

WSR 08-10-011
EXPEDITED RULES
PUBLIC EMPLOYMENT
RELATIONS COMMISSION

[Filed April 24, 2008, 3:47 p.m.]

Title of Rule and Other Identifying Information: WAC 391-25-436 Special provision—State civil service employees, describes employee and nonemployee rights while a notice of election is posted for a union representation election; and WAC 391-35-085 Amendment to certification, provides a simple mechanism for a union or employer to clarify a name changed on bargaining unit certification.

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 Dario de la Rosa, Public Employment Relations Commission, 112 Henry Street N.E., Suite 300, P.O. Box 40919, Olympia, WA 98504-0919, AND RECEIVED BY July 8, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 391-35-085 provides a simple mechanism for the name on a certification to be changed so long as the bargaining unit is not affected and there is not [no] question regarding the bargaining representatives' majority status.

WAC 391-25-436 satisfies the RCW 41.80.080(1) mandate that this commission adopt election rules, including a rule providing for campaigning on an employer's property during working hours. WAC 391-25-436 permits employees to campaign in nonworking areas during nonworking time or in working areas during working time provided the employer permits other like activities. Nonemployees have the right to campaign in public areas of an employer's workplace. An employer may expand these rights through policy.

Reasons Supporting Proposal: WAC 391-35-085, to provide a simple mechanism for an employer or union to have a certification amended to reflect a change in name. WAC 391-25-436, to satisfy the RCW 41.80.080 statutory mandate of adopting a rule that proscribes employees' rights regarding campaigning on an employer's premises during a union election.

Statutory Authority for Adoption: For WAC 391-25-436 is RCW 41.58.050, 41.80.080; and for WAC 391-35-085 is RCW 28B.52.080, 41.56.090, 41.58.050, 41.76.060, 41.80.070.

Statute Being Implemented: For WAC 391-25-436 is RCW 41.80.080.

Name of Agency Personnel Responsible for Drafting: Dario de la Rosa, Olympia, Washington, (360) 570-7328;

Implementation and Enforcement: Cathleen Callahan, Olympia, Washington, (360) 570-7312.

April 24, 2008

Dario de la Rosa

General Counsel

NEW SECTION

WAC 391-25-436 Special provision—State civil service employees. (1) While a notice of election is posted under WAC 391-25-430, employees in the bargaining unit or proposed bargaining unit have the right to conduct campaigning activities in the public areas or in the nonworking areas of the employer's premises, during nonworking time of the campaigner and employees being solicited, as long as they do not disrupt operations. However, if employees are permitted to discuss nonwork subjects or solicit other employees in work areas, the employer cannot discriminatorily regulate employee discussions or solicitations.

(2) Nonemployees have the right to engage in campaigning activities in the employer's public areas consistent with the reasonable use of those areas. Where there are no public areas in an employer's workplace, reasonable comparable access must be granted.

(3) Employer rules and policies may expand these rights. Employer rules and policies must be nondiscriminatory.

NEW SECTION

WAC 391-35-085 Amendment of certification. A party may file a petition to amend an existing certification, and the executive director may amend the certification, provided that the purpose of the amendment is to reflect changed circumstances such as the name of a labor organization or the name of an employer, and the bargaining unit is not affected by the change and there is no question concerning representation.

WSR 08-10-049
WITHDRAWAL OF
EXPEDITED RULE MAKING
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed May 1, 2008, 1:27 p.m.]

In accordance with RCW 34.05.335(1), the department of labor and industries hereby withdraws the expedited rule making filed as WSR 08-06-073 on March 4, 2008. The WAC related to this rule filing is chapter 296-305 WAC, Safety standards for fire fighters.

Please contact Josh Swanson at (360) 902-6805 or e-mail at swaj235@lni.wa.gov, if you have any questions.

Joshua J. Swanson

Legislative Liaison

and Rules Coordinator

WSR 08-10-076
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed May 6, 2008, 11:12 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-126 Sales of motor vehicle fuel, special fuels, and nonpollutant fuel, provides tax reporting information to persons selling motor vehicle fuel, special fuel (diesel), and non-pollutant fuel (propane).

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 47453, Olympia, WA 98504-7453, fax (360) 586-0127, e-mail GayleC@dor.wa.gov, AND RECEIVED BY July 7, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule has been reorganized and subsection titles have been added. The following explains where issues addressed in subsections in the proposed rule can be found in the current rule. Also noted are subsections that have been added to recognize legislative changes.

- The introduction (subsection (1)) has been added to provide an overview of what topics are covered.
- Information found in subsection (2), **What are motor vehicle fuel and special fuels, and how are they taxed?**, can be found in subsections (1) and (1)(b) of the existing rule.
- Subsection (3), **What motor vehicle fuel and special fuels exemptions are available?**, incorporates legislation granting exemptions (RCW 82.08.0255 and 82.12.0256) to subsection (a) county owned ferries, county ferry districts, and subsection (d) public transportation benefit areas. The exemptions in subsection (b) nonprofit transportation providers, subsection (c) public transportation, and subsection (e) special fuels used in interstate commerce are in subsections (1)(c), (d), and (e) of the existing rule. The exemption certificate for special fuel sales to interstate carriers is now available on the department's internet site, and the address has been provided. The requirement to renew the certificate at least every four years has been replaced with a provision for the certificate to apply for all sales transactions as long as the seller has a "recurring business relationship" with the buyer per RCW 82.04.470 and 82.08.050.
- Subsection (3)(f) has been incorporated due to SSB 5009, chapter 443, Laws of 2007, that exempts farm fuel users from retail sales and use taxes for diesel and aircraft fuel purchased for nonhighway use (RCW 82.08.865 and 82.12.865). The department's

internet site address has been provided for obtaining a copy of the "farmers' retail sales tax exemption certificate" which should be used for this exemption.

- Subsection (4), **Nonpollutant fuels**, incorporates existing subsections (2), (2)(a), (b), (c), (d), (e), (f), and information from RCW 82.38.075. The department's internet site address is included for obtaining the "certificate for purchase of nonpollutant special fuels."
- The contents of subsection (5), **Refunds are available for fuel taxes paid when fuel is consumed off the highway**, can be found in subsection (1)(f) of the existing rule.

Copies of draft rules are available for viewing and printing on our web site at <http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx>.

Reasons Supporting Proposal: To incorporate provisions of SSB 5009 (chapter 443, Laws of 2007) and E2SSB 5862 (chapter 223, Laws of 2007), and to reorganize the information in an easier to read manner.

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

Statute Being Implemented: RCW 82.08.0255, 82.12.-0256, 82.08.865, and 82.12.865.

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 #544, Olympia, WA, (360) 570-6126; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

May 6, 2008

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 91-15-022, filed 7/11/91, effective 8/11/91)

WAC 458-20-126 Sales of motor vehicle fuel, special fuels, and nonpollutant fuel. (1) (~~Motor vehicle fuel and special fuels.~~ "Motor vehicle fuel" as used in this section means gasoline or any other inflammable gas or liquid the chief use of which is as fuel for the propulsion of motor vehicles. (See RCW 82.36.010.) "Special fuels" as used in this section means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles, except that it does not include motor vehicle fuel as defined above. (See RCW 82.38.020.) Diesel fuel is an example of a special fuel.

(a) The retail sales tax does not apply to the following:

(i) Sales of motor vehicle fuel on which the tax of chapter 82.36 RCW is paid.

(ii) Sales of special fuel when sold for use as fuel in propelling motor vehicles upon the public highways in this state and on which the special fuel tax of chapter 82.38 RCW is paid. Payment of the annual fee in lieu of the special fuel tax

on natural gas and propane, RCW 82.38.075, constitutes payment of the special fuel tax imposed by chapter 82.38 RCW.

(b) The retail sales tax or use tax applies to sales and uses of motor vehicle fuel or special fuel when the taxes of chapter 82.36 or 82.38 RCW have not been paid or have been refunded.

(c) By reason of special exemptions contained in RCW 82.08.0255 the retail sales tax does not apply to sales of special fuel delivered in this state which is later transported and used outside this state by persons engaged in interstate commerce. This exemption also applies to persons hauling their own goods in interstate commerce.

Exemption certificate. Persons selling special fuel to interstate carriers which comes within the foregoing exemption may obtain an exemption certificate from the purchaser in substantially the following form in order to document the entitlement to the exemption.

Certificate of Special Fuel Sales
to Interstate Carriers

The undersigned hereby certifies that all the special fuel purchased from the listed dealer will be purchased for transportation and use outside of Washington by them as an interstate carrier and is entitled to the exemption of RCW 82.08.0255 or will be used on highways in Washington and the special fuel tax of chapter 82.38 RCW will be paid.

Dealer:
Carrier:
Authorized Carrier Signature:
Title or office:
Date:

The above certificate must be renewed at intervals not to exceed four years.

(d) Neither the retail sales tax nor use tax applies to sales or uses of motor vehicle fuel or special fuel purchased by private, nonprofit transportation providers certified under chapter 81.66 RCW, who are entitled to fuel tax refund or exemption under chapter 82.36 or 82.38 RCW.

(e) Persons selling special fuels on which the tax of chapter 82.38 RCW is not collected, except special fuel sold for use outside this state by persons engaged in interstate commerce, or fuel sold to exempt certified transportation providers, are required to collect the retail sales tax on retail sales thereof.

It is the intent of the law that all vehicle fuels, except special fuel purchased in this state for use outside this state by interstate commerce carriers, or fuels sold to exempt certified transportation providers will be subject to either the vehicle fuel taxes (chapter 82.36 or 82.38 RCW) or else the sales or use taxes of the Revenue Act (chapter 82.08 or 82.12 RCW). The fuel taxes apply to sales of fuel for on-highway consumption. The sales or use tax applies to fuel sold for consumption off the highways (e.g., boat fuel, or fuel for farm machinery, construction equipment, etc.).

(f) When persons purchase motor vehicle fuel or special fuel upon which either the fuel taxes of chapter 82.36 or 82.38 RCW have been paid, but the fuel is consumed off the

highways, such persons are entitled to a refund of these taxes under the procedures of chapter 82.36 or 82.38 RCW. However, persons receiving refund of vehicle fuel taxes because of their off-highway consumption of the fuel in this state are subject to payment of the use tax of chapter 82.12 RCW on the value of the fuel. The director of the department of licensing administers the fuel tax refund provisions and will deduct from the amount of any such refunds the amount of use tax due.

(2) **Nonpollutant fuel.** RCW 82.38.075 provides for payment of an annual fee by users of nonpollutant fuel (natural gas and liquified petroleum gas, commonly called propane) in lieu of motor vehicle fuel tax which would otherwise be due. This fee is paid at the time of original and annual renewals of vehicle license registrations. Sales or use tax applies to sales of nonpollutant fuel and any other motor fuel only if the taxes of chapter 82.36 or 82.38 RCW are not paid. The "in lieu of" tax is merely an alternative method of paying tax due under chapter 82.38 RCW. Thus, when it is paid by a user, the user has no liability for sales or use tax on purchases of nonpollutant fuel for use in the motor vehicle.

