

WSR 19-23-001
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed November 6, 2019, 12:19 p.m.]

Title of Rule and Other Identifying Information: WAC 458-20-189 Sales to and by the state of Washington and municipal corporations, including counties, cities, towns, school districts, and fire districts.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 458-20-189 to reflect 2019 legislation that expands a sales and use tax exemption for personal property sold between political subdivisions to include sales or uses of personal property as a result of a merger, and creates a new sales and use tax exemption or sales or uses of personal property made under contractual consolidations of political subdivisions in which the taxpayer that originally paid the sales or use tax continues to benefit from the personal property.

Reasons Supporting Proposal: The rule is being amended to incorporate legislation from 2019 (SB 5337).

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

Statute Being Implemented: RCW 82.08.0278 and 82.12.0274.

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: Linda King, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1530; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1603.

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 amendments to WAC 458-20-189 only incorporate statutory provisions and are not interpretive. The amendments are needed to reflect 2019 legislative changes made to RCW 82.08.0278 and 82.12.0274.

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 Linda King, Department of Revenue, P.O. Box 47476, Olympia, WA 98504-7476, phone 360-534-1530, fax 360-534-1606, email LindaK@dor.wa.gov, AND RECEIVED BY January 21, 2020.

November 6, 2019

Atif Aziz

Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-08-076, filed 4/3/17, effective 5/4/17)

WAC 458-20-189 Sales to and by the state of Washington and municipal corporations, including counties, cities, towns, school districts, and fire districts. (1) **Introduction.** This rule discusses the business and occupation (B&O), retail sales, use, and public utility tax applications to sales made to and by the state of Washington and municipal corporations including, but not limited to, counties, cities, towns, school districts, fire districts, and other special districts.

(a) **Other rules that may apply.** Readers may also want to refer to other rules for additional information, including the following:

(i) WAC 458-20-106 Casual or isolated sales—Business reorganizations.

(ii) WAC 458-20-118 Sale or rental of real estate, license to use real estate.

(iii) WAC 458-20-167 Educational institutions, school districts, student organizations, and private schools.

(iv) WAC 458-20-168 Hospitals, nursing homes, assisted living facilities, adult family homes and similar health care facilities.

(v) WAC 458-20-179 Public utility tax.

(vi) WAC 458-20-180 Motor carriers.

(vii) WAC 458-20-201 Interdepartmental charges.

(viii) WAC 458-20-250 Solid waste collection tax.

(ix) WAC 458-20-251 Sewerage collection and other related activities.

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

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

(a) **"Enterprise activity"** means an activity financed and operated in a manner similar to a private business enterprise. The term includes those activities which are generally in competition with private business enterprises and which are over fifty percent funded by user fees. The term does not include activities which are exclusively governmental.

(b) **"Municipal corporations"** means counties, cities, towns, school districts, fire districts, and other special districts including, but not limited to, park and recreation districts, water and sewer districts, and library districts of the state of Washington.

(c) **"Public service business"** means any business subject to control by the state, or having the powers of eminent

domain, or any business declared by the legislature to be of a public service nature, irrespective of whether the business has the powers of eminent domain or the state exercises its control over the business. It includes, but is not limited to, water distribution, light and power, public transportation, and sewer collection.

(d) **"Subject to control by the state,"** as used in (c) of this subsection, means control by the utilities and transportation commission or any other state department required by law to regulate a business of a public service nature as to rates charged or services rendered.

(e) **"User fee"** as used in this rule, means a charge imposed on individuals or entities to access facilities, receive services, or participate in activities.

(3) Application of the business and occupation tax.

(a) **Sales to the state of Washington and municipal corporations.** Sellers are subject to the B&O tax on sales to the state of Washington, its departments and institutions, or to municipal corporations.

(b) **Sales by the state of Washington.** The state of Washington and its departments and institutions are not subject to the provisions of the B&O tax under RCW 82.04.030.

(c) Sales by municipal corporations.

(i) Governmental activities. Municipal corporations are not subject to the B&O tax on amounts received from activities that are exclusively governmental under RCW 82.04.-419. Income from activities that are exclusively governmental include, but are not limited to, license and permit fees; inspection fees; fees for copies of public records, reports, and studies; pet adoption and license fees; processing fees for fingerprinting and environmental impact statements; and fees for on-street metered parking and on-street parking permits. Income received from taxes, fines, penalties, and interest imposed on exclusively governmental activities is also exempt from the B&O tax.

(ii) Interdepartmental charges. Charges between departments of a particular municipal corporation are interdepartmental charges and are not subject to the B&O tax.

(iii) Grant income. Municipal corporations are exempt from the B&O tax on grants received from the state of Washington, or the United States government under RCW 82.04.-418.

(iv) Public service business activities. Municipal corporations engaging in public service business activities should refer to the rules mentioned in subsection (1)(a) of this rule to determine their B&O tax liability.

(v) Enterprise activities. Municipal corporations receiving income, however designated, from any enterprise activity for which a specific charge is made are subject to the B&O tax.

(A) When determining whether an activity is an enterprise activity, user fees received from the activity must be measured against total costs attributable to providing the activity, including direct and indirect overhead. This review should be performed at the budget level for all activities included in the budget, and on the fiscal or calendar year basis used by the entity in maintaining its books of account.

Example 1. A city determines that its community center, which is operated under a single budget, generated two hundred fifty thousand dollars in user fees for the fiscal year. The

total cost to operate the facility was four hundred thousand dollars, which includes direct operating costs, direct and indirect overhead, asset depreciation, and interest payments for the retirement of bonds issued to fund the facility's construction. The principal payments for the retirement of the bonds are not included because these costs are a part of the asset depreciation costs. The facility's operation is an enterprise activity because it is more than fifty percent ($\$250,000/\$400,000 = 63\%$) funded by user fees.

(B) An enterprise activity that is operated as part of a governmental or nonenterprise activity is subject to the B&O tax.

Example 2. A city owns a large community center and three smaller neighborhood centers. The community center operates with its own budget, and the three neighborhood centers operate under a single separate budget. The community center and the neighborhood centers are operated as a part of the overall parks and recreation department, which is not more than fifty percent funded by user fees.

Each budget must be independently reviewed to determine whether these facilities are operated as enterprise activities. The operation of the community center is an enterprise activity only if the user fees account for more than fifty percent of the community center's operating budget. The total user fees generated by the three neighborhood centers are compared to the total costs of operating the three centers to determine whether they, as a whole, are an enterprise activity. Had each neighborhood center operated under individual budgets, the user fees generated by each neighborhood center would be compared to the costs of operating that center.

(4) Business and occupation tax classifications for enterprise activities.

(a) Municipal corporations engaging in enterprise activities are subject to the B&O tax as follows:

(i) **Service and other activities tax.** Amounts received from, but not limited to, event admission fees for concerts and exhibits, admission charges to a zoo or wildlife park, fees charged for the use of lockers at a facility not considered an "athletic or fitness facility" as defined in RCW 82.04.050, charges for moorage (less than thirty days), and the granting of a license to use real property are subject to the service and other activities B&O tax under RCW 82.04.290(2).

(ii) **Extracting tax.** The extracting of natural products for sale or for commercial use is subject to the extracting B&O tax under RCW 82.04.230. The measure of tax is the value of products. (See WAC 458-20-135 on extracting.) Counties and cities are not, however, subject to the extracting B&O tax on the cost of labor and services performed in the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, or rock taken from a pit or quarry owned by or leased to the county or city when these products are either stockpiled for placement or are placed on a street, road, place, or highway of the county or city by the county or city itself. In addition, the extracting B&O tax does not apply to the cost of or charges for such labor and services if the sand, gravel, or rock is sold by the county or city to another county or city at actual cost for placement on a publicly owned street, road, place, or highway under RCW 82.04.415.

(iii) **Manufacturing tax.** The manufacturing of products for sale or for commercial use is subject to the manufacturing

B&O tax under RCW 82.04.240. The measure of tax is the value of products. (See WAC 458-20-136 on manufacturing.) The manufacturing B&O tax does not apply to the value of materials printed by counties, cities, towns, school districts, educational districts, or library or library district facilities solely for their own use under RCW 82.04.600.

(iv) **Wholesaling tax.** The wholesaling B&O tax applies to the gross proceeds received from sales or rentals of tangible personal property to persons who resell the same without intervening use under RCW 82.04.270. The wholesaling tax does not, however, apply to casual sales. Sellers must obtain a reseller permit from their customer to document the wholesale nature of any sale as provided in WAC 458-20-102 (Reseller permits).

(v) **Retailing tax.** Amounts received from, but not limited to, user fees for off-street parking and garages, charges for the sale or rental of tangible personal property to consumers, fees for providing recreational services and activities, charges for operating an athletic or fitness facility, and other retail services and activities as provided in RCW 82.04.050, are taxable under the retailing B&O tax under RCW 82.04.-250. The retailing B&O tax does not, however, apply to casual sales.

(b) Persons selling products that they have extracted or manufactured must report, unless exempt by law, under both the "production" (extracting and/or manufacturing) and "selling" (wholesaling or retailing) classifications of the B&O tax, and claim a tax credit under the multiple activities tax credit system. See WAC 458-20-19301 on multiple activities tax credits.

(5) Application of the retail sales tax.

(a) **Sales to the state of Washington and municipal corporations.** The retail sales tax applies to retail sales made to the state of Washington, including its departments and institutions, and to municipal corporations unless a specific exemption applies.

(b) **Sales by the state of Washington and municipal corporations.** The state of Washington, including its departments and institutions, and all municipal corporations must collect retail sales tax on all retail sales of tangible personal property or retail services unless a specific exemption applies. Retail sales tax must be collected and remitted even if the sale is exempt from the retailing B&O tax.

Example 3. A city police department must collect retail sales tax on casual sales of unclaimed property to consumers, even though this activity is not subject to the B&O tax because these sales are considered casual sales.

Example 4. A city owns and operates a zoo. One budget is maintained for the care and maintenance of the wildlife and facilities, and a separate budget is maintained for the gift shop and concessions. The wildlife and facilities budget is less than fifty percent funded by admission fees, while the gift shop and concessions budget is almost entirely funded by the proceeds from sales. The admission fees are not subject to the B&O tax, but the income from the gift shop and concession sales are subject to the retailing B&O tax and the city must collect retail sales tax. In this example, had the entire zoo been operated under a single budget and less than fifty percent of the budget was funded by user fees, then no part of the zoo would be considered an enterprise activity. If the zoo

is not an enterprise activity, then B&O tax would not apply to the admission fees, the gift shop sales, or the concession sales. However, retail sales tax must still be collected on the gift shop and concession sales.

(c) **Sales between the state of Washington and a municipal corporation.** Sales between a department or institution of the state and a municipal corporation are retail sales and are subject to the retail sales tax.

Example 5. State Agency sells office equipment to County. State Agency is making a retail sale and must collect and remit retail sales tax upon the amount charged, even though the B&O tax does not apply to this sale. The amount of retail sales tax must be separately itemized on the sales invoice under RCW 82.08.050. State Agency may claim a tax paid at source deduction for any retail sales or use tax previously paid on the purchase of the office equipment provided there was no intervening use of the office equipment by State Agency. If intervening use occurred, State Agency may not claim the tax paid at source deduction, as described in WAC 458-20-102 (Reseller permits), for any retail sales or use tax it previously paid when purchasing the office equipment.

(d) **Sales between municipal corporations.** Sales between municipal corporations are retail sales subject to the retail sales tax.

(e) **Sales between departments or institutions of the state of Washington.** Departments or institutions of the state of Washington are not considered sellers when making sales to other departments or institutions of the state because the state is considered to be a single entity under RCW 82.08.-010(2). Therefore, the "selling" department or institution is not required to collect the retail sales tax on these sales.

All departments or institutions of the state of Washington are, however, considered "consumers" under RCW 82.08.010(3). A department or institution of the state purchasing tangible personal property from another department or institution is required to remit to the department of revenue the retail sales or use tax upon that purchase, unless it can document that the "selling" institution previously paid retail sales or use tax on that item.

(6) **Retail sales tax exemptions.** The retail sales tax does not apply to the following:

(a) Sales to city or county housing authorities created under the provisions of the Washington housing authorities law, chapter 35.82 RCW. However, prime contractors and subcontractors working for city or county housing authorities should refer to WAC 458-20-17001 (Government contracting—Construction, installations, or improvements to government real property) to determine their tax liability.

(b) Charges to the state of Washington and municipal corporations for that portion of the selling price of contracts for watershed protection or flood control which is reimbursed by the United States government according to the provisions of the Watershed Protection and Flood Prevention Act, Public Law 566, as amended, under RCW 82.08.0271.

(c) Sales of an entire or complete integral section of operating property of a publicly or privately owned public utility to the state of Washington or to a municipal corporation for use in conducting any public service business, except a tugboat business, under RCW 82.08.0256.

(d) Sales of or charges made for labor and services in the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, or rock taken from a pit or quarry owned or leased to a county or city, when the materials are either stockpiled in the pit or quarry, placed on the public road by the county or city itself, or sold at cost to another county or city for use on public roads under RCW 82.08.-0275.

(e) Sales to one municipal corporation by another municipal corporation directly or indirectly arising out of, or resulting from, the annexation, merger, or incorporation of any part of the territory of one municipal corporation by another under RCW 82.08.0278.

(f) Sales to one municipal corporation by another municipal corporation according to the terms of a contractual consolidation under which the taxpayers that originally paid a sales or use tax continue to benefit from the use of the personal property.

(g) Sales to the state of Washington or a municipal corporation of ferry vessels and component parts thereof, and charges for labor and services in respect to construction or improvement of such vessels under RCW 82.08.0285.

~~((g))~~ (h) Sales to the United States. Sales to federal employees, however, are subject to the retail sales tax even if the federal employee will be reimbursed for the cost by the federal government. (See WAC 458-20-190 on sales to the United States.)

~~((h))~~ (i) Charges for physical fitness classes, such as aerobics classes, provided by local governments under RCW 82.08.0291. For more information on charges for physical fitness classes provided by local governments, refer to the department's website at dor.wa.gov.

(7) Application of the use tax.

(a) The state of Washington, including its departments and institutions, and municipal corporations are required to pay the use tax directly to the department of revenue if the retail sales tax was not paid on the value of the item or service at the time of purchase. Refer to WAC 458-20-178 (Use tax and the use of tangible personal property) for more information.

(b) Purchases of cigarette stamps, vehicle license plates, license plate tabs, disability decals, or other items to evidence payment of a license, tax, or fee are purchases for consumption by the state or municipal corporation and subject to the retail sales or use tax.

(c) If the state of Washington or its departments and institutions purchase tangible personal property or retail services to resell to any other department or institution of the state of Washington, or to consume as an ingredient or component part in manufacturing or producing for use, a new article for resale to any other department or institution of the state of Washington, the transaction is a retail purchase and subject to retail sales or use tax.

(d) The state of Washington or a municipal corporation that produces or manufactures products for commercial or industrial use are required to remit use tax upon the value of those products under RCW 82.12.020, unless a specific use tax exemption applies. This value must correspond as nearly as possible to the gross proceeds from retail sales of similar

products. (See WAC 458-20-112 and 458-20-134 on value of products and commercial or industrial use, respectively.)

Example 6. A municipal corporation that operates a print shop and produces forms or other documents for its own use must remit use tax upon the value of those products, even though a B&O tax exemption is provided by RCW 82.04.-600. The value of the products subject to use tax may be reduced by any retail sales tax previously paid on materials, such as paper or ink, which are incorporated into the manufactured product.

(i) Counties and cities are not subject to use tax on the cost of labor and services in the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, and rock taken from a pit or quarry owned or leased to a county or city when the materials are for use on public roads under RCW 82.12.0269.

(ii) If a department or institution of the state of Washington manufactures or produces tangible personal property for use or resale to any other department or institution of the state, use tax must be remitted on the value of that article even though the state is not subject to the B&O tax.

Example 7. State Agency manufactures office furniture to resell to other departments or institutions of the state of Washington. State Agency sometimes uses office furniture it has manufactured for its own offices. Use tax is due on the office furniture sold to the other departments or institutions, and on the office furniture State Agency puts to its own use. The taxable value of the office furniture sold to the other departments or institutions is the selling price. The taxable value for the office furniture State Agency puts to its own use is the selling price at which State Agency sells comparable furniture to other departments or institutions. When computing and remitting use tax upon the value of manufactured furniture, State Agency may reduce the value by any retail sales or use taxes it previously remitted on materials incorporated into that furniture. A department or institution purchasing office furniture from State Agency must remit use tax on the value of that furniture, unless it can document that State Agency paid use tax upon the appropriate value of the furniture. (See also subsection (5)(e) of this rule.)

(e) A use tax exemption applies to the use by the state or local governments of donated personal property under RCW 82.12.02595. The donor, however, remains liable for the retail sales or use tax on the donated property.

(f) A use tax exemption applies to the use of personal property of one municipal corporation by another municipal corporation directly or indirectly arising out of, or resulting from, the annexation, merger, or incorporation of any part of the territory of one municipal corporation by another.

(g) A use tax exemption applies to the use of the personal property of one municipal corporation by another municipal corporation according to the terms of a contractual consolidation under which the taxpayers that originally paid a sales or use tax continue to benefit from the use of the personal property.

(8) Application of the public utility tax.

(a) Persons receiving income subject to the public utility tax may not claim a deduction for amounts received as compensation for services rendered to the state of Washington, its

departments and institutions, or to municipal corporations thereof.

(b) The public utility tax does not apply to income received by the state of Washington or its departments and institutions from providing public utility services.

(c) Municipal corporations operating public service businesses should refer to the rules mentioned in subsection (1)(a) of this rule to determine their public utility tax liability.

WSR 19-23-058
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed November 14, 2019, 5:00 p.m.]

Title of Rule and Other Identifying Information: WAC 458-20-179 Public utility tax.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 458-20-179 to reflect 2019 legislation that: (1) Provides public utility tax credits to certain businesses participating in an early adoption incentive program (E3SHB 1257); and (2) exempts specified renewable natural gas sales from public utility tax (HB 1070). The department is also amending WAC 458-20-179 to reflect deimplementation of RCW 82.16.0491 because the right to earn tax credits under that statute expired.

Reasons Supporting Proposal: This rule is being amended to incorporate legislation from 2019 (E3SHB 1257, HB 1070) and to reflect the expiration of a tax credit under RCW 82.16.0491.

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

Statute Being Implemented: RCW 82.04.120, 82.04.310, 82.16.185, 82.16.310.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Patrick Murphy, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1577; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1603.

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 revisions to the rule follow the wording in corresponding statu-

tory additions and revisions as a result of 2019 legislation. The rule does not contain any new interpretations.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Patrick Murphy, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1577, fax 360-534-1606, email patrickm@dor.wa.gov, AND RECEIVED BY January 21, 2020.

November 14, 2019
Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-21-166, filed 10/23/18, effective 11/23/18)

WAC 458-20-179 Public utility tax. Introduction.

This rule explains the public utility tax (PUT) imposed by chapter 82.16 RCW. The PUT is a tax for engaging in certain public service and transportation businesses within this state.

The department of revenue (department) has adopted other rules that relate to the application of PUT. Readers may want to refer to rules in the following list:

- (1) WAC 458-20-104 Small business tax relief based on income of business;
- (2) WAC 458-20-121 Sales of heat or steam—Including production by cogeneration;
- (3) WAC 458-20-13501 Timber harvest operations;
- (4) WAC 458-20-175 Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce;
- (5) WAC 458-20-180 Motor carriers;
- (6) WAC 458-20-192 Indians—Indian country;
- (7) WAC 458-20-193D Transportation, communication, public utility activities, or other services in interstate or foreign commerce; and
- (8) WAC 458-20-251 Sewerage collection and other related activities.

This rule contains examples that identify a number of facts and then state a conclusion. The 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.

Part I - General Information

(101) **Persons subject to the public utility tax.** The PUT is imposed by RCW 82.16.020 on certain public service and transportation businesses including railroad, express, railroad car, water distribution, sewerage collection, light and power, telegraph, gas distribution, motor transportation, urban transportation, log transportation, vessels under sixty-

five feet in length operating upon the waters within the state of Washington, and tugboat businesses.

(a) **Hauling by watercraft.** Income from hauling persons or property for hire by watercraft between points in Washington is subject to one of two PUT classifications, depending on the nature of the service. Income from:

- Operating tugboats of any size, and the sale of transportation services by vessels sixty-five feet and over, is subject to tax under the "other public service business" PUT classification.

- The sale of transportation services using vessels under sixty-five feet, other than tugboats, is subject to tax under the "vessels under sixty-five feet" public utility tax classification.

These classifications do not include sightseeing tours, fishing charters, or activities that are in the nature of guided tours where the tour may include some water transportation. Persons engaged in providing tours should refer to WAC 458-20-258, Travel agents and tour operators.

(b) **Other businesses subject to the public utility tax.** The PUT also applies to any other public service business subject to control by the state, or having the powers of eminent domain, or any business declared by the legislature to be of a public service nature, unless the activity is subject to tax under chapter 82.04 RCW, Business and occupation (B&O) tax.

(i) The phrase "subject to control by the state" means control by the utilities and transportation commission or any other state agency required by law to exercise control of a business of a public service nature regarding rates charged or services rendered. Examples of other public service businesses include, but are not limited to: Airplane transportation, boom, dock, ferry, pipeline, toll bridge, water transportation, and wharf businesses. RCW 82.16.010.

