

WSR 20-17-023
EXPEDITED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed August 6, 2020, 3:21 p.m.]

Title of Rule and Other Identifying Information: WAC 181-80-005, 181-80-010, 181-80-020, alternative routes to certification.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To correct typographical errors and redundancies.

Reasons Supporting Proposal: This will provide more clarity for readers of chapter 181-80 WAC.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Statute Being Implemented: Chapter 28A.410 RCW.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Maren Johnson, 600 Washington Street S.E., Olympia, WA 98504, 360-867-8424

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 corrections of typographical errors and redundancies does not [change] the meaning or effect of these rules, per RCW 34.05.353(1).

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 Maren Johnson, Professional Educator Standards Board, 600 Washington Street S.E., Olympia, WA 98504, phone 360-867-8424, AND RECEIVED BY October 19, 2020.

August 4, 2020
Maren Johnson
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-05-010, filed 2/7/19, effective 3/10/19)

WAC 181-80-005 Definitions. The following definitions shall apply to terms used in this chapter:

(1) **Clinical practice:** "Clinical practice" means ~~((the period during))~~ a specific, prolonged field experience where

the candidate practices or serves in the role for which ~~((he or she is))~~ they are being prepared. Clinical practice must take place in an education setting and under the general supervision of a certificated practitioner, with three years' experience in the role for which the candidate is seeking certification, as defined in WAC 181-78A-010.

(2) **District staff member:** For the purposes of chapter 181-80 WAC, these candidates may be classified district staff members~~((s));~~ or district staff members who hold initial, continuing, or limited career technical education certificates~~((s));~~ or district early learning education staff.

(3) **Field experience:** "Field experience" means learning experiences in school, clinical, or laboratory settings. These learning experiences must be related to specific program outcomes and designed to integrate educational theory, knowledge, and skills in actual practice under the direction of a qualified supervisor as defined in WAC 181-78A-010.

(4) **Internship:** "Internship" means the period of clinical practice for candidates enrolled in approved administrator, school counselor, and school psychologist preparation programs as defined in WAC 181-78A-010.

(5) **Preresidency intensive academy:** The preresidency intensive academy shall require candidates to, prior to beginning residency, gain foundational knowledge in professional educator standards board-approved program domain standards as described in chapter 181-78A WAC; an introduction to the culture of schools, lesson planning, and basic classroom management; and ~~((must require))~~ training in cultural competency.

(6) **Residency:** A residency is a year-long field experience with a minimum of five hundred forty hours of student teaching. Residency is facilitated through partnership of preparation program and school district. Mentoring is required for the duration of the residency.

(7) **Student teaching:** "Student teaching" means the period of clinical practice for individuals enrolled in teacher preparation programs as defined in WAC 181-78A-010.

AMENDATORY SECTION (Amending WSR 19-05-010, filed 2/7/19, effective 3/10/19)

WAC 181-80-010 Basic requirements. (1) Alternative routes to teacher certification programs are partnerships between professional educator standards board-approved preparation program providers, Washington school districts, and other partners as appropriate. These partnerships are focused on district-specific teacher shortage areas. ~~((Authorized))~~ Approved alternative routes partnerships are eligible to apply for the alternative routes block grant and to facilitate alternative route conditional scholarship program as described in RCW 28A.660.050.

(2) Each prospective teacher preparation program provider, in cooperation with a Washington school district or consortia of school districts operating an approved alternative route to teacher certification program must meet the following requirements:

(a) **Partnership requirements.** Alternative routes providers shall establish an alternative routes partnership memorandum of agreement (MOA) between the approved teacher

preparation program provider and each partnering district or consortia of districts. Each MOA shall require:

(i) An identification, indication of commitment, and description of the role of approved teacher preparation program provider and partnering district or consortia of districts, including specific duties of each partner;

(ii) The role of each partner in candidate recruitment, screening, selection, and oversight;

(iii) The role of each partner in field placement and student teaching and a description of when each begins within the program;

(iv) The role of each partner in ~~((mentorship))~~ mentor selection, training, and support;

(v) A description of how the district intends for the alternative route program to support its workforce development plan and how the presence of alternative route candidates will advance its school improvement plans.

(b) **Programmatic requirements.** Programs shall uphold the following requirements in addition to requirements and standards listed in chapter 181-78A WAC.

(i) Ensure candidates meet assessment requirements for basic skills, content knowledge, and performance-based assessment per RCW 28A.410.220, 28A.410.280, and WAC 181-78A-300~~((3))~~.

(ii) Fingerprint and character clearance under RCW 28A.410.010 must be current at all times during the field experience for candidates who do not hold a valid Washington certificate.

(iii) Clinical practice for teacher candidates should consist of no less than five hundred forty hours in classroom settings.

(iv) Mentorship requirements must be met in accordance with WAC 181-78A-220 and 181-78A-300 and each candidate must be assigned a mentor. The candidate must receive mentoring for the duration of the residency.

(v) **Teacher development plan:** Ensure the design and use of a teacher development plan for each candidate. The plan shall specify the alternative route coursework and training required of each candidate and shall be developed by comparing the candidate's prior experience and coursework with the state's standards for residency certification. The plan must also include:

(A) Identification of one or more tools to be used to assess a candidate's performance once the candidate is about halfway through their residency;

(B) Recognition for relevant prior learning ~~((within the teacher development plan))~~ that demonstrates meeting residency certification competencies; and

(C) A description of the criteria that would result in early exit from the program with residency certification.

(vi) **Shortage areas.** Alternative route programs shall enroll candidates in a subject or geographic endorsement shortage area, as defined by the professional educator standards board ~~((including, but not limited to, bilingual, English language learner, special education, early childhood education, and areas with shortages due to geographic location as determined by the professional educator standards board))~~.

AMENDATORY SECTION (Amending WSR 19-05-010, filed 2/7/19, effective 3/10/19)

WAC 181-80-020 Program types. Alternative route programs under this chapter shall operate one to four specific route programs. Successful completion of an alternative route program shall meet the program completion requirements for residency teacher certification. The mentor of the teacher candidate at the school and the supervisor of the teacher candidate from the teacher preparation program provider must both agree that the teacher candidate has successfully completed the program.

(1) **Route 1:** Providers approved to offer route one programs shall enroll currently employed district staff members seeking residency teacher certification. Candidates enrolled in route one programs may complete both their baccalaureate degree and requirements for residency certification in two years or less. Program providers and partners shall uphold entry requirements for route one candidates that include:

(a) A transferable associate degree, or associate degree, or associate of applied science, or ninety quarter credits or the equivalent in semester credits from an accredited institution of higher education;

(b) District or building validation of qualifications, including one year of student interaction and leadership.

(2) **Route 2:** Providers approved to offer route two programs shall enroll currently employed district staff members with baccalaureate degrees seeking residency teacher certification. Candidates enrolled in this route must complete a pre-residency intensive academy. Program providers and partners shall uphold entry requirements for candidates that include:

(a) A baccalaureate degree from an accredited institution of higher education;

(b) District or building validation of qualifications, including one year of student interaction and leadership.

(3) **Route 3:** Providers approved to offer route three programs shall enroll individuals with baccalaureate degrees~~((s))~~ who are not employed in the district at the time of application. Candidates enrolled in this route must complete a pre-residency intensive academy. Program providers and partners shall uphold entry requirements for candidates that include:

(a) A baccalaureate degree from an accredited institution of higher education; and

(b) External validation of qualifications, including demonstrated experience with students or children, such as reference letters and letters of support from previous employers.

(4) **Route 4:** Providers approved to offer route four programs shall enroll individuals with baccalaureate degrees, who are employed in the district at the time of application, or who hold limited certificates as described in WAC 181-79A-231, or hold initial, continuing, or limited career technical education certificates as described in chapter 181-77 WAC. Candidates enrolled in this route must complete a pre-residency intensive academy. The candidate will be delegated primary responsibility for planning, conducting, and evaluating instructional activities in a designated classroom. Program providers and partners shall uphold entry requirements for candidates that include:

(a) A baccalaureate degree from an accredited institution of higher education; and

(b) External validation of qualifications, including demonstrated experience with students or children, such as reference letters and letters of support from previous employers.

(5) Applicants for alternative route programs who are eligible veterans or National Guard members and who meet the entry requirements for the alternative route program for which application is made shall be given preference in admission.

WSR 20-17-033
EXPEDITED RULES
WASHINGTON STATE PATROL

[Filed August 10, 2020, 7:27 a.m.]

Title of Rule and Other Identifying Information: WAC 204-24-050 Use of tire chains and other traction device.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To provide an accurate description of the function of the Washington state department of transportation (WSDOT) highway maintenance vehicles.

Reasons Supporting Proposal: To provide accurate description of the function of WSDOT highway maintenance vehicles.

Statutory Authority for Adoption: RCW 46.37.005 and 46.37.420.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kimberly Mathis, 106 11th Avenue S.W., Olympia, WA 98504, 360-596-4017.

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.

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 Ms. Kimberly Mathis, Washington State Patrol, 106 11th Avenue S.W., Olympia, WA 98504, phone 360-596-4017, email wsprules@wsp.wa.gov, AND RECEIVED BY November 2, 2020.

August 4, 2020
John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 14-21-076, filed 10/13/14, effective 11/13/14)

WAC 204-24-050 Use of tire chains or other traction devices. (1) Vehicles under 10,000 pounds gross vehicle weight.

When traffic control signs are posted by the department of transportation it will be unlawful for any vehicle to enter the controlled area without having mounted on its drive tires the traction device specified by the sign, which must also meet the requirements of WAC 204-24-040.

(a) Exception for all wheel drive vehicles. When "chains required" signs are posted, all-wheel drive vehicles will be exempt from the chain requirement when all wheels are in gear and are equipped with approved traction devices as specified in WAC 204-24-040 provided that tire chains for at least one set of drive tires are carried in the vehicle.

(b) Alternative traction devices listed on the patrol's website as being approved for passenger vehicles as outlined in this chapter will be considered approved for use when "chains required" signs are posted.

(2) Vehicles or combinations of vehicles over 10,000 pounds gross vehicle weight rating (GVWR).

