

WSR 07-05-047
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed February 16, 2007, 10:23 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-167 Educational institutions, school districts, student organizations, and private schools, this rule explains the application of the business and occupation, retail sales, and use taxes to educational institutions, school districts, student organizations, and private schools. Also included is tax guidance for nursery schools, preschools, and child care.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Gayle Carlson, Department of Revenue, P.O. Box 47454, Olympia, WA 98504-7454, fax (360) 664-0693, e-mail GayleC@dor.wa.gov, AND RECEIVED BY April 23, 2007.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing the following changes:

- Statutory citations are added or corrected;
- Subsection (5)(b)(ii), the definition of "computer" has been updated to incorporate the current statutory definition provided in RCW 82.04.215. The rule currently contains an outdated definition that was previously provided in RCW 82.12.0284; and
- Subsection (5)(b)(iii) and (6), language referencing a 1998 law change, and pre-1998 tax-reporting instructions, have been removed.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: To the extent the following apply to the taxpayers identified in this rule: RCW 82.04.170, [82.04].339, [82.04].399, [82.04].4282, [82.04].-4332, 82.08.02537, 82.12.02595, [82.12].0264, [82.12].-0284, [82.12].0347.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Gayle Carlson, 1025 Union Avenue S.E., Suite #501, Olympia, WA, (360) 570-6126; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #501, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #501, Olympia, WA, (360) 570-6147.

February 15, 2007

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 99-03-005, filed 1/7/99, effective 2/7/99)

WAC 458-20-167 Educational institutions, school districts, student organizations, and private schools. (1)

Introduction. This section explains the application of Washington's business and occupation (B&O), retail sales, and use taxes to educational institutions, school districts, student organizations, and private schools. It also gives tax reporting information to persons operating nursery schools, preschools, or providing child care. Educational institutions which are institutions of the state of Washington should also refer to WAC 458-20-189 (Sales to and by the state of Washington, etc.). Nonprofit organizations should also refer to WAC 458-20-169 (Religious, charitable, benevolent, nonprofit service organizations, and sheltered workshops).

(2) **Definitions.** For the purposes of this section, the following definitions apply:

(a) The term "tuition fees" includes fees for instruction, library, laboratory, and health services. The term also includes special fees and amounts charged for room and board when the property or service for which such charges are made is furnished exclusively to the students, teachers, or other staff of the institution. RCW 82.04.170.

(b) "Educational institutions" means the following:

(i) Institutions which are established, operated, and governed by this state or its political subdivisions under Title 28A (Common school provisions), 28B (Higher education), or 28C (Vocational education) RCW.

(ii) Nonpublic schools, including parochial or independent schools or school districts, carrying out a program for any or all of the grades one through twelve, which have been approved by the Washington state board of education. (See also chapter 180-90 WAC.)

(iii) Degree-granting institutions offering educational credentials, instruction, or services prerequisite to or indicative of an academic or professional degree or certificate beyond the secondary level, provided the institution is accredited by an accrediting association recognized by the United States Secretary of Education and offers to students an educational program of a general academic nature. Degree-granting institutions should refer to chapter 28B.85 RCW for information about the requirement for authorization by the Washington higher education coordinating board.

(iv) Institutions which are not operated for profit, and which are privately endowed under a deed of trust to offer instruction in trade, industry, and agriculture.

(v) Programs that an educational institution cosponsors with a nonprofit organization, as defined by the Internal Revenue Code Sec. 501 (c)(3), provided that educational institution grants college credit for course work successfully completed through the educational program.

(vi) Certain branch campuses of foreign degree-granting institutions, provided the following requirements, among others, are satisfied:

(A) The branch campus must be owned and operated directly by a foreign degree-granting institution or indirectly through a Washington profit or nonprofit corporation in which the foreign degree-granting institution is the sole or controlling shareholder or member;

(B) Courses must be provided solely and exclusively to students enrolled in a degree-granting program offered by the institution;

(C) The branch campus must be approved by the Washington higher education coordinating board to operate in this state; and

(D) The branch campus must be recognized to be exempt from income taxes pursuant to 26 U.S.C. Sec. 501(c).

