

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; and 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

AMENDATORY SECTION (Amending WSR 07-03-031, filed 1/8/07, effective 2/8/07)

WAC 458-20-101 Tax registration and tax reporting.

(1) **Introduction.** This section explains tax registration and tax reporting requirements for the Washington state department of revenue as established in RCW 82.32.030 and 82.32.045. This section discusses who is required to be registered, and who must file excise tax returns. This section also discusses changes in ownership requiring a new registration, the administrative closure of taxpayer accounts, and the revocation and reinstatement of a tax reporting account with the department of revenue. Persons required to file tax returns should also refer to WAC 458-20-104 (Small business tax relief based on volume of business).

(2) **Persons required to obtain tax registration endorsements.** Except as provided in (a) of this subsection, every person who is engaged in any business activity for which the department of revenue is responsible for administering and/or collecting a tax or fee, shall apply for and obtain a tax registration endorsement with the department of revenue. (See RCW 82.32.030.) This endorsement shall be reflected on the face of the business person's registrations and licenses document. The tax registration endorsement is non-transferable, and valid for as long as that person continues in business.

(a) Registration under this section is not required if all of the following conditions are met:

(i) The person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW (business and occupation tax), is less than twelve thousand dollars per year;

(ii) A person's gross income from all business activities taxable under chapter 82.16 RCW (public utility tax), is less than twelve thousand dollars per year;

(iii) The person is not required to collect or pay to the department of revenue retail sales tax or any other tax or fee which the department is authorized to administer and/or collect; and

(iv) The person is not otherwise required to obtain a license or registration subject to the master application procedure provided in chapter 19.02 RCW. For the purposes of this section, the term "license or registration" means any agency permit, license, certificate, approval, registration, charter, or any form or permission required by law, including agency rule, to engage in any activity.

(b) The term "tax registration endorsement," as used in this section, has the same meaning as the term "tax registration" or "certificate of registration" used in Title 82 RCW and other sections in chapter 458-20 WAC.

(c) The term "person" has the meaning given in RCW 82.04.030.

(d) The term "tax reporting account number" as used in this section, is the number used to identify persons registered with the department of revenue.

(3) Requirement to file tax returns. Persons registered with the department must file tax returns and remit the appropriate taxes to the department, unless they are placed on an "active nonreporting" status by the department.

(a) The department may relieve any person of the requirement to file returns by placing the person in an active nonreporting status if all of the following conditions are met:

(i) The person's value of products (RCW 82.04.450), gross proceeds of sales (RCW 82.04.070), or gross income of the business (RCW 82.04.080), from all business activities taxable under chapter 82.04 RCW (business and occupation tax), is:

(A) Beginning July 1, 1999, less than twenty-eight thousand dollars per year (chapter 357, Laws of 1999); or

(B) Prior to July 1, 1999, less than twenty-four thousand dollars per year;

(ii) The person's gross income (RCW 82.16.010) from all business activities taxable under chapter 82.16 RCW (public utility tax) is less than twenty-four thousand dollars per year; and

(iii) The person is not required to collect or pay to the department retail sales tax or any other tax or fee the department is authorized to collect.

(b) The department will notify those persons it places on an active nonreporting status. (A person may request to be placed on an active nonreporting status if the conditions of (a) of this subsection are met.)

(c) Persons placed on an active nonreporting status by the department are required to timely notify the department if their business activities do not meet any of the conditions explained in (a) of this subsection. These persons will be removed from an active nonreporting status, and must file tax returns and remit appropriate taxes to the department, beginning with the first period in which they do not qualify for an active nonreporting status.

(d) Persons that have not been placed on an active nonreporting status by the department must continue to file tax returns and remit the appropriate taxes.

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

(a) Bob Brown is starting a bookkeeping service. The gross income of the business is expected to be less than twelve thousand dollars per year. Due to the nature of the business activities, Bob is not required to pay or collect any other tax which the department is authorized to collect.

Bob Brown is not required to apply for and obtain a tax registration endorsement with the department of revenue. The conditions under which a business person may engage in

business activities without obtaining the tax registration endorsement have been met. However, if Bob Brown in some future period has gross income exceeding twelve thousand dollars per year, he will be required to obtain a tax registration endorsement. If Bob's gross income exceeds twenty-eight thousand dollars per year, he will be required to file tax returns and remit the appropriate taxes.

(b) Cindy Smith is opening a business to sell books written for children to local customers at retail. The gross proceeds of sales are expected to be less than twelve thousand dollars per year.

Cindy Smith must apply for and obtain a tax registration endorsement with the department of revenue. While gross income is expected to be less than twelve thousand dollars per year, Cindy Smith is required to collect and remit retail sales tax.

(c) Alice Smith operates a taxicab service with an average gross income of eighteen thousand dollars per year. She also owns a management consulting service with an average gross income of fifteen thousand dollars per year. Assume that Alice is not required to collect or pay to the department any other tax or fee the department is authorized to collect. Alice qualifies for an active nonreporting status because her taxicab income is less than the twenty-four thousand dollar threshold for the public utility tax, and her consulting income is less than the twenty-four thousand dollar threshold for the business and occupation (B&O) tax. If the department of revenue does not first place her on an active nonreporting status, she may request the department to do so.

(5) Out-of-state businesses. The B&O and public utility taxes are imposed on the act or privilege of engaging in business activity within Washington. RCW 82.04.220 and 82.16.020. Out-of-state persons who have established sufficient nexus in Washington to be subject to Washington's B&O or public utility taxes must obtain a tax registration endorsement with this department if they do not satisfy the conditions expressed in subsection (2)(a) of this section. Out-of-state persons required to collect Washington's retail sales or use tax, or who have elected to collect Washington's use tax, even though not statutorily required to do so, must obtain a tax registration endorsement.

(a) Persons with out-of-state business locations should not include income that is disassociated from their in-state activities in their computations for determining whether the gross income thresholds provided in subsection (2)(a)(i) and (ii) are satisfied.

(b) Out-of-state persons making sales into or doing business within Washington should also refer to the following rules in chapter 458-20 WAC for a discussion of their tax reporting responsibilities:

(i) WAC 458-20-103 (Time and place of sale);

(ii) WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property);

(iii) WAC 458-20-193D (Transportation, communication, public utility activities, or other services in interstate or foreign commerce);

(iv) WAC 458-20-194 (Doing business inside and outside the state); and

(v) WAC 458-20-221 (Collection of use tax by retailers and selling agents).

(6) **Registration procedure.** The state of Washington initiated the unified business identifier (UBI) program to simplify the registration and licensing requirements imposed on the state's business community. Completion of the master application enables a person to register or license with several state agencies, including the department of revenue, using a single form. The person will be assigned one unified business identifier number, which will be used for all state agencies participating in the UBI program. The department may assign the unified business identifier number as the taxpayer's revenue tax reporting account number, or it may assign a different or additional number as the revenue tax reporting account number.

(a) Persons completing the master application will be issued a registrations and licenses document. The face of this document will list the registrations and licenses (endorsements) which have been obtained.

(b) The department of revenue does not charge a registration fee for issuing a tax registration endorsement. Persons required to complete a master application may, however, be subject to other fees.

(c) While the UBI program is administered by the department of licensing, master applications are available at any participating UBI service provider location. The following agencies of the state of Washington participate in the UBI program (see RCW 19.02.050 for a more complete listing of participating agencies):

- (i) The office of the secretary of state;
- (ii) The department of licensing;
- (iii) The department of employment security;
- (iv) The department of labor and industries;
- (v) The department of revenue.

(7) **Temporary revenue registration certificate.** A temporary revenue registration certificate may be issued to any person who operates a business of a temporary nature.

(a) Temporary businesses, for the purposes of registration, are those with:

- (i) Definite, predetermined dates of operation for no more than two events each year with each event lasting no longer than one month; or
- (ii) Seasonal dates of operation lasting no longer than three months. However, persons engaging in business activities on a seasonal basis every year should refer to subsection (8) of this section.

(b) Each temporary registration certificate is valid for a single event. Persons that subsequently make sales into Washington may incur additional tax liability. Refer to WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property) for additional information on tax reporting requirements. It may be required that a tax registration endorsement be obtained, in lieu of a temporary registration certificate. See subsection (2) of this section.

(c) Temporary revenue registration certificates may be obtained by making application at any participating UBI agency office, or by completing a seasonal registration form.

(8) **Seasonal revenue tax reporting accounts.** Persons engaging in seasonal business activities which do not exceed two quarterly reporting periods each calendar year may be eligible for a tax reporting account with a seasonal reporting status. This is a permanent account until closed by the tax-

payer. The taxpayer must specify in which quarterly reporting periods he or she will be engaging in taxable business activities. The quarterly reporting periods in which the taxpayer is engaging in taxable business activities may or may not be consecutive, but the same quarterly period or periods must apply each year. The taxpayer is not required to be engaging in taxable business activities during the entire period.

The department will provide and the taxpayer will be required to file tax returns only for the quarterly reporting periods specified by the taxpayer. Examples of persons which may be eligible for the seasonal reporting status include persons operating Christmas tree and/or fireworks stands. Persons engaging in taxable business activities in more than two quarterly reporting periods in a calendar year will not qualify for the seasonal reporting status.

(9) **Display of registrations and licenses document.** The taxpayer is required to display the registrations and licenses document in a conspicuous place at the business location for which it is issued.

(10) **Multiple locations.** A registrations and licenses document is required for each place of business at which a taxpayer engages in business activities for which the department of revenue is responsible for administering and/or collecting a tax or fee, and any main office or principal place of business from which excise tax returns are to be filed. This requirement applies to locations both within and without the state of Washington.

(a) For the purposes of this subsection, the term "place of business" means:

- (i) Any separate establishment, office, stand, cigarette vending machine, or other fixed location; or
- (ii) Any vessel, train, or the like, at any of which the taxpayer solicits or makes sales of tangible personal property, or contracts for or renders services in this state or otherwise transacts business with customers.

(b) A taxpayer wishing to report all tax liability on a single excise tax return may request a separate registrations and licenses document for each location. The original registrations and licenses document shall be retained for the main office or principal place of business from which the returns are to be filed, with additional documents obtained for all branch locations. All registrations and licenses documents will reflect the same tax reporting account number.

(c) A taxpayer desiring to file a separate excise tax return covering a branch location, or a specific construction contract, may apply for and receive a separate revenue tax reporting account number. A registrations and licenses document will be issued for each tax reporting account number and will represent a separate account.

(d) A master application must be completed to obtain a separate registrations and licenses document, or revenue tax reporting account number, for a new location.

(11) **Change in ownership.** When a change in ownership of a business occurs, the new owner must apply for and obtain a new registrations and licenses document. The original document must be destroyed, and any further use of the tax reporting account number for tax purposes is prohibited.

(a) A "change in ownership," for purposes of registration, occurs upon but is not limited to:

(i) The sale of a business by one individual, firm or corporation to another individual, firm or corporation;

(ii) The dissolution of a partnership;

(iii) The withdrawal, substitution, or addition of one or more partners where the general partnership continues as a business organization and the change in the composition of the partners is equal to or greater than fifty percent;

(iv) Incorporation of a business previously operated as a partnership or sole proprietorship;

(v) Changing from a corporation to a partnership or sole proprietorship; or

(vi) Changing from a corporation, partnership or sole proprietorship to a limited liability company or a limited liability partnership.

(b) For the purposes of registration, a "change in ownership" does not occur upon:

(i) The sale of all or part of the common stock of a corporation;

(ii) The transfer of assets to an assignee for the benefit of creditors or upon the appointment of a receiver or trustee in bankruptcy;

(iii) The death of a sole proprietor where there will be a continuous operation of the business by the executor, administrator, or trustee of the estate or, where the business was owned by a marital community or registered domestic partnership, by the surviving spouse or surviving domestic partner of the deceased owner;

(iv) The withdrawal, substitution, or addition of one or more partners where the general partnership continues as a business organization and the change in the composition of the partners is less than fifty percent; or

(v) A change in the trade name under which the business is conducted.

(c) While changes in a business entity may not result in a "change in ownership," the completion of a new master application may be required to reflect the changes in the registered account.

(12) Change in location. Whenever the place of business is moved to a new location, the taxpayer must notify the department of the change. A new registrations and licenses document will be issued to reflect the change in location.

(13) Lost registrations and licenses documents. If any registrations and licenses document is lost, destroyed or defaced as a result of accident or of natural wear and tear, a new document will be issued upon request.

(14) Administrative closure of taxpayer accounts. The department may, upon written notification to the taxpayer, close the taxpayer's tax reporting account and rescind its tax registration endorsement whenever the taxpayer has reported no gross income and there is no indication of taxable activity for two consecutive years.

The taxpayer may request, within thirty days of notification of closure, that the account remain open. A taxpayer may also request that the account remain open on an "active non-reporting" status if the requirements of subsection (3)(a) of this section are met. The request shall be reviewed by the department and if found to be warranted, the department will immediately reopen the account. The following are acceptable reasons for continuing as an active account:

(a) The taxpayer is engaging in business activities in Washington which may result in tax liability.

(b) The taxpayer is required to collect or pay to the department of revenue a tax or fee which the department is authorized to administer and/or collect.

(c) The taxpayer has in fact been liable for excise taxes during the previous two years.

(15) Reopening of taxpayer accounts. A business person choosing to resume business activities for which the department of revenue is responsible for administering and/or collecting a tax or fee, may request a previously closed account be reopened. The business person must complete a new master application. When an account is reopened a new registrations and licenses document, reflecting a current tax registration endorsement, shall be issued. Persons requesting the reopening of an account which had previously been closed due to a revocation action should refer to subsection (16) of this section.

(16) Revocation and reinstatement of tax registration endorsements. Actions to revoke tax registration endorsements must be conducted by the department pursuant to the provisions of chapter 34.05 RCW, the Administrative Procedure Act, and the taxpayers bill of rights of chapter 82.32A RCW. Persons should refer to WAC 458-20-10001, Adjudicative proceedings—Brief adjudicative proceedings—Wholesale and retail cigarette license revocation/suspension—Certificate of registration (tax registration endorsement) revocation, for an explanation of the procedures and processes pertaining to the revocation of tax registration endorsements.

(a) The department of revenue may, by order, revoke a tax registration endorsement if any tax warrant issued under the provisions of RCW 82.32.210 is not paid within thirty days after it has been filed with the clerk of the superior court, or for any other reason expressly provided by law.

(b) The revocation order will be posted in a conspicuous place at the main entrance to the taxpayer's place of business and must remain posted until the tax registration endorsement has been reinstated. A revoked endorsement will not be reinstated until:

(i) The amount due on the warrant has been paid, or satisfactory arrangements for payment have been approved by the department; and

(ii) The taxpayer has posted with the department a bond or other security in an amount not exceeding one-half the estimated average annual liability of the taxpayer.

(c) It is unlawful for any taxpayer to engage in business after its tax registration endorsement has been revoked.

(17) Penalties for noncompliance. The law provides that any person engaging in any business activity, for which registration with the department of revenue is required, shall obtain a tax registration endorsement.

(a) The failure to obtain a tax registration endorsement prior to engaging in any taxable business activity constitutes a gross misdemeanor.

(b) Engaging in business after a tax registration endorsement has been revoked by the department constitutes a Class C felony.

(c) Any tax found to have been due, but delinquent, and any tax unreported as a result of fraud or misrepresentation,

may be subject to penalty as provided in chapter 82.32 RCW, WAC 458-20-228 and 458-20-230.

AMENDATORY SECTION (Amending WSR 02-15-158, filed 7/23/02, effective 8/23/02)

WAC 458-20-217 Lien for taxes. (1) Introduction.

This rule provides an overview of the administrative collection remedies and procedures available to the department of revenue (department) to collect unpaid and overdue tax liabilities. It discusses tax liens and the liens that apply to probate, insolvency, assignments for the benefit of creditors, bankruptcy and public improvement contracts. The rule also explains the personal liability of persons in control of collected but unpaid sales tax. Although the department may use judicial remedies to collect unpaid tax, most of the department's collection actions are enforced through the administrative collection remedies discussed in this rule.

(2) **Tax liens.** The department is not required to obtain a judgment in court to have a tax lien. A tax lien is created when a warrant issued under RCW 82.32.210 is filed with a superior court clerk who enters it into the judgment docket. A copy of the warrant may be filed in any county in this state in which the department believes the taxpayer has real and/or personal property. The department is not required to give a taxpayer notice prior to filing a tax warrant. *Peters v Sjöholm*, 95 Wn.2d 871, 877, 631 P.2d 937 (1981) *appeal dismissed, cert. denied* 455 U.S. 914 (1982). The tax lien is an encumbrance on property. The department may enforce a tax lien by administrative levy, seizure or through judicial collection remedies.

(a) **Attachment of lien.** The filed warrant becomes a specific lien upon all personal property used in the conduct of the business and a general lien against all other real and personal property owned by the taxpayer against whom the warrant was issued.

(i) The specific lien attaches to all goods, wares, merchandise, fixtures, equipment or other personal property used in the conduct of the business of the taxpayer. Other personal property includes both tangible and intangible property. For example, the specific lien attaches to business assets such as accounts receivable, chattel paper, royalties, licenses and franchises. The specific lien also attaches to property used in the business which is owned by persons other than the taxpayer who have a beneficial interest, direct or indirect, in the operation of the business. (See subsection (3) below for what constitutes a beneficial interest.) The lien is perfected on the date it is filed with the superior court clerk. The lien does not attach to property used in the business that was transferred prior to the filing of the warrant. It does attach to all property existing at the time the warrant is filed as well as property acquired after the filing of the warrant. No sale or transfer of such personal property affects the lien.

(ii) The general lien attaches to all real and personal non-business property such as the taxpayer's home and non-exempt personal vehicles.

(b) **Lien priorities.** The department does not need to levy or seize property to perfect its lien. The lien is perfected when the warrant is filed. The tax lien is superior to liens that vest after the warrant is filed.

(i) The lien for taxes is superior to bona fide interests of third persons that vested prior to the filing of the warrant if such persons have a beneficial interest in the business.

(ii) The lien for taxes is also superior to any interest of third persons that vested prior to the warrant if the interest is a mortgage of real or personal property or any other credit transaction that results in the mortgagee or the holder of the security acting as the trustee for unsecured creditors of the taxpayer mentioned in the warrant.

(iii) In most cases, to have a vested or perfected security interest in personal property, the secured party must file a UCC financing statement indicating its security interest. RCW 62A.9-301. See RCW 62A.9-302 for the exceptions to this general rule. The financing statement must be filed prior to the filing of the tax warrant for the lien to be superior to the department's lien.

(c) **Period of lien.** A filed tax warrant creates a lien that is enforceable for the same period as a judgment in a civil case that is docketed with the clerk of the superior court. RCW 82.32.210(4). A judgment lien expires ten years from the date of filing. RCW 4.56.310. The department may extend the lien for an additional ten years by filing a petition for an order extending the judgment with the clerk of the superior court. The petition must be filed within ninety days of the expiration of the original ten-year period. RCW 6.17.020.

(3) **Persons who have a beneficial interest in a business.** A third party who receives part of the profit, a benefit, or an advantage resulting from a contract or lease with the business has a beneficial interest in the operation of the business. A party whose only interest in the business is securing the payment of debt or receiving regular rental payments on equipment does not have a beneficial interest. Also, the mere loaning of money by a financial institution to a business and securing that debt with a UCC filing does not constitute a beneficial interest in the business. Rather, a party who owns property used by a delinquent taxpayer must also have a beneficial interest in the operation of that business before the lien will attach to the party's property. The definition of the term "beneficial interest" for purposes of determining lien priorities is not the same as the definition used for tax free transfers described in WAC 458-20-106.

(a) **Third party.** A third party is simply a party other than the taxpayer. For example, if the taxpayer is a corporation, an officer or shareholder of that corporation is a "third party" with a beneficial interest in the operation of the business. If the corporate insider has a security interest in property used by the business, the tax lien will be superior even if the corporate insider's lien was filed before the department's lien.

