

Northwest Woodlands

A Publication of the Oregon Small Woodlands, Washington Farm Forestry, Idaho Forest Owners & Montana Forest Owners Associations

ESTATE PLANNING AND MANAGEMENT

Planning Tips

Build Your Team

Tax Saving Strategies

**Your State's Tax
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Air Quality**

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Washington Estate Tax

By **ANDY PERLEBERG AND JOHN WAY**

Washington has an estate tax that applies to the estates of Washington residents who die with assets greater than the amount of the estate tax exemption applicable on their date of death (currently \$2,193,000). Generally, all of a Washington resident's assets held at death are subject to the tax, and they are valued at fair market value on the resident's date of death. This includes personal and real property. However, pursuant to RCW 83.100.046, if a decedent owned property used for farming, including timber farming, gave their property to one or more family members and meets certain requirements, the value of that property is not included in their estate when determining whether their estate



Andy Perleberg



John Way

owes Washington estate tax.

This statute and related rules are somewhat convoluted as they include multiple defined terms, and there are many specific requirements. The deduction from the decedent's taxable estate is for the value of any "qualified real property," tangible personal property used for a "qualified use" and the value of the timber growing on "qualified woodland." These deductions not only apply to property owned directly by the decedent (in the decedent's name) but also to property owned indirectly if the decedent owned an interest in a corporation, partnership (including LLC) or trust as long as the business qualifies as a "closely held business" under the federal Internal Revenue Code and the decedent owned the interest in combination with direct ownership for periods totaling at least 5 of the 8 years prior to death.

Qualified real property means real property acquired from a decedent by a member of their family that was being used for a qualified use by the

decedent or family members when the decedent died. It must be (1) at least 50 percent of the adjusted value of the decedent's gross estate or (2) 25 percent or more of the adjusted value of the gross estate, was used for a qualifying use by the decedent or member of their family for periods aggregating at least 5 years out of the prior 8 years and the decedent or a member of their family materially participated in the operation of the farm.

Qualified use means the real property is used as a farm for farming purposes. Farming purposes is defined to include "the planting, cultivating, caring for or cutting of trees" and "the preparation, other than milling, of trees for market." For tangible property, qualified use means it is used primarily for farming purposes on the farm.

Assuming the deduction is available, the value of the property to be deducted from the taxable estate is the same as the value of the property used to determine the gross estate.

Washington real estate excise tax

Transfers of real property in Washington by gift, devise or inheritance are not subject to Washington's



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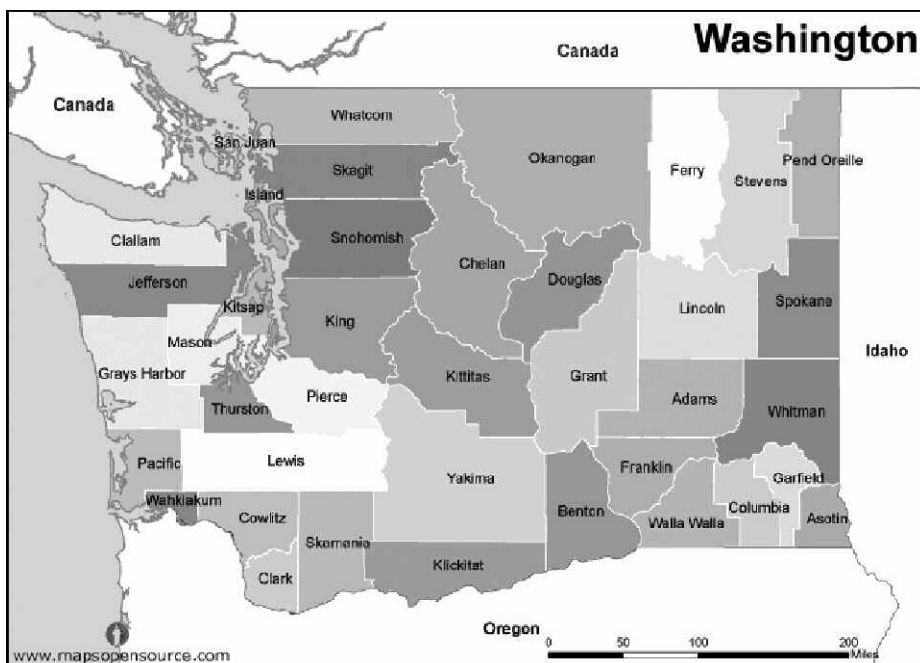
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The Open Space Taxation Act, enacted in 1970, allows property owners to have their open space, farm, agricultural and timber lands valued at their current use rather than at their highest and best use.

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real estate excise tax (however, they do require the filing of a real estate excise tax affidavit).

