

WSR 14-21-025
EXPEDITED RULES
OFFICE OF
ADMINISTRATIVE HEARINGS

[Filed October 3, 2014, 11:44 a.m.]

Title of Rule and Other Identifying Information: WAC 10-04-020 Function—Organization—Offices.

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 Jane L. Habegger, Office of Administrative Hearings, P.O. Box 42489, Olympia, WA 98504-2489, AND RECEIVED BY December 23, 2014.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: (1) We are closing our Vancouver office November 28, 2014.

(2) We have changed the title of assistant deputy chief administrative law judge to assistant chief administrative law judge.

Reasons Supporting Proposal: We want to properly inform the public of the closure of our Vancouver office by striking the reference to it in WAC 10-04-020. We also want to properly inform the public of the change in titles for assistant chief administrative law judges.

Statutory Authority for Adoption: RCW 34.12.030(6).

Statute Being Implemented: RCW 34.12.010 and 34.12.-030.

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

Name of Proponent: Office of administrative hearings, governmental.

Name of Agency Personnel Responsible for Drafting: Jane L. Habegger, 2420 Bristol Court S.W., Olympia, WA 98504, (360) 407-2756; Implementation and Enforcement: Lorraine Lee, 2420 Bristol Court S.W., Olympia, WA 98504, (360) 407-2710.

October 1, 2014

Lorraine Lee

Chief Administrative Law Judge

AMENDATORY SECTION (Amending WSR 13-08-047, [filed 3/28/13,] effective 4/28/13)

WAC 10-04-020 Function—Organization—Offices.

The office of administrative hearings conducts impartial administrative hearings for state agencies and local governments pursuant to chapter 34.12 RCW. The office is under the direction of the chief administrative law judge.

Administrative law judges preside over hearings in adjudicative proceedings and issue initial or final orders, including findings of fact and conclusions of law.

The administrative office is located at 2420 Bristol Ct. SW, P.O. Box 42488, Olympia, Washington, 98504-2488. The office hours are 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., Monday through Friday except legal holidays. Administrative law judges are assigned to field offices located in Olympia, Seattle, Spokane, Tacoma[5] (~~Vancouver~~), and Yakima. Each office is headed by an assistant (~~deputy~~) chief administrative law judge.

All written communications by parties pertaining to a particular case shall be filed with the field office, if any, assigned to the case, and otherwise with the chief administrative law judge or designee at the administrative office.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

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

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

WSR 14-21-120
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed October 17, 2014, 12:03 p.m.]

Title of Rule and Other Identifying Information: WAC 458-20-178 (Rule 178) Use tax, this rule explains who is responsible for remitting use tax, and when and how to remit the tax. It also explains the imposition of use tax as it applies to the use of tangible personal property within Washington when the property was not subject to retail sales tax at the time of acquisition.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Gayle Carlson, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail GayleC@dor.wa.gov, AND RECEIVED BY December 22, 2014.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to revise Rule 178 to delete verbiage in subsection (6) that is inaccurate because the example is no longer valid. Chapter 13, Laws of 2013 2nd sp. sess., made the example invalid when it created a use tax exemption for items less

than ten thousand dollars, purchased ..., from a nonprofit organization or a library. While this specific exemption is scheduled to expire July 1, 2017, the example in subsection (6) could still be misleading and the department proposes removing it.

Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Reasons Supporting Proposal: Chapter 13, Laws of 2013 2nd sp. sess.

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

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Gayle Carlson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1576; Implementation: Dylan Waits, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1583; and Enforcement: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

October 17, 2014
Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-09-036, filed 4/10/14, effective 5/11/14)

WAC 458-20-178 Use tax and the use of tangible personal property. (1) **Introduction.** This rule provides general use tax-reporting information for consumers. It discusses who is responsible for remitting use tax, and when and how to remit the tax. The rule also explains the imposition of use tax as it applies to the use of tangible personal property within this state when the acquisition of the tangible personal property was not subject to retail sales or deferred sales tax.

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

(b) **Additional information available.** For information on use tax exemptions please refer to chapter 82.12 RCW. When appropriate, this rule refers the reader to applicable statutes and rules. In addition, the reader may wish to refer to the following:

(i) WAC 458-20-145, Local sales and use tax, provides information on sourcing local sales and use taxes.

(ii) WAC 458-20-15503, Digital products, provides information on sales and use tax liability on digital products such as: Digital goods, including digital audio works, digital audio-visual works, and digital books; digital automated services; digital codes used to obtain digital goods or digital automated services; and remote-access software.

(iii) WAC 458-20-169, Nonprofit organizations, provides information on a use tax exemption for donated items to a nonprofit charitable organization.

(iv) WAC 458-20-17803, Use tax on promotional material, provides information about the use tax reporting responsibilities of persons who distribute or cause the distribution of

promotional material, except newspapers, the primary purpose of which is to promote the sale of products or services in Washington.

(v) WAC 458-20-190, Sales to and by the United States—Doing business on federal reservations—Sales to foreign governments, provides tax reporting information for businesses doing business with the United States.

(vi) WAC 458-20-192, Indians—Indian country, provides information on use tax pertaining to Indians and Indian tribes and use tax pertaining to non-Indians in Indian country.