(b) **Beneficial interest of lessor.** In some cases a lessor or franchisor will have a beneficial interest in the leased or franchised business. For example, an oil company that leases a gas station and other equipment to an operator and requires the operator to sell its products is a third party with a beneficial interest in the business. Factors which support a finding of a beneficial interest in a business include the following:

(i) The business operator is required to pay the lessor or franchisor a percentage of gross receipts as rent;

(ii) The lessor or franchisor requires the business operator to use its trade name and restricts the type of business that may be operated on the premises;

(iii) The lease places restrictions on advertising and hours of operation; and/or

(iv) The lease requires the operator to sell the lessor's products.

(c) A third party who has a beneficial interest in a business with a filed lien is not personally liable for the amounts owing. Instead, the amount of tax, interest and penalties as reflected in the warrant becomes a specific lien upon the third party's property that is used in the business.

(4) **Notice and order to withhold and deliver.** A tax lien is sufficient to support the issuance of a writ of garnishment authorized by chapter 6.27 RCW. RCW 82.32.210(4). A tax lien also allows the department to issue a notice and order to withhold and deliver. A notice and order to withhold and deliver (order) is an administrative garnishment used by the department to obtain property of a taxpayer from a third party such as a bank or employer. See RCW 82.32.235. The department may issue an order when it has reason to believe that a party is in the possession of property that is or shall become due, owing or belonging to any taxpayer against whom a warrant has been filed.

(a) **Service of order.** The department may serve an order to withhold and deliver to any person, or to any political subdivision or department of the state. The order may be served by the sheriff or deputy sheriff of the county where service is made, by any authorized representative of the department, or by certified mail.

(b) **Requirement to answer order.** A person upon whom service has been made is required to answer the order in writing within twenty days of service of the order. The date of mailing or date of personal service is not included when calculating the due date of the answer. All answers must be true and made under oath. If an answer states that it cannot presently be ascertained whether any property is or shall become due, owing, or belonging to such taxpayer, the person served must answer when such fact can be ascertained. RCW 82.32.235.

(i) If the person served with an order possesses property of the taxpayer subject to the claim of the department, the party must deliver the property to the department or its duly authorized representative upon demand. If the indebtedness involved has not been finally determined, the department will hold the property in trust to apply to the indebtedness involved or for return without interest in accordance with the final determination of liability or nonliability. In the alternative, the department must be furnished a satisfactory bond conditioned upon final determination of liability. RCW 82.32.235.

(ii) If the party upon whom service has been made fails to answer an order to withhold and deliver within the time prescribed, the court may enter a default judgment against the party for the full amount claimed owing in the order plus costs. RCW 82.32.235.

(c) **Continuing levy.** A notice and order to withhold and deliver constitutes a continuing levy until released by the department. RCW 82.32.237.

(d) **Assets that may be attached.** Both tangible assets, as a vehicle, and intangible assets may be attached. Examples of intangible assets that may be attached by an order to withhold and deliver include, but are not limited to, checking or savings accounts; accounts receivable; refunds or deposits; contract payments; wages and commissions, including bonuses; liquor license deposits; rental income; dealer reserve accounts held by service stations or auto dealers; and funds held in escrow pending sale of a business. Certain insurance proceeds are subject to attachment such as the cash surrender value of a policy. The department may attach funds in a joint account that are owned by the delinquent taxpayer. Funds in a joint account with the right of survivorship are owned by the depositors in proportion to the amount deposited by each. RCW 30.22.090. The joint tenants have the burden to prove the separate ownership.

(e) **Assets exempt from attachment.** Examples of assets which are not attachable include Social Security, railroad retirement, welfare, and unemployment benefits payable by the federal or state government.

(5) **Levy upon real and/or personal property.** The department may issue an order of execution, pursuant to a filed warrant, directing the sheriff of the county in which the warrant was filed to levy upon and sell the real and/or personal property of the taxpayer in that county. RCW 82.32.-220. If the department has reason to believe that a taxpayer has personal property in the taxpayer's possession that is not otherwise exempt from process or execution, the department may obtain a warrant to search for and seize the property. A search warrant is obtained from a superior or district court judge in the county in which the property is located. See RCW 82.32.245.

(6) **Probate, insolvency, assignment for the benefit of creditors or bankruptcy.** In all of these cases or conditions, the claim of the state for unpaid taxes and increases and penalties thereon, is a lien upon all real and personal property of the taxpayer. RCW 82.32.240. All administrators, executors, guardians, receivers, trustees in bankruptcy, or assignees for the benefit of creditors are required to notify the department of such administration, receivership, or assignment within sixty days from the date of their appointment and qualification. In cases of insolvency, this includes the duty of the person who is winding down the business to notify the department.

(a) The state does not have to take any action to perfect its lien. The lien attaches the date of the assignment for the benefit of creditors or of the initiation of the probate or bankruptcy. In cases of insolvency, the lien attaches at the time the business becomes insolvent. The lien, however, does not affect the validity or priority of any earlier lien that may have attached in favor of the state under any other provision of the Revenue Act.

(b) Any administrator, executor, guardian, receiver, or assignee for the benefit of creditors who does not notify the department as provided above is personally liable for payment of the taxes and all increases and penalties thereon. The personal liability is limited to the value of the property subject to administration that otherwise would have been available to pay the unpaid liability.

(c) In probate cases in which a surviving spouse or surviving domestic partner is separately liable for unpaid taxes and increases and penalties thereon, the department does not need to file a probate claim to protect the state's interest against the surviving spouse or the surviving domestic partner. The department may collect from the ~~((surviving spouse's))~~ separate property of the surviving spouse or surviving domestic partner and any assets formerly community property or property of the domestic partnership which become the ~~((surviving spouse's))~~ property of the surviving spouse or the surviving domestic partner. If the deceased spouse or deceased domestic partner and/or the community or domestic partnership also was liable for the tax debt, the claim also could be asserted in the administration of the ~~((deceased spouse's))~~ estate of the deceased spouse or deceased domestic partner.

(7) **Lien on retained percentage of public improvement contracts.** Every public entity engaging a contractor under a public improvement project of twenty thousand dollars or more, shall retain five percent of the total contract price, including all change orders, modifications, etc. This retainage is a trust fund held for the benefit of the department and other statutory claimants. In lieu of contract retainage, the public entity may require a bond. All taxes, increases, and penalties due or to become due under Title 82 RCW from a contractor or the contractor's successors or assignees with respect to a public improvement contract of twenty thousand dollars or more shall be a lien upon the amount of the retained percentage withheld by the disbursing officer under such contract. RCW 60.28.040.

(a) **Priorities.** The employees of a contractor or the contractor's successors or assignees who have not been paid the prevailing wage under the public improvement contract have a first priority lien against the bond or retainage. The department's lien for taxes, increases, and penalties due or to become due under such contract is prior to all other liens. The amount of all other taxes, increases and penalties due from the contractor is a lien upon the balance of the retained percentage after all other statutory lien claims have been paid. RCW 60.28.040.

(b) **Release of funds.** Upon final acceptance by the public entity or completion of the contract, the disbursing officer shall contact the department for its consent to release the funds. The officer cannot make any payment from the retained percentage until the department has certified that all taxes, increases, and penalties due have been paid or are readily collectible without recourse to the state's lien on the retained percentage. RCW 60.28.050 and 60.28.051.

(8) **Personal liability for unpaid trust funds.** The retail sales tax is to be held in trust. RCW 82.08.050. As a trust fund, the retail sales tax is not to be used to pay other corporate or personal debts. RCW 82.32.145 imposes personal liability on any responsible person who willfully fails to pay or cause to be paid any collected but unpaid retail sales tax. Collection authority and procedures prescribed in chapter 82.32 RCW apply to the collection of trust fund liability assessments.

(a) **Responsible person.** A responsible person is any officer, member, manager, or other person having control or supervision of retail sales tax funds collected and held in trust

or who has the responsibility for filing returns or paying the collected retail sales tax.

(i) A responsible person may have "control and supervision" of collected retail sales tax or the responsibility to report the tax under corporate bylaws, job description, or other proper delegation of authority. The delegation of authority may be established by written documentation or by conduct.

(ii) A responsible person must have significant but not necessarily exclusive control or supervision of the trust funds. Neither a sales clerk who only collects the tax from the customer nor an employee who only deposits the funds in the bank has significant supervision or control of the retail sales tax. An employee who has the responsibility to collect, account for, and deposit trust funds does have significant supervision or control of the tax.

(iii) A person is not required to be a corporate officer or have a proprietary interest in the business to be a responsible person.

(iv) A member of the board of directors, a shareholder, or an officer may have trust fund liability if that person has the authority and discretion to determine which corporate debts should be paid and approves the payment of corporate debts out of the collected retail sales trust funds.

(v) More than one person may have personal liability for the trust funds if the requirements for liability are present for each person.

(b) **Requirements for liability.** In order for a responsible person to be held personally liable for collected and unpaid retail sales tax:

(i) The tax must be the liability of a corporate or limited liability business;

(ii) The corporation must be terminated, dissolved, or abandoned;

(iii) The failure to pay must be willful; and

(iv) The department must not have a reasonable means of collecting the tax from the corporation.

(c) **Willful failure to pay.** A willful failure to pay means that the failure was an intentional, conscious, and voluntary course of action. An intent to defraud or a bad motive is not required. For example, using collected retail sales tax to pay other corporate obligations is a willful failure to pay the trust funds to the state.

(i) A responsible person depositing retail sales tax funds in a bank account knowing that the bank might use the funds to off-set amounts owing to it is engaging in a voluntary course of action. It is a willful failure to pay if the bank does exercise its right of set off which results in insufficient funds to pay the corporate retail sales tax that was collected and deposited in the account. To avoid personal liability in such a case, the responsible party can set aside the collected retail sales tax and not commingle it with other funds that are subject to attachment or set off.

(ii) If the failure to pay the trust funds to the state was due to reasons beyond that person's control, the failure to pay is not willful. For example, if the person responsible for remitting the tax provides evidence that the trust funds were unknowingly stolen or embezzled by another employee, the failure to pay is not considered willful. To find that a failure to pay the trust funds to the state was due to reasons beyond

that person's control, the facts must show both that the circumstances caused the failure to pay the tax and that the circumstances were beyond the person's control.

(iii) If a responsible person instructs an employee or hires a third party to remit the collected sales tax, the responsible person is not relieved of personal liability for the tax if the tax is not paid.

(d) **Extent of liability.** Trust fund liability includes the collected but unpaid retail sales tax as well as the interest and penalties due on the tax.

(i) An individual is only liable for trust funds collected during the period he or she had the requisite control, supervision, responsibility, or duty to remit the tax, plus interest and penalties on those taxes. RCW 82.32.145(2).

(ii) Any retail sales taxes that were paid to the department but not collected may be deducted from the retail sales taxes collected but not paid.

(e) **No reasonable means of collection.** The department has "no reasonable means of collection" if the costs of collection would be more than the amount that could be collected; if the amount that might be recovered through a levy, foreclosure or other collection action would be negligible; or if the only means of collection is against a successor corporation.

(f) **Appeal of personal liability assessment.** Any person who receives a personal liability assessment is encouraged to request a supervisory conference if the person disagrees with the assessment. The request for the conference should be made to the department representative that issued the assessment or the representative's supervisor at the department's field office. A supervisory conference provides an opportunity to resolve issues with the assessment without further action. If unable to resolve the issue, the person receiving the assessment is entitled to administrative and judicial appeal procedures. RCW 82.32.145(4). See also RCW 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

While encouraged to request a supervisory conference, any person receiving a personal liability assessment may elect to forego the supervisory conference and proceed directly with an appeal of the assessment. Refer to WAC 458-20-100 for information about the department's administrative appeal procedures, including how to timely file a petition for appeal.

WSR 08-11-079
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed May 19, 2008, 2:39 p.m.]

Title of Rule and Other Identifying Information: WAC 458-16A-100 definitions, defines terms contained in RCW 84.36.381 through 84.36.389.

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 21, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 458-16A-100 is being amended to conform to SSHB [2SHB] 3104 (chapter 6, Laws of 2008), SSB 5256 (chapter 182, Laws of 2008), and legislation since 2003.

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 legislative changes since 2003.

Statutory Authority for Adoption: RCW 84.36.383, 84.36.389, and 84.36.865.

Statute Being Implemented: RCW 84.36.381 through 84.36.389.

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 19, 2008

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-09-002, filed 4/2/03, effective 5/3/03)

WAC 458-16A-100 Senior citizen ((~~and~~)), disabled person, and one hundred percent disabled veteran exemption—Definitions. (1) **Introduction.** This rule contains definitions of the terms used for the senior citizen ((~~and~~)), disabled person, and one hundred percent disabled veteran exemption from property taxes. The definitions apply to the senior citizen ((~~and~~)), disabled person, and one hundred percent disabled veteran exemption contained in sections RCW 84.36.381 through 84.36.389 unless the context clearly requires otherwise.

(2) **Annuity.** "Annuity" means a series of payments under a contract. Annuity contracts pay a fixed sum of money at regular intervals for more than one full year. An annuity may be paid as the proceeds of a life insurance contract (other than as a lump sum payment), unemployment compensation, disability payments, or even welfare receipts. It does not include payments for the care of dependent children.

(3) **Assessment year.** "Assessment year" means the year when the assessor lists and values the principal residence for property taxes. The assessment year is the calendar year prior to the year the taxes become due and payable. It is always the year before the claimant receives a reduction in

his or her property taxes because of the senior citizen ~~((and))~~, disabled person, and one hundred percent disabled veteran exemption.

(4) **Capital gain.** "Capital gain" means the amount the seller receives for property (other than inventory) over that seller's adjusted basis in the property. The seller's initial basis in the property is the property's cost plus taxes, freight charges, and installation fees. In determining the capital gain, the seller's costs of transferring the property to a new owner are also added onto the adjusted basis of the property. If the property is acquired in some other manner than by purchase, the seller's initial basis in the property is determined by the way the seller received the property (e.g., property exchange, payment for services, gift, or inheritance). The seller adjusts (increases and decreases) the initial basis of the property for events occurring between the time the property is acquired and when it is sold (e.g., increased by the cost of improvements made later to the property).

(5) **Claimant.** "Claimant" means a person claiming the senior citizen ~~((and))~~, disabled person, and one hundred percent disabled veteran exemption by filing an application with the county assessor in the county where the property is located.

(6) **Combined disposable income.** "Combined disposable income" means the annual disposable income of the claimant, the claimant's spouse or domestic partner, and any cotenant reduced by amounts paid by the claimant or the claimant's spouse or domestic partner for their:

- (a) Legally prescribed drugs;
- (b) Home health care; ~~((and))~~
- (c) Nursing home ~~((expenses))~~, boarding home, or adult family home expenses; and
- (d) Health care insurance premiums for Medicare under Title XVIII of the Social Security Act.

Disposable income is not reduced by these amounts if payments are reimbursed by insurance or a government program (e.g., Medicare or Medicaid). When the application is made, the combined disposable income is calculated for the assessment year.

(7) **Cotenant.** "Cotenant" means a person who resides with the claimant and who has an ownership interest in the residence.

(8) **Department.** "Department" means the state department of revenue.

(9) **Depreciation.** "Depreciation" means the annual deduction allowed to recover the cost of business or investment property having a useful life of more than one year. In limited circumstances, this cost, or a part of this cost, may be taken as a section 179 expense on the federal income tax return in the year business property is purchased.

(10) **Disability.** "Disability" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months. (RCW 84.36.383(7); 42 U.S.C. Sec. 423 (d) (1)(A).)

(11) **Disabled veteran.** "Disabled veteran" means a veteran of the armed forces of the United States with a one hun-

red percent disability rating that is service-connected (RCW 84.36.381 (3)(b)).

(12) **Disposable income.** "Disposable income" means the adjusted gross income as defined in the Federal Internal Revenue Code of 2001, and as amended after that date, plus all the other items described below to the extent they are not included in or have been deducted from adjusted gross income. (RCW 84.36.383)

(a) Capital gains, other than gain excluded from the sale of a principal residence that is reinvested prior to the sale or within the same calendar year in a different principal residence;

(b) Losses. Amounts deducted for loss;

(c) Depreciation. Amounts deducted for depreciation;

(d) Pension and annuity receipts;

(e) Military pay and benefits other than attendant-care and medical-aid payments. Attendant-care and medical-aid payments are any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the military;

(f) Veterans benefits other than:

(i) Attendant-care payments and medical-aid payments, defined as any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the Department of Veterans Affairs (VA);

(ii) Disability compensation, defined as payments made by the VA to a veteran because of service-connected disability;

(iii) Dependency and indemnity compensation, defined as payments made by the VA to a surviving spouse, child, or parent because of a service-connected death.

~~((Attendant care and medical aid payments are any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the Department of Veterans Affairs (VA);))~~

(g) Federal Social Security Act and railroad retirement benefits;

(h) Dividend receipts;

(i) Interest received on state and municipal bonds.

~~((11))~~ (13) **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.

(14) **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.

(15) **Excess levies.** "Excess levies" means voter-approved levies by taxing districts, other than port or public utility districts, of additional taxes in excess of the statutory aggregate dollar rate limit, the statutory dollar rate limit, or the constitutional one percent levy limit. It does not include regular levies allowed to exceed a statutory limit with voter approval or voted regular levies.

~~((12))~~ **(16) Excluded military pay or benefits.** "Excluded military pay or benefits" means military pay or benefits excluded from a person's federal gross income, other than those amounts excluded from that person's federal gross income for attendant-care and medical-aid payments. Members of the armed forces receive many different types of pay and allowances. Some payments or allowances are included in their gross income for the federal income tax while others are excluded from their gross income. Excluded military pay or benefits include:

- (a) Compensation for active service while in a combat zone or a qualified hazardous duty area;
- (b) Death allowances for burial services, gratuity payment to a survivor, or travel of dependents to the burial site;
- (c) Moving allowances;
- (d) Travel allowances;
- (e) Uniform allowances;
- (f) Group term life insurance payments made by the military on behalf of the claimant, the claimant's spouse or domestic partner, or the cotenant; and
- (g) Survivor and retirement protection plan premiums paid by the military on behalf of the claimant, the claimant's spouse or domestic partner, or the cotenant.

~~((13))~~ **(17) Family dwelling unit.** "Family dwelling unit" means the dwelling unit occupied by a single person, any number of related persons, or a group not exceeding a total of eight related and unrelated nontransient persons living as a single noncommercial housekeeping unit. The term does not include a boarding or rooming house.

~~((14))~~ **(18) Home health care.** "Home health care" means the treatment or care of either the claimant or the claimant's spouse or domestic partner received in the home. It must be similar to the type of care provided in the normal course of treatment or care in a nursing home, although the person providing the home health care services need not be specially licensed. The treatment and care must meet at least one of the following criteria. It must be for:

- (a) Medical treatment or care received in the home;
- (b) Physical therapy received in the home;
- (c) Food, oxygen, lawful substances taken internally or applied externally, necessary medical supplies, or special needs furniture or equipment (such as wheel chairs, hospital beds, or therapy equipment), brought into the home as part of a necessary or appropriate in-home service that is being rendered (such as a meals on wheels type program); or
- (d) Attendant care to assist the claimant, or the claimant's spouse or domestic partner, with household tasks, and such personal care tasks as meal preparation, eating, dressing, personal hygiene, specialized body care, transfer, positioning, ambulation, bathing, toileting, self-medication a person provides for himself or herself, or such other tasks as may be necessary to maintain a person in his or her own home, but shall not include improvements or repair of the home itself.

~~((15))~~ **(19) Lease for life.** "Lease for life" means a lease that terminates upon the demise of the lessee.

~~((16))~~ **(20) Legally prescribed drugs.** "Legally prescribed drugs" means drugs supplied by prescription of a medical practitioner authorized to issue prescriptions by the laws of this state or another jurisdiction.

~~((17))~~ **(21) Life estate.** "Life estate" means an estate whose duration is limited to the life of the party holding it or of some other person.

(a) Reservation of a life estate upon a principal residence placed in trust or transferred to another is a life estate.

