

Every person, firm, or corporation furnishing materials, supplies, or equipment to be used in the construction, performance, carrying on, prosecution, or doing of any work for the state, or any county, city, town, district, municipality, or other public body, shall give to the contractor of the work a notice in writing, which notice shall cover the material, supplies, or equipment furnished or leased during the sixty days preceding the giving of such notice as well as all subsequent materials, supplies, or equipment furnished or leased, stating in substance and effect that such person, firm, or corporation is and/or has furnished materials and supplies, or equipment for use thereon, with the name of the subcontractor ordering the same, and that a lien against the retained percentage may be claimed for all materials and supplies, or equipment furnished by such person, firm, or corporation for use thereon, which notice shall be given by (1) mailing the same by registered or certified mail in an envelope addressed to the contractor, or (2) by serving the same personally upon the contractor or the contractor's representative and obtaining evidence of such service in the form of a receipt or other acknowledgement signed by the contractor or the contractor's representative, and no suit or action shall be maintained in any court against the retained percentage to recover for such material, supplies, or equipment or any part thereof unless the provisions of this section have been complied with.

Passed the House March 9, 1986.

Passed the Senate March 5, 1986.

Approved by the Governor April 4, 1986, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State April 4, 1986.

Note: Governors explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 1, 2 and 3, Substitute House Bill No. 573, entitled:

"AN ACT Relating to claims arising from improvements upon real property."

Sections 1, 2 and 3 are identical to sections 701, 702 and 703 of Substitute Senate Bill No. 4630. Since I am signing Substitute Senate Bill No. 4630, sections 1, 2 and 3 of this bill are duplicative.

With the exception of sections 1, 2 and 3, Substitute House Bill No. 573 is approved."

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## CHAPTER 315

[House Bill No. 1633]

### TIMBER EXCISE TAX—PUBLIC TIMBER—PRIVATE PURCHASERS— HARVESTER

AN ACT Relating to taxation of timber harvested by public entities; amending RCW 84.33.035, 84.33.073, 82.04.050, and 82.04.100; reenacting and amending RCW 82.04.330; adding a new section to chapter 82.04 RCW; adding new sections to chapter 84.33 RCW; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 1, chapter 204, Laws of 1984 and RCW 84.33.035 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Composite property tax rate" for a county means the total amount of property taxes levied upon forest lands by all taxing districts in the county other than the state, divided by the total assessed value of all forest land in the county.

(2) "Forest land" means forest land which is classified or designated forest land under this chapter.

(3) "Harvested" means the time when in the ordinary course of business the quantity of timber by species is first definitely determined. The amount harvested shall be determined by the Scribner Decimal C Scale or other prevalent measuring practice adjusted to arrive at substantially equivalent measurements, as approved by the department of revenue.

(4) "Harvester" means every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use; PROVIDED, That whenever the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein so fells, cuts, or takes timber for sale or for commercial or industrial use, the harvester is the first person other than the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein, who acquires title to or a possessory interest in such timber. The term "harvester" does not include persons performing under contract the necessary labor or mechanical services for a harvester.

(5) "Stumpage value of timber" means the appropriate stumpage value shown on tables prepared by the department of revenue under RCW 84.33-.091, provided that for timber harvested from public land and sold under a competitive bidding process, stumpage value shall mean that actual amount paid to the seller in cash or other consideration. Whenever payment for the stumpage includes considerations other than cash, the value shall be the fair market value of the other consideration, provided that if the other consideration is permanent roads, the value of the roads shall be the appraised value as appraised by the seller.

(6) "Timber" means forest trees, standing or down, on privately or publicly owned land, and except as provided in RCW 84.33.170 includes Christmas trees.

(7) "Timber assessed value" for a county means a value, calculated by the department of revenue before October 1 of each year, equal to the total

stumpage value of timber harvested from privately owned land in the county during the most recent four calendar quarters for which the information is available multiplied by a ratio. The numerator of the ratio is the rate of tax imposed by the county under RCW 84.33.051 for the year of the calculation. The denominator of the ratio is the composite property tax rate for the county for taxes due in the year of the calculation, expressed as a percentage of assessed value.

(8) "Timber assessed value" for a taxing district means the timber assessed value for the county multiplied by a ratio. The numerator of the ratio is the total assessed value of forest land in the taxing district. The denominator is the total assessed value of forest land in the county. As used in this section, "assessed value of forest land" means the assessed value of forest land for taxes due in the year the timber assessed value for the county is calculated.

Sec. 2. Section 1, chapter 146, Laws of 1981 as amended by section 3, chapter 4, Laws of 1982 2nd ex. sess. and RCW 84.33.073 are each amended to read as follows:

As used in RCW 84.33.073 and 84.33.074, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Small harvester" means every person who from his own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use in an amount not exceeding five hundred thousand board feet in a calendar quarter and not exceeding one million board feet in a calendar year: PROVIDED, That whenever the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein so fells, cuts, or takes timber for sale or for commercial or industrial use, not exceeding these amounts, the small harvester is the first person other than the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein, who acquires title to or a possessory interest in such timber. ((H)) "Small harvester" does not include persons performing under contract the necessary labor or mechanical services for a harvester, and it does not include harvesters of forest products classified by the department of revenue as special forest products including Christmas trees, posts, shake boards and bolts, and shingle blocks.