(vii) WAC 458-20-257, Warranties and service contracts, provides information on tax responsibilities of persons selling or performing services covered by warranties, service contracts, and mixed agreements for tangible personal property.

(2) **What is use tax?** Use tax complements the retail sales tax, and in most cases mirrors the retail sales tax. Articles of tangible personal property used or certain services purchased in Washington are subject to use tax when the state's retail sales tax has not been paid, or where an exemption is not available. Tangible personal property or services used or purchased by the user in any manner are taxable including, but not limited to:

- Purchases directly from out-of-state sellers;
- Purchases through the internet, telemarketing, mail order; or
- Acquisitions at casual or isolated sales.

(a) **Example 1.** ABC Company (ABC) orders office supplies from out-of-state vendors and also through catalogs. In addition, ABC pays annual subscriptions for magazines for their own use. None of these vendors is required to collect Washington's retail sales tax. Use tax is due on all taxable items ordered including the annual subscriptions.

(b) **Example 2.** Mary is a music instructor that teaches adults how to play the piano. Mary does not charge her students retail sales tax on the costs of the weekly piano lessons. Use tax is not due on the lessons, as the lessons are not a retail sales taxable service. See WAC 458-20-224, Service and other business activities.

(3) **"Use" defined.** For purposes of this rule, "use," "used," "using," or "put to use" have their ordinary meaning and include the first act by which a person takes or assumes dominion or control over the article (as a consumer). It includes installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within the state. (See RCW 82.12.010.) Multiple uses of the same article by the same person do not generally result in multiple use tax liabilities.

(4) **Measure of tax – Value of article used.** Use tax generally is levied and collected on an amount equal to the value of the article used by the taxpayer. RCW 82.12.010 defines this value to generally be the purchase price of the article. There are a number of specific situations where this value may be different than the amount of consideration paid or given by the buyer to the seller. See subsection (7) of this rule for exceptions.

(a) **When the value is the purchase price.** The term "purchase price" has the same meaning as "selling price." The selling price is the total amount of consideration, except

trade-in property of like kind, including cash, credit, property, and services, for which tangible personal property is sold, leased, or rented, valued in money, whether received in money or otherwise. The selling price, and therefore the "value of the article used" also includes delivery charges. Delivery charges are charges made by the seller for preparing and delivering tangible personal property to a location designated by the buyer and include, but is not limited to, charges for transportation, shipping, postage, handling, crating, and packing. (See RCW 82.08.010 and 82.12.010.)

(b) When the purchase price does not represent true value. When an article is sold under conditions in which the purchase price does not represent the true value, the "value of the article used" is to be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character. (See RCW 82.12.010.) This is frequently referred to as the fair market value of the property. For additional information regarding the measure of tax for articles in these situations, refer to WAC 458-20-112, Value of products. Refer to subsection (4)(i)(i) of this rule for determining use tax when there is no similar article of like quality and character.

A comparison/examination of arm's length sales transactions is required when determining the value of the article used on the basis of the retail selling price of similar products. An arm's length sale generally involves a transaction negotiated by unrelated parties, each acting in his or her own self-interest.

(i) In an arm's length sales transaction, the value placed on the property by the parties to the transaction may be persuasive evidence of the true value of the property. Where there is a conflict regarding the true value of tangible personal property between sales documents, entries in the accounting records and/or value reported for use tax purposes, the department often looks to the person's accounting records as an indication of the minimum value of capitalized property. Neither the department nor the taxpayer is necessarily bound by this value if it is established that the entry in the books of account does not fairly represent the true value of the article used.

(ii) Some arm's length sales transactions involve multiple pieces of property or different types of property (such as when both real and personal property are sold). While the total sales price may represent a true value for the property in total, the values allocated to the specific components may not in and of themselves represent true values for those components. This is especially apparent when the values assigned by the parties to the sales transaction vary from those entered into the accounting records and/or reported for use tax purposes. In such cases, the value of the article used for the purpose of the use tax must be determined as nearly as possible according to the retail selling price, at the place of use, of similar products of like quality and character.

(c) Property acquired and used outside Washington before use occurs in Washington. The purchase price of property acquired and used outside Washington before being used in this state may not represent the property's true value. Under these circumstances, the value of article used is the retail selling price at place of use of similar products of like

quality and character as of the time the article is first used in Washington.

(d) Imported property. When property is imported from outside the United States for use in Washington state, the value of the article used includes any amount of tariff or duty paid with respect to importation.

(e) Articles produced for commercial or industrial use. A person who extracts or manufactures products or by-products for commercial or industrial use is subject to use tax and the business and occupation (B&O) tax on the value of products or by-products used. "Commercial or industrial use" is the use of products, including by-products, as a consumer by the person who extracted or manufactured the products or by-products. See WAC 458-20-134, Commercial or industrial use and WAC 458-20-136, Manufacturing, processing for hire, fabricating.

Tax applies even if the person is not generally in the business of extracting, producing, or manufacturing the products, or the extracting or manufacturing activity is incidental to the person's primary business activity. Thus, a clothing retailer who manufactures signs or other materials for display purposes incurs a liability even though the clothing retailer is not otherwise in the business of manufacturing signs and other display materials for sale.