(a) Fuel dealers should not collect sales or use tax on any nonpollutant fuel sold to Washington licensed vehicle owners for "on-highway" use when the vehicle displays a currently valid decal or other identifying device issued by the department of licensing.

(b) Nonpollutant fuels purchased for "off-highway" use, however, are not subject to the taxes of chapter 82.36 or 82.38 RCW and therefore the sales tax applies to dealer sales of fuel for "off-highway" use. If the nonpollutant fuel is pumped into the vehicle fuel tank, then the special fuel tax applies. However, this tax should have already been paid by Washington state licensed vehicle owners directly under the "in lieu of" provisions of RCW 82.38.075.

(c) The department recognizes that certain licensed special fuel users may find it more practical to accept deliveries of nonpollutant fuels into a bulk storage facility rather than into the fuel tanks of motor vehicles. Persons selling nonpollutant fuels to such bulk purchasers may obtain from the purchaser an exemption certificate in order to document entitlement to the exemption. The certificate will certify the amount of fuel which will be consumed by the buyer in propelling motor vehicles upon the highways of this state. This procedure is limited, however, to persons duly registered with the department. The registration number given on the certificate ordinarily will be sufficient evidence that the purchaser is properly registered. The certificate shall be in substantially the following form:

Certificate for Purchase of Nonpollutant Special Fuels

Seller:
Buyer:
Buyer's DOR reporting No.:
Buyer's Special Fuel User's License No.:

The undersigned hereby certifies that on this date he purchased (gallons/cubic feet) of nonpollutant fuel from the above named seller, and that delivery of the products so purchased was not made into the fuel tanks of a motor vehicle.

The undersigned further certifies that of the purchase herein described:

1. (gallons/cubic feet) will be used to propel motor vehicles upon the highways of the state of Washington and that the "in lieu of" special fuel taxes of chapter 82.38 RCW have been paid.

2. (gallons/cubic feet) will be used in some other manner and that the retail sales tax is applicable to the purchaser of this quantity.

Date _____

 Name

 Office or Title

(d) Where it is not possible for a special fuel user licensee to determine at the time of purchase the exact proportion of the products purchased which will be consumed in propelling motor vehicles upon the highways of this state, the amount of such off-highway use special fuel may be estimated. In the event such an estimate is used, the purchaser must make an adjustment on a following excise tax return and pay use tax upon any portion of the fuel used for off-highway purposes upon which the retail sales tax was not paid.

(e) Certificates should be retained by the seller, as a part of his permanent records, and will be acceptable evidence of sales tax exemption upon sales of nonpollutant special fuel delivered in the manner described. When nonpollutant fuel is delivered by the seller into the bulk storage facilities of a special fuel user licensee or is otherwise sold to such buyers under conditions whereby it is not delivered into the fuel tanks of motor vehicles, it will be presumed that the entire amount of the products so sold will be subject to the retail sales tax unless the seller has obtained the certificate.

(f) Owners of out-of-state licensed vehicles who purchase propane and other nonpollutant fuel normally will not have paid the motor vehicle fuel tax or the special fuel tax. Thus, where the taxes of chapters 82.36 and 82.38 RCW have not been paid they owe sales tax on their purchases of this fuel for both on-highway or off-highway use.

(g) Accordingly, the following guidelines will prevail:

(i) All sales of nonpollutant fuel not placed in vehicle fuel tanks by the seller are subject to sales tax which the seller must collect and remit unless a certificate as described above is obtained from the purchaser.

(ii) All sales of motor vehicle fuel, special fuel, or nonpollutant fuel of any kind for "on-highway" use are subject to the fuel taxes of chapter 82.36 or 82.38 RCW.

(iii) The tax due on nonpollutant fuel for "on-highway" use (including propane) under chapter 82.38 RCW will already have been paid by Washington licensed vehicle owners so the seller need not collect additional state tax of any kind.

(iv) Non-Washington licensed vehicle owners who have not paid tax under either chapter 82.36 or 82.38 RCW must pay sales tax on all purchases of nonpollutant fuel (including propane) whether for on-highway or off-highway use.)

Introduction. This section explains the retail sales and use taxes for motor vehicle fuel, special fuels, and fuels commonly referred to as natural gas and propane. This section

also provides documentation requirements to buyers and sellers of fuel for both on and off highway use.

(2) What are motor vehicle fuel and special fuels, and how are they taxed? "Motor vehicle fuel" as used in this section means gasoline or any other inflammable gas or liquid the chief use of which is as fuel for the propulsion of motor vehicles. (See RCW 82.36.010.) "Special fuels" as used in this section mean all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles, except that it does not include motor vehicle fuel as defined above. (See RCW 82.38.020.) Diesel fuel is an example of a special fuel.

The retail sales tax or use tax applies to sales and uses of motor vehicle fuel or special fuel, unless an exemption applies, when the taxes of chapter 82.36 or 82.38 RCW have not been paid or have been refunded. Generally the fuel taxes apply to sales of fuel for highway consumption and the sales or use tax applies to fuel sold for consumption off the highways (e.g., boat fuel, or fuel for farm machinery or construction equipment, etc.).

(3) What motor vehicle fuel and special fuels exemptions are available?

(a) County owned ferries. RCW 82.08.0255 and 82.12.0256 provide exemptions from the retail sales tax and use tax for motor vehicle fuel or special fuels, purchased on or after April 27, 2007. This exemption applies only to county owned ferries or county ferry districts created under chapter 36.54 RCW for use in passenger only ferries.

(b) Nonprofit transportation providers. RCW 82.08.-0255 and 82.12.0256 provide retail sales tax and use tax exemptions for sales of or uses of motor vehicle fuel or special fuels purchased by private, nonprofit transportation providers certified under chapter 81.66 RCW, who are entitled to fuel tax refund or exemption under chapter 82.36 or 82.38 RCW.

(c) Public transportation. RCW 82.08.0255 and 82.12.0265 provide exemptions for the retail sales tax and use tax when motor vehicle fuel or special fuels are purchased or used for the purpose of public transportation, and the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080(3).

(d) Public transportation benefit areas (PTBA). For purchases on or after April 27, 2007, RCW 82.08.0255 and 82.12.0256 provide retail sales tax and use tax exemptions for motor vehicle fuel and special fuels purchased by a PTBA created under chapter 36.57A RCW.

(e) Special fuels used in interstate commerce. The retail sales tax does not apply to sales of special fuels delivered in this state which are later transported and used outside this state by persons engaged in interstate commerce. (RCW 82.08.0255(2).) This exemption also applies to persons hauling their own goods in interstate commerce.

Exemption certificate. Persons selling special fuels to interstate carriers must obtain a completed exemption certificate "Certificate of Special Fuel Sales to Interstate Carriers" from the purchaser in order to document the entitlement to the exemption. The exemption certificate can be obtained from the department of revenue (department) on the internet at <http://www.dor.wa.gov/>, or by contacting the department's taxpayer services division at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
1-800-647-7706

The provisions of the exemption certificate may be limited to a single sales transaction, or may apply to all sales transactions as long as the seller has a recurring business relationship with the buyer. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months.

(f) Farm fuel users of diesel or aircraft fuels. For the purpose of this section, a "farm fuel user" means either a farmer or a person who provides horticultural services for farmers, such as soil preparation, crop cultivation, or crop harvesting services.

(i) Effective March 6, 2006, RCW 82.08.865 and 82.12.865 exempt farm fuel users from retail sales and use taxes for diesel and aircraft fuel purchased for nonhighway use.

(ii) Substitute Senate Bill (SSB) 5009, chapter 443, Laws of 2007, added biodiesel fuel as exempt from retail sales and use taxes when purchased or used by farm fuel users for non-highway use. This exemption, effective May 11, 2007, also applies to a fuel blend if all the component fuels of the blend would otherwise be exempt under RCW 82.08.865 and 82.12.865 if the component fuels were sold as separate products. The exemptions do not apply to fuel used for residential heating purposes.

(iii) When purchasing an eligible fuel, a farm fuel user must provide the seller with a completed "Farmers' Retail Sales Tax Exemption Certificate," which can be obtained from the department on the internet at <http://www.dor.wa.gov/>, or by contacting the department's taxpayer services division at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
1-800-647-7706

Sellers of eligible fuels to farm fuel users must document the tax exempt sales of red-dyed diesel, biodiesel, or aircraft fuel by accepting the certificate mentioned above and retaining it in their records for five years.

(4) Nonpollutant fuels. Nonpollutant fuels are described as natural gas and liquefied petroleum gas, commonly called propane. Nonpollutant fuels can be purchased for either highway or "off-highway" use. Sales of nonpollutant fuels for highway use are normally subject to taxes under either chapter 82.36 or 82.38 RCW. Nonpollutant fuels purchased for "off-highway" use are subject to retail sales tax or use tax

(a) Highway fuel used by Washington licensed vehicle owners. RCW 82.38.075 provides for payment of an annual fee by users of nonpollutant fuel in lieu of the motor vehicle fuel tax. This fee is paid at the time of original and annual renewals of vehicle license registrations. A decal or other identifying device must be displayed as prescribed by the

department of licensing as authority to purchase these non-pollutant fuels.

Fuel dealers should not collect sales or use tax on any nonpollutant fuel sold to Washington licensed vehicle owners for highway use when the vehicle displays a valid decal or other identifying device issued by the department of licensing.

(b) "Off-highway" fuel use. Nonpollutant fuels purchased for "off-highway" use are not subject to the taxes of chapter 82.36 or 82.38 RCW, and therefore the retail sales tax applies.

(c) Bulk purchases of fuel. The department recognizes that certain licensed special fuel users may find it more practical to accept deliveries of nonpollutant fuels into a bulk storage facility rather than into the fuel tanks of motor vehicles. Persons selling nonpollutant fuels to such bulk purchasers must obtain from the purchaser an exemption certificate in order to document entitlement to the exemption. The "Certificate for Purchase of Nonpollutant Special Fuels" must certify the amount of fuel which will be consumed by the purchaser in using motor vehicles upon the highways of this state. This procedure is limited, however, to persons duly registered with the department. The registration number given on the certificate ordinarily will be sufficient evidence that the purchaser is properly registered. The "Certificate for Purchase of Nonpollutant Special Fuels" can be obtained from the department on the internet at <http://www.dor.wa.gov/>, or by contacting the department's taxpayer services division at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
1-800-647-7706

(i) When fuel is purchased for both on and off highway use, and it is not possible for a special fuel user licensee to determine the exact proportion purchased for highway use in this state, the amount of the off-highway use special fuel may be estimated. In the event such an estimate is used and retail sales tax is not paid, the purchaser must make an adjustment on the next excise tax return and remit use tax on the portion of the fuel used for off-highway purposes.