When traffic control signs marked "chains required" are posted by the department of transportation it will be unlawful for any vehicle or combination of vehicles to enter the controlled area without having mounted on its tires, tire chains as follows: Provided, That highway maintenance vehicles operated by the department of transportation for the purpose of snow removal and its ancillary functions are exempt from the following requirements (~~(if such vehicle has sanding capability in front of the drive tires.))~~):

(a) Vehicles or vehicle combinations with two to four axles including but not limited to trucks, truck-tractors, buses and school buses: For vehicles with a single drive axle, one tire on each side of the drive axle must be chained. For vehicles with dual drive axles, one tire on each side of one of the drive axles must be chained. For vehicle combinations including trailers or semi-trailers; one tire on the last axle of the last trailer or semi-trailer, must be chained. If the trailer or semi-trailer has tandem rear axles, the chained tire may be on either of the last two axles.

(b) Automobile transporters are any vehicle combination designed and used specifically for the transport of assembled (capable of being driven) highway vehicles. For vehicles with single drive axles, one tire on each side of the drive axle must be chained. For vehicles with dual drive axles, one tire on each side of each of the drive axles must be chained. For vehicle combinations including trailers or semi-trailers, one tire on the last axle of the last trailer or semi-trailer must be chained. If the trailer or semi-trailer has tandem rear axles, the chained tire may be on either of the last two axles.

(c) Vehicle combinations with five axles consisting of a truck tractor with dual drive axles and a tandem axled semi-trailer; all tires on one drive axle may be chained or one tire on each side of each of the drive axles may be chained. Chains must be applied to a minimum of four tires on the drive axles. On the tandem axle semi-trailer, the chained tire may be on either of the last two axles.

(d) Vehicle combinations with five axles, consisting of a truck and trailer, or truck tractor and semi-trailer with a single

drive axle, or truck tractor, semi-trailer and full trailer: For vehicles with a single drive axle, all tires on the drive axle must be chained. For vehicles with dual drive axles, all tires on one of the drive axles must be chained. For vehicle combinations including trailers or semi-trailers, one tire on the last axle of the last trailer or semi-trailer must be chained. If the trailer or semi-trailer has tandem rear axles, the chained tire may be on either of the last two axles.

(e) Vehicle combinations with six or more axles, including but not limited to truck and trailer or truck tractor and semi-trailer or truck tractor semi-trailer and full trailer: For vehicles with a single drive axle, all tires on the drive axle must be chained. For vehicles with dual drive axles where traffic control signs marked "approved traction tires required" are posted, all tires on one of the drive axles must be chained. For vehicles with dual drive axles where traffic control signs marked "chains required" are posted, all tires on one of the drive axles must be chained. In addition, one tire on each side of the additional drive axle must be chained. For vehicle combinations including trailers or semi-trailers, one tire on the last axle must be chained. For vehicles with tandem axle trailers or semi-trailers, the chained tire may be on either of the last two axles.

(f) All vehicles over 10,000 pounds gross vehicle weight rating (GVWR) must carry a minimum of two extra chains for use in the event that road conditions require the use of more chains or in the event that chains in use are broken or otherwise made useless.

(g) Approved chains for vehicles over 10,000 pounds gross vehicle weight rating (GVWR) must have at least two side chains to which are attached sufficient cross chains of hardened metal so that at least one cross chain is in contact with the road surface at all times. Plastic chains will not be allowed.

(h) If automatic tire chains are used, the vehicle must carry regular tire chains for use on the outside tires of the drive axle of all axles equipped with the automatic tire chain.

(i) On the following routes all vehicles and combinations of vehicles over 10,000 gross vehicle weight rating (GVWR) pounds must carry sufficient tire chains to meet the requirements of this chapter from November 1 to April 1 of each year or at other times when chains are required for such vehicles:

(i) I-90 - Between North Bend (MP 32) and Ellensburg (MP 101).

(ii) SR-97 - Between (MP 145) and Junction SR-2.

(iii) SR-2 - Between Dryden (MP 108) and Index (MP 36).

(iv) SR-12 - Between Packwood (MP 135) and Naches (MP 187).

(v) SR-97 - Between the Columbia River (MP 0.00) and Toppenish (MP 59.00).

(vi) SR-410 - From Enumclaw to Naches.

(vii) SR-20 - Between Tonasket (MP 262) and Kettle Falls (MP 342); and SR-20 between Newhalem (MP 120) and Winthrop (MP 192).

(viii) SR-155 - Between Omak (MP 79) and Nespelem (MP 45).

(ix) SR-970 - Between (MP 0) and (MP 10).

(x) SR-14 - Between Gibbons Creek (MP 18.00) and (MP 108.40) intersection of Cliffs Road.

(xi) SR-542 - Mt. Baker highway between (MP 22.91) and (MP 57.26).

(xii) I-82 - Between Ellensburg Exit 3 (MP 3.00) and Selah Exit 26 (MP 26.00).

Vehicles making local deliveries as indicated on bills of lading and not crossing the mountain pass are exempt from this requirement if operating outside of a chain required area.

(3) For the purpose of this section, chained will mean that the tire has either a tire chain approved for use under chapter 204-24 WAC or an alternative traction tire device listed on the patrol's website as approved for the type of vehicle combination listed in this section.

(4) The Washington state department of transportation or Washington state patrol may prohibit any vehicle from entering a chain/approved traction device control area when it is determined that the vehicle will experience difficulty in safely traveling the area.

WSR 20-17-039

EXPEDITED RULES

DAIRY PRODUCTS COMMISSION

[Filed August 10, 2020, 8:47 a.m.]

Title of Rule and Other Identifying Information: WAC 142-40-040 Travel.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this expedited rule making is to clarify how travel costs are reimbursed.

Reasons Supporting Proposal: Clarifying how travel costs are reimbursed helps prevent confusion in the way the commission processes travel reimbursements.

Statutory Authority for Adoption: RCW 15.44.038 and 15.44.060.

Statute Being Implemented: RCW 15.44.038.

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

Name of Proponent: Washington dairy products commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Celeste Piette, Lynnwood, Washington, 425-672-0687; and Enforcement: Steve Seppi, Lynnwood, Washington, 425-672-0687.

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.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The expedited rule-making process is appropriate because these rules relate only to the administration of the Washington dairy products commission.

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 Teresa Norman, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-2043, fax 360-902-2092, email tnorman@agr.wa.gov, AND RECEIVED BY October 20, 2020.

August 10, 2020
Steve Seppi
Executive Director

AMENDATORY SECTION (Amending WSR 20-13-026, filed 6/9/20, effective 7/10/20)

WAC 142-40-040 Travel. (1) Except as provided in subsections (7) and (8) of this section, all overnight or out-of-state travel by commissioners and by commission staff must be approved in accordance with commission policy in advance of departure to be eligible for travel expense reimbursement.

(2) All travel expenses must be within the preapproved budget limits as provided for in WAC 142-40-030(1).

(3) Reimbursement for transportation expenses shall be at actual cost subject to the following limitations:

(a) If an employee chooses not to use the state's travel services, travel must be booked at the lowest commercially reasonable cost and exclude any fees due to personal preference or convenience not necessary or critical to commission business.

(b) If an employee chooses not to use the state's travel services, coach airfare will be reimbursed with the expectation that the lowest commercially reasonable fare is found.

(c) If a commissioner or commission employee uses his or her automobile for transportation, mileage shall be reimbursed at the current rate set by the GSA for business travel.

(d) Car rentals up to full-size cars and related fuel expenses. Larger or different types of vehicles require prior approval.

(e) Other transport, including public transit, taxi, and rideshare services, related to commission business travel shall be reimbursed.

(f) Customary tips for transport and meals shall be reimbursed in accordance with commission policy.

(4) Reimbursement for lodging expenses shall be at actual costs and travelers should adhere to the GSA per diem rates as closely as possible. Accommodations should be standard rooms and must be the lowest commercially reasonable cost and exclude any fees due to personal preference or convenience not necessary or critical to commission business.

(5) Reimbursement for meals shall be at actual costs, plus tip, provided that such costs are reasonable for the particular market in which the expense is incurred.

(6) Each person traveling on official commission business shall submit request for reimbursement in accordance with commission policy. Receipts for each expense for which reimbursement is requested must accompany the reimbursement request. Expenses will not be reimbursed unless such a request, accompanied by receipts where required, is timely submitted. Receipts may not be required for expenses under a certain dollar threshold as stated by the Washington dairy products commission policies, which are to be reviewed annually.

(7) No advance approval of travel and related expenses is required for attendance at regular or special meetings of the commission or a committee thereof within the state of Washington.

(8) Day trips by commissioners and commission staff, as well as overnight travel within Washington state by commission staff for commission business, do not require approval in advance of departure and travel-related costs for day trips are reimbursable as provided under (~~WAC 142-40-040(5)~~) this section.

WSR 20-17-043
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed August 10, 2020, 2:05 p.m.]

Title of Rule and Other Identifying Information: WAC 458-20-267 Annual tax performance reports for certain tax preferences.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is updating WAC 458-20-267 to recognize 2020 legislation (ESB 6690), which modified the B&O tax rates for certain taxpayers engaged in manufacturing, processing for hire, and selling commercial airplanes and component parts for commercial airplanes. Examples in the rule have been updated to remove references to the previous rates.

Reasons Supporting Proposal: Updating the examples to remove references to certain preferential B&O tax rates will provide guidance to taxpayers on how to properly complete an annual tax performance report.

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

Statute Being Implemented: RCW 82.04.260.

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: Jennifer Martin, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1539; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

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

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those

programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The amendments to WAC 458-20-267 include updates to examples. No substantive changes were made to this 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 Jennifer Martin, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, phone 360-534-1539, fax 360-534-1606, email JenniferM@dor.wa.gov, AND RECEIVED BY October 19, 2020.

August 10, 2020
Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-13-094, filed 6/19/18, effective 7/20/18)

WAC 458-20-267 Annual tax performance reports for certain tax preferences. (1) **Introduction.** Effective for tax reporting periods beginning January 1, 2018, taxpayers taking certain tax preferences must file an annual tax performance report with the department of revenue (department) providing information about their business. This rule explains how to file a report, the information that must be included in the report, due dates for filing, and other filing requirements.

(a) **References to related rules.** For tax reporting periods through December 31, 2017, readers may want to refer to the following rules:

(i) WAC 458-20-267A Annual reports for certain tax preferences;

(ii) WAC 458-20-268 Annual surveys for certain tax preferences.

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

(i) **Person.** "Person" has the meaning under RCW 82.04.030 and also includes the state and its departments and institutions.

(ii) **Tax preference.** As defined under RCW 43.136.021, "tax preference" means:

(A) An exemption, exclusion, or deduction from the base of a state tax; a credit against a state tax; a deferral of a state tax; or a preferential state tax rate; and

(B) For purposes of this rule, tax preference includes only the tax preferences requiring an annual tax performance report under RCW 82.32.534.

