provide a notice and listing form as required by RCW 84.40.040 to a taxpayer does not excuse a taxpayer from making a timely listing of taxable personal property with the assessor. The assessor's failure to provide a notice and listing form may, however, be considered in determining whether the taxpayer's failure to provide a timely listing was due to reasonable cause.

(d) **How are the penalties distributed?** When collected, the penalties provided for in this subsection (3) are credited to the county current expense fund. RCW 84.40.130 and 84.56.020(8).

(e) **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 status of each actual situation must be determined after a review of all of the facts and circumstances.

(i) Due to an oversight, Company A makes its listing of taxable personal property on October 6th of the assessment year, over five months after the deadline provided in RCW 84.40.040. The amount of tax imposed against Company A on its personal property in the following year is \$600.00. Company A is subject to a penalty of \$150.00, 25% of the amount of its tax liability.

(ii) Due to an oversight, Company B makes its listing of taxable personal property on May 2nd of the assessment year, two days after the deadline provided in RCW 84.40.040. The amount of tax imposed against Company B on its personal property in the following year is \$2,250.00. The amount of the penalty assessed against Company B is \$100.00. 5% of \$2,250.00 is \$112.50. However, the penalty is limited to \$50.00 per calendar day when the delinquency does not exceed one month.

(iii) Due to an oversight, Company C fails to make a listing of its taxable personal property by April 30th, the deadline provided in RCW 84.40.040. On August 24th of the assessment year, the assessor lists and values the taxable personal property of Company C and mails a copy of the listing to Company C. At this time, Company C would be subject to a penalty of 20% of the tax imposed against it on its personal property in the following year. After receiving the assessor's listing, Company C makes its own listing with the assessor on September 7th of the assessment year. The amount of penalty imposed is 25% of the tax imposed against Company C on its personal property in the following year. The listing by the assessor has no effect on the amount of the penalty Company C is subject to.

(iv) Due to an oversight, Company D fails to make a listing of its taxable personal property for assessment years 2001, 2002, and 2003. In May of 2003, the assessor learns of Company D's failure to

list its taxable personal property for the 2001, 2002, and 2003 assessment years. After being notified by the assessor of its failure to make a listing, Company D makes a listing for assessment years 2001, 2002, and 2003 with the assessor on May 20, 2003. The assessor adds the taxable personal property for 2003 to the assessment roll. The assessor also adds the taxable personal property for 2001 and 2002 to the assessment roll as omitted property under the provisions of RCW 84.40.080. The penalties assessed against Company D include a penalty of 25%, for each year, of the amount of tax imposed on Company D resulting from the omitted property assessment for assessment years 2001 and 2002. In addition, Company D is subject to a penalty for the delinquent 2003 listing in the amount of 5% of the amount of tax imposed on Company D resulting from the listing for the 2003 assessment year or \$1,000, whichever is less. The amount of \$1,000 represents \$50 per calendar day of delinquency. For additional information about omitted property, refer to WAC 458-12-050.

(4) Penalty for willfully providing a false or fraudulent listing of taxable personal property. If a person willfully provides the assessor with a false or fraudulent listing of taxable personal property, or, with the intent to defraud, fails or refuses to provide a listing of taxable personal property as required by chapter 84.40 RCW, the person is subject to a penalty of one hundred percent of the tax properly due. A false or fraudulent listing may arise because it does not include all of the taxable personal property in the ownership, possession, or control of the person making the listing, or because it contains false information relating to the proper value of the personal property listed. A person is not liable for the penalty provided in this subsection (4) if the failure to list or the false listing was the result of negligence, inadvertence, accident, or simple oversight rather than willfulness or an intent to defraud. Likewise, a person making a false listing will not be subject to the penalty provided in this subsection (4) if it is shown that the misrepresentations made by the person are entirely attributable to reasonable cause. The penalty imposed under this subsection (4) is in lieu of the penalty imposed under subsection (3) of this rule.

(a) How is the penalty imposed? The assessor does not impose the penalty provided in this subsection (4). Rather, the penalty provided for in this subsection along with any tax properly due are to be recovered in a lawsuit brought in the name of the state of Washington on the complaint of the county assessor or the county legislative authority. The provisions of this subsection (4) are in addition to any other provisions of law relating to the recovery of property taxes.