(ii) Nonpollutant fuel not placed in vehicle fuel tanks by the seller are subject to retail sales tax, unless a "Certificate for Purchase of Nonpollutant Special Fuels" is obtained from the purchaser. The seller must collect and remit the retail sales tax to the department, or retain the certificate as part of his permanent records. When nonpollutant fuel is delivered by the seller into the bulk storage facilities of a special fuel user licensee or is otherwise sold to such buyers under conditions where it is not delivered into the fuel tanks of motor vehicles, it will be presumed that the entire amount of fuel sold is subject to retail sales tax unless the seller has obtained a completed certificate.

(d) Vehicles licensed outside the state of Washington. Owners of out-of-state licensed vehicles are exempt from the requirement to purchase an annual license as provided in RCW 82.38.075. In lieu of taxes of chapters 82.36 and 82.38

RCW, retail sales tax is due on their purchases of nonpollutant fuel, for either highway or off-highway use.

(5) Refunds are available for fuel taxes paid when fuel is consumed off the highway. If a person purchases motor vehicle fuel or special fuels and pays the fuel taxes of chapter 82.36 or 82.38 RCW, and then consumes the fuel off the highway, the person is entitled to a refund of these taxes under the procedures of chapter 82.36 or 82.38 RCW. However, a person receiving a refund of vehicle fuel taxes because of the off-highway consumption of the fuel in this state is subject to use tax on the value of the fuel. The department of licensing administers the fuel tax refund provisions and will deduct from the amount of a refund the amount of use tax due.

WSR 08-10-077

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed May 6, 2008, 11:17 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-270 Telephone program excise tax rates, this rule provides the rates for the taxes imposed on switched access lines pursuant to RCW 43.20A.725 and 80.36.430.

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 47453, Olympia, WA 98504-7453, fax (360) 586-0127, e-mail GayleC@dor.wa.gov, AND RECEIVED BY July 7, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 458-20-270 is being amended by the expedited process to allow for the new rates to become effective July 1, 2008. The rate for telecommunications relay services (TRS) will remain at twelve cents for the fiscal year July 1, 2008, through June 30, 2009. The rate will change for the Washington telephone assistance program (WTAP) for the coming fiscal year from fourteen cents to thirteen cents per switched access line.

Copies of draft rules are available for viewing and printing on our web site at <http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx>.

Reasons Supporting Proposal: Under RCW 43.20A.725 and 80.36.430, the department is required to annually determine the tax rates imposed on switched access lines to fund the telephone relay service program and the Washington telephone assistance program. Each tax rate is determined by dividing the respective program budgets by the number of switched access lines reported to the department in the prior calendar year. The department retains no discretion in the

determination of these tax rates, the amount of which is explicitly dictated by the statutory formulas and inputs provided to the department.

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

Statute Being Implemented: RCW 43.20A.725 and 80.36.430.

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 #544, Olympia, WA, (360) 570-6126; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

May 6, 2008

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-17-110, filed 8/17/07, effective 9/17/07)

WAC 458-20-270 Telephone program excise tax rates. RCW 82.72.020 requires the department of revenue (department) to collect certain telephone program excise taxes. Those taxes include the tax on switched access lines imposed by RCW 43.20A.725 (telephone relay service—TRS) and 80.36.430 (Washington telephone assistance program—WTAP). Pursuant to those statutes, the department must annually determine the rate of each respective tax according to the statutory formulas.

The monthly telephone program excise tax rates per switched access line are as follows:

Period	TRS Rate	WTAP Rate
7/1/2005 - 6/30/2006	10 cents	14 cents
7/1/2006 - 6/30/2007	9 cents	14 cents
7/1/2007 - 6/30/2008	12 cents	14 cents
<u>7/1/2008 - 6/30/2009</u>	<u>12 cents</u>	<u>13 cents</u>

WSR 08-10-078

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed May 6, 2008, 11:36 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-168 Hospitals, nursing homes, boarding homes, adult family homes and similar health care facilities, this rule provides B&O tax reporting instructions to persons operating hospitals, medical care facilities, nursing homes, and adult family homes. The rule explains when such persons are responsible for collecting retail sales tax. It also identifies certain retail sales and use tax exemptions that may apply to persons operating these facilities.

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 Pat Moses, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, fax (360) 586-0127, e-mail PatM@dor.wa.gov, AND RECEIVED BY July 7, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend Rule 168 to recognize the following legislative changes:

1. HB 2544, chapter 137, Laws of 2008, creates an exemption from state and local sales taxes and lodging taxes for temporary medical housing provided by a health or social welfare organization;

2. SHB 1891, chapter 447, Laws of 2007 (RCW 82.04.620), provides a deduction from the service and other activities classification of the B&O tax for amounts received by physicians or clinics for drugs for infusion or injection by licensed physicians;

3. ESHB 1672, section 5, chapter 165, Laws of 2006 (RCW 82.04.4485), created the hospital safe patient handling B&O tax credit equal to one hundred percent of the cost of mechanical lifting devices or other specified equipment; and

4. SB 6368, section 1, chapter 241, Laws of 2006, provided a repeal date for the quality maintenance fee imposed on nursing homes.

Copies of draft rules are available for viewing and printing on our web site at <http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx>

Reasons Supporting Proposal: To incorporate recent legislative changes.

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

Statute Being Implemented: Chapter 137, Laws of 2008, RCW 82.04.620, 82.04.4485, 82.71.020 repealed.

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

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

Name of Agency Personnel Responsible for Drafting: Pat Moses, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6116; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

May 6, 2008

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-14-090, filed 6/30/05, effective 7/31/05)

WAC 458-20-168 Hospitals, nursing homes, boarding homes, adult family homes and similar health care facilities. (1) **Introduction.** This ~~((rule))~~ section explains the application of business and occupation (B&O), retail sales, and use taxes to persons operating hospitals as defined in RCW 70.41.020, nursing homes as defined in RCW 18.51-010, boarding homes as defined in RCW 18.20.020, adult family homes as defined in RCW 70.128.010, and similar health care facilities.

The department of revenue (department) has adopted other rules dealing with the taxability of various activities relating to the provision of health care. Readers may want to refer to the following rules for additional information:

(a) WAC 458-20-150 Optometrists, ophthalmologists, and opticians;

(b) WAC 458-20-151 Dentists and other health care providers, dental laboratories, and dental technicians;

(c) WAC 458-20-18801 Prescription drugs, prosthetic and orthotic devices, ostomic items, and medically prescribed oxygen; and

(d) WAC 458-20-233 Tax liability of medical and hospital service bureaus and associations and similar health care organizations.

(2) **Personal and professional services of hospitals, nursing homes, boarding homes, and similar health care facilities.** This subsection provides information about the application of B&O tax to the personal and professional services of hospitals, nursing homes, boarding homes, and similar health care facilities. For information regarding B&O tax deductions and exemptions for persons operating health care facilities, readers should refer to subsection (3) of this ~~((rule))~~ section.

(a) **Public or nonprofit hospitals.** The gross income of public or nonprofit hospitals derived from providing personal or professional services to inpatients, is subject to B&O tax under the public or nonprofit hospitals classification. RCW 82.04.260. For the purpose of this ~~((rule))~~ section, "public or nonprofit hospitals" are hospitals, as defined in RCW 70.41.020, operated as nonprofit corporations, operated by political subdivisions of the state (e.g., a hospital district operated by a county government), or operated by but not owned by the state.

Gross income of public or nonprofit hospitals derived from providing personal or professional services for persons other than inpatients is generally subject to B&O tax under the service and other activities classification. RCW 82.04-290. Thus, for example, amounts received for services provided to outpatients, income received for providing nonmedical services, interest received on patient accounts receivable, and amounts received for providing transcribing services to physicians are subject to service and other activities B&O tax.

(i) **Clinics and departments operated by public or nonprofit hospitals.** Gross income derived from medical clinics and departments providing services to both inpatients and outpatients and operated by a public or nonprofit hospital is subject to B&O tax under the public or nonprofit hospitals classification where the clinic or department is an integral,

interrelated, and essential part of the hospital. Otherwise, the gross income derived from medical clinics and departments providing services to both inpatients and outpatients and operated by a public or nonprofit hospital is subject to B&O tax under the service and other activities classification.

Relevant factors for determining whether a medical clinic or department operated by a public or nonprofit hospital is an integral, interrelated, and essential part of the hospital include whether the clinic or department is located at the hospital facility and whether the clinic or department furnishes the type of services normally provided by hospitals, such as twenty-four hour intake and emergency services.

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

(A) Acme Hospital is a nonprofit hospital. Acme has a medical clinic that is separate but physically located within the hospital. However, the clinic is open only during regular business hours and provides no domiciliary care or overnight facilities to its patients. The clinic is staffed, equipped, administered, and provides the type of medical services that one would expect to receive in the average physician's office. Acme's medical clinic is not an integral, interrelated, and essential part of Acme Hospital. Gross receipts by the medical clinic are subject to service and other activities B&O tax.

(B) Acme Hospital is a nonprofit hospital. Acme has a cancer treatment facility that is physically located within the hospital. The cancer treatment facility provides the type of services normally provided by hospitals to cancer patients. Acme's cancer treatment facility is an integral, interrelated, and essential part of Acme Hospital. Gross receipts by the cancer treatment facility are subject to public or nonprofit hospitals B&O tax.

(ii) **Educational programs and services.** Amounts received by public or nonprofit hospitals for providing educational programs and services to the general public are subject to B&O tax under the public or nonprofit hospitals classification if they are an integral, interrelated, and essential part of the hospital. Otherwise, such amounts are subject to B&O tax under the service and other activities classification. Educational services are considered an integral, interrelated, and essential part of the hospital only if they are unique and incidental to the provision of hospitalization services (i.e., services that will be, have been, or are currently being provided to the participants). Only those educational programs and services offered by a hospital that would be very difficult or impossible to duplicate by a person other than a hospital because of the specialized body of knowledge, facilities, and equipment required are unique and incidental to the provision of hospitalization services. Amounts derived from educational programs and services are subject to service and other activities B&O tax when the educational programs or services could be provided by any physician, clinic, or trained lay person.

(b) **Other hospitals, nursing homes, and similar health care facilities.** The gross income derived from personal and professional services of hospitals, clinics, nursing homes, and similar health care facilities, other than public or

nonprofit hospitals described above in (a) of this subsection (~~((2)(a))~~) and hospitals owned by the state, is subject to service and other activities B&O tax. The gross income received by the state of Washington from operating a hospital or other health care facility, whether or not the hospital or other facility is owned by the state, is not subject to B&O tax. Nursing homes should refer to subsection (6) of this (~~(rule)~~) section for information regarding the quality maintenance fee imposed under chapter 82.71 RCW.

