

# Washington State Tax Guide



# INDIAN TRIBES





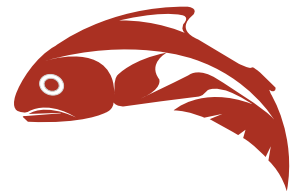
The Indian Tax Guide was created to assist persons engaging in activities within Indian country or with Indian tribes or tribal members. The information contained in this guide provides guidance for activities such as the sales of tangible personal property or retail services, and treaty fishery activity or the exercise of other treaty rights.

This information is current at the time of publication. Please remember, state tax laws change on a regular basis and this guide will not reflect any changes that may occur after printing.

This guide is intended to provide general tax information only. For more information or to get answer to specific questions, please contact the Department of Revenue using the mailing address, phone number or web site listed below:

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Washington Department of Revenue**

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# Taxpayer Rights and Responsibilities

## Rights

The taxpayers of the state of Washington have the Right to:

Simple and prompt administrative process for tax refunds and credits.

- Timely, fair and equitable treatment with dignity and respect.
- Accurate written information on reporting instructions, appeal procedures, refund claims and reasons for assessment.
- Public hearings on proposed rules.
- Review and appeal of assessments, business registration revocations and adverse rulings.
- Remedies when statutes and rules are found to be nonconstitutional.
- Confidentiality of financial and business information.

## Responsibilities

The taxpayers of the state of Washington have the Responsibility to:

- Register with the Department of Revenue.
- Know their tax reporting obligations and seek instructions when they are uncertain.
- Keep accurate and complete business records.
- File returns and pay taxes in a timely manner.
- Ensure the accuracy of the information entered on their tax returns.
- Substantiate claims for refund.
- Notify the Department of Revenue and pay taxes promptly when closing a business.

Revised Code of Washington (RCW) 82.32A

## Definitions

**Indian:** Means a person on the tribal rolls of an Indian tribe. A person on the tribal rolls is also known as an “enrolled member,” “member,” “enrolled person,” “enrollee,” or “tribal member.”

**Indian country:** “Indian country” has the same meaning as given in 18 U.S.C. 1151 and means:

- All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights of way running through the reservation
- All Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same

**Indian tribe:** Means an Indian nation, tribe, band, community, or other entity recognized as an “Indian tribe” by the United States Department of the Interior. The phrase “federally recognized Indian tribe” and the term “tribe” have the same meaning as “Indian tribe.”

**Indian reservation:** Reservation land and trust or federally restricted land located outside a reservation.

**Non-member:** Means a person not on the tribal rolls of the Indian tribe.

**State sales and use tax:** Includes local sales and use tax.

**Tribal trust land:** Land held in trust for a Tribe by the federal government. The federal government holds title to the land.

**Tribal fee land:** Land owned by the Tribe and not currently in trust. The Tribe holds legal title.



# Federally Recognized Indian Tribes In Washington

Chehalis	Samish Nation
Colville Confederated	Sauk-Suiattle
Cowlitz	Shoalwater Bay
Hoh	S’Kallam Skokomish
Jamestown	Snoqualmie
Lower Elwha Klallam	Spokane
Lummi Nation	Squaxin Island
Makah	Stillaguamish
Muckleshoot	Suquamish
Nisqually	Swinomish
Nooksack	Kalispel
Port Gamble S’Klallam	Tulalip
Puyallup	Upper Skagit
Quinault Nation	Yakama Nation
Quileute	

An up-to-date list of federally recognized Indian tribes in the state of Washington is available online from the Governor’s Office of Indian Affairs at [www.goia.wa.gov](http://www.goia.wa.gov).

# Who is a Tribal Member?

## Member

A person who is enrolled with the Tribe upon whose territory an activity is taking place.

## Spouse

The spouse of a tribal member, if the treatment of Washington Administrative Code 458-20-192 does not conflict with tribal law, is a tribal member.

## Corporation

Corporations or other entities owned by Indians. A state chartered corporation comprised solely of Indians is not subject to tax on business conducted in Indian country if all of the owners of the corporation are members of the tribe. The corporation is subject to tax on business conducted outside of Indian country, subject to the exception for treaty fishery activity. Also, partnerships or other entities comprised solely of tribal members of a tribe are not subject to tax on business conducted in Indian country.

## Family Members

In the event that the composition of a family includes a member who is not a member of the tribe the business will be considered as satisfying the “comprised solely” criteria if at least half of the owners are enrolled members of the tribe.

**Example:** A business entity is comprised of a mother who is a member of the Chehalis Tribe and her son who is a member of the Squaxin Island Tribe. When doing business together on the Chehalis reservation they will be considered as satisfying the “comprised solely” criteria because at least half the owners are enrolled members of the Chehalis Tribe.

## Recordkeeping and Tax Collection

A seller is required to maintain appropriate records on the tax-exempt status of applicable business transactions. The seller must obtain a completed Buyers' Retail Sales Tax Exemption Certificate from the buyer.

Generally, in this state the sale to persons other than tribal members is subject to the retail sales tax regardless of where delivery or rendition of services takes place. A seller is required to collect and remit to the state the retail sales tax upon each taxable sale made by them to non-members in Indian country.

A tribe and the Department may enter into an agreement covering the collection of state tax by tribal members or the tribe.

Records of tax-exempt status must be maintained for five years.

### Qualifying Identification

In order to substantiate the tax-exempt status of a retail sale to a person who is a tribal member, unless the purchaser is personally known to the seller as a member, the seller must require presentation of a tribal membership card or other suitable identification of the purchaser as an enrollee of the Indian tribe. Examples of other acceptable identification are:

- Letter from tribal official
- List of tribal member from a tribal official
- Treaty fishery identification card

**Example:** A refuse collection company must verify the tax-exempt status of its customers. The refuse collection company can:

- get a list from the tribe of all tribal members living in Indian country
- get a copy of the individual's tribal membership card

A tribe and the Department may enter into an agreement covering identification of enrolled members, in which case the terms of the agreement govern.

## Sales to Indians and Indian Tribes In Indian Country

Generally, the state may not tax Indians or Indian tribes in Indian country. The term "Indian" includes only those persons, and qualifying spouses, who are enrolled with the tribe upon whose territory the activity takes place and does not include Indians who are members of other tribes.

If the tax falls on an Indian or a tribe, the tax is not imposed if the activity takes place in Indian country or the activity is treaty fishing rights-related activity.

Nontribal sellers of tangible personal property, retail services, and professional services owe the business and occupation (B&O) tax unless certain conditions are met. In some instances, the retail sales tax must also be collected from the tribal member or tribe.

### Sales of Tangible Personal Property

Income from sales of tangible personal property to the tribe or to tribal members is not subject to B&O tax if the tangible personal property is delivered to the buyer in Indian country and if:

- The property is located in Indian country at the time of sale
- The seller has a branch office, outlet, or place of business in Indian country that is used to receive the order or distribute the property
- The sale of the property is solicited by the seller while the seller is in Indian country.

When these conditions are not met, the seller must pay B&O tax on its business activity.

Generally, the sale of tangible personal property sold to an Indian or an Indian tribe is not subject to sales tax when the property is delivered to the member or tribe within Indian country or the sale that takes place within Indian country. The sale is subject to sales tax when delivery occurs outside of Indian country.

**Example** (delivery within Indian country): A tribal member purchases furniture from a store outside of Indian Country. The tribal member presents identification to the store owner and requests delivery to the reservation upon which they are a tribal member. In this case, retail sales tax is not due. However, if the tribal member takes possession of the furniture outside of Indian country, sales tax must be collected.

**Example** (sale within Indian country): A tribal member purchases items from a store located on the reservation of which they are a tribal member. The transaction is automatically exempt from sales tax and there is no reason to establish “delivery.” If the purchaser is known to the store owner as a registered tribal member, no proof is required. If the purchaser is not known to be a tribal member, the store owner must verify proof, such as a tribal membership card.

## Providing Retail Services

The B&O tax and retail sales tax are not imposed if the retail service, such as construction or repair services, is performed for the member or tribe in Indian country.

In the case of a retail service that is performed both on and off Indian country, only the portion of the contract that relates to work done in Indian country is excluded from tax. The work done for a tribe or tribal member outside of Indian country is subject to the B&O tax and the retail sales tax.

**Example:** A company performing road work for a tribe or tribal member both inside and outside of Indian country must collect the appropriate tax for work conducted outside of Indian country. Any work performed within the boundaries of Indian country is exempt from sales tax.

**Example:** A contractor enters into a contract with a tribe to install a sewer line that extends off reservation. Only the income attributable to the installation of the portion of the sewer line off reservation is subject to state tax.

To document a tax exempt sale to an enrolled tribal member, use the **Buyers' Retail Sales Tax Exemption Certificate** form.