(b) Beneficial interest in a trust is considered a life estate for the settlor of a revocable or irrevocable trust who grants to himself or herself the beneficial interest directly in his or her principal residence, or the part of the trust containing his or her personal residence, for at least the period of his or her life.

(c) Beneficial interest in an irrevocable trust is considered a life estate, or a lease for life, for the beneficiary who is granted the beneficial interest representing his or her principal residence held in an irrevocable trust, if the beneficial interest is granted under the trust instrument for a period that is not less than the beneficiary's life.

~~((18))~~ **(22) Owned.** "Owned" includes "contract purchase" as well as "in fee," a "life estate," and any "lease for life." A residence owned by a marital community or domestic partnership or owned by cotenants is deemed to be owned by each spouse or each domestic partner or each cotenant.

~~((19))~~ **(23) Ownership by a marital community or domestic partnership.** "Ownership by a marital community or domestic partnership" means property owned in common by both spouses or domestic partners. Property held in separate ownership by one spouse or domestic partner is not owned by the marital community or domestic partnership. The person claiming the exemption must own the property for which the exemption is claimed. Example: A person qualifying for the exemption by virtue of age ~~((20))~~, disability, or one hundred percent disabled veteran status cannot claim exemption on a residence owned by the person's spouse or domestic partner as a separate estate outside the marital community or domestic partnership unless the claimant has a life estate therein.

~~((20))~~ **(24) Pension.** "Pension" means an agreement to provide for payments, not wages, to a person (or to that person's family) who has fulfilled certain conditions of service or reached a certain age. A pension may allow payment of all or a part of the entire pension benefit, in lieu of regular periodic payments.

~~((21))~~ **Physical disability.** "~~Physical disability~~" means ~~the condition of being disabled, resulting in the inability to pursue an occupation because of physical or mental impairment.~~

~~((22))~~ **(25) Principal residence.** "Principal residence" means the claimant owns and occupies the residence as his or her principal or main residence. It does not include a residence used merely as a vacation home. For purposes of this exemption:

- (a) Principal or main residence means the claimant occupies the residence for more than six months each year.
- (b) Confinement of the claimant to a hospital or nursing home does not disqualify the claim for exemption if:
 - (i) The residence is temporarily unoccupied;
 - (ii) The residence is occupied by the claimant's spouse or domestic partner or a person financially dependent on the claimant for support;
 - (iii) The residence is occupied by a caretaker who is not paid for watching the house;

(iv) The residence is rented for the purpose of paying nursing home ~~((and)),~~ hospital, boarding home or adult family home costs.

~~((23))~~ **(26) Regular gainful employment.** "Regular gainful employment" means consistent or habitual labor or service which results in an increase in wealth or earnings.

~~((24))~~ **(27) Replacement residence.** "Replacement residence" means a residence that qualifies for the senior citizen ~~((and)),~~ disabled person, and one hundred percent disabled veteran exemption and replaces the prior residence of the ~~((senior citizen or disabled))~~ person receiving the exemption.

~~((25))~~ **(28) Residence.** "Residence" means a single-family dwelling unit whether such unit be 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 land use regulations require this larger parcel size. The term also includes:

(a) A share ownership in a cooperative housing association, corporation, or partnership if the person claiming exemption can establish that his or her share represents the specific unit or portion of such structure in which he or she resides.

(b) A single-family dwelling situated upon leased lands and upon lands the fee of which is vested in the United States, any instrumentality thereof including an Indian tribe, the state of Washington, or its political subdivisions.

(c) A mobile home which has substantially lost its identity as a mobile unit by being fixed in location upon land owned or rented by the owner of said mobile home and placed on a foundation, posts, or blocks with fixed pipe connections for sewer, water or other utilities even though it may be listed and assessed by the county assessor as personal property. It includes up to one acre of the parcel of land on which a mobile home is located if both the land and mobile home are owned by the same qualified claimant.

~~((26))~~ **(29) Veteran.** "Veteran" means a veteran of the armed forces of the United States.

(30) Veterans benefits. "Veterans benefits" means benefits paid or provided under any law, regulation, or administrative practice administered by the VA. Federal law excludes from gross income any veterans' benefits payments, paid under any law, regulation, or administrative practice administered by the VA.

WSR 08-11-080

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed May 19, 2008, 2:41 p.m.]

Title of Rule and Other Identifying Information: WAC 458-14-015 Jurisdiction of county boards of equalization, lists the appeals county boards of equalization may hear and explains the circumstances under which the boards may equalize property values on their own initiative.

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 21, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 458-14-015 is being amended to add, at subsection (1)(p), the jurisdiction of the boards of equalization to hear appeals from decisions of the assessor pursuant to RCW 84.37.040 regarding deferrals under chapter 84.37 RCW, Property tax limited income deferral program, as approved by the legislature in its November 2007 special session.

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 2007 legislation.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, and 84.48.200.

Statute Being Implemented: RCW 84.37.040.

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 19, 2008

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-13-034, filed 6/14/06, effective 7/15/06)

WAC 458-14-015 Jurisdiction of county boards of equalization. (1) Boards have jurisdiction to hear all appeals as may be authorized by statute, including the following types of appeals:

(a) Appeals for a change in appraised value when the department establishes taxable rent under chapter 82.29A RCW (leasehold excise tax) based on an appraisal done by the county assessor at the request of the department.

(b) Appeals of assessor determinations related to cancellation of exemption pursuant to RCW 84.14.110 (multiple unit dwellings in urban centers).

(c) Appeals of decisions or disputes pursuant to RCW 84.26.130 (historic property).

(d) Forest land application denial under RCW 84.33.130, and forest land removal under RCW 84.33.140.

(e) Current use determinations pursuant to RCW 84.34.035, denial of application for farm and agricultural land, and RCW 84.34.108, removal from current use classification and appeal of new assessed valuation upon removal of current use classification.

(f) Determinations pursuant to RCW 84.36.660 (special property tax exemption for increase in value attributable to the installation of an automatic sprinkler system in a night-club).

(g) Appeals pursuant to RCW 84.36.385 (senior citizen exemption denials).

(h) Appeals pursuant to RCW 84.36.812 (assessed value upon which additional tax is based, upon cessation of exempt use).

(i) Determinations pursuant to RCW 84.38.040 (property tax deferrals).

(j) Determinations pursuant to RCW 84.40.039 (valuation reduction after government restriction).

(k) Determinations pursuant to RCW 84.40.085 (omitted property or value).

(l) Valuation appeals of taxpayers pursuant to RCW 84.48.010.

(m) Appeal from a decision of the assessor relative to a claim for either real or personal property tax exemption, pursuant to RCW 84.48.010.

(n) Determinations pursuant to RCW 84.48.065 (cancellation or correction of manifest error) when the cancellation or correction results in a change on the assessment or tax roll.

(o) Destroyed property appeals pursuant to RCW 84.70.010.

(p) Appeals from decisions of the assessor pursuant to RCW 84.37.040 regarding deferrals under chapter 84.37 RCW (property tax limited income deferral program).

(2) Boards have jurisdiction to equalize property values on their own initiative pursuant to RCW 84.48.010, in accordance with WAC 458-14-046.

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 21, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 458-16A-010 and 458-16A-020 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 84.36.041 to domestic partners. Definitions of "domestic partner" and "domestic partnership" have been included (at subsection (2)(j) and (k) in WAC 458-16A-010 and subsection (2)(g) and (h) of WAC 458-16A-020), and language has been added to recognize domestic partners and domestic partnerships where required.

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 84.36.041 and 84.36.865.

Statute Being Implemented: RCW 84.36.041.

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 19, 2008

Alan R. Lynn

Rules Coordinator

WSR 08-11-081

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed May 19, 2008, 2:42 p.m.]

Title of Rule and Other Identifying Information: WAC 458-16A-010 Nonprofit homes for the aging, explains the exemptions allowed and the criteria that must be met in order to receive an exemption as a nonprofit home for the aging; and WAC 458-16A-020 Nonprofit homes for the aging—Initial application and annual renewal, explains the application and renewal processes for obtaining the exemption.

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

AMENDATORY SECTION (Amending WSR 00-09-086, filed 4/18/00, effective 5/19/00)

WAC 458-16A-010 Nonprofit homes for the aging.

(1) **Introduction.** Under RCW 84.36.041, a nonprofit home for the aging may be totally or partially exempt from property tax. This section explains the exemptions allowed and the criteria that must be met in order to receive an exemption under this statute. Throughout this section, all requirements will pertain to all types of homes for the aging including, but not limited to, adult care homes, assisted living facilities, continuing care retirement communities (CCRC), and independent housing, unless a particular type of home is separately identified.

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

(a) "Acquisition" means that an existing home for the aging (or home) currently in operation is acquired by a nonprofit organization and the ownership of the facility will change as a result of a purchase, gift, foreclosure, or other method.

(b) "Assistance with activities of daily living" means the home provides, brokers, or contracts for the provision of auxiliary services to residents, such as meal and housekeeping service, transportation, ambulatory service, and attendant care including, but not limited to, bathing and other acts related to personal hygiene, dressing, shopping, food preparation, monitoring of medication, and laundry services.

(c) "Combined disposable income" means the disposable income of the person submitting the income verification form, plus the disposable income of the person's spouse or domestic partner, and the disposable income of each cotenant occupying the dwelling unit for the preceding calendar year, less amounts paid by the person submitting the income verification form or the person's spouse, domestic partner or cotenant during the previous year for the treatment or care of either person received in the dwelling unit or in a nursing home.

(i) If the person submitting the income verification form was retired for two months or more of the preceding calendar year, the combined disposable income of the person will be calculated by multiplying the average monthly combined disposable income of the person during the months the person was retired by twelve.

(ii) If the income of the person submitting the income verification form is reduced for two or more months of the preceding calendar year because of the death of the person's spouse or domestic partner, the combined disposable income of the person will be calculated by multiplying the average monthly combined disposable income of the person after the death of the spouse or domestic partner by twelve.

(d) "Complete and separate dwelling units" means that the individual units of a home contain complete facilities for living, sleeping, cooking, and sanitation.

(e) "Construction" means the actual construction or building of all or a portion of a home that did not exist prior to the construction.

(f) "Continuing care retirement community" or "CCRC" means an entity that provides shelter and services under continuing care contracts with its residents or includes a health care facility or health service.

(g) "Continuing care contract" means a contract to provide a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related or personal care services, that is conditioned upon the transfer of property, the payment of an entrance fee to the provider of the services, and/or the payment of periodic charges in consideration for the care and services provided. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

(h) "Cotenant" means a person who resides with an eligible resident and who shares personal financial resources with the eligible resident.

(i) "Disposable income" means adjusted gross income as defined in the federal Internal Revenue Code, as amended prior to January 1, 1994, plus all of the following items to the extent they are not included in or have been deducted from adjusted gross income:

(i) Capital gains, other than gain excluded from income under section 121 of the federal Internal Revenue Code to the extent it is reinvested in a new principal residence;

(ii) Amounts deducted for loss;

(iii) Amounts deducted for depreciation;

(iv) Pension and annuity receipts;

(v) Military pay and benefits other than attendant-care and medical-aid payments;

(vi) Veterans benefits other than attendant-care and medical-aid payments;

(vii) Federal Social Security Act and railroad retirement benefits;

(viii) Dividend receipts; and

(ix) Interest received on state and municipal bonds.

(j) "Domestic partner" means a partner 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.

(k) "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.

(l) "Eligible resident" means a person who:

(i) Occupied the dwelling unit as their principal place of residence as of December 31st of the assessment year the home first became operational or in each subsequent year, occupied the dwelling unit as their principal place of residence as of January 1st of the assessment year. If an eligible resident is confined to a hospital or nursing home and the dwelling unit is temporarily unoccupied or occupied by a spouse or domestic partner, a person financially dependent on the claimant for support, or both, the dwelling will still be considered occupied by the eligible resident;

(ii) Is sixty-one years of age or older on December 31st of the year in which the claim for exemption is filed, or is, at the time of filing, retired from regular gainful employment by reason of physical disability. A surviving spouse or domestic partner of a person who was receiving an exemption at the time of the person's death will qualify for this exemption if the surviving spouse or domestic partner is fifty-seven years of age or older and otherwise meets the requirements of this subsection; and

(iii) Has a combined disposable income that is no more than the greater of twenty-two thousand dollars or eighty percent of the median income adjusted for family size as determined by the federal Department of Housing and Urban Development (HUD) for the county in which the person resides and in effect as of January 1 of the year the application for exemption is submitted.

~~((k))~~ (m) "First assessment year the home becomes operational" or "the assessment year the home first became operational" means the first year the home becomes occupied by and provides services to eligible residents. Depending upon the facts, this year will be the year during which construction of the home is completed or the year during which a nonprofit organization purchases or acquires an existing home and begins to operate it as a nonprofit home for the aging.

((+)) (n) "Home for the aging" or "home" means a residential housing facility that:

(i) Provides a housing arrangement chosen voluntarily by the resident, the resident's guardian or conservator, or another responsible person;

(ii) Has only residents who are at least sixty-one years of age or who have needs for care generally compatible with persons who are at least sixty-one years of age; and

(iii) Provides varying levels of care and supervision, as agreed to at the time of admission or as determined necessary at subsequent times of reappraisal.

((+)) (o) "HUD" means the federal Department of Housing and Urban Development.

((+)) (p) "Local median income" means the median income adjusted for family size as most recently determined by HUD for the county in which the home is located and in effect on January 1st of the year the application for exemption is submitted.

((+)) (q) "Low income" means that the combined disposable income of a resident is eighty percent or less of the median income adjusted for family size as most recently determined by HUD for the county in which the home is located and in effect as of January 1st of the year the application for exemption is submitted.

((+)) (r) "Occupied dwelling unit" means a living unit that is occupied either on January 1st of the year for which the application for exemption is made or on December 31st of the assessment year the home first becomes operational and for which application for exemption is made.

((+)) (s) "Property that is reasonably necessary" means all property that is:

(i) Operated and used by a home; and

(ii) The use of which is restricted to residents, guests, or employees of a home.

((+)) (t) "Refinancing" means the discharge of an existing debt with funds obtained through the creation of new debt. For purposes of this section, even if the application for tax exempt bond financing to refinance existing debt is treated by the financing agent as something other than refinancing, an application for a property tax exemption because of refinancing by tax exempt bonds will be treated as refinancing and the set-asides specific to refinancing will be applied. "Refinancing" shall include tax exempt bond financing in excess of the amount of existing debt that is obtained to modify, improve, restore, extend, or enlarge a facility currently being operated as a home.

((+)) (u) "Rehabilitation" means that an existing building or structure, not currently used as a home, will be modified, improved, restored, extended, or enlarged so that it can be used as a home for elderly and disabled individuals. A project will be considered a rehabilitation if the costs of rehabilitation exceed five thousand dollars. If a home has acquired tax exempt bond financing and does not meet the definition of "rehabilitation" contained in this subsection, the home may be eligible for a total exemption under the "refinancing" definition and if it meets the "refinancing" set-aside requirements. If such a home is not eligible for a total exemption, the department will determine the home's eligibility for a partial exemption in accordance with the pertinent parts of RCW 84.36.041 and this section.

((+)) (v) "Set-aside(s)" means the percentage of dwelling units reserved for low-income residents when the construction, rehabilitation, acquisition, or refinancing of a home is financed under a financing program using tax exempt bonds.

((+)) (w) "Shared dwelling units" or "shared units" means individual dwelling units of a home that do not contain complete facilities for living, eating, cooking, and sanitation.

((+)) (x) "Taxable value" means the value of the home upon which the tax rate is applied in order to determine the amount of property taxes due.

((+)) (y) "Total amount financed" means the total amount of financing required by the home to fund construction, acquisition, rehabilitation, or refinancing. Seventy-five percent of this amount must be supplied by tax exempt bonds to receive the total exemption from property tax available under the tax exempt bond financing provision of RCW 84.36.041.

(3) **General requirements.** To be exempt under this section, a home for the aging must be:

(a) Exclusively used for the purposes for which exemption is granted, except as provided in RCW 84.36.805;

(b) Operated by an organization that is exempt from income tax under section 501(c) of the federal Internal Revenue Code; and

(c) The benefit of the exemption must inure to the home.

(4) **Total exemption.** There are three ways in which a home may be totally exempt from property tax. All real and personal property used by a nonprofit home that is reasonably necessary for the purposes of the home is exempt if it meets the general requirements listed in subsection (3) of this section and:

(a) At least fifty percent of the occupied dwelling units in the home are occupied by eligible residents;

(b) The home is subsidized under a HUD program; or

(c) The construction, rehabilitation, acquisition, or refinancing of a home is financed under a program using bonds exempt from federal income tax if at least seventy-five percent of the total amount financed uses tax exempt bonds and the financing program requires the home to reserve or set-aside a percentage of all dwelling units so financed for low-income residents. See subsections (5), (6), and (7) of this section for tax exempt bond requirements and the percentage of units that must be set-aside for low-income residents in order for the home to be totally exempt.

(5) **Homes or CCRCs financed by tax exempt bonds—Generally.** All real and personal property used by a nonprofit home or CCRC may be totally exempt from property tax if at least seventy-five percent of the total amount financed for construction, rehabilitation, acquisition, or refinancing uses tax exempt bonds and the financing program requires the home or CCRC to reserve or set-aside a percentage of all dwelling units so financed for low-income residents.

(a) The percentage of set-aside units required will vary depending on whether the home is a CCRC, the purpose for which the tax exempt bond financing was obtained, the type of dwelling unit, and the receipt of Medicaid funds. The set-aside requirements for homes are set forth in subsection (6) of

this section and for CCRCs are set forth in subsection (7) of this section.

(b) The exemption will be granted in direct correlation to the total amount financed by tax exempt bonds and the portion of the home or CCRC that is constructed, acquired, rehabilitated, or refinanced by tax exempt bonds.

(c) If tax exempt bonds are used for refinancing, the set-aside requirements set forth in subsections (6) and (7) of this section will be applied to the actual area or portion of the home or CCRC to which the bonds correspond.

(i) Example 1. A CCRC (that accepts Medicaid funds) is composed of a multistory building, six duplexes, and two independent homes and the CCRC has secured tax exempt bonds to satisfy an existing mortgage on the multistory building. Only the multistory building will be considered eligible for a total exemption from property tax because of tax exempt bond financing. To receive the exemption, at least twenty percent of the dwelling units of the multistory building must be set-aside for residents at or below fifty percent of the local median income or at least forty percent of the dwelling units must be set-aside for residents at or below sixty percent of the local median income.

(ii) Example 2. A home obtains tax exempt bonds to refinance a portion of the home and to fund construction. The department will separately consider the area of the home that corresponds to the purpose for which the tax exempt bonds were obtained. The set-aside requirements related to refinancing will be applied to the portion of the home that corresponds to the mortgage being refinanced and the set-aside requirements related to construction will be applied to the area of the home to be newly constructed. The department will determine the eligibility for partial exemption of the remainder of the home that is not being refinanced or constructed.

(d) If a total exemption is granted under the tax exempt bond financing provision, the total exemption will remain in effect as long as:

- (i) The home or CCRC remains in compliance with the requirements under which it received the tax exempt bonds;
- (ii) The tax exempt bonds are outstanding; and
- (iii) The set-aside requirements are met.

(e) If a home or CCRC has obtained tax exempt bond financing to modify, improve, restore, extend, or enlarge its existing facility and the project does not meet the definition of rehabilitation contained in subsection (2) of this section, the project will not be considered a rehabilitation. In this situation, the set-aside requirements related to refinancing or acquisition will be applied in determining eligibility for a total exemption.

(f) When a home or CCRC no longer meets the criteria for exemption under the tax exempt bond financing portion of the statute, eligibility for exemption under RCW 84.34.041 will be determined by the other provisions of the statute. In other words, a home may receive a total or partial exemption depending on the number of residents who are deemed to be "eligible residents" or who require "assistance with activities of daily living." For example, if a home that previously received a total exemption due to the receipt of tax exempt bond financing has one hundred dwelling units and sixty of

those dwelling units are occupied by eligible residents, the home may receive a total exemption.