(i) The extractor or manufacturer is responsible for remitting retail sales or use tax on all materials used while developing or producing an article for commercial or industrial use. This includes materials that are not components of the completed article.

(ii) The value of the extracted or manufactured article is subject to use tax when the article is completed and used. The measure of use tax due for the completed article may be reduced by the value of any materials actually incorporated into that article if the manufacturer or extractor previously paid sales or use tax on the materials. See subsection (4)(g) of this rule for an explanation of the measure of tax for a completed prototype.

(f) Bailment. For property acquired by bailment, the "value of the article used" for the bailee is an amount representing a reasonable rental for the use of the bailed article, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character. (See RCW 82.12.010.) If the nature of the article is such that it can only be used once, the reasonable rental value is the full value of the article used. See also WAC 458-20-211, Leases or rentals of tangible personal property, bailments.

(g) Prototypes. The value of the article used with respect to an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product is:

- The retail selling price of such new or improved product when first offered for sale; or
- The value of materials incorporated into the prototype in cases where the new or improved product is not offered for sale. (See RCW 82.12.010.)

(h) Articles manufactured and used in the production of products for the department of defense. When articles are manufactured and used in the production of products for the department of defense, use tax is due except where there

is an exemption. The value of the article used with respect to an article manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the department of defense of the United States is the value of the ingredients of the manufactured or produced article. (See RCW 82.12.010.) However, refer to WAC 458-20-13601, Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment to determine if such articles qualify for exemption under RCW 82.12.02565.

(i) **Property temporarily brought into Washington for business use.** In the case of articles owned by a user engaged in business outside the state which are brought into the state for no more than one hundred eighty days in any period of three hundred sixty-five consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used must be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under chapter 82.08 or 82.12 RCW upon the full value of the article used.

However, this measure of "value of article used" is a separate provision from RCW 82.12.0251 use tax exemption. The use tax exemption is provided to nonresidents bringing property into Washington for his or her use or enjoyment while temporarily within the state, unless the property is used in conducting a nontransitory business activity. The term "nontransitory business activity," for the purposes of this exemption, means and includes the business of extracting, manufacturing, selling tangible and intangible property, printing, publishing, and performing contracts for the constructing or improving of real or personal property. It does not include the business of conducting a circus or other form of amusement when the personnel and property of such business regularly moves from one state into another, nor does it include casual or incidental business done by a nonresident lawyer, doctor or accountant.

(i) **Reasonable rental value.** A reasonable rental value is normally determined by the rental price or using the fair market rental value of similar products of like quality and character if rental price is not reasonable. If a reasonable rental value cannot be determined because of the nature of property, such as it may not be possible to find similar products of like quality and character, monthly reasonable rental value may be determined based on depreciation plus one percent (per month) of the purchase price. For the purpose of this computation, depreciation should be computed on a straight-line basis with an assumption that there is no salvage value. The life of the asset must be based on "book" life rather than an accelerated life that might be used for federal tax purposes. This calculation applies even if the asset is fully depreciated.

(ii) **Example.** A piece of equipment that originally cost \$100,000 and has a book life of forty-eight months results in a monthly rental value of \$3,083 $((100,000/48) + (100,000 \times .01))$. This monthly value applies even if the asset is fully depreciated or is greater or less than the actual depreciation used for federal tax purposes. A lesser value can be used if the taxpayer retains documentation supporting the lesser value and that value is based on rental values.

(j) **Special provisions for vessel dealers and manufacturers.** The value of an article used for a vessel held in inven-

tory and used by a vessel dealer or vessel manufacturer for personal use is the reasonable rental value of the vessel used. This value applies only if the vessel dealer or manufacturer can show that the vessel is truly held for sale and that the dealer or manufacturer is and has been making good faith efforts to sell the vessel. (See RCW 82.12.802.) This may result in a vessel manufacturer incurring multiple use tax liabilities with respect to multiple uses of the same vessel.

The use of a vessel by a vessel dealer or vessel manufacturer for certain purposes is not subject to use tax. For specific information on these exemptions see RCW 82.12.800 and 82.12.801.

(5) **Who is liable for the tax?** RCW 82.12.020 imposes use tax upon every person using tangible personal property or certain retail services as a consumer in the state of Washington. The law does not distinguish between persons using property (or certain retail services) for business or personal use. Thus, a Washington resident purchasing personal items via the internet or through a mail-order catalog has the same legal responsibility to report and remit use tax as does a corporation purchasing office supplies. The rate of the use tax is the same as the retail sales tax rate in the location where the property is used. Refer to WAC 458-20-145, Local sales and use tax for further discussion about determining where use occurs.

(a) **When tax liability arises.** Use tax is owed at the time the tangible personal property is first put to use in this state, unless an exemption is available.

(b) **Reporting and remitting payment to the department of revenue.**

(i) **Registered taxpayers.** Persons registered with the department under RCW 82.32.030 to do business in Washington should use their excise tax return to report and remit use tax.

(ii) **Unregistered persons.** Persons not required to be registered with the department should use a Consumer Use Tax Return to report and remit use tax. The Consumer Use Tax Return is available by:

(A) Using the department's web site at dor.wa.gov;

(B) Calling the department's telephone information center at 1-800-647-7706; or

(C) Requesting the form at any of the department's local field offices.