(c) **Elimination of annual survey.** For tax preferences claimed for tax reporting periods beginning in January 2018 and later, taxpayers are no longer required to complete both an annual report and an annual survey.

(d) **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. The department will evaluate each case on its particular facts and circumstances.

(2) **Tax preferences requiring an annual tax performance report.** Taxpayers may refer to the department's website at dor.wa.gov for the "Annual Tax Performance Report for Preferential Tax Rates/Credits/Exemptions/Deferrals Worksheet." This worksheet lists tax preferences that require an annual tax performance report. Taxpayers may also contact the telephone information center at 800-647-7706 to determine whether they must file an annual tax performance report.

(3) **How to file annual tax performance reports.**

(a) **Electronic filing.** Annual tax performance reports must be filed electronically unless the department waives this requirement upon a showing of good cause. A report is filed electronically when the department receives the report in an electronic format through the "MyDOR" system at dor.wa.gov.

(b) **Required paper form.** If the department waives the electronic filing requirement for a person who shows good cause, that person must use the annual tax performance report form developed by the department unless that person obtains prior written approval from the department to file an annual tax performance report in an alternative format.

(c) **How to obtain the form.** Persons who have received a waiver of the electronic filing requirement from the department or who otherwise would like a paper copy of the report may obtain the annual tax performance report form from the department's website at dor.wa.gov. It may also be obtained by calling the telephone information center at ((800-647-7706)) 360-705-6705, or by contacting the department at:

Attn: Tax Incentive Team
Taxpayer Account Administration
Department of Revenue
Post Office Box 47476
Olympia, WA 98504-7476

(d) **Special requirement for persons who did not file an annual tax performance report during the previous calendar year.** If a person is a first-time filer or otherwise did not file an annual tax performance report with the department during the previous calendar year, or prior to 2019 did not file an annual report or annual survey, the annual tax performance report must include information on employment and wages for the two calendar years immediately preceding the due date of the report.

(e) **Due date of annual tax performance report for tax preferences other than deferrals.** Every person claiming a tax preference that requires an annual tax performance report under RCW 82.32.534 must file the report annually with the department in the year following the calendar year in which

the person becomes eligible to claim the tax preference. The due date for filing the report is May 31st.

(f) **Due date of annual tax performance report for tax preferences that are deferrals.** If the tax preference is a deferral of tax, an annual tax performance report must be filed by May 31st in the year following the calendar year in which the investment project is certified by the department as operationally complete, and by May 31st of each of the seven succeeding calendar years.

(g) **Due date extensions.** The department may extend the due date for filing annual tax performance reports as provided in subsection (15) of this rule.

(h) **Example 1.** ~~((An aerospace firm first claimed the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts on April 1, 2017. By May 31, 2018, the aerospace firm was required to submit an annual report covering calendar years 2016 and 2017. If the aerospace firm continues to claim the B&O tax rate provided by RCW 82.04.260(11) during calendar year 2018, an annual tax performance report is due by May 31, 2019, covering calendar year 2018.))~~ A manufacturer of commercial airplanes begins construction on a new facility in Washington. This facility will be used to manufacture fuselages of commercial airplanes. This firm first claimed the sales and use tax exemption provided by RCW 82.08.980 for construction of new facilities used to manufacture commercial airplanes, fuselages, or wings of commercial airplanes in 2020. By May 31, 2021, the aerospace firm was required to submit an annual report covering calendar years 2019 and 2020. If the aerospace firm continues to utilize the exemption provided by RCW 82.08.980 during calendar year 2021, an annual tax performance report is due by May 31, 2022, covering calendar year 2021.

(i) **Example 2.** An aluminum smelter first claimed the B&O tax rate provided by RCW 82.04.2909 for aluminum smelters on July 31, 2017. By May 31, 2018, the aluminum smelter must provide an annual report covering calendar years 2016 and 2017. If the aluminum smelter continues to claim the B&O tax rate provided by RCW 82.04.2909 during calendar year 2018, an annual tax performance report is due by May 31, 2019, covering calendar year 2018.

(4) **Amount of tax preference.** The annual tax performance report must include the amount of the tax preference claimed for the calendar year covered by the report.

(5) **What employment positions are included in the annual tax performance report?**

(a) **General rule.** Except as provided in (a)(i), (ii), or (b) of this subsection, the report must include information detailing employment positions in the state of Washington.

(i) **Alternative to reporting employment and wage data.** A person may elect to allow, on their behalf, the employment security department to release wage and employment data to the department and the joint legislative audit and review committee. Each taxpayer electing this option must affirm that election in accordance with procedures approved by the employment security department.

(ii) **Additional reporting requirements for public research institutions claiming an exemption for machinery and equipment.** For a person that claimed an exemption

provided in RCW 82.08.025651 or RCW 82.12.025651, the report must include the amount of tax exempted under those sections in the prior calendar year for each general area or category of research and development for which exempt machinery and equipment and labor and services were acquired in the prior calendar year.

(b) **Alternative method.** Persons engaged in manufacturing commercial airplanes or their components may report employment positions per job at the manufacturing site.

(i) **What is a "manufacturing site"?** For purposes of the annual tax performance report, a "manufacturing site" is one or more immediately adjacent parcels of real property located in Washington state on which manufacturing occurs that support activities qualifying for a tax preference. Adjacent parcels of real property separated only by a public road comprise a single site. A manufacturing site may include real property that supports the qualifying activity, such as administration offices, test facilities, warehouses, design facilities, and shipping and receiving facilities. It may also include portions of the manufacturing site that support nonqualifying activities.

(ii) **If the person files per job at the manufacturing site, which manufacturing site is included in the annual tax performance report for the aerospace manufacturing industry tax preferences?** The location(s) where a person is manufacturing commercial airplanes or components of such airplanes within this state is the manufacturing site(s) included in the annual tax performance report. A "commercial airplane" has its ordinary meaning, which is an airplane certified by the Federal Aviation Administration (FAA) for transporting persons or property, and any military derivative of such an airplane. A "component" means a part or system certified by the FAA for installation or assembly into a commercial airplane.

(iii) **Are there alternative methods for reporting separately for each manufacturing site?** For purposes of completing the annual tax performance report, the department may agree to allow a person whose manufacturing sites are within close geographic proximity to consolidate its manufacturing sites onto a single annual tax performance report provided that the jobs located at the manufacturing sites have equivalent employment positions, and wages. A person may request written approval to consolidate manufacturing sites by contacting the department at:

Attn: Tax Incentive Team
Taxpayer Account Administration
Department of Revenue
Post Office Box 47476
Olympia, WA 98504-7476

(c) **Example 3.** ABC Airplanes, a company manufacturing FAA certified airplane landing gear, conducts activities at three locations in Washington state. ABC Airplanes ~~((is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts))~~ claims the Aerospace Property and Leasehold Excise Tax B&O credit provided by RCW 82.04.4463 for property taxes paid on qualified buildings used exclusively in manufacturing commercial airplanes or component parts. In Seattle, WA, ABC

Airplanes maintains its corporate headquarters and administrative offices. In Spokane, WA, ABC Airplanes manufactures the brake systems for the landing gear. In Vancouver, WA, ABC Airplanes assembles the landing gear using the components manufactured in Spokane, WA. If filing per manufacturing site, ABC Airplanes must file separate annual tax performance reports for employment positions at its manufacturing sites in Spokane and Vancouver because these are the Washington state locations in which manufacturing occurs that supports activities qualifying for a tax preference.

~~((d) **Example 4.** Acme Engines, a company manufacturing engine parts, conducts manufacturing in five locations in Washington state. Acme Engines is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. It manufactures FAA-certified engine parts at its Puyallup, WA location. Acme Engines' four other locations manufacture non-FAA-certified engine parts. If filing per manufacturing site, Acme Engines must file an annual tax performance report for employment positions at its manufacturing site in Puyallup because it is the only location in Washington state in which manufacturing occurs that supports activities qualifying for a tax preference.~~

~~(e) **Example 5.** Tacoma Rivets, with one in-state manufacturing site located in Tacoma, WA, manufactures rivets used in manufacturing airplanes. Half of the rivets Tacoma Rivets manufactures are FAA-certified to be used on commercial airplanes. The remaining rivets Tacoma Rivets manufactures are not FAA-certified and are used on military airplanes. Tacoma Rivets is reporting tax on its sales of FAA-certified rivets under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. If filing per manufacturing site, Tacoma Rivets must file an annual tax performance report for employment positions at its manufacturing site in Tacoma because it is the location in Washington state in which manufacturing occurs that supports activities qualifying for a tax preference.~~

~~(f) **Example 6.** Dynamic Aerospace Composites is a company that manufactures only FAA-certified airplane fuselage materials. Dynamic Aerospace Composites conducts activities at three separate locations within Kent, WA. Dynamic Aerospace Composites is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. If filing per manufacturing site, Dynamic Aerospace Composites must file separate annual tax performance reports for each of its three manufacturing sites.~~

~~(g) **Example 7.** Worldwide Aerospace, an aerospace company, manufactures wing systems for commercial airplanes in twenty locations around the world, but none located in Washington state. Worldwide Aerospace manufactures wing surfaces in San Diego, CA. Worldwide Aerospace sells the wing systems to an airplane manufacturer located in Moses Lake, WA and is reporting tax on these sales under the B&O tax rate provided by RCW 82.04.260(11) for sales, at retail or wholesale, of commercial airplanes, or components of such airplanes, manufactured by that person. Worldwide Aerospace is required to complete the annual tax perfor-~~

~~mance report for any employment positions in Washington that are directly related to the qualifying activity.))~~

~~(6) **What jobs are included in the annual tax performance report?** The annual tax performance report covers all full-time, part-time, and temporary jobs in this state or, for persons filing as provided in subsection (5)(b) of this rule, at the manufacturing site as of December 31st of the calendar year for which an applicable tax preference is claimed. Jobs that support nonqualifying activities or support both nonqualifying and qualifying activities for a tax preference are included in the report if the job is located in Washington state or, for persons filing as provided in subsection (5)(b) of this rule, at the manufacturing site.~~

~~((a)) **Example ((8)) 4.** XYZ Aluminum, an aluminum smelter company, manufactures aluminum in Tacoma, WA. The company is reporting tax under the B&O tax rate provided by RCW 82.04.2909 for aluminum smelters. XYZ Aluminum's annual tax performance report for its Tacoma, WA location will include all of its employment positions in this state, including its nonmanufacturing employment positions.~~

