

WSR 18-04-087
EXPEDITED RULES
OFFICE OF
ADMINISTRATIVE HEARINGS

[Filed February 5, 2018, 3:30 p.m.]

February 5, 2018

Lorraine Lee

Chief Administrative Law Judge

Title of Rule and Other Identifying Information: Chapter 10-04 WAC, Public records.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 10-04-075 is being updated to include a sentence that states that fees for copies of public records may be waived when the costs of processing the payment are reasonably likely to exceed the amount of the fees that would be charged.

Reasons Supporting Proposal: Expedited rule making is appropriate under RCW 34.05.353 (1)(a) because the proposed rule provision relates only to internal government operations that are not subject to violation by a person. The ability to waive fees when the costs of processing the fee payment is reasonably likely to exceed the amount that would be charged is in the public interest because it aligns agency practice with principles of responsible management and good stewardship of public funds.

Statutory Authority for Adoption: RCW 34.12.030(6).

Statute Being Implemented: Chapter 42.56 RCW.

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, Implementation, and Enforcement: Josh Sundt, 2420 Bristol Court S.W., Olympia, WA 98502, 360-407-2700.

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

Relates only to internal governmental operations that are not subject to violation by a person.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: A minor clarification is being made in WAC 10-04-075 which allows the public records officer to waive fees for copies of public records when the costs of processing the fee payment are reasonably likely to exceed the amount that would be charged.

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 Barb Cleveland, Rules Coordinator, Office of Administrative Hearings, P.O. Box 42488, Olympia, WA 98504-2488, phone 360-407-2700, fax 360-664-8721, email Barb.Cleveland@oah.wa.gov, AND RECEIVED BY April 9, 2018.

AMENDATORY SECTION (Amending WSR 18-01-144, filed 12/20/17, effective 1/20/18)

WAC 10-04-075 Fees for providing public records.

(1) There is no fee for inspecting public records.

(2) The office will charge for providing copies of public records and will maintain a fee schedule on its web site. The office may waive fees when the costs of processing the payment are reasonably likely to exceed the amount of the fees that would be charged.

(3) The office is not calculating actual costs for copying its records because doing so would be unduly burdensome for the following reasons:

(a) The office does not have the resources to conduct a study to determine actual copying costs;

(b) Conducting such a study would interfere with other essential agency functions; and

(c) Through the legislative process, the public and requestors have commented on and been informed of authorized fees and costs provided in the Public Records Act and other laws.

(4) The office uses the standard fees and costs authorized in RCW 42.56.120.

(5) The public records officer may require payment of fees before providing the records.

(a) Before beginning to copy public records, a deposit of up to ten percent of the estimated costs of copying may be required.

(b) Payment of the costs of copying an installment may be required before the installment is provided.

(c) If payment of fees is required, the office will send notification to the requestor. Within thirty days after the office sends notification, the requestor must pay the fee or make other arrangements with the office.

(6) The office will not charge sales tax for copies of public records.

(7) The office will accept payment by check, money order, or cash. For cash payments, it is within the office's discretion to determine the denomination of bills and coins that will be accepted.

WSR 18-04-089
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed February 5, 2018, 3:46 p.m.]

Title of Rule and Other Identifying Information: WAC 458-276-030 Availability of public records—Centralized administration—Public records requests and processing—Contact information and hours—Index—Costs.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 458-276-030 is being amended to incorporate language from EHB 1595 (2017) which describes the costs associated with responding to public records requests.

Reasons Supporting Proposal: The department is amending WAC 458-276-030 [to] provide clarity on the fee schedule used by the department when providing access to public records.

Statutory Authority for Adoption: Chapter 42.56 RCW (Public Records Act) and RCW 82.01.060(2) (department of revenue's rule-making authority).

Statute Being Implemented: RCW 42.56.120.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Leslie Mullin, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1589; Implementation and Enforcement: Randy Simmons, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

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

Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

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 2017 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 Leslie Mullin, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1589, fax 360-534-1606, email LeslieMu@dor.wa.gov, AND RECEIVED BY April 9, 2018.

February 5, 2018
Erin T. Lopez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-01-002, filed 12/6/17, effective 1/6/18)

WAC 458-276-030 Availability of public records—Centralized administration—Public records requests and processing—Contact information and hours—Index—Costs. (1) **Availability.** All public records of the department of revenue (department) are deemed to be available for public inspection and copying pursuant to these rules in this chapter, except as otherwise provided by WAC 458-276-045 regarding exemptions and other limitations on disclosure of records.