(vii) "Educational institutions" does not include any entity defined as a "private vocational school" under (~~chapter 28C.10~~) RCW 28C.10.020 and/or any entity defined as a "degree-granting private vocational school" under chapters 28C.10 and 28B.85 RCW (other than those described in (b)(iv) of this subsection).

(c) "Private schools" means all schools and institutions which are excluded from the above definition of "educational institutions." For example, an elementary school operated by a church organization is a "private school" if the school is not approved. It will be given the tax treatment of an "educational institution" for purposes of this section only if it has obtained approval from the Washington state board of education.

(3) **Business and occupation tax.** Departments and institutions of the state of Washington are not subject to the B&O tax. (See WAC 458-20-189.) School districts are also not subject to the B&O tax, except as to income derived from a public utility or enterprise activity. RCW 82.04.419. Private schools, student organizations, school districts engaging in utility or enterprise activities, and educational institutions which are not departments or institutions of the state of Washington are subject to the B&O tax as follows:

(a) **Service and other business activities.** The service B&O tax applies to the following nonexclusive list of activities or sources of income:

(i) Tuition fees received by private schools. However, educational institutions, as defined above, may deduct amounts derived from tuition fees. RCW 82.04.4282.

(ii) Rental of conference facilities to various organizations or groups.

(iii) Rental by private schools of dormitories or other student lodging facilities which are not generally available to the public and where the student does not have an absolute right of control and occupancy. (See WAC 458-20-118.) However, educational institutions may deduct the income from charges for lodging made to students. These amounts are defined by law as being tuition.

(iv) Amounts received by private schools for providing meals to students where the meals are provided exclusively for students, teachers, staff, and their guests. However, refer to the comments under retailing for the taxability of meals sold to guests of students. Income from providing meals to students by educational institutions is deductible.

(v) Amounts received from owners of coin operated vending machines or amusement devices for allowing the placement of those machines on the premises of the school. (Refer also to WAC 458-20-187.)

(b) **Retailing.** Activities and sources of income subject to the retailing B&O tax include, but are not limited to, the following:

(i) Sales of tangible personal property or services classified as retail sales. This includes sales of books and supplies

to students where these materials are not supplied as part of the tuition charge. Sales of academic transcripts are exempt from tax. RCW 82.04.399.

(ii) Sales of meals to guests of students.

(iii) Sales of meals or prepared foods in facilities which are generally open to the public, including those sold to students. (See also WAC 458-20-119.)

(4) **Retail sales tax.** The retail sales tax applies to all retail sales including, but not limited to, those identified in subsection (3) of this section, unless a specific statutory exemption applies.

(a) Educational institutions, school districts, student organizations, and private schools, including departments or institutions of the state of Washington, are required to collect the retail sales tax on sales of tangible personal property and retail services to consumers, even though such sales may be exempt from the retailing B&O tax. Retail sales tax exemptions are provided for sales of academic transcripts (RCW (~~82.08.2537~~) 82.08.02537) and certain food products (RCW 82.08.0293 and 82.08.0297, and WAC 458-20-244).

(b) Amounts derived from charges between departments or institutions of the state of Washington, or between departments of the same entity, constitute interdepartmental charges and are not subject to the retailing or retail sales tax. (See WAC 458-20-201 and 458-20-189.)

(c) Persons selling merchandise through vending machines should refer to WAC 458-20-187.

(5) **Deferred sales or use tax.** Educational institutions, school districts, student organizations, and private schools are required to report the deferred sales or use tax upon the use of all tangible personal property purchased or acquired under conditions whereby the Washington retail sales tax has not been paid, unless a specific statutory exemption applies. If items are purchased for dual purposes (i.e., for both consumption and resale), a tax paid at source deduction may be claimed for the cost of the articles resold upon which retail sales tax was previously paid. (See WAC 458-20-102.)