~~((b) **Example 9.** AAA Tire Company manufactures tires at one manufacturing site located in Centralia, WA. The company is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. FAA-certified tires comprise only 20% of the products it manufactures and are manufactured in a separate building at the manufacturing site. If filing under the method described in subsection (5)(b) of this rule, AAA Tire Company must report all jobs at the manufacturing site, including the jobs engaged in the nonqualifying activities of manufacturing non-FAA-certified tires.))~~

~~(7) **How is employment detailed in the annual tax performance report?** The annual tax performance report requires reporting of the total hours and wages for employees in Washington for each quarter or for the calendar year, as determined by the department.~~

~~(8) **What is total employment?** The annual tax performance report must provide information on all full-time, part-time, and temporary employment positions located in Washington. Total employment includes employees who are on authorized leaves of absences such as sick leave, vacation, disability leave, jury duty, military leave, regardless of whether those employees are receiving wages. Leaves of absences do not include separations of employment such as layoffs or reductions in force. Vacant positions are not included in total employment.~~

~~(9) **What are full-time, part-time, and temporary employment positions?** An employer must provide information on the total number of employees that are employed in full-time, part-time, or temporary employment positions on December 31st of the calendar year for which an applicable tax preference is claimed.~~

~~(a) **Full-time and part-time employment positions.** For a position to be treated as full time or part time, the employer must intend for the position to be filled for at least fifty-two consecutive weeks or twelve consecutive months. A full-time position is a position that satisfies any one of the following minimum thresholds:~~

(i) Works thirty-five hours per week for fifty-two consecutive weeks;

(ii) Works four hundred fifty-five hours, excluding overtime, each quarter for four consecutive quarters; or

(iii) Works one thousand eight hundred twenty hours, excluding overtime, during a period of twelve consecutive months.

A part-time position is a position in which the employee works less than the hours required for a full-time position. In some instances, an employee may not be required to work the hours required for full-time employment because of paid rest and meal breaks, health and safety laws, disability laws, shift differentials, or collective bargaining agreements, but receives wages equivalent to a full-time job. If, in the absence of these factors, the employee would be required to work the number of hours for a full-time position to receive full-time wages, the position should be reported as a full-time employment position.

(b) **Temporary positions.** A temporary position is a position that is intended to be filled for period of less than twelve consecutive months. Positions in seasonal employment are temporary positions. Temporary positions include workers furnished by staffing companies regardless of the duration of the placement with the person required to file the annual tax performance report.

(c) **The following facts apply to the examples in (c) of this subsection.** National Airplane Inc. manufactures (~~FAA certified navigation systems at a manufacturing site located in Tacoma, WA. National Airplane Inc. is claiming all the tax preferences available for manufacturers and processors for hire of commercial airplanes and component parts~~) wings for commercial airplanes. National Airplane Inc. begins construction of a new facility to store raw materials used in manufacturing wings for commercial planes in Tacoma, WA, and claims the Aerospace Manufacturing Site Sales and Use Tax Exemption in RCW 82.08.980 and 82.12.980. National Airplane Inc. employs one hundred people. Seventy-five of the employees work directly in the manufacturing operation and are classified as (U.S. Department of Labor Standard Occupation Code) SOC Production Occupations. Five employees work in the engineering and design division and are classified as SOC Architect and Engineering Occupations. Five employees are sales representatives and are classified as SOC Sales and Related Occupations. Five employees are service technicians and are classified as SOC Installation, Maintenance, and Repair Occupations. Five employees are administrative assistants and are classified as SOC Office and Administrative Support. Five executives are classified as SOC Management Occupations.

(i) **Example ((10)) 5.** Through a college work-study program, National Airplane Inc. employs six interns from September through June in its engineering department. The interns each work twenty hours a week. The six interns are reported as temporary employees, and not as part-time employees, because the intern positions are intended to be filled for a period of less than twelve consecutive months. Assuming the five employees classified as SOC Architect and Engineering Occupations are full-time employees, National Airplane Inc. will report a total of eleven employment positions in SOC Architect and Engineering Occupa-

tions with five in full-time employment positions and six in temporary employment positions.

(ii) **Example ((11)) 6.** National Airplane Inc. manufactures navigation systems in two shifts of production. The first shift works eight hours from 8:00 a.m. to 5:00 p.m. Monday through Friday. The second shift works six hours from 6:00 p.m. to midnight Monday through Friday. The second shift works fewer hours per week (thirty hours) than the first shift (forty hours) as a pay differential for working in the evening. If a second shift employee transferred to the first shift, the employee would be required to work forty hours with no overall increase in wages. The second shift employees should be reported as full-time employment positions, rather than part-time employment positions.

(iii) **Example ((12)) 7.** On December 1st, ten National Airplane Inc. full-time employees classified as SOC Production Occupations take family and medical leave for twelve weeks. National Airplane Inc. hires five people to perform the work of the employees on leave. Because the ten employees classified as SOC Production Occupations are on authorized leave, National Airplane Inc. will include those employees in the annual tax performance report as full-time employment positions. The five people hired to replace the absent employees classified as SOC Production Occupations will be included in the report as temporary employees. National Airplane Inc. will report a total of eighty employment positions in SOC Production Occupations with seventy-five in full-time employment positions and five in temporary employment positions.

(iv) **Example ((13)) 8.** On December 1st, one full-time employee classified as SOC Sales and Related Occupations resigns from her position. National Airplane Inc. contracts with Jane Smith d/b/a Creative Enterprises, Inc. to finish an advertising project assigned to the employee who resigned. Because Jane Smith is an independent contractor, National Airplane Inc. will not include her employment in the annual tax performance report. Because the resignation has resulted in a vacant position, the total number of employment positions National Airplane Inc. will report in SOC Sales and Related Occupations is reduced to four employment positions.

(v) **Example ((14)) 9.** All National Airplane Inc. employees classified as SOC Office and Administrative Support Occupations work forty hours a week, fifty-two weeks a year. On November 1st, one employee must limit the number of hours worked to thirty hours each week to accommodate a disability. The employee receives wages based on the actual hours worked each week. Because the employee works less than thirty-five hours a week and is not paid a wage equivalent to a full-time position, the employee's position is a part-time employment position. National Airplane Inc. will report a total of five employment positions in SOC Office and Administrative Support Occupations with four in full-time employment positions and one in part-time employment positions.

(10) **What are wages?** For the purposes of the annual tax performance report, "wages" means the base compensation paid to an individual for personal services rendered to an employer, whether denominated as wages, salary, commission, or otherwise. Generally, compensation in the form of

overtime, tips, bonuses, benefits (insurance, paid leave, meals, etc.), stock options, and severance pay are not "wages." For employees that earn an annual salary, hourly wages are determined by dividing annual salary by 2080. If an employee is paid by commission, hourly wages are determined by dividing the total amount of commissions paid during the calendar year by 2080.

(11) How are wages detailed for the annual tax performance report?

(a) An employer must report the total wages for employees in Washington for each quarter or for the calendar year, as determined by the department.

(b) For purposes of the annual tax performance report, wages are measured on December 31st of the calendar year for which an applicable tax preference is claimed.

(12) Reporting workers furnished by staffing companies. For temporary positions filled by workers that are furnished by staffing companies, the person filling out the annual tax performance report must provide the following information:

(a) Total number of staffing company employees furnished by staffing companies;

(b) Average duration of all staffing company employees.

(13) Additional reporting for aluminum smelters and electrolytic processing businesses. For an aluminum smelter or electrolytic processing business, the annual tax performance report must indicate the quantity of product produced in this state during the time period covered by the report.

(14) Are annual tax performance reports confidential? Except for the additional information that the department and the joint legislative audit and review committee may request which it deems necessary to measure the results of, or to determine eligibility for the tax preference, annual tax performance reports are not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(15) What are the consequences for failing to file a complete annual tax performance report?

(a) **What is a "complete annual tax performance report"?** An annual tax performance report is complete if:

(i) The annual tax performance report is filed on the form required by this rule or in an electronic format as required by law; and

(ii) The person makes a good faith effort to substantially respond to all report questions required by this rule.

Responses such as "varied," "various," or "please contact for information" are not considered good faith responses to a question.

(b) **Amounts due for late filing.** Except for deferrals, if a person does not timely file a required annual tax performance report, then the following amounts are immediately due and payable:

For reports due on or after July 1, 2017 or annual tax performance reports due on or after May 31, 2019:

(i) Thirty-five percent of the amount of the tax preference claimed for the previous calendar year; and

(ii) An additional fifteen percent of the amount of the tax preference claimed for the previous calendar year if the person has previously been assessed under (b) of this subsection

for failure to timely submit a report for the same tax preference.

(c) **Tax deferrals.** If the tax preference is a deferral of tax, twelve and one-half percent of the deferred tax is immediately due. If the economic benefits of the deferral are passed to a lessee, the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(d) **Interest and penalties.** The department may not assess interest or penalties on amounts due under (b) and (c) of this subsection.

(e) **Extension for circumstances beyond the control of the taxpayer.** If the department finds the failure of a taxpayer to file an annual tax performance report by the due date was the result of circumstances beyond the control of the taxpayer, the department will extend the time for filing the report. The extension will be for a period of thirty days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this rule. The department may grant additional extensions as it deems proper under RCW 82.32.590.

In determining whether the failure of a taxpayer to file an annual tax performance report by the due date was the result of circumstances beyond the control of the taxpayer, the department will apply the provisions in WAC 458-20-228 for the waiver or cancellation of penalties when the underpayment or untimely payment of any tax was due to circumstances beyond the control of the taxpayer.

(f) **One-time only extension.** A taxpayer (~~who~~) that fails to file an annual tax performance report, as required under this rule, by the due date of the report is entitled to an extension of the due date. A request for an extension under this subsection must be made in writing to the department.

(i) To qualify for an extension, a taxpayer must have filed all annual tax performance reports, annual reports and annual surveys, if any, due in prior years by their respective due dates, beginning with annual reports and annual surveys due in the calendar year 2010.

(ii) The extension is for ninety days from the original due date of the annual tax performance report.

(iii) No taxpayer may be granted more than one ninety-day extension.

WSR 20-17-044

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed August 10, 2020, 2:05 p.m.]

Title of Rule and Other Identifying Information: WAC 458-16-270 Schools and colleges.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 458-16-270 to incorporate 2020 legislation, ESB 5402, section 49. This legislation removes certain detailed information from RCW 84.36.840 no longer required in annual reports submitted by nonprofit exempt schools, colleges, and not-for-profit foundations established for the exclusive support of an institution of higher education, seeking exemption from property taxes under RCW 84.36-050.