The following definitions apply for purposes of this (~~(rule)~~) section:

(i) "Hospital" has the same meaning as in RCW 70.41.020; and

(ii) "Nursing home" has the same meaning as in RCW 18.51.010.

(c) **Boarding homes.** Effective July 1, 2004, persons operating boarding homes licensed under chapter 18.20 RCW are entitled to a preferential B&O tax rate. See RCW 82.04.2908. Persons operating licensed boarding homes should report their gross income derived from providing room and domiciliary care to residents under the licensed boarding homes B&O tax classification. For the purpose of this (~~(rule)~~) section, "boarding home" and "domiciliary care" have the same meaning as in RCW 18.20.020. Refer to subsection (3)(h) of the (~~(rule)~~) section for B&O tax deductions and exemptions available to boarding homes.

(d) **Nonprofit corporations and associations performing research and development.** There is a separate B&O tax rate that applies to nonprofit corporations and nonprofit associations for income received in performing research and development within this state, including medical research. See RCW 82.04.260.

(e) **Can a nursing home or boarding home claim a B&O tax exemption for the rental of real estate?** The primary purpose of a nursing home is to provide medical care to its residents. The primary purpose of boarding homes is to assume general responsibility for the safety and well-being of its residents and to provide other services to residents such as housekeeping, meals, laundry, and activities. Boarding homes may also provide residents with assistance with activities of daily living, health support services, and intermittent nursing services. Because the primary purpose of nursing homes and boarding homes is to provide services and not to lease or rent real property, no part of the gross income of a nursing home or boarding home may be exempted from B&O tax as the rental of real estate.

(f) **Adjustments to revenues.** Many hospitals will provide medical care without charge or where some portion of the charge will be canceled. In other cases, medical care is billed to patients at "standard" rates but is later adjusted to reduce the charges to the rates established by contract with Medicare, Medicaid, or private insurers. In these situations the hospital must initially include the total charges as billed to the patient as gross income unless the hospital's records clearly indicate the amount of income to which it will be entitled under its contracts with insurance carriers. Where tax returns are initially filed based on gross charges, an adjustment may be taken on future tax returns after the hospital has adjusted its records to reflect the actual amounts collected. In no event may the hospital reduce the amount of its current

gross income by amounts that were not previously reported on its excise tax return. If the tax rate changes from the time the B&O tax was first paid on the gross charges and the time of the adjustment, the hospital must file amended tax returns to report the B&O tax on the transaction as finally completed at the rate in effect when the service was performed.

(g) **What are the tax consequences when a hospital contracts with an independent contractor to provide medical services at the hospital?** When a hospital contracts with an independent contractor (service provider) to provide medical services such as managing and staffing the hospital's emergency department, the hospital may not deduct the amount paid to the service provider from its gross income. If, however, the patients are alone liable for paying the service provider, and the hospital has no personal liability, either primarily or secondarily, for paying the service provider, other than as agent for the patients, then the hospital may deduct from its gross income amounts paid to the service provider.

In addition, the service provider is subject to service and other activities B&O tax on the amount received from the hospital for providing these services for the hospital. If the service provider subcontracts with third parties, such as physicians or nurses, to help provide medical services as independent contractors, the service provider may not deduct from its gross income amounts paid to the subcontractors where the service provider is personally liable, either primarily or secondarily, for paying the subcontractors. If, however, the hospital is alone liable for paying the subcontractors, and the service provider has no personal liability, either primarily or secondarily, other than as agent for the hospital, then the service provider may deduct from its gross income amounts paid to the subcontractors. For additional information regarding deductible advances and reimbursements, refer to WAC 458-20-111 (Advances and reimbursements).

(3) **B&O tax deductions, credits, and exemptions.** This subsection provides information about several B&O tax deductions, credits, and exemptions available to persons operating medical or other health care facilities.

(a) **Organ procurement organizations.** Amounts received by a qualified organ procurement organization under 42 U.S.C. Sec. 273(b) in effect as of January 1, 2001, to the extent that the amounts are exempt from federal income tax, are exempt from B&O tax. RCW 82.04.326. This exemption is effective March 22, 2002.

(b) **Contributions, donations, and endowment funds.** A B&O tax deduction is provided by RCW 82.04.4282 for amounts received as contributions, donations, and endowment funds, including grants, which are not in exchange for goods, services, or business benefits. For example, B&O tax deduction is allowed for donations received by a public hospital, as long as the donors do not receive any goods, services, or any business benefits in return. On the other hand, a public hospital is not allowed to take a B&O tax deduction on amounts received from a state university for work-study programs or training seminars for doctors, because the university receives business benefits in return, as students receive education and training while (~~enrolling~~) enrolled in the university's degree programs.

The deductible amounts should be included in the gross income reported on the excise tax return and then deducted

on the return to determine the amount of taxable income. Deductions taken must be identified on the appropriate deduction detail page of the excise tax return.

(c) **Adult family homes.** The gross income derived from personal and professional services of adult family homes licensed by the department of social and health services (DSHS), or which are specifically exempt from licensing under the rules of DSHS, is exempt from B&O tax under RCW 82.04.327. The exemption under RCW 82.04.327 does not apply to persons who provide home care services to clients in the clients' own residences.

For the purpose of this (~~rule~~) section, "adult family home" has the same meaning as in RCW 70.128.010.

(d) **Nonprofit kidney dialysis facilities, hospice agencies, and certain nursing homes and homes for unwed mothers.** B&O tax does not apply to amounts received as compensation for services rendered to patients or from sales of drugs for human use pursuant to a prescription furnished as an integral part of services rendered to patients by kidney dialysis facilities operated as a nonprofit corporation, nonprofit hospice agencies licensed under chapter 70.127 RCW, and nursing homes and homes for unwed mothers operated as religious or charitable organizations. RCW 82.04.4289. This exemption applies only if no part of the net earnings received by such an institution inures, directly or indirectly, to any person other than the institution entitled to this exemption. This exemption is available to nonprofit hospitals for income from the operation of kidney dialysis facilities if the hospital accurately identifies and accounts for the income from this activity.

Examples of nursing homes and homes for unwed mothers operated as religious or charitable organizations include nursing homes operated by church organizations or by nonprofit corporations designed to assist alcoholics in recovery and rehabilitation. Nursing homes and homes for unwed mothers operated by governmental entities, including public hospital districts, do not qualify for the B&O tax exemption provided in RCW 82.04.4289.

(e) **Government payments made to health or social welfare organizations.** A B&O tax deduction is provided by RCW 82.04.4297 to a health or social welfare organization, as defined in RCW 82.04.431, for amounts received directly from the United States, any instrumentality of the United States, the state of Washington, or any municipal corporation or political subdivision of the state of Washington as compensation for health or social welfare services. A deduction is not allowed, however, for amounts that are received under an employee benefit plan. The deductible amounts should be included in the gross income reported on the excise tax return and then deducted on the tax return to determine the amount of taxable income. Deductions taken must be identified on the appropriate deduction detail page of the excise tax return. Readers should refer to WAC 458-20-169 (Nonprofit organizations) for additional information regarding this deduction.

For purposes of the deduction provided by RCW 82.04.4297, "employee benefit plan" includes any plan, trust, commingled employee benefit trust, or custodial arrangement that is subject to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., or that is described in sections 125, 401, 403, 408, 457, and 501

(c)(9) and (17) through (23) of the Internal Revenue Code of 1986, as amended, or a similar plan maintained by a state or local government, or a plan, trust, or custodial arrangement established to self-insure benefits required by federal, state, or local law.

(f) **Amounts received under a health service program subsidized by federal or state government.** A public hospital that is owned by a municipal corporation or political subdivision, or a nonprofit hospital, or a nonprofit community health center, or a network of nonprofit community health centers, that qualifies as a health and social welfare organization as defined in RCW 82.04.431, may deduct from the measure of B&O tax amounts received as compensation for health care services covered under the federal Medicare program authorized under Title XVIII of the federal Social Security Act; medical assistance, children's health, or other program under chapter 74.09 RCW; or for the state of Washington basic health plan under chapter 70.47 RCW. RCW 82.04.4311. This deduction applies to amounts received directly or through a third party from the qualified programs or plans. However, this deduction does not apply to amounts received from patient copayments or patient deductibles. The deductible amounts should be included in the gross income reported on the excise tax return and then deducted on the return to determine the amount of taxable income. Deductions taken must be identified on the appropriate deduction detail page of the excise tax return.

For purposes of the deduction provided by RCW 82.04.4311, "community health center" means a federally qualified health center as defined in 42 U.S.C. Sec. 1396d as existed on August 1, 2005.

(i) **Effective date of deduction.** The deduction for a public hospital owned by a municipal corporation or political subdivision and for a nonprofit hospital is effective April 2, 2002. Taxpayers who have paid B&O taxes between January 1, 1998, and April 2, 2002, on amounts that would qualify for this deduction are entitled to a refund. In addition, tax liability for accrued but unpaid taxes that would be deductible under this subsection (3)(f) are waived. For information regarding refunds, refer to WAC 458-20-229 (Refunds).

The deduction for a nonprofit community health center or a network of nonprofit community health centers is effective August 1, 2005.

(ii) **Example.** Acme Hospital is a nonprofit hospital that qualifies as a health and social welfare organization as defined in RCW 82.04.431. Acme receives \$1,000 for providing health care services to Jane, who qualifies for the federal Medicare program authorized under Title XVIII of the federal Social Security Act. Jane is covered in a health care plan that is a combination of Medicare, which is B&O tax deductible by Acme, and a Medicare plus plan, which is paid for by Jane and is not B&O tax deductible by Acme. Jane pays \$20 to Acme as patient copayments. Medicare pays \$600 to Acme for the health care services, and the Medicare plus plan pays \$380. Acme may only deduct the \$600 received from Medicare.

(g) **Blood and tissue banks.** Amounts received by a qualifying blood bank, a qualifying tissue bank, or a qualifying blood and tissue bank are exempt from B&O tax to the extent the amounts are exempt from federal income tax.