## Providing Other Services

Income from the performance of services in Indian country for the tribe or for tribal members is not subject to the B&O or public utility tax. Services performed outside of Indian country are subject to the B&O or public utility tax. In those instances where services are performed both on and off of Indian country, the activity is subject to state tax to the extent that services are substantially performed outside of Indian country.

## Professional Services Presumption

It will be presumed that a professional service (e.g., accounting, legal, or dental) is substantially performed outside of Indian country if 25 percent or more of the time taken to perform the service occurs outside of Indian country. The portion of income subject to state tax is determined by multiplying the gross receipts from the activity by the quotient of time spent outside of Indian country performing the service, divided by total time spent performing the service.

**Example:** An accountant with an office outside of Indian country provides accounting services to a tribal member. The accountant performs some of the work at the office and some work at the business of the tribal member in Indian country. If at least 25 percent of the time performing the work is spent outside of Indian country, the services are substantially performed outside of Indian country and therefore a portion is subject to state tax.

The accountant must maintain suitable records to distinguish between taxable and nontaxable income in order to provide for a reasonable approximation of the amount of gross income subject to B&O tax. In this case, suitable records could be a log of the time and location of the services performed for the tribal member by the accountant, his or her employees, and any contractors hired by the accountant.

## Tax Rate Lookup Tool (GIS)

When collection of retail sales tax is applicable, the Department's Tax Rate Lookup Tool can be used to determine the correct local sales tax rate for a specific location. This tool automatically searches for and identifies the proper location code and tax rate when you enter the US Postal Service address. The system also provides a map lookup system. The Tax Rate Lookup Tool is available online at [taxrates.dor.wa.gov](http://taxrates.dor.wa.gov).

## Public Utility Services Presumption

For public utility services under chapters 82.16 and 54.28 RCW it will be presumed that the service is provided where the customer receives the service.

## Retail Sales Tax - Tangible Personal Property - Delivery Threshold

Retail sales tax is not imposed on sales to Indians if the tangible personal property is delivered to the member or tribe in Indian country or if the sale takes place in Indian country.

# Construction Services Performed in Indian Country by Non-Enrolled Persons

## Prime Contractor Working Directly for Tribal Members in Indian Country

**Retail sales tax:** Retail sales tax does not apply to the construction charges of a prime contractor to a tribe or enrolled member when the construction is performed in Indian country. In the case of construction that is performed both in and outside Indian country, only the portion of the contract that relates to work done in Indian country is excluded from tax. The work done for a tribe or Indian outside of Indian country, for example road work that extends outside of Indian country, is subject to retail sales tax.

**Business and occupation (B&O) tax:** B&O tax does not apply to the construction charges of a prime contractor to a tribe or enrolled member when the construction is performed in Indian country.

**Resale Certificate:** A prime contractor may use a resale certificate to purchase materials and subcontractor labor for construction in Indian Country for tribal members. These are considered to be purchases for resale.

**Use tax:** Prime contractors do not owe use tax on the materials permanently installed or affixed to real estate in Indian Country when the construction is performed for the tribe or an enrolled member. Prime contractors do not owe use tax on materials and/or services (e.g., equipment rentals) consumed in performance of such construction.

**Example:** A business building a home for a non-tribal member can purchase subcontractor services and materials to be incorporated into the home at wholesale. Similarly, a business building a home for a tribal member in Indian country can also purchase these services and materials at wholesale.

## Subcontractor Working for Prime Contractor in Indian Country

Subcontractors working in Indian Country are generally taxed as if the construction occurred outside of Indian Country. In other words, subcontractors are not afforded any favorable tax treatment by virtue of performing work for a prime contractor who is performing work for an Indian or Indian tribe.

**Retail sales tax:** Retail sales tax does not apply if the subcontractor obtains a resale certificate from the prime contractor. This is true even though the prime contractor is not required to collect sales tax from the enrolled member.

**Business and occupation tax:** Subcontractors are subject to B&O tax on their income from the performance of construction in Indian Country. If they obtain a resale certificate from the prime contractor, wholesaling B&O tax applies. Otherwise, retailing B&O tax applies.

**Resale certificates:** Subcontractors may use a resale certificate to purchase materials and subcontractors for construction in Indian Country.

**Use Tax:** Subcontractors do not owe use tax on materials they install in Indian Country.

Subcontractors owe use tax on items and services consumed in Indian Country.

## Construction in Indian Country for Non-Enrolled Persons

Construction performed for non-enrolled persons is treated like construction that occurs outside of Indian Country.

## Construction Funded by the Federal Government

**Retail sales tax:** Both prime contractors and subcontractors are not required to charge sales tax when performing construction in Indian Country for the federal government.

**Business and occupation tax:** Both prime contractors and subcontractors are taxable under the government contracting B&O tax classification.

**Use tax:** Both prime contractors and subcontractors owe use tax on the materials used in the construction. Both prime contractors and subcontractors owe use tax on items and services consumed during such construction. In addition, all contractors must pay use tax on any items loaned (bailed) by the Federal Government to the contractor to perform the construction.

## Documenting Tax-exempt Transactions Recordkeeping

Contractors providing construction services to tribal members on Indian lands must verify the tax-exempt status of the tribal members by reviewing the buyer's identification and by obtaining a completed Buyers' Retail Sales Tax Exemption Certificate from the buyer. For examples of acceptable identification, see the Recordkeeping and Tax Collection section.

## Sales by Indians

With the exception of treaty fishery activity, Indians conducting business outside of Indian country are generally subject to the excise tax, including the business and occupation (B&O) tax, the public utility tax, and retail sales tax.

Indians or Indian tribes conducting business outside Indian country must register with the Department as required by RCW 82.32.030. Washington Administrative Code 458-20-101 provides information for registering a business. In addition, the business must collect and remit retail sales tax, when applicable, and is subject to the business and occupation (B&O) tax.

## Treaty Fishery

“Treaty fishery” means the fishing and shellfish rights preserved in a tribe’s treaty, a federal executive order, or an act of Congress. It includes activities such as harvesting, processing, transporting, or selling, as well as activities such as management and enforcement.

### Business and Occupation (B&O) Tax

The gross income directly derived from treaty fishing rights-related activity is not subject to state tax.

This exclusion from tax is limited to those businesses wholly owned and operated by Indians or Indian tribes who have treaty fishing rights. If a business wholly owned and operated by Indians or Indian tribes deals with both treaty and nontreaty fish, this exclusion from tax is limited to the business attributable to the treaty fish.

“Wholly owned and operated” includes entities that meet the qualifications under 26 U.S.C. 7873, which requires:

- Such entity is engaged in a fishing rights-related activity of such tribe
- All of the equity interests in the entity are owned by qualified Indian tribes, members of such tribes, or their spouses
- Except as provided in the code of federal regulations, in the case of an entity which engages to any extent in any substantial processing or transporting of fish, ninety percent or more of the annual gross receipts of the entity is derived from fishing rights-related activities of one or more qualified Indian tribes each of which owns at least ten percent of the equity interests in the entity
- Substantially all of the management functions of the entity are performed by members of qualified Indian tribes

## Sales and Use Tax

The retail sales tax and use tax do not apply to the services or tangible personal property for use in the treaty fishery, regardless of where delivery of the item or performance of the service occurs. Gear, such as boats, motors, nets, and clothing, purchased or used by Indians in the treaty fishery is not subject to sales or use tax. Likewise, retail services in respect to property used in the treaty fishery, such as boat or engine repair, are not subject to sales tax.

## Sales to Non-members

Treaty fish and shellfish sold by members of the tribe are not subject to sales tax or use tax, regardless of where the sale takes place due to the sales and use tax exemption for food products.

## Government-to-government Agreement

A tribe and the Department may enter into an agreement covering the treaty fishery and taxable activities of enrolled members, in which case the terms of the agreement govern.

## Gaming

Gaming by Indian tribes is regulated by the federal Indian Gaming Regulatory Act. Non-members who operate or manage gaming operations for Indian tribes are not subject to tax for business conducted in Indian country. This exclusion from tax applies to taxes imposed on income attributable to the business activity (e.g., the B&O tax), and to sales and use tax on the property used in Indian country to conduct the activity. Sales tax will apply if delivery of property is taken outside of Indian country.

Non-members who purchase tangible personal property at a gaming facility are subject to retail sales or use tax, unless:

- The item is preempted because of the outcome of the balancing test. For example, depending on the relative state, tribal, and federal interests, tax on food at restaurants or lounges owned and operated by the tribe or a tribal member or sales of member arts and crafts at gift shops is preempted
- The item is purchased for use in the gaming activity at the facility, such as bingo cards or daubers

## Public Utility Tax

Generally, income from sales in Indian country of tangible personal property to, and from the performance of services in Indian country for, tribes and tribal members is not subject to B&O (chapter 82.04 RCW) or public utility tax (chapters 82.16 and 54.28 RCW).