(2) **Centralized administration.** All communications with the department regarding administration or enforcement of chapter 42.56 RCW and these rules in this chapter, and

written requests for copies of the department's public records, decisions, and other matters, are handled by the information governance office.

(3) **Written and dated requests.** Requestors are encouraged to view the documents available on the web site prior to submitting a records request. The department recommends a written and dated request for public records to protect against unauthorized disclosure of confidential taxpayer information, unauthorized disclosure of licensing information, unauthorized disclosure of confidential property tax information, invasion of privacy, and to enhance the accuracy of the department's response to the request. A written request minimizes confusion or misunderstanding as to what is being requested and establishes a contact for clarifications and questions.

(4) **Request for records.** The written request is most effective if it contains the following information:

(a) Name of the person requesting the records or a point of contact;

(b) Calendar date on which the request is made;

(c) Specific records requested, if not identified in the public records index located online at dor.wa.gov, then an appropriate description of the records requested; and

(d) Contact information for questions about the request including, if possible, mailing address, email address, and telephone number.

(5) **Web site public records email request available.** The department has developed an "email request form" to assist requestors in obtaining public records. This email request form is located on the department's web site at www.dor.wa.gov (searching: "public records").

(6) **Department's contact information.** Any person requesting access to public records of the department or seeking assistance in making such a request should contact the information governance office. Written requests for identifiable public records may be submitted to the information governance office by mail, email message, through the department's web site, facsimile transmission, or delivered in person to the following addresses and physical location:

In-person delivery to physical address:

Department of Revenue
Information Governance Office
6400 Linderson Way S.W., Suite 288
Tumwater, WA 98501-6516

Mail delivery:

Department of Revenue
Information Governance Office
P.O. Box 47456
Olympia, WA 98504-7478

Email message: dorpublicrecords@dor.wa.gov

Department's web site: dor.wa.gov

Facsimile transmission (fax): 360-705-6655

(7) **Response.** Within five business days of the receipt of the initial public records request by the information governance office, the department will:

• Provide the record;

• Acknowledge that the department has received the request and provide a reasonable estimate of the time it will take to fully respond;

- Seek a clarification of the request; or
- Deny the request.

(8) **Electronic format.** When a person requests public records in an electronic format, the information governance office will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the department and is generally commercially available, or in a format that is reasonably translatable from the format in which the department keeps the records.

(9) **Public records index.** The department maintains and makes available for public inspection and copying an appropriate index or indices in accordance with RCW 42.56.070. Such index or indices are located on the department's web site (searching: "public records index").

(10) **Hours for inspection and copying.** Public records maintained by the department will be available for inspection and copying at the information governance office during the office hours of 9:00 a.m. to noon and 1:30 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(11) **Fees.**

(a) There is no fee for the inspection of public records.

(b) Pursuant to RCW 42.56.120 (2)(b), the department is not calculating all actual costs for copying records because to do so would be unduly burdensome for the following reasons:

(i) The department does not have the resources to conduct a study to determine actual copying costs for all of its records;

(ii) To conduct such a study would interfere with other essential agency functions; and

(iii) Through the 2017 legislative process, the public and requestors have commented on and been informed of authorized fees and costs, including for electronic records, provided in RCW 42.56.120 (2)(b) and (c), (3) and (4).

Therefore, the department will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). The copy fees in (c) of this subsection apply to requests to the department under chapter 42.56 RCW and received on or after the effective date of this rule.

(c) The department will take reasonable steps to provide records in the most efficient manner available in its normal operations. However, the department will generally charge fees for providing copies, whether hardcopy or electronic, to public records requests and may combine the following fees to the extent that more than one type of fee applies to copies produced in response to a particular request:

(i) Fifteen cents per page for photocopies of public records, printed copies of electronic public records when requested by the person requesting records, or for the use of agency equipment to photocopy public records using standard black and white paper photocopying. For other than standard photocopies, a reasonable fee for providing copies of public records and for use of the department's copy equipment may be charged;

(ii) Ten cents per page for public records scanned into an electronic format or for the use of agency equipment to scan the records;

(iii) Five cents per each four electronic files or attachment uploaded to email, cloud-based data storage service, or other means of electronic delivery;

(iv) Ten cents per gigabyte for the transmission of public records in an electronic format or for the use of agency equipment to send the records electronically; and

(v) The actual cost of any digital storage media or device provided by the department, the actual cost of any container or envelope used to mail the copies to the requestor, and the actual postage or delivery charge.