(a) These organizations are the consumers of food or beverage products which are ingredients of meals that are furnished to students and faculty. However, certain food products are exempt from the retail sales and/or use tax. RCW 82.12.0293 and 82.12.0297, and WAC 458-20-244.

(b) Use tax exemptions are also provided for the following:

(i) Academic transcripts. RCW 82.12.0347.

(ii) Computers, computer components, computer accessories, or computer software irrevocably donated to any public or private nonprofit school or college in this state, as defined by chapter (~~82.36~~) 84.36 RCW. For the purposes of this exemption, RCW (~~82.12.0284~~) 82.04.215 defines "computer" as (~~a data processor that can perform substantial computation, including numerous arithmetic or logic operations, without intervention by a human operator~~) an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions. RCW 82.12.0284. This exemption is available to both the donor and the private nonprofit school or college receiving the donation.

(iii) Tangible personal property donated to a nonprofit charitable organization or state or local governmental

entity(~~(RCW 82.12.02595. Prior to June 11, 1998, this exemption is available only to the nonprofit charitable organization or state or local governmental entity receiving the donation. On and after June 11, 1998, the following are also exempt from the use tax:~~

(A)) ~~including~~ the subsequent use of the property by a person to whom the property is donated or bailed by the nonprofit charitable organization, or state or local governmental entity, if used to further the purpose of that organization(~~and~~).

~~((B))~~ (iv) The donation of tangible personal property without intervening use to a nonprofit charitable organization, or the incorporation of tangible personal property without intervening use into real or personal property of or for a nonprofit charitable organization in the course of installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating the real or personal property for no charge. ~~((Chapter 182, Laws of 1998.))~~ RCW 82.12.02595.

~~((iv))~~ (v) Motor vehicles equipped with dual controls loaned to and exclusively used by a school in connection with the school's driver training program. This exemption is available to both the donor and the school receiving the donation. For the purposes of this exemption, RCW 82.12.0264 limits the term "school" to:

(A) The University of Washington, Washington State University, the regional universities, The Evergreen State College, and the state community colleges;

(B) Any public, private, or parochial school accredited by either the state board of education or by the University of Washington (the state accrediting station); or

(C) Any public vocational school meeting the standards, courses, and requirements established and prescribed or approved in accordance with the Community College Act of 1967.

(6) Nursery schools, preschools, child care providers, privately operated kindergartens, and persons monitoring home child care facilities. Income received by nursery schools, preschools, child care providers, and privately operated kindergartens for the care or education of children who are under eight years of age and not enrolled in or above the first grade is exempt from the B&O tax. RCW 82.04.4282. Such persons are, however, subject to B&O tax upon the gross proceeds derived from providing child care to children who are eight years of age or older or enrolled in or above the first grade.

~~(Effective July 1, 1998.))~~ Persons providing child care for periods of less than twenty-four hours are subject to tax under the child care B&O classification. RCW 82.04.2905. The service and other activities B&O tax classification ~~((applied to these services prior to July 1, 1998, and continues to apply))~~ applies to child care services provided for periods in excess of twenty-four hours. Nursery schools, preschools, and child care providers receiving both taxable and exempt income must properly segregate such income in their books of account.

(a) The B&O tax does not apply to income derived by a church for the care of children of any age for periods of less than twenty-four hours, provided the church is exempt from property tax under RCW 84.36.020. RCW 82.04.339.

(b) Persons who monitor home child care facilities under one or more federal nutrition programs are required to register with the department and are taxable on their gross income under the service and other classification of the B&O tax. These monitors contract with, and are accountable to the superintendent of public instruction which receives funds from the United States Department of Agriculture and disburses funds to each monitor. Commonly, a portion of the funds received by the monitor is required by law to be passed directly to the home child care facilities for the provision of qualifying meals. That portion of the funds received by the monitor may be taken as a "reimbursement" deduction on the monitor's ~~((combined))~~ excise tax return, so that the monitor is subject to B&O tax only on the portion of funds retained for the rendering of services.