(ii) Persons engaged in the same business activities as the businesses described above are subject to the PUT even if they are not publicly recognized as providing that type of service or the amount of income from these activities is not substantial. For example, an industrial manufacturing company that owns and operates a well, and that sells a relatively small amount of water to its wholly owned subsidiary, is subject to the PUT as a water distribution business on its sales of water.

(c) **Are amounts derived from interest and penalties taxable?** Amounts charged to customers as interest or penalties are generally subject to the service and other activities B&O tax. This includes interest charged for failure to timely pay for utility services or for incidental services. Incidental services include for example meter installation or other activities which are performed prior to the customer receiving utility services. Any interest or penalty resulting from the failure to timely pay a local improvement district or utility local improvement district assessment is not subject to public utility or B&O taxes.

(102) **Tax rates and measure of tax.** The rates of tax for each business activity subject to the PUT are imposed under RCW 82.16.020 and set forth on appropriate lines of the state public utility tax addendum for the excise tax return. The measure of the PUT is the gross income of the business. The term "gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental

to that business. No deduction may be taken on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discounts, delivery costs, taxes, or any other expense whatsoever paid or accrued, nor on account of losses. RCW 82.16.010(3).

(103) **Persons subject to public utility tax may also be subject to B&O tax.** The B&O tax does not apply to any business activities for which PUT is specifically imposed, including amounts derived from activities for which a deduction from the PUT is available under RCW 82.16.050. RCW 82.04.310(1). However, many persons engaged in business activities subject to the PUT are also engaged in other business activities subject to B&O tax.

For example, a gas distribution company operating a system for the distribution of natural gas for sale may also make retail sales of gas appliances. The gas distribution company is subject to the PUT on its distribution of natural gas to consumers. It is also subject to retailing B&O tax and must collect and remit retail sales tax on its retail sales of gas appliances. Repairs of customer owned appliances are also a retailing activity subject to retail sales tax.

In distinguishing gross income taxable under the PUT from gross income taxable under the B&O tax, the department is guided by the uniform system of accounts established for the specific type of utility concerned. Because of differences in the uniform systems of accounts established for various types of utility businesses, such guides are not controlling for the purposes of classifying revenue under the Revenue Act.

(104) **Charges for service connections, line extensions, and other similar services.**

(a) For existing customers, amounts derived from services that are incidental to a public utility activity are subject to PUT. Thus, amounts received for the following are subject to PUT:

- (i) Service connection, start-up, and testing fees;
- (ii) Charges for line extensions, repairs, raisings, and/or drops;
- (iii) Meter or pole replacement;
- (iv) Meter reading or load factor charges; and
- (v) Connecting or disconnecting.

(b) For new customers, amounts received for any of the services noted above in Part (104)(a) of this rule are subject to service and other activities B&O tax.

A "new customer" is a customer who previously has not received the utility service at the location. For example, a customer of a water distribution company who currently receives water at a residence and constructs a new residence at a different location is considered a "new customer" with respect to any meter installation services performed at the new residence, until the customer actually receives water at that location. It is immaterial that this customer may be receiving water at the old residence. The charge for installing the meter for this customer at the new location is subject to service and other activities B&O tax.

(105) **Contributions of equipment or facilities.** Contributions to a utility business in the form of equipment or facilities are not considered income to the utility business, if the contribution is a condition of receiving service.

(a) **Example 1.** An industrial customer purchases and pays sales tax on transformers it installs. The customer then provides the transformers to a public utility district as a condition of receiving future service. The public utility district is not subject to the PUT or B&O tax on the receipt of the transformers. Use tax is not owed by the utility district as the customer paid sales tax at the time of purchase.

(b) **Example 2.** For a water or sewerage collection business, the value of pipe, valves, pumps, or similar items provided by a developer for purposes of servicing the developed area is likewise not subject to PUT or B&O tax.

Part II - Exemptions, Deductions, and Nontaxable Receipts

(201) **Exemptions.** This subsection describes PUT exemptions. Also see subsections in this rule that discuss specific utilities.

(a) **Income exemption.** Persons subject to the PUT are exempt from the payment of the tax if their taxable income from utility activities does not meet a minimum threshold. RCW 82.16.040. For detailed information about this exemption, refer to WAC 458-20-104, Small business tax relief based on income of business.

(b) **Ride sharing.** RCW 82.16.047 exempts amounts received in the course of commuter ride sharing or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010. For detailed information about this exemption, refer to WAC 458-20-261, Commute trip reduction incentives.

(c) **State route number 16.** RCW 82.16.046 exempts amounts received from operating state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW.

(202) **Deductions.** In general, costs of doing business are not deductible under the PUT. However, RCW 82.16.050 provides for limited deductions. This subsection describes a number of those deductions. The deductible amounts should be included in the gross income reported on the state public utility tax addendum for the excise tax return and then deducted on the deduction detail page to determine the amount of taxable income. Deductions taken but not identified on the appropriate deduction detail page may be disallowed. Also see Parts III and IV of this rule, which identify additional deductions available to power and light, gas distribution, and water distribution businesses.

(a) **Cash discounts.** The amount of cash discount actually taken by the purchaser or customer is deductible under RCW 82.16.050(4).

(b) **Credit losses.** The amount of credit losses actually sustained by taxpayers whose regular books of account are kept on an accrual basis is deductible under RCW 82.16.050(5). For additional information regarding credit losses see WAC 458-20-196, Bad debts.

(c) **Taxes.** Amounts derived by municipally owned or operated public service businesses directly from taxes levied for their support are deductible under RCW 82.16.050(1). However, service charges that are spread on the property tax rolls and collected as taxes are not deductible.

Local improvement district and utility local improvement district assessments, including interest and penalties on

such assessments, are not income because they are exercises of the jurisdiction's taxing authority. These assessments may be composed of a share of the costs of capital facilities, installation labor, connection fees, etc.

(d) **Prohibitions imposed by federal law or the state or federal constitutions.** Amounts derived from business that the state is prohibited from taxing under federal law or the state or federal constitutions are deductible under RCW 82.16.050(6).

(e) **Sales of commodities for resale.** Amounts derived from the sale of commodities to persons in the same public service business as the seller, for resale within this state, are deductible under RCW 82.16.050(2). This deduction is allowed only with respect to water distribution, gas distribution, or other public service businesses that furnish water, gas, or any other commodity in the performance of a public service business. For example, income from the sale of natural gas by a gas distributing company to natural gas companies located in Washington, who resell the gas to their customers, is deductible from the gas distributing company's gross income.

(f) **Services furnished jointly.** In general, costs of doing business are not deductible under the PUT. However, RCW 82.16.050(3) allows a deduction for amounts actually paid by a taxpayer to another person taxable under the PUT as the latter's portion of the consideration due for services furnished jointly by both, provided the full amount paid by the customer for the service is received by the taxpayer and reported as gross income subject to the PUT. The services must be furnished jointly by both the taxpayer and another person taxable under the PUT.

Example 1. Manufacturing Company hires ABC Transport (ABC) to haul goods from Tacoma to a manufacturing facility in Bellingham. ABC subcontracts part of the haul to XYZ Freight (XYZ) and has XYZ haul the goods from Tacoma to Everett, where the goods are loaded into ABC's truck and transported to Bellingham. Assuming all other requirements of the deduction are met, ABC may deduct the payments it makes to XYZ from its gross income as XYZ's portion of the consideration paid by Manufacturing Company for transportation services furnished jointly by both ABC and XYZ. See WAC 458-20-180 for additional information on motor carriers.

Example 2. Dakota Electricity Generator (DEG) sells electricity to Mod Industrial Firm (MIF). DEG hires Wheeler #1 to transmit the electricity from DEG to MIF. Wheeler #1 subcontracts a portion of the transmission service to Wheeler #2.

- Wheeler #1 and Wheeler #2 are jointly furnishing transmission services to DEG. Assuming all other requirements of the deduction are met, Wheeler #1 may claim a "services jointly provided" deduction in the amount paid to Wheeler #2.

- DEG may not claim a "services jointly provided" deduction for the amount DEG paid Wheeler #1. DEG and Wheeler #1 are *not* jointly furnishing a service to MIF. DEG is selling electricity to MIF, and Wheeler #1 is selling transmission services to DEG.

Example 3. City A's water department purchases water from City B's water department. City A sells the water to its

customers. City A may not take a deduction for its payment to City B's water department as "services jointly provided." The sale of water by City A to its customers is not a service jointly provided to City A's customers by both City A and City B.

City B, however, may take a deduction under RCW 82.16.050(2) for its sales of water to City A since this is a sale of commodities to a person in the same public service business, for resale within this state.

(203) **Nontaxable amounts.** The following amounts are not considered taxable income.

(a) **Insurance claim amounts.** Amounts received from insurance companies in payment of losses, which are distinguishable from amounts received to settle contract payment disagreements.

(b) **Payment of damages.** Amounts received from individuals and others in payment of damages caused by them to the utility's plant or equipment.

(c) **Amounts from eminent domain proceedings or governmental action.** Amounts received as compensation for compensatory or involuntary taking of facilities of a public utility, by the exercise of eminent domain or governmental action, are considered liquidated damages.

Part III - Light and Power Business

(301) **Light and power business.** Public utility tax is imposed by RCW 82.16.020 on gross income from providing light and power services. Light and power business means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale. RCW 82.16.010.

(302) **Requirements for light and power businesses.** RCW 82.16.090 requires that customer billings issued by light and power businesses serving more than twenty thousand customers include the following information:

(a) The rates and amounts of taxes paid directly by the customer on products or services rendered by such business; and

(b) The rate, origin, and approximate amount of each tax levied on the revenue of such business which has been added as a component of the amount charged to the customer. This does not include taxes levied by the federal government or taxes levied under chapters 54.28, 80.24, or 82.04 RCW.

(303) **Wheeling of electricity.** "Wheeling of electricity" is the activity of delivering or distributing electricity owned by others using power lines and equipment of the person doing the wheeling. Income from wheeling electricity is subject to the PUT.

(304) **Exchanges of electricity by light and power businesses.** There is no specific exemption that applies to an "exchange" of electrical energy or its rights. However, exchanges of electrical energy between light and power businesses qualify for deduction in computing the PUT as sales of power to another light and power business for resale. RCW 82.16.050(11). An exchange is a transaction that is considered to be a sale and involves a delivery or transfer of energy or its rights by one party to another for which the second party agrees, subject to the terms and conditions of the agreement, to deliver electrical energy at the same or another time.

Examples of deductible exchange transactions include, but are not limited to, the following:

(a) The exchange of electric power for electric power between one light and power business and another light and power business;

(b) The transmission of electric power by one light and power business to another light and power business pursuant to the agreement for coordination of operations among power systems of the Pacific Northwest executed as of September 15, 1964;

(c) The acquisition of electric power by the Bonneville Power Administration (BPA) for resale to its Washington customers in the light and power business;

(d) The residential exchange of electric power entered into between a light and power business and the administrator of the BPA pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501, Sec. 5(c), 16 U.S.C. Sec. 839c. In some cases, power is not physically transferred, but the purpose of the residential exchange is for BPA to pay a "subsidy" to the exchanging utilities. These subsidies are considered a nontaxable adjustment (rebate or discount) for purchases of power from BPA.

(305) **Exemptions.** The following exemptions are available for sales of electricity, and are in addition to the general exemptions found in Part II of this rule.

(a) **Sales of electricity to an electrolytic processor.** RCW 82.16.0421 provides an exemption for sales of electricity made by light and power businesses to chlor-alkali electrolytic processing businesses or sodium chlorate electrolytic processing businesses for the electrolytic process. This exemption, which is scheduled to expire June 30, 2029, applies to sales of electricity made by December 31, 2028.

The exemption does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the electrolytic process.

(i) **Exemption certificate required.** To claim the exemption, the chlor-alkali electrolytic processing business or the sodium chlorate electrolytic processing business must provide the light and power business with an exemption certificate. RCW 82.16.0421. A certificate can be obtained from the department's website at: dor.wa.gov.

(ii) **Annual tax performance report requirement.** RCW 82.16.0421 requires taxpayers receiving the benefit of this tax preference to file an annual tax performance report by May 31st of the year following any calendar year in which a taxpayer becomes eligible to claim the tax preference. See RCW 82.32.534 for more information on the annual tax performance report requirement for tax preferences.

(iii) **Qualification requirements.** To qualify all the following requirements must be met:

(A) The electricity used in the electrolytic process must be separately metered from the electricity used for the general operations of the business;

(B) The price charged for the electricity used in the electrolytic process must be reduced by an amount equal to the tax exemption available to the light and power business; and

(C) Disallowance of all or part of the exemption is a breach of contract and the damages to be paid by the chlor-alkali electrolytic processing business or the sodium chlorate

electrolytic processing business is the amount of the tax exemption disallowed.

(b) **Sales of electricity to aluminum smelters.** RCW 82.16.0498 provides an exemption to be taken in the form of a credit. The credit is allowed if the contract for sale of electricity to an aluminum smelter specifies that the price charged for the electricity will be reduced by an amount equal to the credit. The exemption does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the smelting process. The credit allowed is the same amount as the utility tax that would otherwise have been due under RCW 82.16.020.

(c) **BPA credits or funds.** Effective June 10, 2010, through June 30, 2015, RCW 82.04.310 exempted from the B&O tax credits or payments received by persons from the BPA, for the purpose of implementing energy conservation programs or demand-side management programs. This exemption expired June 30, 2015, and credits or payments received on or after July 1, 2015, are subject to the B&O tax under the service and other activities classification.

(306) **Deductions.** The following deductions are available for sales of electricity, and are in addition to the general deductions found in Part II of this rule.

(a) **Sales of electricity for resale or for consumption outside Washington.** Amounts derived from the production, sale, or transfer of electrical energy for resale within or outside the state of Washington or for consumption outside the state are deductible under RCW 82.16.050(11). These sales of electricity are also not subject to the manufacturing B&O tax. RCW 82.04.310.

(b) **Low density light and power businesses.** RCW 82.16.053 provides a deduction for light and power businesses having seventeen or fewer customers per mile of distribution power lines with retail power rates that exceed the state average power rate. The statute requires the department to determine the state average electric power rate each year and make this rate available to these businesses. This rate and additional information regarding this deduction can be found on the department's website at: dor.wa.gov.

(c) **Conservation - Electrical energy and gas.** RCW 82.16.055 provides deductions relating to the production or generation of energy from cogeneration or renewable resources, and for measures to improve the efficiency of energy end-use.

(i) **Restrictions.** Use of the deductions is subject to the following restrictions:

(A) They apply only to new facilities for the production or generation of energy from cogeneration or renewable energy resources or measures to improve the efficiency of energy end-use on which construction or installation was begun after June 12, 1980, and before January 1, 1990;

(B) The measures or projects must be, at the time they are placed in service, reasonably expected to save, produce, or generate energy at a total incremental system cost per unit of energy delivered to end-use which is less than or equal to the incremental system cost per unit of energy delivered to end-use from similarly available conventional energy resources that utilize nuclear energy or fossil fuels and that the gas or electric utility could acquire to meet energy demand in the same time period; and

(C) They may be taken for a period not exceeding thirty years after the project is placed in operation. Any recurring costs determined to be eligible for deduction under this rule will cease to be eligible in whole or part at the time of termination of any energy conservation measure or project that originally authorized the deduction under RCW 82.16.055.

(ii) **What can be deducted.** The following may be deducted from a taxpayer's gross income:

(A) Amounts equal to the cost of production at the plant for consumption within the state of Washington of electrical energy produced or generated from cogeneration as defined in RCW 82.08.02565;

(B) Amounts equal to the cost of production at the plant for consumption within the state of Washington of electrical energy or gas produced or generated from renewable energy resources such as solar energy, wind energy, hydroelectric energy, geothermal energy, wood, wood wastes, municipal wastes, agricultural products and wastes, and end-use waste heat;

(C) Amounts expended to improve consumers' efficiency of energy end-use or to otherwise reduce the use of electrical energy or gas by the consumer;

(D) Amounts received by a utility as a contribution for the installation of service, and later refunded to the customer, are deductible from gross income at the time the amounts are refunded;

(E) Production expenses, eligible fuel costs and book depreciation of capital costs. Eligible fuel costs are all fuels if used for cogeneration or nonfossil fuel costs if not a cogeneration facility.

(307) **Credits.** Credit is available to light and power businesses that make ~~((contributions to an electric utility rural economic development revolving fund. The credit is equal to fifty percent of contributions made during a fiscal year to an electric utility rural economic development revolving fund.~~

~~(a) Light and power businesses may take a credit up to twenty five thousand dollars, not to exceed the PUT that would normally be due, against their public utility tax liability each fiscal year for contributions made.~~

~~(b) Expenditures from the electric utility rural economic development revolving fund must be made solely on qualifying projects, in a designated qualifying rural area. For additional information see RCW 82.16.0491.~~

~~(e) The total amount of credits available statewide on a fiscal year basis for all qualified businesses is three hundred fifty thousand dollars. The department will allow earned credits on a first come, first served basis. The right to earn these tax credits expired June 30, 2011. Unused earned credits may be carried forward to subsequent years provided the department has given prior approval)) incentive payments to eligible customers under the state energy performance standard early adoption incentive program. The credit is equal to the amount of incentive payments made under RCW 19.27A.220 in any calendar year, plus documented administrative costs not to exceed eight percent of the incentive payments.~~

(a) A light and power business may take the credit against its PUT liability, but the credit may not exceed the PUT that would normally be due. The credit may be claimed

during the same calendar year that the light and power business made incentive payments and incurred administrative expenses, or carried forward for the following two calendar years. A light and power business may not carry the credit backward or receive a refund in the place of a credit.

(b) A business that claims credit in excess of the amount actually earned must repay the excess amount, in addition to interest accruing from the date the credit was claimed to the date of repayment. The department must provide written notice of the amount of any excess credit and interest due. The amount due must be paid within thirty days of the date of notice. The interest rate for excess credit claimed is equal to the rate for delinquent excise taxes under chapter 82.32 RCW. However, businesses do not need to repay excess credits claimed based on amounts reported to the business by the department of commerce under RCW 19.27A.220, if the amounts are later found abnormal or inaccurate through no fault of the business.

(c) The right to earn credits under this early adoption incentive program expires June 30, 2032.

Part IV - Gas and Water Distribution Businesses

(401) **Gas distribution.** Gross income received for the distribution of gas is taxable under PUT as provided by RCW 82.16.020. Gas distribution business means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural. RCW 82.16.010. See Part II for general exemptions and deductions that may apply to gas distribution.

(402) **Requirements for gas distribution businesses.** RCW 82.16.090 requires that customer billings issued by gas distribution businesses serving more than twenty thousand customers include the following information:

(a) The rates and amounts of taxes paid directly by the customer on products or services rendered by such business; and

(b) The rate, origin, and approximate amount of each tax levied on the revenue of such business which has been added as a component of the amount charged to the customer. This does not include taxes levied by the federal government or taxes levied under chapters 54.28, 80.24, or 82.04 RCW.

(c) In addition to the general exemptions and deductions noted in Part II of this rule, the law provides the following:

(i) **Sales of natural or manufactured gas to aluminum smelters.** RCW 82.16.0498 provides an exemption to be taken in the form of a credit for sales of natural or manufactured gas to aluminum smelters. The credit is allowed if the contract for sale of gas to an aluminum smelter specifies that the price charged for the gas will be reduced by an amount equal to the credit. The credit allowed is the same amount as the utility tax that would otherwise have been due under RCW 82.16.020.

(ii) **Conservation - Energy from gas.** RCW 82.16.055 provides deductions for the production or generation of energy from cogeneration or renewable resources and for measures to improve the efficiency of energy end-use. See subsection (306)(c) of this rule.

(iii) **Compressed natural gas and liquefied natural gas used as transportation fuel.**

(A) Effective July 1, 2015, RCW 82.16.310 provides an exemption for sales by a gas distribution business of natural gas, compressed natural gas, and liquefied natural gas if the:

(I) Compressed natural gas or liquefied natural gas is sold or used as transportation fuel; or

(II) Buyer uses natural gas to manufacture compressed natural gas or liquefied natural gas to be sold or used as transportation fuel.

(B) Effective July 28, 2019, RCW 82.16.310 provides an exemption for sales by a gas distribution business of renewable natural gas.

(C) The buyer must provide and the seller must retain an exemption certificate. See the department's website at: dor.wa.gov for the "Purchases of Natural Gas for Use as Transportation Fuel" form. RCW 82.16.310.

~~((C))~~ (D) Although sales of natural gas, compressed natural gas, ~~(and)~~ liquefied natural gas, and renewable natural gas may be exempt under RCW 82.16.310, the income from such sales may be subject to other taxes such as business and occupation tax and retail sales tax.

~~((D))~~ (E) For the purpose of this subsection, "transportation fuel" means fuel for the generation of power to propel a motor vehicle as defined in RCW 46.04.320, a vessel as defined in RCW 88.02.310, or a locomotive or railroad car. "Renewable natural gas" is defined in RCW 54.04.190 to mean a gas consisting largely of methane and other hydrocarbons derived from the decomposition of organic material in landfills, wastewater treatment facilities, and anaerobic digesters.

(403) **Credits for gas distribution businesses.** Credit is available to gas distribution businesses that make incentive payments to eligible customers under the state energy performance standard early adoption incentive program. The credit is equal to the amount of incentive payments made under RCW 19.27A.220 in any calendar year, plus documented administrative costs not to exceed eight percent of the incentive payments.