~~((e))~~ (d) The department must provide, if asked by the requestor, a summary of the applicable charges before any copies are made. Based on the summary of applicable charges, the requestor may revise the request to reduce the number of copies to be made, thus reducing the charges.

(12) **Fee exception.** The department may not impose the copying fee under subsection (11) of this rule for access to or downloading of records the department routinely posts on dor.wa.gov prior to receipt of a request unless the requestor has specifically requested that the department provide copies of the records through other means.

(13) **Customized service charge.** In addition to the fees imposed under subsection (11) of this rule, the department may also impose a customized service charge. The amount of the customized service charge may:

(a) Be imposed if the department estimates the request will require the use of information technology expertise to prepare data compilations, or to provide customized electronic access services when the department does not use the compilations or customized electronic access services for other department purposes;

(b) Reimburse the department up to the actual cost of providing the services in subsection (13) of this rule; and

(c) Be imposed on the requestor only if the department notified the requestor of the charge. Additionally, the department must provide the requestor:

(i) An explanation of why the charge applies;

(ii) A description of the specific information technology expertise required to fulfill the request;

(iii) A reasonable estimate of the charge; and

(iv) The opportunity to alter the request in order to avoid or reduce the amount of the charge.

(14) **Deposit.** In addition to the fees and charges in subsections (11) and (13) of this rule, the department may also require a deposit not to exceed ten percent of the estimated cost of providing copies for a request. If the department makes a request available on a partial or installment basis, the agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the department is not obligated to fulfill the balance of the request.

(15) **Waiver or alteration of fees.** The department may waive any fee assessed for a public records request pursuant to department rules and regulations. The department may enter into any contract, memorandum of understanding, or other agreement with a requestor that provides an alternative fee arrangement to the charges authorized in this rule, or in response to a voluminous or frequently occurring request.

WSR 18-04-090
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed February 5, 2018, 3:49 p.m.]

February 5, 2018
 Erin T. Lopez
 Rules Coordinator

Title of Rule and Other Identifying Information: WAC 458-29A-400 Leasehold excise tax—Exemptions.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 458-29A-400 is being amended to incorporate language from SSB 5977 (2017), sections 1303 and 1304, which provide an exemption for certain leasehold interests from leasehold excise tax.

Reasons Supporting Proposal: The department is amending WAC 458-29A-400 to provide guidance to community colleges and technical colleges regarding a new leasehold excise tax exemption.

Statutory Authority for Adoption: RCW 82.29A.140.

Statute Being Implemented: RCW 82.29A.130.

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: Leslie Mullin, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1589; Implementation and Enforcement: Randy Simmons, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

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 2017 legislation.

NOTICE

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AMENDATORY SECTION (Amending WSR 15-04-103, filed 2/3/15, effective 3/6/15)

WAC 458-29A-400 Leasehold excise tax—Exemptions. (1) Introduction.

(a) This rule explains the exemptions from leasehold excise tax provided by RCW 82.29A.130, 82.29A.132, 82.29A.134, and 82.29A.136. To be exempt from the leasehold excise tax, the property subject to the leasehold interest must be used exclusively for the purposes for which the exemption is granted.

(b) This rule also explains the expiration date for new tax preferences for the leasehold excise tax pursuant to the language found at RCW 82.32.805.

(c) **Rule examples.** This rule includes a number of examples that identify a set of facts and then states a conclusion. The examples should be used only as a general guide. The department will evaluate each case on its particular facts and circumstances and apply both this rule and other statutory and common law authority.

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

(a) "New tax preference" means a tax preference that initially takes effect after August 1, 2013, or a tax preference in effect as of August 1, 2013, that is expanded or extended after August 1, 2013, even if the expanding or extending legislative amendment includes any other changes to the tax preference.

(b) "Tax preference" has the same meaning as in RCW 43.136.021 with respect to any state tax administered by the department of revenue (department), except does not include the Washington estate and transfer tax in chapter 83.100 RCW.

(3) **Operating properties of a public utility.**

(a) All leasehold interests that are part of the operating properties of a public utility are exempt from leasehold excise tax if the leasehold interest is assessed and taxed as part of the operating property of a public utility under chapter 84.12 RCW.

(b) **Example.** Assume ABC Railroad Company is a public utility. Tracks leased to ABC Railroad Company are exempt from leasehold excise tax because ABC Railroad Company is a public utility assessed and taxed under chapter 84.12 RCW and the tracks are part of the railroad's operating properties.