RCW 82.04.324. For the purposes of this exemption, the following definitions apply:

(i) **Qualifying blood bank.** "Qualifying blood bank" means a blood bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, is registered under 21 C.F.R., part 607 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood. "Qualifying blood bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(ii) **Qualifying tissue bank.** "Qualifying tissue bank" means a tissue bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, is registered under 21 C.F.R., part 1271 as existing on June 10, 2004, and whose primary business purpose is the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, heart valve tissue, or human eye tissue. "Qualifying tissue bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(iii) **Qualifying blood and tissue bank.** "Qualifying blood and tissue bank" is a bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, is registered under 21 C.F.R., Part 607 and Part 1271 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood, and the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, and heart valve tissue. "Qualifying blood and tissue bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(h) **Boarding homes.** Effective July 1, 2004, licensed boarding home operators are entitled to a B&O tax deduction for amounts received as compensation for providing adult residential care, enhanced adult residential care, or assisted living services under contract with the department of social and health services authorized by chapter 74.39A RCW to residents who are Medicaid recipients. RCW 82.04.4337. For the purpose of this ~~(rule)~~ section, "adult residential care," "enhanced adult residential care," and "assisted living services" have the same meaning as in RCW 74.39A.009.

Effective July 1, 2005, B&O tax does not apply to the amounts received by a nonprofit boarding home licensed under chapter 18.20 RCW for providing room and domiciliary care to residents of the boarding home. Chapter 514, Laws of 2005. For purposes of this ~~(rule)~~ section, "nonprofit boarding home" means a boarding home that is operated as a religious or charitable organization, is exempt from federal income tax under 26 U.S.C. Sec. 501 (c)(3), is incorporated under chapter 24.03 RCW, is operated as part of a nonprofit hospital, or is operated as part of a public hospital district.

(i) **Comprehensive cancer centers.** Effective July 1, 2006, B&O tax does not apply to the amounts received by a comprehensive cancer center to the extent the amounts are exempt from federal income tax. Chapter 514, Laws of 2005. For purposes of this ~~(rule)~~ section, "comprehensive cancer center" means a cancer center that has written confirmation

that it is recognized by the National Cancer Institute as a comprehensive cancer center and that qualifies as an exempt organization under 26 U.S.C. Sec. 501 (c)(3) as existing on July 1, 2006.

(j) Hospital safe patient handling credit.

(i) RCW 82.04.4485 allows a hospital to take a credit against the B&O tax for the cost of purchasing mechanical lifting devices and other equipment that are primarily used to minimize patient handling by health care providers. In order to qualify for credit, the purchases must be made as part of a safe patient handling program developed and implemented by the hospital in compliance with RCW 70.41.390. The credit is equal to one hundred percent of the cost of the mechanical lifting devices or other equipment.

(ii) No application is necessary for the credit; however, a hospital taking a credit under this section must maintain records, as required by the department, necessary to verify eligibility for the credit under this subsection. The hospital is subject to all of the requirements of chapter 82.32 RCW. A credit earned during one calendar year may be carried over to be credited against taxes incurred in a subsequent calendar year. No refunds shall be granted for credits under this subsection.

(iii) The maximum credit that may be earned under this section for each hospital is limited to one thousand dollars for each acute care available inpatient bed.

(iv) Credits are available on a first in-time basis. The department shall disallow any credits, or portion thereof, that would cause the total amount of credits claimed statewide under this subsection to exceed ten million dollars. If the ten million dollar limitation is reached, the department will notify hospitals that the annual statewide limit has been met. In addition, the department will provide written notice to any hospital that has claimed tax credits after the ten million dollar limitation in this subsection has been met. The notice will indicate the amount of tax due and shall provide that the tax be paid within thirty days from the date of such notice. The department will not assess penalties and interest as provided in chapter 82.32 RCW on the amount due in the initial notice if the amount due is paid by the due date specified in the notice, or any extension thereof.

(v) Credit may not be claimed under this section for the acquisition of mechanical lifting devices and other equipment if the acquisition occurred before June 7, 2006.

(vi) Credit may not be claimed under this section for any acquisition of mechanical lifting devices and other equipment that occurs after December 30, 2010.

(vii) The department shall issue an annual report on the amount of credits claimed by hospitals under this section, with the first report due on July 1, 2008.

(viii) For the purposes of this subsection, "hospital" has the meaning provided in RCW 70.41.020.

(k) Prescription drugs administered by the medical service provider. Effective October 1, 2007, RCW 82.04.-620 allows a deduction from the service and other activities classification of the B&O tax (RCW 82.04.290(2)) for amounts received by physicians or clinics for drugs for infusion or injection by licensed physicians or their agents for human use pursuant to a prescription. This deduction only applies to amounts that:

(i) Are separately stated on invoices or other billing statements;

(ii) Do not exceed the then current federal rate; and

(iii) Are covered or required under a health care service program subsidized by the federal or state government.

For purpose of this deduction only, amounts that "are covered or required under a health care service program subsidized by the federal or state government" include any required drug copayments made directly from the patient to the physician or clinic.

(A) "Federal rate" means the rate at or below which the federal government or its agents reimburse providers for prescription drugs administered to patients as provided for in the Medicare, Part B drugs average sales price information resource as published by the United States Department of Health and Human Services, or any index that succeeds it.

(B) The deduction is available on an "all or nothing" basis against the total of amounts received for a specific drug charge. If the total amount received by the physician or clinic for a specific drug exceeds the federal reimbursement rate, none of the total amount received qualifies for the deduction (including any required copayment received directly from the patient). In other words, a physician or clinic may not simply take an "automatic" deduction equal to the federal reimbursement rate for each drug.

(C) For physicians or clinics reporting their taxes on the accrual basis, the total amount charged for a drug must be included in the gross income at the time of billing if it is in excess of the federal rate. However, in some cases the gross income from charges may be adjusted, as indicated in subsection (2)(f) of this section. If such an adjustment to gross income is appropriate, the exemption discussed in this subsection may also be taken at the time of billing if the adjustment leaves the physician or clinic contractually liable to receive a total amount (including any copayment received from the patient) that is not in excess of the federal rate.

(l) Temporary medical housing provided by a health or social welfare organization. House Bill No. 2544, chapter 137, Laws of 2008, effective July 1, 2008, creates an exemption from state and local sales taxes and lodging taxes for temporary medical housing provided by a health or social welfare organization. The term "health or social welfare organization" is defined in RCW 82.04.431. "Temporary medical housing" means transient lodging and related services provided to a patient or the patient's immediate family, legal guardian, or other persons necessary to the patient's mental or physical well-being.

(i) The exemption applies to the following taxes:

(A) Retail sales tax levied under RCW 82.08.020;

(B) Lodging taxes levied under chapter 67.28 RCW;

(C) Convention and trade center tax levied under RCW 67.40.090 and 67.40.130;

(D) Public facilities tax levied under RCW 36.100.040; and

(E) Tourism promotion areas tax levied under RCW 35.101.050.

(ii) The exemptions in this subsection apply to charges made for "temporary medical housing" only:

(A) While the patient is receiving medical treatment at a hospital required to be licensed under RCW 70.41.090 or at

an outpatient clinic associated with such hospital, including any period of recuperation or observation immediately following such medical treatment; and

(B) By a person that does not furnish lodging or related services to the general public.

(4) **Sales of tangible personal property.** Retailing B&O tax applies to sales of tangible personal property sold and billed separately from the performance of personal or professional services by hospitals, nursing homes, boarding homes, adult family homes, and similar health care facilities. This includes charges for making copies of medical records. In addition, retail sales tax must be collected from the buyer and remitted to the department unless the sale is specifically exempt by law.

(a) **Tangible personal property used in providing medical services to patients.** Retailing B&O and retail sales taxes do not apply to charges to a patient for tangible personal property used in providing medical services to the patient, even if separately billed. Tangible personal property used in providing medical services is not considered to have been sold separately from the medical services simply because those items are separately invoiced. These charges, even if separately itemized, are for providing medical services and are subject to B&O tax under either the public or nonprofit hospital B&O tax classification or the service and other activities classification depending on the person making the charge. For example, charges for drugs physically administered by the seller are subject to B&O tax under either the public or nonprofit hospital classification or the service and other activities classification depending on the person making the charge. On the other hand, charges for drugs sold to patients or their caregivers, either for patient self-administration or administration by a caregiver other than the seller, are subject to retailing B&O tax and retail sales tax unless specifically exempt by law. Readers should refer to WAC 458-20-18801 for detailed information regarding retail sales tax exemptions that apply to sales of prescription drugs and other medical items.

(b) **Sales of meals.** Although the sale of meals is generally considered to be a retail sale, hospitals, nursing homes, boarding homes, and similar health care facilities that furnish meals to patients or residents as a part of the services provided to those patients or residents are not considered to be making retail sales of meals. Thus amounts received by hospitals, nursing homes, boarding homes, and similar health care facilities for furnishing meals to patients or residents as part of the services provided to those patients or residents are subject to B&O tax under the service and other activities, public or nonprofit hospital, or licensed boarding homes classifications, depending upon the person furnishing the meals.

Prepared meals sold to senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW are exempt from retail sales and use taxes. RCW 82.08.0293 and 82.12.0293. The exemptions apply to sales of prepared meals to not-for-profit organizations organized under chapter 24.03 or 24.12 RCW, that provide the meals to senior citizens, disabled persons, or low-income persons as a part of the patient services they render.

Hospitals, nursing homes, boarding homes, and similar health care facilities may have restaurants, cafeterias, or other dining facilities where meals are sold for cash or credit to doctors, nurses, other employees, and visitors. Some of these facilities may provide meals to their employees at no charge. Under these circumstances, all sales of meals to such persons are subject to retailing B&O and retail sales taxes, including the value of meals provided at no charge to employees. For additional information regarding the sale of meals, including meals furnished to employees, refer to WAC 458-20-119 (Sales of meals). Hospitals, nursing homes, boarding homes, and similar health care facilities that provide free meals to persons other than employees, such as visitors, should refer to WAC 458-20-124 (Restaurants, cocktail bars, taverns and similar businesses) for information about the taxability of meals given away free of charge.

(c) **Sales of medical supplies, chemicals, or materials to a comprehensive cancer center.** Effective July 1, 2006, sales of medical supplies, chemicals, or materials to a comprehensive cancer center are exempt from retail sales and use tax. Chapter 514, Laws of 2005. This exemption, however, does not apply to the sales of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

(i) **Medical supplies.** For purposes of this exemption, "medical supplies" means any item of tangible personal property, including any repair and replacement parts for such tangible personal property, used by a comprehensive cancer center for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. The term includes tangible personal property used to:

(A) Provide preparatory treatment of blood, bone, or tissue;

(B) Control, guide, measure, tune, verify, align, regulate, test, or physically support blood, bone, or tissue; and

(C) Protect the health and safety of employees or others present during research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(ii) **Chemicals.** For purposes of this exemption, "chemical" means any catalyst, solvent, water, acid, oil, or other additive that physically or chemically interacts with blood, bone, or tissue.