(a) A gas distribution business may take the credit against its PUT liability, but the credit may not exceed the PUT that would normally be due. The credit may be claimed during the same calendar year that the gas distribution business made incentive payments and incurred administrative expenses, or carried forward for the following two calendar years. A gas distribution business may not carry the credit backward or receive a refund in the place of a credit.

(b) A business that claims credit in excess of the amount actually earned must repay the excess amount, in addition to interest accruing from the date the credit was claimed to the date of repayment. The department must provide written notice of the amount of any excess credit and interest due. The amount due must be paid within thirty days of the date of notice. The interest rate for excess credit claimed is equal to the rate for delinquent excise taxes under chapter 82.32 RCW. However, businesses do not need to repay excess credits claimed based on amounts reported to the business by the department of commerce under RCW 19.27A.220, if the amounts are later found abnormal or inaccurate through no fault of the business.

(c) The right to earn credits under this early adoption incentive program expires June 30, 2032.

(404) Water distribution. PUT is imposed on amounts derived from the distribution of water under RCW 82.16.020. Water distribution business means the business of operating a plant or system for the distribution of water for hire or sale. RCW 82.16.010. In addition to the general exemptions and deductions noted in Part II of this rule, the law provides the following:

(a) Water distribution by a nonprofit water association. Amounts derived from the distribution of water by a nonprofit water association and used for capital improvements, related to the water distribution service, by that association are deductible under RCW 82.16.050(12).

(b) Distribution of irrigation water. Amounts derived from the distribution of water through an irrigation system, for irrigation purposes, are deductible under RCW 82.16.050(7). The phrase "for irrigation purposes" means water used solely for nourishing plant life. Thus, when a water distribution business supplies potable water and some of the water is segregated and separately supplied solely for the nourishing of plant life as opposed to water supplied for domestic, municipal, or industrial uses, charges for such separately supplied irrigation water may be deducted from gross income subject to PUT.

To meet the "irrigation system" requirement, a water distribution business must demonstrate that its distribution system has turnouts or similar connections for irrigation purposes that are separate from service hookups or similar connections for domestic, industrial, or municipal uses. Under the appropriate circumstances, the use of separate meters and cross-connection or back flow devices may be evidence of such separate connections.

WSR 19-23-062

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed November 15, 2019, 11:04 a.m.]

Title of Rule and Other Identifying Information: WAC 458-61A-100 Real estate excise tax—Overview, 458-61A-101 Taxability of the transfer or acquisition of the controlling interest of an entity with an interest in real property located in this state, 458-61A-102 Definitions, and 458-61A-107 Options to purchase.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updating WAC 458-61A-100 and 458-61A-101 to reflect changes in the real estate excise tax from ESSB 5998 (2019) and since previous updates. Adding and updating definitions to WAC 458-61A-102, for new terms contained in ESSB 5998 (2019), codified in RCW 82.45.060(5). Updating WAC 458-61A-107 to reflect changes to the definition of a "controlling interest" contained in ESSB 5998 (2019), codified in RCW 82.45.010(2).

Reasons Supporting Proposal: ESSB 5998 (2019), imposes a new graduated real estate excise tax (REET) structure, codified in RCW 82.45.060. It also changed the period for determining controlling interest transfers from twelve

months to thirty-six months. WAC 458-61A-100 and 458-61A-101 are being updated to reflect these changes. Some statutory references in these two rules are outdated.

ESSB 5998 (2019), codified in RCW 82.45.060(5), introduced definitions for new terms applicable to chapter 82.45 RCW. WAC 458-61A-102 includes definitions for the new terms, which are necessary in the administration of real estate excise tax rules. ESSB 5998 (2019), codified in RCW 82.45.010(2), modified the definition of the term "sale" to expand the period for determining "controlling interest transfers" from twelve months to thirty-six months. The definition of the term "sale" is being updated to reflect the change. ESSB 5998 (2019), codified in RCW 82.45.033(1), modified the definition of the term "controlling interest" to clarify the provisions in RCW 82.45.033 (1)(a) apply to "profit corporations" and the provisions in RCW 82.45.033 (1)(b) also apply to "any other corporation." The definition of the term "controlling interest" is being updated to reflect the change.

ESSB 5998 (2019), codified in RCW 82.45.010(2), modified the definition of the term "sale" to expand the period for determining "controlling interest transfers" from twelve months to thirty-six months. WAC 458-61A-107 is being updated to reflect the change in the period for determining a controlling interest transfer from twelve months to thirty-six months.

Statutory Authority for Adoption: RCW 82.45.150, 82.32.300, and 82.01.060(2).

Statute Being Implemented: RCW 82.45.010, 82.45.033, and 82.45.060.

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: Brenton Madison and Rex Munger, 6400 Linderson Way S.W., Olympia, WA, 360-534-1583 and 360-534-1554; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Olympia, WA, 360-534-1603.

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 rules follow the wording of the new and modified definitions contained in RCW 82.45.010, 82.45.033, and 82.45.060. They do not include any new interpretations.

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 Brenton Madison and Rex Munger, Department of Revenue, P.O. Box 47476, Olympia, WA 98504-7476, phone 360-534-1583 and 360-534-1554, fax 360-534-1606, email BrentonM@dor.wa.gov and RexM@dor.wa.gov, AND RECEIVED BY January 21, 2020.

November 15, 2019
Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-12-074, filed 5/27/16, effective 6/27/16)

WAC 458-61A-100 Real estate excise tax—Overview. (1) **Introduction.** Chapter 82.45 RCW imposes an excise tax on every sale of real estate in the state of Washington. All sales of real property in this state are subject to the real estate excise tax unless specifically exempted by chapter 82.45 RCW (~~and these rules~~). The general provisions for the administration of the state's excise taxes contained in chapter 82.32 RCW apply to the real estate excise tax, except as provided in RCW 82.45.150. This chapter provides applicable definitions, describes procedures for payment, collection, and reporting of the tax, explains when penalties and interest are imposed on late payment, describes those transactions exempted from imposition of the tax, and explains the procedures for refunds and reviews.

Legislation adopted in (~~2010. Effective May 1, 2010, chapter 23, Laws of 2010 sp. sess.~~) **2019.** Effective January 1, 2020, chapter 424, Laws of 2019 established new requirements regarding:

(a) Sales of real estate that result from the transfer of a controlling interest in an entity that owns real property within a thirty-six-month period. See RCW 82.45.010 and WAC 458-61A-101.

(b) (~~Enforcement of tax liability. See WAC 458-61A-301.~~) New graduated real estate excise tax rates. See RCW 82.45.060.

(2) **Imposition of tax.**

(a) The taxes imposed are due at the time the sale occurs, are the obligation of the seller, and, in most instances, are collected by the county upon presentation of the documents of sale for recording in the public records.

(b) If there is a sale of the controlling interest in an entity that owns real property in this state, the tax is paid to the department at the time the interest is transferred. See WAC 458-61A-101.

(3) **Rate of tax.** The rate of the tax is set forth in RCW 82.45.060. Counties, cities, and towns may impose additional taxes on sales of real property on the same incidences, collection, and reporting methods authorized under chapter 82.45 RCW. See chapter 82.46 RCW.

(4) **Nonprofit organizations.** Transfers to or from an organization exempt from ad valorem property taxes under chapter 84.36 RCW, or from federal income tax, because of

the organization's nonprofit or charitable status are nevertheless subject to the real estate excise tax unless specifically exempt under chapter 82.45 RCW or these rules.

(5) **Sales in Indian country.** A sale of real property located in Indian country by an enrolled tribe or tribal member is not subject to real estate excise tax. See WAC 458-20-192 for complete information regarding the taxability of transactions involving Indians and Indian country.

AMENDATORY SECTION (Amending WSR 11-16-106, filed 8/3/11, effective 9/3/11)

WAC 458-61A-101 Taxability of the transfer or acquisition of the controlling interest of an entity with an interest in real property located in this state. (1) **Introduction.** The transfer of a controlling interest in an entity that has an interest in real property in this state is considered a taxable sale of the entity's real property for purposes of the real estate excise tax under chapter 82.45 RCW. This rule explains the application of the tax on those transfers.

Legislation adopted in (~~2010. Effective May 1, 2010, chapter 23, Laws of 2010 1st sp. sess.~~) **2019.** Effective January 1, 2020, chapter 424, Laws of 2019 established new requirements (~~regarding option agreements and regarding enforcement of tax liability. See subsections (3) and (6) through (8) of this section~~), extending the time period in which a controlling interest transfer occurs for real estate excise tax purposes from twelve months to thirty-six months.

(2) **Definitions.** For the purposes of this chapter, the following definitions apply unless the context requires otherwise.

(a) **"Controlling interest"** means:

(i) In the case of a profit corporation, either fifty percent or more of the total combined voting power of all classes of stock of the corporation entitled to vote, or fifty percent of the capital, profits, or beneficial interest in the voting stock of the corporation; and

(ii) In the case of any other corporation, or a partnership, association, trust, or other entity, fifty percent or more of the capital, profits, or beneficial interest in such corporation, partnership, association, trust, or other entity.

Examples. The following examples, while not exhaustive, illustrate some of the circumstances in which the transfer of an interest in an entity may or may not be taxable. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(A) Able and Baker each own 40% of the voting shares of a corporation, Flyaway, Inc. Charlie, Delta, Echo, and Frank each own 5% voting shares. Charlie acquires Baker's 40% interest, and Delta's and Echo's 5% interests. This is a taxable acquisition because a controlling interest (50% or more) was acquired by Charlie (40% from Baker plus 5% from Delta and 5% from Echo). However, if Charlie, Delta, and Echo were to transfer their shares (totaling 15%) to Able, those transfers would not be taxable. Although Able would own 55% of the corporation, only a 15% interest was transferred and acquired, so the acquisition by Able is not taxable.

(B) Melody LLC consists of a general partner and three limited partners, each possessing a 25% interest. Even though

the general partner controls the management and daily operations, a 25% interest is not a controlling interest. If someone were to acquire a 50% or greater interest from any of the existing partners, there would be a taxable acquisition of a controlling interest. If one partner acquires an additional 25% interest from another partner for a total of a 50% interest, no transfer or acquisition of a controlling interest occurs because less than 50% is transferred and acquired.

(C) Anne, Bobby, Chelsea, and David each own 25% of the voting shares of a corporation. The corporation redeems the shares of Bobby, Chelsea, and David. Anne now owns all the outstanding shares of the corporation. A taxable transfer occurred when the corporation redeemed the shares of Bobby, Chelsea, and David.

(D) Andrew owns 75% of the voting shares of a corporation. Andrew transfers all of his stock by 25% portions of the shares in three separate and unrelated transactions to Betsy, Carolyn, and Daniel, who are not acting in concert. A taxable transfer of a controlling interest occurs when Andrew transfers 75% of the voting shares of the corporation, even though no one has subsequently acquired a controlling interest.

(E) Big Corporation has two stockholders, Adrian and Britain. Adrian owns 90 shares of stock (90%) and Britain owns 10 shares of stock (10%). Big Corporation owns 60% of the stock of Little Corporation, which owns real property. Adrian, by virtue of owning 90% of Big Corporation's stock, has a 54% interest in Little Corporation (90% interest in Big multiplied by the 60% interest Big has in Little equals the 54% interest Adrian has in Little). Adrian sells his 90 shares of stock in Big to Britain. Adrian, by selling his 90 shares of Big stock, has transferred a controlling interest (54%) in an entity that owns real property (Little). This transfer is subject to the real estate excise tax.

(F) Assume the same facts as in Example (E) of this subsection, except that Big owns only 50% of Little's stock. Since Adrian has not transferred and Britain has not acquired a controlling interest in Little ($90\% \times 50\% = 45\%$), the real estate excise tax does not apply. If, however, Big had transferred its 50% interest in Little, that would be a transfer of a controlling interest and it would be subject to the real estate excise tax.

(b) The terms "**person**" or "**company**" mean any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the state of Washington or any political subdivision thereof, corporation, limited liability company association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, and the United States or any agency or instrumentality thereof.

(c) "**True and fair value**" means market value, which is the amount of money that a willing, but unobliged, buyer would pay a willing, but unobligated, owner for real property, taking into consideration all reasonable, possible uses of the property.

(d) (~~"**Twelve-month period**" is any period of twelve consecutive months and~~) "**Taxable transfer period**" is either twelve months or thirty-six months. If twelve months, the period may span two calendar years. If thirty-six months,

the period may span four calendar years. RCW 82.45.010(2). The thirty-six-month period is effective January 1, 2020. The department of revenue has issued guidance on the application of the thirty-six-month period, available at dor.wa.gov.

(e) "**Acting in concert**" occurs:

(i) When one or more persons have a relationship with each other such that one person influences or controls the actions of another through common ownership. For example, if a parent corporation and a wholly owned subsidiary each purchase a 25% interest in an entity, the two corporations have acted in concert and acquired a controlling (i.e., at least 50%) interest in the entity.

(ii) Where buyers are not commonly controlled or owned, but the unity of purpose with which they have negotiated and will complete the acquisition of ownership interests, indicates that they are acting together. For example, three separate individuals who decide together to acquire control of a company jointly through separate purchases of 20% interests in the company act in concert when they acquire the interests.

(3) **In general.** In order for the tax to apply when the controlling interest in an entity that owns real property is transferred, the following must have occurred:

(a) The transfer or acquisition of the controlling interest occurred within a ~~((twelve-month))~~ taxable transfer period.

~~((Effective May 1, 2010,))~~ Solely for the purpose of determining whether a transfer or acquisition pursuant to the exercise of an option occurred within a ~~((twelve-month))~~ taxable transfer period, the date on which the option agreement was executed is deemed to be the date of the transfer or acquisition;

(b) The controlling interest was transferred in a single transaction or series of transactions by a single person or acquired by a single person or a group of persons acting in concert;

(c) The entity has an interest in real property located in this state;

(d) The transfer is not otherwise exempt under chapters 82.45 RCW and 458-61A WAC; and

(e) The transfer was made for valuable consideration.

(4) **Measure of the tax.** The measure of the tax is the "selling price." For the purpose of this rule, "selling price" means the true and fair value of the real property owned by the entity at the time the controlling interest is transferred.

(a) If the true and fair value of the property cannot reasonably be determined, one of the following methods may be used to determine the true and fair value:

(i) A fair market value appraisal of the property; or

(ii) An allocation of assets by the seller and the buyer made pursuant to section 1060 of the Internal Revenue Code of 1986, as amended or renumbered as of January 1, 2005.

(b) If the true and fair value of the property to be valued at the time of the sale cannot reasonably be determined by either of the methods in (a) of this subsection, the market value assessment for the property maintained on the county property tax rolls at the time of the sale will be used as the selling price.

(c) **Examples.**

(i) A partnership owns real property and consists of two partners, Amy and Beth. Each has a 50% partnership interest.

The true and fair value of the real property owned by the partnership is \$100,000. Amy transfers her 50% interest in the partnership to Beth for valuable consideration. The taxable selling price is the true and fair value of the real property owned by the partnership, or \$100,000.

(ii) A corporation consists of two shareholders, Chris and Dilbert. The assets of the corporation include real property, tangible personal property, and other intangible assets (goodwill, cash, licenses, etc.). An appraisal of the corporation's assets determines that the values of the assets are as follows: \$250,000 for real property; \$130,000 for tangible personal property; and \$55,000 for miscellaneous intangible assets. Chris transfers his 50% interest to Ellie for valuable consideration. The taxable selling price is the true and fair value of the real property owned by the corporation, or \$250,000.

(iii) An LLC owns real property and consists of two members, Frances and George. Each has a 50% LLC interest. Frances transfers her 50% interest to George. In exchange for the transfer, George pays Frances \$100,000. The true and fair value of the real property owned by the LLC is unknown. There is no debt on the real property. A fair market value appraisal is not available. The market value assessment for the property maintained on the county property tax rolls is \$275,000. The taxable selling price is the market value assessment, or \$275,000.

(5) **Persons acting in concert.** The tax applies to acquisitions made by persons acting in concert, as defined in subsection (2)((f)) (e) of this (section) rule.

(a) Where persons are not commonly controlled or influenced, factors that indicate whether persons are acting in concert include:

- (i) A close relation in time of the transfers or acquisitions;
- (ii) A small number of purchasers;
- (iii) Mutual terms contained in the contracts of sale; and
- (iv) Additional agreements to the sales contract that bind the purchasers to a course of action with respect to the transfer or acquisition.

(b) If the acquisitions are completely independent, with each purchaser buying without regard to the identity of the other purchasers, then the persons are not acting in concert, and the acquisitions will be considered separate acquisitions.

(c) **Example.** Able owns 100% of Emerald Corporation, which owns real property. As a group, Baker, Charlie, Delta, and Echo negotiate to acquire all of Able's interest in Emerald. Baker, Charlie, Delta, and Echo each acquire 25% of Able's interest. The contracts of Baker, Charlie, Delta, and Echo are identical and the purchases occur simultaneously. Baker, Charlie, Delta, and Echo also negotiated an agreement binding themselves to a course of action with respect to the acquisition of Emerald and the terms of the shareholders agreement that will govern their relationship as owners of Emerald. Baker, Charlie, Delta, and Echo are acting in concert and their acquisitions from Able are treated as a single acquisition of a controlling interest that is subject to the real estate excise tax.

(6) **Date of sale.**

(a) When the controlling interest is acquired in one transaction, the actual date control is transferred is the date of sale.

Examples of when an interest in an entity is transferred include when payment is received by the seller and the shares of stock are delivered to the buyer, or when payment is received by the seller and partnership documents are signed, etc.

(b) When the parties enter into an agreement to acquire or transfer a controlling interest over time through a series of transactions, the date of sale is deemed the date of the agreement arranging the transactions. The agreement results in the transfer of both a present interest and a beneficial interest in the entity, the sum of which results in a controlling interest, regardless of whether the first of the successive transactions (~~(is more than twelve months prior to the final transaction)~~) occurred outside the taxable transfer period.

(c) When the controlling interest is transferred or acquired pursuant to the exercise of an option, the date upon which the option is exercised is the date of sale.

(d) **Examples.**

(i) Andrew owns 100% of the voting shares of Topaz Corporation. Andrew signs a binding agreement to transfer 51% of his shares in the corporation to Ted. The agreement states that the transfer will occur as follows: 49% of the shares will be transferred on January 1st, and the remaining 2% of the shares will be transferred on February 1st of the following year. Andrew has contractually agreed to sell 51% of the voting shares in Topaz within a (~~twelve month~~) taxable transfer period, even though the shares will not actually be transferred to Ted until later. The date of sale is the date of the agreement, and (~~REET~~) real estate excise tax is due upon the true and fair value of the property as of the date of the agreement.

(ii) Matt acquires a 10% interest in an entity which owns an apartment building under construction worth \$500,000 from Simon on January 30th. On July 30th Matt acquires a 30% interest in the same entity from Mary, but the building is now worth \$900,000. On September 30th Matt acquires a 10% interest in the same entity from Ruth, but the building is now worth \$1,000,000. These are three separate and completely independent transfers. The final transfer allowed Matt to acquire, within (~~twelve months~~) a taxable transfer period, a controlling interest in an entity that owns real property. September 30th is the date of sale.

To determine the sellers' proportional tax liability in the example above, the series of transactions is viewed as a whole. Note both the individual and the total interests transferred. Here, Simon and Mary each conveyed 10% interests, while Ruth conveyed a 30% interest, with a total of a 50% interest being conveyed. To determine the liability percentage for each seller, divide the interest each conveyed by the total interest conveyed (Here, Simon and Mary: $10/50 = 20\%$; Ruth: $30/50 = 60\%$). This results in tax liability percentages here for Simon and Mary of 20% each and for Ruth, 60%.

To determine the amount of tax owed, the percentage is applied to the value of the property at the time of conveyance. In the example above, the value of the property to which the percentage applies is dependent on the time of each transfer (i.e., Simon's 20% on the \$500,000; Mary's 60% on the \$900,000; Ruth's 20% on the \$1,000,000).

(7) **Tax liability.** When there is a transfer or acquisition of a controlling interest in an entity that has an interest in real property, the seller of the interest is generally liable for the tax.

~~(a) ((Prior to May 1, 2010, when the seller had not paid the tax by the due date and neither the buyer nor the seller notified the department of the sale within thirty days of the sale, the buyer was also liable for the tax. When the buyer notified the department of the sale within thirty days of the sale, the buyer was not held personally liable for any tax due. Effective May 1, 2010, however, notice to the department by either the seller or the buyer does not exempt the buyer from liability for the tax, if the department cannot collect the tax from the seller.~~

~~(b) Effective May 1, 2010,))~~ The department may, at the department's option, enforce the obligation of the seller.

(i) If the entity is a corporation;

(A) Against the corporation;

(B) Against the person or persons who acquired the controlling interest; or

(C) When the corporation is not a publicly traded company, against the person or persons who transferred the controlling interest.

(ii) If the entity is a partnership, association, trust, or other entity that is not a corporation;

(A) Against the entity; or

(B) Against the person or persons who transferred or acquired the controlling interest.

~~((=))~~ (b) Unpaid tax is a specific lien on each parcel of real property in this state owned by an entity in which a controlling interest has been transferred or acquired. The lien attaches from the time of sale until the tax is paid, which lien may be enforced in the manner prescribed for the foreclosure of mortgages.

(8) Reporting requirements.

(a) The transfer of a controlling interest in real property must be reported to the department when no instrument is recorded in the official real property records of the county in which the property is located. If the transfer is not taxable due to an exemption, that exemption should be stated on the affidavit.