(4) **Student housing at public and nonprofit schools and colleges.**

(a) All leasehold interests in facilities owned or used by a school, college, or university which leasehold provides housing to students are exempt from leasehold excise tax if the student housing is exempt from property tax under RCW 84.36.010 and 84.36.050.

(b) **Example.** Assume State Public University leases a building to use as a dormitory for its students. The leasehold interest associated with this building is exempt from the

leasehold excise tax. This is because the dormitory is used to house State Public University's students.

(5) Subsidized housing.

(a) All leasehold interests of subsidized housing are exempt from leasehold excise tax if the property is owned in fee simple by the United States, the state of Washington or any of its political subdivisions, and residents of the housing are subject to specific income qualification requirements.

(b) **Example.** Assume an apartment building and the property on which it is located is:

- Owned in fee simple by the state of Washington; and
- Used as subsidized housing for residents subject to income qualification requirements.

If the United States Department of Housing and Urban Development holds the leasehold interest on the property it is exempt from leasehold excise tax. This is because the property is owned in fee simple by the state of Washington, used for subsidized housing, and the residents are subject to income qualification requirements.

(6) Nonprofit fair associations.

(a) All leasehold interests used for fair purposes of a nonprofit fair association are exempt from leasehold excise tax if the fair association sponsors or conducts a fair or fairs supported by revenues collected under RCW 67.16.100 and allocated by the director of the department of agriculture. The property must be owned in fee simple by the United States, the state of Washington or any of its political subdivisions. However, if a nonprofit association subleases exempt property to a third party, the sublease is a taxable leasehold interest.

(b) **Example.** Assume a leasehold interest held by Local Nonprofit Fair Association is exempt from leasehold excise tax. Local Nonprofit Fair Association subleases some of the buildings on the fairgrounds to private parties for storage during the winter. These subleases are subject to the leasehold excise tax.

(7) Public employee housing.

(a) All leasehold interests in public property or property of a community center which is exempt from property tax used as a residence by an employee of the public owner or the owner of the community center which is exempt from property tax are exempt from leasehold excise tax if the employee is required to live on the public property or community center which is exempt from property tax as a condition of his or her employment. The "condition of employment" requirement is met only when the employee is required to accept the lodging in order to enable the employee to properly perform the duties of his or her employment. However, the "condition of employment" requirement can be met even if the employer does not compel an employee to reside in a publicly owned residence or residence owned by a community center which is exempt from property tax.

(b) Examples.

(i) A park ranger employed by the National Park Service, an agency of the United States government, resides in a house furnished by the agency at a national park. The ranger is required to be on call twenty-four hours a day to respond to requests for assistance from park visitors staying at an adjacent overnight campground. The use of the house is exempt

from leasehold excise tax because the lodging enables the ranger to properly perform her duties.

(ii) An employee of the Washington department of fish and wildlife resides in a house furnished by the agency at a fish hatchery although, under the terms of a collective bargaining agreement, the agency may not compel the employee to live in the residence as a condition of employment. In exchange for receiving use of the housing provided by the agency, the employee is required to perform additional duties, including regularly monitoring certain equipment at the hatchery during nights and on weekends and escorting public visitors on tours of the hatchery on weekends. The use of the house is exempt from leasehold excise tax because the lodging enables the employee to properly perform the duties of his employment. The use is exempt even though the employee would continue to be employed by the agency if the additional duties were not performed and even though state employees of an equal job classification are not required to perform the additional duties.

(iii) A professor employed by State University is given the choice of residing in university-owned campus housing free of charge or of residing elsewhere and receiving a cash allowance in addition to her regular salary. If she elects to reside in the campus housing free of charge, the value of the lodging furnished to the professor would be subject to leasehold excise tax because her residence on campus is not required for her to perform properly the duties of her employment.

(8) Interests held by enrolled Indians.

(a) Leasehold interests held by enrolled Indians are exempt from leasehold excise tax if the lands are owned or held by any Indian or Indian tribe, and the fee ownership of the land is vested in or held in trust by the United States, unless the leasehold interests are subleased to a lessee which would not qualify under chapter 82.29A RCW, RCW 84.36.451 and 84.40.175 and the tax on the lessee is not preempted due to the balancing test (see WAC 458-20-192).

(b) Any leasehold interest held by an enrolled Indian or a tribe, where the leasehold is located within the boundaries of an Indian reservation, on trust land, on Indian country, or is associated with the treaty fishery or some other treaty right, is not subject to leasehold excise tax.