Reasons Supporting Proposal: This rule is being updated to incorporate changes resulting from 2020 legislation, ESB 5402, section 49.

Statutory Authority for Adoption: RCW 84.36.865.

Statute Being Implemented: RCW 84.36.840.

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: Miki Gearhart, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1536; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

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

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

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The expedited rule-making process is applicable to this rule update because the department is incorporating changes resulting from 2020 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 Miki Gearhart, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, phone 360-534-1536, fax 360-534-1606, email MikiG@dor.wa.gov, AND RECEIVED BY October 19, 2020.

August 10, 2020

Atif Aziz

Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-07-021, filed 3/10/15, effective 4/10/15)

WAC 458-16-270 Schools and colleges. (1) Introduction. This rule explains the two property tax exemptions available under the provisions of RCW 84.36.050. The first exemption applies to property owned or used by or for a nonprofit school or college. The second exemption is for property owned by a not-for-profit foundation established for the exclusive support of an institution of higher education, as

defined in RCW 28B.10.016, that is leased to and used by the institution. Nonprofit schools, colleges, and not-for-profit foundations seeking a property tax exemption under RCW 84.36.050 must also comply with the relevant requirements of RCW 84.36.805, 84.36.840, and WAC 458-16-165. (See subsection (8) of this rule.)

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

(a) "College or campus purposes" means principally designed to further the educational, athletic, or social functions of an institution of higher education, as defined in RCW 28B.10.016, and only applies to property that is owned by a not-for-profit foundation and leased to and used by such an institution.

(b) "Cultural or art educational program" means:

(i) An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;

(ii) A musical or dramatic performance or series of performances; or

(iii) An educational seminar or program, or series of such programs, offered by a nonprofit school or college to the general public on an artistic, cultural, or historical subject. (See RCW 82.04.4328(2).)

(c) "Educational, social and athletic programs" or "educational, social and athletic functions" individually or collectively mean those programs offered or functions performed by or for the school or college in each such general area, including, but not limited to, those illustrated by the examples set forth in this definition, and including educational, social, and athletic programs and functions sponsored or cosponsored by the school or college, offered by others on school or college-owned property in a manner consistent with the school or college's programs, and such programs and functions on school or college property that may involve alumni and community members.

(i) Examples of educational programs and functions include, in addition to those described in the definition of "educational purposes" in (d) of this subsection: Classes, seminars, conferences, providing instructional support to students and other participants in such programs and functions, and programs and functions that utilize and apply the academic and instructional resources and facilities of the school or college, including related administrative and support activities for these programs and functions.

(ii) Examples of athletic programs and functions include: Physical training, sport events and practices, athletic camps, and use of school or college recreational and fitness resources and facilities by students, alumni, faculty, staff, or third parties, including related administrative and support activities, which use the property in a manner consistent with the school or college's programs.

(iii) Examples of social programs or functions include activities engaged in by or for the school or college that further the health, safety, well-being, emotional growth, welfare, psychological development, socialization, preparation and training for participation in society, development of adaptive skills and cultural awareness and related activities for students including, but not limited to, theatrical or musical performances, artistic, cultural, or technology exhibits or

fairs, events, presentations and programs providing students with information about and access to goods and services they need while a student at the school or college.

(d) "Educational purposes" means, in addition to the educational programs and functions described in (c) of this subsection, systematic instruction, either formal or informal, in any and all branches of learning directed to an indefinite class of persons and from which a substantial public benefit is derived. The term includes all purposes that seek to promote or advance education.

(e) "Schools and colleges" means:

(i) Nonprofit educational institutions that are approved by the superintendent of public instruction or whose students and credentials are accepted without examination by schools and colleges established under either Title 28A or 28B RCW and offer students an educational program of a general academic nature; or

(ii) Nonprofit institutions that meet the following criteria:

(A) They have a definable curriculum and measurable outcomes for a specific group of students;

(B) They have a qualified or certified faculty;

(C) They have facilities and equipment that are designed for the primary purpose of the educational program;

(D) They have an attendance policy and requirement;

(E) They have a schedule or course of study that supports the instructional curriculum; and

(F) They are accredited, recognized, or approved by an external agency that certifies educational institutions and the transferability of courses.

(f) "Net income" means the amount received from the loan or rental of exempt property that exceeds the amount of the maintenance and operation expenses, as defined in WAC 458-16-165, attributable to the portion of the property loaned or rented.

(g) "Pecuniary gain" means the generation of monetary receipts from commercial operations or other sales activities, when those receipts exceed expenses of operations or are intended to exceed expenses of operations.

(h) "Religious faculty" means a person who:

(i) Teaches at a school or college; and

(ii) Is a member of the clergy or a religious order or officially invested with ministerial or priestly authority, as distinguished from laity.

(i) "Third parties" means individuals, groups, organizations, associations, corporations, and entities other than the school or college to which an exemption is granted under this rule.

(3) **Exemption - Nonprofit schools or colleges.** Property owned or used by or for any nonprofit school or college within this state is exempt to the extent that it is used for educational purposes or cultural or art educational programs.

(a) Real property exempt under this rule cannot exceed four hundred acres. The exempt property includes, but is not limited to:

(i) Buildings and grounds principally designed for the educational, athletic, or social programs or functions of the school or college;

(ii) Buildings that house part-time or full-time students, religious faculty, or the chief administrator of the school or college;

(iii) Buildings used for athletic activities of the school or college; and

(iv) All other school or college facilities, such as maintenance facilities, heating plants, storage facilities, security services facilities, food services facilities, transportation facilities, administrative offices, or a student union building or student commons, which are needed because of the presence of the school or college.

(b) Property that is not a part of, or contiguous to, the main campus of a school or college and for which the institution wishes to obtain an exemption((;)). The department may require the institution to provide, in detail, the following information to support the exemption:

(i) The names of courses taught or a description of the educational purposes or cultural or art educational programs taking place at the off-campus site;

(ii) A calendar of dates and times that shows how the subject property is used; and

(iii) The number of students who participate in the educational activities or cultural or art educational programs conducted at the off-campus site.

(c) If property is leased to a school or college, in order to be exempt, the benefit of the exemption must inure to the school or college.

(4) **Exemption - Property owned by a not-for-profit foundation that is leased to and used by an institution of higher education.** RCW 84.36.050 also provides a property tax exemption to real or personal property owned by a not-for-profit foundation established for the exclusive support of an institution of higher education, as defined in RCW 28B.10.016. The property must be leased to and used by the institution for college or campus purposes and it must be principally designed to further the educational, athletic or social functions of the institution.

(a) An institution of higher education is defined in RCW 28B.10.016 as synonymous with "postsecondary institutions" and means the University of Washington, Washington State University, Western Washington University at Bellingham, Central Washington University at Ellensburg, Eastern Washington University at Cheney, The Evergreen State College, the community colleges, and the technical colleges.

(b) The exemption can only be obtained for property actively utilized by currently enrolled students.

(c) The benefit of the exemption must inure to the educational institution using the exempt property.

(5) **Uses of the exempt property that affect the exemption - Exceptions.** For purposes of the school and college exemption:

(a) If exempt property is used by a third party entitled to a property tax exemption, the property remains exempt as long as the amount of rent or donations received by the school or college for that use is reasonable and does not result in net income.

(b) If exempt property is used by a third party not entitled to a property tax exemption, except as otherwise provided in this rule, then the property, or portion used is taxable for the entire assessment year in which the nonqualifying use occurs

and will remain taxable until a new application is filed with the department and approved. When an exemption is denied for only a portion of the school or college's property, the renewal application only needs to address that portion of the property denied and not the entire property.

(c) There are three general exceptions to the loss of exemption when exempt property is used by a third party not entitled to a property tax exemption, which exceptions are described in (i), (ii), and (iii) of this subsection (5)(c), as follows:

(i) If exempt property is used by students, alumni, faculty, staff, or other third parties in a manner consistent with the educational, social, or athletic programs of the school or college, including property used for related administrative and support functions, and not for pecuniary gain or to promote business activities, then the property remains exempt.

(ii) When the school or college contracts with and permits the use by third parties of exempt property to provide school or college-related programs or services directed at students, faculty, and staff, and not primarily at the general public, then the property remains exempt, regardless of whether payment for the programs or services is made to such third party by the school or college, or by program participants or service recipients, and regardless of whether the use by the third party results in pecuniary gain for the third party or the promotion of the third party's business. Examples of such programs or services include school or college educational, social and athletic programs and functions; the provision of food services, including snack and coffee bars, food or bottled drink vending machines, or on-campus catering services for school or college events; placement of an automated teller machine on exempt property; the operation of a bookstore on campus that sells textbooks and other student oriented items; and the provision of maintenance, operational, or administrative services.

(iii) If exempt property is used for pecuniary gain or to promote business activities for fifteen days or less each calendar year by third parties who are not entitled to a property tax exemption, the property remains exempt. Disqualifying use of more than fifteen days is measured separately with respect to each specific portion of the exempt property used, and is cumulative with respect to each such separate portion each year for all such third party use. For example, if a classroom in a building is used by three separate third parties for pecuniary gain or to promote business activities on three separate occasions in one calendar year for periods of four, six, and eight days respectively (for a total of eighteen days), that classroom, but not the entire floor or building, loses its exemption for that calendar year. By contrast, if the six day disqualifying use occurred in a different portion of the building, such as an auditorium, neither the classroom nor the auditorium would be disqualified, since neither portion of the building would have been used for pecuniary gain or to promote business activities for more than fifteen days in that year. This fifteen day limitation does not apply when exempt property is used as or for a sports or educational camp or program that is taught, operated, or conducted by a faculty member who is required or permitted to do so as part of his or her compensation package, whether or not participants pay a fee directly to such faculty member.

(d) Unless otherwise authorized under this rule, the use of exempt property by any individual, group, or entity, does not nullify the exemption if the property is used for nonexempt purposes for up to fifty days each calendar year and is used for pecuniary gain or to promote business activities, as described in subsection (5)(c)(iii) of this rule, for not more than fifteen of the fifty days in each calendar year. The fifty and fifteen-day limitations do not include days for setup and takedown activities that take place immediately preceding or following a meeting or other event.

(6) Examples of uses that do not nullify the exemption. In order to clarify the property tax exemption for schools and colleges, this subsection describes and gives examples of the types of use by third parties not entitled to a property tax exemption that do not nullify the tax exempt status of property owned or used by or for a school or college. The following examples should be used only as a general guide. The tax results of other specific situations must be determined after a review of all of the facts and circumstances. In the following examples, as long as any rent or donation associated with the use is reasonable and does not result in net income to the school or college, the exemption is not affected.