(i) The sale must be reported by the seller to the department within five days from the date of the sale on the department of revenue affidavit form, DOR Form 84-0001B. The affidavit form must be signed by both the seller and the buyer, or their agent, and must be accompanied by payment of the tax due.

(ii) The affidavit form may also be used to disclose the sale, in which case:

(A) It must be signed by the person making the disclosure; and

(B) It must be accompanied by payment of the tax due only when submitted by a seller reporting a taxable sale.

(iii) Any person who intentionally makes a false statement on any return or form required to be filed with the department under this chapter is subject to penalty of perjury.

(iv) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which the transfer of an interest in an entity must be reported to the department. These examples should be used only as a general

guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(A) Simon and Peter each own 40% of the voting shares of a corporation. Paul, Matthew, Mark, and John each own 5% voting shares. Paul acquires Peter's 40% interest, and Matthew's and Mark's 5% interests. This is a taxable acquisition because a controlling interest (50% or more) was acquired by Paul (40% from Peter plus 5% from Matthew and 5% from Mark). This transaction must be reported.

(B) Assume same facts as in example (iv)(A) of this subsection. Paul files an affidavit to disclose the sale to the department within thirty days of the date of sale. Peter, Matthew, and Mark go on vacation and the affidavit and required tax payment is not sent to the department. The department notifies Peter, Matthew, and Mark of their tax liability, which now includes interest and penalties. ~~((Effective May 1, 2010,))~~ Paul is not relieved of personal liability for the tax, interest, or penalties, if the department cannot collect from Peter, Matthew, and Mark.

(C) Assume the same facts as in example (iv)(A) of this subsection, except Paul only acquires Peter's 40% interest and Matthew's 5% interest. This is not a taxable acquisition because a controlling interest (50% or more) was not acquired by Paul. This transaction does not need to be reported.

(b) Under RCW 43.07.390, an entity must report the transfer of a controlling interest or an interest that amounts to at least one-third of a controlling interest in the entity to the secretary of state, and ~~((, effective May 1, 2010))~~, also the granting of any option that, if exercised, would result in a transfer or acquisition of a controlling interest. Failure to report a taxable transfer subjects the entity to interest and penalties.

(9) **Due date, interest and penalties.** The tax imposed is due and payable immediately on the date of sale. See WAC 458-61A-306 for interest and penalties that may apply.

(10) **Transfers after tax has been paid.** When there is a transfer or acquisition of a controlling interest in an entity and the real estate excise tax is paid on the transfer, and there is a subsequent acquisition of an additional interest in the same entity within the same ~~((twelve-month))~~ taxable transfer period by a person acting in concert with the previous buyer(s), the subsequent seller is liable for its proportional portion of the tax. After payment by the subsequent seller of its proportional share, the person(s) who previously paid the tax may apply to the department for a refund of the amount overpaid because of the new proportional amount paid as a result of the subsequent transfer or acquisition.

(11) **Exemptions.** Because transfer and acquisition of a controlling interest in an entity that owns real estate in this state is statutorily defined as a "sale" of the real property owned by the entity, the exemptions of chapter 82.45 RCW and this chapter also apply to the sale of a controlling interest.

Examples.

(a) The merger of a wholly owned subsidiary owning real property located in this state with another subsidiary wholly owned by the same parent is a transfer of a controlling interest. However, this transfer may be exempt from taxation on two grounds. First, it may be exempt because it is a mere change in form or identity (see WAC 458-61A-211). Second,

it may be exempt if it qualifies under the nonrecognition of gain or loss provisions of the Internal Revenue Code for entity formation, liquidation and dissolution, and reorganization. (See WAC 458-61A-212.)

(b) Taki owns 100% of a corporation. Taki wants her child, Mieko, and corporate manager, Sage, to be co-owners with her in the corporation. Taki makes a gift of 50% of the voting stock to Mieko and sells 33 1/3% to Sage. Although a controlling interest in the corporation has been transferred to and acquired by Mieko, it is not taxed because a gift is an exempt transfer and not considered for purposes of determining whether a controlling interest has transferred. The sale of the 33 1/3% interest to Sage is not a controlling interest, and is not taxed.

(c) Richard owns 75% of the voting stock of a corporation that owns real estate located in this state. Richard pledges all of his corporate stock to secure a loan with a bank. When Richard defaults on the loan and the bank forecloses on Richard's stock in the corporation, the transfer and acquisition of the controlling interest of the entity is not a taxable transaction because foreclosures of mortgages and other security devices are exempt transfers. (See WAC 458-61A-208.)

AMENDATORY SECTION (Amending WSR 13-21-016, filed 10/4/13, effective 11/4/13)

WAC 458-61A-102 Definitions. For the purposes of chapter 458-61A WAC, the following definitions apply unless the context requires otherwise:

(1) **"Affidavit"** means the real estate excise tax affidavit provided by the department for use by taxpayers in reporting transfers of real property. Both the seller/grantor and the buyer/grantee, or their agents, sign the affidavit under penalty of perjury. The term also includes the form used to report to the department transfers and acquisitions of a controlling interest in an entity owning real property in this state under WAC 458-61A-101.

(2) **"Agricultural land"** means farm and agricultural land and farm and agricultural conservation land, as those terms are defined in RCW 84.34.020, including any structures on such land.

(3) **"Consideration"** means money or anything of value, either tangible or intangible, paid or delivered, or contracted to be paid or delivered, including performance of services, in return for the transfer of real property. The term includes the amount of any lien, mortgage, contract indebtedness, or other encumbrance, given to secure the purchase price, or any part thereof, or remaining unpaid on the property at the time of sale. For example, Lee purchases a home for \$250,000. He puts down \$50,000, and finances the balance of \$200,000. The full consideration paid for the house is \$250,000.

(a) "Consideration" includes the issue of an ownership interest in any entity in exchange for a transfer of real property to the entity. For example, if Julie transfers title to 20 acres of commercial property to Smith Development, LLC in exchange for a 50% ownership interest in the company, that constitutes consideration for the transfer. In the case of partnerships, consideration includes the increase in the capital

account of the partner made as a result of the partner's transfer of real property to the partnership, unless the transfer is otherwise specifically exempt under WAC 458-61A-211 or 458-61A-212.

(b) "Consideration" includes the assumption of an underlying debt on the property by the buyer at the time of transfer. For example, Ben buys a residence, valued at \$300,000, from Liza. Liza was purchasing the property on a real estate contract that has an outstanding balance of \$175,000. Ben gives Liza \$125,000 in cash and he assumes the obligation on the real estate contract, which Liza assigns to him. Real estate excise tax is due on \$300,000, which is the total consideration for the sale.

(c) "Consideration" does not include the amount of any outstanding lien or encumbrance in favor of the United States, the state, or a municipal corporation for taxes, special benefits, or improvements. For example, Mel buys residential property for \$300,000. The title is encumbered by a lien for unpaid property taxes in the amount of \$12,000, and a lien for municipal sidewalk improvements in the amount of \$6,000. Although Mel will become liable for those liens in order to take title to the property, they are not considered part of the purchase price for the purpose of calculating real estate excise tax. The real estate excise tax is due only on the purchase price of \$300,000.

~~((3))~~ (4) **"Consumer price index for shelter"** means the most current seasonally adjusted index for the shelter expenditure category of the consumer price index for all urban consumers (CPI-U) as published by July 31st by the Bureau of Labor Statistics of the United States Department of Labor.

(5) **"Controlling interest"** means:

(a) In the case of a profit corporation, either fifty percent or more of the total combined voting power of all classes of stock of the corporation entitled to vote, or fifty percent of the capital, profits, or beneficial interest in the voting stock of the corporation; and

(b) In the case of any other corporation, or a partnership, association, trust, or other entity, fifty percent or more of the capital, profits, or beneficial interest in the corporation, partnership, association, trust, or other entity.

~~((4))~~ (6) **"County"** means the county treasurer or its agent.

~~((5))~~ (7) **"Date of sale"** means the date (normally shown on the instrument of conveyance or sale) that ownership of or title to real property, or control of the controlling interest in an entity that has a beneficial interest in real property, is delivered to the buyer/transferee in exchange for valuable consideration. In the case of a lease with option to purchase, the date of sale is the date when the purchase option is exercised and the property is transferred. "Date of sale," "date of transfer," "conveyance date," and "transaction date" all have the same meaning and may be used interchangeably in this chapter. The real estate excise tax is due on the date of sale.

~~((6))~~ (8) **"Department"** means the department of revenue.

~~((7))~~ (9) **"Domestic partner"** has the same meaning as defined in chapter 26.60 RCW.

~~((8))~~ (10) **"Floating home"** means a building on a float used in whole or in part for human habitation as a single-family dwelling, which is not designed for self-propulsion by mechanical means or for propulsion by means of wind, and which is on the property tax rolls of the county in which it is located.

~~((9))~~ (11) **"Governmental entity"** means:

- (a) The United States;
- (b) The state of Washington ("state"), including its departments and institutions, as distinct from its corporate agencies or instrumentalities; and
- (c) Any municipal corporation or political subdivision of the state of Washington.

~~((10))~~ (12) **"Growth of the consumer price index for shelter"** means the percentage increase in the consumer price index for shelter as measured from data published by the Bureau of Labor Statistics of the United States Department of Labor by July 31st for the most recent three-year period for the selling price threshold adjustment in 2022, and the most recent four-year period for subsequent selling price threshold adjustments.

(13) **"Mining property"** is property containing or believed to contain metallic or nonmetallic minerals, and sold or leased under terms that require the buyer or lessee to conduct exploration or mining work thereon, and for no other purpose.

~~((11))~~ (14) **"Mobile home"** means a mobile home as defined by RCW 46.04.302.

~~((12))~~ (15) **"Mortgage"** has its ordinary meaning, and includes a "deed of trust" for the purposes of this chapter, unless the context clearly indicates otherwise. The term "underlying debt" may also be used to refer to a mortgage or other security interest.

~~((13))~~ (16) **"Municipal corporation or political subdivision of the state of Washington"** means any county, city, town, school district, fire protection district, or other authority identified as a municipal corporation or political subdivision of the state of Washington by statute and that qualifies for the property tax exemption provided by Article VII of the Washington state Constitution.

~~((14))~~ (17) **"Park model trailer"** means a park model trailer as defined in RCW 46.04.622.

~~((15))~~ (18) **"Real estate" or "real property"** means any interest, estate, or beneficial interest in land or anything affixed to land, including the ownership interest or beneficial interest in any entity that owns land, or anything affixed to land, including standing timber and crops. The term includes condominiums and individual apartments for which the buyer receives a warranty deed. The term includes used mobile homes, used park model trailers, used floating homes, and improvements constructed upon leased land. The term also includes any part of an irrigation system that is underground or affixed to the land. The term does not include irrigation equipment that is above the ground or that is not affixed to land. See RCW 82.12.020 for the tax treatment of sales of irrigation equipment that is not included in the definition of "real estate."

~~((16))~~ (19) **"Real estate contract" or "contract"** means any written agreement for the sale of real property in which legal title to the property is retained by the seller as

security for the payment of the purchase price. The term does not include earnest money agreements or options to purchase real property.

~~((17))~~ (20) **"Sale"** means:

(a) Any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, including standing timber, or any estate or interest therein for a valuable consideration, and any contract for such a conveyance, grant, assignment, quitclaim, or transfer, and any lease with an option to purchase real property, including standing timber, or any estate or interest therein or other contract under which possession of the property is given to the purchaser, or any other person at the purchaser's direction, and title to the property is retained by the vendor as security for the payment of the purchase price. The term includes the grant, relinquishment, or assignment of a life estate in property. The term also includes the grant, assignment, quitclaim, sale, or transfer of improvements constructed upon leased land.

(b) The term "sale" also includes the transfer or acquisition within any ~~((twelve-month))~~ thirty-six-month period of a controlling interest in any entity with an interest in real property located in this state for a valuable consideration. For the purposes of this chapter, all acquisitions of persons acting in concert are aggregated for the purpose of determining whether a transfer or acquisition of a controlling interest has taken place. For purposes of establishing the applicable ~~((twelve-month))~~ thirty-six-month period for a transfer or acquisition pursuant to the exercise of an option, see WAC 458-61A-101.

(c) The term "sale" also applies to successive sales of the same property. An owner of real property is subject to payment of the real estate excise tax upon the entry of each successive contract for the sale of the same parcel of property. For example, Bob owns a house that he sells to Sam on a real estate contract. Real estate excise tax is paid on the transfer from Bob to Sam. Sam makes several payments, until he becomes unemployed. Since Sam can no longer make payments on the property, he conveys it back to Bob. Bob then makes a subsequent sale of the house to Sally. Real estate excise tax is due on the transfer from Bob to Sally. See WAC 458-61A-209 for the tax implications on the conveyance from Sam back to Bob.

(d) The term "sale" does not include:

(i) Those real property transfers that are excluded from the definition of "sale" and exempted from the real estate excise tax under RCW 82.45.010(3) and this chapter, including transfers without valuable consideration.

(ii) The transfer of lots or graves in an established cemetery. An established cemetery is one that meets the requirements for ad valorem property tax exemption under chapter 84.36 RCW.

(iii) The transfer of an interest in real property merely to secure a debt or the assignment of a security interest, release of a security interest, satisfaction of a mortgage, or reconveyance under the terms of a mortgage or deed of trust.

(iv) A deed given to a purchaser under a real estate contract upon fulfillment of the terms of the contract provided that the proper tax was paid on the original transaction. The fulfillment deed must be stamped by the county treasurer as required by WAC 458-61A-301, and the stamp must show

the affidavit number of the sale for which the deed is fulfilling.

(v) A qualified sale of a manufactured/mobile home community, as defined in RCW 59.20.030(~~, that takes place on or after June 12, 2008, but before December 31, 2018~~).

(e) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a transfer may or may not be taxable. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(i) John paid off his home mortgage and wants to get a loan to make improvements and buy a new car. John obtains an equity loan, secured by his home as collateral. This transaction is not subject to the real estate excise tax.

(ii) Bob purchased real property from Sam pursuant to a real estate contract. Real estate excise tax was paid on the purchase price at the time of the sale. Bob has now paid off the property, and Sam is issuing a fulfillment deed to Bob indicating that the real estate contract has been satisfied. The fulfillment deed from Sam to Bob is not subject to the real estate excise tax.

(iii) Diane has made the final payment on her mortgage, and the bank issues a full reconveyance of her property, indicating that the mortgage is paid in full. The reconveyance is not subject to the real estate excise tax.

(iv) Bill is refinancing his mortgage for a lower interest rate. There is a balloon payment on the new loan that will require that he refinance again in five years. Neither transaction is subject to the real estate excise tax.

~~((18))~~ (21) **"Seller"** means any individual, receiver, assignee, trustee for a deed of trust, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club, company, joint stock company, limited liability company, business trust, municipal corporation, quasi municipal corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, but it does not include the United States or the state of Washington. The term "grantor" is used interchangeably with the term "seller" in this chapter and has the same meaning for purposes of the real estate excise tax.

~~((19))~~ (22) **"Selling price"** means the true and fair value of the property conveyed. There is a rebuttable presumption that the true and fair value is equal to the total consideration paid or contracted to be paid to the seller or to another person for the seller's benefit.

(a) When the price paid does not accurately reflect the true and fair value of the property, one of the following methods may be used to determine the true and fair value:

(i) A fair market appraisal of the property; or

(ii) An allocation of assets by the seller and the buyer made under section 1060 of the Internal Revenue Code of 1986, as amended.

(b) When the true and fair value of the property at the time of sale cannot reasonably be determined by either of the methods in (a) of this subsection, the market value assessment for the property maintained in the county property tax rolls at the time of sale will be used as the selling price. RCW 82.45.030.

(c) When the sale is of a partial interest in real property, the principal balance of any debt remaining unpaid at the time of sale will be multiplied by the percentage of ownership transferred, and that amount added to any other consideration to determine the selling price.

(d) In the case of a lease with option to purchase, the selling price is the true and fair value of the property conveyed at the time the option is exercised.

~~((20))~~ (23) **"Timberland"** means land classified under chapter 84.34 RCW or designated under chapter 84.33 RCW, including any structures and standing timber on such land, and standing timber sold apart from the land upon which it sits.

(24) **"United States"** means:

(a) The federal government, including the executive, legislative, and judicial branches, its departments, and federal entities exempt from state or local taxation by reason of specific federal statutory exemption.

The mere fact that an entity is a federal entity, such as an instrumentality of the federal government or a federal corporation, does not mean that the entity is immune from tax. The taxability of a federal entity depends on the benefits and immunities conferred upon it by Congress. Thus, to determine the current taxable status of federal entities, the relevant portion of the federal law should be examined.

(b) "United States" does not include entities associated with but not a part of the United States, such as the National Guard (an instrumentality of the state of Washington). Nor does it include entities contracting with the United States government to administer its programs.

AMENDATORY SECTION (Amending WSR 11-16-106, filed 8/3/11, effective 9/3/11)

WAC 458-61A-107 Option to purchase. (1) **Introduction.** The real estate excise tax applies to a conveyance of real property upon the exercise of an option to purchase.

(2) **Taxability of sales of options.** The real estate excise tax does not apply to the grant or sale of an option and the real estate excise tax affidavit is not required for that transaction. However, the sale of an option is subject to business and occupation tax under the service and other category and should be reported on the combined excise tax return. RCW 82.04.290.

(3) ~~((Effective May 1, 2010,))~~ For the sole purpose of determining whether a transfer or acquisition of a controlling interest pursuant to the exercise of an option occurred within ~~((a twelve-month))~~ the period provided in RCW 82.45.010 and WAC 458-61A-101, the date on which the option agreement was executed is deemed to be the date of the transfer or acquisition. For any other purpose; however, the date on which the option is exercised is the date of the transfer or acquisition. RCW 82.45.010 (2)(b). See WAC 458-61A-101.

(4) **Examples.**

(a) Joe acquires an option at a cost of \$100,000. The option, if exercised, allows Joe to purchase ten parcels of land for \$700,000. As individual parcels, these lots of land are uneconomical to develop. Joe "packages" the land, making it economically feasible to develop by either obtaining sufficient acreage or required studies. Buildup, a real estate devel-

opment and construction company, purchases Joe's option on the property for \$2.3 million and subsequently exercises the option, paying \$700,000 for the land. The real estate excise tax does not apply to the sale of the option, however the \$2.3 million received for the option is subject to the business and occupation tax under the service and other category. The measure of the real estate excise tax is the \$700,000 purchase price paid on the transfer of the land.

(b) Consider the same initial facts as in the example in (a) of this subsection, but instead, Joe exercises the option, and subsequently sells the land to Buildup. The real estate excise tax applies to both the transfer to Joe and the subsequent transfer from Joe to Buildup.

WSR 19-23-072
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed November 18, 2019, 2:10 p.m.]

Title of Rule and Other Identifying Information: WAC 458-18-010 Deferral of special assessments and/or property taxes—Definitions, 458-18-020 Deferral of special assessments and/or property taxes—Qualifications for deferral, and 458-18-100 Deferral of special assessments and/or property taxes—When payable—Collection—Partial payment.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 458-18-010, 458-18-020, and 458-18-100 to incorporate 2019 legislation, ESSB 5160, sections (4) - (8). This legislation amended the qualification requirements for the property tax deferral program under chapter 84.38 RCW.

Reasons Supporting Proposal: These rules are being updated to incorporate changes resulting from 2019 legislation, ESSB 5160, sections (4) - (8). Providing updated deferral program qualification information to applicants will assist the applicant in understanding program requirements and will also assist county assessors when processing deferral applications.

Statutory Authority for Adoption: RCW 84.38.180.

Statute Being Implemented: RCW 84.38.020, 84.38.030, 84.38.070, 84.38.130, 84.38.150.

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: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1603.

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 these rule updates because the department is incorporating changes resulting from 2019 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 47467, Olympia, WA 98504-7467, phone 360-534-1589, fax 360-534-1606, email LeslieMu@dor.wa.gov, AND RECEIVED BY January 21, 2020.

November 18, 2019

Atif Aziz

Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-08-031, filed 3/27/13, effective 4/27/13)

WAC 458-18-010 Deferral of special assessments and/or property taxes—Definitions. (1) Introduction. This ~~((section is intended to))~~ rule provides definitions of the terms ~~((most frequently))~~ used to administer the deferral program in chapter 84.38 RCW and this section through WAC 458-18-100 for special assessments and/or property taxes on residential housing ~~((created by chapter 84.38 RCW. Unless a different meaning is plainly required by the context, the words and phrases used in this chapter have the following meanings:~~

~~((1))~~ (1).

(2) **"Boarding house"** means a residence in which lodging and meals are provided. Each resident of a boarding house is charged a lump sum to cover the costs of lodging and meals with no separate accounting for the fair selling price of the meals.

~~((2))~~ (3) **"Claimant"** means a person who either elects under chapter 84.38 RCW or is required under RCW 84.64.050, to defer payment of special assessments and/or real property taxes accrued on ~~((his or her))~~ their residence by filing a declaration to defer as allowed under chapter 84.38 RCW. ~~((If more than one individual in a household wishes to defer special assessments and/or taxes, only one may file a declaration to defer; in other words,))~~ Only one ~~((claimant))~~ individual per household ~~((is allowed))~~ may file a declaration to defer.

~~((3))~~ (4) **"Cooperative housing"** means any existing structure, including surrounding land and improvements,

~~((that))~~ which contains one or more dwelling units and is owned by:

(a) An association with resident shareholders who are granted renewable leasehold interests in dwelling units in the building. Unlike owners of a condominium, the resident shareholders who hold a renewable leasehold interest do not own their dwelling units; or

(b) An association organized under the Cooperative Association Act (chapter 23.86 RCW).