(c) **Example.** Assume an enrolled member of the Puyallup Tribe leases port land at which the member keeps his or her boat, and the boat is used in a treaty fishery. The leasehold interest is exempt from the leasehold tax. For more information on excise tax issues related to enrolled Indians, see WAC 458-20-192 (Indians—Indian country).

(9) Leases on Indian lands to non-Indians.

(a) Leasehold interests held by non-Indians (not otherwise exempt from tax due to the application of the balancing test described in WAC 458-20-192) in any real property of any Indian or Indian tribe, band, or community that is held in trust by the United States or subject to a restriction against alienation imposed by the United States are exempt from leasehold excise tax if the amount of contract rent paid is greater than or equal to ninety percent of fair market rental value. In determining whether the contract rent of such lands meets the required level of ninety percent of market value, the department will use the same criteria used to establish

taxable rent under RCW 82.29A.020 (2)((~~h~~)) (g) and WAC 458-29A-200.

(b) **Example.** Harry leases land held in trust by the United States for the Yakama Nation for the sum of \$900 per month. The fair market value for similar lands used for similar purposes is \$975 per month. The lease is exempt from the leasehold excise tax because Harry pays at least ninety percent of the fair market value for the qualified lands. For more information on the preemption analysis and other tax issues related to Indians, see WAC 458-20-192.

(10) Annual taxable rent is less than two hundred fifty dollars.

(a) Leasehold interests for which the taxable rent is less than \$250 per year are exempt from leasehold excise tax. For the purposes of this exemption, if the same lessee has a leasehold interest in two or more contiguous parcels of property owned by the same lessor, the taxable rent for each contiguous parcel will be combined and the combined taxable rent will determine whether the threshold established by this exemption has been met. To be considered contiguous, the parcels must be in closer proximity than merely within the boundaries of one piece of property. When determining the annual leasehold rent, the department will rely upon the actual substantive agreement between the parties. Rent payable pursuant to successive leases between the same parties for the same property within a twelve-month period will be combined to determine annual rent; however, a single lease for a period of less than one year will not be projected on an annual basis.

(b) Examples.

(i) The yacht club rents property from the Port of Bay City for its clubhouse and moorage. It also rents a parking stall for its commodore. The parking stall is separated from the clubhouse only by a common walkway. The parking stall lease is a part of the clubhouse lease because it is contiguous to the clubhouse, separated only by a necessary walkway.

(ii) Ace Flying Club rents hangars, tie downs, and ramps from the Port of Desert City. It has separate leases for several parcels. The hangars are separated from the tie down space by a row of other hangars, each of which is leased to a different party. Common ramps and roadways also separate the club's hangars from its tie-downs. The hangars, because they are adjacent to one another, create a single leasehold interest. The tie downs are a separate taxable leasehold interest because they are not contiguous with the hangars used by Ace Flying Club.

(iii) Grace leases a lot from the City of Flora, from which she sells crafts at different times throughout the year. She pays \$50 per month for the lot, and has a separate lease for each season during which she sells. She has one lease from May through September, and a separate lease for the time between Thanksgiving and Christmas, which might run thirty to forty days, depending on the year. The leases will be combined for the purposes of determining the leasehold excise tax. They relate to the same piece of property, for the same activity by the same lessee, and occur within the same year.

(iv) Elizabeth owns a Christmas tree farm. Every year she rents a small lot from the Port of Capital City, adjacent to its airport, to sell Christmas trees. She pays \$125 to the port to rent the lot for 6 weeks. It is the only time during the year

that she rents the lot. Her lease is exempt from the leasehold excise tax, because it does not exceed \$250 per year in taxable rent.

(11) Leases for a continuous period of less than thirty days. Leasehold interests that provide use and possession of public property or property of a community center which is exempt from property tax for a continuous period of less than thirty days are exempt from leasehold excise tax. In determining the duration of the lease, the department will rely upon the actual agreement and/or practice between the parties. If a single lessee is given successive leases or lease renewals of the same property, the arrangement is considered a continuous use and possession of the property by the same lessee. A leasehold interest does not give use and possession for a period of less than thirty days based solely on the fact that the lessor has reserved the right to use the property or to allow third parties to use the property on an occasional, temporary basis.

(12) Month-to-month leases in residential units to be demolished or removed.

(a) Leasehold interests in properties rented for residential purposes on a month-to-month basis pending destruction or removal for construction of a public highway or public building are exempt from the leasehold excise tax. Thus, if the state or other public entity has acquired private property for purposes of building or expanding a highway, or for the construction of public buildings at an airport, the capitol campus, or some other public facility, and the public entity rents the property for residential purposes on a month-to-month basis pending destruction or removal for construction, these leases do not create taxable leasehold interests. This exemption does not require evidence of imminent removal of the residential units; the term "pending" merely means "while awaiting." The exemption is based upon the purpose for which the public entity holds the units.

