

**WSR 06-15-020**  
**EXPEDITED RULES**  
**DEPARTMENT OF REVENUE**

[Filed July 7, 2006, 1:43 p.m.]

Title of Rule and Other Identifying Information: WAC 458-61A-211 Mere change in identity or form—Family corporations and partnerships.

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 Margaret J. Partlow, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, fax (360) 586-5543, e-mail margaretpa@dor.wa.gov, AND RECEIVED BY September 18, 2006.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: A transfer of real property is exempt from the real estate excise tax if it consists of a mere change in identity or form of ownership of an entity. WAC 458-61A-211 explains that the exemption is not limited to transfers involving corporations and partnerships, and includes transfers of trusts, estates, associations, limited liability companies and other entities. The rule explains when a mere change in form or identity where no change in beneficial ownership occurs and provides examples.

The department is proposing an edit change for the example provided in subsection (4)(b), as follows, so that the entity names used in the example read correctly throughout:

For example, Giant Company wants to expand its business. It identifies some real property, but is unable to finance the purchase through a normal loan. It contracts with Mega Loans Inc. to enter into a "synthetic lease" for the purchase of the real property. Under the terms of the synthetic lease, Mega Loans will take title to the real property, and Giant Company will lease it from Mega Loans. Real estate excise tax is paid on the purchase of the real property by Mega Loans. The terms of the lease also provide that ((~~Mega Loans~~)) Giant Company will be the owner for federal tax purposes and ((~~Giant Company~~)) Mega Loans will be the owner for financial accounting purposes. Per the lease agreement, after a specified time Mega Loans will transfer title to the real property to Giant Company. The transfer of title from Mega Loans to Giant Company is subject to real estate excise tax.

Reasons Supporting Proposal: To clarify the language in the example.

Statutory Authority for Adoption: RCW 82.32.300, 82.04.150, and 82.01.060(2).

Statute Being Implemented: Chapter 82.45 RCW, as it applies to changes in identity or form of ownership of an entity.

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: Margaret J. Partlow, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6123; Implementation and Enforcement: Stuart Thronson, 1025 Union Avenue S.E., Suite #100, Olympia, WA, (360) 570-3230.

July 6, 2006

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-23-093, filed 11/16/05, effective 12/17/05)

**WAC 458-61A-211 Mere change in identity or form—Family corporations and partnerships.** (1) **Introduction.** A transfer of real property is exempt from the real estate excise tax if it consists of a mere change in identity or form of ownership of an entity. This exemption is not limited to transfers involving corporations and partnerships, and includes transfers of trusts, estates, associations, limited liability companies and other entities. If the transfer of real property results in the grantor(s) having a different proportional interest in the property after the transfer, real estate excise tax applies.

(2) **Qualified transactions.** A mere change in form or identity where no change in beneficial ownership has occurred includes, but is not limited to:

(a) The transfer by an individual or tenants in common of an interest in real property to a corporation, partnership, or other entity if the entity receiving the ownership interest receives it in the same pro rata shares as the individual or tenants in common held prior to the transfer. (See also WAC 458-61A-212, Transfers where gain is not recognized under the Internal Revenue Code.)

(b) The transfer by a corporation, partnership, or other entity of its interest in real property to its shareholders or partners, who will hold the real property either as individuals or as tenants in common in the same pro rata share as they owned the corporation, partnership, or other entity. To the extent that a distribution of real property is disproportionate to the interest the grantee partner has in the partnership, it will be subject to real estate excise tax.

(c) The transfer by an entity of its interest in real property to its wholly owned subsidiary, the transfer of real property from a wholly owned subsidiary to its parent, or the transfer of real property from one wholly owned subsidiary to another.

(d) The transfer by a corporation, partnership or other entity of its interest in real property to another corporation, partnership, or other entity if the grantee owner(s) receives it in the same pro rata shares as the grantor owner(s) held prior to the transfer.

(e) Corporate mergers and consolidations that are accomplished by transfers of stock or membership, and mergers between corporations and limited partnerships as provided in chapters 25.10 and 24.03 RCW.

(f) A transfer of real property to a newly formed, beneficiary corporation from an incorporator to the newly formed corporation, provided:

(i) The proper real estate excise tax was paid on the original transfer to the incorporator; and

(ii) It was documented on or before the original transfer that the incorporator received title to the property on behalf of that corporation during its formation process.

This tax exemption does not apply to a transaction in which a property owner acquires title in his or her own name and later transfers title to the corporation upon its formation.

(g) A transfer into any revocable trust.

(h) A conveyance from a trustee of a revocable trust to the original grantor or to a beneficiary if no valuable consideration passes, or if the transaction is otherwise exempt under this chapter (for example, a gift or inheritance). A sale of real property by the trustee to a third party, or to a beneficiary for valuable consideration, is subject to the real estate excise tax.