(a) Exempt property is used by students, alumni, faculty, staff, or other third parties for weddings, anniversary celebrations, family or school reunions, funeral services, or similar events. These uses are consistent with the educational or social programs of the school or college and the property remains exempt. The property remains exempt even when the persons or groups using the school or college property for such an event also hire persons such as a caterer, a musical group, or a wedding photographer specifically for the event.

(b) Exempt property is used by third parties, such as members of the community, for lectures, presentations, musical recitals, seminars, debates, or similar educational activities. If the third party use is contracted for and permitted by the school or college, for example when the school or college pays the presenter directly, or when the participants or patrons pay the presenter directly, there is no loss of exemption, as long as the uses are consistent with the educational, social, or athletic programs of the school or college. The presenter may also offer for sale, at the time of the presentation, books, tapes, CDs or similar items that relate directly to the presentation.

(c) Exempt property is used by third parties such as students, alumni, faculty, staff, or members of the community for athletic activities or events on sports fields, tennis courts, and in buildings used for athletics. These uses are consistent with the athletic programs of the school or college and the property remains exempt as long as the property is not used for third party pecuniary gain or to promote business activities. (The example is intended only to illustrate the application of the exception set forth in subsection (5)(c)(i) of this rule, and should be distinguished from the exceptions described under subsections (5)(c)(ii) and (iii) of this rule which permits the generation of third party pecuniary gain in certain identified circumstances.) Any fees, charges, rents, donations or other remuneration for the use of the school or college exempt facilities may not result in net income.

(d) Exempt property is used by third parties for educational or instructional programs, such as private instruction, tutoring, driving instruction, English as a second language or other language courses, examination preparation, or other similar programs. These programs are consistent with the educational programs of the school or college and the property remains exempt as long as the property use is contracted for and permitted by the school or college and the uses are consistent with the educational programs of the school or college.

(e) Exempt property, such as student housing, is used for purposes of recruiting prospective students. Exempt school or college facilities, when not being used by currently enrolled students, are offered by the school or college to third parties for educational programs consistent with the educational purposes of the school or college. Such uses are consistent with the educational programs of the school or college and the property remains exempt.

(f) A school or college provides courses in vocational-technical skills, such as culinary arts, hotel management, automotive mechanics, or cosmetology. As a part of the course work, students obtain practical experience by providing products or services to the public. As long as the charge to the public for these products or services is exclusively used for the school or college's educational, social, or athletic programs, this use of exempt property is consistent with the school's educational programs and functions and will not result in the loss of exemption.

(g) Exempt property is used by a bank or credit union in a school or college student orientation program of limited duration and not more than one time each year, through which students receive information from a variety of local businesses about services that they may need while attending a school or college. This is considered to be a social or educational program of the school or college and is not a disqualifying use.

(h) The school or college contracts with and permits third parties to use exempt property to conduct fund-raising events when the funds raised will be used for educational purposes or cultural or art educational programs of the school or college. Such events must be conducted in accordance with the provisions of WAC 458-16-165.

(7) Examples of disqualifying use. In order to clarify the property tax exemption for schools and colleges, this subsection describes and gives examples of the types of use by third parties not entitled to a property tax exemption that will nullify the tax exempt status of property owned or used by or for a school or college. The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other specific situations must be determined after a review of all of the facts and circumstances.

(a) The placement and operation of a bank or credit union on exempt property. Such an activity is using the exempt property for pecuniary gain and to promote business activities and will cause the loss of exemption. Such an operation provides a service that is not distinguishable from services provided to the general community. The exemption is nullified for the portion of the property occupied by the bank or credit union.

(b) An antique shop, gift shop, or retail store that sells a variety of merchandise, but does not primarily sell products directed at students, faculty, or staff of the school or college, and occupies an exempt college-owned building on the school or college campus on a regular and continuing basis. Such a store does not provide a specific school or college related program or service, and is being operated for pecuniary gain and to promote business activities. The exemption is nullified for the portion of the building occupied by the business.

(8) Additional requirements.

(a) Any school or college, or not-for-profit foundation established for the exclusive support of an institution of higher education, that applies for a property tax exemption under this rule must also comply with the provisions of RCW 84.36.805 to the extent applicable. Schools, colleges, and not-for-profit foundations established for the exclusive support of an institution of higher education may, without losing the exemption, loan or rent exempt property to organizations even though the property would not be exempt if owned by such organizations, as long as the rents or donations received for the use of the portion of the property loaned or rented are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented. WAC 458-16-165 describes and explains additional conditions and requirements that must be complied with to obtain and maintain a property tax exemption for a school, college, or not-for-profit foundation.

(b) Any school or college, or not-for-profit foundation established for the exclusive support of an institution of higher education, that applies for a property tax exemption under this rule must also comply with the provisions of RCW 84.36.840. In accordance with that statute, the applicant must annually file a report with the department on or before March 31st. The report must be signed, and state that the revenues of the school, college, or foundation, including donations, have been applied to maintenance and operation expenses or capital expenditures of the school or college or foundation and to no other purpose. ~~((The report must also contain the following information:~~

~~(i) A list of all property, real and personal, claimed to be exempt, including the parcel number(s) and/or addresses for all real property;~~

~~(ii) The purpose(s) for which the property was used;~~

~~(iii) The revenue derived from the property for the preceding calendar year;~~

~~(iv) The use to which the revenue was applied;~~

~~(v) The number of students who attended the school or college; and~~

~~(vi) The total revenues of the school, college, or foundation, with the source from which they were derived, and the purposes to which the revenues were applied, giving a detailed accounting of the revenues and expenditures.))~~

WSR 20-17-050
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed August 11, 2020, 9:26 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-169 Nonprofit organizations.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 458-20-169 to incorporate 2020 legislation, SB 6312, section 1. This legislation eliminated the expiration date on the use tax exemption for items purchased or received as a prize at a qualifying nonprofit organization or library fundraising event, and added new requirements for calculating the value threshold.

Reasons Supporting Proposal: The rule is being updated to incorporate changes resulting from 2020 legislation, SB 6312, Section 1.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060.

Statute Being Implemented: RCW 82.12.225.

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: Erin Summers, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1568; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

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

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

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The expedited rule-making process is applicable to this rule update because the department is incorporating changes resulting from 2020 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 Erin Summers, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, phone 360-534-1568, fax 360-534-1606, email

ErinSu@dor.wa.gov, AND RECEIVED BY October 19, 2020.

August 11, 2020
 Atif Aziz
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-13-094, filed 6/19/18, effective 7/20/18)

WAC 458-20-169 Nonprofit organizations. (1) **Introduction.** Unlike the tax systems of most states and the federal government, Washington's tax system, including its primary business tax, applies to the activities of nonprofit organizations. Washington's business and occupation (B&O) tax is imposed on all entities that generate gross receipts or proceeds, unless there is a specific statutory exemption or deduction. This rule explains how the B&O, retail sales, and use taxes apply to activities often performed by nonprofit organizations. Although some nonprofit organizations may be subject to other taxes (e.g., public utility or insurance premium taxes on income from utility or insurance activities), these taxes are not discussed in this rule. The rule describes the most common B&O, retail sales, and use tax exemptions and deductions that are specifically provided to nonprofit organizations by state law. Other exemptions or deductions not specific to nonprofit organizations may also apply.

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

(b) **Other rules that may be relevant.** Rules in the following list may contain additional relevant information for nonprofit organizations:

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

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

(iii) WAC 458-20-183 Amusement, recreation, and physical fitness services;

(iv) WAC 458-20-249 Artistic or cultural organizations; and

(v) WAC 458-20-256 Trade shows, conventions and seminars.

(2) **Registration requirements.** Nonprofit organizations with \$12,000 or more per year in gross receipts from sales, and/or gross income from services subject to the B&O tax, or that are required to collect or pay to the department of revenue (department) retail sales tax or any other tax or fee which the department administers (regardless of the level of annual gross receipts) must register with the department. Nonprofit organizations with less than twelve thousand dollars per year in gross receipts and that are not required to collect retail sales tax or any other tax or fee administered by the department are not required to register with the department. For more information on whether registration with the department is required see WAC 458-20-101.

(3) **Filing excise tax returns.** Nonprofit organizations making retail sales that require the collection of retail sales

tax must file an excise tax return, regardless of the annual level of gross receipts or gross income and whether or not any B&O tax is due. For information on when a taxpayer may qualify for a small business B&O tax credit, see WAC 458-20-104. The excise tax return with payment is generally filed on a monthly basis. Under certain conditions the department may authorize taxpayers to file and remit payment on either a quarterly or an annual basis. For information on how reporting frequencies are assigned to taxpayers see WAC 458-20-22801.

Nonprofit organizations that do not have retail sales tax to remit, but are required to register, do not have to file an excise tax return if they meet certain statutory requirements (e.g., annual gross income of less than \$28,000) and are placed on an "active nonreporting" status by the department. For additional information on whether an organization qualifies for the "active nonreporting" status see WAC 458-20-101.

(4) **General tax reporting responsibilities.** While Washington state law provides some tax exemptions and deductions specifically for nonprofit organizations, these organizations otherwise have the same tax-reporting responsibilities as for-profit organizations.

(a) **Business and occupation tax.** Chapter 82.04 RCW imposes a B&O tax on every person with substantial nexus in Washington (see RCW 82.04.067) engaged in business activities within this state, unless the income is specifically exempt or deductible under state law. The B&O tax applies to the value of products, gross proceeds of sales, or gross income of the business, as the case may be. RCW 82.04.220.

(i) **Common B&O tax classifications.** Chapter 82.04 RCW provides a number of classifications that apply to specific activities. The most common B&O tax classifications applying to income received by nonprofit organizations are the retailing, wholesaling, and service and other activities classifications. RCW 82.04.250, 82.04.270, and 82.04.290. If an organization engages in more than one kind of business activity, it must report the gross income from each activity under the appropriate tax classification. RCW 82.04.440(1).

(ii) **Measure of tax.** The most common measures of the B&O tax are "gross proceeds of sales" and "gross income of the business." RCW 82.04.070 and 82.04.080, respectively. These measures include the value proceeding or accruing from the sale of tangible personal property or services rendered without any deduction for the cost of property sold, cost of materials used, labor costs, discounts paid, delivery costs, taxes, losses, or any other expenses.