~~((4))~~ (5) "Department" means the state department of revenue.

~~((5))~~ (6) "Devisee" has the same meaning as provided in RCW 21.35.005: Any person designated in a will to receive a disposition of real or personal property.

(7) "Domestic partner" means a person registered under chapter 26.60 RCW or a partner in a legal union of two persons, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

~~((6))~~ (8) "Domestic partnership" means a partnership registered under chapter 26.60 RCW or a legal union of two persons, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

~~((7))~~ (9) "Equity value" means the amount by which the true and fair value of a residence exceeds the total amount of all liens, obligations, and encumbrances against the property, excluding ~~((the))~~ deferral liens. As used in this context, the "true and fair value" of a residence is the value shown on the county tax rolls maintained by the assessor for the assessment year in which the deferral claim is made.

~~((8))~~ (10) "Fire and casualty insurance" means a policy with an insurer that is authorized by the state insurance commission to insure property in this state.

~~((9))~~ (11) "Heir" has the same meaning as provided in RCW 21.35.005: Any person, including the surviving spouse, who is entitled under the statutes of intestate succession to the property of a decedent.

(12) "Income threshold" means:

(a) For taxes levied for collection in calendar years prior to 2020, a combined disposable income equal to forty-five thousand dollars; and

(b) For taxes levied for collection in calendar year 2020 and thereafter, a combined disposable income equal to the greater of the income threshold for the previous year, or seventy-five percent of the county median household income, adjusted every five years beginning August 1, 2019, and by March 1st every fifth year thereafter, as provided in RCW 84.36.385.

(i) Beginning with the adjustment made by March 1, 2024, and every second adjustment thereafter, if the income threshold in a county is not adjusted based on percentage of county median income, then the income threshold must be adjusted based on the growth of the consumer price index for all urban consumers (CPI-U) for the prior twelve-month period as published by the United States Bureau of Labor Statistics.

(ii) In no case may the adjustment be greater than one percent and if the income threshold adjustment is negative, the income threshold for the prior year continues to apply.

The adjusted threshold must be rounded to the nearest one dollar.

(13) "Irrevocable trust" means a trust that may not be revoked after its creation by the trustor.

~~((10))~~ (14) "Lease for life" means a lease that terminates upon the death of the lessee.

~~((11))~~ (15) "Lien" means any interest in property given to secure payment of a debt or performance of an obligation, including a deed of trust. A lien includes the total amount of special assessments and/or property taxes deferred and the interest ~~((thereon))~~. It also may include any other outstanding balances owed to local governments for special assessments.

~~((12))~~ (16) "Life estate" means an estate that consists of total rights to use, occupy, and control real property but is limited to the lifetime of a designated party; this party is often called a "life tenant."

~~((13))~~ (17) "Local government" means any city, town, county, water-sewer district, public utility district, port district, irrigation district, flood control district, or any other municipal corporation, quasi municipal corporation, or other political subdivision authorized to levy special assessments.

~~((14))~~ (18) "Perjury" means the willful assertion as to a matter of fact, opinion, belief, or knowledge made by a claimant upon the declaration to defer that the claimant knows to be false.

~~((15))~~ (19) "Real property taxes" means ad valorem property taxes levied on a residence in this state. The term includes foreclosure costs, interest, and penalties accrued as of the date the declaration to defer is filed.

~~((16))~~ (20) "Residence" ((has the same meaning given in RCW 84.36.383; it means)) is defined as:

(a) A single-family dwelling unit whether the unit is separate or part of a multiunit dwelling and includes up to one acre of the parcel of land on which the dwelling stands~~((and it)).~~ Residence also includes any additional property up to a total of five acres that comprises the residential parcel if local land use regulations require this larger parcel size~~((-~~

~~((7))~~; or

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

(21) "Revocable trust" means an agreement that entitles the trustor to have the full right to use the real property and to revoke the trust and retake complete ownership of the property at any time during ~~((his or her))~~ their lifetime. The trustee of a revocable trust holds only bare legal title to the real property. Full equitable title to the property remains with the trustor; the original property owner.

~~((18))~~ (22) "Rooming house" means a residence where persons may rent rooms.

~~((19))~~ (23) "Special assessment" means the charge or obligation imposed by a local government upon real property specially benefited by improvements.

AMENDATORY SECTION (Amending WSR 16-06-043, filed 2/24/16, effective 3/26/16)

WAC 458-18-020 Deferral of special assessments and/or property taxes—Qualifications for deferral. (1) Introduction. This rule describes the qualifications a person (claimant) must meet to qualify for a deferral of special assessments and/or real property taxes on residential housing.

(2) Qualifications for deferral. A ~~((person))~~ claimant may defer payment of special assessments and/or real property taxes on up to eighty percent of the amount of ~~((his))~~ their equity value in ~~((said property))~~ their residence if the following conditions are met:

~~((+))~~ (a) Ownership. The claimant must have owned, at the time of filing, the residence on which the special assessment and/or real property taxes have been imposed. For purposes of this ~~((subsection))~~ rule, a residence owned by a marital community, a state registered domestic partnership, or cotenants ~~((shall))~~ will be deemed to be owned by each spouse, each domestic partner, and each cotenant. A claimant who has only a share ownership in cooperative housing, a life estate, a lease for life, or a revocable trust does not satisfy the ownership requirement.

~~((2))~~ (b) Fire and casualty insurance. If the amount deferred ~~((is to))~~ will exceed one hundred percent of the claimant's equity value in the land or lot only, the claimant must have and keep in force fire and casualty insurance in sufficient amount to protect the interest of the state of Washington and ~~((shall))~~ designate the state as a loss payee ~~((upon said))~~ on the policy. ~~((In no case shall))~~ The deferred amount may not exceed the amount of the insured value of the improvement plus the land value.

~~((3))~~ (c) Installment method. For special assessment deferrals, the claimant must have opted for payment of ~~((such))~~ the special assessments on the installment method if ~~((such))~~ that method was available.

~~((4))~~ The claimant must meet all requirements for an exemption for the residence under RCW 84.36.381, other than the income requirements, and to the extent eligible, must have first applied for the exemptions under RCW 84.36.381 through 84.36.389 prior to filing a declaration to defer.

~~((5))~~ The claimant must have a combined disposable income, as defined in RCW 84.36.383, at or below the statutory limit amount provided in RCW 84.38.030. (d) Income. The claimant must have a combined disposable income, as defined in RCW 84.36.383, equal to or less than the income threshold defined in RCW 84.38.020.

(e) Age. The claimant must be sixty years of age or older on December 31st of the year in which the deferral claim is filed, or must have been at the time of filing, retired from regular gainful employment by reason of disability as defined in RCW 84.36.383. However, any surviving spouse, surviving domestic partner, heir, or devisee of a person who was receiving a deferral at the time of the person's death qualifies if the surviving spouse, surviving domestic partner, heir, or devisee is fifty-seven years of age or older and meets the requirements of the deferral.

(f) Other requirements. The claimant must meet all requirements for an exemption for a residence under RCW 84.36.381, other than the age and income requirements, and to the extent eligible, must have first applied for the exemp-

tions under RCW 84.36.381 through 84.36.389 prior to filing a declaration to defer.

AMENDATORY SECTION (Amending WSR 08-16-077, filed 7/31/08, effective 8/31/08)

WAC 458-18-100 Deferral of special assessments and/or property taxes—When payable—Collection—Partial payment. (1) ((Any)) Introduction. This rule explains the circumstances under which amounts deferred under chapter 84.38 RCW become payable.

(2) Deferral. Special assessments and/or real property taxes deferred ~~((shall))~~ become payable together with interest upon the following:

(a) ~~((Upon the))~~ Conveyance of the property ~~((which))~~ that has a deferred special assessment and/or real property tax lien ~~((upon))~~ against it.

(b) ~~((Upon the))~~ Death of the claimant except when the surviving spouse ~~((or))~~ surviving domestic partner, heir, or devisee is qualified and elects to incur the lien and continue the deferment by:

(i) Filing an original "declaration to defer" ~~((within ninety days of the claimant's death))~~; and

(ii) Continuing to meet the qualifications of WAC 458-18-010 through 458-18-100.

~~((When))~~ If a surviving spouse ~~((or))~~ surviving domestic partner, heir, or devisee elect ~~((s))~~ to continue the deferment, ~~((the spouse or domestic partner then becomes))~~ they become the claimant and ~~((is))~~ will be fully subject to the conditions of WAC 458-18-010 through 458-18-100.

(c) ~~((Upon))~~ Condemnation of the property with a deferred special assessment and/or real property tax lien ~~((upon))~~ against it by a public or private body exercising the power of eminent domain ~~((;))~~ provided ~~((; That))~~:

(i) If the assessed value of the property not condemned exceeds the amount of the liens, including interest, the claimant may elect to have the liens set over to the property retained ~~((; Provided further, That))~~; and

(ii) The amount of the lien allowed to be set over ~~((shall))~~ may not exceed eighty percent of the claimant's equity in the retained property.

(d) ~~((At such time as the))~~ Claimant ~~((ceases))~~ ceasing to reside permanently in the residence ~~((upon))~~ on which the deferral ~~((has been))~~ was granted. If the cessation occurs between filing the declaration and ~~((the date the taxes are payable))~~ December 15th of that year, the deferral ~~((shall))~~ will not be allowed. This disallowance does not apply if the claimant dies, leaving a spouse, domestic partner, heir, or devisee surviving, who is eligible for this deferral.

(e) ~~((Upon the))~~ Failure of the claimant to have or keep in force fire and casualty insurance in sufficient amount to protect the interest of the state of Washington, or failure to keep the state listed as a loss payee ~~((upon said))~~ on the policy. Subsection ~~((+))~~ (2)(b) of this ~~((section shall))~~ rule takes precedence over subsection ~~((+))~~ (2)(d) of this ~~((section))~~ rule.

~~((2))~~ (3) Other deferrals. Once a deferral has been granted, the ~~((various))~~ conditions ~~((contained within))~~ in WAC 458-18-010 through 458-18-100 may prohibit the

claimant from qualifying for further deferrals (~~but any obligations resulting~~).

(4) Payment of deferral. Amounts owing from deferrals previously granted will become due and payable (~~only upon occurrence of~~) when any of the conditions (~~set forth~~) in subsection ~~((1))~~ (2) of this ~~(section)~~ rule occurs.

~~((3) Upon occurrence of)~~ When any of the conditions requiring the payment of ~~(any)~~ deferred special assessments and/or real property taxes occur, the county treasurer (~~shall proceed to~~) will collect (~~the same in the manner~~) these amounts as provided (~~for~~) in chapter 84.56 RCW. For purposes of ~~(collection of)~~ collecting the deferred taxes and interest, the provisions of chapters 84.56, 84.60, and 84.64 RCW (~~shall be applicable. When these moneys are~~) apply. Once collected, ~~(they shall be)~~ these amounts are credited to a special account in the county treasury and ~~(shall then)~~ will be remitted to the state treasurer within thirty days from collection with remittance advice to the department (~~of revenue~~). The state treasurer (~~shall~~) will deposit the ~~(moneys in)~~ deferred taxes and interest into the state general fund.

~~((4) Any person may at any time pay a part or)~~ Payment of all or part of the deferred assessments and/or taxes, including the interest, ~~(but such payment shall)~~ does not affect the deferred tax status of the property. ~~(Any)~~ Payments made ~~(shall)~~ will be credited to the oldest deferred amount and ~~(shall)~~ will be prorated between interest and the deferred assessments and/or taxes.

Refer to WSR 19-23-071 filed on November 18, 2019, for more information regarding WAC 230-11-013 Conducting a raffle by a credit union and 230-03-146 Applying for a raffle license by a credit union.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: RCW 9.46.070.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Considine, Attorney, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3469; Implementation: David Trujillo, Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3512; and Enforcement: Tina Griffin, Assistant Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3546.

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 proposed rule change clarifies the base license fee, the gross gambling receipt rate, and the maximum annual license fee for raffle - credit union licenses by differentiating it from other raffle licenses without changing the effect of the rule.

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 Ashlie Laydon, Washington State Gambling Commission, P.O. Box 42400, Olympia, WA 98504-2400, phone 360-486-3473, fax 360-486-3624, email rules.coordinator@wsgc.wa.gov, AND RECEIVED BY January 22, 2020.

November 18, 2019

Ashlie Laydon

Rules Coordinator

WSR 19-23-074

EXPEDITED RULES

GAMBLING COMMISSION

[Filed November 18, 2019, 2:44 p.m.]

Title of Rule and Other Identifying Information: WAC 230-05-160 Charitable or nonprofit organization fees.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments were made to clarify the base license fee, the gross gambling receipt rate, and the maximum annual license fee for raffle - credit union licenses and to differentiate raffle - credit union licenses from other raffle licenses.

Reasons Supporting Proposal: The gambling commission recently adopted rules to allow credit unions to obtain a license to conduct raffles. The proposed rule change clarifies the base license fee, the gross gambling receipt rate, and the maximum annual license fee for raffle - credit union licenses.

AMENDATORY SECTION (Amending WSR 18-05-026, filed 2/9/18, effective 5/1/18)

WAC 230-05-160 Charitable or nonprofit organization fees. Bona fide charitable and nonprofit organizations must pay the following fees:

(1) Annual licenses:

License Type	Base License Fee	Gross Gambling Receipts Rate	Maximum Annual License Fee
Amusement games	\$65 plus \$65 per approved location	0.730%	\$1,000
Bingo	\$65	0.460%	\$11,000

License Type	Base License Fee	Gross Gambling Receipts Rate	Maximum Annual License Fee
Card games - House-banked	\$10,000	1.462%	\$40,000
Card games - Nonhouse-banked	\$65	0.430%	\$1,000
Combination	\$125	-	-
Fund-raising equipment distributor	\$270	1.430%	\$700
Punch board/pull-tabs	\$650	1.430%	\$10,000
Raffles	\$65	3.380%	\$2,000
<u>Raffle - Credit Union</u>	<u>\$65</u>	<u>3.380%</u>	<u>\$2,000</u>
Enhanced raffles	\$5,000	0.430%	\$32,000

(2) Event licenses or permits:

License Type	Base License Fee	Gross Gambling Receipts Rate	Maximum Annual License Fee
Fund-raising event	\$180	3.130%	\$1,000
Recreational gaming activity	\$65	-	-
Special property bingo/change of bingo premises	\$30	-	-

(3) Change fees:

Change of:	Fee
Name	\$100
Location	\$100
Fund-raising event location, date, or time	\$50

(4) Other fees:

Transaction	Fee
Add a new amusement game location	\$65
Duplicate license	\$50
Review, inspection, and/or evaluation of gambling equipment, supplies, services, games, or schemes	Deposit and cost reimbursement

presenting a pharmacy services plan for approval by the pharmacy quality assurance commission.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The pharmacy quality assurance commission (commission) is proposing to repeal the rule because the circumstances have changed and the rule is no longer needed. The rule is no longer necessary due to the adoption of rule amendments to WAC 246-901-130 Pharmacist to pharmacy technician ratio, filed under WSR 19-17-034 on August 14, 2019.

Reasons Supporting Proposal: The commission amended WAC 246-901-130, filed under WSR 19-17-034 on August 14, 2019. The amended rule eliminated the 3:1 standard ratio and placed the duty on the responsible pharmacy manager to set the staffing levels and ensure satisfactory supervision of staff technicians. The proposal to repeal WAC 246-901-140, which set the process for seeking an exception to the 3:1 ratio, is appropriate and supported by the amended rule.

Statutory Authority for Adoption: RCW 18.64A.030, 18.64.005.

Statute Being Implemented: RCW 18.64A.030.

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

Name of Proponent: Pharmacy quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting: Doreen Beebe, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4834; Implementation and Enforcement: Tracy West, JD, Deputy Director, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4988.

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

WSR 19-23-078
EXPEDITED RULES
DEPARTMENT OF HEALTH
 (Pharmacy Quality Assurance Commission)
 [Filed November 19, 2019, 9:23 a.m.]

Title of Rule and Other Identifying Information: WAC 246-901-140 Pharmacy services plan, repealing the rule that establishes the process to seek an exception to the standard pharmacist to pharmacy technician ratio by developing and

The rule is no longer necessary because of changed circumstances.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The need for a rule to define the process for submitting a service plan is no longer needed with the amendment of WAC 246-901-130, which eliminated the standard pharmacist to technician ratio.

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 Doreen Beebe, Program Manager, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4834, fax 360-236-2260, email <https://fortress.wa.gov/doh/policyreview>, AND RECEIVED BY January 21, 2020.

November 19, 2019

Tim Lynch, PharmD, MS, Chair
Pharmacy Quality Assurance Commission

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-901-140 Pharmacy services plan.

WSR 19-23-086

EXPEDITED RULES

GAMBLING COMMISSION

[Filed November 19, 2019, 1:31 p.m.]

Title of Rule and Other Identifying Information: WAC 230-01-001 Time and place of public meetings, 230-01-010 Field offices and operations, and 230-01-011 Deadlines for submitting items to be included in the commission meeting agenda.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 230-01-001 Time and place of public meetings will be repealed. The gambling commission will file notice of public meetings annually on or before January with the office of the code reviser for publication in the Washington State Register as outlined in RCW 42.30.075. WAC 230-01-010 Field offices and operations, has been amended to remove reference to our Renton office, which is no longer in existence. WAC 230-01-011 Deadlines for submitting items to be included in the commission meeting agenda, has been amended to remove reference to WAC 230-01-010.

Reasons Supporting Proposal: The repeal of WAC 230-01-001 Time and place of public meetings, will allow the

commission more flexibility when scheduling their public meetings. Amending WAC 230-01-010 Field offices and operations, will provide accurate information to the public. Amending WAC 230-01-011 Deadlines for submitting items to be included in the commission meeting agenda, is necessary to remove the reference to WAC 230-01-001 [230-01-010], which is being repealed.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: RCW 9.46.070.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Considine, Attorney, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3469; Implementation: David Trujillo, Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3512; and Enforcement: Tina Griffin, Assistant Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3546.

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.

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

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

The rule is no longer necessary because of changed circumstances.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The proposed rule changes relate only to internal governmental operations that are not subject to violation by a person and make changes to address locations and phone numbers.

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 Ashlie Laydon, Washington State Gambling Commission, P.O. Box 42400, Olympia, WA 98504-2400, phone 360-486-3473, fax 360-486-3624, email rules.coordinator@wsgc.wa.gov, AND RECEIVED BY January 22, 2020.

November 19, 2019

Ashlie Laydon

Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-15-062, filed 7/16/07, effective 1/1/08)

WAC 230-01-005 Address and hours of administrative offices. (1) Our administrative office is located in Lacey, Washington.

Mailing Address	((Location)) Physical Address
Washington State Gambling Commission P.O. Box 42400 Olympia, WA 98504-2400	Washington State Gambling Commission 4565 7th Avenue S.E. Lacey, WA 98503

(2) Normal business hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays.

(3) ~~((Services available are:~~

~~(a) Administration;~~

~~(b) Information;~~

~~(c) Licensing;~~

~~(d) Investigation;~~

~~(e) Activity report processing; and~~

~~(f) Public records.~~

(4) ~~Address))~~ Send applications for licenses, required license materials, or requests for notices, information, or other inquiries to our mailing address. Send overnight mail and/or packages to our physical address.

AMENDATORY SECTION (Amending WSR 16-03-068, filed 1/19/16, effective 2/19/16)

WAC 230-01-010 Field offices and operations. Direct regulatory and operational questions to our field offices, located at:

City	Telephone Number
Eastern Region Office ((North)) 901 <u>North</u> Monroe ((Room)), Suite 240 Spokane, WA 99201	509-325-7900
((451 Southwest 10th Street Plaza 451 Building Suite 218 Renton, WA 98057	425-277-7014))

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

WAC 230-01-011 Deadlines for submitting items to be included in the commission meeting agenda. (1) To ensure that the public and the commissioners have sufficient notice of agenda items, we require that items for the commission's monthly meeting agenda be submitted in the format we require and delivered to our administrative office at least fourteen days before the regularly scheduled commission meeting.

(2) Any items submitted after the time frame set forth in subsection (1) of this section must be approved by the commissioners in order to be included on the commission meeting agenda.

(3) We publish the meeting agenda on our website ~~((and with the code reviser's office as explained in WAC 230-01-010))~~.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-01-001 Time and place of public meetings.

WSR 19-23-093

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed November 20, 2019, 8:39 a.m.]

Title of Rule and Other Identifying Information: WAC 458-16A-100 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Definitions, 458-16A-110 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Gross income, 458-16A-115 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Adjusted gross income, 458-16A-120 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Determining combined disposable income, 458-16A-130 Senior citizen, disabled person, and disabled veteran exemption—Qualifications for exemption, 458-16A-135 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Application procedures, and 458-16A-150 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Requirements for keeping the exemption.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 458-16A-100, 458-16A-110, 458-16A-115, 458-16A-120, 458-16A-130, 458-16A-135, and 458-16A-150 to incorporate 2019 legislation, ESSB 5160, sections (1), (2), and (3). This legislation amended the qualification requirements for the property tax exemption under chapter 84.36 RCW for senior citizens, disabled persons, and disabled veterans.