(iii) **Materials.** For purposes of this exemption, "materials" means any item of tangible personal property, including, but not limited to, bags, packs, collecting sets, filtering materials, testing reagents, antisera, and refrigerants used or consumed in performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(iv) **Research.** For purposes of this exemption, "research" means basic and applied research that has as its objective the design, development, refinement, testing, marketing, or commercialization of a product, service, or process.

(5) Equipment and supplies used by health care providers. Hospitals, nursing homes, adult family homes, boarding homes, and similar health care providers are required to pay retail sales tax on purchases of equipment and supplies unless

specifically exempt by law. Readers should refer to WAC 458-20-18801 for detailed information regarding exemptions that are available to these health care providers, as well as persons performing medical research and organ procurement organizations.

(a) **Purchases for resale.** Purchases of tangible personal property for resale without intervening use are not subject to retail sales tax. Persons purchasing tangible personal property for resale must furnish a properly completed resale certificate to the seller to document the wholesale nature of the sale. Resale certificates may be obtained from the department's web site at <http://dor.wa.gov>, or by calling the department's taxpayer information center at 1-800-647-7706. For additional information regarding resale certificates, refer to WAC 458-20-102 (Resale certificates).

(b) **Buyer's responsibility to remit deferred sales or use tax.** If the seller does not collect retail sales tax on a retail sale, the buyer must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. For detailed information regarding the use tax, refer to WAC 458-20-178 (Use tax).

(i) **How do I report deferred sales or use tax.** Persons registered with the department and required to file tax returns should report deferred sales or use tax on their excise tax return. The excise tax return does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's excise tax return. If a deferred sales tax or use tax liability is incurred by a person who is not required to obtain a tax registration endorsement from the department, the person must report the tax on a "Consumer Use Tax Return" and remit the appropriate tax to the department.

(ii) **Where can I obtain a Consumer Use Tax Return?** The Consumer Use Tax Return may be obtained from the department's web site at: <http://dor.wa.gov>, or by calling the department's telephone information center at 1-800-647-7706.

(6) **Quality maintenance fee imposed on nursing homes.** ~~((Beginning))~~ Effective July 1, 2007, the quality maintenance fee imposed on operators of nonexempt nursing facilities in Washington was repealed. Legislation passed in 2006 (section 1, chapter 241, Laws of 2006) repealed chapter 82.71 RCW, which imposed the fee. Originally effective on July 1, 2003, RCW 82.71.020 ((imposes)) imposed a quality maintenance fee on every nursing home in this state not exempt from the fee under RCW 74.46.091. ((Quality maintenance fee, however, is not imposed after July 1, 2011.)) The amount of the quality maintenance fee ~~((is))~~ was in addition to any other tax imposed upon nursing homes. Nursing homes ~~((must))~~ were required to report the number of patient days and remit the fee to the department on a monthly basis. Persons with questions about how the quality maintenance fee ~~((may affect))~~ affected individual nursing home operators or about the exemption provided by RCW 74.46.091 should contact the department of social and health services.

For purposes of this ~~((rule))~~ section, "patient day" means a calendar day of care provided to a nursing home resident, excluding a Medicare patient day. Patient days include the day of admission and exclude the day of discharge; except

that, when admission and discharge occur on the same day, one day of care shall be deemed to exist. "Medicare patient day" means a patient day for Medicare beneficiaries on a Medicare Part A stay and a patient day for persons who have opted for managed care coverage using their Medicare benefit.

WSR 08-10-079
EXPEDITED RULES
DEPARTMENT OF REVENUE
[Filed May 6, 2008, 11:48 a.m.]

Title of Rule and Other Identifying Information: WAC 458-07-035 Listing of property—Subdivisions and segregation of interests, this rule explains when the assessor must begin the listing and valuation of property in the county, provides information relating to the listing and valuation of subdivisions of real property, and explains when a person will be allowed to pay property taxes on a partial interest in a parcel of real property.

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 Marilou Rickert, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, fax (360) 586-0127, e-mail MARILOUR@DOR.WA.GOV, AND RECEIVED BY July 7, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 458-07-035 is being amended to recognize chapter 17, Laws of 2008 (HB 1149), which eliminated the requirement for an advance property tax deposit when recording a binding site plan. This amendment removes a reference to "binding site plan" from WAC 458-07-035 (3)(a).

Copies of draft rules are available for viewing and printing on our web site at <http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx>

Reasons Supporting Proposal: To recognize 2008 legislation.

Statutory Authority for Adoption: RCW 84.08.010 and 84.08.070.

Statute Being Implemented: RCW 84.40.042.

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: Marilou Rickert, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6115; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025

Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

May 6, 2008
Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-22-025, filed 10/27/03, effective 11/27/03)

WAC 458-07-035 Listing of property—Subdivisions and segregation of interests. (1) **Introduction.** This rule explains when the assessor must begin the listing and valuation of property in the county. It also provides information relating to the listing and valuation of subdivisions of real property. Finally, this rule explains when a person will be allowed to pay property taxes on their partial interest in a parcel of real property.

(2) **Listing of property.** The assessor must begin the listing and valuation of all property in the county, except new construction and mobile homes not previously assessed in this state, not later than December 1st of each year, and complete the listing and valuation not later than May 31st of the succeeding year. The listing and valuation of new construction and mobile homes not previously assessed in this state must be completed by August 31st of each year.

(3) **Valuation of subdivisions.** The assessor must list and value all subdivisions of real property at one hundred percent of true and fair value as follows:

(a) If an advance tax deposit was paid in accordance with RCW 58.08.040, each lot of a subdivision must be valued by October 30th of the year following the recording of the plat, replat, or altered plat(~~(, or binding site plan)~~). The value established will be the value of the lot as of January 1st of the year the original parcel was last revalued. Each lot of a subdivision that is valued on or before May 31st, or the closing of the assessment roll, whichever is later, must be placed on the roll for that assessment year. Each lot of a subdivision that is valued after May 31st, or the closing of the assessment roll, whichever is later, must be placed on the roll for the succeeding assessment year; and

(b) If no advance tax deposit was paid, each lot of a subdivision must be valued by the end of the calendar year following the recording of the plat, map, subdivision, or replat. The value established must be the value of the lot as of January 1st of the year the original parcel was last revalued. Each lot of a subdivision that is valued on or before May 31st, or the closing of the assessment roll, whichever is later, must be placed on the roll for that assessment year. Each lot of a subdivision that is valued after May 31st, or the closing of the assessment roll, whichever is later, must be placed on the roll for the succeeding assessment year.

(4) **Petition for payment of taxes on partial interest.** Any person desiring to pay taxes on only their interest in a parcel of real property, whether their interest is a divided interest or an undivided interest, may do so by applying to the assessor of the county where the property is located. The assessor must determine the value of the applicant's interest and certify that value to the county treasurer who will accept payment of taxes for the applicant's interest in the property. No segregation of the property can be made unless all current

year and delinquent taxes and assessments on the entire parcel have been paid in full, except for the following situations, in which all current year and delinquent taxes and assessments on the entire parcel need not first be paid in full:

- (a) When property is being acquired for public use; and
- (b) When a person or financial institution desires to pay the taxes and any penalties and interest on a mobile home upon which they have a lien by mortgage or otherwise.

WSR 08-10-080

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed May 6, 2008, 12:05 p.m.]

Title of Rule and Other Identifying Information: WAC 458-20-150 Optometrists, ophthalmologists, and opticians, explains the application of the business and occupation (B&O) tax, retail sales tax, and use tax to the business activities of optometrists and similar health care providers. It explains the tax liability resulting from providing professional services and the sale of prescription lenses, frames, and other optical merchandise.

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 Richard Cason, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, fax (360) 586-0127, e-mail RichardC@dor.wa.gov, AND RECEIVED BY July 7, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 458-20-150 to reflect provisions of SHB 1891 (chapter 447, Laws of 2007), which allows a deduction from the B&O tax for certain prescription drugs administered by medical service providers.

Copies of draft rules are available for viewing and printing on our web site at <http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx>

Reasons Supporting Proposal: To recognize a new deduction provided in chapter 447, Laws of 2007.

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

Statute Being Implemented: RCW 82.04.620.

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: Richard Cason, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-0331; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360)

570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

May 6, 2008

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-17-023, filed 8/9/04, effective 9/9/04)

WAC 458-20-150 Optometrists, ophthalmologists, and opticians. (1) **Introduction.** This ~~((rule))~~ section explains the application of Washington's business and occupation (B&O), retail sales, and use taxes to the business activities of optometrists, ophthalmologists, and opticians. It explains the tax liability resulting from the rendering of professional services and the sale of prescription lenses, frames, and other optical merchandise. It also discusses the retail sales tax exemption for the sale of prescription lenses and the B&O tax deduction for prescription drugs administered by a medical service provider. The department of revenue (department) has adopted other rules dealing with the taxability of various activities relating to the provision of health care. Readers may want to refer to the following rules for additional information.

(a) WAC 458-20-151 (Dentists and other health care providers, dental laboratories, and dental technicians);

(b) WAC 458-20-168 (Hospitals, ~~((medical care facilities, and))~~ nursing homes, boarding homes, adult family homes and similar health care facilities);

(c) WAC 458-20-18801 (Prescription drugs, prosthetic and orthotic devices, ostomic items, and medically prescribed oxygen); and

(d) WAC 458-20-233 (Tax liability of medical and hospital service bureaus and associations and similar health care organizations).

(2) **Taxability of professional services.** Optometrists and ophthalmologists are subject to the service and other activities B&O tax on their gross income from providing professional services. For the purposes of this ~~((rule))~~ section, "professional services" ~~((means))~~ include the examination of the human eye, the examination ~~((and))~~ identification, and treatment of any defects of the human vision system, and the analysis of the process of vision. It includes the use of any diagnostic instruments or devices for the measurement of the powers or range of vision, or the determination of the refractive powers of the eye or its functions. It does not include the preparation or dispensing of lenses or eyeglasses.

(3) **Purchases and sales of optical merchandise by optometrists, ophthalmologists, and opticians.** ~~((Sales of optical merchandise to consumers are subject to retailing B&O tax. In addition, the seller must collect retail sales tax unless the sale is specifically exempt by law. For the purposes of this rule, "optical merchandise" includes prescription lenses, frames, springs, bows, cases, and other items or accessories to be worn or used with lenses. It also includes nonprescription lenses or eyeglasses. For purposes of this rule, "prescription lens" means any lens, including contact lens, with power or prism correction for human vision, which has been prescribed in writing by a physician or optometrist. The term "prescription lens" includes all ingredients and~~

~~component parts of the lens itself, including color, scratch resistant or ultraviolet coating, and fashion tints. It also includes repair parts and replacement parts.))~~ Purchases of optical merchandise by optometrists, ophthalmologists, and opticians for resale without intervening use as a consumer are not subject to the retail sales tax. Thus, optometrists, ophthalmologists, and opticians are not required to pay retail sales or use tax on items which will be given to customers as part of a sale of eyeglasses or contact lenses, such as cleaning supplies, carrying cases, and the like. The department considers these items to be sold along with the eyeglasses or contact lenses. An optometrist, ophthalmologist, or optician purchasing tangible personal property for resale must furnish a properly completed resale certificate to the seller to document the wholesale nature of the sale. Resale certificates can be obtained from the department's web site at <http://dor.wa.gov>, or by calling the department's telephone information center at 1-800-647-7706. For additional information regarding resale certificates, refer to WAC 458-20-102 (Resale certificates).