The taxpayer is responsible for maintaining suitable records so that the taxpayer and the Department can distinguish between taxable and nontaxable activities. To document a public utility tax exemption, use the Public Utility Exemption For Services Provided to Indian Tribes and Indian Persons form.

## Indian Housing Authorities

Tribal housing authorities and the property of tribal housing authorities are exempt from taxes, such as:

- state and local sales and use taxes
- state and local excise taxes
- state and local property taxes
- special assessments

Please note that tribal housing authorities, like all other housing authorities, are exempt from tax anywhere in the state, and the delivery requirement and other geographic thresholds are not applicable.

Tribal Housing Authority means the tribal government or an agency or branch of the tribal government that operated and administers housing programs for persons of low income or senior citizens.

## Motor Vehicles, Trailers, Snowmobiles, Off-road Vehicles, or Other Such Property, Sold to Indians or Indian Tribes

### Sales Tax

Sales tax is not collected when a motor vehicle, trailer, snowmobile, off-road vehicle, or other such property is delivered by the seller to an Indian or the tribe in Indian country or if the sale is made in Indian country. The tribal member does not have to reside on the reservation for the exemption to apply. However, the buyer must be a member of the tribe upon whose reservation delivery is made.

If the vehicle is delivered to the reservation and the buyer is an enrolled member of the tribe, the sale is exempt from retail sales tax if the following information is provided:

1. Seller's name and address
2. Buyer's name and address
3. Tribe of enrollment
4. Enrollment number
5. Date of sale
6. Year, make, and model of vehicle
7. Vehicle identification number
8. The reservation to which or within which delivery is made (certified by dealer).

To document a sales/use tax exemption for vehicles sold to enrolled tribal members, use the Retail Sales/Use Tax Exemption Certificate for Vehicles Sold to Enrolled Tribal Member form. This exemption must be taken at the time of sale.

### Use Tax

Use tax is not due on the purchase of a motor vehicle, trailer, snowmobile, off-road vehicle, or other such property if the item is acquired in Indian country by an Indian or the tribe for at least partial use in Indian country.

For purposes of taxability it is assumed that the acquisition of those items in Indian country creates the assumption that the property will be used, at least partially, in Indian country.

### Business and Occupation Tax

The seller is not subject to business and occupation (B&O) tax when the services are performed for qualifying Indians or Indian tribes in Indian country. However, when tangible personal property is delivered to Indian country, the B&O is not due only if:

- The property is located in Indian country at the time of sale
- The seller has a branch office, outlet, or place of business in Indian country that is used to receive the order or distribute the property
- The sale of the property is solicited by the seller while the seller is in Indian country

With the exception of treaty fishery and tribal housing authority activities, Indians conducting business outside of Indian country are generally subject to tax in this state and must register with the Department as a business. A business that is wholly owned and operated by Indians or tribes and whose income is derived from treaty fishing rights related activity is not subject to state tax.

## Registration of Vehicle, Trailer, Snowmobile, or Other Such Property

County auditors, sub agencies appointed under RCW 46.01.140, and Department of Licensing vehicle licensing offices must collect use tax when Indians or Indian tribes apply for an original title transaction or transfer of title issued on a vehicle or vessel under chapters 46.09, 46.10, 46.12, or 88.02 RCW unless the tribe/Indian shows that they are not subject to tax.

To substantiate that they are not subject to tax the Indian/tribe must show that they previously paid retail sales or use tax on their acquisition or use of the property, or that the property was acquired on or delivered to Indian country.

The person claiming the exclusion from tax must sign a declaration of delivery to or acquisition in Indian country. A statement in substantially the following form will be sufficient to establish eligibility for the exclusion from sales and use tax.

### Declaration

Declaration of Delivery or Acquisition in Indian Country

- The undersigned is (circle one) an enrolled member of the tribe/authorized representative of the tribe or tribal enterprise, and the property was delivered/acquired within Indian country, for at least partial use in Indian country.
- name of buyer
- date of delivery/acquisition
- address of delivery/acquisition

## Cigarette Tax

Department of Revenue and Liquor Control Board – Joint duties

The statutory duties applicable to administration and enforcement of the cigarette tax are divided between the Department of Revenue and the Liquor Control Board. Enforcement of nonvoluntary compliance is the responsibility of the Liquor Control Board. Voluntary compliance is the responsibility of the Department of Revenue.

Generally, the sales of cigarettes to non-members by Indians or Indian tribes are subject to the cigarette tax. Typically, the wholesaler pre-collects the tax. In the case of sales by tribal smoke shops, the Indian retailer is legally required to collect the tax from the customer.

Therefore, Indian or tribal sellers making sales to non-Indian customers are required by law to:

- Purchase a stock of cigarettes with Washington state cigarette tax stamps affixed for the purpose of making such sales
- Make purchases of cigarettes from licensed cigarette distributors for resale to qualified purchasers
- Purchase a stock of untaxed unstamped cigarettes for resale to qualified purchasers if the tribal seller gives advance notice under RCW 82.24.250 and WAC 458-20-186

“Qualified purchaser” means an Indian purchasing for resale within Indian country to other Indians or an Indian purchasing solely for his or her use other than for resale.

Where sales of cigarettes are the subject of a government-to-government cooperative agreement, including cigarette tax compacts, the provisions of that agreement supersede conflicting provisions of this subsection.

## Refuse Collection Tax

Indians and Indian tribes are not subject to the refuse collection tax for service provided in Indian country, regardless of whether the refuse collection company hauls the refuse off of Indian country.

## Leasehold Excise Tax

Chapter 82.29A imposes a leasehold excise tax. Leasehold interests held by non-enrolled persons are subject to the leasehold excise tax.

However a leasehold excise tax exemption is provided under RCW 82.29A.130(7) for all leasehold interests in any real property of any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States: PROVIDED, that this exemption shall apply only where it is determined that contract rent paid is greater than or equal to 90 percent of fair market rental, to be determined by the Department of Revenue using the same criteria used to establish taxable rent in RCW 82.29A.020(2)(b).

## Fish Tax

Chapter 82.27 RCW imposes a tax on the commercial possession of enhanced food fish, which includes shellfish. The tax is imposed on the fish buyer. The measure of the tax is the value of the enhanced food fish at the point of landing.

A credit is allowed against the amount of tax owed for any tax previously paid on the same food fish to any legally established taxing authority, which includes Indian tribes. Transactions involving treaty fish are not subject to the fish tax, regardless of where the transaction takes place.

Credit against the fish tax is authorized for tax paid on the same fish to any legally established taxing authority.

## Tobacco Tax

The tobacco tax is imposed on “distributors” as that term is defined in RCW 82.26.010. Tobacco tax is not imposed on Indian persons or tribes who meet the definition of distributor under chapter 82.26 RCW and who take delivery of the tobacco in Indian country. Persons who purchase tobacco products from Indians for resale who are exempt from the tobacco tax are subject to tobacco tax on the product.

## Real Estate Excise Tax

The real estate excise tax is imposed on the seller. A sale of land located in Indian country by a tribe or a tribal member is not subject to real estate excise tax.

A sale of land located within Indian country by a non-member to the tribe or to a tribal member is subject to real estate excise tax.

## Timber Excise Tax

Payment of the timber excise tax is the obligation of the harvester.

The tribe or tribal members are not subject to the timber excise tax in Indian country.

Generally, timber excise tax is due from a non-member who harvests timber on fee land within Indian country.

Timber excise tax is not due if the timber being harvested is on trust land or is owned by the tribe and located in Indian country, regardless of the identity of the harvester.

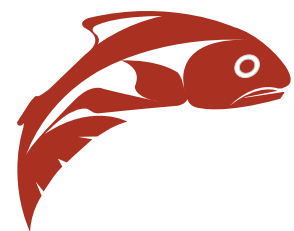
For Specific information on timber tax, you may contact the Department’s Timber Tax Program at 1-800-548-8829.

## Tax on Telephone Services

Indian tribes and enrolled Indians living on the reservation in which they are enrolled are not subject to payment of retail sales tax upon the purchase of telephone services delivered to them within the reservation.

Also exempt are telephone services purchased by Indian businesses operated by Indians within the reservations in which they are an enrolled member.

An exemption statement may be submitted to the telephone service provider by an individual Indian, or, a consolidated tribal statement may be provided by the Indian tribes for enrolled tribal members entitled to the exemption. An exemption statement is required to be updated or renewed only upon a change of address or location of the Indian, and, in the case of a tribal exemption, need only reflect additions and/or deletions.