(b) **Retail sales tax.** A nonprofit organization must collect and remit retail sales tax on all retail sales, unless the sale is specifically exempt by statute. Examples of retail sales tax exemptions that may apply to nonprofit organizations are those for sales of certain food products (see WAC 458-20-244, Food and food ingredients), construction materials purchased by a health or social welfare organization for new construction of alternative housing to be licensed as a family foster home for youth in crisis (see RCW 82.08.02915), and fund-raising activities (see subsection (5)(g) of this rule). New construction includes renovating an existing structure to provide new housing for youth in crisis.

A nonprofit organization must pay retail sales tax when it purchases goods or retail services for its own use as a consumer, unless the purchase is specifically exempt by statute. Items purchased for resale without intervening use are purchases at wholesale and are not subject to the retail sales tax if the seller takes from the buyer a copy of the buyer's reseller permit. The reseller permit documents the wholesale nature of any sale. Reseller permits replaced resale certificates effective January 1, 2010. For additional information on reseller permits see WAC 458-20-102.

(c) **Use tax.** The use tax is imposed on every person, including nonprofit organizations, using tangible personal property within this state as a consumer, unless such use is specifically exempt by statute. The use tax applies only if retail sales tax has not previously been paid on the item. The rate of tax is the same as the sales tax rate that applies at the location where the property is first used.

A common application of the use tax occurs when items are purchased from an out-of-state seller who has no presence in Washington. When the out-of-state seller does not collect Washington's retail sales or use tax, the buyer is statutorily required to remit use tax directly to the department. For more information on use tax and the use of tangible personal property see WAC 458-20-178.

Except for fund-raising, use tax exemptions generally correspond to retail sales tax exemptions. For example, the use tax exemption for construction materials acquired by a health or social welfare organization for new construction of alternative housing for youth in crisis, to be licensed as a family foster home (RCW 82.12.02915) corresponds with the retail sales tax exemption described in subsection (4)(b) of this rule for purchasing these construction materials.

(i) **Use tax exemption for donated items.** RCW 82.12.-02595 provides a use tax exemption for personal property donated to a nonprofit charitable organization. This exemption is available for the nonprofit charitable organization and the donor, if the donor did not previously use the personal property as a consumer. It also applies to the use of property by a donor who is incorporating the property into a nonprofit organization's real or personal property for no charge.

The exemption also applies to another person using property originally donated to a charitable nonprofit organization that is subsequently donated or bailed to that person by the charitable nonprofit organization, provided that person uses the property in furtherance of the charitable purpose for which the property was originally donated to the charitable nonprofit organization. For example, a hardware store donates an industrial pressure washer to a nonprofit community center for neighborhood cleanup, the community center bails this washer to people enrolled in its neighborhood improvement group for neighborhood clean-up projects. No use tax is due from any of the participants in these transactions. An example of a gift that would not qualify is when a car is donated to a church for its staff and the church gives that car to its pastor. The pastor must pay use tax on the car because it serves multiple purposes. It serves the church's charitable purpose, but it also acts as compensation to the pastor and is available for the pastor's personal use. The subsequent donation of property from the charity to another person must be solely for a charitable purpose. If the property is

donated or bailed to the third party for a charitable purpose in line with the nonprofit organization's charitable activities, generally, no additional proof is required that this was the charitable purpose for which the property was originally donated.

(ii) **Use tax implications with respect to fund-raising activities.** Subsection (5)(g) of this rule explains that a retail sales tax exemption is available for certain fund-raising sales. However, there is usually no comparable use tax exemption provided to the buyer/user of property purchased at these fund-raising sales. While the nonprofit organization is not obligated to collect use tax from the buyer, the organization is encouraged to inform the buyer of the buyer's possible use tax obligation.

(iii) ~~((From October 1, 2013, through October 8, 2015,))~~ RCW 82.12.225 ~~((provided))~~ provides a use tax exemption for the use of any article of personal property, ~~((valued at less than ten thousand dollars,))~~ purchased or received as a prize in a contest of chance, as defined in RCW 82.04.285, from a nonprofit organization or a library, ~~if the value is less than the current value limit. ((Effective October 9, 2015, chapter 32, Laws of 2015 3rd Sp. Sess. (ESB 6013), the exemption applies to qualifying personal property valued at less than twelve thousand dollars.))~~ This exemption only applies if the gross income from the sale by the nonprofit organization or library is exempt under RCW 82.04.3651. ~~((This exemption is scheduled to expire July 1, 2020.))~~

(A) The current value limit is twelve thousand dollars. Beginning in 2020, the value limit must be adjusted annually each December for inflation. The department will calculate an adjusted value limit for use in the next calendar year, using the consumer price index for the Seattle area. Adjusted value limits may not decrease from one year to the next. If an adjusted value limit calculation based on the consumer price index results in less than the current year's value limit, the current year's value limit will apply in the following calendar year. Adjusted value limits are published on the department's website and take effect January 1st for the following year.

(B) The following definitions apply to this subsection unless the context clearly requires otherwise:

(I) "Consumer price index" means the consumer price index for all urban consumers, all items, (CPI-U) as calculated by the United States Bureau of Labor Statistics or successor agency.

(II) "Seattle area" means the geographic area sample that includes Seattle and surrounding areas.

(5) **Exemptions.** The following sources of income are specifically exempt from tax. As such, they should not be included or reported as gross income if the organization is required to file an excise tax return.

(a) **Adult family homes.** RCW 82.04.327 exempts from B&O tax amounts received by licensed adult family homes or adult family homes that are exempt from licensing under rules of the department of social and health services.

(b) **Nonprofit assisted living facilities.** RCW 82.04.-4264 exempts from B&O tax amounts received by a nonprofit assisted living facility licensed under chapter 18.20 RCW for providing room and domiciliary care to residents of the assisted living facility. Nonprofit assisted living facilities

were formerly known as "nonprofit boarding homes" in the statute.

(c) **Camp or conference centers.** RCW 82.04.363 and 82.08.830 respectively exempt from B&O tax and retail sales tax amounts received by a nonprofit organization from the sale or furnishing of certain items or services at a camp or conference center conducted on property exempt from the property tax under RCW 84.36.030 (1), (2), or (3). For information about property tax exemptions that may apply see: WAC 458-16-210 (Nonprofit organizations or associations organized and conducted for nonsectarian purposes); WAC 458-16-220 (Church camps); and WAC 458-16-230 (Character building organizations).

Amounts received from the sale of the following items and services are exempt:

(i) Lodging, conference and meeting rooms, camping facilities, parking, and similar licenses to use real property;

(ii) Food and meals;

(iii) Books, tapes, and other products, including electronically transferred items, available exclusively to the participants at the camp, conference, or meeting and not available to the public at large.

(d) **Child care resource and referral services.** RCW 82.04.3395 exempts from B&O tax amounts received by nonprofit organizations for providing child care resource and referral services. Child care resource and referral services do not include child care services provided directly to children.

(e) **Credit and debt services.** RCW 82.04.368 exempts from B&O tax amounts received by nonprofit organizations for providing specialized credit and debt services. These services include:

(i) Presenting individual and community credit education programs including credit and debt counseling;

(ii) Obtaining creditor cooperation allowing a debtor to repay debt in an orderly manner;

(iii) Establishing and administering negotiated repayment programs for debtors; and

(iv) Providing advice or assistance to a debtor with regard to (i), (ii), or (iii) of this subsection.

(f) **Day care provided by churches.** RCW 82.04.339 exempts from B&O tax amounts received by a church for the care of children of any age for periods of less than twenty-four hours, provided the church is exempt from property tax under RCW 84.36.020.

(g) **Fund-raising.** RCW 82.04.3651 and 82.08.02573, respectively, exempt from B&O tax and retail sales tax amounts received from certain fund-raising activities.

These exemptions apply only to the fund-raising income received by the nonprofit organization. For example, commission income received by a nonprofit organization selling books owned by a for-profit entity on a consignment basis is exempt from tax only if the statutory requirements are satisfied. The nonprofit organization is generally responsible for collecting and remitting retail sales tax on the gross proceeds of sales when selling items for another person. For additional information on the taxability of sales by agents, auctioneers and other similar types of sellers see WAC 458-20-159.

(i) **What nonprofit organizations qualify?** Nonprofit organizations that qualify for this exemption are those that are:

(A) A tax-exempt nonprofit organization described by section 501 (c)(3) (educational and charitable), 501 (c)(4) (social welfare), or 501 (c)(10) (fraternal societies operating as lodges) of the Internal Revenue Code; or

(B) A nonprofit organization that would qualify for tax exemption under section 501 (c)(3), (4), or (10) except that it is not organized as a nonprofit corporation; or

(C) A nonprofit organization that does not pay its members, stockholders, officers, directors, or trustees any amounts from its gross income, except as payment for services rendered, does not pay more than reasonable compensation to any person for services rendered, and does not engage in a substantial amount of political activity. Political activity includes, but is not limited to, influencing legislation and participating in any campaign on behalf of any candidate for political office.

(ii) **Qualifying fund-raising activities.** For the purpose of this exemption, "fund-raising activity" means soliciting or accepting contributions of money or other property, or activities involving the anticipated exchange of goods or services for money between the soliciting organization and the organization or person solicited, for furthering the goals of the nonprofit organization.

(A) Money raised by a nonprofit charitable group from its annual telephone fund drive to fund its homeless shelters where nothing is promised in return for a donor's pledge is exempt as fund-raising contributions of money to further the goals of the nonprofit organization.

(B) A nonprofit group organized as a community playhouse has an annual telephone fund drive. The group gives the caller a mug, jacket, dinner, or vacation trip depending on the amount of pledge made over the phone. The community playhouse does not sell or exchange the mugs, jackets, dinners, or trips for cash or property, except during this pledge drive. The money is used to produce the next season's plays. The money earned from the pledges is exempt from both B&O tax and retail sales tax to the extent these amounts represent an exchange of goods and services for money to further the goals of the nonprofit group. The money earned from the pledges above the value of the goods and services exchanged is exempt as a fund-raising contribution of money to further the goals of the nonprofit organization.

(C) A nonprofit group sells ice cream bars at booths leased during the two-week runs of three county fairs, for a total of six weeks during the year, to fund youth camps maintained by the nonprofit group. The money earned from the booths is exempt from both B&O tax and retail sales tax as a fund-raising exchange of goods for money to further the goals of the nonprofit group.

(iii) **Contributions of money or other property.** The term contributions includes grants, donations, endowments, scholarships, gifts, awards, and any other transfer of money or other property by a donor, provided the donor receives no significant goods, services, or benefits in return for making the gift. For example, an amount received by a nonprofit educational broadcaster from a group that conditions receipt on the nonprofit broadcaster airing its seminars is not a contribution regardless of how the amount paid is titled by the two organizations.