(6) **Set-aside requirements related to homes and tax exempt bond financing.** A specified number of dwelling units within a home must be set-aside for low income residents to obtain a total property tax exemption because of tax exempt bond financing. The set-aside requirements for homes will be determined according to the type of dwelling units contained in the home and the purpose for which the tax exempt bond financing was obtained. The provisions of this section do not apply to CCRCs. The specific set-aside requirements for CCRCs are described in subsection (7) of this section.

A home must meet the following set-aside requirements to be totally exempt from property tax:

PURPOSE OF BOND FINANCING	TYPE OF DWELLING UNIT	SET-ASIDE REQUIREMENTS
New construction or Rehabilitation	Complete & Separate units	10% of total units set-aside for residents at or below 80% of local median income and 10% of total units set-aside for residents at or below 50% of local median income
Acquisition or Refinancing of dwelling units currently satisfying 10% and 10% set-aside requirements	Complete & Separate units	10% of total units set-aside for residents at or below 80% of local median income and 10% of total units set-aside for residents at or below 50% of local median income
Acquisition or Refinancing of dwelling units not currently satisfying 10% and 10% set-aside requirements	Complete & Separate units	20% of total units set-aside for residents at or below 50% of local median income or 40% of total units set-aside for residents at or below 60% of local median income

PURPOSE OF BOND FINANCING	TYPE OF DWELLING UNIT	SET-ASIDE REQUIREMENTS
Acquisition, New Construction, Refinancing, or Rehabilitation	Shared units	10% of total units set-aside for residents at or below 80% of local median income and 10% of total units set-aside for residents at or below 50% of local median income

(7) **Set-aside requirements related to CCRCs and tax exempt bond financing.** A specified number of dwelling units of a CCRC must be set-aside for low income residents to obtain a total property tax exemption because of tax exempt bond financing. The set-aside requirements for CCRCs will be determined by whether the CCRC does or does not have Medicaid contracts for continuing care contract residents and the purpose for which the tax exempt bond financing was obtained. The provisions of this section do not apply to other homes. The specific set-aside requirements for other homes are described in subsection (6) of this section.

(a) The continuing care contract between the resident and the CCRC is a contract to provide shelter along with nursing, medical, health-related or personal care services to the resident for the duration of the resident's life or for a term in excess of one year. A resident's tenancy may not be terminated due to inability of the resident to fully pay the monthly service fee when the resident establishes facts to justify a waiver or reduction of these charges. This provision shall not apply if the resident, without the CCRC's consent, has impaired his and/or her ability to meet financial obligations required by the continuing care contract due to a transfer of assets, after signing the continuing care contract, other than to meet ordinary and customary living expenses, or by incurring unusual or unnecessary new financial obligations.

(b) A CCRC without Medicaid contracts for continuing care contract residents may not receive Medicaid funds from Washington state or the federal government during the term that the bonds are outstanding, except during the initial transition period as allowed by state law or if the regulatory agreement with the tax exempt bond financier exempts the CCRC from compliance with this requirement.

(c) The following set-aside requirements must be met by CCRCs not receiving Medicaid funds (including CCRCs that are permitted to receive Medicaid funds during an initial transition period only) to receive a total exemption:

PURPOSE OF BOND FINANCING	SET-ASIDE REQUIREMENTS
New construction or Rehabilitation	10% of total units set-aside for residents at or below 80% of local median income and 15% of total units set-aside for residents at or below 100% of local median income

PURPOSE OF BOND FINANCING	SET-ASIDE REQUIREMENTS
Acquisition or Refinancing of dwelling units currently satisfying 10% and 15% set-aside requirements	10% of total units set-aside for residents at or below 80% of local median income and 15% of total units set-aside for residents at or below 100% of local median income
Acquisition or Refinancing of dwelling units not currently satisfying 10% and 15% set-aside requirements	20% of total units set-aside for residents at or below 50% of local median income or 40% of total units set-aside for residents at or below 60% of local median income

(d) The following set-aside requirements must be met by CCRCs receiving Medicaid funds to receive a total exemption:

PURPOSE OF BOND FINANCING	SET-ASIDE REQUIREMENTS
New construction or Rehabilitation	10% of total units set-aside for residents at or below 80% of local median income and 10% of total units set-aside for residents at or below 100% of local median income
Acquisition or Refinancing of dwelling units currently satisfying 10% and 10% set-aside requirements	10% of total units set-aside for residents at or below 80% of local median income and 10% of total units set-aside for residents at or below 100% of local median income
Acquisition or Refinancing of dwelling units not currently satisfying 10% and 10% set-aside requirements	20% of total units set-aside for residents at or below 50% of local median income or 40% of total units set-aside for residents at or below 60% of local median income

(8) **Partial exemption.** If a home does not qualify for a total exemption from property tax, the home may receive a partial exemption for its real property on a unit by unit basis and a total exemption for its personal property.

(a) Real property exemption. If the real property of a home is used in the following ways, the portion of the real property so used will be exempt and the home may receive a partial exemption for:

- (i) Each dwelling unit occupied by a resident requiring significant assistance with activities of daily living;
 - (ii) Each dwelling unit occupied by an eligible resident;
- and

(iii) Common or shared areas of the home that are jointly used for two or more purposes that are exempt from property tax under chapter 84.36 RCW.

(b) Assistance with activities of daily living. A home may receive a partial exemption for each dwelling unit that is occupied by a resident who requires significant assistance with the activities of daily living and the home provides, brokers, facilitates, or contracts for the provision of this assistance. A resident requiring assistance with the activities of daily living must be a resident who requires significant assistance with at least three of the nonexclusive list of activities set forth below and who, unless the resident receives the assistance, would be at risk of being placed in a nursing home. Activities of daily living include, but are not limited to:

- (i) Shopping;
- (ii) Meal and/or food preparation;
- (iii) Housekeeping;
- (iv) Transportation;
- (v) Dressing;
- (vi) Bathing;
- (vii) General personal hygiene;
- (viii) Monitoring of medication;
- (ix) Ambulatory services;
- (x) Laundry services;
- (xi) Incontinence management; and
- (xii) Cuing for the cognitively impaired.

(c) Examples of assistance with the activities of daily living:

(i) If the resident of a home requires assistance with daily dressing, bathing, and personal hygiene, weekly housekeeping chores, and daily meal preparation, the person is a resident requiring significant assistance with activities of daily living and the home may receive a partial exemption for the dwelling unit in which the person resides.

(ii) If the resident of a CCRC only requires someone to clean the house weekly and to do the laundry weekly, the resident does not require significant assistance with activities of daily living and the CCRC may not receive a partial exemption for the dwelling unit.

(d) Common or shared areas. Areas of a home that are jointly used for two or more purposes exempt from property tax under chapter 84.36 RCW will be exempted under RCW 84.36.041.

(i) The joint use of the common or shared areas must be reasonably necessary for the purposes of the nonprofit organization, association, or corporation exempt from property tax under chapter 84.36 RCW. A kitchen, dining room, and laundry room are examples of the types of common or shared areas for which a partial property tax exemption may be granted.

(ii) Example. A nonprofit organization uses its facility as a home for the aging and a nursing home. The home and nursing home jointly use the kitchen and dining room. The home may receive a property tax exemption for the common or shared areas under RCW 84.36.041. The eligibility of the other areas of the facility will be determined by the appropriate statute. The home's eligibility will be determined by RCW 84.36.041 and the nursing home's eligibility will be determined by RCW 84.36.040.

(e) Amount of partial exemption. The amount of partial exemption will be calculated by multiplying the assessed value of the property reasonably necessary for the purposes of the home, minus/less the assessed value of any common or shared areas, by a fraction. The numerator and denominator of the fraction will vary depending on the first assessment year the home became operational and occupied by eligible residents.

(i) Numerator. If the home becomes operational after the January 1st assessment date, the numerator is the number of dwelling units occupied by eligible residents and by residents requiring assistance with activities of daily living on December 31st. The December 31st date will be used only in the first year of operation. In any other assessment year, the numerator is the number of the dwelling units occupied on January 1st of the assessment year by eligible residents and by residents requiring assistance with activities of daily living.

(ii) Denominator. If the home becomes operational after the January 1st assessment date, the denominator is the number of dwelling units occupied on December 31st. The December 31st date will be used only in the first assessment year the home becomes operational. In any other assessment year, the denominator is the total number of occupied dwelling units as of January 1st of the assessment year.

(iii) Example:

Assessed value of home:	\$500,000
Less assessed value of common area:	<u>- 80,000</u>
Total	\$420,000

Number of units occupied on 1/1 by eligible residents and people requiring assistance with daily living activities	=	6
Total of occupied units on 1/1		40 or .15
$\$420,000 \times .15 = \$63,000$ Amount of partial exemption		
$\$420,000 - \$63,000 = \$357,000$ Taxable value of home		

(f) Valuation of the home. The assessor will value a home that receives a partial exemption by considering only the current use of the property during the period in which the partial exemption is received and will not consider any potential use of the property.

(9) Income verification required from some residents. If a home seeks a total property tax exemption because at least fifty percent of the occupied dwelling units are occupied by eligible residents or seeks to receive a partial exemption based upon the number of units occupied by eligible residents, the residents must submit income verification forms. The department may request income verification forms from residents of homes receiving a total exemption because of tax exempt bond financing.

(a) The income verification forms must be submitted to the assessor of the county in which the home is located by July 1st of the assessment year in which the application for exemption is made. If the home becomes operational after the January 1st assessment date, these forms must be submitted to the assessor as soon as they are available but no later than December 31st of that assessment year.

(b) The income verification form will be prescribed and furnished by the department of revenue.

(c) If an eligible resident filed an income verification form for a previous year, the resident is not required to submit a new form unless there is a change in status affecting the resident's eligibility, such as a significant increase or decrease in disposable income, or the assessor or the department requests a new income verification form to be submitted.

(10) **Additional requirements.** Any nonprofit home for the aging that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16A-020 and 458-16-165. WAC 458-16A-020 contains information regarding the initial application and renewal procedures relating to the exemption discussed in this section. WAC 458-16-165 sets forth additional requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.041.

AMENDATORY SECTION (Amending WSR 00-09-086, filed 4/18/00, effective 5/19/00)

WAC 458-16A-020 Nonprofit homes for the aging—Initial application and annual renewal. (1) **Introduction.** This section explains the initial application process that must be followed when a home for the aging wishes to obtain a property tax exemption under RCW 84.36.041. This section also describes the annual renewal requirements that a home must follow to retain its tax exempt status, as well as the role of the assessor's office and the department of revenue in administering this exemption. Throughout this section, all requirements will pertain to all types of homes for the aging including, but not limited to, adult care homes, assisted living facilities, continuing care retirement communities (CCRC), and independent housing.

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

(a) "Assessor" means the county assessor or any agency or person who is duly authorized to act on behalf of the assessor.

(b) "Combined disposable income" means the disposable income of the person submitting the income verification form, plus the disposable income of the ~~((person's))~~ person's spouse or domestic partner, and the disposable income of each cotenant occupying the dwelling unit for the preceding calendar year, less amounts paid by the person submitting the income verification form ~~((or))~~ the person's spouse or domestic partner, or any cotenant during the previous year for the treatment or care of ~~((either person))~~ any of them received in the dwelling unit or in a nursing home.

(i) If the person submitting the income verification form was retired for two months or more of the preceding calendar year, the combined disposable income of the person will be calculated by multiplying the average monthly combined disposable income of the person during the months the person was retired by twelve.

(ii) If the income of the person submitting the income verification form is reduced for two or more months of the preceding calendar year by reason of the death of the person's spouse or domestic partner, the combined disposable income of the person will be calculated by multiplying the average monthly combined disposable income of the person after the death of the spouse or domestic partner by twelve.

(c) "Continuing care retirement community" or "CCRC" means an entity that provides shelter and services under continuing care contracts with its residents or includes a health care facility or health service.

(d) "Continuing care contract" means a contract to provide a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related or personal care services, that is conditioned upon the transfer of property, the payment of an entrance fee to the provider of the services, and/or the payment of periodic charges in consideration for the care and services provided. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

(e) "Cotenant" means a person who resides with an eligible resident and who shares personal financial resources with the eligible resident.

(f) "Department" means the department of revenue.

(g) "Domestic partner" means a partner 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.

(h) "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.

(i) "Eligible resident" means a person who:

(i) Occupied the dwelling unit as their principal place of residence as of December 31st of the assessment year the home first became operational or in each subsequent year, occupied the dwelling unit as their principal place of residence as of January 1st of the assessment year. If an eligible resident is confined to a hospital or nursing home and the dwelling unit is temporarily unoccupied or occupied by a spouse or domestic partner, a person financially dependent on the claimant for support, or both, the dwelling will still be considered occupied by the eligible resident;

(ii) Is sixty-one years of age or older on December 31st of the year in which the claim for exemption is filed, or is, at the time of filing, retired from regular gainful employment by reason of physical disability. A surviving spouse or domestic partner of a person who was receiving an exemption at the time of the person's death will qualify for this exemption if the surviving spouse or domestic partner is fifty-seven years of age or older and otherwise meets the requirements of this subsection; and

(iii) Has a combined disposable income that is no more than the greater of twenty-two thousand dollars or eighty percent of the median income adjusted for family size as determined by federal Department of Housing and Urban Development (HUD) for the county in which the person resides.

~~((H))~~ (j) "First assessment year the home becomes operational" or "the assessment year the home first became operational" means the first year the home becomes occupied by and provides services to eligible residents. Depending upon the facts, this year will be the year during which construction of the home is completed or the year during which a nonprofit

organization purchases or acquires an existing home and begins to operate it as a nonprofit home for the aging.

~~((+))~~ **(k)** "Homes for the aging" or "home(s)" means a residential housing facility that:

(i) Provides a housing arrangement chosen voluntarily by the resident, the resident's guardian or conservator, or another responsible person;

(ii) Has only residents who are at least sixty-one years of age or who have needs for care generally compatible with persons who are at least sixty-one years of age; and

(iii) Provides varying levels of care and supervision, as agreed to at the time of admission or as determined necessary at subsequent times of reappraisal.

~~((+))~~ **(l)** "HUD" means the federal Department of Housing and Urban Development.

~~((+))~~ **(m)** "Occupied dwelling unit" means a living unit that is occupied either on January 1st of the year in which the claim for exemption is filed or on December 31st of the first assessment year the home becomes operational and in which the claim for exemption is filed.

~~((+))~~ **(n)** "Property that is reasonably necessary" means all property that is:

(i) Operated and used by a home; and

(ii) The use of which is restricted to residents, guests, or employees of a home.

(3) Application for exemption. The tax exemption authorized by RCW 84.36.041 is claimed by and benefits a nonprofit home for the aging, not the residents of the home. Therefore, the claim for this exemption is submitted by a home to the department.

(a) If a claim for exemption is filed on behalf of a home under RCW 84.36.041 and the exemption is granted, no resident of that home may receive a personal exemption under RCW 84.36.381.

(b) A listing of the varying levels of care and supervision provided or coordinated by the home must accompany all initial applications submitted for exemption. Examples of the varying levels of care and supervision include, but are not limited to, the following:

(i) Conducting routine room checks;

(ii) Arranging for or providing transportation;

(iii) Arranging for or providing meals;

(iv) On-site medical personnel;

(v) Monitoring of medication; or

(vi) Housekeeping services.

(c) Homes having real property that is used for purposes other than as a home (for example, property used for a barber shop) must provide the department with a floor plan identifying the square footage devoted to each exempt and nonexempt use.

(d) At the time an application for exemption is submitted, the home must submit proof that it is recognized by the Internal Revenue Service as a 501(c) organization.

(e) Homes that apply for a total exemption because of tax exempt bond financing must submit a copy of the regulatory agreement between the home and the entity that issues the bonds. When only a portion of the home is financed by a program using tax exempt bonds, the home must submit a site plan of the home indicating the areas so financed.

(4) Segregation. A nonprofit organization that provides shelter and services to elderly and disabled individuals may use the facility for more than one purpose that is exempt from property tax under chapter 84.36 RCW. Property that is used for more than one exempt purpose and that qualifies for exemption under a statute other than RCW 84.36.041 will be segregated and exempted pursuant to the applicable statute.

(a) If a home includes a nursing home, the department will segregate the home and the part of the facility that is used as a nursing home. The department will separately determine the eligibility of the home under RCW 84.36.041 and the nursing home under RCW 84.36.040 for the property tax exemption available under each statute.

Exception: If the home does not receive Medicaid funds (including CCRCs that are permitted to receive Medicaid funds during an initial transition period only) and is seeking a total exemption because of tax exempt bond financing, the home and nursing home will be considered as a whole when the set-aside requirements are applied.

(b) Dwelling units that are occupied by residents who do not meet the age or disability requirements of RCW 84.36.-041 will be segregated and taxed.

(c) Common or shared areas. Areas of a home that are jointly used for two or more purposes exempt from property tax under chapter 84.36 RCW will be exempted under RCW 84.36.041.

(i) The joint use of the common or shared areas must be reasonably necessary for the purposes of the nonprofit organization, association, or corporation exempt from property tax under chapter 84.36 RCW. A kitchen, dining room, and laundry room are examples of the types of common or shared areas for which a property tax exemption may be granted.

(ii) Example. A nonprofit organization uses its facility as a home for the aging and a nursing home. The home and nursing home jointly use the kitchen and dining room. The home may receive a property tax exemption for the common or shared areas under RCW 84.36.041. The eligibility of the other areas of the facility will be determined by the appropriate statute. The home's eligibility will be determined by RCW 84.36.041 and the nursing home's eligibility will be determined by RCW 84.36.040.

(5) Homes subsidized by HUD. Homes subsidized by a HUD program must initially and each March 31st thereafter provide the department with a letter of certification from HUD of continued HUD subsidy and a list of the name, age, and/or disability of all residents. If the property is subsidized by more than one HUD contract and one of the contracts expires or is otherwise no longer in effect, the eligibility of the portion of the facility still subsidized by HUD will be conditioned on receipt of a letter of certification from HUD and a listing of all persons residing on the property. The eligibility of the remainder of the property will be determined by the number of dwelling units occupied by eligible residents on January 1st following the expiration or cancellation of the HUD subsidy.

(6) **Homes that are not subsidized by HUD.** If a home is not subsidized by HUD or does not meet the requirements to receive a total exemption because of tax exempt bond financing, it may receive a total or partial exemption from property tax. The extent of the exemption will be determined by the number of dwelling units occupied by eligible residents. If more than fifty percent of the dwelling units are occupied by eligible residents, the home may receive a total exemption. Alternatively, if less than fifty percent of the dwelling units are occupied by eligible residents, the home may receive partial exemption for its real property on a unit by unit basis and a total exemption for its personal property. An income verification form will be used to determine if a resident of a home meets the criteria of "eligible resident." During the initial application process, the residents of a home applying for exemption will be asked to submit an income verification form with the assessor of the county in which the home is located and the assessor and/or the department may request any relevant information deemed necessary to make a determination.

(a) The type of income verification form required and its due date depends upon the date the home first became operational and began to provide services to eligible residents:

(i) If the home was operating and providing services to eligible residents on the January 1st assessment date, the residents are to submit Form REV 64-0043 between January 1st and July 1st of the year preceding the year in which the tax is due; or

(ii) If the home started operating and providing services to eligible residents after the January 1st assessment date, the residents are to submit Form REV 64-0042 on or before December 31st of the year preceding the year in which the tax is due. In this situation, no income verification forms will be required during the following year if the same eligible residents occupy the same dwelling units on December 31st and January 1st of the subsequent year.

(b) If two or more residents occupy one unit, only one cotenant is required to file verification of combined disposable income, as defined in subsection (2) of this section, with the assessor.

(c) Form REV 64-0043 will not be accepted by the assessor if it is submitted or postmarked after July 1st unless the assessor and/or the department has agreed to waive this deadline. Form REV 64-0042 will not be accepted if it is submitted or postmarked after December 31st unless the assessor and/or department agrees to waive this deadline.

