

WSR 24-17-136

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed August 21, 2024, 7:27 a.m.]

Title of Rule and Other Identifying Information: WAC 458-16-560 Housing for qualifying households.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of revenue (department) intends to amend WAC 458-16-560 to incorporate changes enacted pursuant to SSB 5386 (2023) and SHB 2012 (2024). Specifically, these update subsections (4)(iii)-(iv) and add new subsection (4)(vi).

Reasons Supporting Proposal: The proposed amendments are necessary to conform the rule to SSB 5386, which passed in 2023, and SHB 2012, which passed in 2024.

Statutory Authority for Adoption: RCW 82.01.060, 82.32.300.

Statute Being Implemented: RCW 84.36.560.

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: Patrick Watkins, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1539; Implementation and Enforcement: Jeannette Gute, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1599.

This notice meets the following criteria to use the expedited adoption process for these rules:

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The expedited rule-making process is applicable to this rule update because the department is incorporating changes resulting from 2023 and 2024 legislation.

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 Patrick Watkins, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1539, fax 360-534-1606, email PatrickW@dor.wa.gov, BEGINNING August 21, 2024, 12:00 a.m., AND RECEIVED BY October 21, 2024, 11:59 p.m.

August 21, 2024
Brenton Madison
Rules Coordinator

OTS-5770.1

AMENDATORY SECTION (Amending WSR 21-01-063, filed 12/9/20, effective 1/9/21)

WAC 458-16-560 Housing for qualifying households. (1)(a) **Introduction.** This rule explains the real and personal property tax exemption that may be claimed by nonprofit entities providing rental housing or lots for mobile homes within a mobile home park, mobile home park cooperative, or manufactured housing cooperative for occupancy by qualifying households in accordance with RCW 84.36.560.

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

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

(a) "Group home" means a single-family dwelling financed, in whole or in part, by one or more of the sources listed in subsection (4)(d) of this rule. A "group home" has multiple units occupied on a (~~twenty-four~~) 24-hour basis by persons who are not related by birth or marriage and who are not dependent upon each other financially. Residents of a "group home" typically receive financial assistance from the federal or state government, such as Social Security benefits or supplementary security insurance.

(b) "Mobile home lot" or "mobile home park" means the same as these terms are defined in RCW 59.20.030.

(c) "Nonprofit entity" means a:

(i) Nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal Internal Revenue Code, as amended;

(ii) Limited partnership in which a general partner is a nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal Internal Revenue Code, as amended, a public corporation established under RCW 35.21.660, 35.21.670, or 35.21.730, a housing authority created under RCW 35.82.030 or 35.82.300, or a housing authority meeting the definition in RCW 35.82.210 (2)(a);

(iii) Limited liability company in which a managing member is a nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal Internal Revenue Code, as amended, a public corporation established under RCW 35.21.660, 35.21.670, or 35.21.730, a housing authority established under RCW 35.82.030 or 35.82.300, or a housing authority meeting the definition in RCW 35.82.210 (2)(a); or

(iv) Mobile home park cooperative or a manufactured housing cooperative, as defined in RCW 59.20.030. A "mobile home park cooperative" and a "manufactured housing cooperative" are defined as real property consisting of common areas and two or more lots held out for placement of mobile homes, manufactured homes, or park models in which both the individual lots and the common areas are owned by an association of shareholders which leases or otherwise extends the right to occupy individual lots to its own members.

(d) "Occupied dwelling unit" means a living unit that is occupied by an individual or household as of December 31st of the first assessment year the rental housing or mobile home park becomes operational

or is occupied by an individual or household on January 1st of each subsequent assessment year in which the claim for exemption is submitted.

(e) "Qualifying household" means:

(i) Until June 30, 2021, a single person, family, or unrelated persons living together whose income is at or below (~~fifty~~) 50 percent of the median income adjusted for family size as most recently determined by the federal Department of Housing and Urban Development for the county in which the rental housing or mobile home park is located. The median income level is that which is in effect as of January 1st of the year the application for exemption is submitted.

(ii) Beginning July 1, 2021, a single person, family, or unrelated persons living together whose income is at or below (~~sixty~~) 60 percent of the median income adjusted for family size as most recently determined by the federal Department of Housing and Urban Development for the county in which the rental housing or mobile home park is located. The median income level is that which is in effect as of January 1st of the year the application for exemption is submitted.