Reasons Supporting Proposal: These rules are being updated to incorporate changes resulting from 2019 legislation, ESSB 5160, sections (1), (2), and (3). Providing updated exemption qualification information to applicants will assist the applicant in understanding exemption program requirements and will also assist county assessors when processing exemption applications.

Statutory Authority for Adoption: RCW 84.36.865.

Statute Being Implemented: RCW 84.36.381, 84.36.383, 84.36.385.

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: John

Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1603.

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 these rule updates because the department is incorporating changes resulting from 2019 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 47467, Olympia, WA 98504-7467, phone 360-534-1589, fax 360-534-1606, email LeslieMu@dor.wa.gov, AND RECEIVED BY January 21, 2020.

November 20, 2019
Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-04-007, filed 1/25/18, effective 2/25/18)

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

(2) **Annuity.** "Annuity" means a series of long-term periodic payments, under a contract or agreement. It does not include payments for the care of dependent children. For purposes of this subsection, "long-term" means a period of more than one full year from the annuity starting date.

Annuity distributions must be included in "disposable income," as that term is defined in subsection ~~((12))~~ (13) of

this ~~((section,))~~ rule, regardless of whether ~~((or not they))~~ the distributions are taxable under federal law. A one-time, lump sum, total distribution is not an "annuity" for purposes of this ~~((section))~~ rule, and only the taxable portion that would be included in federal adjusted gross income should be included in disposable income.

(3) **Assessment year.** "Assessment year" means the year ~~((when))~~ the assessor lists and values the principal residence for property taxes. The assessment year is the calendar year prior to the year the taxes ~~((become))~~ are due and payable. ~~((It is always))~~ The assessment year is the year before the claimant receives ~~((a))~~ the reduction in ~~((his or her))~~ their property taxes because of the senior citizen, disabled person, and ~~((one hundred percent))~~ disabled veteran exemption.

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

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

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

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

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

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

(8) **County median household income.** "County median household income" means the median household income estimates for the state of Washington by county of the legal address of the principal place of residence, as published by the office of financial management.

~~(9)~~ **Department.** "Department" means the state department of revenue.

~~((9))~~ **(10) Depreciation.** "Depreciation" means the annual deduction allowed to recover the cost of business or investment property having a useful life of more than one year. In limited circumstances, this cost, or a part of this cost, may be taken as a section 179 expense on the federal income tax return in the year business property is purchased.

~~((10))~~ **(11) Disability.** "Disability" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months. ~~((RCW 84.36.383((7))); 42 U.S.C. Sec. 423 (d)(1)(A).)~~

~~((11))~~ **(12) Disabled veteran.** "Disabled veteran" means a veteran of the armed forces of the United States entitled to and receiving compensation from the United States Department of Veterans Affairs (VA) at:

(a) A combined service-connected evaluation rating of eighty percent or higher; or

(b) A total disability rating for a service-connected disability without regard to evaluation percent. ~~((RCW 84.36.381(3)-))~~

~~((12))~~ **(13) Disposable income.** "Disposable income" means the adjusted gross income as defined in the Federal Internal Revenue Code of 2001, and as amended after that date, plus all the other items described below to the extent they are not included in or have been deducted from adjusted gross income ~~((RCW 84.36.383-))~~:

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

(b) ~~((Losses-))~~ Amounts deducted for loss;

(c) ~~((Depreciation-))~~ Amounts deducted for depreciation;

(d) Pension and annuity receipts;

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

(f) Veterans benefits other than:

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

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

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

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

(h) Dividend receipts; and

(i) Interest received on state and municipal bonds.

~~((13))~~ **(14) Domestic partner.** "Domestic partner" means a person registered under chapter 26.60 RCW or a

partner in a legal union of two persons, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

~~((14))~~ **(15) Domestic partnership.** "Domestic partnership" means a partnership registered under chapter 26.60 RCW or a legal union of two persons, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

~~((15))~~ **(16) Excess levies.** "Excess levies" has the same meaning as provided in WAC 458-19-005 for "excess property tax levy."

~~((16))~~ **(17) Excluded military pay or benefits.** "Excluded military pay or benefits" means military pay or benefits excluded from a person's federal gross income, other than those amounts excluded from that person's federal gross income for attendant-care and medical-aid payments. Members of the armed forces receive many different types of pay and allowances. Some payments or allowances are included in their gross income for ~~((the))~~ federal income tax purposes while others are excluded ~~((from their gross income))~~. Excluded military pay or benefits include:

(a) Compensation for active service while in a combat zone or a qualified hazardous duty area;

(b) Death allowances for burial services, gratuity payment to a survivor, or travel of dependents to the burial site;

(c) Moving allowances;

(d) Travel allowances;

(e) Uniform allowances;

(f) Group term life insurance payments made by the military on behalf of the claimant, the claimant's spouse or domestic partner, or the cotenant; and

(g) Survivor and retirement protection plan premiums paid by the military on behalf of the claimant, the claimant's spouse or domestic partner, or the cotenant.

~~((17))~~ **(18) Family dwelling unit.** "Family dwelling unit" means the dwelling unit occupied by a single person, any number of related persons, or a group not exceeding a total of eight related and unrelated nontransient persons living as a single noncommercial housekeeping unit. The term does not include a boarding or rooming house.

~~((18))~~ **(19) Home health care.** "Home health care" means the treatment or care of either the claimant or the claimant's spouse or domestic partner received in the home. It must be similar to the type of care provided in the normal course of treatment or care in a nursing home, although the person providing the home health care services need not be specially licensed. The treatment and care must meet at least one of the following criteria. It must be for:

(a) Medical treatment or care received in the home;

(b) Physical therapy received in the home;

(c) Food, oxygen, lawful substances taken internally or applied externally, necessary medical supplies, or special needs furniture or equipment (such as wheel chairs, hospital beds, or therapy equipment), brought into the home as part of a necessary or appropriate in-home service that is being rendered (such as a meals on wheels type program); or

(d) Attendant care to assist the claimant, or the claimant's spouse or domestic partner, with household tasks, and such

personal care tasks as meal preparation, eating, dressing, personal hygiene, specialized body care, transfer, positioning, ambulation, bathing, toileting, self-medication a person provides for himself or herself, or such other tasks as may be necessary to maintain a person in ~~((his or her))~~ their own home, but ~~((shall))~~ does not include improvements or repair of the home itself.

~~((+9))~~ (20) Income threshold 1. "Income threshold 1" means:

(a) For taxes levied for collection in calendar years prior to 2020, a combined disposable income equal to thirty thousand dollars; and

(b) For taxes levied for collection in calendar year 2020 and thereafter, a combined disposable income equal to the greater of income threshold 1 for the previous year or forty-five percent of the county median household income, adjusted every five years beginning August 1, 2019, as provided in RCW 84.36.385(8).

(21) Income threshold 2. "Income threshold 2" means:

(a) For taxes levied for collection in calendar years prior to 2020, a combined disposable income equal to thirty-five thousand dollars; and

(b) For taxes levied for collection in calendar year 2020 and thereafter, a combined disposable income equal to the greater of income threshold 2 for the previous year or fifty-five percent of the county median household income, adjusted every five years beginning August 1, 2019, as provided in RCW 84.36.385(8).

(22) Income threshold 3. "Income threshold 3" means:

(a) For taxes levied for collection in calendar years prior to 2020, a combined disposable income equal to forty thousand dollars; and

(b) For taxes levied for collection in calendar year 2020 and thereafter, a combined disposable income equal to the greater of income threshold 3 for the previous year or sixty-five percent of the county median household income, adjusted every five years beginning August 1, 2019, as provided in RCW 84.36.385(8).

(23) Lease for life. "Lease for life" means a lease that terminates upon the ~~((demise))~~ death of the lessee.

~~((20))~~ (24) Legally prescribed drugs. "Legally prescribed drugs" means drugs supplied by prescription of a medical practitioner authorized to issue prescriptions by the laws of this state or another jurisdiction.

~~((21))~~ (25) Life estate. "Life estate" means an estate whose duration is limited to the life of the party holding it or of some other person.

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

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

(c) Beneficial interest in an irrevocable trust is considered a life estate, or a lease for life, for the beneficiary who is granted the beneficial interest representing ~~((his or her))~~ their principal residence held in an irrevocable trust, if the benefi-

cial interest is granted under the trust instrument for a period that is not less than the beneficiary's life.

~~((22))~~ (26) Owned. "Owned" includes "contract purchase" as well as "in fee," a "life estate," and any "lease for life." A residence owned by a marital community or domestic partnership or owned by cotenants is deemed to be owned by each spouse or each domestic partner or each cotenant.

~~((23))~~ (27) Ownership by a marital community or domestic partnership. "Ownership by a marital community or domestic partnership" means property owned in common by both spouses or domestic partners. Property held in separate ownership by one spouse or domestic partner is not owned by the marital community or domestic partnership. The person claiming the exemption must own the property for which the exemption is claimed. ~~((Example:))~~ For example, a person qualifying for the exemption by virtue of age, disability, or ~~((one hundred percent))~~ disabled veteran status ~~((cannot))~~ may not claim this exemption on a residence owned by the person's spouse or domestic partner as a separate estate outside the marital community or domestic partnership unless the claimant has a life estate ~~((therein-~~

~~(24))~~ in that separate estate.

(28) Pension. "Pension" generally means an arrangement providing for payments, not wages, to a person ~~((t))~~ or to that person's family~~((y))~~, who has fulfilled certain conditions of service or reached a certain age. Pension distributions may be triggered by separation from service, attainment of a specific age, disability, death, or other events. A pension may allow payment of all or a part of the entire pension benefit, in lieu of regular periodic payments.

~~((25))~~ (29) Principal residence. "Principal residence" means the claimant owns and occupies the residence as ~~((his or her))~~ their principal or main residence. It does not include a residence used merely as a vacation home. For purposes of this exemption:

(a) Principal or main residence means the claimant occupies the residence for more than ~~((six))~~ nine months each calendar year.

(b) Confinement of the claimant to a hospital ~~((or))~~ nursing home, assisted living facility, adult family home, or home of a relative for the purpose of long-term care, does not disqualify the claim for exemption if:

(i) The residence is temporarily unoccupied;

(ii) The residence is occupied by the claimant's spouse or domestic partner or a person financially dependent on the claimant for support;

(iii) The residence is occupied by a caretaker who is not paid for watching the house;

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

~~((26))~~ (c) For purposes of this subsection, "relative" means any individual related to the claimant by blood, marriage, or adoption.

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

~~((27))~~ (31) Regular property tax levies. "Regular property tax levies" has the same meaning as provided in WAC 458-19-005 for "regular property tax levy."

~~((28))~~ **(32) Replacement residence.** "Replacement residence" means a residence that qualifies for the senior citizen, disabled person, and ~~((one hundred percent))~~ disabled veteran exemption and replaces the prior residence of the person receiving the exemption.

~~((29))~~ **(33) Residence.** "Residence" means a single-family dwelling unit whether ~~((such))~~ the unit ~~((be))~~ is separate or part of a multiunit dwelling and includes up to one acre of the parcel of land on which the dwelling stands~~((, and it))~~. A residence also includes any additional property up to a total of five acres that comprises the residential parcel if land use regulations require this larger parcel size. The term also includes:

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

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

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

~~((30))~~ **(34) Veteran.** "Veteran" means a veteran of the armed forces of the United States.

~~((31))~~ **(35) Veterans benefits.** "Veterans benefits" means benefits paid or provided under any law, regulation, or administrative practice administered by the VA. Federal law excludes from gross income any veterans' benefits payments, paid under any law, regulation, or administrative practice administered by the VA.

AMENDATORY SECTION (Amending WSR 08-16-078, filed 7/31/08, effective 8/31/08)

WAC 458-16A-110 Senior citizen, disabled person, and ~~((one hundred percent))~~ disabled veteran exemption—Gross income. (1) **Introduction.** This rule explains the definition of gross income used for federal income tax purposes and provides guidance to assessors on how to calculate and verify gross income. ~~((In order))~~ To meet the income requirements for the senior citizen, disabled person, and ~~((one hundred percent))~~ disabled veteran exemption ~~((program))~~, the claimant must provide supporting documents verifying combined disposable income as defined in WAC 458-16A-100. The gross income for federal income tax purposes of the claimant, the claimant's spouse or domestic partner,

and any cotenants represents a part of the claimant's combined disposable income.

Examples. This rule includes examples that identify a set of facts and then state a conclusion. These examples should only be used as a general guide.

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

(b) No federal income tax return. ~~((When))~~ If the claimant does not present federal income tax returns, the assessor must determine what constitutes gross income ~~((for the non-filer))~~ and obtain copies of income documents to determine ~~((that person's)), and possibly verify, the claimant, the claimant's spouse or domestic partner, and any cotenant's gross income.~~ (This rule provides the assessor with some guidance in determining the gross income for a nonfiler.

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

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

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

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

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

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

(d) Contributions or payments made by an employer to accident and health plans, the employer's qualified transportation plan, a cafeteria plan, a dependent care assistance program, educational assistance programs, or for certain fringe benefits for employees described by Internal Revenue Code

section 132. If the claimant earns wages as an employee, (~~he or she~~) they should receive a W-2 form from the employer reporting those wages. (~~This~~) The W-2 form should have (~~already~~) excluded the described contributions or payments provided for the employee's benefits (~~in the above list~~). If there is a question (~~arises about~~) on whether (~~or not~~) an employer adjusted the employee's gross income for these (~~exclusions~~) employee benefits, the claimant should contact their employer and have the employer provide the (~~county with a correct or corrected~~) assessor with an accurate copy of the W-2 form to verify the correct wages paid to the employee;

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

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

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

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

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

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

(k) Amounts received under insurance contracts for certain living expenses (~~As a general rule~~). Generally, when an individual's principal residence is damaged or destroyed by fire, storm, or other casualty, or (~~who~~) the individual is denied access to (~~his~~) their principal residence by governmental authorities because of the occurrence or (~~the~~) threat of (~~such~~) a casualty, gross income does not include amounts received by (~~such~~) the individual under (~~an~~) the insurance contract which (~~are~~) is paid to compensate or reimburse (~~such~~) the individual for living expenses incurred for (~~himself~~) themselves and members of (~~his~~) their household resulting from the loss of use or occupancy of (~~such~~) the residence;

(l) Certain cost-sharing payments made for conservation purposes on land owned by the claimant (~~s~~). Payments received from federal or state funds primarily to conserve soil, protect or restore the environment, improve forests, or

provide a habitat for wildlife are excluded from gross income. In addition, the claimant may exclude energy conservation subsidies provided by public utilities from gross income. If the claimant indicates that (~~he or she has~~) they have received payments from the government or had improvements made to (~~his or her~~) their residence or land by the government for conservation purposes, the assessor may ask for verification of the amount excluded, (~~t~~) if any (~~t~~), from gross income and the information received by the claimant supporting this exclusion. See Internal Revenue Code sections 126 and 136;

(m) Child support payments;

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

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

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

AMENDATORY SECTION (Amending WSR 08-16-078, filed 7/31/08, effective 8/31/08)

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

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

(b) **No federal income tax return.** (~~When~~) If the claimant does not present federal income tax return(s), the assessor must determine what constitutes the adjusted gross income and the (~~adjusted gross~~) disposable income of the (~~nonfiler and~~) claimant, the claimant's spouse or domestic partner, and any cotenants. The assessor obtains copies of income documents to determine (~~that person's~~) and verify the claimant, the claimant's spouse or domestic partner, and any cotenant's income amounts. (~~This rule provides the~~

assessor with some guidance in determining the adjusted gross income for a nonfiler.

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

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

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

(b) ~~**Certain unreimbursed expenses (paid or incurred by an elementary or secondary school teacher for educational materials and equipment, an employee who is a qualified performing artist, or a state or local government official paid on a fee basis.**~~ From 2002 until 2010;).

(i) **Teachers.** An elementary or secondary school teacher may deduct from their gross income, up to two hundred fifty dollars of unreimbursed amounts that ~~((the teacher pays))~~ they pay for educational materials and equipment used in ~~((the teacher's))~~ their classroom. A teacher may take this deduction on a Form 1040 or a 1040A.

(ii) **Performing artists.** A qualified performing artist, defined by Internal Revenue Code section 62(b), ~~((or a state or local government official paid on a fee basis))~~ may deduct from gross income any unreimbursed trade or business expense(s) incurred for ~~((that))~~ their employer as an employee. If the claimant submits a copy of a Form 1040 federal income tax return, the deduction will be taken on the dotted line before the final line for determining adjusted gross income with a designation of "QPA(~~" or "FBO")."~~ ((A))

(iii) **State and local government officials.** A state or local government official paid on a fee basis may deduct from gross income any unreimbursed trade or business expense incurred for their employer as an employee. If the claimant submits a copy of a Form 1040 federal income tax return, the deduction will be taken on the dotted line before the final line for determining adjusted gross income with a designation of "FBO."

(iv) **No federal income tax return.** Any claimant, a claimant's spouse(;) or domestic partner, or cotenant ((that)) who does not file a federal income tax return, but claims to have unreimbursed expenses for this deduction, ((should)) must

provide documentation to demonstrate ~~((his or her status as an elementary or secondary school teacher, a qualified performing artist, or a government employee paid on a fee basis))~~ employee status and documentation of the unreimbursed ~~((educational materials and equipment or trade or business amounts spent))~~ expenses incurred as an employee for ~~((his or her))~~ their employer.

(c) **Losses from sale or exchange of property.** A property owner may deduct from gross income losses from the sale or exchange of property for federal income tax purposes. If the claimant submits a copy of a Form 1040 federal income tax return, the deduction is generally determined on a Schedule D. For purposes of this ~~((program))~~ exemption, losses cannot be deducted from income. Any losses taken must be added onto adjusted gross income. An assessor may refuse documentation of losses from ~~((a))~~ any claimant, the claimant's spouse(;) or domestic partner, or cotenant ((that)) who does not file a federal income tax return as these losses do not result in any change to the claimant's final combined disposable income.

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

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

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

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

(h) **One-half of self-employment tax.** As part of ~~((his or her))~~ their trade or business expenses, a self-employed person may deduct from gross income one-half of the self-employment tax paid to the federal government determined on a Schedule SE. This deduction is claimed on the Form 1040 federal income tax return. A self-employed person that has not filed a federal income tax return((-)) may not claim this deduction as the self-employment tax is reported and paid with that return.

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

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

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

and the amount of the alimony payments made during the year.

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

(m) **Required repayment of supplemental unemployment compensation.** A person may deduct from gross income required repayments of supplemental unemployment compensation benefits. If the claimant submits a Form 1040 federal income tax return, the deduction may show on the tax return in one of two ways. If the repayment is made in the same year the benefits are received, the ~~((taxpayer))~~ claimant reduces the total unemployment compensation reported on the tax return by the amount of repayment. If the repayment is made in a ~~((later))~~ subsequent year, the ~~((taxpayer))~~ claimant deducts the repayment on the dotted line before the final line for determining adjusted gross income on the tax return and identifies it as "Sub-Pay TRA." A person that does not file a federal income tax return, but claims to have repaid supplemental unemployment compensation, should provide documentation of these repayments to the assessor.

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

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

vide documentation about the qualifying clean-fuel vehicle or the refueling property, the amount paid for the clean-fuel property, and a calculation of the deduction amount allowed.

~~((p))~~ **Unreimbursed moving expenses.** If the claimant, the claimant's spouse((:)) or domestic partner, ((or)) and any cotenant had to move a significant distance for a job or business, ((he or she)) they may deduct from gross income ((the)), in years prior to 2018, unreimbursed moving ((costs)) expenses. This deduction is claimed on the Form 1040 federal income tax return. If ((the)) any claimant, the claimant's spouse((:)) or domestic partner, or cotenant does not file a federal income tax return, the claimant should provide documentation of the distance moved, the reason for the move, and the moving expenses. The assessor may request a copy of Form 3903, Moving Expenses, and the distance test worksheet on that form to ((prove)) show the amount of the person's adjusted gross income, regardless of whether ((or not)) the claimant, the claimant's spouse((:)) or domestic partner, or cotenant filed a federal income tax return.

~~((q))~~ **Archer MSAs (medical savings accounts).** A person may deduct from gross income a qualifying contribution to an Archer MSA. An MSA is an account set up exclusively for paying the qualified medical expenses of the account holder or the account holder's spouse or dependent(s) in conjunction with a high deductible health plan (HDHP). To be eligible for an MSA, the person must work as an employee for a small employer or be self-employed. The person must also have an HDHP, and have no other health insurance coverage except permitted coverage. The calculation of the deduction is performed on a Form 8853~~((This deduction is))~~ and claimed on the Form 1040 federal income tax return. If the person does not file a federal income tax return, but claims to have made a qualifying contribution to an Archer MSA, the claimant should provide copies of documentation to the assessor as to that person's qualifications for the deduction and how the deduction was calculated. If this deduction is claimed, the assessor may ask the claimant to submit a copy of Form 8853, and Archer MSAs and Long Term Care Insurance Contracts, regardless of whether ((or not)) the claimant, the claimant's spouse((:)) or domestic partner, or cotenant filed a federal income tax return.

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

the taxpayer does not have adjusted gross income above sixty-five thousand dollars (one hundred thirty thousand dollars if married filing jointly). The two thousand five hundred dollar limit on the interest gets reduced for taxpayers with adjusted gross income over fifty thousand dollars (one hundred thousand dollars if married filing jointly).)) See Internal Revenue Code section 221.