Washington property tax

Most forestland in Washington is classified as either “designated forest land” (DFL) pursuant to Chapter 84.33 of the Revised Code of Washington (RCW) and Chapter 458-40 of the Washington Administrative Code (WAC) or “timberland” pursuant to 84.34 RCW and 458-30 WAC and therefore qualifies for significantly reduced property tax rates. When DFL or timberland is transferred, including by inheritance or gift, as long as the new owner will continue using the land as required by these designations and files a Notice of Continuance, the property tax rates will remain reduced. Generally, if the owner sells the property to someone who will not be continuing the use, the owner/seller must pay a “compensating” (DFL) or “additional” (timberland) tax, which includes the additional tax that would have been paid in prior years (up to nine) had the property been taxed at fair market value, plus interest and a 20 percent penalty. This can result in a significant expense.

However, there is an exception for sales by estates within two years of the death of a decedent who owned at least a 50 percent interest in real property that has been DFL or classified as timberland continuously since 1993. In such a case, neither the compensating nor the additional tax applies, which can be a boon to many families. There is, however, an exception to the exception—the 2-year post-death period is based on the death certificate, and some county assessors have interpreted this to mean that if the land was owned by



The well-known 2009 publication “Estate Planning for Forest Landowners: What Will Become of Your Timberland?” by Siegel, Haney and Greene is no longer available in hard copy. Fortunately, you can download a digital copy of General Technical Report SRS-112 at: www.srs.fs.fed.us/pubsl31987.

an entity, like a LLC, since the entity did not “die” and there is no death certificate, this exception does not apply and the estate will be subject to the compensating or additional tax.

Low property taxes—either

through DFL or Timber Open Space—are exchanged with a 5 percent timber tax at time of harvest. Described by the Washington Department of Revenue website (dor.wa.gov), the landowners (or whomever owns the timber) pays this excise tax on the stumpage value of harvested trees. Stumpage is what a log buyer pays for your timber, which considers all the other costs s/he may also incur including harvesting and transportation. Stumpage value can change quickly

based on variable costs like fuel, markets, equipment maintenance, timber volume per acre and even working conditions. Other cost factors include

—Continued on next page—



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	Bill B.	(360) 520-2287
Mt. Vernon, WA	Mark F.	(360) 202-9141

insurance and wages for labor. Generally, a written and approved forest management plan is the evidence needed by county assessors to qualify for DFL or Timber Open Space. ■

ANDY PERLEBERG is Extension forester and associate professor for Washington State University. He provides organized educational opportunities to forest owners and natural resource professionals. Prior to his

current position, Andy worked in industry and government research and development by painting trees, cruising timber, fighting fire and even counting fish. Somewhere in the middle of everything, his wife dragged him, kicking and scratching, into the Peace Corps, where he worked in agro-forestry. It was in the Ecuadorian jungle where Andy learned what helps him wake up in the morning and go to sleep at night: helping others understand why forests are important. He enjoys nature walks, bedtime stories, bonfires and baseball. Andy can be reached at 509-667-6540 or Andyp@wsu.edu.

M. JOHN WAY advises farmers, ranchers and private business owners on business, business succession and estate planning as well as state and federal tax issues. He is an attorney with Schwabe, Williamson & Wyatt based in their Seattle office but works with clients all over the Northwest. John is the current chair of the American Bar Association's Elder Law and Special Needs Planning Group and until recently was an adjunct professor at the University of Washington's School of Law in the tax program. When not working, John likes to sail, hike and travel. John can be reached at 206-407-1569 or mjway@schwabe.com.



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Designated Forestland in Washington State

Washington State encourages sound forestry practices so that present and future generations can enjoy the many benefits they provide. In addition to scenic and recreational spaces, healthy forests provide:

- an enhanced water supply
- reduced soil erosion, storm and flood damage
- habitat for wild game
- employment opportunities
- raw materials for products

To encourage commercial forestry in Washington, landowners may choose to have their land designated as forestland. This designation often results in a lower assessed value and lower taxes.

Requirements for designated forestland

To request your land be designated as forestland, the following requirements apply:

- The land must be used primarily for growing and harvesting timber.
- The land must consist of a single parcel of 5 or more acres; or multiple, contiguous parcels totaling 5 or more acres.
 - Residential home sites are not included in the 5-acre minimum.
 - Designated forestland may include land utilized for incidental uses that are compatible with growing and harvesting timber, but no more than 10 percent of the land may be used for such incidental uses.
- If the land has appurtenances necessary for the production, preparation or sale of the timber products, that land may also be included.
- You must comply with forest practice laws and regulations.
- Application must be made to the county assessor.

Valuation of designated forestland

The Department of Revenue annually adjusts and certifies forestland values to be used by county assessors in preparing assessment rolls. The assessors assign the forestland values to the property based on land grades and operability classes.

The timber on designated forestland is exempt from real property taxes but is subject to timber excise tax under chapter 84.33 RCW. For additional information on timber excise tax, please refer to the Timber Excise Tax publication or visit www.foresttax.dor.wa.gov

Adapted from Washington State Department of Revenue "Designated Forest Land", July 2017. This fact sheet provides general information regarding designated forestland. The information is current at the date of publication. Please note subsequent law changes may supersede or invalidate some of this information.