(b) How is the penalty distributed? When collected, the penalty imposed under this subsection (4) and the tax to which it was added must be paid into the county treasury to the credit of the current expense fund.

[Statutory Authority: 2009 c 521. WSR 10-07-133, § 458-12-110, filed 3/23/10, effective 4/23/10. Statutory Authority: RCW 84.08.010, 84.08.070, 84.40.040, 84.40.080, 84.40.085, 84.40.130, and 84.40.200. WSR 05-02-034, § 458-12-110, filed 12/30/04, effective 1/30/05; Order PT 68-6, § 458-12-110, filed 4/29/68.]

WAC 458-12-115 Personalty—Taxable situs—In general. Personal property except where required by statute to be listed elsewhere shall be listed and assessed in the county where situated as of 12 noon on January 1st of each year. (RCW 84.44.010)

For the purposes of determining the situs of goods in transit the following guidelines shall be observed:

(1) **Goods in interstate transit** - Goods in transit to this state from another are assessable only if on the assessment date they have come to rest within this state. The fact that such goods may be still in their original package as of the assessment date is immaterial. (*American Steel & Wire Company v. Speed*, 192 U.S. 500 (1903); AGO 5-2-1942; TCR 2-25-1936) Goods which are in-transit either from or through the state with the ultimate destination point elsewhere shall not be subject to local property taxation. However, if during the course of such transit any nonexempt goods (see RCW 84.36.140 through 84.36.191) shall be stored in any county of this state for other than natural causes or lack of facilities for immediate transportation then such goods shall become subject to local taxation. (*Kelley v. Rhoads*, 188 U.S. 1 (1902))

(2) **Exports and imports** - Goods from foreign countries are imports in the strict sense and generally become taxable within the following situations:

(a) Such goods are sold by the importer;

(b) The physical container except intermodal containers (i.e., vanpacs or similar equipment) constructed and utilized solely to transport a quantity of goods in separate original packages in a single container and intended to be reuseable in which they arrived is broken; (*Brown v. Maryland*, 25 U.S. 266 (1827); *Waring v. The Mayor of Mobile*, 75 U.S. 110 (1868))

(c) The merchandise is commingled with the mass of properties in the state; (*May v. New Orleans*, 178 U.S. 496 (1890))

(d) The goods have been committed to the purpose or use for which they were imported. (*Youngstown Sheet & Tube Company v. Bowers*, 358 U.S. 534 (1958))

Goods which are to be exported are assessable until they enter into the stream of exportation. (*Eardley Fisheries Co. v. Seattle*, 50 Wn.2d 566)

(3) **Intrastate transit** - Goods in transit from one point in this state to another on the assessment date are assessable at their destination. (*State Trust Company v. Chehalis County*, 79 U.S. 282 (1897); AGO 1929-30, p. 179; TCR 2-25-1937; AGO 1933-34, p. 97)

"In-transit" shall mean that the goods are either in the hands of the carrier without being subject to further control by the owner or that the goods are physically moving as of the assessment date. (TCR 2-16-1938; 2-7-1939) If during the course of the transit the goods shall happen to be delayed for other than natural causes or lack of immediate transportation facilities then such goods shall be subject to assessment at the location of their actual situs. This shall be so notwithstanding the fact that such situs may not be the destination point nor the domicile of the owner. However, if the goods are only temporarily delayed for the excusable reasons, then they are assessable at the destination point. (AGO 1929-30, p. 192; TCR 6-13-1940)

Goods arriving at destination point before the assessment date shall be assessed and taxed at that point regardless of whether or not possession or the right of possession has passed to the person, firms

or corporations accepting such goods. (AGO 1929-30, p. 179; AGO 1913-14, p. 61.)

[Order PT 68-6, § 458-12-115, filed 4/29/68.]

WAC 458-12-251 Computer software—Definitions—Valuation. (1)

This rule implements the provisions of chapter 29, Laws of 1991, ex. sess, regarding the property taxation of computer software.