The completed Consumer Use Tax Return, with payment, is due on or before the twenty-fifth day of the month following the month in which the tax liability occurs. For example, a person acquires clothing without payment of the retail sales tax during August. The Consumer Use Tax Return and the tax are due by September 25th.

The return and payment can be submitted electronically using the department's online system at dor.wa.gov, mailed, or delivered to any of the department's local field offices.

(6) **How does use tax differ from the retail sales tax?** There are circumstances where the law does not provide a use tax exemption to complement a retail sales tax exemption. (~~For instance, RCW 82.08.02573 provides a retail sales tax exemption for certain fund-raising sales made by nonprofit organizations or, effective July 1, 2010, libraries (see chapter 106, section 214, Laws of 2010). Because~~) Where there is no complementary use tax exemption, the buyer/user is still

responsible for remitting use tax on his or her use of the purchased property.

((Another)) For instance ((where)), there is no complementary use tax exemption to the retail sales tax exemption ((is)) in RCW 82.08.0251. This exemption provides a retail sales tax exemption for articles acquired in casual sales transactions, if the seller is not required to be registered with the department. Because there is no complementary use tax exemption, the buyer/user is responsible for remitting the use tax on his or her use of the purchased property. For example, if a person purchases furniture through a classified ad from a homeowner, the buyer is responsible for reporting and paying the use tax although the sale is exempt from retail sales tax.

(7) **Exceptions.** The law provides certain exceptions to the imposition of tax on a single event. These exceptions occur when the law provides a method of determining the measure of tax different than the full value of the article being used.

(a) **Destroyed property.** The mere destruction or discarding of tangible personal property as unusable or worthless is usually not considered a taxable "use." The following examples identify a number of facts and then state a conclusion.

(i) **Example 4.** AA Computer Software (AA) has some obsolete inventory that will no longer sell as an updated version of the software is now available for purchase. AA decides to throw away this inventory even though it has never been used. As the software was never used, use tax is not owed on the destroyed inventory.

(ii) **Example 5.** WW Dealer purchases a used vehicle for resale. WW Dealer publicizes an upcoming sale by airing a television commercial in which WW Dealer destroys the vehicle. WW Dealer's destruction of the vehicle for publicity purposes is considered use by a consumer. The vehicle is subject to use tax sourced at the location where WW Dealer destroys the vehicle.

(b) **Tangible personal property acquired by gift or donation.** The use of property acquired by gift or donation is subject to the use tax, unless the person gifting or donating the property previously paid or remitted Washington retail sales or use tax on the purchase or use of the property. (See RCW 82.12.020.) However, a credit for tax paid in another jurisdiction is available if documentation of tax paid is provided. See subsection (8) of this rule for additional information.

Use tax does not apply when the same property is gifted or donated back to the original giftor or donor if the original giftor or donor previously paid the retail sales tax or use tax.

Example 6. John purchases a vehicle, pays retail sales tax on the purchase, and gifts the vehicle to Mary. Mary's use of the vehicle is not subject to use tax because John paid sales tax when he purchased the vehicle. After two years, Mary returns the vehicle to John. John's use of the vehicle is not subject to use tax because he paid sales tax when he originally purchased the vehicle. However, use tax is due if Mary gifts or donates the vehicle to a person other than John because Mary has not previously paid retail sales or use tax.

(c) **Tangible personal property put to both an exempt and taxable use.** If property is first used for an exempt or nontaxable purpose and is later used for a nonexempt or tax-

able purpose, use tax is due on the value of the property when first used for the nonexempt or taxable purpose. For instance, RCW 82.12.0251 provides a use tax exemption for the temporary use within Washington of watercraft brought in by certain nonresidents. (See WAC 458-20-238, Sales of watercraft to nonresidents—Use of watercraft in Washington by nonresidents for a detailed explanation of the exemption requirements.) However, use tax is due if the nonresident exceeds the temporary use threshold or the nonresident subsequently becomes a Washington resident.

(d) **Intervening use of property purchased for resale.** Persons purchasing tangible personal property for resale in the regular course of business may purchase the property at wholesale without paying retail sales tax provided the property is not put to intervening use, and the buyer provides the seller with a completed reseller permit. (See RCW 82.04.050 and 82.04.060.)

A buyer who purchases taxable property at wholesale and subsequently puts the property to intervening use is subject to either the retail sales tax (commonly referred to as "deferred retail sales tax") or use tax, unless a specific use tax exemption applies to the intervening use. The tax applies even if the property is at all times held out for sale and is in fact later sold. Tax is due even if the intervening use is the result of an unforeseen circumstance, such as when property is purchased for resale, the customer fails to satisfy the terms of the sales agreement, and the property is used until another customer is found. See WAC 458-20-102 Reseller permits regarding tax-reporting requirements when a person purchases property for both resale and consumption.

(e) **Using inventory to promote sales.** Intervening use does not include the use of inventory for floor or window display purposes if that merchandise is subsequently sold as new merchandise. Likewise, intervening use does not include the use of inventory for demonstration purposes occurring with efforts to sell the same merchandise if that merchandise is subsequently sold as new merchandise. The fact that the selling price may be discounted because the property is shop worn from display or demonstration is not, by itself, controlling for the purposes of determining whether intervening use has occurred.