Sales of optical merchandise to consumers are subject to retailing B&O tax. In addition, the seller must collect retail sales tax unless the sale is specifically exempt by law. For the purposes of this section, "optical merchandise" includes prescription lenses, frames, springs, temples, cases, and other items or accessories to be worn or used with lenses. It also includes nonprescription lenses or eyeglasses.

For purposes of this section, "prescription lens" means any lens, including contact lens, with power or prism correction for human vision, which has been prescribed in writing by a physician or optometrist. The term "prescription lens" includes all ingredients and component parts of the lens itself, including color, scratch resistant or ultraviolet coating, and fashion tints.

(a) **Are sales of prescription lenses and frames exempt from retail sales tax?** As a result of legislation to implement the national Streamlined Sales and Use Tax Agreement, effective July 1, 2004, sales of prescription lenses and frames for prescription lenses are exempt from retail sales tax as ~~((a))~~ prosthetic devices under RCW 82.08.0283.

Before July 1, 2004, sales of prescription lenses were exempt from retail sales tax under RCW 82.08.0281~~((7))~~ if the lenses were dispensed by an optician licensed under chapter 18.34 RCW or by a physician or optometrist under a prescription written by a physician or optometrist. Sales of frames for prescription lenses did not qualify for a sales tax exemption. Thus, before July 1, 2004, when prescription lenses were sold with frames, only the prescription lenses were exempt from sales tax.

(b) **Are repairs of prescription lenses and frames subject to retail sales tax?** Beginning July 1, 2004, charges for the repair of prescription lenses or to prescription eyeglass frames, whether the frames are the original frames or replacement frames, are exempt from retail sales tax under RCW 82.08.0283. Before July 1, 2004, charges for the repair of prescription lenses were exempt from retail sales tax. Charges for the repair of frames, however, were subject to retail sales tax.

(c) **Segregation of income from different sources.** To claim a retail sales tax exemption under RCW 82.08.0281 or 82.08.0283, persons providing or selling any combination of

professional services, prescription lenses, prescription eyeglass frames, or other optical merchandise must segregate and separately account for the income derived from each source.

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

(i) Taxpayer is an optometrist who performs eye examinations and sells prescription eyeglasses, contact lenses, and other optical merchandise. All sales of prescription lenses are made under written prescription. Income attributable to the eye examinations, the sale of prescription lenses, and the sale of other optical merchandise is segregated in Taxpayer's books of account.

The income derived from the eye examinations is subject to service and other activities B&O tax. The gross proceeds of sales of the prescription lenses and other optical merchandise are subject to retailing B&O tax. The sales of prescription lenses, including contact lenses, are exempt from retail sales tax. Beginning July 1, 2004, sales of eyeglass frames with prescription lenses are exempt from retail sales tax. Taxpayer, however, must collect retail sales tax on sales of other optical merchandise, including eyeglass frames sold with prescription lenses before July 1, 2004, and remit the tax to the department.

(ii) Taxpayer is a retail drugstore that sells preassembled "off-the-shelf" reading glasses. These eyeglasses have lenses with power or prism correction and are sold without a prescription. In addition, Taxpayer sells magnifiers, binoculars, monoculars, and sunglasses. These items are also sold without a prescription.

The gross proceeds of sales of these items are subject to retailing B&O tax. In addition, Taxpayer must collect retail sales tax on sales of these items and remit the tax to the department. Because these items are not sold under a prescription, nor are they prescribed, fitted, or furnished for the buyer by a person licensed under the laws of this state to prescribe, fit, or furnish prosthetic devices, they are not exempt from retail sales tax under either RCW 82.08.0281 or 82.08.0283.

(4) **Equipment and supplies used by optometrists, ophthalmologists, and opticians.** Purchases of equipment and supplies used by optometrists, ophthalmologists, and opticians are purchases at retail and are subject to retail sales tax unless specifically exempt by law. If the seller does not collect retail sales tax, the optometrist, ophthalmologist, or optician must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. Deferred sales or use tax should be reported on the buyer's excise tax return. The excise tax return does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's excise tax return. For detailed information about use tax, refer to WAC 458-20-178 (Use tax).

(a) **Prescription drugs.** "Prescription drugs," as defined in RCW 82.08.0281, may be purchased without payment of retail sales or use tax by optometrists and ophthalmologists if

all requirements for the exemption are met. For additional information regarding prescription drugs, refer to WAC 458-20-18801.

(b) Prescription drugs administered by the medical service provider. Effective October 1, 2007, RCW 82.04.620 allows a deduction from the service and other activities classification of the B&O tax (RCW 82.04.290(2)) for amounts received by physicians or clinics for drugs for infusion or injection by licensed physicians or their agents for human use pursuant to a prescription. This deduction only applies to amounts that:

(i) Are separately stated on invoices or other billing statements;

(ii) Do not exceed the then current federal rate; and

(iii) Are covered or required under a health care service program subsidized by the federal or state government.

For purposes of this deduction only, amounts that "are covered or required under a health care service program subsidized by the federal or state government" include any required drug copayments made directly from the patient to the physician or clinic.

(A) "Federal rate" means the rate at or below which the federal government or its agents reimburse providers for prescription drugs administered to patients as provided for in the Medicare, Part B drugs average sales price information resource as published by the United States Department of Health and Human Services, or any index that succeeds it.

(B) The deduction is available on an "all or nothing" basis against the total of amounts received for a specific drug charge. If the total amount received by the physician or clinic for a specific drug exceeds the federal reimbursement rate, none of the total amount received qualifies for the deduction (including any required copayment received directly from the patient). In other words, a physician or clinic may not simply take an "automatic" deduction equal to the federal reimbursement rate for each drug.

(c) **Samples.** Optometrists, ophthalmologists, and opticians are required to pay use tax on any samples, with the exception of prescription drug samples that they acquire unless retail sales or use tax has been previously paid on these samples.

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

(i) Taxpayer is an ophthalmologist who performs eye examinations, laser surgery, and cataract surgery. Taxpayer purchases equipment and supplies that are used in performing these services such as surgical instruments, eye shields, cotton swabs, sterile dressings, bandages, and gauze. Taxpayer also purchased a computer, technical publications, and magazines by mail order and over the internet.

Taxpayer is subject to retail sales tax on these purchases. If the seller does not collect sales tax, Taxpayer is liable for deferred sales tax or use tax and must remit the tax directly to the department.

(ii) Taxpayer is an optometrist who performs eye examinations and sells prescription eyeglasses, contact lenses, and other optical merchandise. Taxpayer purchases nonprescrip-

tion saline and cleaning solutions for contact lenses and carrying cases for eyeglasses and contact lenses. The saline and cleaning solutions are consumed when Taxpayer performs eye examinations. The eyeglass and contact lens carrying cases are provided to customers at the time they purchase eyeglasses or contact lenses.

The purchases of the eyeglass and contact lens carrying cases are purchases for resale and are, therefore, not subject to sales tax if Taxpayer provides the seller with a properly completed resale certificate. The purchases of the saline and cleaning solutions are, however, subject to the retail sales tax. These solutions are consumed while providing professional services and cannot be considered to be purchased for resale. They also do not qualify for a sales tax exemption under RCW 82.08.0281 as prescription drugs. If retail sales tax was not paid on the saline and cleaning solutions at the time of purchase, Taxpayer must remit deferred sales tax or use tax directly to the department.

WSR 08-10-104

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed May 7, 2008, 10:47 a.m.]

Title of Rule and Other Identifying Information: WAC 458-18-010 Deferral of special assessments and/or property taxes—Definitions, provides definitions of the terms most frequently used to administer the deferral program for special assessments and/or property taxes on residential housing created by chapter 84.38 RCW.

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 Marilou Rickert, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, fax (360) 586-0127, e-mail MARILOUR@DOR.WA.GOV, AND RECEIVED BY July 7, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 458-18-010 is being amended to conform to SSHB [2SHB] 3104 (chapter 6, Laws of 2008). SSHB [2SHB] 3104 extended the rights and liabilities of spouses under RCW 84.38.030, 84.38.130, and 84.38.150 to domestic partners. Definitions for "domestic partner" and "domestic partnership" have been added at (new) subsections (6) and (7) and subsequent subsections have been renumbered. In addition, (new) subsection (16) has been changed to reflect the 2006 amendment to RCW 84.36.383(1), which revised the definition of "residence" for purposes of chapter 84.38 RCW.

Copies of draft rules are available for viewing and printing on our web site at <http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx>.

Reasons Supporting Proposal: To recognize 2008 legislation.

Statutory Authority for Adoption: RCW 84.38.180, 84.38.020.

Statute Being Implemented: RCW 84.38.020, 84.38.-130, 84.38.150, 84.36.383.

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: Marilou Rickert, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6115; Implementation and Enforcement: Brad Flaherty, 1025 Union Avenue S.E., Suite #200, Olympia, WA, (360) 570-5860.

May 7, 2008

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 99-21-044, filed 10/15/99, effective 11/15/99)

WAC 458-18-010 Deferral of special assessments and/or property taxes—Definitions. Introduction. This section is intended to provide definitions of the terms most frequently used to administer the deferral program for special assessments and/or property taxes on residential housing created by chapter 84.38 RCW. Unless a different meaning is plainly required by the context, the words and phrases used in this chapter have the following meanings:

(1) "Boarding house" means a residence in which lodging and meals are provided. Each resident of a boarding house is charged a lump sum to cover the costs of lodging and meals with no separate accounting for the fair selling price of the meals.

(2) "Claimant" means a person who either elects under chapter 84.38 RCW or is required under RCW 84.64.050 to defer payment of special assessments and/or real property taxes accrued on his or her residence by filing a declaration to defer as allowed under chapter 84.38 RCW. If more than one individual in a household wishes to defer special assessments and/or taxes, only one may file a declaration to defer; in other words, only one claimant per household is allowed.

(3) "Cooperative housing" means any existing structure, including surrounding land and improvements, that contains one or more dwelling units and is owned by:

(a) An association with resident shareholders who are granted renewable leasehold interests in dwelling units in the building. Unlike owners of a condominium, the resident shareholders who hold a renewable leasehold interest do not own their dwelling units; or

(b) An association organized under the Cooperative Association Act (chapter 23.86 RCW).