(3) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a grant of an interest in real property may or may not qualify for this exemption. These examples should be used only as a general guide. The taxability of each transaction must be determined after a review of all the facts and circumstances.

(a) Andy owns a 100% interest in real property. He transfers his property to his solely owned corporation. The transfer is exempt from real estate excise tax because there has been no change in the beneficial ownership interest in the property.

(b) Elizabeth owns a 100% interest in real property, and is the sole owner of Zippy Corporation. She transfers her property to Zippy. The corporation pays \$5,000 to Elizabeth and agrees to make payments on the underlying debt on the property. Despite the fact that there was consideration involved in the transfer, it is still exempt from tax because there was no change in beneficial ownership.

(c) Jim, Kathie, and Tim own real property as joint tenants. They transfer their property to their LLC in the same pro rata ownership. The transfer is exempt from real estate excise tax because there has been no change in beneficial ownership.

(d) Pat, Liz, and Erin own Stage Corporation. They also own Song & Dance Partnership, in the same pro rata ownership percentages as their interests in the corporation. Stage Corporation transfers real property to Song & Dance Partnership. The transfer is exempt from real estate excise tax, because there has been no change in beneficial interest.

(e) Morgan owns real property. Brea owns Sparkle Corporation. Morgan transfers real property to Sparkle in exchange for an interest in the corporation. The transfer is subject to real estate excise tax because there has been a change in the beneficial interest in the real property. The tax applies to the extent that the transfer of real property results in the grantor having a different proportional interest in the property after it is transferred. (Note, however, that Morgan and Brea may be able to structure their transaction in a manner that would qualify for exemption under WAC 458-61A-212.)

(f) Dan owns property as sole owner. Jill owns property as sole owner. Dan and Jill each transfer their property to Rhyming LLC, which they form together. The transfers are taxable because there has been a change in the beneficial ownership interest in the real property. To the extent that the transfer of real property results in the grantor having a differ-

ent proportional interest in the property after the transfer, it is taxable. (Note, however, that Dan and Jill may qualify for an exemption under WAC 458-61A-212.)

(g) Fred and Steve are equal partners in Jazzy Partnership. They decide to transfer real property from the partnership to themselves as individuals. Based on its true and fair value, the partnership transfers 60% of the real property to Fred and 40% to Steve. This distribution is not in proportion to their ownership interest in Jazzy Partnership, and the transfer is not exempt because there has been a change in the beneficial ownership interest. To the extent that the transfer of property results in the grantor having a different proportional interest in the property after the transfer, it is taxable. (Note, however, that Fred and Steve may qualify for an exemption under WAC 458-61A-212.)

(4) **Disparate treatment of ownership interests.**

(a) Where the ownership of real property is different for financial accounting purposes than for federal tax purposes, the beneficial ownership interest in the real property is deemed the entity which is the owner for financial accounting purposes. Any transfer from the entity that is the owner for federal tax purposes to the owner for financial accounting purposes, or vice versa, is subject to the real estate excise tax.

(b) For example, Giant Company wants to expand its business. It identifies some real property, but is unable to finance the purchase through a normal loan. It contracts with Mega Loans Inc. to enter into a "synthetic lease" for the purchase of the real property. Under the terms of the synthetic lease, Mega Loans will take title to the real property, and Giant Company will lease it from Mega Loans. Real estate excise tax is paid on the purchase of the real property by Mega Loans. The terms of the lease also provide that ((~~Mega Loans~~)) Giant Company will be the owner for federal tax purposes and ((~~Giant Company~~)) Mega Loans will be the owner for financial accounting purposes. Per the lease agreement, after a specified time Mega Loans will transfer title to the real property to Giant Company. The transfer of title from Mega Loans to Giant Company is subject to real estate excise tax.

(5) **Family corporations, partnerships, or other entities.** This exemption applies to transfers to an entity that is wholly owned by the transferor and/or the transferor's spouse or children, regardless of whether the transfer results in a change in the beneficial ownership interest. However, real estate excise taxes will become due and payable on the original transfer as otherwise provided by law if:

(a) The partnership or corporation thereafter voluntarily transfers the property; or

(b) The transferor, spouse or children voluntarily transfer stock in the corporation, or interest in the partnership capital to other than:

(i) The transferor and/or the transferor's spouse or children;

(ii) A trust having the transferor and/or the transferor's spouse or children as the only beneficiaries at the time of transfer to the trust; or

(iii) A corporation or partnership wholly owned by the original transferor and/or the transferor's spouse or children, within three years of the original transfer to which this exemption applies, and the tax on the subsequent transfer is not paid within sixty days of becoming due.