(7) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(a) MN University is an educational institution created by the state of Washington. MN University operates a book store at which it sells text books, school supplies, and apparel to students and nonstudents. As an institution of the state of Washington, MN University is exempt from the B&O tax with respect to all sales, irrespective that sales are made to nonstudents. However, MN is required to collect and remit retail sales tax on its gross proceeds of sales made through its book store.

(b) DMG College is a degree-granting institution accredited by an accrediting association recognized by the United States Secretary of Education. DMG College is an educational institution operated by a church. DMG makes charges to its students for tuition, meals, and lodging. It also receives income for occasionally providing lodging and meals to guests of its students during the year. DMG also rents its conference and dormitory facilities to various groups during the summer, providing cafeteria services when needed. The income from tuition, meals, and lodging received from the students is exempt of B&O and retail sales tax because this entity comes within the definition of an educational institution. DMG must report the retailing B&O tax and collect and remit retail sales tax upon the gross proceeds derived from the sales of meals and prepared foods to the conference attendees and guests. The income derived from the rental of the conference and dormitory facilities to various groups and student guests is subject to the service B&O tax. The college is not considered as holding itself out for the sale of lodging to the general public.

(c) JB College is an educational institution which is not a department or institution of the state of Washington. JB College has converted five housing units from student use for use by nonstudents. Guests of the administration use these units for stays of two or three days, and are charged a specific amount per night. The college provides linen, towels, etc., to the users. These units are always rented for periods under thirty days. JB College must report this rental income under the retailing B&O tax and collect and remit retail sales tax. This income is not derived from the occasional rental of stu-

dent lodging facilities, but is derived from the rental of accommodations specifically maintained for public use.

(d) Jane Doe operates a private preschool and kindergarten, providing care and elementary education for children. She also provides after hours child care. Jane Doe may claim a deduction for the income received for the care and education of children under eight years old and not enrolled in or above the first grade, provided this income is properly segregated in her books of account. The income attributable to the care of children at or above the first grade level, i.e., eight years old or enrolled in or above the first grade, is subject to the child care B&O tax. Jane Doe may be able to reduce or eliminate any child care B&O tax liability if she qualifies for the small business B&O tax credit. RCW 82.04.4451 and WAC 458-20-104.

WSR 07-05-067

EXPEDITED RULES

DEPARTMENT OF TRANSPORTATION

[Filed February 20, 2007, 1:56 p.m.]

Title of Rule and Other Identifying Information: Chapter 12-04 WAC, General organization and public disclosure.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO John Sibold, Director of Aviation, Washington Department of Transportation, Aviation Division, P.O. Box 3367, Arlington, WA 98223, AND RECEIVED BY April 24, 2007.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 1977 the department of transportation (WSDOT) was created (RCW 47.01.031) and the aeronautics commission was abolished. The WSDOT formed the WSDOT aviation division (RCW 47.68.015) to oversee aviation in the state.

Chapter 12-04 WAC were [was] the functioning rules for the aeronautics commission which no longer exists.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: Not applicable.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state department of transportation, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Sibold, Arlington, Washington, (360) 651-6300.

February 1, 2007

P. J. Hammond

Chief of Staff

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 12-04-010	Purpose.
WAC 12-04-020	Definitions.
WAC 12-04-030	Public records available.
WAC 12-04-040	Membership, officers, quorum, director, administrative offices, function.
WAC 12-04-050	Meetings.
WAC 12-04-060	Public records officer.
WAC 12-04-070	Office hours.
WAC 12-04-080	Requests for public records.
WAC 12-04-090	Copying.
WAC 12-04-100	Exemptions.
WAC 12-04-110	Review of denials of public records requests.
WAC 12-04-120	Protection of public records.
WAC 12-04-130	Records index.
WAC 12-04-140	Communications.
WAC 12-04-150	Adoption of form.

WSR 07-05-068

EXPEDITED RULES

DEPARTMENT OF TRANSPORTATION

[Filed February 20, 2007, 1:58 p.m.]