(b) **Example.** State University has obtained capital development funding for the construction of new campus buildings, and has purchased a block of residential property adjacent to campus for the sole purpose of expansion. Jim leases these houses from State University pursuant to a month-to-month rental agreement and rents them to students. Construction of the new buildings is not scheduled to begin for two years. Jim is not subject to the leasehold excise tax, because State University is holding the residential properties for the sole purpose of expanding its facilities, and Jim is leasing them pending their certain, if not imminent, destruction.

(13) Public works contracts.

(a) Leasehold interests in publicly owned real or personal property held by a contractor solely for the purpose of a public improvements contract or work to be executed under the public works statutes of Washington state or the United States are exempt from leasehold excise tax. To receive this exemption, the contracting parties must be the public owner of the property and the contractor that performs the work under the public works statutes.

(b) **Example.** Assume Tinker Construction is a contractor performing work to construct a second deck on the Nisqually Bridge pursuant to a public works contract between the state of Washington and Tinker Construction. During

construction of the second deck on the Nisqually Bridge any leasehold interest in real or personal property created for Tinker Construction solely for the purpose of performing the work necessary under the terms of the contract is exempt from leasehold excise tax.

(14) Correctional industries in state adult correctional facilities.

(a) Leasehold interests for the use and possession of state adult correctional facilities for the operation of correctional industries under RCW 72.09.100 are exempt from leasehold excise tax.

(b) Examples.

(i) Assume ABC Retail Company, a for-profit corporation, operates and manages a business within a state prison under an agreement between it and the department of corrections. ABC Retail Company is exempt from leasehold excise tax for its use and possession of state property.

(ii) Assume ABC Charitable Society, a nonprofit organization, operates and manages a business within a state prison under an agreement between it and the department of corrections. ABC Charitable Society is exempt from leasehold excise tax for its use and possession of state property.

(15) Camp facilities for persons with disabilities.

(a) Leasehold interests in a camp facility are exempt from leasehold excise tax if the property is used to provide organized and supervised recreational activities for persons with disabilities of all ages, and for public recreational purposes, by a nonprofit organization, association, or corporation which would be exempt from property tax under RCW 84.36.030(1) if it owned the property.

(b) **Example.** Assume a county park with camping facilities is leased to Charity Campgrounds, a nonprofit charitable organization that allows the property to be used by the general public for recreational activities throughout the year and as a camp for disabled persons for two weeks during the summer. Charity Campgrounds is exempt from leasehold excise tax because the nonprofit allows the property to be used by the general public for recreational activities throughout the year, and to be used as a camp for disabled persons for two weeks during the summer.

(16) Public or entertainment areas of certain baseball stadiums.

(a) Leasehold interests in public or entertainment areas of a baseball stadium with natural turf and a retractable roof or canopy, located in a county with a population of over one million people, with a seating capacity of over forty thousand, and constructed on or after January 1, 1995, are exempt from leasehold excise tax.

(b) "Public or entertainment areas" for the purposes of this subsection include ticket sales areas, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality and stadium club areas, kitchens or other work areas primarily servicing other public areas, public rest rooms, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas and suites, the playing field, and any other areas to which the public has access or that are used for the production of the entertainment event or other public usage, and any other personal

property used for such purposes. "Public or entertainment areas" does not include locker rooms or private offices used exclusively by the lessee.

(17) **Public or entertainment areas of certain football stadiums and exhibition centers.** Leasehold interests in the public or entertainment areas of an open-air stadium suitable for national football league football and for Olympic and world cup soccer, with adjacent exhibition facilities, parking facilities, and other ancillary facilities constructed on or after January 1, 1998, are exempt from leasehold excise tax. For the purpose of this subsection, the term "public and entertainment areas" has the same meaning as set forth in subsection (16) of this rule.

(18) **Public facilities districts.** All leasehold interests in public facilities districts, as provided in chapter 36.100 or 35.57 RCW are exempt from leasehold excise tax.

(19) **State route 16 corridor transportation systems.** All leasehold interests in the state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW are exempt from leasehold excise tax. RCW 82.29A.132.

(20) **Sales/leasebacks by regional transit authorities.** All leasehold interests in property of a regional transit authority or public corporation created under RCW 81.112.320 under an agreement under RCW 81.112.300 are exempt from leasehold excise tax. RCW 82.29A.134.