Evidence that property has been put to intervening use includes, but is not limited to, the following:

(i) **Property not sold as new merchandise.** Intervening use occurs if, after use of the property for display or demonstration purposes, the property can no longer be sold as new merchandise. An indication that intervening use has occurred is if property is without a new model warranty if the sale of the property normally includes such a warranty.

(ii) **Capitalizing demonstrator or display property.** The capitalization and depreciation of property is evidence of intervening use. Thus, there is a rebuttable presumption that intervening use occurs if the accounting records identify the property as a demonstrator or as display merchandise. The burden is on the person making such entries in the accounting records to substantiate any claims the property was not put to intervening use.

(iii) **Loaning property to promote sales.** Intervening use includes loaning property to a customer or potential customer for the purpose of promoting sales of other products.

For example, intervening use occurs if a coffee manufacturer and/or distributor loans brewing equipment to a customer to promote coffee sales, even if the equipment is subsequently sold to the same or different customer. In this example, the coffee manufacturer and/or distributor loaning the equipment would owe use tax on the full value of the equipment. If the manufacturer and/or distributor had not paid use tax, the customer would owe use tax on the reasonable rental value as this is a bailment situation. See subsection (4)(f) of this section for the measure of tax on bailed articles.

(f) **Effect of the trade-in exclusion.** The exclusion for the value of trade-in property from the measure of tax applies only if the trade-in property is of the same general type or classification as the property for which it was traded-in. There is no requirement that Washington's retail sales or use tax be previously paid on the trade-in property. There is also no requirement that the property subject to use tax be acquired in Washington, or that the user be a Washington resident at the time he or she acquired the property. For additional information refer to WAC 458-20-247, Trade-ins, selling price, sellers' tax measure.

(8) **Credit for taxes paid in other jurisdictions.** RCW 82.12.035 provides a credit against Washington's use tax for legally imposed retail sales or use taxes paid by the purchaser to: Any other state, possession, territory, or commonwealth of the United States, or any political subdivision of a state, the District of Columbia, or any foreign country or political subdivision of a foreign country. (See RCW 82.56.010.)

(a) This use tax credit is available only if the present user, or his or her bailor or donor, has documentation that shows the retail sales or use tax was paid with respect to such property, extended warranty, digital products, digital codes, or service defined as a retail sale in RCW 82.04.050 to the other taxing jurisdiction.

(b) This credit is not available for other types of taxes such as, but not limited to, value-added taxes (VATs).

(c) For the purposes of allocating state and local use taxes, the department first applies the credit against the amount of any use tax due the state. Any unused portion of the credit is then applied against the amount of any use tax due to local jurisdictions. RCW 82.56.010, Multistate Tax Compact, Article V. Elements of Sales and Use Tax Laws.

(9) **No apportionment of use tax liability.** Unless specifically provided by law, the value of the article or use tax liability may not be apportioned even though the user may use the property both within and without Washington, or use the property for both taxable and exempt purposes.

(a) **Example 7.** A construction company using an airplane for traveling to and from its Washington office and out-of-state job sites must remit use tax on the full value of the airplane, even if the airplane was purchased and delivery taken outside Washington. There is no apportionment of this value even though the airplane is used both within and outside of Washington.

(b) **Exemption.** For an exemption pertaining to use tax liability, see WAC 458-20-17401, Use tax liability for motor vehicles, trailers, and parts used by motor carriers operating in interstate or foreign commerce.

WSR 14-21-125

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed October 17, 2014, 2:17 p.m.]

Title of Rule and Other Identifying Information:

- WAC 458-18-220 Refunds—Rate of interest, which provides the rate of interest that applies to tax refunds made pursuant to RCW 84.69.010 through 84.69.090 in accordance with RCW 84.69.100, and also to judgments entered in favor of the plaintiff pursuant to RCW 84.68.030.
- WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component, which provides the interest rate and the property tax component used to value farm and agricultural lands classified under chapter 84.34 RCW (open space program).
- WAC 458-30-590 Rate of inflation—Publication—Interest rate—Calculation, which provides the rate of inflation used to calculate interest on deferred special benefit assessments when farm and agricultural or timber land is removed or withdrawn from classification under chapter 84.34 RCW (open space program).

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Gayle Carlson, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail GayleC@dor.wa.gov, AND RECEIVED BY December 22, 2014.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend:

- WAC 458-18-220, to provide the rate of interest for treasury bill auction year 2014, which is to be used when refunding property taxes paid in 2015, as required by RCW 84.69.100.
- WAC 458-30-262, to provide the interest rate and property tax component to be used when valuing classified farm and agricultural land during the 2015 assessment year, as required by RCW 84.34.065.
- WAC 458-30-590, to provide the rate of inflation used in calculating interest for deferred special benefit assessments of land removed or withdrawn during 2015, as required by RCW 84.34.310.

Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Reasons Supporting Proposal: The department is required by statute to annually adopt these rules to provide the information identified above.

Statutory Authority for Adoption: RCW 84.34.360, 84.34.065, 84.34.141, and 84.69.100.