Title of Rule and Other Identifying Information: Chapter 12-08 WAC, Practice and procedure.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO John Sibold, Director of Aviation, Washington Department of Transportation, Avia-

tion Division, P.O. Box 3367, Arlington, WA 98223, AND RECEIVED BY April 24, 2007.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 1977 the department of transportation (WSDOT) was created (RCW 47.01.031) and the aeronautics commission was abolished. The WSDOT formed the WSDOT aviation division (RCW 47.68.015) to oversee aviation in the state.

Chapter 12-08 WAC refers to the practice and procedures of the aeronautics commission hearings. The aeronautics commission was abolished and therefore the WAC should be repealed.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: Not applicable.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state department of transportation, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Sibold, Arlington, Washington, (360) 651-6300.

February 1, 2007
P. J. Hammond
Chief of Staff

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 12-08-010 Uniform procedural rules.
- WAC 12-08-020 Contested case hearing.
- WAC 12-08-030 Hearings before hearing officer.
- WAC 12-08-040 Proposed orders by hearing officers and appeal.

WSR 07-05-069

EXPEDITED RULES

DEPARTMENT OF TRANSPORTATION

[Filed February 20, 2007, 2:01 p.m.]

Title of Rule and Other Identifying Information: Chapter 468-220 WAC, Aircraft—Indicia of registration.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO John Sibold, Director of

Aviation, Washington Department of Transportation, Aviation Division, P.O. Box 3367, Arlington, WA 98223, AND RECEIVED BY April 24, 2007.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 468-220 WAC required aircraft owners to affix a decal onto the aircraft which they received from the department of transportation aviation division after registering the aircraft with the state. This assisted in determining if the aircraft had been registered for that year.

Because of emerging technology and database systems to track aircraft owners, WSDOT aviation division does not issue or require the decal to prove registration of aircraft.

Statutory Authority for Adoption: Not applicable.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state department of transportation, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Sibold, Arlington, Washington, (360) 651-6300.

February 1, 2007
P. J. Hammond
Chief of Staff

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 468-220-010 Display of indicia of registration.

WSR 07-05-077

EXPEDITED RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed February 20, 2007, 4:06 p.m.]

Title of Rule and Other Identifying Information: WAC 82-50-021 Official state lagged semimonthly pay dates established.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Roselyn Marcus, Office of Financial Management (OFM), P.O. Box 43113, Olympia, WA 98504-3113, AND RECEIVED BY April 24, 2007.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 82-50-021 publishes the official lagged, semimonthly pay dates for state officers and employees. This WAC, which provides pay dates for the current and ensuing calendar years, is amended each year to add pay dates for the ensuing year and delete the pay dates for the previous year. The purpose of this filing is to establish official pay dates for state officers and employees for calendar year 2008 and delete the obsolete pay dates for calendar year 2006.

Reasons Supporting Proposal: The statute requires that OFM annually update and publish state pay dates.

Statutory Authority for Adoption: RCW 42.16.010(1) and 42.16.017.

Statute Being Implemented: RCW 42.16.010(1) and 42.16.017.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Nielson, 6639 Capitol Boulevard, Tumwater, (360) 664-7681; Implementation and Enforcement: Wendy Jarrett, 6639 Capitol Boulevard, Tumwater, (360) 664-7675.

February 20, 2007

Roselyn Marcus

Director of Legal Affairs

Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-11-053, filed 5/11/06, effective 6/11/06)

WAC 82-50-021 Official lagged, semimonthly pay dates established. Unless exempted otherwise under the provisions of WAC 82-50-031, the salaries of all state officers and employees are paid on a lagged, semimonthly basis for the official twice-a-month pay periods established in RCW 42.16.010(1). The following are the official lagged, semi-monthly pay dates for calendar years (~~2006 and~~) 2007 and 2008:

((CALENDAR YEAR 2006	CALENDAR YEAR 2007
Tuesday, January 10, 2006	Wednesday, January 10, 2007
Wednesday, January 25, 2006	Thursday, January 25, 2007
Friday, February 10, 2006	Friday, February 9, 2007
Friday, February 24, 2006	Monday, February 26, 2007
Friday, March 10, 2006	Friday, March 9, 2007
Friday, March 24, 2006	Monday, March 26, 2007
Monday, April 10, 2006	Tuesday, April 10, 2007
Tuesday, April 25, 2006	Wednesday, April 25, 2007
Wednesday, May 10, 2006	Thursday, May 10, 2007
Thursday, May 25, 2006	Friday, May 25, 2007
Friday, June 9, 2006	Monday, June 11, 2007
Monday, June 26, 2006	Monday, June 25, 2007
Monday, July 10, 2006	Tuesday, July 10, 2007
Tuesday, July 25, 2006	Wednesday, July 25, 2007
Thursday, August 10, 2006	Friday, August 10, 2007
Friday, August 25, 2006	Friday, August 24, 2007
Monday, September 11, 2006	Monday, September 10, 2007
Monday, September 25, 2006	Tuesday, September 25, 2007

((CALENDAR YEAR 2006	CALENDAR YEAR 2007
Tuesday, October 10, 2006	Wednesday, October 10, 2007
Wednesday, October 25, 2006	Thursday, October 25, 2007
Thursday, November 9, 2006	Friday, November 9, 2007
Wednesday, November 22, 2006	Monday, November 26, 2007
Monday, December 11, 2006	Monday, December 10, 2007
Friday, December 22, 2006	Monday, December 24, 2007))

<u>CALENDAR YEAR 2007</u>	<u>CALENDAR YEAR 2008</u>
<u>Wednesday, January 10, 2007</u>	<u>Thursday, January 10, 2008</u>
<u>Thursday, January 25, 2007</u>	<u>Friday, January 25, 2008</u>
<u>Friday, February 9, 2007</u>	<u>Monday, February 11, 2008</u>
<u>Monday, February 26, 2007</u>	<u>Monday, February 25, 2008</u>
<u>Friday, March 9, 2007</u>	<u>Monday, March 10, 2008</u>
<u>Monday, March 26, 2007</u>	<u>Tuesday, March 25, 2008</u>
<u>Tuesday, April 10, 2007</u>	<u>Thursday, April 10, 2008</u>
<u>Wednesday, April 25, 2007</u>	<u>Friday, April 25, 2008</u>
<u>Thursday, May 10, 2007</u>	<u>Friday, May 9, 2008</u>
<u>Friday, May 25, 2007</u>	<u>Friday, May 23, 2008</u>
<u>Monday, June 11, 2007</u>	<u>Tuesday, June 10, 2008</u>
<u>Monday, June 25, 2007</u>	<u>Wednesday, June 25, 2008</u>
<u>Tuesday, July 10, 2007</u>	<u>Thursday, July 10, 2008</u>
<u>Wednesday, July 25, 2007</u>	<u>Friday, July 25, 2008</u>
<u>Friday, August 10, 2007</u>	<u>Monday, August 11, 2008</u>
<u>Friday, August 24, 2007</u>	<u>Monday, August 25, 2008</u>
<u>Monday, September 10, 2007</u>	<u>Wednesday, September 10, 2008</u>
<u>Tuesday, September 25, 2007</u>	<u>Thursday, September 25, 2008</u>
<u>Wednesday, October 10, 2007</u>	<u>Friday, October 10, 2008</u>
<u>Thursday, October 25, 2007</u>	<u>Friday, October 24, 2008</u>
<u>Friday, November 9, 2007</u>	<u>Monday, November 10, 2008</u>
<u>Monday, November 26, 2007</u>	<u>Tuesday, November 25, 2008</u>
<u>Monday, December 10, 2007</u>	<u>Wednesday, December 10, 2008</u>
<u>Monday, December 24, 2007</u>	<u>Wednesday, December 24, 2008</u>

WSR 07-05-084
EXPEDITED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed February 21, 2007, 9:28 a.m.]