~~((s))~~ **Higher education expenses.** ~~((From 2002 to 2005, an individual with adjusted gross income below a set amount (generally sixty-five thousand dollars) may take a deduction))~~ A person may deduct from gross income, some or all amounts they paid for qualified tuition and related expenses ((paid by that person for that person, that person's spouse, or a dependent of that person. Depending on the individual's gross income, the deduction cannot exceed three thousand dollars (four thousand dollars in 2004 and 2005))) for themselves, their spouse, or their dependent. The deduction is claimed on either the Form 1040 or Form 1040A federal income tax return. A person that does not file a federal income tax return, but claims to have paid higher education expenses, should provide the assessor with copies of documentation of ~~((that person's)) their~~ qualification for the deduction and how the deduction was calculated. This deduction may only be taken if the income was not excluded from gross income. ((See WAC 458-16A-110 (savings bonds, qualified state tuition programs, and Coverdell Education Savings Accounts).)) See Internal Revenue Code, section 222.

AMENDATORY SECTION (Amending WSR 13-12-047, filed 5/31/13, effective 7/1/13)

WAC 458-16A-120 Senior citizen, disabled person, and ~~((one hundred percent)) disabled veteran exemption—Determining combined disposable income.~~ (1) Introduction. This rule describes how an assessor determines a claimant's combined disposable income.

Examples. This rule includes examples that identify a set of facts and then state a conclusion. These examples should only be used as a general guide.

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

sor may request copies of supporting documents to verify the amount of the claimant's combined disposable income.

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

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

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

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

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

The statement must also agree to provide this income information if the claimant is able to obtain it anytime ~~((in))~~ within the next six years.

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

(i) **Gain from a sold residence.** Under certain circumstances, gain from a sold residence is added onto the seller's adjusted gross income. Since ~~((there is no federal form used for reporting the exclusion of))~~ excluded capital gains from the sale of a principal residence are generally not reported on the federal income tax return, the exemption application asks if a home has been sold, whether the sale proceeds were reinvested in a new principal residence, and the amount of capital gain from the sale.

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

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

(ii) **Interest received on state and municipal bonds.**

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

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

(B) If the claimant does not have ~~((this))~~ Form 1099-INT, the bond issuer should be able to ~~((tell the owner))~~ determine whether the interest is taxable. The bond issuer should also ~~((give))~~ provide the owner with a periodic, ~~((t))~~ or year-end ~~((t))~~ statement showing the tax treatment of the bond. If the ~~((income))~~ recipient of the bond income invested in the bond through a trust, a fund, or other organization, that organization should ~~((give))~~ provide the recipient with this information.

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

(iv) **Veterans benefits.** Veterans benefits are added ~~((onto))~~ to the veteran's adjusted gross income to determine the veteran's disposable income ~~((, except for))~~. The following veterans benefits are not added to a veteran's adjusted gross income:

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

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

(C) Dependency and indemnity compensation, defined as payments made by the ~~((Department of Veterans Affairs))~~ VA ~~((t))~~ to a surviving spouse, child, or parent. ~~((, (RCW 84.36.383 (5)(f)(iv))))~~

Veterans benefits are discussed in more detail in (d)(viii) of this subsection.

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

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

determine the seller's disposable income. ~~((The amount is reported on the exemption application.))~~ Refer to (b)(i) of this subsection for a more complete discussion of excluded capital gain ~~((upon))~~ on a sold residence.

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

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

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

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

(vi) **Veterans benefits.** Veterans benefits are added ~~((back onto))~~ to the veteran's adjusted gross income to determine the veteran's disposable income ~~((, except for))~~. The following veterans benefits are not added to a veteran's adjusted gross income:

(A) Attendant-care payments and medical-aid payments, defined as any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home

benefits provided by the ~~((Department of Veterans Affairs))~~ VA ~~(())~~;

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

(C) Dependency and indemnity compensation, defined as payments made by the ~~((Department of Veterans Affairs))~~ VA ~~(())~~ to a surviving spouse, child, or parent. ~~((RCW 84.36.383 (5)(f)(iv)))~~

Veterans benefits are discussed in (d)(viii) of this subsection.

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

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

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

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

(iii) **Losses.** Amounts deducted for ~~((loss))~~ losses are added ~~((onto the))~~ to adjusted gross income to determine ~~((the))~~ disposable income. Most losses are reported on the federal income tax return in parentheses to reflect that these loss amounts are to be deducted. ~~((The))~~ Net losses are reported on Form 1040 as business losses, ~~((as))~~ capital losses, ~~((as))~~ other losses, ~~((as))~~ rental or partnership-type losses, ~~((and))~~ or as farm losses. ~~((Add))~~ The assessor adds these amounts ~~((in parentheses onto))~~ to the adjusted gross income. ~~((In addition))~~ Additionally, the assessor adds to adjusted gross income the amount reported as a penalty on early withdrawal of savings because the amount represents a loss under section 62 of the Internal Revenue Code.

(A) The ~~((taxpayer))~~ claimant only reports the net amount of these losses on the front page of the Form 1040 federal income tax return. A loss may be used on other schedules or forms to reduce income before being transferred to the front page of the tax return to calculate adjusted gross income. The assessor adds ~~((onto))~~ to the adjusted gross income the amount of losses used to reduce income on these other schedules and forms. The amount of losses that were used to reduce adjusted gross income must be added ~~((onto~~

~~that~~) to the adjusted gross income to determine disposable income.

For example, ~~((the))~~ a claimant reports a five thousand dollar capital loss on the front page of the 1040 ~~((a capital loss of (five thousand dollars). The assessor examines the Schedule D))~~. On the Schedule D, the claimant reports two thousand dollars in long-term capital gains from the sale of Company X stock and seven thousand dollars in long-term capital losses from the sale of an interest in the Y limited partnership. The assessor has already added the five thousand dollar~~((s))~~ loss from the net capital loss reported on the front page of the tax return. The assessor would add onto adjusted gross income only the additional two thousand dollars in losses from ~~((this))~~ the Schedule D that was used to offset the capital gain the claimant earned from the sale of Company X stock.

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

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

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

(vi) **Federal Social Security Act and railroad retirement benefits.** Any nontaxable Social Security benefit or equivalent railroad retirement amount reported on the Form 1040 federal income tax return is added ~~((+))~~ to the adjusted gross income of the person receiving these benefits to determine that person's disposable income. The nontaxable Social Security benefit or equivalent railroad retirement

amount is the difference between the total Social Security benefits or equivalent railroad retirement amounts reported and the taxable amounts reported. If the total amount of the Social Security benefit or equivalent railroad retirement amount is not reported on the tax return, the assessor may use a copy of the Form SSA-1099 or Form RRB-1099 issued to the claimant, the claimant's spouse or domestic partner, or the cotenant to determine the Social Security benefits or the railroad retirement benefits received.

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

(viii) **Veterans benefits.** Federal law excludes from gross income any veterans benefit~~((s))~~ payments~~((r))~~ paid under any law, regulation, or administrative practice administered by the ~~((Department of Veterans Affairs (VA). To determine disposable income, allowances or payments made from the VA must be added on the veteran's adjusted gross income, except for))~~ VA. The following veterans benefits are not added to a veteran's adjusted gross income:

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

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

(C) Dependency and indemnity compensation, defined as payments made by the ~~((Department of Veterans Affairs (VA)))~~ VA((+)) to a surviving spouse, child, or parent. ~~((RCW 84.36.383 (5)(f)(iv)))~~

VA benefits are not reported on the Form 1040. The claimant should disclose when excluded veterans benefits were received and provide copies of documents that verify the amount received.

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

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

(B) Generally, the mutual fund owner will receive a notice from the mutual fund telling ~~((him or her))~~ them the amount of the exempt-interest dividends received. These exempt-interest dividends are not shown on Form 1099-DIV

or Form 1099-INT. Although exempt-interest dividends are not taxable, the owner must report them on the Form 1040 tax return if ~~((he or she has))~~ they have to file; and

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

(3) **Calculate the combined disposable income.** ~~((When))~~ Once the assessor has calculated the disposable income for the claimant, the claimant's spouse or domestic partner, and any cotenants, the assessor ~~((combines))~~ will add the disposable incomes ~~((of these people))~~ together. To calculate the combined disposable income for the claimant, the assessor ~~((reduces this combined income by))~~ will subtract from the sum of the disposable income, the amounts paid by the claimant or the claimant's spouse or domestic partner during that calendar year for their:

(a) Legally prescribed drugs ~~((;))~~;

(b) Home health care;

(c) Nursing home, assisted living facility, or adult family home expenses; and

(d) Health care insurance premiums for medicare under Title XVIII of the Social Security Act ~~((to calculate the claimant's combined disposable income))~~.

AMENDATORY SECTION (Amending WSR 18-24-108, filed 12/4/18, effective 1/4/19)

WAC 458-16A-130 Senior citizen, disabled person, and disabled veteran exemption—Qualifications for exemption. (1) **Introduction.** This rule describes the qualifications a claimant must meet for the senior citizen, disabled person, and disabled veteran property tax exemption. ~~((The definitions in WAC 458-16A-100 apply to this rule. In order))~~ To qualify for the exemption, the claimant must:

(a) Meet the age or disability requirements as described in subsection (2) of this rule;

(b) Have a combined disposable income below the ~~((statutory limit amount provided in RCW 84.36.384))~~ prescribed amounts in subsection (3) of this rule; and

(c) Own the property and occupy it as ~~((his or her))~~ their principal residence for more than nine months each calendar year as described in subsection (4) of this rule.

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

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

(b) The disabled person claiming the exemption must be at the time of filing, retired from regular gainful employment and unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months ~~((42 U.S.C. Sec. 423(d)(1)(A)))~~.

(c) The veteran claiming the exemption must be at the time of filing, a veteran of the armed forces of the United States entitled to and receiving compensation from the United States Department of Veterans Affairs (VA) at:

(i) A combined service-connected evaluation rating of eighty percent or higher; or

(ii) A total disability rating for a service-connected disability without regard to evaluation percent.

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

(3) **Income requirements.** ~~((In order))~~ To qualify for the exemption, the claimant's combined disposable income ~~((as defined in RCW 84.36.383 and WAC 458-16A-120,))~~ must be ~~((below the statutory limit amount provided in RCW 84.36.384))~~ equal to or less than one of the three income thresholds described in RCW 84.36.383. The income thresholds, which are published by the department beginning August 1, 2019, and by March 1st every fifth year thereafter, will determine the amount of property tax the claimant is exempt from on their principal residence, as follows:

(a) Income threshold 3. A claimant's combined total disposable income that is equal to or less than income threshold 3 is exempt on their principal residence from the following:

(i) All excess property taxes;

(ii) The additional state property tax imposed under RCW 84.52.065(2); and

(iii) The portion of the regular property taxes authorized pursuant to RCW 84.55.050 to remove the property tax levy limit (lid lift) approved by the voters, if the legislative authority of the county or city imposing the additional regular property taxes identified this exemption in the ordinance placing the lid lift measure on the ballot.

(b) Income threshold 2. A claimant's combined total disposable income that is equal to or less than income threshold 2, but greater than income threshold 1, is exempt on their principal residence from the following:

(i) All property taxes listed under income threshold 3; and

(ii) All regular property taxes on the greater of fifty thousand dollars or thirty-five percent of the valuation of their residence, but not to exceed seventy thousand dollars of the valuation of their residence.

(c) Income threshold 1. A claimant's combined total disposable income that is equal to or less than income threshold 1, is exempt on their principal residence from the following:

(i) All property taxes listed under income threshold 3; and

(ii) All regular property taxes on the greater of sixty thousand dollars or sixty percent of the valuation of their residence.

(4) **Principal residence requirements.** ~~((In order))~~ To qualify for the exemption, the claimant must own the property and occupy it as ~~((his or her))~~ their principal residence for more than nine months each calendar year. The claimant must occupy the principal residence at the time of filing for each year the exemption is claimed. WAC 458-16A-100 and 458-16A-135 provide additional information regarding the definitions of principal residence and residence, and the sup-

porting documents required to demonstrate the property is owned and occupied as a claimant's principal residence.

AMENDATORY SECTION (Amending WSR 15-22-086, filed 11/3/15, effective 12/4/15)

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

(2) **When to apply for the exemption.** A claimant may first apply for the exemption in the calendar year that ~~((he or she))~~ they meet~~((s))~~ the age, disability, or disabled veteran requirements for exemption of taxes due in the following year. If the claimant does not apply when ~~((he or she meets))~~ they meet the age, disability, or disabled veteran requirements, then ~~((he or she))~~ they may apply for the exemption in any subsequent year. The exemption may be claimed on ~~((his or her))~~ their principal residence for previous years by applying with separate applications for each year. However, refunds based ~~((upon))~~ on an exemption made in previous years may be refunded for only ~~((for))~~ up to three years after the taxes were due as provided in ~~((chapter 84.69 RCW))~~ RCW 84.69.030.

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

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

(5) **How to apply for the exemption.** Applications and supporting documents are filed in person or by mail at the county assessor's office where the principal residence is located. As an alternative, the county assessor may provide an electronic means for filing if authorized by the department.

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

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

- (i) The claimant;
- (ii) The claimant's designated agent;

(iii) The legal guardian for the claimant (if applicable); or

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

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

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

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

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

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

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

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

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

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

(v) If the claim is based upon the claimant's veteran status, copies of legal documents showing that the claimant is a veteran of the armed forces of the United States entitled to and receiving compensation from the United States Department of Veterans Affairs at a combined service-connected evaluation rating of eighty percent or higher or at a total disability rating for a service-connected disability without regard to evaluation percent;

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

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

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

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

(D) If the claimant or the claimant's spouse or domestic partner has been in a nursing home, assisted living facility, ~~((or))~~ adult family home, or has been receiving in-home care in either their home or in the home of a relative for purposes of long-term care, copies of invoices (or an equivalent billing statement or payment statement) for nonreimbursed ~~((nursing home and in-home))~~ care or documentation to verify the claimant or claimant's spouse or domestic partner have been receiving care at the home of a relative;

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

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

(G) If no federal returns were filed or received, the claimant must still provide copies of documents to demonstrate ~~((his or her))~~ their income and the income of ~~((his or her))~~ their spouse or domestic partner and any cotenants (i.e., federal income statements such as Form W-2 (wages), Form 1099-INT (interest), Form 1099-DIV (dividends), Form 1099-R (pension amounts), Form 1099-G (unemployment),

or Form 1099-Misc. (contract income)). Even claimants who claim they have no federal income (or an inordinately small amount of federal income) must have income to maintain themselves and their residences. In these situations, the claimant must produce copies of documents demonstrating the source of the funds they are living on (i.e., checking account registers and bank statements) and the bills for maintaining the claimant and the residence (i.e., public assistance check stubs, utility invoices, cable TV invoices, check registers, bank statements, etc.); and

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

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

AMENDATORY SECTION (Amending WSR 18-04-007, filed 1/25/18, effective 2/25/18)

WAC 458-16A-150 Senior citizen, disabled person, and ~~((one hundred percent))~~ disabled veteran exemption—Requirements for keeping the exemption. (1) **Introduction.** This rule explains how and when a senior citizen, disabled person, or ~~((one hundred percent))~~ disabled veteran must file additional ~~((reports))~~ documents with the county assessor to ~~((keep the))~~ maintain their senior citizen, disabled person, or ~~((one hundred percent))~~ disabled veteran property tax exemption. The rule also explains what happens when the claimant or the property no longer qualifies for the full exemption.

Examples. This rule includes examples that identify a set of facts and then state a conclusion. These examples should only be used as a general guide.

(2) **Continuing the exemption.** The claimant must keep the assessor up to date on ~~((the claimant's))~~ their continued qualification for the senior citizen, disabled person, or ~~((one hundred percent))~~ disabled veteran property tax exemption. The claimant keeps the assessor up to date in the following three ways(-):

(a) First, the claimant submits a change in status form when any change affects ~~((his or her))~~ their exemption. In some circumstances, the change in status form may be submitted by an executor, a surviving spouse, a surviving domestic partner, or a purchaser to notify the county of a change in status affecting the exemption(-);

(b) Second, the claimant submits a renewal application for the exemption either ~~((upon))~~ on the assessor's request following an amendment of the income requirement, or at least once every six years(-); and

(c) Third, the claimant applies to transfer the exemption when moving to a new principal residence.

(3) **Change in status.** When a claimant's circumstances change in a way that affects ~~((his or her))~~ their qualification for the senior citizen, disabled person, or ~~((one hundred per-~~

ent)) disabled veteran property tax exemption, the claimant must submit a completed change in status form to notify the county of this change.

(a) **When to submit form.** The claimant must submit a change in status form to the county assessor for any change affecting that person's qualification for the exemption within thirty days of ~~((such))~~ the change in status. If the claimant is unable or fails to submit a change in status form, any subsequent property owner, including a claimant's estate or surviving spouse or surviving domestic partner, should submit a change in status form to avoid interest, and in some cases, the penalty for willfully claiming the exemption based ~~((upon))~~ on erroneous information.

(b) **Change~~((s))~~ in status described.** ~~((Changes))~~ A change in status includes:

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

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

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

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

(d) **Obtaining the form.** The claimant or subsequent property owner may obtain the form from the county assessor where ~~((his or her))~~ their principal residence is located. The form may also be obtained electronically if available from the county assessor and electronic filing has been approved by the department.

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

~~84.36.385.))~~ If the change in status results in a refund of property taxes, the treasurer may refund property taxes and interest for up to the most recent three years after the taxes were due as provided in ~~((chapter 84.69))~~ RCW 84.69.030.

(f) **Loss of the exemption.** As provided in RCW 84.40.360, if the change in status disqualifies the applicant for the exemption, property taxes must be recalculated based ~~((upon))~~ on the current full assessed value of the property and paid from the date the change in status occurred. ~~((RCW 84.40.360.))~~

For example, the exemption is lost when the claimant dies, ~~((f))~~ unless the spouse or domestic partner ~~((is))~~ also ~~((qualified))~~ qualifies. The property taxes are then recalculated ~~((to))~~ based on the full assessed ~~((amount))~~ value of the principal residence, on a pro rata basis, beginning the day following the date of the claimant's death ~~((for))~~ through the remainder of the year.

(g) **Loss of exemption on part of the property.** If ~~((the))~~ a change in status ~~((removes))~~ results in the removal of a portion of the property from the exemption, property taxes ~~((in their full amount))~~ on that portion ~~((of the property that is))~~ are no longer exempt and must be recalculated based ~~((upon))~~ on the current full assessed value of that portion of the property and paid from the date the change in status occurred.

For example, a property owner subdivides ~~((his or her))~~ their one-acre lot into two parcels. The parcel that does not have the principal residence built ~~((upon))~~ on it will no longer ~~((qualifies))~~ qualify for the exemption. The property taxes are then recalculated ~~((to))~~ based on the full assessed ~~((amount))~~ value of that parcel on a pro rata basis for the remainder of the year beginning the day following the date the subdivision was given final approval.

(h) **Exemption reduced.** If the change in ~~((status))~~ income reduces the exemption amount, the increased property taxes are due in the year following the change in income. For example, a claimant's income rises so that only excess levies and the state property tax levy imposed under RCW 84.52.065(2) on the principal residence are exempt. The claimant's income is based ~~((upon))~~ on the assessment year. In the following year when the taxes are collected, the property taxes due ~~((are))~~ will be calculated with only an exemption for excess levies and an exemption for the state property tax levy imposed under RCW 84.52.065(2).

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

(a) **Notice to renew.** Written notice must be sent by the assessor and must be mailed at least three weeks in advance of the expected ~~((taxpayer))~~ claimant response date.

(b) **When to renew.** The assessor must request a renewal application at least once every six years. The assessor may request a renewal application for any year the income requirements are amended in the statute after the exemption is granted.

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

(d) **The renewal application form.** The county assessor may design the renewal application form or adapt either its

own application form or the application master form obtained from the department. The county must obtain approval of the final renewal application form from the department before it may be distributed and used, and must also obtain authorization from the department if providing an option to file by electronic means. The property owner must use a renewal form from the county where the principal residence is located. The claimant must provide true and accurate information on the renewal application form.

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

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

(5) **Transfer of the exemption.** When a claimant moves to a replacement residence, ~~((the claimant))~~ they must file a change in status form with the ~~((county))~~ assessor in the county where ~~((his or her))~~ their former principal residence was located. No claimant may receive an exemption on more than the equivalent of one residence in any year.

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

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to adopt rules for a new licensing and regulatory program for hemp production in accordance with the Agricultural Improvement Act of 2018 and E2SSB 5276 which will include a licensing component and related fees, program administration and testing criteria and protocol. The department also intends to repeal chapter 16-305 WAC, Industrial hemp research pilot, in accordance with section 15 of E2SSB 5276 effective January 1, 2020.

Reasons Supporting Proposal: The legislature passed chapter 158, Laws of 2019 to authorize the department to develop an agricultural commodity program to replace the industrial hemp research pilot program, in accordance with the Agricultural Improvement Act of 2018. The industrial hemp research pilot is repealed under section 15 of E2SSB 5276 "effective January 1, 2020." The bill allows the department to use expedited rule making to adopt the state hemp plan submitted to the United States Department of Agriculture.

Statutory Authority for Adoption: RCW 15.140.030.

Statute Being Implemented: Chapter 15.140 RCW.

Rule is necessary because of federal law, 7 C.F.R. Part 990.

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting: Aspen Humiston, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1931; Implementation and Enforcement: Jessica Allenton, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1828.

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

Content is explicitly and specifically dictated by statute.