(f) "Rental housing" means a residential housing facility or group home that is occupied, but not owned, by qualifying households.

(3) **Initial application and renewal declaration.**

(a) Initial application. An initial application for exemption must be filed with the department on or before March 31st to exempt property from taxes due in the following year. However, an initial application may be filed after March 31st if the property is acquired or converted to an exempt use after that date, if the property may qualify for an exemption under chapter 84.36 RCW.

(b) Renewal declaration. In order to requalify for exempt status, a nonprofit entity receiving this exemption must file a renewal declaration on or before March 31st of every third year following initial qualification for exemption.

(c) Additional information about the application and renewal requirements for this exemption can be found in WAC 458-16-110 Initial application and renewal declaration.

(4) **Full exemption.** Real and personal property is exempt from property taxes if:

(a) The property is owned or used by a nonprofit entity, as defined in subsection (2) of this rule, in providing rental housing for qualifying households or used to provide a lot of land upon which a mobile home for a qualifying household will be placed in a mobile home park;

(b) The benefit of the exemption is received by the nonprofit entity. That is, if the property is leased to or used by, but not owned by, a nonprofit entity, the reduction in property taxes due to the exemption is passed on to the nonprofit user either through a reduction in rent, reimbursement of rent, or property tax paid;

(c) At least (~~seventy-five~~) 75 percent of the occupied dwelling units in the rental housing or lots in the mobile home park are occupied by qualifying households; and

(d) The rental housing or lots in the mobile home park are insured, financed, or assisted, in whole or in part, through one or more of the following sources:

(i) A federal or state housing program administered by the department of commerce;

(ii) A federal housing program administered by a city or county government;

(iii) An affordable housing levy authorized under RCW 84.52.105 or 84.55.050;

(iv) The surcharges authorized by RCW (~~(36.22.178 and 36.22.179)~~) 36.22.250 and any of the surcharges authorized in chapter 43.185C RCW; (~~(e)~~)

(v) The Washington state housing finance commission, provided that the financing is for a mobile home park cooperative or a manufactured housing cooperative, as defined in RCW 59.20.030, or a nonprofit entity; or

(vi) City or county funds designated for affordable housing.

(5) **Partial exemption.** If less than (~~(seventy-five)~~) 75 percent of the occupied dwelling units within the rental housing or lots in the mobile home park are occupied by qualifying households, the rental housing or mobile home park is eligible for a partial exemption on the real property and a total exemption on the housing's or park's personal property. The property must be owned or used by a nonprofit entity in providing rental housing for qualifying households or used to provide a lot upon which a mobile home for a qualifying household will be placed in a mobile home park.

(a) A partial exemption will be allowed for each dwelling unit in the rental housing or for each lot in the mobile home park occupied by a qualifying household; and

(b) The amount of the real property exemption will be calculated by multiplying the assessed value of the property reasonably necessary to provide the rental housing or to operate the mobile home park by a fraction. The formula for determining the fraction is as follows:

(i) The numerator of the fraction is the number of dwelling units or lots occupied by qualifying households as of December 31st of the first assessment year in which the rental housing facility or mobile home park becomes operational, or on January 1st of each subsequent assessment year in which the claim for exemption is submitted; and

(ii) The denominator of the fraction is the total number of dwelling units or lots occupied as of December 31st of the first assessment year in which the rental housing facility or mobile home park becomes operational, or on January 1st of each subsequent assessment year in which the claim for exemption is submitted.

(6) **Exempt facility with three or fewer units or a mobile home park with three or fewer lots with vacancy on January 1st.** If the rental housing or mobile home park is comprised of three or fewer dwelling units or lots and there are any unoccupied dwelling units or lots on January 1st, the department will determine the size of the exemption based on the number of occupied dwelling units or lots as of December 31st of the first assessment year the rental housing becomes operational, and on May 1st of each subsequent assessment year in which a claim for exemption is submitted. For example, if one-half of an exempt duplex is vacant on January 1st and it is the duplex's third year of operation, the department will determine the size of the exemption based on the number of occupied units on May 1st of that assessment year.