For example, parents own real property as individuals. They create an LLC that is owned by themselves and their three children. The parents transfer the real property to the LLC. Despite the fact that there was a change in beneficial ownership interest, it is still exempt from tax, because the LLC is owned by the grantor and/or the grantor's spouse or children.

**(6) Transfers when there is not a change in identity or form of ownership of an entity.** This exemption applies to transfers of real property when the grantor and grantee are the same.

For example, John and Megan own real property as tenants in common. They decide that they prefer to hold the property as joint tenants with rights of survivorship. John and Megan, as tenants in common, convey the property to John and Megan as joint tenants with rights of survivorship. The transfer is exempt from real estate excise tax.

**WSR 06-15-039**  
**EXPEDITED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed July 10, 2006, 10:46 a.m.]

Title of Rule and Other Identifying Information: Chapter 180-95 WAC, Education centers.

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 Marcia Riggers, Office of the Superintendent of Public Instruction (OSPI), 600 Washington Street S.E., Olympia, WA 98504, AND RECEIVED BY September 18, 2006.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed changes to chapter 180-95 WAC is to make appropriate agency name changes to be consistent with chapter 28A.205 RCW.

Statutory Authority for Adoption: Chapter 180-95 WAC.

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

Name of Proponent: [OSPI], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Marcia Riggers, OSPI, (360) 725-6175.

July 6, 2006  
Marty Daybell  
Deputy Superintendent

AMENDATORY SECTION (Amending Order 4-94, filed 1/19/94, effective 2/19/94)

**WAC 180-95-010 Definitions.** The following definitions shall apply to terms used in this chapter:

(1) "Education center" shall mean a private educational institution certified by the (~~(state board of education)~~) superintendent of public instruction which employs a clinical, client-centered approach and is devoted to (a) teaching the basic academic skills including specific attention to improvement of student motivation for achieving and (b) employment orientation: Provided, That no education center certified by the (~~(state board of education)~~) superintendent of public instruction pursuant to this section shall be deemed a common school under RCW 28A.150.020 or a private school for the purposes of RCW 28A.195.010 through 28A.195.050(~~(, or proprietary school under chapter 18.82 RCW)~~).

(2) "Basic academic skills" shall mean the study of mathematics, speech, language, reading and composition, science, history, literature and political science or civics; it shall not include courses of a vocational training nature and courses deemed nonessential to the accrediting of common schools or the approval of private schools under RCW 28A.305.130.

(3) "A clinical, client-centered basis" shall mean an approach to education which includes the individual diagnosis of the person's educational abilities, determining and setting of individual goals, prescribing and providing individual programs of instruction, and evaluating the individual student's progress in his or her educational program.

(4) "Individual diagnostic procedure" shall mean the individual assessment by a certified teacher, or when deemed necessary, by a psychometrist, psychologist, and/or another professional who is appropriately certificated or licensed to conduct specific diagnostic evaluations and to prescribe an individual educational and instructional program in conjunction with the teacher, student, parents, and others as necessary.

(5) "General educational development (GED) tests" shall mean that battery of tests designed and published by the GED testing service of the American council on education to measure the major outcomes and concepts generally associated with four years of high school education. Each GED testing center must have a current contract with the American council on education and be authorized by the state (~~(superintendent of public instruction)~~) board for community and technical colleges.

(6) "Educational gain" shall mean (a) measurable increases in the student's achievement, (b) increased motivation for achieving, and/or (c) increased knowledge and skills relevant to employment orientation as defined in (8) below: Provided, That consideration is given to the student's background in determining the extent of such gain.

(7) "Eligible common school dropout" shall be defined as set forth in WAC 392-185-010(2).

(8) "Employment orientation" shall normally include, but not be restricted to instruction and practical experience in the following areas: Job applications, interview techniques, expectations for attendance and production, learning to translate skills and abilities in terms of job needs, examination by the student of job descriptions and exploration of the student's ability to fulfill the job needs.

AMENDATORY SECTION (Amending Order 4-94, filed 1/19/94, effective 2/19/94)

**WAC 180-95-020 Criteria for certification of education centers.** To be certified as an education center, a private educational institution must apply to the (~~(state board of education)~~) superintendent of public instruction and provide evidence that it:

(1) Qualifies under the definition set forth in WAC 180-95-010(1).

(2) Offers instruction in the basic academic skills as defined in WAC 180-95-010(2) and employment orientation as defined in WAC 180-95-010(8).

(3) Employs, for purposes of diagnosing and instructing students, professionally trained personnel who meet requirements for certification set forth in chapters 180-80 and/or 180-84 WAC: Provided, That for specific diagnostic evaluations, a professional who is otherwise appropriately licensed does not have to meet certification requirements.

(4) Operates on a clinical, client-centered basis as defined in WAC 180-95-010(3).