(d) After the application for exemption is approved, residents will not be required to file a new income verification form unless a change in their circumstances occurs or the assessor requests it. However, at any time after the initial application is approved, assessors and/or the department may:

(i) Request residents to complete Form REV 64-0043;
(ii) Conduct audits; and
(iii) Request other relevant information to ensure continued eligibility.

(e) By March 31st each year, a home not subsidized by HUD that wishes to retain its exempt property tax status must file with the department a list of the total number of dwelling units in its complex, the number of occupied dwelling units in

its complex as of January 1st, the number of previously qualified dwelling units in its complex that are no longer occupied by the same eligible residents, and a list of the name, age, and/or disability of all residents and the date upon which they moved into or occupied the home. If a home's eligibility was based upon the number of units occupied on December 31st, the home must only provide the department with an amended list of additions or deletions as of the subsequent January 1st assessment date.

(7) **Homes financed by tax exempt bonds.** Homes that receive a total property tax exemption because of tax exempt bond financing must initially and each March 31st thereafter provide the department with a letter of certification from the agency or organization monitoring compliance with the bond requirements. The letter of certification must verify that the home is in full compliance with all requirements and set-asides of the underlying regulatory agreement.

(a) If the set-aside requirements contained in the regulatory agreement differ from the set-aside requirements established by the department and set forth in WAC 458-16A-010, the department may require the residents of the home to submit income verification forms (Form REV 64-0042 or 64-0043) to the assessor of the county in which the home is located.

(b) A home for the aging that is receiving a property tax exemption must annually submit a list of the name, age, and/or disability of all residents in the home to the department.

(8) **Assessor's responsibilities.** Assessors will determine the age or disability and income eligibility of all residents who file Form REV 64-0042 or 64-0043, the income verification forms. By July 15th each year or by January 15th of the assessment year following the first assessment year a home becomes operational, the assessor will forward a copy of Form REV 64-0042 or 64-0043 to the department for each resident who meets the eligibility requirements.

(9) **Appeals.** An applicant who is determined not to be an "eligible resident" by the assessor and a home that is denied a property tax exemption by the department each have the right to appeal. Appeals must be filed within thirty days of the date the notice of ineligibility or denial was mailed by the assessor or the department.

(a) If the assessor determines that an applicant does not meet the definition of an "eligible resident," the resident may appeal this decision to the board of equalization of the county in which the home is located.

(b) If the department denies, in whole or in part, an application for exemption, the home may appeal this denial to the state board of tax appeals.

(10) **Additional requirements.** Any nonprofit home for the aging that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16A-010 and 458-16-165. WAC 458-16A-010 contains information regarding the basic eligibility requirements to receive a total or partial exemption under RCW 84.36.041. WAC 458-16-165 sets forth additional requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.041.

WSR 08-11-110
EXPEDITED RULES
OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2008-17—Filed May 20, 2008, 2:43 p.m.]

Title of Rule and Other Identifying Information: The office of insurance commissioner (OIC) is proposing to repeal WAC 284-43-210 which requires carriers to submit access plans. In addition, WAC 284-43-220 would be amended to eliminate references to WAC 284-43-210.

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 Kacy Scott, Insurance Commissioner, P.O. Box 40258, Olympia, WA 98504-0258, e-mail Kacys@oic.wa.gov, AND RECEIVED BY July 22, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 284-43-210, adopted in 1998, describes a series of documents and/or answers to specific questions about how a health plan operates called an "access plan" that carriers must file with the OIC and make available to any interested party on request. This rule is proposed for repeal because that statutory basis for the rule, RCW 48.43.095 (1)(c), was repealed in 2000. Many of the requirements of WAC 284-43-210 overlap with WAC 284-43-820. In addition, WAC 284-43-220 would be amended to eliminate references to WAC 284-43-210.

Reasons Supporting Proposal: The statutory basis for the rule, RCW 48.43.095 (1)(c), was repealed in 2000.

Statutory Authority for Adoption: RCW 48.02.060.

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

Name of Proponent: [OIC], governmental.

Name of Agency Personnel Responsible for Drafting: Donna Dorris, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7040; **Implementation:** Beth Berendt, P.O. Box 40255, Olympia, WA 98504-0255, (360)725-7117; and **Enforcement:** Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

May 20, 2008

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2003-01, filed 4/23/03, effective 5/24/03)

WAC 284-43-220 Network reports—Format. Each health carrier must file with the commissioner (~~an access plan~~) a Provider Network Form A, Network Enrollment Form B and Geographic Network Report.

(1) (~~Access plan.~~ A health carrier must describe each of its networks in an access plan as prescribed by WAC 284-43-210.

(~~2~~) **Provider Network Form A.** A carrier must file an electronic report of all participating providers by network. This report must contain all data items shown in Provider Network Form A prescribed by and available from the commissioner. Updated reports must be filed each month. Filing of this data satisfies the reporting requirements of RCW 48.44.080 and the requirements of RCW 48.46.030 relating to filing of notices that describes changes in the provider network.

(~~3~~) **Network Enrollment Form B.** By March 31, 2004, and every year thereafter, a carrier must prepare an electronic report showing the total number of covered persons who were entitled to health care services during each month of the year, excluding nonresidents. A separate report must be filed for each network by line of business. The report must contain all data items shown in and conform to the format of Network Enrollment Form B prescribed by and available from the commissioner.

(~~4~~) **Geographic Network Report.** By March 31st of every year, a carrier also must file an electronic or hard copy paper report meeting the standards below. The carrier must update the reports whenever a material change in the carrier's provider network occurs that significantly affects the ability of covered persons to access covered services. Each carrier must file for each network, using a network accessibility analysis system, such as GeoNetworks or any other similar system:

(a) A map showing the location of covered persons and primary care providers with a differentiation between single and multiple provider locations;

(b) An access table illustrating the relationship between primary care providers and covered persons as of December of each year by county, including at a minimum:

(i) Total number of covered persons;

(ii) Total number of primary care providers (or, if the plan is a Preferred Provider Organization style of managed care, the total number of contracted providers);

(iii) Number of covered persons meeting the carrier's self defined access standard;

(iv) Percentage of covered persons meeting the carrier's self defined access standard; and

(v) Average distance to at least one primary care provider for its covered persons; and

(c) An alphabetical list by county and city showing:

(i) Total number of covered persons;

(ii) Total number of primary care providers (or, if the plan is a Preferred Provider Organization style of managed care, the total number of contracted providers);

(iii) Total number of obstetric and women's health care providers;

(iv) Total number of specialists;

(v) Total number of nonphysician providers by license type;

(vi) Total number of hospitals; and

(vii) Total number of pharmacies.

(~~5~~) **4** A carrier may vary the method of reporting required under subsection (~~4~~) **3** of this section upon

written request and subsequent written approval by the commissioner. In the request, the carrier must show that the carrier does not use or does not have easy access to electronic or data systems permitting the method of reporting required without incurring substantial costs.

((6)) (5) For purposes of this section:

(a) "Line of business" means either individual, small group or large group coverage;

(b) "Network" means the group of participating providers and facilities providing health care services to a particular line of business.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 284-43-210 Access plan.

WSR 08-11-114
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed May 21, 2008, 8:54 a.m.]

Title of Rule and Other Identifying Information: WAC 458-16-115 Personal property exemptions for household goods, furnishings, and personal effects, and for the head of a family, explains the personal property tax exemption for household goods, furnishings, and personal effects and the exemption available to the head of a family for otherwise taxable personal property up to a value of fifteen thousand dollars.

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 21, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 458-16-115 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 84.36.110 and 84.36-120 to domestic partners.

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, 84.08.070, and 84.36.865.

Statute Being Implemented: RCW 84.36.110, 84.36-120.

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 21, 2008

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-11-124, filed 5/21/07, effective 6/21/07)

WAC 458-16-115 Personal property exemptions for household goods, furnishings, and personal effects, and for the head of a family. (1) Introduction. This section explains the personal property tax exemption for household goods, furnishings, and personal effects. It also explains the exemption available to the head of a family for otherwise taxable personal property up to a value of fifteen thousand dollars. These exemptions are provided by RCW 84.36.110. (For sections dealing with exemptions of intangible personal property under RCW 84.36.070, *see* WAC 458-50-150 through 458-50-190.)

(2) Exemption for household goods, furnishings, and personal effects. All household goods and furnishings actually being used to equip and outfit the owner's residence or place of abode and all personal effects held by any person for his or her exclusive use and benefit are exempt from property taxation. Any household goods and furnishings or personal effects held for sale or commercial use do not qualify for this exemption. RCW 84.36.110(1).

(a) What are household goods and furnishings? "Household goods and furnishings" are all items of tangible personal property normally located in or about a residence and used or held to enhance the value or enjoyment of the residence, including its premises. The phrase includes, but is not limited to, movable items of necessity, convenience, or decoration, such as furniture, appliances, food, pictures, and tools and equipment used to maintain the residence. Personal property qualifying for this exemption retains its exempt status while temporarily in storage or while being used temporarily at locations other than the owner's residence.

"Household goods and furnishings" do not include items of personal property constructed primarily for use independent of and separate from a residence such as boats, motor vehicles, campers, and travel trailers. However, certain motor vehicles, campers, and travel trailers may be entitled to an exemption from property taxation under RCW 84.36.595. Also, some boats may be wholly or partially exempt from property taxation under RCW 84.36.080 and 84.36.090.

(b) What are personal effects? "Personal effects" are items of tangible property of a personal or intimate nature

that usually and ordinarily accompany a person such as wearing apparel, jewelry, and articles of a similar nature. RCW 84.36.120.

(c) When are household goods, furnishings, and personal effects not exempt? Personal property held for sale or used for any business or commercial purpose does not qualify for the household goods exemption. Thus, property used to equip and outfit a motel, hotel, apartment, sorority, fraternity, boarding house, rented home, duplex, or any other premises not used by the owner for his or her own personal residence or place of abode does not qualify for this exemption. Likewise, a hairdresser who uses any portion of his or her home as a beauty salon cannot claim a household goods exemption for personal property held for sale or otherwise used in the business. Business inventories, however, are exempt from property taxation under RCW 84.36.477.

Following is a nonexclusive list of items that are exempt as household goods or furnishings if they are used in a residence or place of abode but are fully taxable if they are used for business or commercial purposes.

(i) Desks are exempt as household goods if they are used in a residence but are taxable if they are used in a business office, including an office located in the owner's residence.

(ii) Silverware and china are exempt if they are used in a residence but are taxable if they are used in a restaurant.

(iii) Art or other collections are exempt if they are located in a residence but are taxable if they are located in a public display or used for commercial purposes.

(iv) Power equipment such as lawnmowers used exclusively to enhance the value or enjoyment of a residence, including its premises, are exempt, but they are taxable when used to maintain a golf course or for any other business or commercial purpose.

(3) Exemption for the head of a family. Each head of a family is entitled to an exemption from his or her taxable personal property in an amount up to fifteen thousand dollars of actual value. RCW 84.36.110(2). For purposes of this exemption, "actual value" has the same meaning as "true and fair value" as defined in WAC 458-07-030. The taxpayer must qualify for the head of a family exemption on January 1st of the assessment year (the assessment date) or the exemption is lost for taxes payable the following year. As noted above, household goods, furnishings, and personal effects not used for business or commercial purposes are exempt from property taxation; therefore, the exemption for the head of a family does not apply to such property.

(a) Who qualifies as the head of a family? The exemption for the head of a family applies only to individuals (i.e., natural persons); it does not apply to artificial entities such as corporations, limited liability companies, or partnerships. The "head of a family" includes the following residents of the state of Washington:

(i) Any person receiving an old age pension under the laws of this state;

(ii) Any citizen of the United States, over the age of sixty-five years, who has resided in the state of Washington continuously for ten years;

(iii) The husband (~~(or)~~), wife, or domestic partner, when the claimant is a married person or has entered into a domestic partnership, or a surviving spouse (~~(not remarried)~~) or sur-

living domestic partner, who has neither remarried nor entered into a subsequent domestic partnership; and

(iv) Any person who resides with, and has under his or her care and maintenance, any of the following:

(A) His or her minor child or grandchild, or the minor child or grandchild of his or her deceased spouse or deceased domestic partner;

(B) His or her minor brother or sister or the minor child of a deceased brother or sister;

(C) His or her father, mother, grandmother, or grandfather, or the father, mother, grandmother, or grandfather of a deceased spouse or deceased domestic partner; or

(D) Any of the other relatives mentioned in this subsection who have attained the age of majority and are unable to take care of or support themselves.

(b) What property is not exempt? The personal property exemption for the head of a family does not apply to the following:

(i) Private motor vehicles. A "private motor vehicle" is any motor vehicle used for the convenience or pleasure of the owner, which carries a licensing classification other than motor vehicle for hire, auto stage, auto stage trailer, motor truck, motor truck trailer, or dealer's license. RCW 84.36.120;

(ii) Mobile homes. A "mobile home" is a trailer designed for human habitation, which is capable of being moved upon the public streets and highways and is either more than thirty-five feet in length or more than eight feet in width. RCW 84.36.120;

(iii) Floating homes. A "floating home" is a building on a float, used in whole or in part for human habitation as a single-family dwelling and is on the property tax rolls of the county in which it is located. A floating home is not designed for self-propulsion by mechanical means or by means of wind. RCW 82.45.032; or

(iv) Houses, cabins, boathouses, boat docks, or other similar improvements that are located on publicly owned land.

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

(i) A husband and wife operate a catering business as a limited liability company (LLC). The wife also operates a consulting business as a sole proprietor out of the family home. Husband and wife are not entitled to the head of family exemption for property held by the LLC. However, the wife is entitled to the head of family exemption for the taxable personal property used in her consulting business.

(ii) Jane Doe is a citizen of the United States, over the age of sixty-five, and has resided in the state of Washington continuously for over ten years. Jane owns a farm. She has transferred title to the farm property, both real and personal, into a trust. An attorney is the trustee, and Jane is the sole beneficiary. Since Jane Doe has beneficial ownership of the trust property and she qualifies as the head of a family, Jane may claim the head of a family exemption for the taxable personal property held in the trust.

(4) **How do the exemptions included in this section affect listing?** If the county assessor is satisfied that all of the personal property of any person is exempt from taxation, no listing is required by the owner or taxpayer. If the value of taxable personal property exceeds fifteen thousand dollars, then the taxpayer must make a complete listing, and the assessor will deduct fifteen thousand dollars from the total amount of the assessment and assess the remainder. RCW 84.36.110(2).

WSR 08-11-120
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed May 21, 2008, 10:06 a.m.]

Title of Rule and Other Identifying Information: WAC 458-16A-150 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Requirements for keeping the exemption, explains how and when a claimant must file additional reports with the county assessor to keep the exemption and what happens when the claimant or the property no longer qualifies for the full exemption.

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 21, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 458-16A-150 is being amended to conform to SSHB [2SHB] 3104 (chapter 6, Laws of 2008), SB 6338 (chapter 62, Laws of 2006), HB 1019 (chapter 248, Laws of 2005), and SB 5034 (chapter 27, Laws of 2004). SSHB [2SHB] 3104 extended the rights and liabilities of spouses under RCW 84.36.381 to domestic partners. SB 6338 changed the definition of "residence" for purposes of the senior citizen, disabled person, and one hundred percent disabled veteran exemption. HB 1019 extended the former senior citizen and disabled person exemption to veterans of the armed forces of the United States with one hundred percent service connected disability. SB 5034 raised income and valuation limits for qualifying for the senior citizen and disabled person exemption; increased the circumstances under which claimants may qualify for the exemption without residing in their residences; added a definition for "disability"; and added additional deductions for the purpose of calculating "disposable income."

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 legislative changes since 2003.

Statutory Authority for Adoption: RCW 84.36.383, 84.36.389, and 84.36.865.

Statute Being Implemented: RCW 84.36.381 through 84.36.389.

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 21, 2008

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-16-029, filed 7/29/03, effective 8/29/03)

WAC 458-16A-150 Senior citizen (~~and~~), disabled person, and one hundred percent disabled veteran exemption—Requirements for keeping the exemption. (1)

Introduction. This rule explains how and when a senior citizen (~~or~~), disabled person, or one hundred percent disabled veteran must file additional reports with the county assessor to keep the senior citizen (~~or~~), disabled person, or one hundred percent disabled veteran property tax exemption. The rule also explains what happens when the claimant or the property no longer qualifies for the full exemption.

(2) **Continuing the exemption.** The claimant must keep the assessor up to date on the claimant's continued qualification for the senior citizen (~~or~~), disabled person, or one hundred percent disabled veteran property tax exemption. The claimant keeps the assessor up to date in three ways. First, the claimant submits a change in status form when any change affects his or her exemption. In some circumstances, the change in status form may be submitted by an executor, a surviving spouse, a surviving domestic partner, or a purchaser to notify the county of a change in status affecting the exemption. Second, the claimant submits a renewal application for the exemption either upon the assessor's request following an amendment of the income requirement, or every four years. Third, the claimant applies to transfer the exemption when moving to a new principal residence.

(3) **Change in status.** When a claimant's circumstances change in a way that affects his or her qualification for the senior citizen (~~or~~), disabled person, or one hundred percent disabled veteran property tax exemption, the claimant must submit a completed change in status form to notify the county of this change.

(a) **When to submit form.** The claimant must submit a change in status form to the county assessor for any change affecting that person's qualification for the exemption within thirty days of such change in status. If the claimant is unable or fails to submit a change in status form, any subsequent property owner, including a claimant's estate or surviving spouse or surviving domestic partner, should submit a change

in status form to avoid interest and in some cases the penalty for willfully claiming the exemption based upon erroneous information.

(b) **Changes in status described.** Changes in status include:

(i) Changes that affect the property (i.e., changes in land use regulations, new construction, boundary line changes, rentals, ownership changes, etc.);

(ii) Changes to the property owner's annual income that increase or decrease property taxes due under the program; or

(iii) Changes that affect the property owner's eligibility for the exemption (i.e., death, moving to a replacement residence, moving to another residence the claimant does not own, moving into a hospice, a nursing home, or any other long-term care facility, marriage, registration in a state registered domestic partnership, improvement of a ~~((physical))~~ disability for a disabled person's claim, or a disabled person entering into gainful employment).

(c) **Change in status form.** The county assessor designs the change in status form or adapts a master form obtained from the department. The county must obtain approval of the final form from the department before it may be distributed. The claimant, the claimant's agent, or a subsequent owner of the residence must use a change in status form from the county where the principal residence is located. The person filing the form must provide true and accurate information on the change in status form.

(d) **Obtaining the form.** The claimant or subsequent property owner may obtain the form from the county assessor where his or her principal residence is located.

(e) **Failure to submit the form after a change in status occurs.** If the claimant fails to submit the change in status form, the application information relied upon becomes erroneous for the period following the change in status. Upon discovery of the erroneous information, the assessor determines the status of the exemption, and notifies the county treasurer to collect any unpaid property taxes and interest from the claimant, the claimant's estate, or if the property has been transferred, from the subsequent property owner. The treasurer may collect any unpaid property taxes, interest, and penalties for a period not to exceed three years as provided for under RCW 84.40.380. In addition, if a person willfully fails to submit the form or provides erroneous information, that person is liable for an additional penalty equal to one hundred percent of the unpaid taxes. RCW 84.36.385. If the change in status results in a refund of property taxes, the treasurer may refund property taxes and interest for up to the most recent three years after the taxes were paid as provided in chapter 84.69 RCW.

(f) **Loss of the exemption.** If the change in status disqualifies the applicant for the exemption, property taxes must be recalculated based upon the current full assessed value of the property and paid from the date the change in status occurred. RCW 84.40.360. For example, the exemption is lost when the claimant dies (unless the spouse or domestic partner is also qualified). The property taxes are recalculated to the full assessed amount of the principal residence on a pro rata basis beginning the day following the date of the claimant's death for the remainder of the year.