Statute Being Implemented: RCW 84.34.055, 84.34.065, 84.34.141, 84.34.310, 84.34.360, 84.68.030, and 84.69.100.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Gayle Carlson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1576; Implementation: Dylan Waits, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1583; and Enforcement: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

October 17, 2014
Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-01-059, filed 12/13/13, effective 1/1/14)

WAC 458-18-220 Refunds—Rate of interest. The following rates of interest shall apply on refunds of taxes made pursuant to RCW 84.69.010 through 84.69.090 in accordance with RCW 84.69.100. The following rates shall also apply to judgments entered in favor of the plaintiff pursuant to RCW 84.68.030. The interest rate is derived from the equivalent coupon issue yield of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted after June 30th of the calendar year preceding the date the taxes were paid. The rate thus determined shall be applied to the amount of the judgment or the amount of the refund, until paid:

Year tax paid	Auction Year	Rate
1984	1983	9.29%
1985	1984	11.27%
1986	1985	7.36%
1987	1986	6.11%
1988	1987	5.95%
1989	1988	7.04%
1990	1989	8.05%
1991	1990	8.01%
1992	1991	5.98%
1993	1992	3.42%
1994	1993	3.19%
1995	1994	4.92%
1996	1995	5.71%
1997	1996	5.22%
1998	1997	5.14%

Year tax paid	Auction Year	Rate
1999	1998	5.06%
2000	1999	4.96%
2001	2000	5.98%
2002	2001	3.50%
2003	2002	1.73%
2004	2003	0.95%
2005	2004	1.73%
2006	2005	3.33%
2007	2006	5.09%
2008	2007	4.81%
2009	2008	2.14%
2010	2009	0.29%
2011	2010	0.21%
2012	2011	0.08%
2013	2012	0.15%
2014	2013	0.085%
<u>2015</u>	<u>2014</u>	<u>0.060%</u>

AMENDATORY SECTION (Amending WSR 14-01-059, filed 12/13/13, effective 1/1/14)

WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component. For assessment year (~~2014~~) 2015, the interest rate and the property tax component that are to be used to value classified farm and agricultural lands are as follows:

- (1) The interest rate is (~~4.69~~) 4.45 percent; and
- (2) The property tax component for each county is:

COUNTY	PERCENT	COUNTY	PERCENT
Adams	((1.29)) <u>1.26</u>	Lewis	((1.09)) <u>1.11</u>
Asotin	((1.28)) <u>1.21</u>	Lincoln	((1.25)) <u>1.17</u>
Benton	((1.16)) <u>1.17</u>	Mason	((1.05)) <u>1.15</u>
Chelan	((1.06)) <u>1.10</u>	Okanogan	((1.06)) <u>1.04</u>
Clallam	((1.11)) <u>1.12</u>	Pacific	((1.26)) <u>1.32</u>
Clark	((1.45)) <u>1.38</u>	Pend Oreille	0.90
Columbia	((1.16)) <u>1.11</u>	Pierce	((1.54)) <u>1.52</u>
Cowlitz	1.24	San Juan	0.68
Douglas	((1.21)) <u>1.15</u>	Skagit	((1.23)) <u>1.21</u>

COUNTY	PERCENT	COUNTY	PERCENT
Ferry	((0.94)) <u>0.95</u>	Skamania	((1.06)) <u>1.03</u>
Franklin	((1.30)) <u>1.29</u>	Snohomish	((1.30)) <u>1.24</u>
Garfield	((1.13)) <u>0.93</u>	Spokane	((1.43)) <u>1.38</u>
Grant	((1.37)) <u>1.33</u>	Stevens	((0.99)) <u>0.98</u>
Grays Harbor	((1.22)) <u>1.27</u>	Thurston	((1.37)) <u>1.31</u>
Island	((0.87)) <u>0.95</u>	Wahkiakum	((0.96)) <u>0.94</u>
Jefferson	((0.97)) <u>1.02</u>	Walla Walla	((1.34)) <u>1.33</u>
King	((1.19)) <u>1.16</u>	Whatcom	((1.12)) <u>1.16</u>
Kitsap	((1.22)) <u>1.24</u>	Whitman	((1.38)) <u>1.42</u>
Kittitas	((0.92)) <u>0.98</u>	Yakima	((1.25)) <u>1.26</u>
Klickitat	((0.90)) <u>0.95</u>		

accrues and is assessed in accordance with WAC 458-30-550.

(a) Interest is assessed only for the time (years and months) the land remains classified under RCW 84.34.020 (2) or (3).

(b) If the classified land is exempt from the special benefit assessment for more than one year, the annual inflation rates are used to calculate an average rate of interest. This average is determined by adding the inflation rate for each year the classified land was exempt from the special benefit assessment after the local improvement district was created. The sum of the inflation rates is then divided by the number of years involved to determine the applicable rate of interest.

(c) Example. A local improvement district for a domestic water supply system was created in January 1990 and the owner used the statutory exemption provided in RCW 84.34.320. On July 1, 1997, the land was removed from the farm and agricultural classification. An average interest rate was calculated using the inflation rates for 1990 through 1997. The owner was then notified of the amount of previously exempt special benefit assessment, plus the average interest rate.