(7) **Allowance for income growth.** Because the occupants of rental housing and mobile home parks granted an exemption under RCW 84.36.560 are generally attempting to improve their financial situation, the income of the household is likely to fluctuate during the time they occupy the rental housing unit or lot in the mobile home park.

(a) In an attempt to assist these households in improving their circumstances, the exemption will continue for specific rental housing units or mobile home lots if the rental housing or mobile home park

continues to meet the certification requirements in subsection (4) (d) of this rule, and if the household's income rises above the applicable "qualifying household" threshold in subsection (2) (e) of this rule, but remains at or below (~~eighty~~) 80 percent of the median income adjusted for family size as most recently determined by the federal Department of Housing and Urban Development for the county in which the rental housing or mobile home park is located; and

(b) If a rental housing unit or mobile home lot receiving an exemption under the exception in (a) of this subsection becomes vacant and is subsequently re-rented, the income of the household moving into the rental unit or onto the mobile home lot must meet the applicable median income requirements for a qualifying household as described in subsection (2) (e) of this rule to remain exempt from property tax.

(c) Example. If a rental unit is occupied by a qualifying household whose income rises up to (~~seventy~~) 70 percent of median income, the unit will retain its exempt status as long as the household continues to occupy the rental unit and the household's income remains below (~~eighty~~) 80 percent of median income. If the residents of the rental unit move out on June 1st and the unit is subsequently rented to a qualifying household whose income is at or below the median income threshold in subsection (2) (e) of this rule, the unit will retain its exempt status. Conversely, if the rental unit is rented to a household whose income is above the median income threshold in subsection (2) (e) of this rule, the unit becomes ineligible for exemption as of January 1st of the following year.

(8) **Group homes - Income of residents.** The income of the individual residents of a group home, as defined in subsection (2) of this rule, will not be combined so as to constitute the income of a single household. Each resident will be considered an independent household occupying a separate dwelling unit. In other words, the income of the residents of a group home will not be aggregated when the department determines the size of the exemption the group home is entitled to receive. For example, if there are six residents in a group home, the department will process the application for exemption as if there were six separate dwelling units and determine the size of the exemption on that basis. If three of the residents have income at or below the median income threshold in subsection (2) (e) of this rule, the group home will receive a (~~fifty~~) 50 percent reduction in the property taxes due on the group home.

(9) **Eligibility of property unoccupied at the time of initial application or at any time after the exemption is granted.** Property that is unoccupied at the time of initial application or on January 1st of any subsequent year is still eligible for exemption if certain conditions are met. If the property is currently taxable, it may receive exempt status as of the assessment year in which the claim for exemption is submitted. If the property is currently exempt but the exempt use will cease or will be reduced because of renovations or repairs, the exempt status of the property may be continued for taxes payable the next year. The following conditions must be satisfied to receive an exemption under either of these circumstances:

(a) The rental housing or mobile home park will be used for the exempt purpose stated in RCW 84.36.560 within two assessment years;

(b) The nonprofit entity applying for or receiving the exemption has obtained a commitment for financing, in whole or in part, to acquire, construct, remodel, renovate, or otherwise convert the property to provide housing for qualifying households from one or more of the sources listed in subsection (4) (d) of this rule;

(c) The nonprofit entity has manifested its intent in writing to construct, remodel, renovate, or otherwise convert the rental housing or mobile home park to housing for qualifying households; and

(d) If less than the entire facility or mobile home park will be used to provide rental housing or mobile home lots for qualifying households, only that portion is entitled to an exemption under this rule.

(10) **Exclusive use required.** To be exempt under RCW 84.36.560, the property must be exclusively used to provide rental housing or mobile home lots for qualifying households, except as provided in RCW 84.36.805.

(11) **Payments in-lieu of property tax will be accepted.** Any nonprofit entity that qualifies for a property tax exemption under RCW 84.36.560 may agree to make payments to the city, county, or other political subdivision for the improvements, services, and facilities furnished by the city, county, or political subdivision for the benefit of the exempt rental housing facility or mobile home lots. However, these payments may not exceed the amount of property tax last levied as the annual tax by the city, county, or political subdivision on the property prior to the time the exemption was effective.