(g) **Loss of exemption on part of the property.** If the change in status removes a portion of the property from the exemption, property taxes in their full amount on that portion of the property that is no longer exempt must be recalculated based upon the current full assessed value of that portion of the property and paid from the date the change in status occurred. For example, a property owner subdivides his or her one-acre lot into two parcels. The parcel that does not have the principal residence built upon it no longer qualifies for the exemption. The property taxes are recalculated to the full assessed amount of that parcel on a pro rata basis for the remainder of the year beginning the day following the date the subdivision was given final approval.

(h) **Exemption reduced.** If the change in status reduces the exemption amount, the increased property taxes are due in the year following the change in income. For example, a claimant's income rises so that only excess levies on her principal residence are exempt. The claimant's income is based upon the assessment year. The following year when the taxes are collected, the property taxes due are calculated with only an exemption for excess levies.

(4) **Renewal application.** The county assessor must notify claimants when to file a renewal application with updated supporting documentation.

(a) **Notice to renew.** Written notice must be sent by the assessor in the year the renewal application is requested. Notice must be sent no later than December 10th, three weeks before the December 31st filing requirement.

(b) **When to renew.** The assessor must request a renewal application at least once every four years. The assessor may request a renewal application for any year the income requirements are amended in the statute after the exemption is granted. Once notified, the claimant must file the renewal application by December 31st of that year.

(c) **Processing renewal applications.** Renewal applications are processed in the same manner as the initial application.

(d) **The renewal application form.** The county assessor may design the renewal application form or adapt either its own application form or the application master form obtained from the department. The county must obtain approval of the final renewal application form from the department before it may be distributed. The property owner must use a renewal form from the county where the principal residence is located. The claimant must provide true and accurate information on the renewal application form.

(e) **Obtaining the form.** The assessor provides this form to senior citizens ~~((or))~~, disabled persons, or one hundred percent disabled veterans claiming the exemption when requesting renewal.

(f) **Failure to submit the renewal application.** If the property owner fails to submit the renewal application form, the exemption is discontinued until the claimant reapplies for the program. The assessor may postpone collection activities and continue to work with an eligible claimant to complete an application for a missed period.

(5) **Transfer of the exemption.** When a claimant moves to a replacement residence, the claimant must file a change in status form with the county where his or her former principal

residence was located. No claimant may receive an exemption on more than the equivalent of one residence in any year.

(a) **Exemption on the former residence.** The exemption on the former residence applies to the closing date on the sale of the former residence, provided the claimant lived in the residence for most of the portion of that year prior to the date of closing. Property taxes in their full amount must be recalculated based upon the current full assessed value of the property and paid from the day following the date the sale closed. The taxes are paid for the remaining portion of the year. RCW 84.40.360.

(b) **Exemption upon the replacement residence.** Upon moving, the claimant must reapply for the exemption in the county where the replacement residence is located if the claimant wants to continue in the exemption program. The same application, supporting documents, and application process is used for the exemption on the replacement residence as when a claimant first applies. See WAC 458-16A-135. The exemption on the replacement residence applies on a pro rata basis in the year he or she moves, but only from the latter of the date the claimant moves into the new principal residence or the day following the date the sale closes on his or her previous residence.

WSR 08-11-121

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed May 21, 2008, 10:07 a.m.]

Title of Rule and Other Identifying Information: WAC 458-16A-135 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Application procedures, explains when and how a senior citizen, disabled person, or one hundred percent disabled veteran may apply for a property tax exemption on that person's principal residence. WAC 458-16A-140 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Exemption described—Exemption granted—Exemption denied—Freezing property values, explains how county assessors process a claimant's application form and what happens when the exemption is granted or denied by the assessor.

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 21, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 458-16A-

135 and 458-16A-140 are being amended to conform to SSHB [2SHB] 3104 (chapter 6, Laws of 2008), SSB 5256 (chapter 182, Laws of 2008), SB 6338 (chapter 62, Laws of 2006), HB 1019 (chapter 248, Laws of 2005), SB 5034 (chapter 27, Laws of 2004), and SB 5758 (chapter 53, Laws of 2003). SSHB [2SHB] 3104 extended the rights and liabilities of spouses under RCW 84.36.381 to domestic partners. SSB 5256 changed the calculation for excluding veteran's benefits from the income calculation for the senior citizen, disabled person, and one hundred percent disabled veteran exemption. SB 6338 changed the definition of "residence" for purposes of the senior citizen, disabled person, and one hundred percent disabled veteran exemption. HB 1019 extended the former senior citizen and disabled person exemption to veterans of the armed forces of the United States with one hundred percent service connected disability. SB 5034 raised income and valuation limits for qualifying for the senior citizen and disabled person exemption; increased the circumstances under which claimants may qualify for the exemption without residing in their residences; added a definition for "disability"; and added additional deductions for the purpose of calculating "disposable income." SB 5758 clarified language related to gender and perjury in RCW 84.36.387.

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 legislative changes since 2003.

Statutory Authority for Adoption: RCW 84.36.383, 84.36.389, and 84.36.865.

Statute Being Implemented: RCW 84.36.381 through 84.36.389.

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 21, 2008

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-09-002, filed 4/2/03, effective 5/3/03)

WAC 458-16A-135 Senior citizen (~~and~~), disabled person, and one hundred percent disabled veteran exemption—Application procedures. (1) Introduction. This rule explains when and how a senior citizen (~~or~~), disabled person, or one hundred percent disabled veteran may apply for a property tax exemption on that person's principal residence. RCW 84.36.381 through 84.36.389.

(2) **When to apply for the exemption.** A claimant may first apply for the exemption in the calendar year that he or she meets the age (~~or~~), disability, or disabled veteran requirements for exemption of taxes due in the following

year. If the claimant does not apply when he or she meets the age ~~((or))~~, disability, or disabled veteran requirements, then he or she may apply for the exemption in any subsequent year. The exemption may be claimed on his or her principal residence for previous years by applying with separate applications for each year. However, refunds based upon an exemption made in previous years may be refunded only for up to three years after the taxes were paid as provided in chapter 84.69 RCW.

(3) **Application required.** A claimant must submit to the county assessor's office an application for exemption with supporting documents. If the claimant applies for more than one year when the application is first made, an application must be made for each year the claimant seeks the exemption.

(4) **Where to obtain the application form.** A claimant may obtain the application form and the list of required supporting documents from the county assessor's office where his or her principal residence is located.

(5) **How to apply for the exemption.** Applications and supporting documents are filed in person or by mail at the county assessor's office where the principal residence is located.

(a) **The application form.** The county assessor designs the application form or adapts a master form obtained from the department. The county must obtain approval of the final form from the department before it may be distributed and used. The claimant must use an application form from the county where the principal residence is located and provide true and accurate information in the application.

(b) **Signatures.** The signature must certify that under penalty of perjury under the laws of Washington the application is true and correct. The application must be signed, dated, and state the place (city, county, or address) where it was signed. The application must be signed by:

- (i) The claimant;
- (ii) The claimant's designated agent;
- (iii) The legal guardian for the claimant (if applicable);

or

(iv) If the property is subject to a deed of trust, mortgage, or purchase contract requiring an accumulation of reserves to pay property taxes, the lien holder; and

(v) If the claimant resides in a cooperative housing unit or portion of a cooperative structure representing the claimant's ownership share in that cooperative, the authorized agent of the cooperative must also sign the application.

(c) **Perjury statement.** The perjury statement certifying under the penalty of perjury that the application is true and correct must be placed upon the application immediately above a line for the signature. Any person signing a false claim with the intent to defraud or evade the payment of any tax ~~((commits))~~ is guilty of perjury under chapter 9A.72 RCW. If a person receives an exemption based on erroneous information, the assessor assesses any unpaid taxes with interest for up to three years. If a person receives an exemption based on erroneous information, and the person either provided that information with the intent to defraud or intentionally failed to correct that information, the assessor assesses any unpaid taxes with interest, for up to three years, with the one hundred percent penalty provided in RCW 84.40.130. RCW 84.36.385(5).

(d) **Cooperative agreement to reduce rent.** A cooperative must also agree, in a statement attached to the application, to reduce amounts owed by the claimant to the cooperative by the amount of the tax exemption. The agreement must also state that when the exemption exceeds the amount owed to the cooperative, the cooperative must pay to the claimant any amount of the tax exemption remaining after this offsetting reduction. RCW 84.36.387(5).

(e) **Supporting documents.** Unless the assessor determines that all or some of the supporting documents are not necessary, a claimant must present the documents listed below with his or her application. Except for affidavits, the assessor's office should not accept original documents from the claimant. If the assessor's office is presented with original documents (other than affidavits), they must make copies or note the information provided in the documents on a separate sheet and return these original documents to the claimant. The claimant submits the following documents with the application:

(i) If the county records do not reflect the claimant as the property owner, copies of any legal instruments demonstrating the claimant's interest held in the property;

(ii) Documents demonstrating that the property is the claimant's principal residence (i.e., copy of a driver's license and voter's registration card);

(iii) Copies of legal identification showing the claimant's age (i.e., copy of a driver's license or birth certificate);

(iv) If the claim is based upon a physical disability, either:

(A) An affidavit from a licensed physician or certified physician's assistant (medical or osteopath doctor), a licensed or certified psychologist for disabling mental impairments, or a licensed podiatrist for disabling impairments of the foot, that states the claimant is unable to enter into regular gainful employment because of his or her ~~((physical))~~ disability and the expected term of the disability; or

(B) Copies of a written acknowledgment or decision by the Social Security Administration or Veterans Administration that the claimant is permanently ~~((physically))~~ disabled;

(v) If the claim is based upon the claimant's veteran status, copies of legal documents showing that the claimant is a veteran of the armed forces of the United States with one hundred percent service-connected disability as provided in 42 U.S.C. Sec. 423 (d)(1)(A) as amended prior to January 1, 2005:

(vi) Copies of documents showing income earned or reported by the claimant, the claimant's spouse or domestic partner and any cotenants, even when the income is estimated (income information should be provided to the degree possible and then confirmed with supporting documents in the follow-up period), such proof shall include to the extent it is relevant:

(A) If the claimant, the claimant's spouse or domestic partner, or any cotenants receive Social Security payments, a federal statement showing Social Security paid (generally, Form SSA-1099);

(B) If the claimant, the claimant's spouse or domestic partner, or any cotenants receive railroad retirement benefits, a federal statement showing railroad retirement benefits paid (generally, Forms RRC-1099 and RRC 1099-R);

(C) If the claimant, the claimant's spouse or domestic partner, or any cotenants file federal income tax returns, those returns with supporting forms, schedules, and, if specifically requested, worksheets for the deductions taken from gross income (generally, Form 1040 with its supporting forms and schedules);

(D) If the claimant or the claimant's spouse or domestic partner has been in a nursing home, boarding home, or adult family home or has been receiving in-home care, copies of invoices (or an equivalent billing statement or payment statement) for nonreimbursed nursing home and in-home care;

(E) If the claimant indicates that the ~~((claimant's and the claimant's spouse's))~~ nonreimbursed prescription drug~~(s)~~ expenses for the claimant and the claimant's spouse or domestic partner for the period under review exceeds five hundred dollars, copies of checks or other payment statements (i.e., pharmacy printout of payments for purchases) showing amounts paid for nonreimbursed prescription drug expenses;

(F) Copies of documents showing premiums paid if the claimant or the claimant's spouse or domestic partner pays health care insurance premiums for Medicare under Title XVIII of the Social Security Act (i.e., 1099, or Medicare plan policy declaration);

(G) If no federal returns were filed or received, the claimant must still provide copies of documents to demonstrate his or her income and the income of his or her spouse or domestic partner and any cotenants (i.e., federal income statements such as Form W-2 (wages), Form 1099-INT (interest), Form 1099-DIV (dividends), Form 1099-R (pension amounts), Form 1099-G (unemployment), or Form 1099-Misc. (contract income)). Even claimants who claim they have no federal income (or an inordinately small amount of federal income) must have income to maintain themselves and their residences. In these situations, the claimant must produce copies of documents demonstrating the source of the funds they are living on (i.e., checking account registers and bank statements) and the bills for maintaining the claimant and the residence (i.e., public assistance check stubs, utility invoices, cable TV invoices, check registers, bank statements, etc.); and

~~((+))~~ (vii) Any other copies of documents the assessor requires in his or her discretion for the claimant to produce in order to demonstrate the claimant qualifies for the exemption.

(f) Public disclosure of the application. The application form may not be disclosed. A copy of the application may be disclosed only if all income information on the form is obliterated so that it cannot be read. Except as required by law, no public disclosure may be made of the checklist of supporting documents or any supporting documents retained that concern the ~~((claimant's, the claimant's spouse's, or any cotenant's))~~ income of the claimant, the claimant's spouse or domestic partner, or any cotenant.

AMENDATORY SECTION (Amending WSR 03-09-002, filed 4/2/03, effective 5/3/03)

WAC 458-16A-140 Senior citizen ~~((and))~~, disabled person, and one hundred percent disabled veteran exemption—Exemption described—Exemption

granted—Exemption denied—Freezing property values.

(1) **Introduction.** This rule explains how county assessors process a claimant's application form for the senior citizen ~~((or))~~, disabled person, or one hundred percent disabled veteran property tax exemption. The rule describes the exemption and what happens when the exemption is granted or denied by the assessor.

(2) **The exemption described.** This property tax exemption reduces or eliminates property taxes on a senior citizen's ~~((or))~~, disabled person's, or one hundred percent disabled veteran's principal residence. Except for benefit charges made by a fire protection district, this exemption does not reduce or exempt an owner's payments for special assessments against the property. Local governments impose special assessments on real property because the real property is specially benefitted by improvements made in that area (e.g., local improvement district assessments for roads or curbs, surface water management fees, diking/drainage fees, weed control fees, etc.). All the property owners in that area share in paying for these improvements. The only exception related to this program is for benefit charges made by a fire protection district. Fire protection district benefit charges are reduced twenty-five, fifty, or seventy-five percent depending upon the combined disposable income of the claimant. RCW 52.18.090.

(a) **Excess levies.** A qualifying claimant receives an exemption from excess levies on his or her principal residence.

(b) **Regular levies.** Depending upon the claimant's combined disposable income, the exemption may also apply to all or a portion of the regular levies on the claimant's principal residence. Both the level of the claimant's combined disposable income and the assessed value of the home determine the amount of the regular levy exempted from property taxes. The exemption applies to all the regular and excess levies when the assessed value of the claimant's principal residence falls below the amount of exempt assessed value identified in RCW 84.36.381 (5)(b) and the claimant's combined disposable income is also below the levels set in that section.

(c) **Property taxes due.** Generally the owner pays the property taxes on the principal residence and obtains directly the benefit of this exemption. If the claimant is not the property's owner, or is not otherwise obligated to pay the property taxes on the principal residence, but "owned" the principal residence for purposes of this exemption, the property owner that owes the tax must reduce any amounts owed to them by the claimant up to the amount of the tax exemption. If the amounts owed by the claimant to this property owner are less than the tax exemption, the owner must pay to the claimant in cash any amount of the tax exemption remaining after this offsetting reduction. RCW 84.36.387(6).

(3) **Processing exemption applications.** County assessors process applications for the senior citizen ~~((or))~~, disabled person, or one hundred percent disabled veteran exemption. The assessors grant or deny the exemption based upon these completed applications.

(a) **Application review.** The county assessor reviews a completed application and its supporting documents.

The assessor:

- (i) Notes on a checklist for the claimant's file the supporting documents received;
- (ii) Reviews the supporting documents;
- (iii) Records relevant information from the supporting documents into the claimant's file. In particular, the assessor records into the file the claimant's age and a summary of the income information received; and
- (iv) After reviewing the supporting documents, must either destroy or return the supporting documents used to verify the claimant's age and income.

(b) **Incomplete applications.** A county assessor may return an incomplete application or a duplicate application. An incomplete application may be missing:

- (i) Signatures;
- (ii) Information upon the form; or
- (iii) Supporting documents.

Upon returning an incomplete application, the assessor should provide the claimant with a dated denial form listing the signatures, information, or documents needed to complete the application. The denial of an incomplete application may be appealed in the same manner as a denial of the exemption.

(c) The assessor may accept any late filings for the exemption even after the taxes have been levied, paid, or become delinquent. An application filed for the exemption in previous years constitutes a claim for a refund under WAC 458-18-210.

(4) **Exemption timing if approved.** Property taxes are reduced or eliminated on the claimant's principal residence for the year following the year the claimant became eligible for the program. When a late application is filed, the exemption may only result in:

- (a) A property tax refund for taxes paid within three years of the payment date; and
- (b) Relief from unpaid property taxes for previous years.

(5) **Exemption procedure when claim granted.** When the exemption is granted, the county assessor:

- (a) Freezes the assessed value of the principal residence upon the assessment roll;
- (b) Determines the level of exemption the claimant qualifies for;
- (c) Notifies the claimant that the exemption has been granted;
- (d) Notifies the claimant of his or her duty to file timely renewal applications;
- (e) Notifies the claimant of his or her duty to file change of status forms when necessary;
- (f) Notifies the claimant of the need to reapply for the exemption if the claimant moves to a replacement residence;
- (g) Notifies the claimant that has supplied estimated income information whether or not follow-up income information is needed;
- (h) Places the claimant on a notification list for renewal of the exemption;
- (i) Places the claimant on a notification list if supporting documents are needed to confirm estimated income information prior to May 31st of the following year;
- (j) Exempts the residence from all or part of its property taxes; and

(k) Provides the department with a recomputation of the assessed values for the immediately preceding year as a part of the annual recomputation process.

(6) **Exemption procedure when claim denied.** The assessor denies the exemption when the claimant does not qualify. The assessor provides a dated denial form listing his or her reasons for this denial. A claimant may appeal the exemption's denial to the county board of equalization as provided for in WAC 458-14-056.

(7) **Freezing the property value.** The assessor freezes the assessed value of the principal residence either on the latter of January 1, 1995, or January 1st of the year when a claimant first qualifies for the exemption. The assessor then tracks both the market value of the principal residence and its frozen value. The assessor provides both the principal residence's market value and its frozen value in the valuation notices sent to the owner.

(a) **Frozen values in counties using a cyclical revaluation plan.** In counties using a cyclical revaluation plan, the assessor:

- (i) Revalues the principal residence, for property revalued in that assessment year, before the assessed value is frozen; or
- (ii) Freezes the principal residence's value at the most recent assessed value for property that is not revalued in that assessment year.

The assessor continues to revalue the principal residence during the regular revaluation cycles to track the market value for the property.

(b) **Adding on improvement costs.** The assessor adds onto the frozen assessed value the cost of any improvements made to the principal residence.

(c) **One-year gaps in qualification.** If a claimant receiving the exemption fails to qualify for only one year because of high income, the previous frozen property value must be reinstated on January 1st of the following year when the claimant again qualifies for the program.

(d) **Moving to a new residence.** If an eligible claimant moves, the county assessor freezes the assessed value of the new principal residence on January 1st of the assessment year in which the claimant transfers the exemption to the replacement residence.

WSR 08-11-126

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed May 21, 2008, 10:58 a.m.]

Title of Rule and Other Identifying Information: WAC 458-16A-110 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Gross income, explains the definition of gross income used for federal income tax. WAC 458-16A-115 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Adjusted gross income, explains how an assessor determines the adjusted gross income for the claimant, the claimant's spouse or domestic partner, and any cotenants. WAC 458-16A-120 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Determining combined

disposable income, describes how an assessor determines a claimant's combined disposable income. WAC 458-16A-130 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Qualifications for exemption, describes the qualifications a claimant must meet for the senior citizen, disabled person, and one hundred percent disabled veteran property tax exemption.