## Taxability Matrix for Tribal Members and Non-Members

Rule 192	Outside Indian Country	In Indian Country
<p>Qualified Member, Spouse, 100%Indian Corporation the Tribe</p>	<p>Taxable, except Treaty Fishing Related activity.</p> <p>B&amp;O tax not due for treaty fishing activities where business is wholly owner/operated by qualified Indian tribes.</p> <p>Retail Sales Tax not due on services or tangible property for use in treaty fishing, no matter where delivery takes place.</p> <p>Except that Tribal Housing Authorities are not subject to sales tax on or off the reservation.</p>	<p>Not taxable if,</p> <ul style="list-style-type: none"> <li>• Tangible property delivered in Indian country</li> <li>• Services provided in Indian country.(Members and tribes SHOULD collect Retail Sales Tax and other taxes due from non-members.)</li> </ul>
<p>NON-MEMBER</p>	<p>TAXABLE AS USUAL</p>	<p>Retail Sales Tax? Yes, it is due (see above). This is also subject to a balancing test.</p> <p>B&amp;O Tax? Depends on the balancing test. See WAC 458-20- 192(7).</p> <p>No B&amp;O if services are provided in Indian country to a member or tribe (use the time test for professional services. However, if 25 percent or more of the time spent outside of Indian Country, apportionment is required.</p> <p>No B&amp;O if tangible property is delivered in Indian country to a member or tribe and meets the test under WAC 458-20-192(7).</p>

(1) Introduction.

(a) Under federal law the state may not tax Indians or Indian tribes in Indian country. In some instances the state's authority to impose tax on a nonmember doing business in Indian country with an Indian or an Indian tribe is also preempted by federal law. This rule only addresses those taxes administered by the department of revenue (department).

(b) The rules of construction used in analyzing the application of tax laws to Indians and nonmembers doing business with Indians are:

(i) Treaties are to be construed in the sense in which they would naturally have been understood by the Indians; and

(ii) Statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.

(c) This rule reflects the harmonizing of federal law, Washington state tax law, and the policies and objectives of the Centennial Accord and the Millennium Agreement. It is consistent with the mission of the department of revenue, which is to achieve equity and fairness in the application of the law.

(d) It is the department's policy and practice to work with individual tribes on a government-to-government basis to discuss and resolve areas of mutual concern.

(2) Definitions. The following definitions apply throughout this rule:

(a) "Indian" means a person on the tribal rolls of an Indian tribe. A person on the tribal rolls is also known as an "enrolled member" or a "member" or an "enrolled person" or an "enrollee" or a "tribal member."

(b) "Indian country" has the same meaning as given in 18 U.S.C. 1151 and means:

(i) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights of way running through the reservation;

(ii) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and

(iii) All Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.

(c) "Indian tribe" means an Indian nation, tribe, band, community, or other entity recognized as an "Indian tribe"

by the United States Department of the Interior. The phrase "federally recognized Indian tribe" and the term "tribe" have the same meaning as "Indian tribe."

(d) "Indian reservation" means all lands, notwithstanding the issuance of any patent, within the exterior boundaries of areas set aside by the United States for the use and occupancy of Indian tribes by treaty, law, or executive order and that are areas currently recognized as "Indian reservations" by the United States Department of the Interior. The term includes lands within the exterior boundaries of the reservation owned by non-Indians as well as land owned by Indians and Indian tribes and it includes any land that has been designated "reservation" by federal act.

(e) "Nonmember" means a person not on the tribal rolls of the Indian tribe.

(f) "States sales and use tax" includes local sales and use tax.

3) Federally recognized Indian tribes. As of the effective date of this rule there are twenty-eight federally recognized Indian tribes in the state of Washington. You may contact the governor's office of Indian affairs for an up-to-date list of federally recognized Indian tribes in the state of Washington at its website, [www.goia.wa.gov](http://www.goia.wa.gov) or at:

Governor's Office of Indian Affairs

531 15th Ave. S.E.

P.O. Box 40909

Olympia, WA 98504-0909

360-753-2411

(4) Recordkeeping. Taxpayers are required to maintain appropriate records on the tax exempt status of transactions. For example, in the case of the refuse collection tax, the refuse collection company must substantiate the tax-exempt status of its customers. This could be done, for example, one of two ways. The tribe can provide the refuse collection company with a list of all of the tribal members living in Indian country or the individual members can provide exemption certificates to the company. A buyer's retail sales tax exemption certificate that can be used for this purpose is located on the department's website ([www.dor.wa.gov/forms/other.htm](http://www.dor.wa.gov/forms/other.htm)) or may be obtained by contacting the department. The company must then keep the list or the certificates in its files as proof of the tax exempt status of the tribe and its members. Individual businesses may contact the department to determine how best to keep records for specific situations.

(5) Enrolled Indians in Indian country. Generally. The state may not tax Indians or Indian tribes in Indian country. For the purposes of this rule, the term "Indian" includes only those

persons who are enrolled with the tribe upon whose territory the activity takes place and does not include Indians who are members of other tribes. An enrolled member's spouse is considered an "Indian" for purposes of this rule if this treatment does not conflict with tribal law. This exclusion from tax includes all taxes (e.g., B&O tax, public utility tax, retail sales tax, use tax, cigarette tax). If the incidence of the tax falls on an Indian or a tribe, the tax is not imposed if the activity takes place in Indian country or the activity is treaty fishing rights related activity (see subsection (6)(b) of this rule). "Incidence" means upon whom the tax falls. For example, the incidence of the retail sales tax is on the buyer.

(a)(i) Retail sales tax - tangible personal property - delivery threshold. Retail sales tax is not imposed on sales to Indians if the tangible personal property is delivered to the member or tribe in Indian country or if the sale takes place in Indian country. For example, if the sale to the member takes place at a store located on a reservation, the transaction is automatically exempt from sales tax and there is no reason to establish "delivery."

(ii) Retail sales tax - services. The retail sales tax is not imposed if the retail service (e.g., construction services) is performed for the member or tribe in Indian country. In the case of a retail service that is performed both on and off Indian country, only the portion of the contract that relates to work done in Indian country is excluded from tax. The work done for a tribe or Indian outside of Indian country, for example road work that extends outside of Indian country, is subject to retail sales tax.

(b) Use tax. Use tax is not imposed when tangible personal property is acquired in Indian country by an Indian or the tribe for at least partial use in Indian country. For purposes of this rule, acquisition in Indian country creates a presumption that the property is acquired for partial use in Indian country.

(c) Tax collection. Generally, sales to persons other than Indians are subject to the retail sales tax irrespective of where in this state delivery or rendition of services takes place. Sellers are required to collect and remit to the state the retail sales tax upon each taxable sale made by them to nonmembers in Indian country. A tribe and the department may enter into an agreement covering the collection of state tax by tribal members or the tribe. (See also the discussion regarding preemption of tax in subsection (7) of this rule.)

In order to substantiate the tax-exempt status of a retail sale to a person who is a tribal member, unless the purchaser is personally known to the seller as a member, the seller must require presentation of a tribal membership card or other suitable identification of the purchaser as an enrollee of the

Indian tribe. A tribe and the department may enter into an agreement covering identification of enrolled members, in which case the terms of the agreement govern.

A person's tax status under the Revenue Act does not change simply because he or she is making a tax-exempt sale to a tribe or tribal member. For example, a person building a home for a nonmember/consumer is entitled to purchase subcontractor services and materials to be incorporated into the home at wholesale. See RCW 82.04.050. A person building a home for a tribal member/consumer in Indian country is similarly entitled to purchase these services and materials at wholesale. The fact that the constructing of the home for the tribal member/consumer is exempt from retail sales tax has no impact on the taxability of the purchases of materials, and the materials continue to be purchased for resale.

(d) Corporations or other entities owned by Indians. A state chartered corporation comprised solely of Indians is not subject to tax on business conducted in Indian country if all of the owners of the corporation are enrolled members of the tribe except as otherwise provided in this section. The corporation is subject to tax on business conducted outside of Indian country, subject to the exception for treaty fishery activity as explained later in this rule. Similarly, partnerships or other entities comprised solely of enrolled members of a tribe are not subject to tax on business conducted in Indian country. In the event that the composition includes a family member who is not a member of the tribe, for instance a business comprised of a mother who is a member of the Chehalis Tribe and her son who is a member of the Squaxin Island Tribe, together doing business on the Chehalis reservation, the business will be considered as satisfying the "comprised solely" criteria if at least half of the owners are enrolled members of the tribe.

(6) Indians outside Indian country.

(a) Generally. Except for treaty fishery activity, Indians conducting business outside of Indian country are generally subject to tax (e.g., the B&O, the public utility tax, retail sales tax). Indians or Indian tribes who conduct business outside Indian country must register with the department as required by RCW 82.32.030. (See also WAC 458-20-101 for more registration information.)