(21) **Interests consisting of three thousand or more residential and recreational lots.** All leasehold interests consisting of three thousand or more residential and recreational lots that are or may be subleased for residential and recreational purposes are exempt from leasehold excise tax. Any combination of residential and recreational lots totaling at least three thousand satisfies the requirement of this exemption. RCW 82.29A.136.

(22) **Historic sites owned by the United States government or municipal corporations.** All leasehold interests in property listed on any federal or state register of historical sites are exempt from leasehold excise tax if the property is:

(a) Owned by the United States government or a municipal corporation; and

(b) Wholly contained within a designated national historic reserve under 16 U.S.C. Sec. 461.

(23) Amphitheaters.

(a) All leasehold interests in the public or entertainment areas of an amphitheater are exempt from leasehold excise tax if a private entity is responsible for one hundred percent of the cost of constructing the amphitheater which is not reimbursed by the public owner, both the public owner and the private lessee sponsor events at the facility on a regular basis, the lessee is responsible under the lease or agreement to operate and maintain the facility, and the amphitheater has a seating capacity of over seventeen thousand reserved and general admission seats and is in a county that had a population of over three hundred fifty thousand, but less than four hundred twenty-five thousand when the amphitheater first opened to the public.

(b) For the purposes of this subsection, "public or entertainment areas" include box offices or other ticket sales areas, entrance gates, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality

areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas including lawn seating areas and suites, stages, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" do not include office areas used predominately by the lessee.

(24) Military housing.

(a) All leasehold interests in real property used for the placement of housing that consists of military housing units and ancillary supporting facilities are exempt from leasehold excise tax if the property is situated on land owned in fee by the United States, is used for the housing of military personnel and their families, and is a development project awarded under the military housing privatization initiative of 1996, 10 U.S.C. Sec. 2885, as existing on June 12, 2008.

(b) For the purposes of this subsection, "ancillary supporting facilities" means facilities related to military housing units, including facilities to provide or support elementary or secondary education, child care centers, day care centers, child development centers, tot lots, community centers, housing offices, dining facilities, unit offices, and other similar facilities for the support of military housing.

(25) Community colleges and technical colleges.

(a) All leasehold interests in facilities owned or used by a community college or technical college are exempt from leasehold excise tax if the leasehold interest provides:

- (i) Food services for students, faculty, and staff;
- (ii) The operation of a bookstore on campus; or
- (iii) Maintenance, operational, or administrative services to the community college or technical college.

(b) Provisions of RCW 82.32.805 and 82.32.808 do not apply to the exemption specified in this subsection.

(26) Expiration date for new tax preferences.

(a) RCW 82.29A.025 incorporates the language found at RCW 82.32.805 establishing the expiration date of new tax preferences for the leasehold excise tax.

(i) Generally, every new tax preference expires on the first day of the calendar year that is subsequent to the calendar year that is ten years from the effective date of the tax preference.

(ii) A future legislative amendment that expands a tax preference does not extend the tax preference beyond the period provided in this subsection unless an extension is expressly and unambiguously stated in the legislative amendment.

(b) This subsection does not apply if legislation creating a new tax preference includes an expiration date for the new tax preference.

(c) This subsection does not apply to an existing tax preference that is amended to clarify an ambiguity or correct a technical inconsistency. Future enacted legislation intended to make such clarifications or corrections must explicitly indicate that intent.

**WSR 18-04-092
EXPEDITED RULES
OFFICE OF
FINANCIAL MANAGEMENT**

[Filed February 5, 2018, 5:29 p.m.]

Title of Rule and Other Identifying Information: WAC 82-50-021 Official state lagged semi-monthly pay dates established.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 82-50-021 publishes the official lagged, semi-monthly pay dates for state officers and employees. This WAC, which provides pay dates for the current and ensuing calendar years, is amended each year to add pay dates for the ensuing year and delete the pay dates for the previous year. The purpose of this filing is to establish official pay dates for state officers and employees for calendar year 2019 and delete the obsolete pay dates for calendar year 2017.

Reasons Supporting Proposal: The statute requires that the office of financial management (OFM) annually update and publish state pay dates.

Statutory Authority for Adoption: RCW 42.16.010(1) and 42.16.017.

Statute Being Implemented: RCW 42.16.010(1) and 42.16.017.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Nielson, 106 11th Avenue S.W., Olympia, 360-725-0226; Implementation and Enforcement: Brian Tinney, 106 11th Avenue S.W., Olympia, 360-725-0171.