Title of Rule and Other Identifying Information: WAC 388-513-1350 Defining the resource standard and determining resource eligibility for long-term care (LTC) services.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Rules Coordinator, Department of Social and Health Services, P.O. Box 45850,

Olympia, WA 98504-5850, or deliver to Blake Office Park East, 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, AND RECEIVED BY 5:00 p.m. on April 23, 2007.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Housekeeping - correcting typographical errors. Correction in subsection (4) to indicate (1)(b) rather than (a)(b). The section should read as follows:

(4) If the department has already established eligibility and authorized services for one spouse, and the community spouse needs LTC services in the same month, (but after eligibility has been established and services authorized for the institutional spouse), then the department applies the standard described in subsection (1)(a) of this section to each spouse. If doing this would make one of the spouses ineligible, then the department applies (1)(b) of this section for a couple.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, 74.09.575.

Statute Being Implemented: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, 74.09.575.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Lori Rolley, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2271.

February 15, 2007

Jim Schnellman, Chief
Office of Administrative Resources

AMENDATORY SECTION (Amending WSR 07-01-073, filed 12/18/06, effective 1/18/07)

WAC 388-513-1350 Defining the resource standard and determining resource eligibility for long-term care (LTC) services. This section describes how the department defines the resource standard and available or excluded resources when determining a client's eligibility for LTC services. The department uses the term "resource standard" to describe the maximum amount of resources a client can have and still be resource eligible for program benefits.

(1) The resource standard used to determine eligibility for LTC services equals:

(a) Two thousand dollars for:

(i) A single client; or

(ii) A legally married client with a community spouse, subject to the provisions described in subsections (8) through (11) of this section; or

(b) Three thousand dollars for a legally married couple, unless subsection (3) of this section applies.

(2) When both spouses apply for LTC services the department considers the resources of both spouses as available to each other through the month in which the spouses stopped living together.

(3) When both spouses are institutionalized, the department will determine the eligibility of each spouse as a single client the month following the month of separation.

(4) If the department has already established eligibility and authorized services for one spouse, and the community spouse needs LTC services in the same month, (but after eligibility has been established and services authorized for the institutional spouse), then the department applies the standard described in subsection (1)(a) of this section to each spouse. If doing this would make one of the spouses ineligible, then the department applies ~~((a)(b))~~ (1)(b) of this section for a couple.

(5) When a single institutionalized individual marries, the department will redetermine eligibility applying the rules for a legally married couple.

(6) The department applies the following rules when determining available resources for LTC services:

(a) WAC 388-475-0300, Resource eligibility;

(b) WAC 388-475-0250, How to determine who owns a resource; and

(c) WAC 388-470-0060(6), Resources of an alien's sponsor.

(7) For LTC services the department determines a client's nonexcluded resources as follows:

(a) The department determines available resources for SSI-related clients as described in WAC 388-475-0350 through 388-475-0550 and resources excluded by federal law with the exception of:

(i) WAC 388-475-0550(16);

(ii) WAC 388-475-0350 (1)(b) clients who have submitted an application for LTC services on or after May 1, 2006 and have an equity interest greater than five hundred thousand dollars in their primary residence are ineligible for LTC services. This exception does not apply if a spouse or blind, disabled or dependent child under age twenty-one is lawfully residing in the primary residence. Clients denied or terminated LTC services due to excess home equity may apply for an undue hardship waiver.

(b) For an SSI-related client one automobile per household is excluded regardless of value if it is used for transportation of the eligible individual/couple.

(i) For an SSI-related client with a community spouse, the value of one automobile is excluded regardless of its use or value.

(ii) Vehicles not meeting the definition of automobile is a vehicle that has been junked or a vehicle that is used only as a recreational vehicle.

(c) For a SSI-related client, the department adds together the available resources of both spouses if subsections (2), (5), (6), (7) and (8)(a) or (b) apply, but not if subsection (3) or (4) apply.