(2) "Timber" means forest trees, standing or down, on privately or publicly owned land.

(3) "Harvesting and marketing costs" means only those costs directly associated with harvesting the timber from the land and delivering it to the buyer and may include the costs of disposing of logging residues but it does not include any other costs which are not directly and exclusively related to

harvesting and marketing of the timber such as costs of permanent roads or costs of reforesting the land following harvest.

**NEW SECTION.** Sec. 3. A new section is added to chapter 84.33 RCW to read as follows:

(1) If no later than thirty days after removal of classification or designation the owner applies for classification under RCW 84.34.020 (2) or (3), then the classified or designated forest land shall not be considered removed from classification or designation for purposes of the compensating tax under RCW 84.33.120 or 84.33.140 until the application for current use classification under RCW 84.34.030 is denied or the property is removed from designation under RCW 84.34.108. Upon removal from designation under RCW 84.34.108, the amount of compensating tax due under this chapter shall be equal to:

(a) The difference, if any, between the amount of tax last levied on such land as forest land and an amount equal to the new assessed valuation of such land when removed from designation under RCW 84.34.108 multiplied by the dollar rate of the last levy extended against such land, multiplied by

(b) A number equal to:

(i) The number of years the land was classified or designated under this chapter, if the total number of years the land was classified or designated under this chapter and classified under chapter 84.34 RCW is less than ten; or

(ii) Ten minus the number of years the land was classified under chapter 84.34 RCW, if the total number of years the land was classified or designated under this chapter and classified under chapter 84.34 RCW is at least ten.

(2) Nothing in this section authorizes the continued classification or designation under this chapter or defers or reduces the compensating tax imposed upon forest land not transferred to classification under subsection (1) of this section which does not meet the necessary definitions of forest land under RCW 84.33.100. Nothing in this section affects the additional tax imposed under RCW 84.34.108.

**\*NEW SECTION.** Sec. 4. A new section is added to chapter 82.04 RCW, to be codified within RCW 82.04.020 through 82.04.212, to read as follows:

**"Plantation Christmas trees" means Christmas trees which are exempt from the timber excise tax under RCW 84.33.170.**

\*Sec. 4 was vetoed, see message at end of chapter.

**\*Sec. 5. Section 1, chapter 8, Laws of 1970 ex. sess. as last amended by section 25, chapter 3, Laws of 1983 2nd ex. sess. and RCW 82.04.050 are each amended to read as follows:**

**(1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who (a) purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, or (b) installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person, or (c) purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale, or (d) purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), or (d) above following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280, subsections (2) and (7) and RCW 82.04.290.**

**(2) The term "sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following: (a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of coin operated laundry facilities when such facilities are situated in an apartment house, hotel, motel, rooming house, trailer camp or tourist camp for the exclusive use of the tenants thereof, and also excluding sales of laundry service to members by nonprofit associations composed exclusively of nonprofit hospitals, and excluding services rendered in respect to live animals, birds and insects; (b) the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture; (c) the sale of or charge made for labor and services rendered in**

*respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting; (d) the sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW; (e) the sale of and charge made for the furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same; (f) the sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), and (e) above when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this paragraph shall be construed to modify the first paragraph of this section and nothing contained in the first paragraph of this section shall be construed to modify this paragraph.*

*(3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal business or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities: (a) Amusement and recreation businesses including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows and others; (b) abstract, title insurance and escrow businesses; (c) credit bureau businesses; (d) automobile parking and storage garage businesses.*

*(4) The term shall also include the renting or leasing of tangible personal property to consumers.*

*(5) The term shall also include the providing of telephone service, as defined in RCW 82.04.065, to consumers.*

*(6) The term shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic*

*including mass transportation vehicles of any kind, nor shall it include sales of feed, seed, seedlings, fertilizer, and spray materials to persons for the purpose of producing for sale any agricultural product whatsoever, including plantation Christmas trees and milk, eggs, wool, fur, meat, honey, or other substances obtained from animals, birds, or insects, but only when such production and subsequent sale are exempt from tax under RCW 82.04.330, nor shall it include sales of chemical sprays or washes to persons for the purpose of post-harvest treatment of fruit for the prevention of scald, fungus, mold, or decay.*

*(7) The term shall not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor shall the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority.*

\*Sec. 5 was vetoed, see message at end of chapter.