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 21, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 458-16A-110, 458-16A-115, 458-16A-120, and 458-16A-130 are being amended to conform to SSHB 3104 [2SHB] (chapter 6, Laws of 2008), SSB 5256 (chapter 182, Laws of 2008), SB 6338 (chapter 62, Laws of 2006), HB 1019 (chapter 248, Laws of 2005), and SB 5034 (chapter 27, Laws of 2004). SSHB [2SHB] 3104 extended the rights and liabilities of spouses under RCW 84.36.381 and 84.36.383 to domestic partners. SSB 5256 changed the calculation for excluding veterans benefits from the income calculation for the senior citizen, disabled person, and one hundred percent disabled veteran exemption. SB 6338 changed the definition of "residence" for purposes of the senior citizen, disabled person, and one hundred percent disabled veteran exemption. HB 1019 extended the former senior citizen and disabled person exemption to veterans of the armed forces of the United States with one hundred percent service connected disability. SB 5034 raised income and valuation limits for qualifying for the senior citizen and disabled person exemption; increased the circumstances under which claimants may qualify for the exemption without residing in their residences; added a definition for "disability"; and added additional deductions for the purpose of calculating "disposable income."

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 legislative changes since 2003.

Statutory Authority for Adoption: RCW 84.36.383, 84.36.389, and 84.36.865.

Statute Being Implemented: RCW 84.36.381 through 84.36.389.

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., #200, Olympia, WA, (360) 570-5860.

May 21, 2008

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-09-002, filed 4/2/03, effective 5/3/03)

WAC 458-16A-110 Senior citizen (~~and~~), disabled person, and one hundred percent disabled veteran exemption—Gross income. (1) **Introduction.** This rule explains the definition of gross income used for federal income tax. In order to meet the income requirements for the senior citizen (~~and~~), disabled person, and one hundred percent disabled veteran exemption program, the claimant must provide supporting documents verifying combined disposable income. The gross income for federal income tax purposes of the claimant, the claimant's spouse or domestic partner, and any cotenants represents a part of the claimant's combined disposable income.

(a) **Income tax return.** In most cases, the claimant presents copies of federal income tax returns to demonstrate both gross income and adjusted gross income amount(s) for the claimant, the claimant's spouse or domestic partner, and any cotenants. The assessor then determines the disposable income for each person based upon that person's income tax return and the other information supplied by the claimant.

(b) **No income tax return.** When the claimant does not present federal income tax returns, the assessor must determine what constitutes gross income for the nonfiler and obtain copies of income documents to determine that person's gross income. This rule provides the assessor with some guidance in determining the gross income for a nonfiler.

(c) **Verifying the gross income amount.** In some cases, the assessor may choose to verify income amount(s). The rule provides the assessor some guidance in verifying all or part of the gross income for the claimant, the claimant's spouse or domestic partner, or any of the cotenants.

(2) **Gross income determined.** Internal Revenue Code section 61 defines "gross income," generally, as all income from whatever source derived. WAC 458-16A-135 lists the documentation used to determine the income of the claimant.

(3) **Exclusions from the federal definition of gross income.** A claimant may provide documentation or information about amounts received during the year that are excluded from gross income. These amounts should not be taken into account when determining gross income. The federal definition of gross income, generally, does not include:

(a) Gifts, inheritance amounts, or life insurance proceeds;

(b) Up to two hundred fifty thousand dollars (five hundred thousand dollars for a married couple) gain from the sale of a principal residence that meets the requirements of Internal Revenue Code section 121, see also WAC 458-16A-100 (definition of disposable income);

(c) Amounts received for illness or injury when received from workmen's compensation, a legal settlement, a legal judgment, a Medicare+Choice MSA, a federal employer under the federal Employees Compensation Act, accident insurance, or health insurance. If the amount received is from an employer directly for illness or injury or from employer-provided accident or health insurance, the amount is excluded only if it is paid to reimburse medical expenses, for the loss of limb, or for permanent disfigurement to the employee, the employee's spouse, or the employee's dependents;

(d) Contributions or payments made by an employer to accident and health plans, the employer's qualified transportation plan, a cafeteria plan, a dependent care assistance program, educational assistance programs, or for certain fringe benefits for employees described by Internal Revenue Code section 132. If the claimant earns wages as an employee, he or she should receive a W-2 form from the employer reporting those wages. This W-2 form should have already excluded the described contributions or payments provided for the employee's benefit in the above list. If a question arises about whether or not an employer adjusted the employee's gross income for these exclusions, the claimant should contact their employer and have the employer provide the county with a correct or corrected copy of the W-2 form to verify the correct wages paid to the employee;

(e) Income from discharge of indebtedness under certain limited circumstances, such as insolvency. These circumstances are outlined in Internal Revenue Code section 108;

(f) Improvements by a lessee left upon the lessor's property at the termination of a lease;

(g) Recovery of an amount deducted in a prior tax year that did not reduce federal income taxes paid in that prior year. For example, a person that itemized deductions may get a refund of property taxes or a stolen uninsured item will be returned. This refund or recovery is included in income unless the deduction did not result in a reduction of tax. It may not result in a reduction of tax because the person had to pay alternative minimum tax or taking away that deduction drops that person below the standard deduction amount. When the deduction did not reduce taxes, the recovery amount that did not reduce taxes is excluded. The assessor may request the claimant excluding such a recovery to present prior returns and worksheets such as the worksheets provided in Publication 525, *Taxable and Nontaxable Income*, to demonstrate how the exclusion was calculated;

(h) Qualified scholarships and fellowship grants provided for certain educational expenses (e.g., tuition and books). Internal Revenue Code section 117 provides a complete description of qualified scholarship and fellowship grant amounts excluded from gross income;

(i) Meals or lodging furnished to an employee for the convenience of the employer;

(j) Excluded military pay and benefits. These exclusions are defined in WAC 458-16A-100. A discussion of how to determine and calculate these benefits is found in WAC 458-16A-120;

(k) Amounts received under insurance contracts for certain living expenses: As a general rule, when an individual's principal residence is damaged or destroyed by fire, storm, or other casualty, or who is denied access to his principal resi-

dence by governmental authorities because of the occurrence or the threat of such a casualty, gross income does not include amounts received by such individual under an insurance contract which are paid to compensate or reimburse such individual for living expenses incurred for himself and members of his household resulting from the loss of use or occupancy of such residence;

(l) Certain cost-sharing payments made for conservation purposes on land owned by the claimant: Payments received from federal or state funds primarily to conserve soil, protect or restore the environment, improve forests, or provide a habitat for wildlife are excluded from gross income. In addition, the claimant may exclude energy conservation subsidies provided by public utilities from gross income. If the claimant indicates that he or she has received payments from the government or had improvements made to his or her residence or land by the government for conservation purposes, the assessor may ask for verification of the amount excluded (if any) from gross income and the information received by the claimant supporting this exclusion. See Internal Revenue Code sections 126 and 136;

(m) Child support payments;

(n) Qualified foster care payments made from the government or a qualified nonprofit to a foster parent or guardian. See Internal Revenue Code section 131;

(o) Income from United States savings bonds used to pay higher education tuition and fees. See Internal Revenue Code section 135;

(p) Distributions from a qualified state tuition program or a Coverdell Education Savings Account used to pay for higher education expenses. Distributions from a Coverdell Education Savings Account used to pay for elementary or secondary education expenses. See Internal Revenue Code sections 529 and 530.

AMENDATORY SECTION (Amending WSR 03-09-002, filed 4/2/03, effective 5/3/03)

WAC 458-16A-115 Senior citizen (~~and~~), disabled person, and one hundred percent disabled veteran exemption—Adjusted gross income. (1) Introduction. This rule explains how an assessor determines the adjusted gross income for the claimant, the claimant's spouse or domestic partner, and any cotenants. In order to meet the income requirements for the senior citizen (~~and~~), disabled person, and one hundred percent disabled veteran exemption program, the claimant must provide supporting documents verifying combined disposable income. The adjusted gross income for federal income tax purposes of the claimant, the claimant's spouse or domestic partner, and any cotenants represents a part of the claimant's combined disposable income.

(a) **Income tax return.** In most cases, the claimant presents copies of federal income tax returns to demonstrate adjusted gross income amount(s) for the claimant, the claimant's spouse or domestic partner, and any cotenants. The assessor then determines the disposable income for each person based upon that person's income tax return and other information supplied by the claimant.

(b) **No income tax return.** When the claimant does not present federal income tax return(s), the assessor must deter-

mine what constitutes the gross income and the adjusted gross income of the nonfiler and obtain copies of income documents to determine that person's income amounts. This rule provides the assessor with some guidance in determining the adjusted gross income for a nonfiler.

(c) **Verifying the adjusted gross income amount.** In some cases, the assessor may choose to verify income amount(s). The rule provides the assessor some guidance in verifying all or part of the adjusted gross income for the claimant, the claimant's spouse or domestic partner, or any of the cotenants.

(2) **Adjusted gross income.** Internal Revenue Code section 62 defines "adjusted gross income" as gross income minus the following deductions:

(a) **Trade and business deductions.** Business owners may deduct from gross income trade or business expenses. If the claimant submits a copy of a Form 1040 federal income tax return, these deductions will be taken on the Schedule C, the Schedule C-EZ, or, for a farm, the Schedule F. If the business owned is a partnership, limited partnership, S Corporation, or Limited Liability Company (LLC), the deduction is taken on the return submitted by the partnership, limited partnership, S Corporation, or LLC (Tax Return Forms 1065 and 1120S) and passed through to the individual on a Schedule K-1. A claimant, spouse, domestic partner, or cotenant that does not file a federal income tax return, but claims to have trade or business deductions should provide documentation of income and expenses from the business to allow the assessor to determine the amount of trade or business expenses to be deducted.

(b) **Unreimbursed expenses paid or incurred by an elementary or secondary school teacher for educational materials and equipment, an employee who is a qualified performing artist, or a state or local government official paid on a fee basis.** From 2002 until 2010, an elementary or secondary school teacher may deduct from gross income up to two hundred fifty dollars of unreimbursed amounts that the teacher pays for educational materials and equipment used in the teacher's classroom. A teacher may take this deduction on a Form 1040 or a 1040A. A qualified performing artist, defined by Internal Revenue Code section 62(b), or a state or local government official paid on a fee basis may deduct from gross income any unreimbursed trade or business expenses incurred for that employer as an employee. If the claimant submits a copy of a Form 1040 federal income tax return, the deduction will be taken on the dotted line before the final line for determining adjusted gross income with a designation of "QPA" or "FBO." A claimant, spouse, domestic partner, or cotenant that does not file a tax return, but claims to have unreimbursed expenses for this deduction, should provide documentation to demonstrate his or her status as an elementary or secondary school teacher, a qualified performing artist, or a government employee paid on a fee basis and documentation of the unreimbursed educational materials and equipment or trade or business amounts spent as an employee for his or her employer.

(c) **Losses from sale or exchange of property.** A property owner may deduct from gross income losses from the sale or exchange of property for federal income tax purposes. If the claimant submits a copy of a Form 1040 federal income

tax return, the deduction is generally determined on a Schedule D. For purposes of this program, losses cannot be deducted from income. Any losses taken must be added onto adjusted gross income. An assessor may refuse documentation of losses from a claimant, spouse, domestic partner, or cotenant that does not file a tax return as these losses do not result in any change to the claimant's final combined disposable income.

(d) **Deductions attributable to rents and royalties.** A property owner may deduct from gross income expenses attributable to property held for the production of rents and royalties. If the claimant submits a copy of a Form 1040 federal income tax return, the deductions are determined on a Schedule E. A claimant, spouse, domestic partner, or cotenant that does not file a tax return, but claims to have expenses from rental property or licensed property, should provide documentation of these expenses.

(e) **Certain deductions of life tenants and income beneficiaries of property.** A life tenant or income beneficiary of a trust or estate may deduct from gross income for federal income tax purposes depreciation or depletion expenses related to the business or rental property in which he or she has a life estate or when the property is owned by a trust or estate, if he or she has a beneficial interest in the property. If the claimant submits a copy of a Form 1040 federal income tax return, these deductions are shown on Schedule E. A claimant, spouse, domestic partner, or cotenant with a beneficial interest in business property owned by a trust or estate would show the depreciation or depletion deduction on the Schedule K-1 from that trust or estate. An assessor may refuse documentation of depreciation or depletion on property from a claimant, spouse, domestic partner, or cotenant that does not file a tax return as these expenses do not result in any change to the claimant's final combined disposable income.

(f) **Pension, profit-sharing, annuity, and annuity plans of self-employed individuals.** A self-employed person may deduct from gross income contributions to a SEP, SIMPLE, or other qualified plan. These deductions are claimed on the Form 1040 federal income tax return. A self-employed claimant, spouse, domestic partner, or cotenant that does not file a tax return, but claims this deduction, should provide documentation of the contributions made to a qualified plan by his or her business.

(g) **Self-employed health insurance deduction.** As part of his or her trade and business expenses, a self-employed person may deduct from gross income part (and after 2002, all) of the business's payments for his or her health insurance. This deduction is claimed on the Form 1040 federal income tax return. A self-employed claimant, spouse, domestic partner, or cotenant that does not file a tax return, but claims this deduction, should provide documentation of the payments made for his or her health insurance by his or her business. The assessor may request the claimant to submit a copy of the deduction worksheet provided in the instructions for Form 1040 to calculate this deduction whether or not the self-employed person filed a tax return.

(h) **One-half of self-employment tax.** As part of his or her trade or business expenses, a self-employed person may deduct from gross income one-half of the self-employment

tax paid to the federal government determined on a Schedule SE. This deduction is claimed on the Form 1040 federal income tax return. A self-employed person that has not filed a return, may not claim this deduction as the self-employment tax is reported and paid with that return.

(i) **Retirement savings.** A person may deduct from gross income qualifying contributions (up to three thousand five hundred dollars) made to an individual retirement account (IRA). This deduction may be claimed on either the Form 1040 or Form 1040A federal income tax return. A claimant, spouse, domestic partner, or cotenant that does not file a tax return, but claims to have made qualifying contributions to an IRA, should provide documentation of these contributions. The assessor may request the claimant to submit a copy of the IRA deduction worksheet provided in the instructions for Form 1040 and Form 1040A to calculate this deduction whether or not the person filed a tax return.

(j) **Penalties on early withdrawal of savings.** A person may deduct from gross income for purposes of federal income tax penalties paid because of an early withdrawal of savings. This deduction is claimed on the Form 1040 federal income tax return. The IRS classifies these penalties as losses. For purposes of this program, losses may not be deducted from income. Any deduction taken on this line must be added to adjusted gross income. An assessor may refuse documentation about these penalties from a claimant, spouse, domestic partner, or cotenant that does not file a tax return as these losses do not result in any change to the claimant's final combined disposable income.

(k) **Alimony.** A person may deduct from gross income alimony paid in cash to a previous spouse. This deduction is claimed on the Form 1040 federal income tax return. A person that does not file a tax return, but made alimony payments, should provide copies of documentation showing alimony payments were made in cash to a prior spouse. The documents should include a copy of the divorce or separation instrument providing for the alimony payments and the amount of the alimony payments made during the year.

(l) **Reforestation costs.** A landowner may deduct from gross income for purposes of federal income tax the amortized reforestation costs for qualified timber property over a period of eighty-four months. If the property is held as business property, the deduction will appear with the trade and business expenses. If the property is not held as business property and the claimant submits a copy of a Form 1040 federal income tax return, this deduction is claimed on the dotted line before the final line for determining adjusted gross income on the Form 1040 federal income tax return and identified as "RFST." An assessor may refuse documentation of the amortization of reforestation costs from a claimant, spouse, domestic partner, or cotenant that does not file a tax return as these amortized costs are depreciation expenses. These expenses would be added onto adjusted gross income for purposes of this program and do not result in any change to the claimant's final combined disposable income.

(m) **Required repayment of supplemental unemployment compensation.** A person may deduct from gross income required repayments of supplemental unemployment compensation benefits. If the claimant submits a Form 1040 federal income tax return, the deduction may show on the

return in one of two ways. If the repayment is made in the same year the benefits are received, the taxpayer reduces the total unemployment compensation reported on the return by the amount of repayment. If the repayment is made in a later year, the taxpayer deducts the repayment on the dotted line before the final line for determining adjusted gross income on the return and identifies it as "Sub-Pay TRA." A person that does not file a tax return, but claims to have repaid supplemental unemployment compensation, should provide documentation of these repayments.

(n) **Jury duty pay given to employer.** An employee may deduct from gross income jury duty pay given to his or her employer. An employee deducts the jury pay given to the employer on the dotted line before the final line for determining adjusted gross income on the Form 1040 federal income tax return and identifies it as "Jury Pay." A person that does not file a tax return, but claims to have given jury pay received during the year to their employer, should provide documentation of the amount of jury pay given over to the employer.

(o) **Clean-fuel vehicles and certain refueling property.** A person may deduct from gross income a portion of the cost for a qualified clean-fuel vehicle and certain refueling property until the end of calendar year 2004. This deduction may show on the Form 1040 federal income tax return in one of two ways. If the property is held as business property, the deduction will appear with the trade and business expenses. If a clean-fuel vehicle is not held as business property, or is claimed by an employee who used it in whole or part for business, this deduction is claimed on the dotted line before the final line for determining adjusted gross income on the return and identified as "Clean Fuel." A purchaser that does not file a tax return, but purchased clean-fuel property, should provide documentation about the qualifying clean-fuel vehicle or the refueling property, the amount paid for the clean-fuel property, and a calculation of the deduction amount allowed.

(p) **Unreimbursed moving expenses.** If the claimant, spouse, domestic partner, or cotenant had to move a significant distance for a job or business, he or she may deduct from gross income the unreimbursed moving costs. This deduction is claimed on the Form 1040 federal income tax return. If the claimant, spouse, domestic partner, or cotenant does not file a tax return, the claimant should provide documentation of the distance moved, the reason for the move, and the moving expenses. The assessor may (~~ask the claimant to submit~~) request a copy of Form 3903, Moving Expenses, and the distance test worksheet on that form to prove the amount of (~~his or her~~) the person's adjusted gross income whether or not the claimant, spouse, domestic partner, or cotenant filed a federal income tax return.

(q) **Archer MSAs (medical savings accounts).** A person may deduct from gross income a qualifying contribution to an Archer MSA. An MSA is an account set up exclusively for paying the qualified medical expenses of the account holder or the account holder's spouse or dependent(s) in conjunction with a high deductible health plan (HDHP). To be eligible for an MSA, the person must work as an employee for a small employer or be self-employed. The person must also have an HDHP, and have no other health insurance cov-

erage except permitted coverage. The calculation of the deduction is performed on a Form 8853. This deduction is claimed on the Form 1040 federal income tax return. If the person does not file a tax return, but claims to have made a qualifying contribution to an Archer MSA, the claimant should provide copies of documentation as to that person's qualifications for the deduction and how the deduction was calculated. If this deduction is claimed, the assessor may ask the claimant to submit a copy of Form 8853, Archer MSAs and Long Term Care Insurance Contracts, whether or not the claimant, spouse, domestic partner, or cotenant filed a federal income tax return.

(r) **Interest on student loans.** A person may deduct from gross income some or all student loan interest paid on his or her student loan(s) during the first sixty months of the loan repayment period. The deduction may not be claimed by a taxpayer claimed as a dependent, a taxpayer filing as married filing separately, or when the taxpayer has an adjusted gross income amount over fifty-five thousand dollars (seventy-five thousand dollars if married filing jointly). This deduction is claimed on either the Form 1040 or Form 1040A federal income tax return. A person that does not file a tax return, but claims to have paid student loan interest, should provide copies of documentation of that person's qualification for the deduction and how the deduction was calculated. For 2002 and after, a person may deduct some or all of this student loan interest (not over two thousand five hundred dollars) repaid for any repayment period (the sixty-month limit is gone), provided the taxpayer does not have adjusted gross income above sixty-five thousand dollars (one hundred thirty thousand dollars if married filing jointly). The two thousand five hundred dollar limit on the interest gets reduced for taxpayers with adjusted gross income over fifty thousand dollars (one hundred thousand dollars if married filing jointly). See Internal Revenue Code section 221.