(d) For an SSI-related client, excess resources are reduced in an amount equal to medical expenses incurred by the client (for definition see WAC 388-519-0110(10)) that are not subject to third-party payment and for which the client is liable, including:

(i) Health insurance and Medicare premiums, deductions, and co-insurance charges;

(ii) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan with the

exception of the deduction for medical and remedial care expenses that were incurred during a transfer of asset penalty established per WAC 388-513-1363, 388-513-1364 or 388-515-1365; and

(iii) The amount of excess resources is limited to the following amounts:

(A) For LTC services provided under the categorically needy (CN) program, the amount described in WAC 388-513-1315(3); or

(B) For LTC services provided under the medically needy (MN) program, the amount described in WAC 388-513-1395 (2)(a) or (b).

(e) For a client not related to SSI, the department applies the resource rules of the program used to relate the client to medical eligibility.

(8) For legally married clients when only one spouse meets institutional status, the following rules apply. If the client's current period of institutional status began:

(a) Before October 1, 1989, the department adds together one-half the total amount of nonexcluded resources held in the name of:

(i) The institutionalized spouse; or

(ii) Both spouses.

(b) On or after October 1, 1989, the department adds together the total amount of nonexcluded resources held in the name of:

(i) Either spouse; or

(ii) Both spouses.

(9) If subsection (8)(b) of this section applies, the department determines the amount of resources that are allocated to the community spouse before determining nonexcluded resources used to establish eligibility for the institutionalized spouse, as follows:

(a) If the client's current period of institutional status began on or after October 1, 1989 and before August 1, 2003, the department allocates the maximum amount of resources ordinarily allowed by law. The maximum allocation amount is ninety-nine thousand five hundred forty dollars effective January 1, 2006. Effective January 1, 2007, the maximum allocation is one hundred and one thousand six hundred and forty dollars. (This standard increases annually on January 1st based on the consumer price index); or

(b) If the client's current period of institutional status began on or after August 1, 2003, the department allocates the greater of:

(i) A spousal share equal to one-half of the couple's combined nonexcluded resources as of the beginning of the current period of institutional status, up to the amount described in subsection (9)(a) of this section; or

(ii) The state spousal resource standard of forty-one thousand nine hundred forty-three dollars effective July 1, 2005 (this standard increases every odd year on July 1st).

(10) The amount of the spousal share described in (9)(b)(i) can be determined anytime between the date that the current period of institutional status began and the date that eligibility for LTC services is determined. The following rules apply to the determination of the spousal share:

(a) Prior to an application for LTC services, the couple's combined countable resources are evaluated from the date of the current period of institutional status at the request of

either member of the couple. The determination of the spousal share is completed when necessary documentation and/or verification is provided; or

(b) The determination of the spousal share is completed as part of the application for LTC services if the client was institutionalized prior to the month of application, and declares the spousal share exceeds the state spousal resource standard. The client is required to provide verification of the couple's combined countable resources held at the beginning of the current period of institutional status.

(11) The amount of allocated resources described in subsection (9) of this section can be increased, only if:

(a) A court transfers additional resources to the community spouse; or

(b) An administrative law judge establishes in a fair hearing described in chapter 388-02 WAC, that the amount is inadequate to provide a minimum monthly maintenance needs amount for the community spouse.

(12) The department considers resources of the community spouse unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless subsection (13)(a), (b), or (c) of this section applies.

(13) A redetermination of the couple's resources as described in subsections (7) is required, if:

(a) The institutionalized spouse has a break of at least thirty consecutive days in a period of institutional status;

(b) The institutionalized spouse's nonexcluded resources exceed the standard described in subsection (1)(a), if subsection (8)(b) applies; or

(c) The institutionalized spouse does not transfer the amount described in subsections (9) or (11) to the community spouse or to another person for the sole benefit of the community spouse as described in WAC 388-513-1365(4) by either:

(i) The first regularly scheduled eligibility review; or

(ii) The reasonable amount of additional time necessary to obtain a court order for the support of the community spouse.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.