\*Sec. 6. Section 82.04.100, chapter 15, Laws of 1961 as last amended by section 2, chapter 148, Laws of 1985 and RCW 82.04.100 are each amended to read as follows:

*"Extractor" means every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or for commercial or industrial use mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral or other natural resource product, or fells, cuts or takes timber, Christmas trees other than plantation Christmas trees, or other natural products, or takes fish, or takes, cultivates, or raises shellfish, or other sea or inland water foods or products. "Extractor" does not include persons performing under contract the necessary labor or mechanical services for others ((or) persons cultivating or raising fish entirely within confined rearing areas on the person's own land or on land in which the person has a present right of possession, or persons who fell, cut, or take plantation Christmas trees from the person's own land or from land in which the person has a present right of possession.*

\*Sec. 6 was vetoed, see message at end of chapter.

\*Sec. 7. Section 82.04.330, chapter 15, Laws of 1961 as last amended by section 1, chapter 148, Laws of 1985 and by section 10, chapter 414, Laws of 1985 and RCW 82.04.330 are each reenacted and amended to read as follows:

*This chapter shall not apply to any person in respect to the business of growing or producing for sale upon the person's own lands or upon land in which the person has a present right of possession, any agricultural or horticultural produce or crop, or of raising upon the person's own lands or upon land in which the person has a present right of possession, any plantation Christmas tree or any animal, bird, fish, or insect, or the milk, eggs, wool, fur, meat, honey, or other substance obtained therefrom, or in respect to the sale of such products at wholesale by such grower, producer, or raiser thereof. This exemption shall not apply to any person selling such products at retail or using such products as ingredients in a manufacturing process, nor to the sale of any animal or substance obtained therefrom by a person in connection with the person's business of operating a stockyard or a slaughter or packing house, nor to any person in respect to the business of taking, cultivating, or raising ((Christmas trees or)) timber, nor to any association of persons whatever, whether mutual, cooperative or otherwise, engaging in any business activity with respect to which tax liability is imposed under the provisions of this chapter. As used in this section, "fish" means fish which are cultivated or raised entirely within confined rearing areas on the person's own land or on land in which the person has a present right of possession.*

\*Sec. 7 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 8. A new section is added to chapter 84.33 RCW to read as follows:

The excise tax imposed under this chapter applies to forest trees harvested after the effective date of this 1986 act from lands sold to any governmental agency by warranty deed or contract where the seller reserved to itself the right to take all merchantable timber for a specific period of years, or in perpetuity, and to forest trees harvested after the effective date of this 1986 act that any governmental agency, by quit claim deed, as partial consideration for payment of the purchase price, conveyed for a specific period of years, or in perpetuity, all forest trees, standing, growing, or lying on the described land, to the taxpayer, regardless of the date on which the contract was entered.

NEW SECTION. Sec. 9. Section 8 of 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.

Passed the House March 12, 1986.

Passed the Senate March 11, 1986.

Approved by the Governor April 4, 1986, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State April 4, 1986.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 4, 5, 6, and 7 of House Bill No. 1633, entitled:



"AN ACT Relating to taxation of timber harvested by public entities."

These sections of House Bill No. 1633 would give Christmas tree growers the tax status of farmers. Specifically, it would exempt Christmas tree plantations from the timber tax and exempt them from sales tax on seedlings, fertilizer, and other spray materials used in producing Christmas trees, as well as exempting them from the B & O tax.

In vetoing these sections, it is important to recognize that Washington already has a tax designed especially for the business of growing trees. Christmas trees are not food, and they are not used to build housing; they are luxury consumption items priced so that anyone can afford them.

The proponents of this measure argue that their tax status is a detriment to their competitive position in the interstate market, a market in which transportation costs are a dominant factor. While I believe that it is important for Washington to reexamine its tax structure in order to mitigate barriers to business development and to enhance the interstate and international competitiveness of our industries, I do not believe that tax policies are effective in offsetting primary business factors such as transportation costs. In addition, the competitive market for Christmas trees is not comparable to the "price taker" market faced by producers of agricultural products, in which suppliers of perishable products have greater difficulty in passing on any portion of their tax burden. Furthermore, I do not believe it is appropriate to extend a preferential tax status designed for producers of food to the producers of non-food luxuries simply for the purpose of improving a competitive market position, especially when this measure shows no promise of producing additional jobs for Washington.

With the exception of sections 4 through 7, House Bill No. 1633 is approved.\*

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## CHAPTER 316

[Engrossed Substitute Senate Bill No. 4418]

### IRRIGATION

AN ACT Relating to irrigation; creating new sections; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

**NEW SECTION.** Sec. 1. (1) The legislature finds that:

(a) The wise management and utilization of the state's water resources is in the best interests of the citizens of the state of Washington;

(b) Long-term planning of water uses and water supply projects is necessary to assure our state's water resources will be managed and utilized with the vision to maximize long-term benefits to assure that long-term opportunities are not permanently lost based on short-term conditions;

(c) Future allocations of water shall be considered in conjunction with an analysis of competing demands for water resources;

(d) It is the policy of the state to join with federal agencies and others in developing economically feasible, environmentally sound, and water conservation oriented facilities; and

(e) The state is participating in studies now being conducted by the federal government through the bureau of reclamation in the Yakima river and Columbia river basins for the purpose of determining plans for the proper development and utilization of the state's water resources under sound financing arrangements.