(b) Treaty fishery - preemption. For the purpose of this rule, "treaty fishery" means the fishing and shellfish rights preserved in a tribe's treaty, a federal executive order, or an act of Congress. It includes activities such as harvesting, processing, transporting, or selling, as well as activities such as management and enforcement.

(i) Indians - B&O tax. The gross income directly derived from treaty fishing rights related activity is not subject to state tax. This exclusion from tax is limited to those businesses wholly owned and operated by Indians/tribe who have treaty fishing rights. If a business wholly owned and operated by Indians/tribe deals with both treaty and nontreaty fish, this exclusion from tax is limited to the business attributable to the treaty fish. "Wholly owned and operated" includes entities that meet the qualifications under 26 U.S.C. 7873, which requires that:

(A) Such entity is engaged in a fishing rights-related activity of such tribe; (B) All of the equity interests in the entity are owned by qualified Indian tribes, members of such tribes, or their spouses; (C) Except as provided in the code of federal regulations, in the case of an entity which engages to any extent in any substantial processing or transporting of fish, ninety percent or more of the annual gross receipts of the entity is derived from fishing rights-related activities of one or more qualified Indian tribes each of which owns at least ten percent of the equity interests in the entity; and (D) Substantially all of the management functions of the entity are performed by members of qualified Indian tribes.

(ii) Indians - sales and use tax. The retail sales tax and use tax do not apply to the services or tangible personal property for use in the treaty fishery, regardless of where delivery of the item or performance of the service occurs. Gear, such as boats, motors, nets, and clothing, purchased or used by Indians in the treaty fishery is not subject to sales or use tax. Likewise, retail services in respect to property used in the treaty fishery, such as boat or engine repair, are not subject to sales tax.

(iii) Sales to nonmembers. Treaty fish and shellfish sold by members of the tribe are not subject to sales tax or use tax, regardless of where the sale takes place due to the sales and use tax exemption for food products.

(iv) Government-to-government agreement. A tribe and the department may enter into an agreement covering the treaty fishery and taxable activities of enrolled members, in which case the terms of the agreement govern.

(7) Nonmembers in Indian country - preemption of state tax. Generally, a nonenrolled person doing business in Indian country is subject to tax. Unless specifically described as preempted by this rule, the department will review transactions on a case-by-case basis to determine whether tax applies. A nonmember who is not taxable on the basis of preemption should refer to WAC 458-20-101 (tax registration) to determine whether the person must register with the department.

(a) Preemption of tax on nonmembers - gaming. Gaming by Indian tribes is regulated by the federal Indian Gaming

Regulatory Act. Nonmembers who operate or manage gaming operations for Indian tribes are not subject to tax for business conducted in Indian country. This exclusion from tax applies to taxes imposed on income attributable to the business activity (e.g., the B&O tax), and to sales and use tax on the property used in Indian country to conduct the activity. Sales tax will apply if delivery of property is taken outside of Indian country.

Nonmembers who purchase tangible personal property at a gaming facility are subject to retail sales or use tax, unless:

(i) The item is preempted based on the outcome of the balancing test. For example, depending on the relative state, tribal, and federal interests, tax on food at restaurants or lounges owned and operated by the tribe or a tribal member or sales of member arts and crafts at gift shops might be preempted. See the balancing test discussion in subsection (c) below; or (ii) The item is purchased for use in the gaming activity at the facility, such as bingo cards or daubers.

(b) Preemption of B&O and public utility tax - sales of tangible personal property or provision of services by nonmembers in Indian country. As explained in this subsection, income from sales in Indian country of tangible personal property to, and from the performance of services in Indian country for, tribes and tribal members is not subject to B&O (chapter 82.04 RCW) or public utility tax (chapters 82.16 and 54.28 RCW). The taxpayer is responsible for maintaining suitable records so that the taxpayer and the department can distinguish between taxable and nontaxable activities.

(i) Sales of tangible personal property. Income from sales of tangible personal property to the tribe or to tribal members is not subject to B&O tax if the tangible personal property is delivered to the buyer in Indian country and if:

(A) The property is located in Indian country at the time of sale; or (B) The seller has a branch office, outlet, or place of business in Indian country that is used to receive the order or distribute the property; or (C) The sale of the property is solicited by the seller while the seller is in Indian country.

(ii) Provision of services. Income from the performance of services in Indian country for the tribe or for tribal members is not subject to the B&O or public utility tax. Services performed outside of Indian country are subject to tax. In those instances where services are performed both on and off of Indian country, the activity is subject to state tax to the extent that services are substantially performed outside of Indian country. (A) It will be presumed that a professional service (e.g., accounting, legal, or dental) is substantially performed outside of Indian country if twenty-five percent or more of the time

taken to perform the service occurs outside of Indian country. The portion of income subject to state tax is determined by multiplying the gross receipts from the activity by the quotient of time spent outside of Indian country performing the service divided by total time spent performing the service. For example, an accountant with an office outside of Indian country provides accounting services to a tribal member. The accountant performs some of the work at the office and some work at the business of the tribal member in Indian country. If at least twenty-five percent of the time performing the work is spent outside of Indian country, the services are substantially performed outside of Indian country and therefore a portion is subject to state tax. As explained above, the accountant must maintain suitable records to distinguish between taxable and nontaxable income in order to provide for a reasonable approximation of the amount of gross income subject to B&O tax. In this case, suitable records could be a log of the time and location of the services performed for the tribal matter by the accountant, his or her employees, and any contractors hired by the accountant.

(B) For services subject to the retailing and/or wholesaling B&O tax (e.g., building, installing, improving, or repairing structures or tangible personal property), the portion of income relative to services actually performed outside of Indian country is subject to state tax.

For example, a contractor enters into a contract with a tribe to install a sewer line that extends off reservation. Only the income attributable to the installation of the portion of the sewer line off reservation is subject to state tax.

(C) For public utility services under chapters 82.16 and 54.28 RCW it will be presumed that the service is provided where the customer receives the service. (c) Preemption of tax on nonmembers - balancing test - value generated on the reservation. In certain instances state sales and use tax may be preempted on nonmembers who purchase goods or services from a tribe or tribal members in Indian country. The U.S. supreme court has identified a number of factors to be considered when determining whether a state tax borne by non-Indians is preempted, including: The degree of federal regulation involved, the respective governmental interests of the tribes and states (both regulatory and revenue raising), and the provision of tribal or state services to the party the state seeks to tax. See *Salt River Pima-Maricopa Indian Community v. Waddell*, 50 F.3d 734, (1995). This analysis is known as the "balancing test." This preemption analysis does not extend to subsequent transactions, for example if the purchaser buys for resale the tax imposed on the consumer in the subsequent sale is not preempted. However, because these balancing test determinations are so fact-based, the department will rule on these issues on a case-by-case basis. For such a ruling please contact the department at:

Department of Revenue

Executive

P.O. Box 47454

Olympia, WA 98504-7454

(d) Federal contractors. The preemption analysis does not extend to persons who are doing work for the federal government in Indian country. For example, a nonmember doing road construction for the Bureau of Indian Affairs within an Indian reservation is subject to state tax jurisdiction.

(e) Indian housing authorities. RCW 35.82.210 provides that the property of housing authorities and the housing authorities themselves are exempt from taxes, such as state and local sales and use taxes, state and local excise taxes, state and local property taxes, and special assessments. This covers tribal housing authorities and intertribal housing authorities both on and off of Indian land. Please note that tribal housing authorities, like all other housing authorities, are exempt from tax anywhere in the state, and the delivery requirement and other geographic thresholds are not applicable. Not all assessments are exempted under RCW 35.82.210. See *Housing Authority of Sunnyside v. Sunnyside Valley Irrigation District*, 112 Wn2d 262 (1989).

For the purposes of the exemption: (i) "Intertribal housing authority" means a housing authority created by a consortium of tribal governments to operate and administer housing programs for persons of low income or senior citizens for and on behalf of such tribes. (ii) "Tribal government" means the governing body of a federally recognized Indian tribe. (iii) "Tribal housing authority" means the tribal government or an agency or branch of the tribal government that operates and administers housing programs for persons of low income or senior citizens.

(8) Motor vehicles, trailers, snowmobiles, etc., sold to Indians or Indian tribes. Sales tax is not imposed when a motor vehicle, trailer, snowmobile, off-road vehicle, or other such property is delivered to an Indian or the tribe in Indian country or if the sale is made in Indian country. Similarly, use tax is not imposed when such an item is acquired in Indian country by an Indian or the tribe for at least partial use in Indian country. For purposes of this rule, acquisition in Indian country creates a presumption that the property is acquired for partial use in Indian country.