(s) **Higher education expenses.** From 2002 to 2005, an individual with adjusted gross income below a set amount (generally sixty-five thousand dollars) may take a deduction for qualified tuition and related expenses paid by that person for that person, that person's spouse, or a dependent of that person. Depending on the individual's gross income, the deduction cannot exceed three thousand dollars (four thousand dollars in 2004 and 2005). The deduction is claimed on either the Form 1040 or Form 1040A federal income tax return. A person that does not file a tax return, but claims to have paid higher education expenses, should provide copies of documentation of that person's qualification for the deduction and how the deduction was calculated. This deduction may only be taken if the income was not excluded from gross income. See WAC 458-16A-110 (savings bonds, qualified state tuition programs, and Coverdell Education Savings Accounts).

AMENDATORY SECTION (Amending WSR 03-09-002, filed 4/2/03, effective 5/3/03)

WAC 458-16A-120 Senior citizen ~~((and))~~, disabled person, and one hundred percent disabled veteran exemption—Determining combined disposable income.

(1) **Introduction.** This rule describes how an assessor determines a claimant's combined disposable income.

(2) **Begin by calculating disposable income.** The assessor must determine the disposable income of the claimant, the claimant's spouse or domestic partner, and all cotenants. The assessor begins by obtaining a copy of the claimant's, the claimant's spouse's or domestic partner's, and any cotenant's federal income tax return. If the claimant, the claimant's spouse or domestic partner, or a cotenant does not provide a federal income tax return, the assessor must calculate disposable income from copies of other income documents (e.g., W-2, 1099-R, 1099-INT, etc.). The assessor may want to review the definitions of gross income, WAC 458-16A-110, and adjusted gross income, WAC 458-16A-115, to help calculate the combined disposable income for a claimant. These rules provide some guidance on how to determine adjusted gross income without copies of a federal income tax return. On the federal income tax return, the adjusted gross income is found on the front pages of Form 1040, Form 1040A, and Form 1040EZ. Even when a return is provided, an assessor may request copies of supporting documents to verify the amount of the claimant's combined disposable income.

(a) **Absent spouse or domestic partner.** When a spouse or domestic partner has been absent for over a year and the claimant has no knowledge of his/her spouse's or domestic partner's whereabouts or whether the spouse or domestic partner has any income or not, and the claimant has not received anything of value from the spouse or domestic partner or anyone acting (~~upon the spouse's~~) on behalf of the spouse or domestic partner, the (~~spouse's~~) disposable income of the spouse or domestic partner is deemed to be zero for purposes of this exemption. The claimant must submit with the application a dated statement signed by the applicant under the penalty of perjury. This statement must state that more than one year prior to filing this application:

(i) The claimant's spouse or domestic partner has been absent;

(ii) The claimant has not and does not know the whereabouts of the claimant's spouse or domestic partner;

(iii) The claimant has not had any communication with the claimant's spouse or domestic partner;

(iv) The claimant has not received anything of value from the claimant's spouse or domestic partner or anyone acting (~~upon~~) on behalf of the claimant's (~~spouse's behalf~~) spouse or domestic partner.

The statement must also agree to provide this income information if the claimant is able to obtain it anytime in the next four years.

(b) **Form 1040EZ.** Generally, the adjusted gross income on Form 1040EZ represents the disposable income for the person or couple filing the return. However, that person's or couple's adjusted gross income as shown on the Form 1040EZ must be increased by the following amounts that are excluded from their adjusted gross income.

(i) **Gain from a sold residence.** Under certain circumstances, gain from a sold residence is added onto the seller's adjusted gross income. Since there is no federal form used for reporting the exclusion of capital gains from the sale of a principal residence, the exemption application asks if a home

has been sold, whether the sale proceeds were reinvested in new principal residence, and the amount of capital gain from the sale.

(A) If the proceeds were reinvested in a new principal residence, the excluded capital gain reinvested in the new residence is ignored. The adjusted gross income on Form 1040EZ is not adjusted for any part of the excluded capital gain reinvested in the new residence.

(B) If the proceeds were not reinvested in a new principal residence or only a part of the proceeds were reinvested in a new principal residence, the amount of excluded capital gain that is not reinvested in a new principal residence is added onto the seller's adjusted gross income to determine the seller's disposable income. The assessor may accept the excluded capital gain amount claimed upon the application or request a copy of documents demonstrating the seller's basis in the property and the capital gain earned upon the sale.

(ii) **Interest received on state and municipal bonds.** Interest received on state or local government bonds is generally not subject to federal income tax. This tax exempt interest is marked "TEI" and reported on the Form 1040EZ. The tax-exempt interest is added onto the bond owner's federal adjusted gross income to determine the bond owner's disposable income.

(A) The assessor may ask a claimant whether the claimant, the claimant's spouse or domestic partner, or any cotenant(s) own state or local government bonds. If the return does not show the tax exempt amount from the bond, the assessor may ask to see a copy of the Form 1099-INT (Interest Income).

(B) If the claimant does not have this form, the bond issuer should be able to tell the owner whether the interest is taxable. The issuer should also give the owner a periodic (or year-end) statement showing the tax treatment of the bond. If the income recipient invested in the bond through a trust, a fund, or other organization, that organization should give the recipient this information.

(iii) **Excluded military pay and benefits.** Military pay and benefits excluded from federal adjusted gross income, other than attendant-care and medical-aid payments, are added onto the adjusted gross income of the military personnel receiving the excluded military pay or benefits to determine that person's disposable income. Excluded military pay and benefits are discussed in more detail below in paragraph (c)(vii).

(iv) **Veterans benefits.** Veterans benefits (~~(-other than attendant care and medical aid payments;))~~ are added onto the veteran's adjusted gross income to determine the veteran's disposable income, except for:

(A) Attendant-care payments and medical-aid payments, defined as any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the Department of Veterans Affairs (VA);

(B) Disability compensation, defined as payments made by the Department of Veterans Affairs (VA) to a veteran because of service-connected disability. (RCW 84.36.383 (5)(f)(iii).)

(C) Dependency and indemnity compensation, defined as payments made by the Department of Veterans Affairs

(VA) to a surviving spouse, child, or parent. (RCW 84.36.-383 (5)(f)(iv).)

Veterans benefits are discussed in more detail below in paragraph (c)(viii).

(c) **Form 1040A.** If a claimant provides a copy of a Form 1040A, the assessor calculates the disposable income for the person or couple filing the return by adding onto the adjusted gross income reported the items described below to the extent these items were excluded or deducted from gross income:

(i) **Gain from a sold residence.** The excluded capital gain from selling a principal residence to the extent that excluded gain was not reinvested in a new principal residence is added onto the seller's adjusted gross income to determine the seller's disposable income. The amount is reported on the exemption application. Refer to paragraph (a)(i) above for a more complete discussion of excluded capital gain upon a sold residence.

(ii) **Interest received on state and municipal bonds.** Interest received on state or local government bonds is generally not subject to federal income tax. The tax-exempt interest reported on Form 1040A is added back onto the bond owner's adjusted gross income to determine the bond owner's disposable income. Refer to paragraph (a)(ii) above for a more complete discussion of tax-exempt interest on state and municipal bonds.

(iii) **Pension and annuity receipts.** Any nontaxable pension and annuity amounts are added onto the recipient's adjusted gross income amount to determine the recipient's disposable income. The nontaxable pension and annuity amounts are the difference in the total pension and annuity amounts reported from the taxable amounts reported. If the total amount of the pension and annuity amounts are not reported on the return, the assessor may use a copy of the (~~claimant's, the claimant's spouse's, or the cotenant's~~) Form 1099-R (Distributions from Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc.) issued to the claimant, the claimant's spouse or domestic partner, or the cotenant to determine the total amount of pension and annuity amounts received. Pension and annuity amounts do not include distributions made from a traditional individual retirement account; and

(iv) **Federal Social Security Act and railroad retirement benefits.** Any nontaxable Social Security benefit or equivalent railroad retirement amount reported on Form 1040A is added onto the adjusted gross income of the person receiving these benefits to determine that person's disposable income. The nontaxable Social Security benefit or equivalent railroad retirement amount is the difference in the total Social Security benefits or equivalent railroad retirement amounts reported from the taxable amount reported. If the total amount of the Social Security benefit or equivalent railroad retirement amount is not reported on the return, the assessor may use a copy of the (~~claimant's, the claimant's spouse's, or the cotenant's~~) Form SSA-1099 or Form RRB-1099 issued to the claimant, the claimant's spouse or domestic partner, or the cotenant to determine the Social Security benefits or (~~Form RRB-1099 to determine~~) the railroad retirement benefits received.

(v) **Excluded military pay and benefits.** Military pay and benefits excluded from federal adjusted gross income, other than attendant-care and medical-aid payments, are added onto adjusted gross income of the military personnel receiving the excluded military pay or benefits to determine that person's disposable income. Excluded military pay and benefits are discussed below in paragraph (c)(vii).

(vi) **Veterans benefits.** Veterans benefits (~~(other than attendant care and medical aid payments;)~~) are added back onto the veteran's adjusted gross income to determine the veteran's disposable income, except for:

(A) Attendant-care payments and medical-aid payments, defined as any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the Department of Veterans Affairs (VA);

(B) Disability compensation, defined as payments made by the Department of Veterans Affairs (VA) to a veteran because of service-connected disability. (RCW 84.36.383 (5)(f)(iii).)

(C) Dependency and indemnity compensation, defined as payments made by the Department of Veterans Affairs (VA) to a surviving spouse, child, or parent. (RCW 84.36.-383 (5)(f)(iv).)

Veterans benefits are discussed below in paragraph (c)(viii).

(d) **Form 1040.** If a claimant provides a copy of a Form 1040, the assessor calculates the disposable income for the person or couple filing the return by adding onto the reported adjusted gross income all the items described below to the extent these items were excluded or deducted from gross income:

(i) **Gain from a sold residence.** The excluded capital gain from selling a principal residence to the extent that excluded gain was not reinvested in a new principal residence is added onto the seller's adjusted gross income to determine the seller's disposable income. The excluded capital gain amount is reported on the exemption application.

(ii) **Capital gains.** If the return shows capital gains or losses, the assessor examines a copy of the following schedule or forms, if any, that were filed with the return. The assessor should examine the capital gains reported on Schedule D (Capital Gains and Losses) and on Forms 4684 (Casualty and Thefts), 4797 (Sales of Business Property), and 8829 (Business Use of Home).

The assessor adds onto the adjusted gross income any amount of capital gains reduced by losses or deductions on the schedules or forms listed above to determine the total capital gains. The amount of capital gains that were excluded or deducted from adjusted gross income must be added onto that adjusted gross income to determine disposable income.

(iii) **Losses.** Amounts deducted for loss are added onto the adjusted gross income to determine the disposable income. Most losses are reported on the return in parentheses to reflect that these loss amounts are to be deducted. The net losses are reported on Form 1040 as business losses, as capital losses, as other losses, as rental or partnership-type losses, and as farm losses. Add these amounts in parentheses onto the adjusted gross income. In addition, the assessor adds to adjusted gross income the amount reported as a penalty on

early withdrawal of savings because the amount represents a loss under section 62 of the Internal Revenue Code.

(A) The taxpayer only reports the net amount of losses on the front page of the Form 1040 federal income tax return. A loss may be used on other schedules or forms to reduce income before being transferred to the front page of the return to calculate adjusted gross income. The assessor adds onto the adjusted gross income the amount of losses used to reduce income on these other schedules and forms. If the assessor has already added capital gains reduced by losses, the assessor does not add this amount onto adjusted gross income as it has already been accounted for. The amount of losses that were used to reduce adjusted gross income must be added onto that adjusted gross income to determine disposable income. For example, the claimant reports on the front page of the 1040 a capital loss of (five thousand dollars). The assessor examines the Schedule D. On the Schedule D, the claimant reports two thousand dollars in long-term capital gains from the sale of Company X stock and seven thousand dollars in long-term capital losses from the sale of an interest in the Y limited partnership. The assessor has already reduced the claimant's adjusted gross income by five thousand dollars from the capital loss reported on the front page of the return. The assessor would add onto adjusted gross income only the additional two thousand dollars in losses from this Schedule D that was used to offset the capital gain the claimant earned from the sale of Company X stock.

(B) The assessor should examine losses reported on Schedules C (Profit or Loss from Business), D (Capital Gains and Losses), E (Supplemental Income and Loss), F (Profit or Loss from Farming), and K-1 (Shareholder's Share of Income, Credits, Deductions, etc.), and on Forms 4684 (Casualty and Thefts), 4797 (Sales of Business Property), 8582 (Passive Activity Loss Limitations), and 8829 (Business Use of Home) to determine the total amount of losses claimed.

(iv) **Depreciation.** Amounts deducted for the depreciation, depletion, or amortization of an asset's costs are added onto the adjusted gross income to determine the disposable income. This includes section 179 expenses, as an expense in lieu of depreciation. Amounts deducted for depreciation, depletion, amortization, and 179 expenses may be found on Schedules C, C-EZ, E, F, K and K-1, and on Form 4835 (Farm Rental Income and Expenses). If the schedule or form results in a loss transferred to the front of the Form 1040 federal income tax return, the depreciation deduction to the extent it is represented in that loss amount should not be added onto the adjusted gross income (as this would result in it being added back twice);

(v) **Pension and annuity receipts.** Any nontaxable pension and annuity amounts are added onto the recipient's adjusted gross income amount to determine the recipient's disposable income. The nontaxable pension and annuity amounts are the difference in the total pension and annuity amounts reported from the taxable amount reported. If the total amount of the pension and annuity amounts are not reported on the return, the assessor may use a copy of the (~~claimant's, the claimant's spouse's, or the cotenant's~~) Form 1099-R (Distributions from Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc.)

issued to the claimant, the claimant's spouse or domestic partner, or the cotenant to determine the total amount of pension and annuity amounts received. Pension and annuity amounts do not include distributions made from a traditional individual retirement account.

(vi) **Federal Social Security Act and railroad retirement benefits.** Any nontaxable Social Security benefit or equivalent railroad retirement amount reported on the Form 1040 federal income tax return is added onto the adjusted gross income of the person receiving these benefits to determine that person's disposable income. The nontaxable Social Security benefit or equivalent railroad retirement amount is the difference in the total Social Security benefits or equivalent railroad retirement amounts reported from the taxable amount reported. If the total amount of the Social Security benefit or equivalent railroad retirement amount is not reported on the return, the assessor may use a copy of the Form SSA-1099 or Form RRB-1099 issued to the claimant(~~(s)~~), the claimant's spouse(~~(s)~~) or domestic partner, or the cotenant(~~(s Form SSA-1099)~~) to determine the Social Security benefits or (~~(Form RRB-1099 to determine)~~) the railroad retirement benefits received.

(vii) **Excluded military pay and benefits.** Military pay and benefits excluded from federal adjusted gross income, other than pay or benefits for attendant care or medical aid, are added onto the adjusted gross income of the military personnel receiving the military pay or benefits to determine that person's disposable income. Excluded military pay and benefits are not reported on the Form 1040. Excluded military pay and benefits such as pay earned in a combat zone, basic allowance for subsistence (BAS), basic allowance for housing (BAH), and certain in-kind allowances, are reported in box 12 of the Form W-2. The claimant should disclose when excluded military pay and benefits were received and provide copies of the Form W-2 or other documents that verify the amounts received.

(viii) **Veterans benefits.** (~~Veterans benefits, other than attendant care and medical aid payments, are added onto the veteran's adjusted gross income to determine the veteran's disposable income.~~) Federal law excludes from gross income any veterans benefits payments, paid under any law, regulation, or administrative practice administered by the Department of Veterans Affairs (VA). (~~Except for payments by the VA made for attendant care or medical aid~~) To determine disposable income, allowances or payments made from the VA must be added (~~(onto)~~) on the veteran's adjusted gross income, except for:

(A) Attendant-care payments and medical-aid payments, defined as any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the Department of Veterans Affairs (VA);

(B) Disability compensation, defined as payments made by the Department of Veterans Affairs (VA) to a veteran because of service-connected disability. (RCW 84.36.383 (5)(f)(iii).)

(C) Dependency and indemnity compensation, defined as payments made by the Department of Veterans Affairs (VA) to a surviving spouse, child, or parent. (RCW 84.36.-383 (5)(f)(iv).)

VA benefits are not reported on the Form 1040. The claimant should disclose when excluded veterans benefits were received and provide copies of documents that verify the amount received. Attendant-care and medical-aid payments are any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the VA (~~(Disability compensation or pensions paid by the VA are not attendant care or medical-aid payments)~~);

(ix) **Dividend receipts.** Exempt-interest dividends received from a regulated investment company (mutual fund) are reported on the tax-exempt interest line of the Form 1040 and added onto the recipient's adjusted gross income to determine that recipient's disposable income.

(A) The assessor may ask a claimant whether the claimant, the claimant's spouse or domestic partner, or any cotenants have received exempt-interest dividends.

(B) Generally, the mutual fund owner will receive a notice from the mutual fund telling him or her the amount of the exempt-interest dividends received. These exempt-interest dividends are not shown on Form 1099-DIV or Form 1099-INT. Although exempt-interest dividends are not taxable, the owner must report them on the Form 1040 tax return if he or she has to file; and

(x) **Interest received on state and municipal bonds.** Interest received on state or local government bonds is generally not subject to federal income tax. This tax-exempt interest is reported on the Form 1040 and added onto the bond owner's adjusted gross income to determine the bond owner's disposable income.

(3) **Calculate the combined disposable income.** When the assessor has calculated the disposable income for the claimant, the claimant's spouse or domestic partner, and any cotenants, the assessor combines the disposable income of these people together. The assessor reduces this combined income by the amount paid by the claimant or the claimant's spouse or domestic partner during that calendar year for their legally prescribed drugs, home health care (~~(and)~~); nursing home (~~(are)~~), boarding home, or adult family home expenses; and health care insurance premiums for Medicare under Title XVIII of the Social Security Act to calculate the claimant's combined disposable income.

AMENDATORY SECTION (Amending WSR 03-09-002, filed 4/2/03, effective 5/3/03)

WAC 458-16A-130 Senior citizen (~~(and)~~), disabled person, and one hundred percent disabled veteran exemption—Qualifications for exemption. (1) **Introduction.** This rule describes the qualifications a claimant must meet for the senior citizen (~~(or)~~), disabled person, and one hundred percent disabled veteran property tax exemption. In order to qualify for the exemption, the claimant:

(a) Must meet age or disability requirements;

(b) Must have a combined disposable income (~~(of thirty thousand dollars or less)~~) below the statutory limit amount provided in RCW 84.36.381; and

(c) Must own the property and occupy it as his or her principal residence.

(2) **Age, retirement, and disability requirements.** In order to qualify for the exemption:

(a) The senior citizen claiming the exemption must be age sixty-one or older on December 31st of the year in which the claim is filed. No proof is required concerning a senior citizen's employment status to claim the exemption.

(b) The disabled person claiming the exemption must be at the time of filing retired from regular gainful employment ~~((because of his or her physical disability (i.e., unable to work because of a physical or mental impairment). A disabled person is considered retired, although he or she was not working at a job, if he or she is unable to enter into regular gainful employment because of his or her physical disability and does not have a guardian or other person legally required to financially support and care for him or her; or))~~ and unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months (42 U.S.C. Sec. 423 (d)(1)(A)).

(c) The veteran claiming the exemption must at the time of filing be a veteran of the armed forces of the United States with one hundred percent service-connected disability.

(d) The surviving spouse or domestic partner of a claimant, who applies to continue their spouse's or domestic partner's exemption, must be age fifty-seven or older in the calendar year the claimant dies.

(3) **Income requirements.** In order to qualify for the exemption, the claimant's combined disposable income, as defined in RCW 84.36.383 and WAC 458-16A-120, must be below the statutory limit amount provided in RCW 84.36.-381.

(4) **Principal residence requirements.** In order to qualify for the exemption, the claimant must own the property and occupy it as his or her principal residence. The claimant must occupy the principal residence at the time of filing for each year the exemption is claimed. See WAC 458-16A-100 (definitions of principal residence and residence), and WAC 458-16A-135 (supporting documents required to demonstrate the property is owned and occupied as a claimant's principal residence).