(2) **Computer software.** Computer software is a set of directions or instructions that exist in the form of machine-readable or human-readable code, is recorded on physical or electronic medium and directs the operation of a computer system or other machinery and/or equipment. Computer software includes the associated documentation which describes the code and/or its use, operation, and maintenance and typically is delivered with the code to the user. Computer software does not include databases, but does include the computer programs and code which are used to generate databases. Computer software can be canned, custom, or a mixture of both.

(a) A database is text, data, or other information that may be accessed or managed with the aid of computer software but that does not itself have the capacity to direct the operation of a computer system or other machinery and equipment; and, therefore does not constitute computer software.

(3) **Custom software.** Custom software is computer software that is specially designed for a single person's or a small group of persons' specific needs. Custom software includes modifications to canned software and can be developed in-house by the user, by outside developers, or by both.

(4) "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, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit, or otherwise and the United States or any instrumentality thereof.

(5) A "small group of persons" shall consist of less than four persons. A group of four or more persons shall be presumed not to be a small group of persons for the purposes of this section unless each of the persons are affiliated through common control and ownership.

(a) "Persons affiliated through common control and ownership" means

(i) Corporations qualifying as controlled group of corporations in 26 U.S.C. § 1563; or

(ii) Partnerships or other persons in which at least 80% of the ownership in the persons claimed to be affiliated is the same.

(6) **Canned software.** Canned software, also referred to as pre-written, "shrink-wrapped" or standards software, is computer software that is designed for and distributed "as is" for multiple persons who can use it without modifying its code and which is not otherwise considered custom software.

(a) Computer software that is a combination of prewritten or standard components and components specially modified to meet the needs of a user is a mixture of canned and custom software. The standard or prewritten components are canned software and the modifications are custom software.

(b) Canned software that is "bundled" with or sold with computer hardware retains its identity as canned software and shall be valued as such. "Bundled" software is canned software that is sold with hardware and does not have a separately stated price, and can include op-

erating systems such as DOS, UNIX, OS-2, or System 6.0 as well as other programs.

(c) An upgrade is canned software provided by the software developer, author, distributor, inventor, licensor or sublicensor to improve, enhance or correct the workings of previously purchased canned software.

(7) **Embedded software.** Embedded software is computer software that resides permanently on some internal memory device in a computer system or other machinery and equipment, that is not removable in the ordinary course of operation, and that is of a type necessary for the routine operation of the computer system or other machinery and equipment.

(a) Embedded software can be either canned or custom software which:

(i) Is an integral part of the computer system or machinery or other equipment in which it resides;

(ii) Is designed specifically to be included in or with the computer system or machinery or other equipment; and

(iii) In its absence, the computer system or machinery or other equipment is inoperable.

(b) "Not removable in the ordinary course of operation" means that the software is not readily accessible and is not intended to be removed without

(i) Terminating the computer system, machinery, or equipment's operation; or

(ii) Removal of a computer chip, circuit board, or other mechanical device, or similar item.

(c) "Necessary for the routine operation" means that the software is required for the machinery, equipment, or computer to be able to perform its intended function. In the case of machinery or other equipment, such embedded software does not have to be a physical part of the actual machinery or other equipment, but may be part of a separate control or management panel or cabinet.

(8) **Retained rights.** Retained rights are any and all rights, including intellectual property rights such as those rights arising from copyright, patent, and/or trade secret laws, that are owned or held under contract or license by a computer software developer, author, inventor, publisher or distributor, licensor or sublicensor.

(9) **Golden or master copy.** A golden or master copy of computer software is a copy of computer software from which a computer software developer, author, inventor, publisher or distributor makes copies for sale or license.

(10) **Acquisition cost.**

(a) The acquisition cost of computer software shall include the total consideration paid for the software, including money, credits, rights, or other property expressed in terms of money, actually paid or accrued. The term also includes freight and installation charges but does not include charges for modifying software, retail sales tax or training. No deduction from the acquisition cost of computer software shall be allowed for any retained rights held by the developer, author, inventor, publisher, or distributor.

(b) In cases where the acquisition cost of computer software cannot be specifically identified, it will be valued at the usual retail selling price of the same or substantially similar computer software.

(c) In cases where canned software is specially modified for the user, the canned component of the computer software retains its iden-

tity as canned software; and the modifications are considered custom software and not taxable.

(11) Valuation of canned software.