(4) "Department" means the state department of revenue.

(5) "Equity value" means the amount by which the true and fair value of a residence exceeds the total amount of all liens, obligations, and encumbrances against the property

excluding the deferral liens. As used in this context, the "true and fair value" of a residence is the value shown on the county tax rolls maintained by the assessor for the assessment year in which the deferral claim is made.

(6) Domestic partner. "Domestic partner" means a person registered under chapter 26.60 RCW or a partner in a legal union of two persons of the same sex, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

(7) Domestic partnership. "Domestic partnership" means a partnership registered under chapter 26.60 RCW or a legal union of two persons of the same sex, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

~~((6))~~ (8) "Fire and casualty insurance" means a policy with an insurer that is authorized by the state insurance commission to insure property in this state.

~~((7))~~ (9) "Irrevocable trust" means a trust that may not be revoked after its creation by the trustor.

~~((8))~~ (10) "Lease for life" means a lease that terminates upon the death of the lessee.

~~((9))~~ (11) "Lien" means any interest in property given to secure payment of a debt or performance of an obligation, including a deed of trust. A lien includes the total amount of special assessments and/or property taxes deferred and the interest thereon. It also may include any other outstanding balance owed to local government for special assessments.

~~((10))~~ (12) "Life estate" means an estate that consists of total rights to use, occupy, and control real property but is limited to the lifetime of a designated party; this party is often called a "life tenant."

~~((11))~~ (13) "Local government" means any city, town, county, water-sewer district, public utility district, port district, irrigation district, flood control district, or any other municipal corporation, quasi municipal corporation, or other political subdivision authorized to levy special assessments.

~~((12))~~ (14) "Perjury" means the willful assertion as to a matter of fact, opinion, belief, or knowledge made by a claimant upon the declaration to defer that the claimant knows to be false.

~~((13))~~ (15) "Real property taxes" means ad valorem property taxes levied on a residence in this state. The term includes foreclosure costs, interest, and penalties accrued as of the date the declaration to defer is filed.

~~((14))~~ (16) "Residence" has the same meaning given in RCW 84.36.383(~~—except that it includes any additional property up to a total of five acres that comprises the residential parcel if land use regulations require this larger parcel size for the construction of a residential dwelling—~~); it means a single-family dwelling unit whether the unit is separate or part of a multiunit dwelling and includes up to one acre of the parcel of land on which the dwelling stands, and it includes any additional property up to a total of five acres that comprises the residential parcel if local land use regulations require this larger parcel size.

~~((15))~~ (17) "Revocable trust" means an agreement that entitles the trustor to have the full right to use the real property and to revoke the trust and retake complete ownership of

the property at any time during his or her lifetime. The trustee of a revocable trust holds only bare legal title to the real property. Full equitable title to the property remains with the trustor; the original property owner.

~~((16))~~ (18) "Rooming house" means a residence where persons may rent rooms.

~~((17))~~ (19) "Special assessment" means the charge or obligation imposed by local government upon real property specially benefited by improvements.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

**WSR 08-10-113
EXPEDITED RULES
DEPARTMENT OF REVENUE**

[Filed May 7, 2008, 11:45 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-101 Tax registration and tax reporting, explains the tax registration and tax reporting requirements for businesses engaging in business activities within Washington. WAC 458-20-217 Lien for taxes, explains the administrative collection remedies and procedures available to the department to collect unpaid and overdue tax liabilities.

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 Marilou Rickert, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, fax (360) 586-0127, e-mail MARILOUR@DOR.WA.GOV, AND RECEIVED BY July 21, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 458-20-101 and 458-20-217 are being amended to conform to SSB [2SHB] 3104 (chapter 6, Laws of 2008). SSB [2SHB] 3104 expanded the rights, privileges, obligations, and liabilities of domestic partners and domestic partnerships registered under chapter 26.60 RCW. These amendments revise:

- Subsection (11)(b)(iii) of WAC 458-20-101, to add the phrase "or registered domestic partnership" to "marital community" and "or surviving domestic partner" to "surviving spouse."
- Subsection (6)(c) of WAC 458-20-217, to add the phrase "or surviving domestic partner" to "surviving spouse," change "the surviving spouse's separate property" to "the separate property of the surviving spouse or surviving domestic partner," add the phrase "or property of the domestic partnership" to "community property," change "the spouse's property" to "property of the

surviving spouse or the surviving domestic partner," add the phrase "or deceased domestic partner" to "deceased spouse," and change "the deceased spouse's estate" to "the estate of the deceased spouse or deceased domestic partner."

Copies of draft rules are available for viewing and printing on our web site at <http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx>.

Reasons Supporting Proposal: To recognize 2008 legislation.

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

Statute Being Implemented: RCW 82.32.240, 82.32.030, and 82.32.045.

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: Marilou Rickert, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6115; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

May 7, 2008

Alan R. Lynn

Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 08-11 issue of the Register.

WSR 08-10-114

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed May 7, 2008, 11:45 a.m.]

Title of Rule and Other Identifying Information: WAC 458-18-020 Deferral of special assessments and/or property taxes—Qualifications for deferral, lists the qualifications for deferring payment of special assessments or real property taxes on a percentage of the taxpayer's equity in residential property. WAC 458-18-100 Deferral of special assessments and/or property taxes—When payable—Collection—Partial payment, explains when deferred taxes on residential property and interest become payable, the effects of the deferral, and the procedure for collecting and paying the deferred taxes.

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 Jim Winterstein, Department

of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, fax (360) 586-0127, e-mail JimWi@DOR.WA.GOV, AND RECEIVED BY July 7, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 458-18-020 and 458-18-100 are being amended to conform to SSHB [2SHB] 3104 (chapter 6, Laws of 2008). SSHB [2SHB] 3104 extended the rights and liabilities of spouses under RCW 84.38.030, 84.38.130, and 84.38.150 to domestic partners. In addition, subsection (5) of WAC 458-18-020 has been changed to reflect the 2004 amendment to RCW 84.38.030, which increased the amount of combined disposable income claimants may have in order to qualify for the deferral from thirty thousand dollars to forty thousand dollars.

Copies of draft rules are available for viewing and printing on our web site at <http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx>.

Reasons Supporting Proposal: To incorporate legislative changes.

Statutory Authority for Adoption: RCW 84.38.180.

Statute Being Implemented: RCW 84.38.130, 84.38.150.

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: Marilou Rickert, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6115; Implementation and Enforcement: Brad Flaherty, 1025 Union Avenue S.E., Suite #200, Olympia, WA, (360) 570-5860.

May 7, 2008

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 92-15-057, filed 7/13/92, effective 8/13/92)

WAC 458-18-020 Deferral of special assessments and/or property taxes—Qualifications for deferral. A person may defer payment of special assessments and/or real property taxes on up to eighty percent of the amount of his equity value in said property if the following conditions are met:

(1) The claimant must have owned, at the time of filing, the residence on which the special assessment and/or real property taxes have been imposed. For purposes of this subsection a residence owned by a marital community, ~~((or))~~ a state registered domestic partnership, or ~~((owned by))~~ cotenants shall be deemed to be owned by each spouse, each domestic partner, and each cotenant. A claimant who has only a share ownership in cooperative housing, a life estate, a lease for life or a revocable trust does not satisfy the ownership requirement.

(2) If the amount deferred is to exceed one hundred percent of the claimant's equity value in the land or lot only, the claimant must have and keep in force fire and casualty insurance in sufficient amount to protect the interest of the state of Washington and shall designate the state as a loss payee upon said policy. In no case shall the deferred amount exceed the

amount of the insured value of the improvement plus the land value.

(3) In the case of special assessment deferral, the claimant must have opted for payment of such special assessments on the installment method if such method was available.

(4) The claimant must meet all requirements for an exemption for the residence under RCW 84.36.381, other than the income requirements, and to the extent eligible, must have first applied for the exemptions under RCW 84.36.381 through 84.36.389 prior to filing a declaration to defer.

(5) The claimant must have a combined disposable income, as defined in RCW 84.36.383 (~~and WAC 458-16-010 and 458-16-013~~), of ~~((thirty))~~ forty thousand dollars or less.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 84-21-010, filed 10/5/84)

WAC 458-18-100 Deferral of special assessments and/or property taxes—When payable—Collection—Partial payment. (1) Any special assessments and/or real property taxes deferred shall become payable together with interest:

(a) Upon the conveyance of property which has a deferred special assessment and/or real property tax lien upon it.

(b) Upon the death of the claimant except when the surviving spouse or surviving domestic partner is qualified and elects to incur the lien and continue the deferment by (i) filing an original "declaration to defer" within ninety days of the claimant's death and (ii) continuing to meet the qualifications of WAC 458-18-010 through 458-18-100.

When a surviving spouse or surviving domestic partner elects to continue the deferment, the spouse or domestic partner then becomes the claimant and is fully subject to the conditions of WAC 458-18-010 through 458-18-100.

(c) Upon condemnation of property with a deferred special assessment and/or real property tax lien upon it by a public or private body exercising the power of eminent domain: Provided, That if the assessed value of the property not condemned exceeds the amount of the liens, including interest, the claimant may elect to have the liens set over to the property retained: Provided further, That the amount of the lien allowed to be set over shall not exceed 80% of the claimant's equity in the retained property.

(d) At such time as the claimant ceases to reside permanently in the residence upon which the deferral has been granted. If the cessation occurs between filing the declaration and the date the taxes are payable, the deferral shall not be allowed.

(e) Upon the failure of the claimant to have or keep in force fire and casualty insurance in sufficient amount to protect the interest of the state of Washington or failure to keep the state listed as a loss payee upon said policy. Subsection (1)(b) shall take precedence over subsection (1)(d).

(2) Once a deferral has been granted, the various conditions contained within WAC 458-18-010 through 458-18-

100 may prohibit the claimant from qualifying for further deferrals, but any obligations resulting from deferrals previously granted will become due and payable only upon occurrence of the conditions set forth in subsection (1) of this section.

(3) Upon occurrence of any condition requiring the payment of any deferred special assessments and/or real property taxes, the county treasurer shall proceed to collect the same in the manner provided for in chapter 84.56 RCW. For purposes of collection of the deferred taxes and interest, provisions of chapters 84.56, 84.60, and 84.64 RCW shall be applicable. When these moneys are collected, they shall be credited to a special account in the county treasury and shall then be remitted to the state treasurer within thirty days from collection with remittance advice to the department of revenue. The state treasurer shall deposit the moneys in the state general fund.

(4) Any person may at any time pay a part or all of the deferred assessments and/or taxes including the interest, but such payment shall not affect the deferred tax status of the property. Any payment made shall be credited to the oldest deferred amount and shall be prorated between interest and the deferred assessments and/or taxes.