(a) Registration of vehicle, trailer, etc. County auditors, subagencies appointed under RCW 46.01.140, and department of licensing vehicle licensing offices must collect use tax when Indians or Indian tribes apply for an original title transaction or transfer of title issued on a vehicle or vessel under chapters 46.09, 46.10, 46.12, or 88.02 RCW unless the tribe/Indian shows that they are not subject to tax. To

substantiate that they are not subject to tax the Indian/tribe must show that they previously paid retail sales or use tax on their acquisition or use of the property, or that the property was acquired on or delivered to Indian country. The person claiming the exclusion from tax must sign a declaration of delivery to or acquisition in Indian country. A statement in substantially the following form will be sufficient to establish eligibility for the exclusion from sales and use tax.

(b) Declaration.

#### DECLARATION OF DELIVERY OR ACQUISITION IN INDIAN COUNTRY

The undersigned is (circle one) an enrolled member of the tribe/authorized representative of the tribe or tribal enterprise, and the property was delivered/acquired within Indian country, for at least partial use in Indian country. name of buyer date of delivery/acquisition address of delivery/acquisition (9) Miscellaneous taxes. The state imposes a number of excise taxes in addition to the most common excise taxes administered by the department (e.g., B&O, public utility, retail sales, and use taxes). The following is a brief discussion of some of these taxes.

(a) Cigarette tax. The statutory duties applicable to administration and enforcement of the cigarette tax are divided between the department and the liquor control board. Enforcement of nonvoluntary compliance is the responsibility of the liquor control board. Voluntary compliance is the responsibility of the department of revenue. See chapter 82.24 RCW for specific statutory requirements regarding purchase of cigarettes by Indians and Indian tribes. For a specific ruling regarding the taxability of and stamping requirements for cigarettes manufactured by Indians or Indian tribes in Indian country, please contact the department at:

Department of Revenue Executive

P.O.Box 47454

Olympia, WA 98504-7454

Where sales of cigarettes are the subject of a government-to-government cooperative agreement, the provisions of that agreement supersede conflicting provisions of this subsection.

(i) Sales of cigarettes to nonmembers by Indians or Indian tribes are subject to the cigarette tax. The wholesaler is obligated to make precollection of the tax. Therefore, Indian or tribal sellers making sales to non-Indian customers must (A) purchase a stock of cigarettes with Washington state cigarette tax stamps affixed for the purpose of making such sales or (B) they may make purchases of cigarettes from licensed cigarette distributors for resale to qualified purchasers or (C) may purchase a stock of untaxed unstamped cigarettes for resale to qualified purchasers if the tribal seller gives advance notice under RCW 82.24.250

and Rule 186.

For purposes of this rule, "qualified purchaser" means an Indian purchasing for resale within Indian country to other Indians or an Indian purchasing solely for his or her use other than for resale. (ii) Delivery or sale and delivery by any person of stamped exempt cigarettes to Indians or tribal sellers for sale to qualified purchasers may be made only in such quantity as is approved in advance by the department. Approval for delivery will be based upon evidence of a valid purchase order of a quantity reasonably related to the probable demand of qualified purchasers in the trade territory of the seller. Evidence submitted may also consist of verified record of previous sales to qualified purchasers, the probable demand as indicated by average cigarette consumption for the number of qualified purchasers within a reasonable distance of the seller's place of business, records indicating the percentage of such trade that has historically been realized by the seller, or such other statistical evidence submitted in support of the proposed transaction. In the absence of such evidence the department may restrict total deliveries of stamped exempt cigarettes to Indian country or to any Indian or tribal seller thereon to a quantity reasonably equal to the national average cigarette consumption per capita, as compiled for the most recently completed calendar or fiscal year, multiplied by the resident enrolled membership of the affected tribe. (iii) Any delivery, or attempted delivery, of unstamped cigarettes to an Indian or tribal seller without advance notice to the department will result in the treatment of those cigarettes as contraband and subject to seizure. In addition, the person making or attempting such delivery will be held liable for payment of the cigarette tax and penalties. See chapter 82.24 RCW.

Approval for sale or delivery to Indian or tribal sellers of stamped exempt cigarettes will be denied where the department finds that such Indian or tribal sellers are or have been making sales in violation of this rule.

(iv) Delivery of stamped exempt cigarettes by a licensed distributor to Indians or Indian tribes must be by bonded carrier or the distributor's own vehicle to Indian country. Delivery of stamped exempt cigarettes outside of Indian country at the distributor's dock or place of business or any other location outside of Indian country is prohibited unless the cigarettes are accompanied by an invoice.

(b) Refuse collection tax. Indians and Indian tribes are not subject to the refuse collection tax for service provided in Indian country, regardless of whether the refuse collection company hauls the refuse off of Indian country.

(c) Leasehold excise tax. Indians and Indian tribes in Indian

country are not subject to the leasehold excise tax. Leasehold interests held by nonenrolled persons are subject to tax.

(d) Fish tax. Chapter 82.27 RCW imposes a tax on the commercial possession of enhanced food fish, which includes shellfish. The tax is imposed on the fish buyer. The measure of the tax is the value of the enhanced food fish at the point of landing. A credit is allowed against the amount of tax owed for any tax previously paid on the same food fish to any legally established taxing authority, which includes Indian tribes. Transactions involving treaty fish are not subject to the fish tax, regardless of where the transaction takes place.

(e) Tobacco tax. The tobacco tax is imposed on “distributors” as that term is defined in RCW 82.26.010. Tobacco tax is not imposed on Indian persons or tribes who take delivery of the tobacco in Indian country. Effective July 1, 2002, persons who handle for sale any tobacco products that are within this state but upon which tax has not been imposed are subject to the tobacco tax. Chapter 325, Laws of 2002. Thus, persons purchasing tobacco products for resale from Indians who are exempt from the tobacco tax are subject to tobacco tax on the product. See WAC 458-20-185, Tax on tobacco products.

(f) Real estate excise tax. The real estate excise tax is imposed on the seller. A sale of land located in Indian country by a tribe or a tribal member is not subject to real estate excise tax. A sale of land located within Indian country by a nonmember to the tribe or to a tribal member is subject to real estate excise tax.

(g) Timber excise tax. Payment of the timber excise tax is the obligation of the harvester. The tribe or tribal members are not subject to the timber excise tax in Indian country. Generally, timber excise tax is due from a nonmember who harvests timber on fee land within Indian country. Timber excise tax is not due if the timber being harvested is on trust land or is owned by the tribe and located in Indian country, regardless of the identity of the harvester. There are some instances in which the timber excise tax might be preempted on non-Indians harvesting timber on fee land in Indian country due to tribal regulatory authority. For such a ruling please contact the department at:

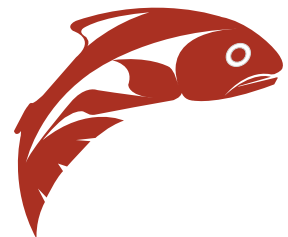
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[Statutory Authority: RCW 82.32.300. 02-14-133, § 458-20-192, filed 7/2/02, effective 8/2/02; 00-24-050A, § 458-20-192, filed 11/30/00, effective 1/1/01; 80-17-026 (Order ET 80-3), § 458-20-192, filed 11/14/80; Order ET 76-4, § 458-20-192, filed 11/12/76; Order ET 74-5, § 458-20-192, filed 12/16/74; Order ET 70-3, § 458-20-192 (Rule 192), filed 5/29/70, effective 7/1/70.]





# BUYERS' RETAIL SALES TAX EXEMPTION CERTIFICATE

*Not to be used as a resale certificate*

Vendor/Seller		Date	
Street Address	City	State	Zip Code

I, the undersigned buyer, certify I am making an exempt purchase for the following reason: *(check applicable box(es))*

### 1. Manufacturing Machinery and Equipment:

- Check here if using as a blanket certificate for these purchases.
  - a.  Used directly in a manufacturing operation.
  - b.  Used directly in a research and development operation.

### 2. Nonresident:

Place of residence: \_\_\_\_\_

Type of proof of residence accepted (drivers license, fishing license, etc) \_\_\_\_\_, including any identification numbers \_\_\_\_\_ and expiration date \_\_\_\_\_.

- a.  Equipment for use in a farming activity *(Include brand, model and address of use):*

\_\_\_\_\_

- b.  Watercraft *(Include make, model and serial number of vessel):*

\_\_\_\_\_

- Registered or documented with the US Coast Guard or state of principal use and will leave Washington waters within 45 days; or
- Buyer is a resident of a foreign country. Purchase is for use outside Washington and will leave Washington waters within 45 days.

Seller's Signature: \_\_\_\_\_

- c.  Tangible personal property other than motor vehicles and those mentioned above for use outside Washington by a resident of a state, possession, or province of Canada, with a sales tax rate of less than three percent.