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

The rule is no longer necessary because of changed circumstances.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: E2SSB 5276, section 11 states that "the department must use expedited rule making to adopt the state hemp plan submitted to the United States department of agriculture. Upon submittal of the plan to the United States department of agriculture, the department may conduct initial expedited rule making under RCW 34.05.353 to establish rules to allow hemp licenses to be issued without delay."

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 Gloriann Robinson, Washington State Department of Agriculture, P.O. Box

WSR 19-23-095

EXPEDITED RULES

DEPARTMENT OF AGRICULTURE

[Filed November 20, 2019, 11:06 a.m.]

Title of Rule and Other Identifying Information: Chapter 16-306 WAC, Hemp program.

42560, Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, email wsdarulescomments@agr.wa.gov, AND RECEIVED BY January 21, 2020.

November 20, 2019
Jessica Allenton
Assistant Director

Chapter 16-306 WAC

HEMP PROGRAM

NEW SECTION

WAC 16-306-010 Purpose of chapter. Under the authority of chapter 15.140 RCW, the department adopts rules to establish a hemp program in accordance with the Agricultural Improvement Act of 2018. These rules include licensing requirements. Licensing is required for persons to produce hemp as provided under this chapter and chapter 15.140 RCW.

NEW SECTION

WAC 16-306-020 Activities outside the scope of the hemp program. The following activities are not subject to regulatory sanctions or penalties under this chapter, except for the limitation of THC content under chapter 15.140 RCW:

- (1) Possessing, transporting, marketing or exchanging legally obtained hemp and hemp products;
- (2) Growing, producing, possessing, processing, marketing or exchanging marijuana as defined in RCW 69.50.101.

NEW SECTION

WAC 16-306-030 Definitions. "Acceptable hemp THC level" means the application of the measurement of uncertainty to the reported THC concentration level on a dry weight basis producing a distribution or range that includes 0.3 percent or less.

"Agricultural Improvement Act of 2018" means sections 7605, 10113, 10114, and 12619 of the Agricultural Improvement Act of 2018, P.L. 115-334.

"Applicant" means a person who submits an application for a license to participate in the hemp program as required under this chapter.

"Contiguous land area" means a specific field with designated boundaries that is planted with hemp. Separate parcels connected only by thin or narrow plantings of hemp or separated by physical barriers such as ditches or roads are not considered contiguous for the purposes of this rule.

"Continuous licensing" means the licensee renews their license annually prior to expiration, such that the licensee is continuously operating under a valid license.

"Corrective action plan" means a plan by the department for a licensed hemp producer to correct a negligent violation of, or noncompliance with, a hemp production plan, its terms, or any other regulation set forth under this chapter.

"Department" means the Washington state department of agriculture.

"Destroyed" means incinerated, tilled under the soil, made into compost, or rendered nonretrievable in another manner approved by the department.

"Disposal" means the material is collected for destruction by a person authorized to handle marijuana such as a DEA-registered reverse distributor, or in another manner approved by the department.

"Hemp" means the plant *Cannabis sativa* L. and any part of the plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

"Key participant" means a person or persons who have a direct or indirect financial interest in the entity producing hemp, such as an owner or partner in a partnership. A key participant also includes persons in a corporate entity at executive levels including chief executive officer, chief operating officer and chief financial officer. This does not include such management as farm, field, or shift managers.

"Legal description" means a method of locating or describing land in relation to the public land survey system such as section, township, and range.

"Licensee" means any person who holds a license from the department to grow or produce hemp in Washington state.

"Lot" refers to a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout. In addition, "lot" is a common term in agriculture that refers to the batch or contiguous, homogeneous whole of a product being sold to a single buyer at a single time. Under the terms of this chapter, "lot" is to be defined by the producer in terms of farm location, field acreage, and variety.

"Measurement of uncertainty" means the parameter, associated with the result of a measurement that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement. The measurement of uncertainty is similar to a margin of error. When the measurement of uncertainty, normally expressed as a +/- with a number, (e.g., +/- 0.05) is combined with the reported measurement, it produces a range and the actual measurement has a known probability of falling within that range.

"Process" means the processing, compounding, or conversion of hemp into hemp commodities or products.

"Produce" or "production" means the planting, cultivation, growing, or harvesting of hemp, including hemp seed.

"Registered land area" means a contiguous land area, including greenhouses and storage areas registered with the department as a condition of licensing, on which a licensee will conduct licensed activities. A registered land area may include more than one field, greenhouse, or storage area so long as those fields, greenhouses, or storage areas are at the same physical address.

"Storage area" means any area, building, plant or facility registered with the department in which a licensee plans to store hemp.

"THC concentration" means the percent of total delta-9 tetrahydrocannabinol, which is the conversion of delta-9 tetrahydrocannabinolic acid into THC.

NEW SECTION**WAC 16-306-040 Hemp producer license application.** (1) An applicant for a hemp producer license must:

(a) Provide the information required for a hemp producer license on a form provided by the department that at a minimum includes the following:

- (i) The name and business address of the applicant;
- (ii) For corporate applicants, the type of business entity, such as corporation, LLC, or partnership, the state or country where the business is incorporated, and the name and address of the entity's agent in Washington state;
- (iii) The legal description (section, township, and range) in which any proposed registered land area is located; and
- (iv) Geospatial location coordinates of any proposed field, greenhouse, or other site where hemp is produced.

(b) Apply to the department for participation in the program between January 1st and March 31st. Applications may be received after March 31st but are subject to a late license fee;

(c) Pay fees as required under this chapter;

(d) Consent to entrance of their property by the department to inspect their registered land area with or without prior notice; and

(e) Report hemp crop acreage to USDA Farm Service Agency (FSA). A link to FSA information on how to report hemp crop acreage to FSA is available on the USDA hemp production program website.

(2) Licenses will expire on the last day of April following the year the license is issued.

(3) All applications must be accompanied by a criminal history report completed within sixty days of the application date. If the application is for a business entity, a completed criminal history report must be provided for each key participant.

(a) The criminal history report must indicate the applicant has not been convicted of a state or federal felony related to a controlled substance for the ten years prior to the date of when the report was completed. An exception applies to a person who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before that date.

(b) A person with a prior felony related to controlled substances within ten years of applying for a producer license is not eligible for the license. Key participants of associations, corporations, and other business entities with a prior felony related to a controlled substance within ten years of applying for a producer license are not eligible for the license under this felony drug conviction limitation. Business entities may still be eligible if the key participant with a prior felony is discharged.

(4) Any person who materially falsifies information in the application shall be ineligible to participate in the program.

NEW SECTION

WAC 16-306-050 Hemp producer license. (1) A person must obtain a hemp producer license prior to planting or growing hemp in this state, including growing hemp seed crop.

(2) A licensed producer may sell or exchange hemp produced under the license once the department has issued documentation declaring the hemp to meet the THC concentration requirements.

(3) The department may inspect and sample a producer's licensed operations. The producer must permit unrestricted access to all hemp plants, plant parts, grain and seeds within a registered land area whether growing or not, and all land and facilities used by the producer for the growing and storage of hemp, pesticide storage or housing, and all documents and records pertaining to the licensee's hemp business operations during business hours.

(4) The licensee must pay all applicable fees adopted under this chapter for any required inspections and testing. Samples may be taken at the department's discretion for testing.

(5) No registered land area may contain cannabis plants or parts thereof that the licensee knows or has reason to know are of a variety that will produce a plant that when tested will produce more than 0.3 percent THC concentration on a dry weight basis. No licensee shall use any such variety for any purpose associated with the growing of hemp.

(6) Licenses will expire on the last day of April following the year the license is issued. This date is not tied to the harvest and planting season. Rather it is tied to the window for applications (January 1st - March 31st) and the thirty days for the department to make a decision. For example, if a producer applies for a license February 1, 2020, and is granted a license on March 1, 2020, the license would expire April 30, 2021.

(7) Unless the license is renewed, any plant material that is not harvested prior to expiration of the license must be destroyed.

(8) Upon any change to the registered land area(s) after issuance of the license, the licensee must submit to the department for approval an updated legal description, geospatial location, and a description of the changes to the registered land area(s) and required fees.

(9) At a minimum, licensees are required to post a sign on each side of every registered land area listed on the application including the following information:

- (a) The department-issued license number;
- (b) Crop type; and
- (c) The department contact phone number.

(10) Licensees growing hemp for seed certification must also follow the requirements in chapter 16-302 WAC.

NEW SECTION

WAC 16-306-060 Records retention. Licensed producers are required to maintain copies of all records and reports necessary to demonstrate compliance with the program. These records include those that support, document, or verify the information in the forms the licensee submitted to the department. Licensees must keep records and reports for a minimum of three years from the expiration date of the license that was in effect at the time the records were generated.

NEW SECTION

WAC 16-306-070 Hemp seed and propagules. (1) A licensee must notify the department of the source of the hemp seed or clones solely for the purpose of maintaining a record of the sources of seeds and clones being used or having been used for hemp production in this state.

(2) The department is not responsible for obtaining seeds on behalf of the licensee.

(3) The department is not liable for and does not warrant that the seed is fit for any purpose.

NEW SECTION

WAC 16-306-080 Hemp inspection and sampling criteria. (1) All licensees are subject to inspection by the department. The department shall inspect registered land areas under a producer license at least once during each license period. The department's inspections of the registered land area may include the following:

- (a) Inspections for unauthorized plant growth;
- (b) Inspections for hemp in any form on the registered land area;
- (c) Inspections for rogue, volunteer, or off-type hemp plants;
- (d) Audits of existing business data and reports related to hemp;
- (e) Identifying compliance with required signage as specified in WAC 16-306-050; and
- (f) Assessing compliance with other applicable licensing terms and conditions.

(2) The department shall take hemp samples from registered land areas licensed under a producer license within fifteen days prior to the anticipated harvest of cannabis plants to test for THC concentration.

(3) The licensee or designated employee shall accompany the sampling agent throughout the sampling process.

(4) Registered land areas may be inspected by the department for a period of three hundred sixty-five days from the end of the license period to check for unauthorized plant growth such as, but not limited to, volunteer plants.

NEW SECTION

WAC 16-306-090 Hemp THC testing criteria. (1) Hemp will be tested for THC concentration in a department-run or approved laboratory as determined by the department using post-decarboxylation or other testing methods approved by the department.

(2) Hemp testing will take place at times and on dates determined by the department.

(3) The department will apply the measurement of uncertainty to the reported THC concentration to determine if hemp material is in compliance under this chapter.

NEW SECTION

WAC 16-306-100 Voluntary certification for hemp intended for human consumption. (1) In addition to testing required under WAC 16-306-090, producers may obtain cer-

tification that hemp meets the department's standards for human consumption if tested for the following:

(a) Nonapproved pesticide or herbicide use. The list of approved pesticides and herbicides is available on the department website; and

(b) Approved limits of mycotoxin. The sample and related lot fail testing for mycotoxin if the results exceed the following limits:

(i) Total of Aflatoxin B1, B2, G1, G2: 20 µg/kg of substance;

(ii) Ochratoxin A: 20 µg/kg of substance.

(c) Approved limits for heavy metals. The sample and related lot fail testing for heavy metals if the results exceed the following limits:

Metal	µ/daily dose (5 grams)
Inorganic arsenic	10.0
Cadmium	4.1
Lead	6.0
Mercury	2.0

(2) The producer must inform the department if they wish to participate in the voluntary certification for human consumption at the time of sampling as specified under WAC 16-306-080.

(3) The licensee will be required to reimburse the department or the approved laboratory for the actual costs incurred for conducting such tests.

NEW SECTION

WAC 16-306-110 Hemp for human consumption as food. The whole hemp plant may be used as food for human consumption. The department shall regulate the processing of the hemp for food products allowable under federal law, in the same manner as other food processing under chapters 15.130, 69.07, and 69.22 RCW.

NEW SECTION

WAC 16-306-120 THC certification. (1) If the hemp meets THC concentration requirements in this chapter, the department will issue a document of certification attesting that hemp has been tested for THC concentration and is in compliance with this chapter.

(2) No hemp may leave a registered land area identified on a license without being issued THC certification by the department.

(3) Hemp plant material from different registered land areas or lots may not be combined until the department issues certification for each field, lot, or registered land area. Hemp seeds and grain are excluded from this restriction.

NEW SECTION

WAC 16-306-130 Transporting hemp. (1) Hemp produced under this chapter may not be transported from a registered land area as identified on the license until THC certification by the department as specified in WAC 16-306-120 is obtained by the applicable licensee prior to transport. During

transport of hemp off a producer's registered land area, including to a processor, the person in possession of the hemp during transport must have in his or her possession either:

- (a) Copies of the hemp producer license and department-issued THC certification, as required by this chapter; or
- (b) A bill of lading or other proper documentation demonstrating that the hemp was legally imported or is otherwise legally present in the state of Washington under applicable state and federal laws relating to hemp.

(2) Any hemp from a licensed Washington producer that is found in Washington state at any location off the premises of a registered land area of a licensee without department-issued THC certification as specified in WAC 16-306-120 is deemed to be contraband and subject to seizure by the Washington state patrol or any law enforcement officer. Any such contraband material is subject to destruction at the licensee's expense, and may result in suspension or revocation of the hemp license.

NEW SECTION

WAC 16-306-140 Hemp producer license fees. (1) Effective January 1, 2020, license fees are as follows:

Annual License Fee	License Modification Fee
\$750	\$200/1

(2) Effective June 1, 2020, license fees are as follows:

Annual License Fee	License Modification Fee	Late License Fee (After March 31)
\$1200	\$200/1	\$200/2

/1 See WAC 16-306-050(8).
/2 In addition to license fee.

NEW SECTION

WAC 16-306-150 Hemp inspection fees. (1) Fees for hemp inspections are paid by the licensee.

- (2) No renewal licenses will be issued until all fees due to the department are paid in full.
- (3) Hemp inspection fees are:
 - (a) \$200.00 per inspection; plus
 - (b) Time and mileage per inspection. All time will be charged at a rate of forty dollars per hour. Mileage will be charged at the rate established by the Washington state office of financial management.

NEW SECTION

WAC 16-306-160 Hemp THC testing fees. (1) Hemp will be tested for THC concentration in a department-run or approved laboratory as determined by the department using testing methods approved by the department.

- (2) Hemp testing will take place at times and on dates determined by the department.
- (3) Fees for hemp THC tests are paid by the licensee.
- (4) No renewal licenses will be issued until all fees due to the department are paid in full.

(5) THC concentration testing fees for hemp when tested at the department's laboratory are established on a sliding rate scale. THC concentration testing will be scheduled by the department based on the availability of laboratory resources. Individual samples may be batched with samples from the same or different licensees in order to reduce the overall cost of the testing. For the purposes of this section, "batch" means a group of samples that are tested by the department on the same day, using the same equipment calibration and testing supplies to test each sample independently from other samples in the batch. The department will bill each licensee for the samples that licensee provides, based on batch size at the time of testing as shown in the following table:

Batch Size	Testing Fee Per Sample
Batch of 1 sample	\$1,000
Batch of 2 samples	\$500
Batch of 3 samples	\$334
Batch of 4 samples	\$250
Batch of 5 samples	\$200

(6) When THC concentration testing is performed at department-approved laboratories, testing fees will be subject to actual laboratory costs, including sample transportation.

NEW SECTION

WAC 16-306-170 Hemp noncompliance for THC concentration. (1)(a) If a licensee's hemp tests higher than the acceptable hemp THC level, the licensee may be subject to suspension or revocation of their license. The lot must be destroyed or disposed of in a manner approved by the department. If determined to be appropriate, the department may give notice of noncompliance to appropriate law enforcement agencies and the Washington state liquor and cannabis board, with a summary of the actions taken to destroy the noncompliant hemp.

- (b) Producers must document the destruction or disposal of all noncompliant hemp. This documentation must be submitted to the department following the completion of the destruction or disposal process.
 - (2) If a licensee's hemp tests higher than 0.3 percent but less than 0.5 percent THC concentration, the licensee may either request a THC retest within thirty days or resampling of the same lot, at their own expense.
 - (3) If at any time a licensee's hemp tests higher than the acceptable hemp THC level, the licensee may be subject to revocation or suspension of their license.

NEW SECTION

WAC 16-306-180 License denial, suspension or revocation, and right to adjudicative proceeding. Upon notice of intent by the department to an applicant to deny a license, notice of intent to a licensee to suspend or revoke a license, or notice of intent for destruction of a hemp material or crop, a person may request an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act, and chapter 16-08 WAC.

NEW SECTION

WAC 16-306-190 Suspension of hemp license for noncompliance with a child support order. (1) If the department receives notice under RCW 74.20A.320 that a licensee is not in compliance with a child support order, the department will suspend or not renew the licensee's hemp license(s) until the department of social and health services provides the department with a release stating that the licensee is in compliance with the child support order. If a licensee's license is suspended, all hemp crops and products in the licensee's possession must remain on the licensee's registered land area until the suspension is lifted.

(2) The department may renew, reinstate, or otherwise extend the licensee's hemp license(s) upon receipt of a copy of the release specified in subsection (1) of this section.

NEW SECTION

WAC 16-306-200 Corrective action plan. (1) A hemp licensee may be subject to a corrective action plan established by the department to correct negligent violations of this chapter including, but not limited to:

(a) Failing to provide a legal description of land on which the producer produces hemp;

(b) Failing to obtain a license or other required authorization from the department; or

(c) Producing Cannabis sativa L. with delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis.

(2) A hemp licensee shall comply with a corrective action plan established by the department to correct the negligent violation, including:

(a) A reasonable date by which the hemp producer shall correct the negligent violation;

(b) A requirement that the hemp producer shall periodically report to the department, as applicable, on the compliance of the hemp producer with the regulations under this chapter for a period of at least two calendar years.

(3) Licensees may be subject to license suspension or revocation for violations of chapter 15.140 RCW or this chapter for failing to comply with a corrective action plan.

(4) A hemp licensee that negligently fails to comply with the regulations under this chapter three times in a five-year period shall be ineligible to produce hemp for a period of five years beginning on the date of the third violation.

(5) The department will not consider hemp producers as committing a negligent violation by producing plants exceeding the acceptable hemp THC level if they use reasonable efforts to grow hemp and the plant does not have a THC concentration of more than 0.5 percent on a dry weight basis. For sampling and testing violations, the department will consider the entire harvest from a distinct lot in determining whether a violation occurred. This means that if testing determines that each sample of five plants from distinct lots has a THC concentration exceeding the acceptable hemp THC level (or 0.5 percent if the hemp producer has made reasonable efforts to grow hemp), USDA considers this as one negligent violation. If an individual produces hemp without a license, this will be considered one violation.

(6) Negligent violations are not subject to criminal enforcement. However, the department will report the production of hemp without a license issued by the department to the United States Department of Agriculture (USDA) and the Attorney General.

(7) Hemp found to be produced in violation of this chapter such as hemp produced on a property not disclosed by the licensed producer, or without a license, would be subject to the same disposal or destruction as for hemp above the acceptable hemp THC level.

NEW SECTION

WAC 16-306-210 Culpable violations. If it is determined a violation was committed with a culpable mental state greater than negligence, meaning, acts made intentionally, knowingly or with recklessness, WSDA will report the violation to USDA, the attorney general, and the local law enforcement officer as applicable.

NEW SECTION

WAC 16-306-220 Venue for legal action. The venue for any legal action under this chapter shall be Thurston County, Washington.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 16-305-010 Purpose of chapter.
- WAC 16-305-015 Activities outside the scope of enforcement.
- WAC 16-305-020 Industrial hemp research program goals.
- WAC 16-305-030 Definitions.
- WAC 16-305-040 Industrial hemp license application.
- WAC 16-305-050 Qualifications of applicants.
- WAC 16-305-060 Industrial hemp grower license.
- WAC 16-305-070 Industrial hemp processor and marketer license.
- WAC 16-305-080 Industrial hemp combination license.
- WAC 16-305-090 Industrial hemp distributor license.
- WAC 16-305-100 Industrial hemp importer certificate.
- WAC 16-305-110 Industrial hemp business licenses and taxes.
- WAC 16-305-120 Suspension of industrial hemp licenses for noncompliance with a child support order.
- WAC 16-305-130 Fit for commerce certification.
- WAC 16-305-140 Transporting industrial hemp.
- WAC 16-305-150 Industrial hemp seed and propagules.

- WAC 16-305-160 Industrial hemp data and reporting requirements.
- WAC 16-305-170 Records retention.
- WAC 16-305-180 Industrial hemp for human consumption.
- WAC 16-305-190 Industrial hemp inspection and sampling criteria.
- WAC 16-305-200 Industrial hemp lab testing criteria.
- WAC 16-305-210 Industrial hemp testing fees.
- WAC 16-305-220 Industrial hemp license fees.
- WAC 16-305-230 Industrial hemp noncompliance for THC concentration.
- WAC 16-305-240 Scope of enforcement.
- WAC 16-305-242 Enforcement actions subject to availability of funds.
- WAC 16-305-245 Determination of civil penalties and license enforcement penalties.
- WAC 16-305-250 Monetary penalties, license denial, suspension or revocation, and right to adjudicative proceeding.
- WAC 16-305-251 Category 1 violations.
- WAC 16-305-252 Category 2 seed distributor violations.
- WAC 16-305-253 Category 3 grower or processor violations.
- WAC 16-305-254 Category 4 license violations.
- WAC 16-305-255 Category 5 regulatory violations.
- WAC 16-305-256 Penalty for failure to follow industrial hemp destruction order.
- WAC 16-305-257 Other dispositions of alleged violations that the department may choose.
- WAC 16-305-260 Venue for legal action.