It is not unusual for the person making a gift to require some accountability for how the gift is used as a condition for receiving the gift or future gifts. Such gifts remain exempt, provided the "accountability" required does not result in a direct benefit to the donor (examples of direct benefits to a donor are: Money given for a report on the soil contamination levels of land owned by the donor, medical services provided to the donor or the donor's family, or market research benefiting the donor directly). This "accountability" can take the form of conditions or restrictions on the use of the gift for specific charitable purposes or can take the form of written reports accounting for the use of the gift. Public acknowledgment of a donor for the gift is not a significant service or benefit.

(iv) **Nonqualifying activities.** Fund-raising activity does not include the operation of a regular place of business in which services are provided or sales are made during regular hours such as a bookstore, thrift shop, restaurant, legal or health clinic, or similar business. It also does not include the operation of a regular place of business from which services are provided or performed during regular hours such as the provision of retail, personal, or professional services. A regular place of business and the regular hours of that business depend on the type of business being conducted.

(A) In the example demonstrating that an amount received by a nonprofit broadcaster was not a contribution because services were given in return for the funds, this activity must also be examined to see whether the exchange was for services as part of a fund-raising activity. The broadcaster is in the business of broadcasting programs. It has a regular site for broadcasting programs and broadcasts twenty-four hours every day. Broadcasting is a part of its business activity performed from a regular place of business during regular hours. The money received from the group with the requirement that its seminars be broadcast would not qualify as money received from a fund-raising activity even though the parties viewed the money as a "donation."

(B) A nonprofit organization that makes catalog sales throughout the year with a twenty-four hour telephone line for taking orders has a regular place of business at the location where the sales orders are processed and regular hours of twenty-four hours a day. Catalog sales are not exempt as fund-raising amounts even though the funds are raised for a nonprofit purpose.

(C) A nonprofit group organized as a community playhouse has three plays during the year at a leased theatre. The plays run for a total of six weeks and the group provides concessions at each of the performances. The playhouse has a regular place of business with regular hours for that type of business. The concessions are done at that regular place of business during regular hours. The concessions are not exempt as fund-raising activities even though amounts raised from the concessions may be used to further the nonprofit purpose of that group.

(D) A nonprofit student group, that raises money for scholarships and other educational needs, sets up an espresso stand that is open for two hours every morning during the school year. The espresso stand is a regular place of business with regular hours for that type of business. The money earned from the espresso stand is not exempt, even though

the amounts are raised to further the student group's nonprofit purpose.

(v) **Fund-raising sales by libraries.** RCW 82.04.3651 provides that the sale of used books, used videos, used sound recording, or similar used information products in a library is not the operation of a regular place of business, if the proceeds are used solely to support the library. The library must be a free public library supported in whole or in part with money derived from taxes. RCW 27.12.010. In addition to the B&O tax exemption under RCW 82.04.3651, RCW 82.08.02573 provides a comparable retail sales tax exemption for the same sales made by a library.

(h) **Group training homes.** RCW 82.04.385 exempts from B&O tax amounts received from the department of social and health services for operating a nonprofit group training home. The amounts excluded from gross income must be used for the cost of care, maintenance, support, and training of developmentally disabled individuals. As defined in RCW 71A.22.020, a nonprofit group training home is an approved facility equipped, supervised, managed, and operated on a full-time nonprofit basis for the full-time care, treatment, training, and maintenance of individuals with developmental disabilities.

(i) **Sheltered workshops.** RCW 82.04.385 also exempts from B&O tax amounts received by a nonprofit organization for operating a sheltered workshop.

(i) **What is a sheltered workshop?** A sheltered workshop is that part of the nonprofit organization engaged in business activities that are performed primarily to provide evaluation and work adjusted services for a handicapped person or to provide gainful employment or rehabilitation services to a handicapped person. The sheltered workshop can be maintained on or off the premises of the nonprofit organization.

(ii) **What is meant by "gainful employment or rehabilitation services to a handicapped person"?** Gainful employment or rehabilitation services must be an interim step in the rehabilitation process that is provided because the person cannot be readily absorbed into the competitive labor market or because employment opportunities for the person do not exist during that time in the competitive labor market.

"Handicapped," for the purposes of this exemption, means a physical or mental disability that restricts normal achievement, including medically recognized addictions and learning disabilities. However, this term does not include social or economic disadvantages that restrict normal achievement (e.g., prior criminal history or low-income status).

(j) **Student loan services.** RCW 82.04.367 exempts from B&O tax amounts received by nonprofit organizations that are exempt from federal income tax under section 501 (c) (3) of the Internal Revenue Code that:

(i) Are guarantee agencies under the federal guaranteed student loan program or that issue debt to provide or acquire student loans; or

(ii) Provide guarantees for student loans made through programs other than the federal guaranteed student loan program.

(k) **Grants received to fund education programs pertaining to litter control, waste reduction, recycling, and**

composting. Effective July 24, 2015, RCW 82.04.755 provides a B&O tax exemption for grants received by a nonprofit organization from the matching fund competitive grant program established in RCW 70.93.180 (1)(b)(ii). This program provides funding for local or statewide education programs designed to help the public with litter control, waste reduction, recycling, and composting of primarily products upon which litter tax is imposed. For information on the state litter tax program, see chapter 82.19 RCW. The requirements for the grants are listed in RCW 70.93.180 (1)(b)(ii). Chapter 15, Laws of 2015 (ESHB 1060).

(6) **B&O tax deduction of payments made to health or social welfare organizations.**

(a) **Compensation from public entities.** RCW 82.04.-4297 provides a B&O tax deduction to health or social welfare organizations for amounts received from the United States, any instrumentality of the United States, the state of Washington, or any municipal corporation or political subdivision of the state of Washington as compensation for or to support health or social welfare services, rendered by a health or social welfare organization, as defined in RCW 82.04.431, or by a municipal corporation or political subdivision. These deductible amounts should be included in the gross income reported on the excise tax return, entered on the deduction page, and then deducted on the return when determining the amount of the organization's taxable income. A deduction is not allowed, however, for amounts that are received under an employee benefit plan.

(b) **Mental health services or chemical dependency services under a government-funded program.** RCW 82.04.4277 provides a B&O tax deduction for health or social welfare organizations for amounts received as compensation for providing mental health services or chemical dependency services under a government-funded program.

(i) The following definitions apply to (b) of this subsection unless the context clearly requires otherwise:

(A) "Chemical dependency" has the same meaning as provided in RCW 70.96A.020;

(B) "Health and social welfare organization" has the meaning provided in RCW 82.04.431; and

(C) "Mental health services" and "behavioral health organization" have the meanings provided in RCW 71.24.-025.

(ii) The deduction for amounts received as compensation for providing chemical dependency services under a government-funded program is effective April 1, 2016. Regional support networks, which are renamed behavioral health organizations effective April 1, 2016, may also deduct from the measure of tax amounts received from the state of Washington for distribution to health or social welfare organizations eligible to deduct the distribution under RCW 82.04.4277.

(iii) Persons claiming deductions under RCW 82.04.-4277 must file an annual tax performance report with the department. Refer to RCW 82.32.534 and WAC 458-20-267 for information regarding filing an annual tax performance report.

(iv) These deductions are scheduled to expire January 1, 2020.

(c) **Child welfare services.** RCW 82.04.4275 provides a B&O tax deduction for health or social welfare organizations

for amounts received as compensation for providing child welfare services under a government-funded program. Persons may also deduct from the measure of tax amounts received from the state of Washington for distribution to health or social welfare organizations eligible to deduct the distribution under RCW 82.04.4275(1).

(d) **What is a health or social welfare organization?** A health or social welfare organization is an organization, including any community action council, providing health or social welfare services as defined in subsection (6)(e) of this rule. To be exempt under RCW 82.04.4297, a corporation must satisfy all of the following conditions:

(i) Be a corporation sole under chapter 24.12 RCW or a domestic or foreign not-for-profit corporation under chapter 24.03 RCW. A corporation providing professional services as authorized under chapter 18.100 RCW does not qualify as a health or social welfare organization;

(ii) Be governed by a board of not less than eight individuals who are not paid corporate employees when the organization is a not-for-profit corporation;

(iii) Not pay any part of its corporate income directly or indirectly to its members, stockholders, officers, directors, or trustees except as executive or officer compensation or as services rendered by the corporation in accordance with its purposes and bylaws to a member, stockholder, officer, or director or as an individual;

(iv) Only pay compensation to corporate officers and executives for actual services rendered. This compensation must be at a level comparable to like public service positions within Washington;

(v) Have irrevocably dedicated its corporate assets to health or social welfare activities. Upon corporate liquidation, dissolution, or abandonment, any distribution or transfer of corporate assets may not inure directly or indirectly to the benefit of any member or individual, except for another health or social welfare organization;

(vi) Be duly licensed or certified as required by law or regulation;

(vii) Use government payments to provide health or social welfare services;

(viii) Make its services available regardless of race, color, national origin, or ancestry; and

(ix) Provide access to the corporation's books and records to the department's authorized agents upon request.

(e) **Qualifying health or welfare services.** The term "health or social welfare services" includes, and is limited to:

(i) Mental health, drug, or alcoholism counseling or treatment;

(ii) Family counseling;

(iii) Health care services;

(iv) Therapeutic, diagnostic, rehabilitative, or restorative services for the care of the sick, aged, physically disabled, developmentally disabled, or emotionally disabled individuals;

(v) Activities, including recreational activities, intended to prevent or ameliorate juvenile delinquency or child abuse;

(vi) Care of orphans or foster children;

(vii) Day care of children;

(viii) Employment development, training, and placement;

(ix) Legal services to the indigent;

(x) Weatherization assistance or minor home repairs for low-income homeowners or renters;

(xi) Assistance to low-income homeowners and renters to offset the cost of home heating energy, through direct benefits to eligible households or to fuel vendors on behalf of eligible households; and

(xii) Community services to low-income individuals, families and groups that are designed to have a measurable and potentially major impact on causes of poverty in communities of the state of Washington; and

(xiii) Temporary medical housing, as defined in RCW 82.08.997, if the housing is provided only:

(A) While the patient is receiving medical treatment at a hospital required to be licensed under RCW 70.41.090 or at an outpatient clinic associated with such hospital, including any period of recuperation or observation immediately following such medical treatment; and

(B) By a person that does not furnish lodging or related services to the general public.