(a) In the first year in which it will be subject to assessment, canned software shall be listed and valued at one hundred percent of acquisition cost as defined in section (10)(a), above, regardless of whether the software has been expensed or capitalized on the accounting records of the business.

(b) In the second year in which it will be subject to assessment, canned software shall be listed at one hundred percent of acquisition cost and valued at fifty percent of its acquisition cost.

(c) After the second year in which canned software has been subject to assessment, it shall be valued at zero.

(d) Upgrades to canned software shall be listed and valued at the acquisition cost of the upgrade package under subsections (11)(a) and (b), above, and not at the value of what the complete software package would cost as a new item.

(12) Valuation of customized canned software. In the case where a person purchases canned software and subsequently has that canned software customized or modified in-house, by outside developers, or both, only the canned portion of such computer software shall be taxable and it shall be valued as described in subsection (11).

(13) Valuation of embedded software. Because embedded software is part of the computer system, machinery, or other equipment, it has no separate acquisition cost and shall not be separately valued apart from the computer system, machinery, or other equipment in which it is housed.

(14) Taxable person. Canned software is taxable to the person having the right to use the software, including a licensee.

(15) Exemptions.

(a) All custom software, except embedded software, shall be exempt from property taxation;

(b) Retained rights of the computer software developer, author, inventor, publisher, distributor, licensor or sublicensor are exempt from property taxation;

(c) Modifications to canned software shall be exempt from property taxation as custom software; however, the underlying canned software shall retain its identity as canned software and shall be valued as prescribed in subsection (11) of this rule;

(d) Master or golden copies of computer software are exempt from property taxation;

(e) The taxpayer is responsible for maintaining and providing records sufficient to support any claim of exemption for either canned or custom software.

[Statutory Authority: RCW 84.08.010 and 1991 c 29. WSR 92-01-132, § 458-12-251, filed 12/19/91, effective 1/19/92.]

WAC 458-12-310 Valuation of property—Personal property. As in the valuation of all other classes of tangible property for ad valorem tax purposes, market value is the assessment goal. To attain that goal, the trade level concept for inventory and leased equipment shall be considered.

Trade level may be defined as value at the point in the production stream where an item of manufactured personalty is found, or the production-distribution level in which a product is found.

In appraising tangible personal property, the assessor shall give recognition to the trade level at which the property is situated and to the principle that tangible property normally increases in value as it progresses through production and distribution channels. Such property normally attains its maximum value as it reaches the consumer level.

Raw material in the hands of the processor or manufacturer should be valued at their cost to the owner or to a competitor.

Work in process in the hands of the processor or manufacturer shall be valued at the stage of production where found (costs to date) or cost to a competitor.

Finished goods held for sale shall be valued at the amount for which they would transfer to a like business (cost to produce); those held for lease or rental shall be valued at the trade level of the principal user, usually cost to retailer or consumer.

Where personal property is in the hands of a person engaged in two or more of the functions of producer, manufacturer, processor, wholesaler, or retailer, the assessor shall determine the level of trade at which the property is situated on the assessment date by reference to its form, location, quantity, and probable purchasers or lessees.

Livestock all county assessors shall use the livestock schedule published annually for their district by the department of revenue as a guide in the valuation of livestock. The assessor must not use the average inventory basis of valuation in the assessment of livestock. (AGO 1-17-51)

Petroleum products all county assessors shall use the petroleum products schedule, approved annually by the department of revenue and adjusted to market zones within the state as a guide in the valuation of petroleum products.

Average inventory where the stock of goods, wares, merchandise or material, whether in a raw or finished state or in process of manufacture, owned by a taxpayer on January 1st of any year does not fairly represent the average stock carried by such taxpayer, such stock shall be listed and assessed upon the basis of the monthly average of stock owned or held by such taxpayer during the preceding calendar year or during such portion thereof as the taxpayer was engaged in business. (RCW 84.40.020) Although the taxpayer may request that the average inventory method be used and the assessor must comply with that request, whatever method is used—average inventory or inventory on January 1st—That method must be followed from year-to-year in reporting unless a showing is made that a major change in the business has occurred necessitating use of the other method.

[Order PT 68-6, § 458-12-310, filed 4/29/68.]