### 3. Interstate or Foreign Commerce or Commercial Deep Sea Fishing Business:

- a.  Motor vehicles, trailers and component parts thereof used to transport persons or property *for hire* in interstate or foreign commerce.
- b.  Airplanes, locomotives, railroad cars or watercraft and component parts thereof used in transporting persons or property *for hire*.
- c.  Labor and services rendered to construct, repair, clean, alter or improve *for hire* carrier property.
- d.  Items for use connected with private or common carriers engaged in air, rail or water in interstate or foreign commerce. *(Note: Items consumed in the state are subject to use tax.)*
- e.  Fuel to be consumed outside of Washington by a vessel primarily engaged in foreign commerce.

Vessel Name: \_\_\_\_\_

Type of Fuel: \_\_\_\_\_ Quantity: \_\_\_\_\_

- f.  Watercraft, component parts, labor and services, and/or diesel fuel used in a qualifying commercial deep sea fishing operation.

Registered Vessel Name: \_\_\_\_\_ Vessel Number: \_\_\_\_\_

**4. Sales to Indians:**

- a.  Tangible personal property or services purchased by Indians or Indian tribes when the goods are delivered to or services provided within Indian country.
- b.  Tangible personal property or services purchased by an Indian/tribe for use in **treaty fishery**.
- c.  Supplies or services purchased by prime contractors hired by Indian tribes to perform construction in Indian Country when the goods are delivered to or services provided in Indian country.

**5. Other:**

- a.  Prescription items (*describe*): \_\_\_\_\_
- b.  Machinery and equipment (*including labor and services to install*) used in generating electricity using fuel cells, wind, solar energy or landfill gas.
- c.  Biofuel blend machinery and equipment and the construction of retail biofuel blend facilities.
- d.  Biofuel blend delivery vehicles and labor and service charges related to such vehicles.
- e.  Equipment rental and purchase of services for use in motion picture and video production.
- f.  Objects of art or cultural value purchased by an artistic or cultural organization.
- g.  Livestock for breeding purposes.

Animal Type: \_\_\_\_\_ Registered Breed Association: \_\_\_\_\_

Animal Name: \_\_\_\_\_

- h.  Animal pharmaceuticals purchased by veterinarians (*describe*): \_\_\_\_\_
- i.  Computer hardware, peripherals, software and related installation, used by aerospace manufacturers.
- j.  Computer hardware, peripherals, software and related installation, purchased by publishers and printers.
- k.  City, County, Tribal, or Inter-Tribal Housing Authorities.
- l.  Tangible personal property for use in a noncontiguous state delivered to the usual receiving terminal of the shipper.

Type of Goods Purchased: \_\_\_\_\_

Point of Delivery: \_\_\_\_\_ Carrier/Agent: \_\_\_\_\_

- m.  Gases and chemicals used by a manufacturer or processor for hire in the production of semiconductor materials.

I, the undersigned buyer, understand that by completing and signing this certificate I am certifying that I qualify for the tax-exempt purchase(s) indicated above. I understand that I will be required to pay sales or use tax on purchases that do not qualify for an exemption. In addition, I understand that false or erroneous use of this certificate will result in liability for unpaid tax with interest and may result in additional penalties.

Type of entity:  Individual  Corporation  Sole Proprietor  Partnership  Other (Explain)

Type of Business: \_\_\_\_\_ Tax Registration No.: \_\_\_\_\_

Name of Buyer: \_\_\_\_\_ Title: \_\_\_\_\_

Signature of Buyer: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**Seller must maintain a copy. Do not send to Department of Revenue.**

*Each exemption on this form has specific rules (see instructions)*

## INSTRUCTIONS

**Buyers must ensure entitlement to the exemption before using this Certificate.** For information regarding exemptions, contact Washington State Department of Revenue Taxpayer Information Center at (360) 705-6705 or 1-800-647-7706 or visit the Department's web site at: <http://dor.wa.gov>.

**Lines 1a and 1b** apply to machinery and equipment for use directly in a manufacturing, processing for hire or research and development activity as outlined in RCW 82.08.02565. This exemption **does not** apply to: consumable items, nonpowered hand tools, property with a useful life of less than one year, or building fixtures that are not integral to the manufacturing operation. Certain repair or replacement parts are also exempt. Reference: RCW 82.08.02565 and WAC 458-20-13601.

**Line 2a** applies to machinery, implements, repair parts and labor purchased in this state by a nonresident for use in conducting a farming activity outside the state. The equipment must be transported outside the state immediately upon purchase. **Seller must examine and record buyer's proof of residency.** See WAC 458-20-239 for acceptable proof of residency. Reference: RCW 82.08.0268 and WAC 458-20-239.

**Line 2b** applies to watercraft purchased by a nonresident for use outside Washington when delivery takes place in Washington. The buyer must provide proof of residency (picture ID) and check the applicable box. By checking the box, the buyer certifies that the vessel will leave Washington State waters within forty-five days. Sellers must examine and document the proof of residency provided by the buyer. **Seller must sign the form.** By signing the form, the seller certifies that the seller has examined and listed the buyer's proof of residency. See WAC 458-20-238 for acceptable proof of residency for corporations, partnerships and limited liability companies. Reference: RCW 82.08.0266, RCW 82.08.02665, and WAC 458-20-238.

**Line 2c** applies to purchases of tangible personal property other than motor vehicles and that mentioned on lines 2a, b, and c for use outside Washington by a resident of a state, possession, or province of Canada with a sales tax rate of less than three percent (e.g. Oregon, Alaska). Reference: RCW 82.08.0273, WAC 458-20-193 (6)(b) and ETA 2014.08.193.

***NOTE:** Sales of motor vehicles are not covered by this certificate, please refer to RCW 82.08.0264 and WAC 458-20-177 for certificate and exemption information.*

**Line 3a** applies to the purchase of motor vehicles, or trailers by a business operating or contracting to operate for the holder of a carrier permit issued by the Interstate Commerce Commission. The exemption also applies to component parts and repairs of such carrier property including labor and services rendered in the course of constructing, repairing, cleaning, altering or improving the same. The buyer must attach a list stating make, model,

year, serial number, motor number and ICC permit number. Reference: RCW 82.08.0263 and WAC 458-20-174.

**Line 3b** applies to the purchase of airplanes, locomotives, railroad cars, or watercraft for use in conducting interstate or foreign commerce by transporting therein or therewith persons or property **for hire**. The exemption also applies to component parts of such carrier property. Reference: RCW 82.08.0262 and WAC 458-20-175.

**Line 3c** applies to charges for labor and services rendered in the course of constructing, repairing, cleaning, altering or improving carrier property when carrier property is used **for hire**. Reference: RCW 82.08.0262 and WAC 458-20-175.

**Line 3d** applies to purchases of durable goods or consumables, other than those mentioned in line 3b, for use in connection with interstate or foreign commerce by such businesses. The goods must be for exclusive use while engaged in transporting persons or property in interstate or foreign commerce. The exemption **does not** apply to charges for labor or services in regard to the installing, repairing, cleaning or altering of such property. Although exempt from retail sales tax, materials are subject to use tax if consumed in Washington. Unregistered businesses must attach a list stating the description and quantity of items that will be consumed in Washington and pay use tax to the seller. Reference: RCW 82.08.0261 and WAC 458-20-175.

**Line 3e** applies to fuel consumed outside the territorial waters of the United States by vessels used primarily in foreign commerce. Buyers must list the vessel name, type of fuel and quantity. Reference: RCW 82.08.0261 and WAC 458-20-175.

**Line 3f** applies to the purchase of vessels, component parts, or repairs by persons engaged in commercial deep sea fishing operations outside the territorial waters of the state of Washington. The exemption also applies to the purchase of diesel fuel used in commercial deep or commercial passenger fishing operations when annual gross receipts therefrom are at least five thousand dollars. Reference: RCW 82.08.0262, RCW 82.08.0298, and WAC 458-20-176.

**Line 4a** applies to the purchase of tangible personal property or services by an Indian or Indian tribe. The goods or services must be delivered to, or performed on the reservation. The purchaser must present a tribal membership card, a treaty fishing card, a certificate of enrollment, or a letter from a tribal official. Sellers must document the buyer's name, dollar amount of purchase, tribal affiliation and reservation where delivery is made. Reference: RCW 82.08.0254 and WAC 458-20-192.

**Line 4b** applies to the purchase of tangible personal property or services by an Indian or Indian tribe for use in the treaty fishery, regardless of where delivery of the item or performance of the service occurs. Unless the buyer is personally known to the seller, the purchaser must present a tribal membership card, a treaty fishing card, a certificate of enrollment, or a letter from a tribal official. Sellers must document the buyer's name, dollar amount of purchase, and tribal affiliation. Reference: 458-20-192 (6)(b)(ii).