(4) **Rates of inflation.** The rates of inflation used to calculate the interest as required by WAC 458-30-550 are as follows:

YEAR	PERCENT	YEAR	PERCENT
1976	5.6	1977	6.5
1978	7.6	1979	11.3
1980	13.5	1981	10.3
1982	6.2	1983	3.2
1984	4.3	1985	3.5
1986	1.9	1987	3.7
1988	4.1	1989	4.8
1990	5.4	1991	4.2
1992	3.3	1993	2.7
1994	2.2	1995	2.3
1996	2.2	1997	2.1
1998	0.85	1999	1.42
2000	2.61	2001	1.89
2002	1.16	2003	1.84
2004	2.39	2005	2.54
2006	3.42	2007	2.08
2008	4.527	2009	-0.85 (negative)
2010	1.539	2011	2.755
2012	1.295	2013	1.314
<u>2014</u>	<u>1.591</u>		

AMENDATORY SECTION (Amending WSR 14-01-059, filed 12/13/13, effective 1/1/14)

WAC 458-30-590 Rate of inflation—Publication—Interest rate—Calculation. (1) **Introduction.** This section sets forth the rates of inflation discussed in WAC 458-30-550. It also explains the department of revenue's obligation to annually publish a rate of inflation and the manner in which this rate is determined.

(2) **General duty of department—Basis for inflation rate.** Each year the department determines and publishes a rule establishing an annual rate of inflation. This rate of inflation is used in computing the interest that is assessed when farm and agricultural or timber land, which are exempt from special benefit assessments, is withdrawn or removed from current use classification.

(a) The rate of inflation is based upon the implicit price deflator for personal consumption expenditures calculated by the United States Department of Commerce. This rate is used to calculate the rate of interest collected on exempt special benefit assessments.

(b) The rate is published by December 31st of each year and applies to all withdrawals or removals from farm and agricultural or timber land classification that occur the following year.

(3) **Assessment of rate of interest.** An owner of classified farm and agricultural or timber land is liable for interest on the exempt special benefit assessment. Interest accrues from the date the local improvement district is created until the land is withdrawn or removed from classification. Interest

WSR 14-21-132**EXPEDITED RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed October 20, 2014, 2:49 p.m.]

Title of Rule and Other Identifying Information: Amending chapter 388-106 WAC to update references to health care authority WACs.

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 1115 Washington, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, AND RECEIVED BY January 6, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending chapter 388-106 WAC to update references to health care authority WACs that have changed.

Changing references to other WACs without changing the effect of the rule is appropriate for expedited rule making under RCW 34.05.353 (1)(c).

Reasons Supporting Proposal: Updating the rule will help clients locate the appropriate WAC references related to long-term care services.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.520.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Debbie Johnson, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2531.

October 15, 2014
Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 14-22 issue of the Register.

WSR 14-21-181**EXPEDITED RULES****EMPLOYMENT SECURITY DEPARTMENT**

[Filed October 22, 2014, 10:40 a.m.]

Title of Rule and Other Identifying Information: WAC 192-110-005 Applying for unemployment benefits—General and 192-140-005 Filing weekly claims for benefits.

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 Juanita Myers, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, AND RECEIVED BY December 23, 2014.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to change the hours during which the claims centers will accept incoming telephone calls into the live agent phone queue from 8:00 a.m. until 5:00 p.m. to 8:00 a.m. until 4:00 p.m. WAC 192-110-015 currently provides that applications for unemployment benefits filed by telephone may be filed during the hours of 8:00 a.m. to 5:00 p.m. WAC 192-140-015 provides that weekly claims filed by telephone may be filed until 5:00 p.m., Friday. The proposal will change the deadline for weekly claims to 4:00 p.m., Friday. There will be no change in the hours during which individuals may file internet initial applications for benefits. WAC 192-140-015 will also be amended to require claimants filing via paper to provide all requested information before the claim is accepted. In addition, the amended rule will allow the agency to assist a claimant with filing a weekly claim without requiring the claimant to disclose his or her personal identification number.

Reasons Supporting Proposal: The goal is to improve customer service and reduce agency costs. Agency staff answer telephone calls from claimants and employers, and complete a large number of administrative tasks necessary to process claims. Budget cuts have reduced the number of staff available to serve customers. Callers who wish to file by telephone or speak to a live agent frequently receive a "high volume message" advising them to call back at another time, or must wait a long period of time before they are connected to an agent. Callers may choose a "virtual hold" function that allows the claimant to receive a call back once an agent is available rather than remain on hold. Currently 84.5 percent of callers choose virtual hold. The claims centers will remain open until 5:00 p.m. During the hours 4:00 p.m. to 5:00 p.m. staff will return calls to claimants who requested virtual hold and answer calls from claimants who called prior to 4:00 p.m. and chose to remain on the line. By changing the hours during which incoming telephone calls will be accepted, the claims centers will be able to assign more staff to answer phones during core business hours, reducing the number of callers

who cannot get through and ensuring that virtual hold customers receive timely callbacks without incurring overtime costs or assigning staff to a shift outside of core business hours.

The requirement that paper claims must be complete is consistent with the requirement for claims filed via telephone or internet. Allowing claimants to file weekly claims with the assistance of a claims center representative without disclosing their personal identification number is consistent with WAC 192-140-010 which advises claimants not to disclose this security feature to anyone.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Statute Being Implemented: RCW 50.20.140.