(5) Conducts individualized diagnosis and instruction which includes as a minimum:

(a) Consideration by qualified personnel of the student's achievement, abilities, interests, and aptitudes;

(b) Delineation of individual learning objectives and education and/or employment goals;

(c) Development and implementation of curriculum and instruction appropriate to diagnosed needs and specified objectives and goals;

(d) Provision for evaluation of the student's progress toward and attainment of learning objectives and education and/or employment goals.

(6) Produces educational gains in students which relate directly to the individual learning objectives and educational and/or employment goals established for the student.

(7) Maintains accurate and complete financial and personnel records.

(8) Is financially sound and capable of fulfilling its educational commitment, i.e., that it has definite and certain resources to meet its current obligations.

AMENDATORY SECTION (Amending Order 4-94, filed 1/19/94, effective 2/19/94)

**WAC 180-95-030 Application procedures for certification as an education center.** A private educational institution shall apply for certification to the (~~(state board of education)~~) superintendent of public instruction on a form provided by the (~~(state board of education)~~) superintendent of public instruction. The (~~(state board of education)~~) superintendent of public instruction or its designee(s) shall determine by (~~(on-site visitation and)~~) documentary evidence submitted by the applicant whether all criteria set forth in WAC 180-95-020 are satisfied. The (~~(state board of education)~~) superintendent of public instruction shall notify the applicant institution of its certification status within ten weeks after the date (~~(state board of education)~~) superintendent of public instruction receives a completed application.

AMENDATORY SECTION (Amending Order 4-94, filed 1/19/94, effective 2/19/94)

**WAC 180-95-040 Length of certification.** A private educational institution shall be certified as an education center by the (~~(state board of education)~~) superintendent of public instruction for no more than three years and shall report annually any changes relevant to certification criteria set forth in WAC 180-95-020 to the (~~(state board of education)~~) superintendent of public instruction on a form provided by the (~~(state board of education)~~) superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 95-08-029, filed 3/29/95, effective 4/29/95)

**WAC 180-95-050 Withdrawal of certification as an education center.** The (~~(state board of education)~~) superintendent of public instruction may withdraw certification if the board finds that a center fails:

(1) To provide adequate instruction in basic academic skills which shall mean:

(a) The center does not offer or make provision for instruction in all the basic skills defined in WAC 180-95-010(2), or

(b) Evidence/data do not verify educational gains which relate directly to the individual learning objectives and the educational and/or employment goals established, or

(c) The center does not provide opportunities for employment orientation.

(2) To meet any of the criteria for certification of education centers as established in WAC 180-95-020.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 180-95-060 Fee revision—Appeal procedure.

WAC 180-95-070 Additional rules.

#### **WSR 06-15-100**

#### **EXPEDITED RULES**

#### **DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed July 17, 2006, 11:08 a.m.]

Title of Rule and Other Identifying Information: Expedited repeal of the following disease management program rules: WAC 388-557-5000 General, 388-557-5050 Definitions, 388-557-5100 Client eligibility and assignment, 388-557-5150 Requirements for becoming an MAA-contracted disease management organization, 388-557-5200 MAA-contracted disease management organization—Confidentiality and information sharing, 388-557-5250 Scope of services, and 388-557-5300 Billing limits.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Rules Coordinator, Department of Social and Health Services, P.O. Box 45850, Olympia, WA 98504-5850, or deliver to Blake Office Park East, 4500 10th Avenue S.E., Lacey, WA 98503, e-mail [fernaax@dshs.wa.gov](mailto:fernaax@dshs.wa.gov), fax (360) 664-6185, AND RECEIVED BY September 18, 2006, 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules are no longer needed because the disease management pilot program has been discontinued June 30, 2006.

The department has plans to create a new chronic care management program next year based on the results of the disease management pilot program.

Reasons Supporting Proposal: Repealing these rules will prevent confusion for the public who might read them and assume that the disease management program is still in operation.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500, and 74.09.530.

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

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

Name of Agency Personnel Responsible for Drafting: Kevin Sullivan, 626 8th Avenue, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1344; Implementation and Enforcement: Alison Robbins, 626 8th Avenue, P.O. Box 45530, Olympia, WA 98504-5530, (360) 725-1634.

July 7, 2006

Andy Fernando, Manager  
Rules and Policies Assistance Unit

WAC 388-557-5200	MAA-contracted disease management organization (DMO)—Confidentiality and data sharing.
WAC 388-557-5250	Disease management program—Scope of services.
WAC 388-557-5300	Disease management program services—Billing limits.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-557-5000	Disease management program—General.
WAC 388-557-5050	Disease management program—Definitions.
WAC 388-557-5100	Disease management program—Client eligibility and assignment.
WAC 388-557-5150	Requirements for becoming an MAA-contracted disease management organization (DMO).