**Line 4c** applies to the purchase of consumable supplies, equipment rentals or services by a prime contractor hired by an Indian tribe to perform construction in Indian Country where the goods or services are delivered to, or performed on the reservation. The purchaser must present a construction contract with the tribe or a letter from a tribal official evidencing that they are working directly with the Tribe. Sellers must document the buyer's name, dollar amount of purchase, and reservation where delivery is made. Reference: RCW 82.08.0254 and WAC 458-20-192.

**Line 5a** applies to the purchase by a medical practitioner, chiropractor, nursing home, or hospital of items to be prescribed and used for the treatment of illness or ailments of human beings. To qualify, certain of these items must be prescribed. Reference: WAC 458-20-18801.

**Line 5b** applies to the purchases of qualifying machinery and equipment (and charges for labor and services to install) used directly in generating electricity using wind, solar energy, or landfill gas as the principal source of power at a facility capable of generating not less than two hundred watts of electricity. Effective July 1, 2001, the exemption includes purchases of fuel cells used in generating electricity. Reference: RCW 82.08.02567 and WAC 458-20-263.

**Line 5c** applies to the purchase of machinery and equipment and the construction of facilities used directly for the retail sale of biodiesel fuel blend, alcohol fuel blend, and wood biomass fuel blend. Reference: RCW 82.08.955 and RCW 92.08.960.

**Line 5d** applies to the purchase of fuel delivery vehicles and labor and service charges related to such vehicles provided 75% of the fuel distributed by them is biodiesel fuel blend, alcohol fuel blend, and wood biomass fuel blend. Reference: RCW 82.08.955 and RCW 82.08.960

**Line 5e** applies to the rental of production equipment and the purchase of production services by motion picture and video production companies. Reference: RCW 82.08.0315 and Motion Picture-Video Production Special Notice, available from the Department.

**Line 5f** applies to the purchase of objects of art or cultural value and items used in the creation of such objects, or in displaying art objects or presenting artistic or cultural

exhibitions or performances by artistic or cultural organizations. Reference: RCW 82.08.031 and WAC 458-20-249.

**Line 5g** applies to the purchase of livestock for breeding purposes. "Livestock" is defined in RCW 16.36.005. The animal must be registered in a nationally recognized breed association. Reference: RCW 82.08.0259 and WAC 458-20-122.

**Line 5h** applies to the purchase of animal pharmaceuticals by veterinarians or farmers for the purposes of administering to an animal raised for sale by a farmer. Animal pharmaceuticals must be approved by the United States Food and Drug Administration or the United States Department of Agriculture. Reference: RCW 82.08.880

**Line 5i** applies to the purchase of computer hardware, peripherals, and software, and related installation, not otherwise eligible for the M&E exemption, to a manufacturer or processor for hire of commercial airplanes or components thereof, used primarily in development, design, and engineering of such products. Reference: RCW 82.08.975.

**Line 5j** applies to the purchase of computer hardware, peripherals, digital cameras, software, and related installation not otherwise eligible for the M&E exemption that is used primarily in the printing or publishing of printed materials. The exemption includes repairs and replacement parts. Reference: RCW 82.08.806.

**Line 5k** applies to all retail purchases of goods and services by City, County, Tribal, or Inter-Tribal Housing Authorities. Reference: RCW 32.82.210

**Line 5l** applies to the purchase of goods for use in a state, territory or possession of the United States which is not contiguous to any other state such as Alaska, Hawaii, Guam, and American Samoa. For the exemption to apply, the seller must deliver the goods to the usual receiving terminal of the for-hire carrier selected to transport the goods. Reference: RCW 82.08.0269 and WAC 458-20-193 (6)(c).

**Line 5m** applies to the sales of gases and chemicals used by a manufacturer or processor for hire in the production of semiconductor materials. Limited to gases and chemicals used to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other uses where the gases and chemicals come into direct contact with the product during the production process, or gases and chemicals used to clean the chambers and other like equipment in which processing takes place. Reference: RCW 82.08.9651.



## Public Utility Tax Exemption For Services Provided to Indian Tribes and Indian Persons

This form may be used to document the status of Indian persons with whom a utility company does business. It may be completed by the Indian person who is receiving utility service on the reservation or trust land and presented to the utility company, or it may be completed by the utility company. The utility company will keep the completed form with its records.

Per Washington Administrative Code (WAC) 458-20-192 (Rule 192), income from the performance of services in Indian country for tribes and tribal members is **not** subject to public utility tax (chapters 82.16 and 54.28 Revised Code of Washington (RCW)). The utility company is responsible for maintaining suitable records so that the utility company and the Department of Revenue can distinguish between taxable and nontaxable activities.

For public utility services under chapters 82.16 and 54.28 RCW, it is presumed that the service is provided where the customer receives the service.

1. Name of customer receiving the utility service (name on the billing statement):

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2. Address where utility service is received:

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3. Name of the federally recognized Indian Tribe to which the customer belongs:

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4. The utility service is received on (check appropriate box):

- Reservation lands of the Indian Tribe noted above.
- Trust land of the Indian Tribe or person noted above but outside of the reservation.

***PRESENT COMPLETED FORM TO UTILITY COMPANY***

For tax assistance, visit <http://dor.wa.gov> or call (800) 647-7706. To inquire about the availability of this document in an alternate format for the visually impaired, please call (360) 486-2342. Teletype (TTY) users please call (800) 451-7985.

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## Retail Sales/Use Tax Exemption Certificate For Vehicles Sold To Enrolled Tribal Member

***Do Not Return this to the Department Of Revenue***

When a motor vehicle, trailer, snowmobile, off-road vehicle, or other such property is sold to an enrolled tribal member and delivery is made on the enrolled tribal member's reservation/trust land in the state of Washington, the sale is exempt from state retail sales and use tax. To receive this exemption, this form must be completed. An original signed copy must be submitted to the Department of Licensing with title application. Copies of this form should be maintained by the seller and buyer. Certification of delivery is not necessary if the dealership making the sale is located on the reservation/trust land. The seller must still provide verification of the enrolled tribal status however.

### Declaration of Buyer

#### Declaration of delivery or acquisition in Indian Country

The undersigned is:

- An enrolled member of the \_\_\_\_\_ Tribe
- An authorized representative of the tribe or tribal enterprise, and the vehicle described below was delivered/acquired within Indian country, for at least partial use in Indian country

Buyer's Name: \_\_\_\_\_

Buyer's Signature: \_\_\_\_\_

Buyer's Address: \_\_\_\_\_

Address of Delivery: \_\_\_\_\_

Check documentation presented:

- Certificate of enrollment
- Tribal membership card
- Treaty Indian Fishing Identification Card
- Official letter signed by tribal official

### Certification of Seller

Seller's Name: \_\_\_\_\_

Address of Seller: \_\_\_\_\_

I certify that the \_\_\_\_\_, \_\_\_\_\_  
(Year, Make, and Model of Vehicle) (Vehicle Identification No.)

was delivered to the buyer on the Washington reservation/trust land of the \_\_\_\_\_ Tribe, of which the buyer documented tribal membership. This certificate is given with full knowledge of, and subject to, the legally prescribed penalties for fraud and tax evasion.

Signature of Seller  
 or Agent of Seller: \_\_\_\_\_ Date: \_\_\_\_\_





## For More Information

If you have general questions you can call our Telephone Information Center at 1-800-647-7706 or our visit web site at <http://dor.wa.gov>.

## Local Office Locations

1904 Humboldt St  
Suite A  
PO Box 1176  
BELLINGHAM 98227-1176  
(360) 676-2114

734 E First St  
Suite B  
PO Box 400  
PORT ANGELES 98362-0064  
(360) 417-9900

2101 4th Ave  
Suite 1400  
SEATTLE 98121-2300  
(206) 956-3000

20819 72nd Ave South  
Suite 680  
KENT 98032  
(253) 437-3440

6500 Linderson Way SW  
Suite 102  
TUMWATER 98501  
(360) 705-6676

8008 NE 4th Plain Blvd  
Suite 320  
PO Box 1648  
VANCOUVER 98668-1648  
(360) 256-2060

9930 Evergreen Way  
Suite Y-150  
EVERETT 98204-3893  
(425) 356-4800

1330 N. Washington  
Suite 5600  
SPOKANE 99201-2456  
(509) 327-0200

630 N Chelan Ave  
Suite B-3  
PO Box 220  
WENATCHEE 98807-0220  
(509) 663-9714

3315 South 23rd St  
Suite 300  
PO Box 111180  
TACOMA 98411-1180  
(253) 382-2000

3703 River Rd  
Suite 3  
YAKIMA 98902-7325  
(509) 454-5160

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