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

Relates only to internal governmental operations that are not subject to violation by a person.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The rule change is internal to state government and only affects state employee paydates.

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 Roselyn Marcus, OFM, P.O. Box 43113, Olympia, WA 98504-3113, phone 360-902-0434, email Roselyn.Marcus@ofm.wa.gov, AND RECEIVED BY April 10, 2018.

February 5, 2018
Roselyn Marcus
Assistant Director for
Legal and Legislative Affairs
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-13-073, filed 6/16/17, effective 7/17/17)

WAC 82-50-021 Official lagged, semimonthly pay dates established. Unless exempted otherwise under the provisions of WAC 82-50-031, the salaries of all state officers and employees are paid on a lagged, semimonthly basis for the official twice-a-month pay periods established in RCW 42.16.010(1). The following are the official lagged, semi-monthly pay dates for calendar years (~~(2017 and)~~) 2018 and 2019:

~~((CALENDAR YEAR 2017~~
~~Tuesday, January 10, 2017~~
~~Wednesday, January 25, 2017~~
~~Friday, February 10, 2017~~
~~Friday, February 24, 2017~~
~~Friday, March 10, 2017~~
~~Friday, March 24, 2017~~
~~Monday, April 10, 2017~~
~~Tuesday, April 25, 2017~~
~~Wednesday, May 10, 2017~~
~~Thursday, May 25, 2017~~
~~Friday, June 9, 2017~~
~~Monday, June 26, 2017~~
~~Monday, July 10, 2017~~
~~Tuesday, July 25, 2017~~
~~Thursday, August 10, 2017~~
~~Friday, August 25, 2017~~
~~Monday, September 11, 2017~~
~~Monday, September 25, 2017~~
~~Tuesday, October 10, 2017~~
~~Wednesday, October 25, 2017~~
~~Thursday, November 9, 2017~~
~~Wednesday, November 22, 2017~~
~~Monday, December 11, 2017~~
~~Friday, December 22, 2017~~

CALENDAR YEAR 2018
 Wednesday, January 10, 2018
 Thursday, January 25, 2018
 Friday, February 9, 2018
 Monday, February 26, 2018
 Friday, March 9, 2018
 Monday, March 26, 2018
 Tuesday, April 10, 2018
 Wednesday, April 25, 2018
 Thursday, May 10, 2018
 Friday, May 25, 2018
 Monday, June 11, 2018
 Monday, June 25, 2018
 Tuesday, July 10, 2018
 Wednesday, July 25, 2018
 Friday, August 10, 2018
 Friday, August 24, 2018
 Monday, September 10, 2018
 Tuesday, September 25, 2018
 Wednesday, October 10, 2018
 Thursday, October 25, 2018
 Friday, November 9, 2018
 Monday, November 26, 2018
 Monday, December 10, 2018
 Monday, December 24, 2018))

CALENDAR YEAR 2018
Wednesday, January 10, 2018
Thursday, January 25, 2018
Friday, February 9, 2018
Monday, February 26, 2018
Friday, March 9, 2018
Monday, March 26, 2018
Tuesday, April 10, 2018
Wednesday, April 25, 2018
Thursday, May 10, 2018
Friday, May 25, 2018
Monday, June 11, 2018
Monday, June 25, 2018
Tuesday, July 10, 2018
Wednesday, July 25, 2018
Friday, August 10, 2018
Friday, August 24, 2018

CALENDAR YEAR 2019
Thursday, January 10, 2019
Friday, January 25, 2019
Monday, February 11, 2019
Monday, February 25, 2019
Monday, March 11, 2019
Monday, March 25, 2019
Wednesday, April 10, 2019
Thursday, April 25, 2019
Friday, May 10, 2019
Friday, May 24, 2019
Monday, June 10, 2019
Tuesday, June 25, 2019
Wednesday, July 10, 2019
Thursday, July 25, 2019
Friday, August 9, 2019
Monday, August 26, 2019

CALENDAR YEAR 2018
Monday, September 10, 2018
Tuesday, September 25, 2018
Wednesday, October 10, 2018
Thursday, October 25, 2018
Friday, November 9, 2018
Monday, November 26, 2018
Monday, December 10, 2018
Monday, December 24, 2018

CALENDAR YEAR 2019
Tuesday, September 10, 2019
Wednesday, September 25, 2019
Thursday, October 10, 2019
Friday, October 25, 2019
Friday, November 8, 2019
Monday, November 25, 2019
Tuesday, December 10, 2019
Tuesday, December 24, 2019