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

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting: Juanita Myers, 212 Maple Park, Olympia, WA, (360) 902-9665; Implementation and Enforcement: Susan Hettinger, 212 Maple Park, Olympia, WA, (360) 902-9223.

October 21, 2014

Lisa Marsh
Deputy Commissioner

AMENDATORY SECTION (Amending WSR 07-22-055, filed 11/1/07, effective 12/2/07)

WAC 192-110-005 Applying for unemployment benefits—General. (1) **How do I apply for benefits?**

(a) You may apply for benefits by:

(i) Calling the unemployment claims (~~(telecenter))~~ center listed in your local telephone directory; or

(ii) Using the department's internet web site. However, you must apply by telephone if you worked in any state other than Washington during the previous two years, or you were off work for 13 or more consecutive weeks because of injury or illness.

(b) If you have a physical or sensory disability, or are in unusual circumstances that make(~~s~~) filing by telephone or internet difficult, the commissioner may authorize other methods of applying for benefits.

(2) **When can I apply?**

(a) You may apply by telephone (~~(at any time between the hours of 8:00 a.m. and 5:00 p.m. (Pacific Time) Monday through Friday))~~ (excluding state holidays) during the days and hours designated by the department, even if you are working. To control workload, the department may assign certain days of the week on which you may file your claim by telephone.

(b) You may apply on the internet at any time.

(3) **When is my claim effective?** Your claim is effective on the Sunday of the week in which you file it.

(4) **What information am I required to provide?** The minimum information needed to process your application is your:

(a) Legal name; and

(b) Social Security account number.

You should also be prepared to provide the names, addresses, dates worked, and reasons for job separation for all of your employers during the past two years. Other information may be requested in individual circumstances.

(5) **Will I receive benefits immediately?** The first week you are eligible for benefits is your waiting week. You will not be paid for this week. However, you must file a claim for this week before we can pay you any benefits for future weeks.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-140-005 Filing weekly claims for benefits.

(1) **How do I file my weekly claim for benefits?** You may file your claim (~~(by calling))~~ using the department's automated systems. The term "automated systems" includes the department's unemployment information and weekly claims telephone line(~~(, using))~~ or the department's internet web site(~~(, or filing)).~~ You may also file a paper claim. At the agency's discretion, you may be allowed to file a weekly claim with the assistance of a claims center representative.

(2) **When do I file my claim?** You must file a claim for every week for which you want to be paid or have counted as your waiting week. Every week begins at 12:01 a.m. on Sunday and ends at midnight on Saturday. You must file your claim *after* the end of the week(s) you are claiming.

(a) File your telephone or internet claim after 12:01 a.m. Sunday, but before (~~(5:00))~~ 4:00 p.m. on Friday, following the week you are claiming. (In case of a legal holiday, file your claim before (~~(5:00))~~ 4:00 p.m. on the last working day of the week.)

(b) If you file by paper, file your claim anytime Sunday through Saturday following the week you are claiming. If you file by mail, your claim is considered filed on the postmarked date. If you file by fax, your claim is considered filed on the date of receipt.

(3) **How often do I file my claim?** File your claim weekly. The department may approve other filing schedules in cases of emergency or in unusual circumstances.

(4) **What happens if I miss a week?** If you do not claim a week, you must reopen your claim. See WAC 192-110-050.

(a) If you have not yet received your first payment, you may claim benefits for one week prior to the week in which you contact the (~~(telecenter))~~ claims center to reopen your claim.

(b) If you have received your first payment and not more than four consecutive weeks have elapsed since you last filed a claim, you may claim benefits for any of the four weeks prior to the week in which you contacted the (~~(telecenter))~~ claims center to reopen your claim.

(c) Except as described in (a) and (b) of this subsection, we will consider unclaimed weeks late. The department will not pay you for these weeks unless you show good cause for not contacting the (~~(telecenter))~~ claims center earlier to reopen your claim.

(5) **What information do I have to report?** Your claim must include:

(a) The Saturday date of the week you are claiming;

(b) Answers to the questions(~~(:~~

~~(i) The telecenter), the claims center cannot process a claim ((filed by telephone or internet)) unless all questions are answered;~~

~~((ii) The department will process a claim filed in writing if at least one question is answered and other information required by this subsection (5) is provided, but your eligibility for benefits will be in question and you will be asked to provide complete information, which could result in a denial of benefits;))~~

(c) Your personal identification number if filing by ~~((telephone or internet, or))~~ automated system, your signature if you filed ~~((your claim))~~ in writing or your verbal authorization if you filed with the assistance of a claims center representative;

(d) The amount and source of any pension you are receiving for the week claimed;

(e) Any holiday earnings received during the week claimed;

(f) Any vacation pay received during the week claimed, including the dates for which payment was received, if applicable; and

(g) Any earnings and the number of hours you worked during the week claimed.

(6) What happens if I don't provide this information?
The department cannot process a ~~((telephone or internet))~~ claim filed via automated system that does not meet the requirements of subsection (5) of this section and you will receive instructions to contact the ~~((unemployment))~~ claims ~~((telecenter))~~ center. A written claim that does not meet these requirements is incomplete and the department will return it to you with a request for additional information.